The Glencore letter dated 8 September 2023, providing feedback in response to CooperAcción’s report, includes the following observations:

- **The use of “outdated references to data and information from 2019 EIA**

  Both reports refer to data and information contained in the Environmental Impact Assessment (EIA) submitted by Antepaccay and approved by the Peruvian authorities in 2019.

  The 2019 EIA has not and will not be applied to the Corococohuayco and the project is under review. This has been widely communicated to stakeholders, including community members, during meetings.

  In line with Peruvian regulation, Antepaccay will submit a new EIA for the Corococohuayco project.”

In Peru, in 2021, Glencore publicly announced that its project was going back to the pre-feasibility stage.¹ This fact is recorded in the 2021 Investment Portfolio of the Ministry of Energy and Mines (MINEM).² We referred to it on page 9 of our report.

However, neither Glencore nor the Peruvian authorities have publicly stated that the Modified Environmental Impact Assessment (MEIA) that was approved for the project is an obsolete document, and that a new EIA will be prepared.

What is more, despite this, on the 17 January 2022 Glencore submitted an initial supporting technical report (STR) for the MEIA, which was approved on 9 March 2022 via Directorial Resolution 00040-2022-SENACE-PE/DEAR. We wonder why, if the project has been back at the pre-feasibility stage since 2021, an STR was processed and approved for that MEIA? This would indicate that for Glencore and the Peruvian authorities, the MEIA’s approval remained in force.

This situation persists. SENACE has not declared the MEIA void. This is evident in the 2023 Mining Investment Projects Portfolio, published in January 2023, which, on page 63, provides the following information on the project:

Furthermore, it is important to note that Glencore acknowledges the existence of an ongoing prior consultation and considers it legal. However, such prior consultation assumes the existence of an approved MEIA. We recall that, in Peru, prior consultation is carried out as part of the authorization to commence mining operations, a permit processed after the approval of an EIA or MEIA.

In conclusion, both Glencore and the Peruvian authorities consider the approval of the MEIA and its initial STR valid. These approvals have not been declared void and, consequently, a prior consultation is underway. Our report highlights the need for transparency on this issue.

- “Incorrect references regarding Glencore acquisition of land in 1997
  “CooperAcción’s report references land acquisition activities carried out by Glencore in 1997. The report itself refers to the industrial asset’s ownership history and notes that Glencore became the owner of Antapaccay in 2013 following the merger with Xstrata. Glencore did not carry out land acquisition in 1997 at Antapaccay because it was not the owner of the industrial asset at this time.”

We welcome this feedback. Nonetheless, we do not agree that this is a case of ‘incorrect references’. On page 7, the report clearly states that “in 2013, Xstrata was taken over by Glencore, which became the new owner of the mining unit.” Later, on page 20, it notes that the current “land negotiation process is repeating the mistakes of the past.”

What do we mean by “mistakes of the past”? These mistakes are outlined in the section of the report entitled “Background: the long history of fragmentation of indigenous territory,” beginning on page 21. As the title indicates, this section provides the background, explaining the effects of the fragmentation of
the territory of these communities over several decades, since the start of mining activities in the area. This background information is important in understanding the situation of indigenous communities and their territory; these are not allegations about Glencore because, clearly, if Glencore took over the project in 2013, it is not responsible for what happened in 1997.

Instead, it is an invitation to Glencore to take note of and learn from past mistakes, which have led to the fragmentation of the territory of indigenous peoples, and to avoid repeating the mistakes made by previous companies when it comes to the Corocohuayco project.

- **“Water contamination”**
  
  In 2019, the Peruvian Government launched the Espinar dialogue table. As part of the dialogue table, there are a number of thematic forums, including one dedicated to the environment.

  In 2022, the Espinar dialogue table requested a government agency (OEFA) carry out studies aimed at investigating the possibility of a causal relationship between Antapaccay’s operations and environmental impacts, including water contamination.

  The OEFA causality studies were completed in 2023 and reports were shared with Antapaccay for review. The review process is ongoing and Antapaccay will continue to engage with the Peruvian authorities to provide feedback. We would be happy to exchange views with Oxfam and CooperAcción on this topic.”

  It is important to clarify that OEFA has been conducting studies to determine the causality of existing contamination in the mining area since 2012. We acknowledge this in our report. These studies provided some evidence, but it was considered inconclusive in demonstrating a link between mining activity and existing contamination. In view of this, there has been continued insistence on the need for more of these studies and this is why OEFA’s Environmental Assessment Directorate (Dirección de Evaluación Ambiental) initiated the Causality Study in 2022. The related studies have already been concluded and the respective reports published.

  In these reports, OEFA’s Environmental Assessment Directorate determines that there is evidence of a causal relationship between changes in environment quality and mining activity. For this reason, and in accordance with OEFA’s Evaluation Regulation, approved via Governing Council Resolution No. 00013-2020-OEFA/CD, these reports have been sent to OEFA’s Directorate of Environmental Supervision in Productive Activities (Dirección de Supervisión Ambiental en Actividades Productivas). This agency will issue a supervision report which will, if applicable, recommend the opening of an administrative sanctioning procedure. As of today, this supervision report has not yet been issued.

  OEFA’s reports on causality provide highly compelling information regarding the source of contamination in Espinar.

- **“Prior consultation process”**
  
  Glencore industrial assets seek to ensure that Indigenous Peoples are consulted and have given their free, prior and informed consent in relation to new projects and changes to existing projects where significant adverse impacts are likely to occur, including as a result of relocation, disturbance of lands and territories
or of critical cultural heritage. This commitment is set out in the Glencore Human Rights Policy and applies to all Glencore industrial assets, including Antapaccay.

As established in Peruvian legislation, the prior consultation process is carried out by the competent government entity. For new projects this entity is the Ministry of Energy and Mines.

According to Peruvian legislation prior consultation is required for the approval of mining construction permits if the authority determines a project could affect Indigenous populations’ collective rights. It does not apply for the approval of environmental impact assessments or their amendments.

The prior consultation that is currently underway at Antapaccay was started ex oficio by the government after the 2019 environmental permit approval and is managed without company involvement. This process is provided for by law and Antapaccay, in accordance with Glencore’s Code of Conduct, respects requirements of Peruvian law.

We would be open to discuss in more detail Glencore’s work in seeking to ensure free, prior and informed consent is obtained and how this is being implemented at Antapaccay in accordance with Peruvian legislation.”

We welcome this feedback and would be very interested in discussing “in more detail Glencore’s work in seeking to ensure free, prior and informed consent is obtained and how this is being implemented at Antapaccay in accordance with Peruvian legislation.”

Indeed, as indicated in your letter and as also stated in our report (page 30), the environmental authorities consider that prior consultation does not apply for the approval of environmental impact assