

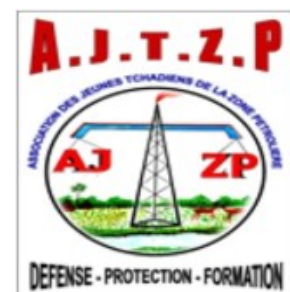
# Complaint to the United Kingdom National Contact Point (NCP)

Breaches of the OECD Guidelines for Multinational Enterprises by  
Glencore UK Ltd at the Badila oilfield in Chad

By

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10 September 2020



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## Before the UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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## Table of Contents

Summary.....	4
Introduction .....	5
a. Objective in bringing the case and understanding of the UK NCP approach .....	5
b. Complainants' demands from the Respondent.....	5
2. Admissibility .....	7
a. The Complainants and their interest in the case.....	7
b. The Respondent Glencore UK Ltd and the UK NCP .....	7
c. Parallel proceedings.....	9
3. The Complainants' dealings with the Respondent to date.....	10
4. Events giving rise to breaches.....	12
a. Context.....	12
b. The incidents.....	15
c. Consequences and adverse impacts on local communities .....	20
5. Breaches of the OECD Guidelines.....	28
a. Environmental damages and failure to conduct due diligence .....	28
b. Human rights violations .....	37
c. Failure to ensure meaningful stakeholder engagement.....	46
d. Failure to contribute to economic, environmental and social progress with a view to achieving sustainable development.....	47
Conclusion.....	49

## Summary

The Complainants submit that Glencore UK, either directly or through its local subsidiary PetroChad (Mangara) Limited (“PCM”), has breached the OECD Guidelines for Multinational Enterprises (the “OECD Guidelines”) by failing:

- to conduct appropriate environmental and human rights due diligence at its Badila oil concession in Chad (Chapters IIA, par. 10, IV, par. 5, and VI);
- to respect the internationally recognised human rights of the local communities living near the concession (Chapters IIA, par. 2 and IV);
- to provide remediation for the harm caused (Chapter IV, par. 6);
- to disclose material information on human rights and environmental risks and issues affecting stakeholder communities (Chapter III);
- to ensure meaningful stakeholder engagement (Chapters IIA, par. 14 and VI, par. 2);
- and to contribute to the communities’ sustainable development (Chapters IIA, par. 1, and VI).

In addition to general neglect towards its stakeholders and local communities, major events have occurred at the Badila oilfield that demonstrate the acute failure of Glencore UK to respect the OECD Guidelines.

On 10 September 2018, the earth bank supporting a wastewater basin containing the equivalent of 34 Olympic size pools collapsed and a wave of destruction swept across the surrounding landscape until the wastewater poured, unchecked, into the local Nya Pende River. The river is crucial for daily life. Thousands of downstream local residents use it for bathing, fishing, washing and to water livestock and crops. A number of people reported noticing that the surface of the river water was “oily” and had a peculiar odour. Photos from that time show a sheen of hydrocarbons on the surface of the water. The wastewater basin held “produced water,” a by-product of crude oil production.

The situation was further aggravated two weeks later, according to local residents. A customary chief and five residents close to the concession told the Complainants that on or around 26 September 2018 the oil feeder pipe leading from the Badila oilfield to the main Chad-Cameroon pipeline was leaking crude oil and necessitated repairs. The location of the leak was only a few meters from the Nya Pende River.

In the days and weeks that followed the wastewater spill and the crude oil leak reported by the chief, dozens of local residents suffered physical injuries including burns, skin lesions, and pustules on the skin. Others complained of blurred vision, stomach aches, internal pains, vomiting and diarrhoea after using, and sometimes drinking, the water from the river. Some required hospitalization, including at least two children who suffered serious skin lesions, burns and pustules after bathing in the water. Livestock was also affected and individuals reported deaths of goats, cattle, pigs and sheep. On the day of the wastewater, fish were floating, dead, on the surface of the water.

On 21 July 2020, another wastewater spill occurred at the Badila oilfield. According to local residents and contractors, sixty cubic metres of wastewater, contrary to the 3-4 cubic meters mentioned by the company, spilled into nearby Melom village, flooding farmland, houses and contaminating the village well.

Glencore UK has failed to conduct adequate due diligence for its wastewater management. It failed to prepare a revised Environmental and Social Impact Assessment when it changed its wastewater disposal technique, to consult and warn communities living near its oilfield over environmental protection measures prior to the spills and the reported leak and did not implement mitigation measure afterwards. It did not provide remediation for injuries, death of livestock and soil contamination as its operational grievance mechanism is flawed and hinder accessibility and is not legitimate, predictable nor equitable.

Further, Glencore UK has little engagement with its stakeholders, failing to disclose relevant documents to affected communities, such as the soil and water test results following the spill and reported leak and to promote sustainable development with local communities.

## **Introduction**

### **a. Objective in bringing the case and understanding of the UK NCP approach**

The Complainants acknowledge that the UK NCP's approach to resolving complaints is in the first instance to facilitate conciliation or mediation and respectfully request that the NCP offers its good offices to resolve the OECD Guidelines breaches outlined below.

The Complainants have communicated with Glencore UK several times about their concerns and demands. They have also submitted a complaint to its grievance mechanism. However, these efforts have not resulted in remediation and Glencore UK's silence has worsened the relationship and trust with the local communities. To date, Glencore UK has not provided remedy to many of the victims, other than limited financial compensation for damage to crops and farmland in a few cases. The Complainants believe that the assistance of the UK NCP, applying the OECD Guidelines, can help create space to rebuild trust and impetus for better outcomes.

Moreover, an agreed resolution could result in the tangible remediation the local communities have long awaited, as well as meaningful changes in corporate practices of Glencore UK and perhaps other oil and extractive companies.

If mediation fails or is refused by Glencore UK, the Complainants understand that the UK NCP will examine the facts and make a determination as to whether or not Glencore UK has breached the OECD Guidelines. The Complainants hope that the UK NCP will provide recommendations on the steps Glencore UK should take to address the harms it has caused and improve its due diligence and stakeholder engagement in the future.

The Complainants acknowledge that all the information provided to the UK NCP will be shared with the company (unless, exceptionally, confidentiality is necessary).

All correspondence relating to this Complaint should be directed to Complainant RAID as the internet and postal services are slow and inconsistent in Chad.

### **b. Complainants' demands from the Respondent**

In submitting this Complaint to the UK NCP, the Complainants seek the following outcomes:

- 1) That Glencore UK commissions independent experts to investigate the September 2018 wastewater spill and the oil leak reported by the customary chief and local residents and all subsequent injuries and loss of livelihoods reported by residents. Such investigation should be thorough, transparent and include the participation of the local communities. If the injuries are found not to be related to Glencore UK's operations, to provide sound and reasonable alternative explanations for the injured people. The findings of that investigation should be made public and distributed to residents.
- 2) Glencore UK commissions an independent environmental assessment of the September 2018 and July 2020 wastewater spills as well as the oil leak reported by the customary chief and local residents of communities near the Badila oilfield. Such investigation should be thorough, transparent and include the participation of the local communities. The findings of that investigation should be made public and distributed to residents.
- 3) Glencore UK guarantees to provide redress and remedy for those already adversely affected including medical support for those still living with injuries.
- 4) Glencore UK guarantees to remedy any environmental damage resulting from the September 2018 wastewater spill and the oil leak reported by the customary chief and local residents, as well as the July 2020 wastewater spill. Glencore UK will publish information about steps it will take to prevent such spills in the future.
- 5) Glencore UK guarantees to implement an accessible and transparent stakeholder engagement mechanism. This should include a clear policy on regular communication and engagement with stakeholders, as well as an operational-level grievance mechanism that is legitimate, accessible, predictable, equitable, rights-compatible and based on engagement and dialogue. The grievance mechanism should be compliant with the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>1</sup>
- 6) To mend the relationship with local communities, and to maintain trust going forward, Glencore UK guarantees that the results of all water and soil testing completed between 2017 and 2020, and any future test results, will be made publicly available and to commission an independent expert that will be on hand to explain the findings to local communities. Glencore UK will undertake to conduct trimestrial water and soil testing, including of the local water wells and the Nya Pende river and its tributaries at locations to be agreed with the local communities. All water and soil testing should be conducted in line with international best practices and meet the WHO standards on drinking-quality water.

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<sup>1</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), 'United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' <[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)> accessed 8 December 2020 (UNGPs).

## 2. Admissibility

The Complainants set out (a) their standing and interest in bringing the complaint; (b) why Glencore UK is the relevant entity for consideration by the UK NCP; and (c) the absence of parallel procedures.

### a. The Complainants and their interest in the case

The Complainant *Association des Jeunes Tchadiens de la Zone Pétrolière* (AJTZP) is a local Chadian non-profit organisation that provides capacity-building workshops to local residents and defends their interests, monitor the activities of PCM and Glencore UK and denounces cases of human rights violations through advocacy and campaigning. It is based in Donia, 12 kilometres from the Badila oilfield. AJTZP is the only organisation serving the rural Doba river basin region and representing its native people. Its members are residents of the villages near the Badila oilfield and those directly impacted by Glencore UK's operations. Since its foundation in May 2013, AJTZP has sought to engage with PCM and Glencore UK about concerns raised by local residents in relation to its operations and it has served as the main point of contact for the villages in the area. AJTZP has a direct interest in the case as it represents local communities affected by Glencore UK's operations at Badila.

The Complainant *Public Interest Law Center* (PILC) is a Chadian legal firm promoting access to judicial and non-judicial remedies for the poor and vulnerable, particularly women and children. It focuses on the responsibility of extractive companies and governments in human rights violations and environmental harm. PILC works in collaboration with Complainant AJTZP by providing it with technical and financial support, as well as training. PILC and AJTZP work closely together in partnership to document the impact of wastewater spills and other harm at the Badila oilfield, to raise awareness of the damaging impacts it causes and to secure remedy for the victims.

The Complainant *Rights and Accountability in Development* (RAID) is a non-governmental organisation based in London, United Kingdom. RAID seeks to expose corporate wrongdoing, environmental damage and human rights abuses by partnering with those harmed to hold companies to account. RAID's focus is predominately on corporate harm committed in Africa. Complainant RAID has a clear interest in this Complaint given its mission to support and seek justice for those harmed by a UK based company operating in Africa. Since December 2019, RAID has partnered with Complainants AJTZP and PILC to seek remedy for the local residents living near the Badila oilfield and to hold Glencore UK accountable. In June 2019, Complainant RAID, alongside Complainants AJTZP and PILC, conducted an 11-days mission in the Badila region to investigate the allegations, and in March 2020, published a public report about its research. Complainant RAID has filed several complaints to the UK NCP and provides translation, expert and technical support to the Complainants AJTZP and PILC in their dealings with both Glencore UK and the UK NCP.

### b. The Respondent Glencore UK Ltd and the UK NCP

This Complaint is directed to the UK NCP. The Complainants contend that the UK NCP is the appropriate NCP and has competence to handle this case for four reasons: i) Glencore UK is

registered in the United Kingdom and headquartered in London; ii) Glencore UK exercises direct control over the issues that arise in this Complaint; iii) the Complainants have consistently engaged with Glencore UK and PCM in their communications about the case; and (iv) there is no NCP in Chad.

i. Glencore UK's corporate structure and location

Glencore UK Limited ("Glencore UK") is a private limited company registered in England and Wales with its headquarters in London.<sup>2</sup> As a result, it is a relevant company for the UK NCP in its consideration of this complaint.

Glencore UK's immediate parent company is Glencore International AG,<sup>3</sup> wholly owned by Glencore Plc ("Glencore"). Glencore is incorporated in Jersey and domiciled in Switzerland.<sup>4</sup> Glencore's shares are listed on the London Stock Exchange's main market with a secondary listing on the Johannesburg Stock Exchange.

Glencore UK manages all of Glencore's energy department, including its oilfields in Chad, through its offices in London. As noted above, PetroChad (Mangara) Limited ("PCM"), is a wholly-owned subsidiary of Glencore directly managed and operated by Glencore UK. In this submission when the Complainants refer to Glencore UK it is understood to include PCM.

ii. Glencore UK exercises direct control over the issues that arose in this Complaint

The Procedural Guidance provides that generally, issues will be dealt with by the NCP of the country in which the issues have arisen.<sup>5</sup> The Complainants believe that the UK NCP is the appropriate entity because the breaches to the OECD Guidelines alleged in this Complaint (failure to conduct due diligence, to protect and respect human rights, to provide remediation, to ensure meaningful stakeholder engagement and to contribute to sustainable development) all relate to decisions taken by Glencore UK and thus have arisen in the UK.

As the Guide for NCP on Coordination mentions, "the term 'issues' is not synonymous with 'impacts.'"<sup>6</sup> The "issues" could refer to "a general policy set by a company at headquarter level which may lead to impacts in several locations. In such a case the location of the 'issues' may be traced back to the location of the company headquarters".<sup>7</sup>

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<sup>2</sup> See <https://beta.companieshouse.gov.uk/company/01170825>.

<sup>3</sup> Glencore UK Ltd, 'Annual Report and Financial Statements 2018' (2018).

<sup>4</sup> Glencore Plc, 'Annual Report 2019' (2019).

<sup>5</sup> Organisation for Economic Co-operation and Development (OECD), 'OECD Guidelines for Multinational Enterprises' ch Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, par. 23. <<http://www.oecd.org/daf/inv/mne/48004323.pdf>> (OECD Guidelines).

<sup>6</sup> Organisation for Economic Co-operation and Development (OECD), 'Guide for National Contact Points on Coordination When Handling Specific Instances, OECD Guidelines for Multinational Enterprises' 6 <<https://mneguidelines.oecd.org/Guide-for-NCPs-on-Coordination-when-handling-Specific-Instances.pdf>>.

<sup>7</sup> *ibid*.



Glencore's energy department, including all of its oil assets and trading, is managed by Glencore UK,<sup>8</sup> which was made clear to the Complainant RAID during their exchange of correspondence, where it was Glencore UK's head of Health, Safety, Environment and Communities (HSEC) that answered correspondence and suggested an in-person meeting in Glencore UK's London offices. During the meeting, it was confirmed that PCM's personnel, and more specifically its HSEC department, reports to the London office, which was directly managing the Complainants' complaint.

Complainant RAID also learned that PCM's HSEC department has a weekly conference call with the London office to report back on issues and to approve action plans and strategies. It was confirmed that the London office was overseeing the problems with the basin overflow and the subsequent wastewater spill, and authorised the company's policy in response to the disaster. Furthermore, several employees based in Chad reported being employed by Glencore UK,<sup>9</sup> as confirmed to the Complainants during their June 2019 field visit.

As such, the issues dealt with in this Complaint all "arose" in the UK, at Glencore UK's headquarters in London, where all key managerial decisions are taken.

iii. The Complainants have consistently interacted with Glencore UK and PCM in their communications

As described below, the Complainants have consistently engaged with Glencore UK and PCM about their concerns. It was made clear to them that Glencore UK was the entity responsible for the issues and that their communications should be directed to Glencore UK.

iv. There is no NCP in Chad

As there is no NCP in Chad, and as the Complainants have tried to resolve their complaint directly with Glencore UK and PCM to no avail, the Complainants hope that the involvement of the UK NCP will help foster an environment inclined to resolution and remediation.

**c. Parallel proceedings**

The Complainants confirm that, to the extent of their knowledge, there are no parallel proceedings concerning the September 2018 spill, the oil leak reported by the customary chief and local residents, the July 2020 wastewater spill or Glencore UK's interactions with local communities around its Badila oilfield in Chad.

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<sup>8</sup> See for example, Glencore Plc, 'Payments to Government Report 2018' (2018) <[https://www.glencore.com/dam:jcr/c9cea7dd-9fe6-4f9b-bd6a-e82f72672075/Glencore Payments to governments report 2018--.pdf](https://www.glencore.com/dam:jcr/c9cea7dd-9fe6-4f9b-bd6a-e82f72672075/Glencore%20Payments%20to%20governments%20report%202018--.pdf)> accessed 5 June 2020.

<sup>9</sup> See for example <https://www.linkedin.com/company/glencore-uk-ltd-/people/?facetGeoRegion=td%3A0>.

### 3. The Complainants' dealings with the Respondent to date

The Complainant AJTZP raised concerns about the disposal of the Badila oilfield wastewater basin as early as June 2018 during a meeting in Chad with Glencore representatives and other Chadian civil society organisations. On 20 August 2018, in response to attempts by Glencore UK to conduct a controlled release of its produced water into the local Nya Pende river, the Complainant AJTZP published a press release vehemently opposing it. A copy of the press release was sent to Glencore UK and its subsidiary PCM in Chad. Complainant AJTZP did not receive an answer. On 10 September 2018, the basin berm collapsed and the wastewater flooded the surrounding fields and poured into the local Nya Pende river.

On 8 November 2018, Complainants AJTZP and PILC held a press conference in Chad about the September 2018 wastewater spill and the injuries residents reported. They provided details about 15 cases of physical injuries between 26 September and 26 October 2018, as well as 2 cases of the death of livestock on 10 and 14 October 2018, including one incident in which 36 cattle died. The press conference was reported by local media and radio.<sup>10</sup>

On 28 November 2018, Complainants AJTZP and PILC published a report which detailed 13 cases of physical injuries attributed to the September 2018 wastewater spill.<sup>11</sup> On 30 March 2019, Complainant PILC broadcasted a radio interview about the wastewater spill and other issues, which was followed by an exchange of correspondence with Glencore UK on 15 and 19 April 2019 and a discussion on 30 May 2019 in Chad. In these exchanges, Glencore UK maintained it had no responsibility in the matter and that no further investigation would be undertaken.

On 9 August 2019, following further research about the human rights and environmental effects of the wastewater spill, the three Complainants wrote to Glencore UK and PCM to raise further concerns about the impact on local residents of the September 2018 wastewater spill and the reported oil leak, the company's lack of engagement with local communities and its grievance mechanism.<sup>12</sup> Complainant RAID received a written answer on 6 September 2019.<sup>13</sup> On 11 October 2019, RAID staff met with representatives of Glencore, Glencore UK, and PCM in Glencore UK's London office, and further written

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<sup>10</sup> 'Glencore pollue la zone pétrolière de Badila' (*Journal Le Pays / Tchad*) <<http://www.lepaystchad.com/5791/>> accessed 4 March 2020; 'Contamination mortelle dans la Zone Pétrolier de Badila' (*Actualités du Tchad*, 8 November 2018) <<https://www.tchad.com/contamination-mortelle-dans-la-zone-petrolier-de-badila>> accessed 4 March 2020; 'Tchad : Glencore accusé de pollution à Badila' (*Journal du Tchad*, 9 November 2018) <<https://www.journaldutchad.com/tchad-glencore-accuse-de-pollution-a-badila/>> accessed 4 March 2020.

<sup>11</sup> Association des Jeunes Tchadien de la Zone Pétrolière (AJTZP) and Public Interest Law Center (PILC), 'Impacts Mortels de l'Exploitation Du Pétrole: Cas Du Bloc de Badila/Donia (Tchad)' (2018), attached as Annex 2. Glencore UK said to Complainant RAID during the 11 October 2019 meeting in London that it did not receive that report until 5 June 2019, when it was sent directly to PetroChad (Mangara)'s General Manager by Complainant PILC.

<sup>12</sup> Letter sent by Complainants RAID, AJTZP and PILC to Glencore UK, dated 9 August 2019, see the full exchange of correspondence in Annex 1.

<sup>13</sup> Glencore UK correspondence dated 6 September 2019, signed by Petrochad (Mangara) Ltd's General Manager (Glencore UK first correspondence), see Annex 1.

clarifications were exchanged between the parties on 15 and 26 October 2019.<sup>14</sup> Despite having confirmed during the October 2019 meeting that the concerns raised by the Complainants were taken as a formal complaint into Glencore's grievance mechanism, it was not reported in Glencore's 2018 or 2019 Sustainability Reports,<sup>15</sup> contrary to its obligation under Chap. III, par.3e) of the OECD Guidelines.

Prior to publishing its public report about the events on 15 March 2020,<sup>16</sup> Complainant RAID sent Glencore UK a right to reply on 3 March 2020, which was answered on 6 March 2020.<sup>17</sup> Glencore UK answered that it was in the process of reviewing its grievance mechanism at Badila and that it will conduct an internal audit of its community engagement process in April 2020. It also mentioned having appointed an independent consultant to assess groundwater, river water and soil sample around the Badila's operations, and being in the process of commissioning an independent Health Impact Risk Assessment.<sup>18</sup> The Complainants were not approached to provide input to these reviews and assessments, nor did Glencore UK provide further updates on these commitments after March 2020 until it was prodded by Complainant RAID when it informed it of another wastewater spill in July 2020.

On 27 July 2020, Complainant RAID received a letter by PCM's general manager notifying it of a waste oil sump that overflowed and spilled into Melom village and the local river.<sup>19</sup> On 31 July 2020, Complainant RAID requested information about the recent wastewater spill, the water test results Glencore UK claimed it conducted, as well as updates on the commitments it made in March 2020.

An answer was received on 11 August 2020 saying that the test results were awaited from a laboratory in the UK.<sup>20</sup> On 28 August 2020, PCM told Complainant RAID that its "local team will shortly communicate these findings [water and soil tests] to the affected communities, as well as making available a copy of the laboratory summary report".<sup>21</sup> It also provided minimal updates on the commitments it undertook in March 2020 following requests by Complainant RAID, saying that the internal audit of its community engagement process and

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<sup>14</sup> Email sent by Complainant RAID dated 15 October 2019, signed by RAID's Executive Director, and Glencore UK correspondence dated 25 October 2019, signed by Glencore UK's Health, Social, Environmental and Communities Lead (Glencore UK second correspondence), see Annex 1.

<sup>15</sup> Glencore Plc, '2019 Sustainability Report' (2019) <<https://www.glencore.com/dam:jcr/31236b6f-34a4-432a-b4b3-6fe133488bb8/2019-Glencore-Sustainability-Report-.pdf>> accessed 3 April 2020; Glencore Plc, '2018 Sustainability Report' (2018) <[https://www.glencore.com/dam:jcr/633f190c-76d6-42b3-beca-debb25134556/2018-Glencore-Sustainability-Report\\_.pdf](https://www.glencore.com/dam:jcr/633f190c-76d6-42b3-beca-debb25134556/2018-Glencore-Sustainability-Report_.pdf)> accessed 3 April 2020.

<sup>16</sup> Rights and Accountability in Development (RAID), 'Glencore's Oil Operations in Chad: Local Residents Injured and Ignored' (2020) <[https://www.raid-uk.org/sites/default/files/raid\\_report\\_glencore\\_chad.pdf](https://www.raid-uk.org/sites/default/files/raid_report_glencore_chad.pdf)> .

<sup>17</sup> Letter sent by Complainant RAID dated 3 March 2020, signed by RAID's Executive Director, and Glencore UK correspondence dated 6 March 2020, signed by Petrochad (Mangara) Ltd' General Manager, (Glencore UK third correspondence), Annex 1.

<sup>18</sup> Glencore UK third correspondence (n 17).

<sup>19</sup> Glencore UK correspondence dated 27 July 2020, signed by Petrochad (Mangara) Ltd' General Manager, (Glencore UK fourth correspondence), Annex 1.

<sup>20</sup> Glencore UK correspondence dated 11 August 2020, signed by Petrochad (Mangara) Ltd's Deputy General Manager (Glencore UK fifth correspondence), see Annex 1.

<sup>21</sup> Glencore UK correspondence dated 28 August 2020, signed by Petrochad (Mangara) Ltd's Deputy General Manager (Glencore UK sixth correspondence), see Annex 1.

the Health Impact Assessment were scheduled to be carried out in the second quarter of 2020, but due to COVID-19 travel restrictions it was being postponed to an undetermined date.<sup>22</sup> Complainant RAID was also informed for the first time in that email that a new Environmental and Social Impact Assessment (ESIA) was approved by the Chadian government on 11 February 2020 and that the ground, soil and water assessment had been conducted in March 2020. Both the new ESIA and the ground, soil and water assessment report were not shared with Complainant RAID, but it was rather told that the “consultant that completed the [ground, soil and water assessment] report stated [that] ‘In short the assessment didn’t find any significant impacts to soil and water.’”<sup>23</sup>

## 4. Events giving rise to breaches

### a. Context

#### i. Chad and the oil industry

The Republic of Chad is a landlocked country in central Africa with a population of approximately 16 million people. Its citizens are amongst the poorest in the world with 47 per cent of its population living in poverty.<sup>24</sup> Chad is ranked 187 out of 189 in the UN’s Human Development Index and has only a 22 per cent literacy rate amongst adults.<sup>25</sup> Oil is the major source of revenue for the Chadian government. In 2011, at the peak of the oil price, Chad’s oil revenue made up 76 per cent of government revenue.<sup>26</sup>

In 2014, Glencore Energy UK Ltd, a subsidiary of Glencore UK, lent to the Chadian state-owned company *Société des Hydrocarbures du Tchad* (SHT) \$1.45 billion, which added to its existing loan of \$600 million.<sup>27</sup> In 2017, Glencore Energy UK held 98 per cent of Chad’s external commercial debt, which accounted for almost half of its total external debt.<sup>28</sup> According to the World Bank, “repaying the external commercial and oil collateralized loan with Glencore had a significant negative effect on the flow of oil revenues to the budget and rendered Chad illiquid”.<sup>29</sup> Even after an agreement was reached in 2018 to restructure this

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<sup>22</sup> Glencore UK fifth correspondence (n 20), see Annex 1.

<sup>23</sup> *ibid.*

<sup>24</sup> United Nations Development Programme (UNDP), ‘Human Development Reports: Chad’ (2019) <<http://hdr.undp.org/en/countries/profiles/TCD>> accessed 5 May 2020.

<sup>25</sup> *ibid.*

<sup>26</sup> International Monetary fund (IMF), ‘Chad: Selected Issues’ (2016) IMF Country Report No. 16/275 <[www.imf.org/~/media/Files/Publications/2016/08/16275/2016-8-chad-si-4-oil-sector-transparency-and-integrity](http://www.imf.org/~/media/Files/Publications/2016/08/16275/2016-8-chad-si-4-oil-sector-transparency-and-integrity)> accessed 3 April 2020.

<sup>27</sup> Initiative pour la Transparence dans les Industries Extractives au Tchad (ITIE), ‘Report EITI 2016 Chad (French)’ (2018) <[https://eiti.org/files/documents/rapport\\_itie\\_tchad\\_2016.pdf](https://eiti.org/files/documents/rapport_itie_tchad_2016.pdf)> accessed 3 April 2020.

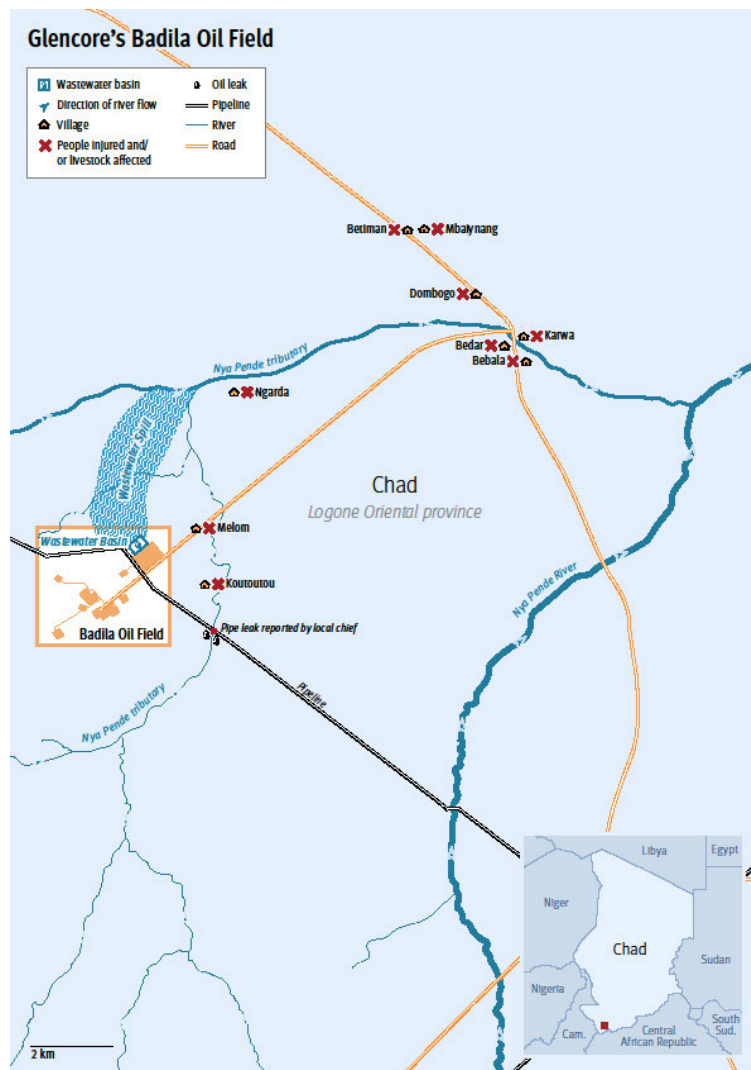
<sup>28</sup> International Monetary Fund (IMF), ‘Chad - Joint World Bank-IMF Debt Sustainability Analysis’ (World Bank 2019) <<http://elibrary.worldbank.org/doi/book/10.1596/32580>> accessed 4 March 2020.

<sup>29</sup> International Development Association, ‘Program Document for a Proposed Development Policy Grant in the Amount of SDR 44.8 Million (Us\$65 Million Equivalent) to the Republic Of Chad for the First Economic Recovery and Resilience Development Policy Operation, Report No 116242-TD’ (World Bank 2018) 16 <<http://documents1.worldbank.org/curated/en/416901537280719716/pdf/116242-PGD-OUO-9-Chad-1st-Economic-Recovery-Resilience-DPO-PD-August-14.pdf>> accessed 8 September 2020.

debt, the Bank warned that there was still a high risk of debt distress for Chad without the further clearance of arrears.<sup>30</sup>

ii. The Badila oilfield

The Badila oilfield is located 65 kilometres from Moundou, the second-largest city in Chad, in the Logone Oriental province. The Nya Pende, a major river in the area, and its tributaries pass alongside the oil concession. The Nya Pende River flows into the Chari and Logone rivers, which terminate in Lake Chad. According to local civil society organisations, around 23 villages and towns, with a total estimated population of 18,000 people, are located in a 13-kilometre diameter of the Badila oilfield. The local population near the oilfield lives largely from subsistence farming and/or nomadic herding. There is limited access to education or health care.



<sup>30</sup> ibid 37.

The Badila oilfield is part of the Mangara-Badila oilfields in the Doba oil basin. The oilfields were initially developed by Griffiths Energy International Ltd, a Canadian-based company, in 2011.<sup>31</sup> In 2013, Griffiths Energy International changed its name to Caracal Energy Plc.<sup>32</sup>

In 2012, Glencore acquired 35% interest in the Mangara-Badila oilfields.<sup>33</sup> In July 2014, Glencore bought Caracal Energy, increasing its stakes from 35% to 85%,<sup>34</sup> while the state-owned oil company SHT retains the remaining 15%. The Badila oilfield is operated by PetroChad (Mangara) Limited (“PCM”), which is wholly owned by Glencore and managed by Glencore UK. In June 2019, Reuters reported that Glencore had put its Badila oilfield up for sale.<sup>35</sup> At the time of submitting this complaint, it has not yet been sold and Glencore remains the proprietor while Glencore UK still manages it.

The first shipment of oil from the Badila oilfield was announced by Caracal Energy in March 2014.<sup>36</sup> According to the latest Chad Extractive Industry Transparency Initiative (EITI) report, the Mangara-Badila oilfields account for 11% of Chad’s oil revenues.<sup>37</sup> In 2018, Glencore produced nearly 2.8 million barrels of oil in Chad from the Mangara-Badila oilfields<sup>38</sup> and paid \$32.7 million in royalties and \$61 million in production entitlements to the Chadian government.<sup>39</sup>

### iii. Wastewater and its environmental impacts

Wastewater, also called “produced water” in the oil industry, is a term used to describe water that is produced as a by-product during the extraction of oil. Produced water varies widely in quantity and quality, depending on the method of extraction, type of oil and gas reservoir,

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<sup>31</sup> ‘Griffiths Energy (DOH) Ltd., Bloc DOH (Bassin de Doba), PSA, 2011’ (*Resource Contracts*) <<https://www.resourcecontracts.org/contract/ocds-591adf-8608678728/view>> accessed 5 May 2020.

<sup>32</sup> Griffiths Energy International Inc., ‘Caracal Energy Shareholders Approve Name Change’ (*Cision / News Wire*, 22 May 2013) <<https://www.newswire.ca/news-releases/caracal-energy-shareholders-approve-name-change-512446681.html>> accessed 5 May 2020.

<sup>33</sup> Glencore acquired a 25% interest from Caracal and under the terms of a separate agreement between Glencore and SHT, Glencore acquired a further 10%, with SHT retaining 15%. See Caracal Energy Inc., ‘Caracal Energy Inc.: Completion of Farm-In Agreement with Glencore’ (*Investigate*) <<https://www.investigate.co.uk/caracal-energy-inc-rns/completion-of-farm-in-agreement-with-glencore/201306170700051329H/>> accessed 5 March 2020.

<sup>34</sup> ‘Glencore Completes Acquisition of Caracal’ (*Glencore*) <<https://www.glencore.com/media-and-insights/news/Glencore-completes-acquisition-of-Caracal>> accessed 5 March 2020; ‘UPDATE 1-Glencore to Buy Chad Oil Firm Caracal for \$1.3 Bln’ *Reuters* (14 April 2014) <<https://uk.reuters.com/article/glencore-caracal-energy-idUKL6N0N62TX20140414>> accessed 5 March 2020.

<sup>35</sup> ‘Glencore Puts Chad Oilfields up for Sale: Sources’ *Reuters* (12 June 2019) <<https://www.reuters.com/article/us-glencore-oil-idUSKCN1TD1U4>> accessed 4 March 2020.

<sup>36</sup> ‘First Shipment of Badila Oil Loaded for Export’ (*Petroleum Africa*, 26 March 2014) <<https://www.petroleumafrika.com/first-shipment-of-badila-oil-loaded-for-export/>> accessed 5 May 2020.

<sup>37</sup> Initiative pour la Transparence dans les Industries Extractives au Tchad (ITIE) (n 27) 25.

<sup>38</sup> ‘Ask Glencore: Chad’ (*Glencore*) <<https://www.glencore.com/ask-glencore/Chad>> accessed 4 March 2020. The 2016 Chad EITI report contradicts that number, and rather mentions in 2016 a production of 5.3 million barrels, see Initiative pour la Transparence dans les Industries Extractives au Tchad (ITIE) (n 27).

<sup>39</sup> Out of which \$39.4 million in production entitlements and \$19 million in royalties were from the Badila oilfield, see Glencore Plc, ‘Payments to Government Report 2018’ (2018) <[https://www.glencore.com/dam:jcr/c9cea7dd-9fe6-4f9b-bd6a-e82f72672075/Glencore\\_Payments\\_to\\_governments\\_report\\_2018--.pdf](https://www.glencore.com/dam:jcr/c9cea7dd-9fe6-4f9b-bd6a-e82f72672075/Glencore_Payments_to_governments_report_2018--.pdf)> accessed 5 June 2020.

geographical location, and the geochemistry of the producing formation. The volume of water produced by an oil well will increase over its lifetime while the volume of oil will decline,<sup>40</sup> rendering the management of wastewater central to oil extraction.

According to scientific experts, produced water is a global environmental issue due to its vast volume and toxicity. Produced water may contain heavy metals, radioactive material and various chemicals used in the production process,<sup>41</sup> which can “present a threat to aquatic life when they are discharged or to crops when the water is used for irrigation”.<sup>42</sup> According to research, if the produced water is discharged “to local surface water bodies without treatment” or left to “soak into the ground, extensive environmental degradation would be found.”<sup>43</sup>

Most produced water requires treatment to make it suitable for recycling or beneficial use. “Currently, the majority of produced water is managed by disposing of it using a practice known as underground injection”<sup>44</sup> and the U.S. Environmental Protection Agency (EPA) and other “state agencies recognize this as a safe, widely used, proven, and effective method for disposing of produced water”.<sup>45</sup> Because of its high toxicity and its potential impacts on the environment, several regulatory agencies, including the U.S. EPA, have prohibited discharge of produced water in most onshore or near-shore locations.<sup>46</sup>

Glencore confirmed that “[s]ince the start of production operations in 2013, PCM's operating procedure utilised an engineered wetlands system”,<sup>47</sup> in addition to underground re-injection. The water treatment basin is a system where the produced water is transferred and treated through successive basins before it can be reused or disposed of. In late 2017, Glencore stopped using the re-injection method and instead expanded its system of water treatment basins,<sup>48</sup> despite re-injection being considered safer for people and the environment.<sup>49</sup> The Complainants do not know the composition of the Badila wastewater, despite asking for it.

## **b. The incidents**

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<sup>40</sup> Argonne National Laboratory and others, ‘A White Paper Describing Produced Water from Production of Crude Oil, Natural Gas, and Coal Bed Methane’ (2004) Prepared for the U.S. Department of Energy National Energy Technology Laboratory Under Contract W-31-109-Eng-38 64

<<https://www.evs.anl.gov/publications/doc/ProducedWatersWP0401.pdf>> accessed 5 June 2020.

<sup>41</sup> U.S. Environmental Protection Agency, ‘Study of Oil and Gas Extraction Wastewater Management Under the Clean Water Act’ (2019) EPA-821-R19-001 5 <[https://www.epa.gov/sites/production/files/2019-05/documents/oil-and-gas-study-draft\\_05-2019.pdf](https://www.epa.gov/sites/production/files/2019-05/documents/oil-and-gas-study-draft_05-2019.pdf)> accessed 3 April 2020.

<sup>42</sup> Argonne National Laboratory and others (n 40) 11.

<sup>43</sup> National Petroleum Council (NCP) North American Resource Development Study, ‘Working Document: Management of Produced Water from Oil and Gas Wells’ 21 <[https://www.npc.org/Prudent\\_Development-Topic\\_Papers/2-17\\_Management\\_of\\_Produced\\_Water\\_Paper.pdf](https://www.npc.org/Prudent_Development-Topic_Papers/2-17_Management_of_Produced_Water_Paper.pdf)> accessed 5 June 2020.

<sup>44</sup> U.S. Environmental Protection Agency (n 41) 1.

<sup>45</sup> National Petroleum Council (NCP) North American Resource Development Study (n 43) 12.

<sup>46</sup> Argonne National Laboratory and others (n 40) v, 55.

<sup>47</sup> Glencore UK first correspondence (n 13), see Annex 1.

<sup>48</sup> *ibid.*

<sup>49</sup> U.S. Environmental Protection Agency (n 41).

i. The September 2018 wastewater spill

On 10 September 2018, a wastewater spill occurred at the Badila's facilities and poured into the local river used by communities living near the oilfield. The spill was linked to a decision by Glencore UK to change its method to dispose of produced water disposal and expand its wetlands system.



In October 2017, as the level of produced water in the treatment basins increased, Glencore UK decided to build a larger end-of-line basin to contain the increased volumes. It acquired a sizeable portion of land next to Melom village to accommodate the basin. In November 2017 Glencore UK constructed a basin “using laterite containment berms for retaining the



water [...] estimated at 85,000 cubic metres”,<sup>50</sup> which corresponds to 85 million litres, the equivalent of 34 Olympic size swimming pools.



In August 2018, in the midst of the rainy season in Chad, the pressure on the basin berms increased and it began to leak. According to two local customary chiefs, on 18 August, Glencore UK sought to convince communities to agree to a controlled release of the water into the river,<sup>51</sup> a request that was refused. Local customary chiefs interviewed by the Complainants said they had refused as Glencore UK provided no proof that the wastewater was harmless or that the Chadian Minister of the Environment had agreed to it.

On 20 August 2018, Glencore UK made a request to the Chadian Ministry of Environment to allow for a controlled release “to alleviate the strain on the containment berm of the basin by the very heavy rainfall”.<sup>52</sup> Two government delegations from the Ministries of Environment, Water and Fisheries and Petroleum and Energy arrived to assess the situation on 26 August 2018, but they did not approve the controlled release.<sup>53</sup> PCM and Glencore UK staff sought to pump water out of the basin into cisterns to release the pressure without success. The Complainants are not aware of any other steps taken by Glencore UK to avert the impending disaster. Glencore UK provided no indication in correspondence with the Complainants that it took any steps to warn local residents about the potential consequences.

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<sup>50</sup> Glencore UK first correspondence (n 13).

<sup>51</sup> See also Petrochad (Mangara) Ltd, ‘Forums, Public and Individual Consultations for the Badila Oilfield for 2017, 2018 and 2019’, Annex 4.

<sup>52</sup> Glencore UK second correspondence (n 14).

<sup>53</sup> Glencore UK second correspondence (n 14).



On the evening of 10 September 2018, the earth bank supporting the water basin collapsed and a wave of destruction swept across the surrounding landscape until the wastewater poured, unchecked, into the local Nya Pende River. Trees, bushes and fields on the path of the spill were destroyed by its force. The river is crucial for daily life. Thousands of downstream local residents use it for bathing, fishing, washing and to water livestock and crops.



After the spill, Glencore UK said the flooding of the basin was a “one-off” event.<sup>54</sup> Nevertheless, it bulldozed the area where the basin had stood and in correspondence with

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<sup>54</sup> Glencore UK first correspondence (n 13).

Complainant RAID, Glencore UK said that following the spill, it was re-using the re-injection method since early 2019 for all of its produced wastewater at the Badila oilfield.<sup>55</sup>

ii. Reports of an oil leak in September 2018

A customary chief of a village close to the Badila operations told the Complainants that on or around 26 September 2018 the oil feeder pipe leading to the main Chad-Cameroon pipeline was leaking crude oil. According to local residents and the customary chief, a PCM and Glencore UK crew was sent and asked five residents of that village for help. The pipe leak was only a few meters from the river, which alarmed the chief. They called on a representative of the Complainant ATJZP to evidence it. The ATJZP staff member arrived a few days later and said he saw evidence of digging and the soil by the pipe had clearly been turned. The local chief and the five residents told Complainant ATJZP that crude oil had earlier been leaking from the pipe.

When Complainant RAID later requested further information about this leak from Glencore UK, it strongly denied any leak had occurred.<sup>56</sup> Glencore UK said “There have been no recordable pipeline leaks from our operations.”<sup>57</sup> Glencore UK stated the incident referred to by the local chief could have been routine repairs conducted on 16 and 17 August 2018 from which there was “no damage to the pipeline itself or any loss of hydrocarbon” at a location nearly identical to the leak reported by the local chief and residents.<sup>58</sup> The customary chief, local residents and AJTZP staff were adamant that the date of the incident they witnessed was on or around 26 September 2018, approximately two weeks after the wastewater spill.

iii. The July 2020 wastewater spill

In the morning of 21 July 2020, under the pressure of heavy rainwater, the concrete cover of a waste oil sump burst and a quantity of “waste oil and water”<sup>59</sup> flowed from the Badila oilfield through Melom village and the local Nya Pende river.

According to interviews of contractors, the Complainants was informed that the sump was approximately 60 cubic meters, contrary to the 3-4 cubic meters contended by Glencore UK.<sup>60</sup> That same day, PCM’s staff conducted a public consultation with the residents of Melom and advised to avoid the downstream river and the community wells, which the wastewater contaminated, until it had investigated further. More than one month after the spill, residents of Melom were still not informed as to whether the water was safe or not.

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<sup>55</sup> *ibid.*

<sup>56</sup> Meeting between representatives of Complainant RAID, Glencore, Glencore UK and Petrochad (Mangara), London, United Kingdom (11 October 2019) and Glencore UK second correspondence (n 14).

<sup>57</sup> Glencore UK second correspondence (n 14).

<sup>58</sup> *ibid.*

<sup>59</sup> Glencore UK fourth correspondence (n 19), see Annex 1.

<sup>60</sup> *ibid.*

PCM's general manager informed Complainant RAID that they conducted land and water samples which were sent to the UK for testing.<sup>61</sup> On 28 August 2020, PCM told Complainant RAID that its "local team will shortly communicate these findings [water and soil tests] to the affected communities, as well as making available a copy of the laboratory summary report".<sup>62</sup>

### c. Consequences and adverse impacts on local communities

The impacts described below relate to the September 2018 incidents. Information on the consequences and adverse impacts resulting from the July 2020 incident is still being collated and analysed. The Complainants will update the NCP in due course.

#### i. Physical Injuries

In the days and weeks that followed the September 2018 wastewater spill and the crude oil leak reported by the chief and residents, at least 50 local residents out of the 106 interviewed by the Complainants reported having suffered physical injuries which they attributed to the water. Women and children appeared to be particularly affected, reporting skin problems including burns, pustules, discolouration and itching. Others reported blurred vision, stomach aches, internal pain, vomiting, diarrhoea and fever after using or drinking water from the river. Some required hospitalization, including at least two children, Jean and Paul \*, who suffered serious skin lesions and pustules after bathing in the water.

That number (50 residents) is based on interviews conducted by the Complainants with local residents of the 10 villages downstream from the wastewater spill and the reported oil leak. Due to a lack of capacity, the Complainants were able to interview only a certain number of people, but hundreds more residents queued up to report injuries they believed were connected to the September 2018 wastewater spill. The information reported here is therefore likely only partial, detailing impacts on a small sample of people.

Following the wastewater spill, the Chadian Ministry of Petroleum commissioned a diagnostic report of samples from the treatment basins and adjacent soil.<sup>63</sup> The results of this report are discussed in more detail below, but one finding concerns the likely consequences for drinking contaminated water after the spill:

*the production water analysed at the outlet of the irrigation basin is unfit for consumption by humans or animals (drinking water). If the water discharged following the breakage of the dike had similar quality (this is likely), and if they were consumed by the animal and human populations without sufficient dilution or specific complementary treatment, then **they potentially had a major health impact.***<sup>64</sup>

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<sup>61</sup> *ibid.*

<sup>62</sup> Glencore UK sixth correspondence (n 21), see Annex 1.

\* Pseudonyms are used throughout to maintain privacy and confidentiality.

<sup>63</sup> Ecofilae, 'Badila Project: Produced Water Treatment: Diagnosis Phase, Commissioned by the Ministry of Energy and Petroleum' (2018), Annex 3.

<sup>64</sup> *ibid* 7.

In the days and weeks that followed the September 2018 wastewater spill and the reported oil leak, photos taken by the Complainant AJTZP show stark images of physical injuries suffered by other local residents including burns, skin infections, and pustules, some of which appeared serious. Below are just a few examples.





(1) Jean's story

One of those most seriously injured was Jean\*, a 13-year-old boy from Karwa village, who had gone to the river downstream of the burst wastewater basin and the reported oil leak, to wash himself and his clothes on or around 26 September 2018. He said that after returning from washing his clothes in the river some 10 to 15 minutes' walk from his home, his skin started to burn and be extremely painful. He described it as one of the most painful events of his life. He mentioned having noticed oil on the surface of the water when he was washing his clothes.

Jean's mother attempted to wash his skin and to administer traditional herbs to help her son, but to no avail. According to a relative, "When she was done washing Jean, the pustules appeared even more and everywhere... His skin was peeling off." According to his family, by the next morning, Jean's body was covered in pustules and burn-like wounds. On or around 27 September 2018, with Jean in intense pain, his family brought him to the nearby St. Joseph health clinic. Medical staff at the clinic said they had never seen wounds similar to Jean's and urged the family to take him to the health district doctor, which they did. According to a family member who was present, "the doctor told us [the wounds] were because of crude

oil.” He gave Jean pain killers and urged the family to take him without delay to the general hospital in Moundou, some 50 kilometres away.

Unable to afford the transportation fees, the family struggled to find the money, requesting assistance from the local chief (*Chef de canton*) and other members of their community. They urged the chief to call Glencore UK. Since Jean had seen oil on the water and the doctor had said the cause of his injuries was “crude oil”, the family wanted to inform Glencore UK and hoped for assistance. In the presence of a family member, the chief called a coordinator at Glencore UK, explaining Jean’s injuries. According to the family member present during the phone call, the Glencore UK staff member replied that there was “no evidence it was because of [the company] or the spill.” The family also alerted Complainant AJTZP.

The next day, having found some funds, Jean and his family arrived at the hospital in Moundou. But the doctor was at a loss as to how to treat Jean and urged the family to take him to a hospital in neighbouring Cameroon, a journey the family could not afford. Jean was given painkillers and the wounds were cleaned. The doctor advised that Jean should stay under medical observation for a period of three months, but after a short time the family ran out of funds and Jean was taken home. There was no money for any further medical treatment.

After Glencore UK was alerted to Jean’s injuries by the chief, a team from the company visited him at his home.<sup>65</sup> They took photos of the injuries but conducted no further evaluation of the case. According to Glencore UK, since its staff received no further report about Jean’s condition after their visit, his case was not “formally recorded” as a grievance in the company’s system.<sup>66</sup>

It took months for Jean’s body to heal. When Complainant RAID met him in June 2019, the scars on his body were still visible. The young boy was withdrawn and said he continued to suffer. A relative said, “he only hides and cries.”

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<sup>65</sup> Glencore UK second correspondence (n 14).

<sup>66</sup> *ibid.*

*Jean's injuries*



(2) Paul's story

Early October 2018, the family of another young boy, Paul\*, 11 or 12 years old, from a nomadic family that often comes to Karwa village, also contacted Complainant AJTZP. Paul was watering his cattle at the river, squatted down and splashed water on his face to cool himself. A short while after, his skin began to burn. Pustules appeared on his ankles, hands and face, where the water had touched his body. Some of the cattle who drank the water also later died, according to Paul's family. Paul was taken to a hospital in Moundou, where he was hospitalized on 10 October 2018 for about 20 days. According to a family member, the doctor at the hospital said Paul's injuries were due to washing in "bad water", which contained hydrocarbons.

Glencore UK was notified of the incident by Complainant AJTZP and the local Canton Chief and sent a small team, including an International SOS medical officer, to visit Paul. The Glencore UK medic conducted a visual examination, but according to those present, did not touch or otherwise examine the wounds and did not ask questions to Paul or his family.

After the visit, a short 2-page report was compiled by Glencore UK staff on 13 October 2019, which was later seen by the Complainants. The report concludes the injuries to Paul (who the report mistakenly identifies as a girl) were not caused by any of Glencore UK's activities as the location they believed the boy was bathing at was upriver from the September 2018 wastewater spill.<sup>67</sup> According to local civil society, this assessment was incorrect. Paul washed downstream of the reported oil leak. The report also concludes *"If the child had bathed in this stream, the blisters should normally be observed all over the body but not only in*

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<sup>67</sup> *ibid.*



*the face.*"<sup>68</sup> But according to the interview with Paul, the boy did not claim he had bathed in the water or that his body had been fully immersed. RAID staff witnessed scarring left by his wounds on Paul's ankles, hands and face, which matches the description of his position in the water to splash his face. Glencore UK's short report was not shared with Paul's family and they were not provided an opportunity to correct it or to provide comments.



*Paul's injuries*

### (3) View of medical experts

Local Chadian doctors who first treated Paul and Jean concluded that the likely cause of their wounds were hydrocarbons in the water (see above). Pictures of the wounds to victims, some of which were taken contemporaneously, were also shown to international medical experts, including a doctor with extensive experience in Africa and an expert dermatologist. The doctors' conclusion, shared with Complainant RAID, was that both Jean and Paul's injuries could have been caused by toxins in the water.<sup>69</sup>

Of the 49 cases shown to international medical experts via photographs, one of the medical experts said that five cases were likely caused by irritants or toxins in the water and 12 other cases could have been caused by toxins in the water but that, based only on the photos provided, would require further investigation. Based on the photos alone, he was not able to give an opinion on 12 further cases. The second medical expert concurred with these conclusions.<sup>70</sup>

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<sup>68</sup> Document seen by Complainant RAID.

<sup>69</sup> Notes, meeting with Dermatologist expert, London, United Kingdom (30 July 2019), on file at Complainant RAID's office.

<sup>70</sup> Expert report seen by Complainant RAID.

ii. Death of livestock and fish

Residents reported a sudden widespread loss of livestock in the weeks and months following the September 2018 wastewater spill and reported oil leak and attributed it to the polluted river water. Of the 106 residents interviewed by the Complainants in June 2019, 17 said that most of their livestock, including goats, sheep, pigs and cattle, died of unexplained causes during this period.

For example, the customary chief of Karwa reported watering his 5 goats, 7 sheep and 22 pigs in the river, but they all died unexpectedly one after the other between mid-September and December 2018. He told the Complainants that they had diarrhoea and were vomiting before dying. He said that when he butchered the animals, their organs were rotten, black and had a putrid smell.

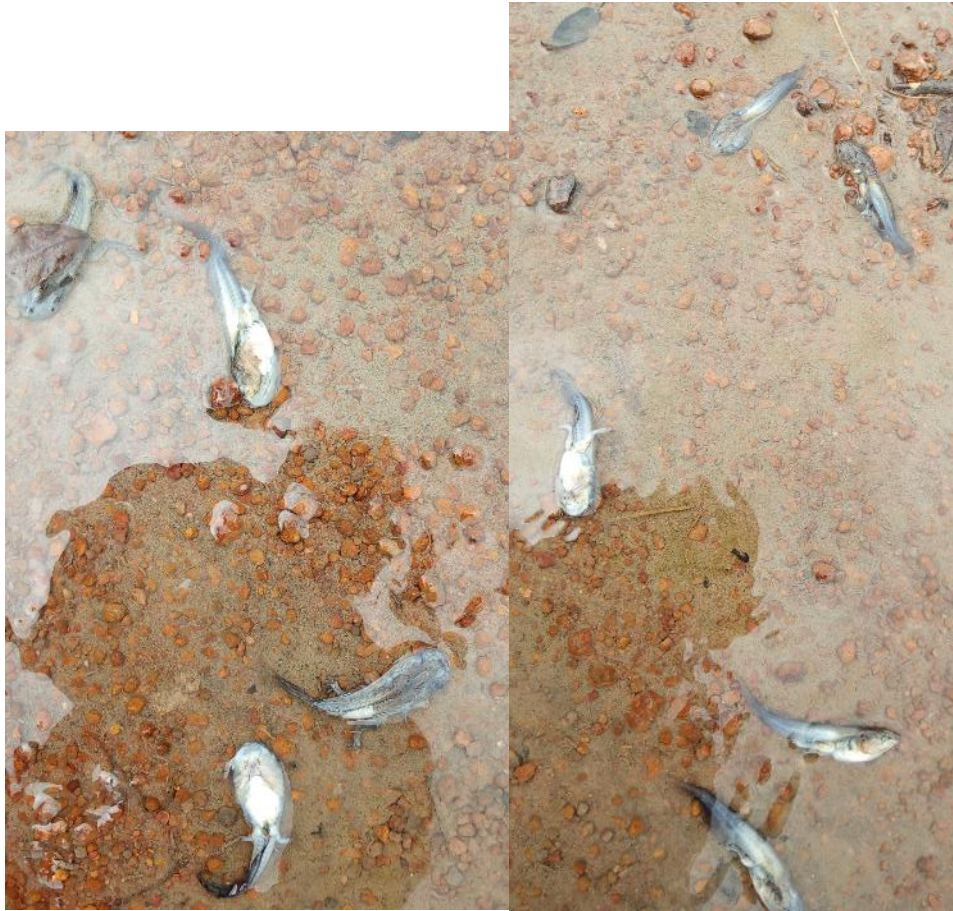
Some farmers also referred to a high rate of miscarriages by their livestock during that same period.

As noted above, the diagnostic report commission by the Chadian Ministry of Petroleum concluded that if the production water was “*consumed by the animal and human populations without sufficient dilution or specific complementary treatment, then **they potentially had a major health impact.***”<sup>71</sup> (emphasis added)

Further, local communities regularly fish in the river to complement their livelihoods and food. Residents reported that right after the September 2018 wastewater spill, dead fish were floating on the surface of the water and that fish became scarcer after that.

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<sup>71</sup> Ecofilae (n 63) 7.



iii. Damage to crops and farmland

During the 2018 spill, a large volume of wastewater swept from the basin near Melom village through a 2-3 kilometres long swathe of agricultural land on its way to the Nya Pende river. Amongst settled groups in the area, families are reliant upon subsistence agriculture, growing a wide variety of crops during a single growing season. The land around the villages is vital for the residents' survival and pressure on it is intense. To exacerbate the situation further, the spill coincided with the beginning of the harvest season in September.

Glencore UK has acknowledged that damage was done to crops by the flood. Indeed, any remediation offered by the company was almost exclusively directed towards those who could provide evidence that they had lost crops. However, and as detailed further below, the Complainants are concerned that valid claims were rejected without good reason, that damage may have gone unreported and that no detail has been provided on how any compensation settlements reached were calculated. It is not apparent that the company has taken into consideration the longer-term impacts caused by the washing away of topsoil during the flood or contamination by the wastewater or the subsequent reported oil leak.

Moreover, the 2012 ESIA adopted by Glencore UK already recognised a long-term decline in soil fertility and soil loss in the event of accidental spills, leaks or inadequate storage of petroleum or chemicals.<sup>72</sup>

## 5. Breaches of the OECD Guidelines

This Complaint alleges that Glencore UK breached the OECD Guidelines with regard to environmental due diligence (Chapter II and Chapter VI), human rights (Chapter IV), remediation of impacts (Chapter II and Chapter IV), disclosure (Chapter III) and meaningful stakeholder engagement (Chapter II and Chapter VI), and contribution to economic, environmental and social progress with a view to achieving sustainable development (Chapter II). The following sections provide specific explanations and substantiation regarding Glencore UK's actions and omissions that account for breaches of the OECD Guidelines.

### a. Environmental damages and failure to conduct due diligence

Glencore UK failed to conduct due diligence in its handling of its wastewater disposal and to prevent an oil leak, which led to environmental degradation, loss of livelihood and serious health impacts.

Chapter II, A.10 requires that enterprises:

*Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed.*

Glencore UK failed to identify the potential adverse impacts by not commissioning an Environmental Impact Assessment on the change to its wastewater disposal processes at the Badila oilfield and failed to prevent harmful impacts by building an inadequate end-basin. When it was clear the basin was beginning to rupture in August and September 2018, Glencore UK failed to implement adequate measures to avoid it overflowing. Further, Glencore UK failed to account for how it addressed these impacts by relying on flawed water testing, despite a governmental report stating that the September 2018 wastewater spill could potentially have major health impacts on the local population.

In addition, Glencore UK failed to prevent and address an oil leak that was reported by a local chief and local residents, which led to environmental damage and health impacts. It also

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<sup>72</sup> Griffiths Energy International, *Étude d'Impact Sur l'Environnement - Projet de Développement de Bloc Pétrolier Mangara (ESIA)* (2012) vol 1. It mentioned in the volume 1 étude d'impact environnemental et social, p. 50: "During the production phase, accidental spills, leaks or inadequate storage can lead to contamination of soils with petroleum or chemicals that leak or spill on the ground." [own translation from French]. The 2012 ESIA was relied upon by Glencore UK until a new ESIA was approved in 2020.

failed to engage with, and inform, local communities on the potential environmental and health impacts of the oil leak and wastewater spill.

Finally, the recent wastewater spill in July 2020 illustrates that Glencore UK continues to be negligent in its water management at the Badila oilfield and continues to disregard concerns expressed by local communities and the environment.

Each of these failures is explained in more detailed below.

i. No Environmental Impact Assessment

As stated by Glencore UK in their correspondence with Complainant RAID in 2019, the Environment and Social Impact Assessment (ESIA) and Environment and Social Management Plan (ESMP) relied upon by Glencore UK until 2019 was completed in 2012, when the oilfield was owned by Caracal.<sup>73</sup> Despite the change of ownership, Glencore UK did not conduct its own ESIA and solely relied on Caracal's version until 2019. Further, no updates to the 2012 ESIA was made when Glencore UK decided to change the disposal technique for its produced water, in spite of the potential for significant environmental, health and safety risks associated with this change.

Glencore UK told Complainant RAID in 2020 that it had updated its ESIA as it was a legal requirement under Chadian law.<sup>74</sup>

ii. Inadequate construction of the basin and sump

Glencore UK explained that the basin was constructed “using laterite containment berms for retaining the water” and that the failure of the laterite berm was due to an increase in water as a result of “torrential downpours and run-off from surrounding land”.<sup>75</sup>

Torrential downpours are frequent in Chad during the rainy season. According to local residents, 2018 did not experience unusual levels of precipitation as compared to other years.

Chapter VI, par. 3 of the OECD Guidelines stipulates that enterprises should:

*Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them.*

There were no unforeseeable events (i.e. higher than usual precipitation levels) that would justify Glencore UK inability to anticipate the impact of heavy rain on the basin berms. The failure of the laterite berm demonstrates that Glencore UK did not build an adequate basin for its produced water and thus did not adequately assess the foreseeable environmental,

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<sup>73</sup> Glencore UK first correspondence (n 13), see Annex 1.

<sup>74</sup> Glencore UK fifth correspondence (n 20), see Annex 1.

<sup>75</sup> Glencore UK first correspondence (n 13), see Annex 1.

health, and safety-related impacts of its processes.

PCM's general manager also attributed the overflowing of the waste oil sump in July 2020 to heavy rain.<sup>76</sup> Again, local residents did not report unusual levels of rain in the 2020 rainy season that could justify Glencore UK's failure to prevent such a spill. The July 2020 spill illustrates Glencore UK's failure to conduct appropriate due diligence of its water management processes.

iii. No prevention measures to prevent overflow

In addition to the obligation to conduct due diligence, the OECD Guidelines provide, in Chapter VI, par. 5, that enterprises should:

*Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.*

Glencore UK failed to prevent the basin and the sump from bursting and its wastewater from pouring into the local Nya Pende.

The most conservative estimate indicates the end-basin started to overflow and leak in August 2018. In an attempt to address the situation, Glencore UK tried to convince local communities to agree to a controlled release of the wastewater without providing evidence that the wastewater would not adversely impact people's health or the environment. After local communities refused the request, Glencore UK turned to the government for permission for a controlled release, which was also refused. Complainant AJTZP denounced Glencore UK's attempt at conducting a controlled release and its lack of other measures to address the important leaks from the basin in its press release of 20 August 2018.

When the leaks from the basin increased, Glencore UK tried to pump water out into cisterns via a small pump in a futile attempt to alleviate the strain on the containment berm, but it was already too late. Despite being faced with the growing probability of a spill following the evident failure at pumping out the water, Glencore UK did not warn local communities of the risk of an impending burst and its possible consequences.

Glencore UK's attempts to conduct a controlled release and its struggles to pump the water out clearly demonstrate that it did not have contingency plans for preventing and mitigating the spill of its produced water. By neglecting to conduct appropriate due diligence when changing its produced water disposal to a treatment system, or when building the end-basin, Glencore UK failed to identify and plan for the potential adverse impacts. Even when it was obvious that the basin berm would collapse, Glencore UK did not take adequate steps to mitigate the imminent impacts and did not alert local communities.

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<sup>76</sup> Glencore UK fourth correspondence (n 19), see Annex 1.

iv. Flawed testing following the spill

In written correspondence, Glencore UK told Complainant RAID that “the water released to the F plot basin [the end-basin] was tested daily and was found to be within the limits required by the International Finance Corporations performance standards”.<sup>77</sup> These results were not shared with local communities.

The OECD Guidelines, Chap. VI, par. 4 mandates enterprises to:

*Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*

The Complainants argue that Glencore UK used its flawed and inadequate testing to justify its lack of response and effective measures to minimise the damage resulting from the spill.

Glencore UK stipulates that its water disposal technique is approved by the Chadian Ministry of the Environment as part of its 2012 ESIA.<sup>78</sup> The ESIA mentions that all produced water should be treated according to the IFC Environmental, Health, and Safety Guidelines for Onshore Oil and Gas Development.<sup>79</sup>

Complainant RAID found that Glencore UK’s testing was not compliant with IFC standards, as five out of nine of IFC’s criteria were not tested and one test result showed wastewater levels that exceeded these standards.

<b>IFC Standards for produced water discharged to surface waters or to land<sup>80</sup></b>	<b>Glencore UK’s results of its 10 September 2018 testing</b>
Total hydrocarbon content Maximum allowed: 10 mg/L	TESTED Result: 4 mg
pH Allowed between 6 - 9	TESTED Result: 7.1
Biochemical oxygen demand (BOD) Maximum allowed: 25 mg/L	<b>NOT TESTED</b>
The chemical oxygen demand (COD) Maximum allowed: 125 mg/L	<b>NOT TESTED</b>
Total Suspended Solids (TSS)	TESTED

<sup>77</sup> Glencore UK first correspondence (n 13), see Annex 1.

<sup>78</sup> *ibid.*

<sup>79</sup> Griffiths Energy International, , *Volume 2 - Plan de Gestion Environnemental et Sociale et Plan de Gestion des Déchets (ESMP)* (2012) 63–64; International Finance Corporation (IFC), ‘Environmental, Health, and Safety Guidelines for Onshore Oil and Gas Development’ 22 <<https://www.ifc.org/wps/wcm/connect/f0167aa2-edd2-4b46-aeb6-b2935a9e6c95/Final%2B-%2BOnshore%2BOil%2BAnd%2BGas%2BDevelopment.pdf?MOD=AJPERES&CVID=jkD2DAU&id=1323153172270>> accessed 24 July 2020 (IFC Guidelines for Onshore Oil and Gas Development).

<sup>80</sup> IFC Guidelines for Onshore Oil and Gas Development (n 79) 22.

Maximum allowed: 35 mg/L	Result: 40 ppm - <b>EXCEED THE STANDARD</b>
Phenols Maximum allowed: 0.5 mg/L	<b>NOT TESTED</b>
Sulphides Maximum allowed: 1 mg/L	<b>NOT TESTED</b>
Heavy metals (total) Maximum allowed: 5 mg/L	<b>NOT TESTED</b>
Chlorides Maximum allowed: 600 mg/l (average), 1200 mg/L (maximum)	Tested only on 08/09/18 and 15/09/18 Results: 266 mg/L and 62 mg/L.

In subsequent correspondence, Glencore UK said that it was instead, and contrary to its own ESIA, adhering to the Table 1.3.1 Indicative Values for Treated Sanitary Sewage Discharge of the IFC Guidelines<sup>81</sup> because “the water was not discharged into water courses, but used for irrigation purposes in the agricultural project”.<sup>82</sup>

The Complainants disagree with the categorisation of produced water under “sanitary sewage”, as sanitary wastewater is defined by the IFC as including “effluents from domestic sewage, food service, and laundry facilities serving site employees.”<sup>83</sup> Produced water for extraction is instead categorised under “industrial wastewater” which is defined by the IFC as wastewater “generated from industrial operations includes process wastewater, wastewater from utility operations, runoff from process and materials staging areas, and miscellaneous activities including wastewater from laboratories, equipment maintenance shops, etc.”<sup>84</sup> Industrial wastewater does not rely on the criteria of Table 1.3.1 as Glencore UK claims.

However, even if the IFC Guidelines on Treated Sanitary Sewage Discharges was applied, Glencore UK’s testing would still fall short of it, as only three components out of the eight were tested:

<b>IFC Guidelines on Treated Sanitary Sewage Discharges</b> <sup>85</sup>	<b>Glencore UK’s results of its 10 September 2018 testing</b>
pH Allowed between 6 - 9	TESTED Result: 7.1
Biochemical oxygen demand (BOD)	<b>NOT TESTED</b>

<sup>81</sup> International Finance Corporation (IFC), ‘Environmental, Health, and Safety General Guidelines’ 30 <<https://www.ifc.org/wps/wcm/connect/29f5137d-6e17-4660-b1f9-02bf561935e5/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES&CVID=jOWim3p>> accessed 24 July 2020 (IFC EHS General Guidelines).

<sup>82</sup> Glencore UK second correspondence, p.3 (n 14).

<sup>83</sup> IFC EHS General Guidelines (n 81) 29.

<sup>84</sup> ibid 27.

<sup>85</sup> IFC Guidelines for Onshore Oil and Gas Development (n 79) 22.



Maximum allowed: 30 mg/L	
The chemical oxygen demand (COD) Maximum allowed: 125 mg/L	<b>NOT TESTED</b>
Total nitrogen Maximum allowed: 10 mg/L	<b>NOT TESTED</b>
Total phosphorus Maximum allowed: 2 mg/L	<b>NOT TESTED</b>
Oil and Grease Maximum allowed: 10 mg/L	TESTED Result: 4 mg/L
Total Suspended Solids (TSS) Maximum allowed: 50 mg/L	TESTED Result: 40 ppm
Total Coliform bacteria Maximum allowed: 400 MPN/100 ml	<b>NOT TESTED</b>

In the days after the September 2018 wastewater spill, Glencore UK conducted no test on the river water contaminated by the wastewater which is used daily by thousands of local residents. The first test Glencore UK conducted of the river water was on 13 September 2018 when it took a sample at the Khou tributary of the Nya Pende river, near to where the basin burst. In written correspondence, Glencore said the samples were tested at its laboratory and at a third-party laboratory in Cameroon.<sup>86</sup> Again, the results were not shared with local communities.

Following the rupture, Glencore UK, as well as Complainants AJTZP and PILC, reported the wastewater spill to the Ministry of Petroleum and the Ministry of Environment, both of which sent representatives to the area on 13 September 2018. The delegation commissioned further scientific testing of the treatment basins and adjacent soil, which took place on 10 October 2018,<sup>87</sup> and resulted in a Diagnostic report by the firm Ecofilae.<sup>88</sup>

The results from the Ecofilae report were of minimal value. A copy of the results, which the Complainants obtained, reported having integrated the “remarks by the Ministry on v.3 transmitted beforehand”<sup>89</sup> and warned that the time elapsed between the taking of the sample and the receipt by the laboratories was “longer than is recommended to ensure optimum sample retention”.<sup>90</sup> Furthermore, it said the treatment chain has been shut down since September 10, 2018 [i.e., the date of the collapse]. Thus, the water collected was at least one month old. It added that the sample was also diluted during that month by rainwater

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<sup>86</sup> Glencore UK second correspondence (n 14).

<sup>87</sup> Glencore UK first correspondence (n 13).

<sup>88</sup> Ecofilae, ‘Badila Project: Produced Water Treatment: Diagnosis Phase, Commissioned by the Ministry of Energy and Petroleum’ (2018), see Annex 3.

<sup>89</sup> *ibid* 6.

<sup>90</sup> *ibid* 9.

accumulated between the wastewater spill and the water sample and that these “factors can lead to a significant reduction in the contents of certain constituents in the samples taken”.<sup>91</sup> Because of such, the water samples taken and analysed were “probably very different from that when the dike broke”.<sup>92</sup>

Despite samples with a lower content of wastewater, the report concluded that “a major impact of salinity is observed on the soils analysed compared to the control soil. These soils seem affected by the salinity of the production water. The consequences for these soils could be their non-fertility and toxicity to the plants”.

Most importantly, and as noted above, Ecofilae concluded that the production water analysed was “**unfit for consumption by humans or animals**”, was likely of a similar quality to that discharged when the dike broke and “**if... consumed by the animal and human populations... potentially had a major health impact**”<sup>93</sup> (emphasis added).

The report explained that “production water (even when respecting the IFC 2007 standards for rejects) is not intended for consumption by humans or animals [...]” and that “these waters [from the end-basin] therefore pose a high health risk if they are consumed directly by humans or animal”<sup>94</sup> Ecofilae took samples from different locations, including water samples in the end-basin (EP#4), and concluded that the levels of barium, boron and fluoride exceeded the World Health Organization standards for drinking water on these parameters.

WHO standards drinking-water quality <sup>95</sup>	Ecofilae results Water sample in the basin (EP#4)
Barium Maximum allowed: 0.7 mg/L	Result: 1.06 mg/L
Boron Maximum allowed: 0.5 mg/L	Result: 0.615 mg/L
Fluoride Maximum allowed: 1.5 mg/L	Result: 11 mg/L

The Ecofilae result on fluoride is almost 10 times higher than the WHO benchmark. The WHO explains that:

*Elevated fluoride intakes can have more serious effects on skeletal tissues. Skeletal fluorosis (with adverse changes in bone structure) may be observed when drinking water contains 3.6 mg of fluoride per litre, particularly with high water consumption.*

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<sup>91</sup> ibid 7.

<sup>92</sup> ibid.

<sup>93</sup> ibid.

<sup>94</sup> Ecofilae (n 64) 24.

<sup>95</sup> World Health Organization (WHO), ‘Guidelines for Drinking-Water Quality’

<[https://www.who.int/water\\_sanitation\\_health/publications/2011/dwq\\_guidelines/en/](https://www.who.int/water_sanitation_health/publications/2011/dwq_guidelines/en/)> accessed 27 July 2020.

*Crippling skeletal fluorosis usually develops only where drinking-water contains over 10 mg of fluoride per litre.*<sup>96</sup>

Regardless of the clear conclusions of the Ecofilae report, and its warnings of potential major health impacts for the local population, Glencore UK said that when it received the report's results in April 2019, it did "not dispute" them as they were "consistent" with its own findings.<sup>97</sup>

v. Turning to re-injection following the burst of the basin

Glencore UK's failure to mitigate and account for how it addressed the adverse impacts of the September 2018 wastewater spill is further demonstrated by the actions Glencore UK took after it: it completely halted the treatment system for its produced water.

In correspondence with Complainant RAID, Glencore UK confirmed that "since early 2019 all produced water is re-injected into the underground reservoir."<sup>98</sup> The area where the basin once stood was bulldozed and any evidence of its existence was cleared. The quick manner in which Glencore UK halted the use of the treatment system and retention basin, rather than improving it or assessing it, suggests it was already aware of inherent flaws in its system.

Although the Complainants requested information about the chemical composition of the produced water at the Badila oilfield, Glencore provided no information, nor details, about the "industry approved materials"<sup>99</sup> it used in the treatment of its produced water from its crude oil processing. The Complainants also received no answer to their questions as to why Glencore had decided to shift away from the re-injection method in 2017, despite direct inquiries to that effect.

vi. Oil traces on the surface of the water

In response to the three videos and photos taken by Complainant AJTZP showing hydrocarbons on the water surface on the day of the September 2018 wastewater spill and in May 2019, Glencore UK stated in written correspondence with Complainant RAID that during its October 2019 visit (one year after the event) "a fine sheen was detected in a small area upstream... in an area of stagnant water, but showed no evidence of crude oil or any residue from a crude oil release." Glencore UK said that the "sheen is a result of a natural phenomenon unrelated to crude oil and similar cases can also be seen in areas where there is no hydrocarbon activity".<sup>100</sup>

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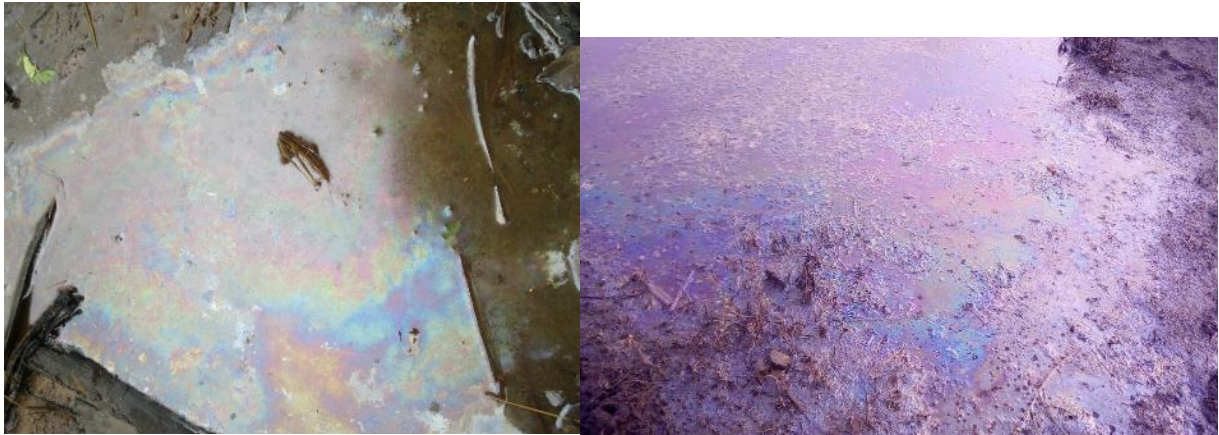
<sup>96</sup> *ibid* 372.

<sup>97</sup> Glencore UK first correspondence (n 13), see Annex 1. Following the receipt of the 9 August 2019 letter from Complainants RAID, PILC and AJTZP, Glencore UK said it tested the water and soil around the former basin on 13 August 2019. This test was conducted nearly a year after the event and is therefore of minimal value.

<sup>98</sup> Glencore UK second correspondence (n 14), see Annex 1.

<sup>99</sup> *ibid*.

<sup>100</sup> *ibid*.



To support its claim, Glencore UK linked, in its letter, to factsheets from the US Minnesota Pollution Control Agency<sup>101</sup> and the website *Ask a Naturalist*.<sup>102</sup> According to these sources, this “natural phenomenon” is observed mostly on stagnant or shallow water. In contrast, the videos and photos presented to Glencore UK by the Complainants show the oil sheen on flowing water or on the surface of the water shortly after the wastewater spill from the basin, which presumably was fast flowing. Local residents who suffered injuries also reported a distinct smell from the river water. According to the Minnesota Pollution Control Agency, a distinct odour can help distinguish natural sheen from one caused by petroleum. Glencore UK provided no water testing results or other scientific evidence to substantiate its claim that the sheen after the 2018 events was natural.

Hydrocarbons traces were also seen on the flowing river in April and May 2019. Complainant AJTZP has also recorded and filmed the sheen at that time.

Glencore UK not only failed to conduct due diligence on its oil leak, but also failed to account for its impacts when presented with clear evidence of it.

vii. Failure to inform and engage with local communities and disclosure the implementation of its environmental policies and its potential environmental and health impacts

Under Chapter VI, par. 2 a) and b), the OECD Guidelines provide that enterprises should:

*a) provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and*

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<sup>101</sup> Jason Moran, ‘Nonpetroleum Sheens on Water’ (Minnesota Pollution Control Agency, June 2017) <<https://www.pca.state.mn.us/sites/default/files/c-er4-07.pdf>> accessed 4 March 2020.

<sup>102</sup> ‘What Is This Oily Sheen on the Marsh?’ (n 65).

*b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.*<sup>103</sup>

The Complainants contend that Glencore UK failed to provide local communities with information on the potential environment, health and safety impacts of its wastewater disposal processes and did not adequately communicate with those affected following the September 2018 wastewater spill and the reported oil leak.

Glencore UK did not tell, nor disclosure to local residents its decision to stop re-injection of its wastewater, of its intention to build a larger end-basin, about the composition and hazardous nature of the wastewater in the basin, nor of its processes used to treat that wastewater. Even when Glencore UK justified its inaction by its water test results, these were never shared with local communities.

This failure to disclose relevant documents and information about its activities and risk management is also in breach of Chap III, par. 3 of the OECD Guidelines.

Melom village is less than 2 kilometres from the end-basin, and agricultural land owned by its residents is adjacent to it. Melom residents were not informed of the risks of a spill, and potential consequences, even when the basin started to overflow. The potential impacts of a spill were quite real. The September 2018 wastewater spill destroyed and contaminated agricultural lands on its path, felled trees, killed fish and poured into the local river used by thousands of local residents downstream.

On 11 September 2018, the day after the 10 September wastewater spill, Glencore UK held a “public” consultation, inviting selected representatives of local communities and civil society organisations, including staff of Complainant AJTZP, though not the wider public or local residents. During the meeting, Glencore UK sought to re-assure those present and said that the wastewater which spilled into the Nya Pende River was safe based on tests it had conducted at the basin on the day of the spill and that there was “no immediate danger.”<sup>104</sup> But no test results were provided to support its claim. Chiefs and community representatives had no way to confirm or reject Glencore UK’s affirmation that the water was safe. Glencore UK did not hold further consultations with local communities in the days that followed, nor did it seek to communicate with local residents in other ways, such as through radio broadcasts or leaflets. No warnings or information were given as to potential impacts of the spill.

Glencore UK failed to adequately engage with local communities and provide them with adequate, measurable and verifiable information on the potential environment, health and safety impacts of the September 2018 wastewater spill, in breach of the OECD Guidelines.

## **b. Human rights violations**

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<sup>103</sup> OECD Guidelines (OECD) (n 5) ch 6 art. 2a) and 2b).

<sup>104</sup> Glencore UK first correspondence (n 13), see Annex 1.

How Glencore UK handled the 10 September 2018 wastewater spill, prior, during and after the event, breached Chap. IV, par. 1 of the OECD Guidelines to:

*Respect human rights, which means they [enterprises] should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

Glencore UK failed to respect the internationally recognized human rights of local communities, in violation of the OECD Guidelines Chap. IIA, par. 2, including the right to health, the right to water and the rights to adequate livelihood.

Furthermore, Glencore UK failed to provide for remediation of the adverse human rights impacts it caused, in breach of Chap. IV, par. 6, of the OECD Guidelines. Each of these failures is set out in further detail below.

i. Right to health

The right to health is included in the ICESCR at its article 12, as the right to “the highest attainable standard of physical and mental health”.<sup>105</sup> Glencore UK’s operations, be it the wastewater spill or the oil leak, directly infringed on the right to health of residents living near the Badila oilfield and the local Nya Pende river.

Extensive research shows that oil and production waters contain toxic materials such as heavy metals and corrosive components, which could have serious detrimental effects on health if ingested.<sup>106</sup> Reference is made above to medical opinion suggesting that the skin injuries in photographs of residents from the Badila area were consistent with those caused by toxins in the water. Yet Glencore UK categorically refutes that the September 2018 spill has had any health impacts on residents, and denies the very existence of the oil leak, and thus any of its potential impacts.

Information and testimony gathered by the Complainants contradict Glencore UK’s assertions. As stated above, at least 50 local residents directly interviewed by the Complainants reported having suffered physical injuries. All of them told the Complainants they experienced burning or itching skin, nine reported blurry vision, eight internal or muscular pain and ten vomiting or diarrhoea. They all mentioned it was related to them drinking or bathing in the river water in the weeks that followed the wastewater spill and oil leak. As noted, the Complainants were unable to interview all those wanting to report injuries.

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<sup>105</sup> See for more detail General comment No. 14: The right to the highest attainable standard of health (Art. 12) 2000 (E/C12/2000/4).

<sup>106</sup> For example Ahmadun Fakhru’l-Razi and others, ‘Review of Technologies for Oil and Gas Produced Water Treatment’ (2009) 170 *Journal of Hazardous Materials* 530 available at <http://www.sciencedirect.com/science/article/pii/S030438940900778X>; Utjok WR Siagian and others, ‘Oilfield Produced Water Reuse and Reinjection with Membrane’ (2018) 156 *MATEC Web of Conferences*, The 24th Regional Symposium on Chemical Engineering 08005 available at [https://www.researchgate.net/publication/323753204\\_Oilfield\\_Produced\\_Water\\_Reuse\\_and\\_Reinjection\\_with\\_Membrane](https://www.researchgate.net/publication/323753204_Oilfield_Produced_Water_Reuse_and_Reinjection_with_Membrane).

ii. Right to water

By failing to prevent wastewater and oil from entering the local Nya Pende river, Glencore UK infringed on the right to water of thousands of local residents.

The human right to water is included, implicitly or explicitly, in a number of international treaties and declarations, including the Universal Declaration of Human Rights and its associated Covenants.<sup>107</sup> The UN Human Rights Council affirmed that the “human right to safe drinking-water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”.<sup>108</sup> In 2002, the UN Committee on Economic, Social and Cultural Rights adopted its general comment No. 15 on the right to water, defining it as the right of everyone “to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” and as “indispensable for leading a life in human dignity” and a “prerequisite for the realization of other human rights”.<sup>109</sup> In 2010, the UN General Assembly explicitly recognised the human right to water and sanitation and acknowledged that clean drinking water and sanitation are “essential for the full enjoyment of life and all human rights”<sup>110</sup>.

The local Nya Pende river is an important source of water for the communities living near and downstream of the Badila oilfield. Aside from some small personal wells, the river is often the only source of reliable water the communities have. In addition, the July 2020 wastewater spill poured into the community well used by Melom residents. PCM’s staff warned residents not to use the water for the well as a sheen of hydrocarbon could be seen on the surface immediately after the spill. Glencore UK did not provide the community with an alternative source of water but rather asked them to wait for test results, which, on 28 August 2020, the company said will be shortly communicated to affected communities.<sup>111</sup>

iii. Right to an adequate standard of living and adequate food

Glencore UK’s failure to prevent the September 2018 wastewater spill and the oil leak directly infringed local residents’ right to an adequate standard of living and adequate food is enshrined in the article 11 of the International Covenant on Economic Social and Cultural Rights. Not only did nomadic herders lose part of their income source, but families also have greater difficulty to procure sufficient and adequate food for themselves.

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<sup>107</sup> For example, the Universal Declaration of Human Rights (UDHR) states that everyone has the right to “a standard of living adequate for [his or her] health and well-being” (art. 25), which is mirrored in the International Covenant on Economic, Social and Cultural Rights (ICESCR) as the right to an “adequate standard of living” (art. 11) and the right of everyone to “the enjoyment of the highest attainable standard of physical and mental health” (art. 12).

<sup>108</sup> The UN Human Rights Council, ‘Resolution A/HRC/RES/15/9 Human Rights and Access to Safe Drinking Water and Sanitation’ <<https://www.right-docs.org/doc/a-hrc-res-15-9/>> accessed 7 January 2020.

<sup>109</sup> General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant) 2003 (E/C12/2002/11).

<sup>110</sup> The United Nations General Assembly, ‘Resolution A/RES/64/292, Sixty-Fourth Session, Agenda Item 48’.

<sup>111</sup> Glencore sixth correspondence (n 21), see Annex 1.

As noted above, out of the 106 residents interviewed by the Complainants, 17 reported the death of their livestock, including goats, sheep, pigs and cattle, in the weeks that followed the wastewater spill and the oil leak. Communities reported a widespread loss of livestock that affected almost every household.

Local residents rely on their livestock not only for food but also for income. Many are herders and depend on their livestock to generate income and feed their family. The sudden and widespread deaths of livestock had a direct impact on their capacity to provide for themselves and to procure sufficient and adequate food.

Reference has already been made to the harm caused by the September 2018 wastewater spill to subsistence agriculture in the area, the true impact of which upon living standards or access to food is neither captured nor, in all likelihood, remediated by the company's complaints mechanism (see the section below on its grievance mechanism).

Furthermore, residents reported that immediately after the September 2018 wastewater spill, dead fish were floating on the surface of the water and that fish became scarcer in the days and weeks that followed. Local communities frequently fish in the river to complement their livelihoods and food.

iv. Failure to address and to provide for remediation of the adverse human rights impacts

Contrary to Chap. IV, par. 2 and 6 of the OECD Guidelines, Glencore UK failed to address for and to provide remediation of the adverse human rights impacts its operations caused. This section outlines Glencore UK's general reluctance to recognise and address the adverse impacts it has caused while the next section focuses upon the company's flawed operational-level grievance mechanism.

In its first correspondence with Complainant RAID, Glencore UK mentioned being unaware of reports of injuries, aside from "one single verbal report", <sup>112</sup> and therefore had not investigated it. This affirmation was rescinded in later correspondence and conversations, where it was confirmed that its community liaison officer had received numerous calls concerning the sudden death of livestock and injuries local communities believed to be related to the September 2018 wastewater spill. Still, Glencore UK did not investigate these allegations in more detail relying on its own flawed testing to assert that such injuries and livestock deaths could not have been the result of its operations. Glencore UK sent its SOS International medic to examine the "single verbal report" and local staff to take photos of Jean's injuries. No other residents were visited by Glencore UK's staff with regards to their concerns relating to physical injuries or livestock deaths.

In its correspondence with Complainant RAID, Glencore UK explained Jean's injuries as being "a skin condition that was described as a condition commonly seen during the rainy season",<sup>113</sup> without stating what this "common" condition could be. If Jean's injuries were

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<sup>112</sup> Glencore UK first correspondence (n 13), see Annex 1.

<sup>113</sup> Glencore UK second correspondence (n 14), see Annex 1.



due to a common condition, both local doctors that have seen Jean would not have been so shocked by his injuries and would have been prepared to treat such condition. In addition, international medical expert to whom photos of Jean's injuries were shown, said they were likely caused by irritants or toxins in the water and did not identify any other probable, let alone common, cause.

To date, Glencore UK has not provided the Complainants with any alternative explanation for what may have caused the injuries of local residents and livestock deaths.

Further, Glencore UK did not conduct assessments of the possible environmental impacts on soil and future harvests. Glencore UK only accepted a limited number of grievances related to damage to farmland and provided some compensation for these, but no other types of complaints were accepted (see next section for further details).

It is only when Complainant RAID raised these issues directly with Glencore UK, a year after the incidents occurred, that it committed to understanding the root causes of the impacts, although it continued to refute these were related to its operations. Notably, Glencore UK committed to:

1. commissioning an independent assessment of the ground and river water in the locations upstream and downstream of its Badila operations; and
2. commissioning a further review into the medical assessments of the skin-related issues reported by the Complainants.

Glencore UK told Complainant RAID on 6 March 2020 that both commitments above were in the process of being commissioned or conducted.<sup>114</sup>

On 11 August 2020, after 5 months of silence and only after Complainant RAID requested additional information did Glencore UK inform RAID that the Health Impact Assessment was scheduled to be carried out in the second quarter of 2020 (one year and a half after the events), but due to COVID-19 travel restrictions, it was being postponed to an undetermined date.<sup>115</sup> In the same email, Complainant RAID was informed that the ground, soil and water assessment had been conducted in March 2020. Without sharing any further details or the report itself, Glencore UK said the "consultant that completed the report stated [that] 'In short the assessment didn't find any significant impacts to soil and water.'"<sup>116</sup> Complainant RAID has requested a copy of the report.

However, local residents told the Complainants that no one visited them with regards to the ground, soil and water assessment. It is difficult to understand how such an assessment can be thoroughly conducted without the involvement of local residents or visits to the affected villages.

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<sup>114</sup> Glencore UK third correspondence (n 17), see Annex 1.

<sup>115</sup> Glencore UK fifth correspondence (n 20), see Annex 1.

<sup>116</sup> *ibid.*

v. Flawed Operational-level Grievance Mechanism (OGM)

Chapter IV of the OECD Guidelines draws upon the “United Nations Framework for Business and Human Rights ‘Protect, Respect and Remedy’ and is in line with the Guiding Principles for its Implementation” and its effectiveness criteria for non-judicial grievance mechanism.<sup>117</sup> Therefore, to comply with the OECD Guidelines and the enterprises’ responsibility to remediate adverse human rights impacts caused, an operational-level grievance mechanism needs to be truly effective, defined as the requirement to be legitimate, accessible, predictable, equitable, transparent, rights-compatible, be a source of continuous learning and be based on engagement and dialogue.<sup>118</sup>

Glencore claims that all its operations “have in place local complaints and grievance processes that are... in line with the Guiding Principles effectiveness criteria”,<sup>119</sup> including PCM’s operations. However, after investigating the events of September 2018, the Complainants found that Glencore UK/PCM’s grievance mechanism at the Badila oilfield is ineffective and seriously flawed, with significant inconsistencies between its written procedures and implementation. It falls considerably short of the standards under the UNGPs and the OECD Guidelines.

During the 11 October 2019 meeting with Complainant RAID, Glencore UK revealed that no grievance is accepted after 30 days of the event or damage.<sup>120</sup> As noted above, Glencore UK holds public forums quarterly (with an average of around 35 people present for a population of thousands of people) while its visits to most villages are sporadic and others are not visited at all. Therefore, it is extremely difficult for residents, some without any means of communication or transport, to respect this unilaterally imposed timeframe of 30 days.

Further, despite clear corporate documents and policies to the contrary, it was confirmed by the Stakeholder Relations Manager in Chad that formal complaints must be in writing to be accepted and recorded by her team. With a national illiteracy rate of 78 per cent,<sup>121</sup> it is unthinkable to require local residents to submit a written complaint.

These two conditions dramatically undercut the accessibility of the Badila grievance mechanism and result in the exclusion of many individuals.

Glencore UK claims that its grievance mechanism is well-known by local communities, based on the large number of grievances it received following the September 2018 wastewater spill (121 complaints received, 89 accepted).<sup>122</sup> All of them related to “flood-related damage to farmland, trees and crops”.<sup>123</sup> Hence, about a third of claims even for this recognised category of harm were rejected without providing evidence-based reasons and without a

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<sup>117</sup> See par. 46 of the Commentary on Human Rights, OECD Guidelines (n 5).

<sup>118</sup> UNGPs (n 1), principle 21.

<sup>119</sup> Glencore Plc, ‘2019 Sustainability Report’ (n 15) 42.

<sup>120</sup> It is also confirmed in Petrochad (Mangara) Ltd, ‘Stakeholder Relations Guideline for Grievance Management’, see Annex 6.

<sup>121</sup> United Nations Development Programme (UNDP) (n 24).

<sup>122</sup> Glencore UK first correspondence (n 13), see Annex 1.

<sup>123</sup> *ibid.*

proper appeal mechanism. As noted, given the inadequacy of soil testing at the few locations selected by the company, it is apparent that no consideration has been given to the long-term effects of the wastewater spill and reported oil leak on soil structure and fertility in the flooded fields and smallholdings.

In only a few days on the ground, the Complainants had documented several complaints of death of livestock and physical injuries directly linked to the same wastewater spill, whereas Glencore UK/PCM did not register one single grievance about such harm.<sup>124</sup> This casts serious doubt on how well-known and understood the Badila grievance mechanism is by local communities, or how grievances are filtered by Glencore UK/PCM.

For example, of the nine customary chiefs interviewed by the Complainants with regards to the September 2018 wastewater spill, three said they directly called Glencore UK/PCM's community representatives to raise concerns, without knowing that such a method was not accepted.

Only two chiefs were aware they had to write their complaint if they wanted to raise a concern. As it happens, the majority of the grievances recorded by Glencore UK/PCM were filed by residents from these two villages.

However, the same two chiefs said they had to wait until the local coordinator came to their village before they could hand him the complaint letters since they have no means of transportation. They told the Complainants that Glencore UK/PCM representatives rarely visit them and only come when they need to recruit temporary labour. Such infrequent contact and/or indirect communication renders the 30-day cut-off imposed by Glencore UK unrealistic.

The four other customary chiefs either contacted the Complainant AJTZP or the Canton Chief to relay concerns about Glencore UK's operations.

One chief said: "If I had the opportunity to inform Glencore and complain to them, I would do so." If customary chiefs do not understand Badila's grievance mechanism and cannot access it, it is reasonable to assume that local residents are far less well informed.

Challenged over its failure to inform local communities about its grievance mechanism, Glencore UK told Complainant RAID that the "opportunity is taken at each public consultation to remind stakeholder [sic] of the Grievance Management Process".<sup>125</sup> It provided an example of a public presentation that purports to emphasise Badila's Grievance Management Process. The presentation did not include any information on the procedures to submit a grievance. It only contained information on the steps a grievance would follow and statistics on complaints received and accepted in the last quarter.<sup>126</sup>

In addition, many complaints concerning the September 2018 wastewater spill were also ruled inadmissible at the outset, but this was done entirely at the discretion of Glencore UK

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<sup>124</sup> *ibid.*

<sup>125</sup> Glencore UK second correspondence (n 14), see Annex 1.

<sup>126</sup> Petrochad (Mangara) Ltd, 'Forum d'information Sur Les Activités de Petrochad Dans Le CPP2/DOI Badila' (19 September 2019), see Annex 7.

without proper reasoning, undercutting legitimacy and transparency. According to Glencore UK's written procedures, Glencore staff can refuse to consider "complaints clearly not related to the project",<sup>127</sup> a discretionary assessment that may exclude valid complaints.

Local PCM staff interviewed by Complainant RAID and Glencore UK's written correspondence show that Glencore UK rejected repeated phone calls and reports of physical injuries and did not register them as complaints because Glencore UK's flawed water testing results appeared to show that the water posed no danger.

Lastly, in the case of the September 2018 wastewater spill, Glencore UK unreasonably expected victims to evidence their claims before an investigation could be initiated but did not provide support on how to do so. This proved an impossible task without appropriate expertise and when Glencore UK did not provide residents with water test results or incident reports. For example, requiring individuals claiming for injuries or the death of livestock to provide medical, veterinary or other scientific evidence linking the harm to toxins in the river water is disproportionate and inequitable. With extremely limited access to such evidence, local residents were not in a position to challenge Glencore UK's conclusion that its operations were not responsible for the harm.

These flaws in Badila's grievance mechanism are also reflected in its overall record on dealing fairly with grievances. In correspondence with Complainant RAID, Glencore UK confirmed that since the start of its operations, it had recorded 559 grievances at Badila in the following categories:<sup>128</sup>

- 230 complaints relating to farmland flooded by rainwater (this includes the 121 complaints from wastewater spill).
  - 130 were assessed as being valid, 91 invalid, and a further nine were ongoing.
- 252 complaints relating to damages to farmland from PCM's construction activities, operations and land acquisition.
  - 98 were assessed as being valid and 154 invalid.
- 4 complaints relating to animals killed due to oil and water spills (although unrelated to the September 2018 wastewater spill).
  - all four complaints were assessed as being invalid.
- 70 complaints relating to damages to houses due to vibrations.
  - all 70 complaints were assessed as being invalid.
- Three complaints of a social nature relating to community compensation eligibility.
  - all three complaints were assessed as being invalid.

Out of the 559 grievances, Glencore UK/PCM accepted only 41% as valid, all relating to damage to farmland and land acquisition. It rejected every other type of grievance. Such

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<sup>127</sup> Petrochad (Mangara) Ltd, 'Stakeholder Relations Guideline for Grievance Management' (n 120), see Annex 6.

<sup>128</sup> Glencore UK first correspondence (n 13), see Annex 1.

numbers underscore the unilateral power exercised by the company in determining what is considered an admissible or valid grievance. A lack of independence in reaching such decisions undercuts legitimacy as one of the effectiveness criteria under the UNGPs and, as such, also breaches corresponding provisions within the OECD Guidelines.

Furthermore, even when Glencore UK does assess a complaint as being valid and provides compensation, its procedures allow for a unilateral resolution. There is no specific information as to how such compensation is calculated and if it engaged with the community to gain agreement on the amount. Glencore UK stated in correspondence with Complainant RAID that “[c]ompensation was paid in line with PCM’s compensation procedures”, referring Complainant RAID to the company’s 2012 Environmental and Social Impact Assessment.<sup>129</sup> However, that document offers no specifics concerning the bases on which compensation in such cases will be determined.

vi. Failure to exercise leverage to prevent or mitigate human rights impacts

Chapter II.A, par.12 of the OECD Guidelines directs enterprises to:

*Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations [...]*

It is further set out under Chapter IV, par.3 that enterprises are to:

*Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations [...]*

After the July 2020 wastewater spill, staff from Complainant AJTZP were told by local officials to “keep quiet” about the incident. When AJTZP responded to further enquiries from journalists about the spill, an attempt was made to arrest the staff member who responded to journalists and the local AJTZP office in the vicinity of Badila was forced to temporarily close. The AJTZP staff member was thus compelled to leave his home and faces arrest if he returns.

In an emailed response, PCM condemned any harassment or violence against local communities or individuals.<sup>130</sup> However, the Complainants are concerned that the company is not using its leverage to the full extent required under the OECD Guidelines:

- Firstly, the company states that its stakeholder liaison team was not aware of the situation involving the staff member concerned and was of the view that “the AJTZP Association continue to be very active within our local communities”. There is a clear gap between Glencore UK/PCM’s understanding of the situation and the events reported by Complainant AJTZP, which implies that the company is failing to understand the harassment experienced by activists. Such an understanding is a prerequisite for a company to contact any third-party to exercise leverage over an abuse of power.

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<sup>129</sup> Glencore UK first correspondence (n 13), see Annex 1.

<sup>130</sup> Glencore UK sixth correspondence (n 21), see Annex 1.

- Secondly, rather than a strong commitment to using its leverage, the company emphasises its lack of control over, or management of, the activities of security providers.<sup>131</sup> In contrast, the Commentary on the use of leverage under both Chapters II and IV of the OECD Guidelines is clear that an enterprise should “use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact”, to include State entities.<sup>132</sup> While Glencore UK/PCM has made internal enquiries, there is no suggestion that it has sought to identify the authorities harassing AJTZP staff or raise the alleged abuses with them directly (after consulting with AJTZP).
- Thirdly, in its reply, PCM refers for the first time to a “MoU with the public security force present in our operating area setting out our expectations for behaviour and use of force”, but has not explained how this MoU allows for the use of leverage. (For example, by setting out channels of communication by which the company can escalate reports of abuse, or actions the company will take to ensure violations are immediately addressed).

The company states its MoU is aligned with the Voluntary Principles on Security and Human Rights (“VPs”). The VPs direct companies to undertake risk assessments, “consult with...communities about the impact of their security arrangements” and advocate that Parties to such MoUs “agree to make their security arrangements transparent and accessible to the public”.<sup>133</sup>

To date, neither Glencore UK nor PCM has published the MoU, nor provided details of any risk assessment it has undertaken on the human rights record of public security in Chad in breach of its disclosure responsibility under Chap. III of the OECD Guidelines. This means that local communities – key stakeholders directly affected by the company’s operations – have not been informed about security arrangements impacting upon them. Furthermore, disclosure of the MoU is itself an important step when it comes to exercising leverage, setting out the standards and benchmarks against which public security providers will be held to account.

### **c. Failure to ensure meaningful stakeholder engagement**

Chapter II, par. 14. of the OECD Guidelines stipulates that enterprises should:

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<sup>131</sup> *ibid.*

<sup>132</sup> OECD Guidelines (n 5) Commentary, paragraph 20. The wording in paragraph 42 is almost identical, referring to “human rights impacts” *per se*.

<sup>133</sup> “The Voluntary Principles on Security and Human Rights’ <<http://www.voluntaryprinciples.org/wp-content/uploads/2019/12/TheVoluntaryPrinciples.pdf>> accessed 8 September 2020. See also ‘Model Clauses for use in Security Agreements between Government Security Forces and Companies with Respect to Security and Human Rights’ <<http://www.voluntaryprinciples.org/wp-content/uploads/2019/12/ModelClausesforAgreementsbetweenGovernmentSecurityForcesandCompanies.pdf>> accessed 8 September 2020.

*Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.*

Local residents told the Complainants that since it acquired the oilfield, Glencore UK has been indifferent when it comes to engaging with communities. For example, even though Glencore UK mentioned it updated its ESIA in 2019-2020,<sup>134</sup> local residents told the Complainants they were not consulted in that process, being entirely unaware of it. Further, major decisions directly impacting local residents, such as the decision to put the concession up for sale,<sup>135</sup> or later to put it under care and maintenance as a result of the Covid19 pandemic,<sup>136</sup> were never reported to local communities.

The par. 35 of the Commentary on General Policies describes enterprises' responsibility of engaging with relevant stakeholders as involving:

*interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides.*

According to a log of Community Site Visits provided by Glencore UK to the Complainants, some of the affected villages had never been visited by its staff and most of the visits that were conducted were to the village chief without broader consultations.<sup>137</sup> As mentioned above, "public consultations" are held quarterly by Glencore UK's staff, but only selected individuals are invited.

Moreover, communication is primarily one-way, for example, visits by Glencore UK to hire local personnel for temporary non-skilled work, as legally required, to acquire new land or to communicate carefully chosen information.<sup>138</sup> The flawed operational-level grievance mechanism in place at the Badila oilfield, critiqued above, is a further example of a process which hampers rather than enhances the ability of residents to communicate their concerns to Glencore UK/PCM.

#### **d. Failure to contribute to economic, environmental and social progress with a view to achieving sustainable development**

The OECD Guidelines stipulate that enterprises should "Contribute to economic, environmental and social progress with a view to achieving sustainable development."<sup>139</sup>

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<sup>134</sup> Glencore UK third correspondence (n 17), see Annex 1.

<sup>135</sup> 'Glencore Puts Chad Oilfields up for Sale: Sources' (n 35).

<sup>136</sup> Glencore Plc, 'Update on COVID-19' (Glencore) <<https://www.glencore.com/media-and-insights/news/update-on-covid-19-20200326>> accessed 11 August 2020.

<sup>137</sup> Petrochad (Mangara) Ltd, 'Forums, Public and Individual Consultations for the Badila Oilfield for 2017, 2018 and 2019' (n 51), see Annex 4; Petrochad (Mangara) Ltd, 'Visits to Local Authorities (Village & Canton Chiefs): Statistics', see Annex 5.

<sup>138</sup> Petrochad (Mangara) Ltd, 'Forums, Public and Individual Consultations for the Badila Oilfield for 2017, 2018 and 2019' (n 51), see Annex 4.

<sup>139</sup> OECD Guidelines (n 5) ch II, par. A1.

The Complainants contend that Glencore UK did not contribute to the economic, environmental and social progress in the communities directly impacted by its operations. In the six years that Glencore UK has operated the Badila oilfield, it provided very limited social investment that did not compensate for the inconveniences and impacts caused by its operations.

According to its internal record, between 2014 and 2019, Glencore UK undertook ten Community Investment Projects, comprising of:

- Two separate cash advances to the Women Committee organising celebrations for International Women’s Day;
- Installing 30 solar panels in eight different villages;
- The rehabilitation of the Miladi village water tower;
- Five separate donations of agricultural and writing materials;
- Construction of a primary school.<sup>140</sup>

In Glencore’s 2019 Sustainability Report, it said that “During June 2018 to September 2019, PCM trained three groups of 15 farmers on market gardening techniques.”<sup>141</sup> There is, however, no mention of it in its internal record, a copy of which was provided to Complainant RAID. It also mentioned that “PCM identified a need by the community to work with local authorities to build a new maternity facility and repair the existing building”.<sup>142</sup> It is unclear what role PCM played in it, if any, as there is no internal record of it as well.

Aside from the construction of the primary school, all other investments are minimal in value.

Glencore UK had a turnover of \$213.4 million in 2018 and registered a profit of \$13 million.<sup>143</sup> For a multinational enterprise with a profit of \$13 million,<sup>144</sup> providing solar panels, small cash advances and agricultural and writing materials to its impacted communities is a negligible contribution. These investments, over five years, cannot be reasonably seen as being made “with a view to achieving sustainable development”.

Glencore UK also tried to incorporate in its social investment record what it has done under its Community *Compensation* Projects. However, Community Compensation Projects are made to compensate an act, acquisition or direct adverse impacts caused by its operations that cannot be attributed to one specific individual, but rather to the community. The majority of these projects were only done in response to Glencore UK taking over large portions of community land, as was the case with the land used to build the wastewater basin. In that instance, Glencore UK was ordered by local authorities to build a primary school in Melom village to compensate local residents for the lost agricultural land. Those

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<sup>140</sup> Petrochad (Mangara) Ltd, ‘SR Badila Community Investment Projects from 2014 to October 2019’, see Annex 8.

<sup>141</sup> Glencore Plc, ‘2019 Sustainability Report’ (n 15) 82.

<sup>142</sup> *ibid* 83.

<sup>143</sup> Glencore UK Ltd, ‘Annual Report and Financial Statements 2018’ (n 3).

<sup>144</sup> *ibid*.



projects, albeit still minimal,<sup>145</sup> cannot, therefore, be understood as true social investments by Glencore UK.

## Conclusion

This Complaint has established that Glencore UK has breaches provisions of the OECD Guidelines which resulted in serious adverse impacts on the communities living near its Badila oilfield. More specifically, Glencore UK has failed to conduct adequate environmental and human rights due diligence, to respect the internationally recognized human rights of the local communities and to provide remediation for the harm caused. Furthermore, this Complaint has demonstrated that Glencore UK failed to disclose material information affecting its stakeholders, to ensure meaningful engagement with them and to contribute to communities' sustainable development.

This Complaint seeks a resolution to the adverse impacts caused by Glencore UK and its subsidiary PCM. The Complainants therefore asks that the UK National Contact Point offers its good offices and assistance in securing Glencore UK's commitment to address the harms it has caused and to improve its environmental and human rights due diligence and stakeholder engagement.

## ANNEXES

**Annex 1: All correspondence between Complainant RAID and Glencore UK**

**Annex 2: Report by AJTZP and PILC on the wastewater spill, November 2018**

**Annex 3: Ecofilae Environmental Report**

**Annex 4: PCM Forum, Public and Individual consultations**

**Annex 5: PCM Record of Community Site Visits**

**Annex 6: PCM SR Guideline for Grievance Management**

**Annex 7: PCM Information presentation at Forums**

**Annex 8: Badila Community Investment Projects**

**Annex 9: Badila Community Compensation Projects**

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<sup>145</sup> See the full list of Community Compensation Projects undertaken by Glencore UK between 2014 and 2019 at Annex 9, Petrochad (Mangara) Ltd, 'SR Badila Community Compensation Projects from 2014 to October 2019'.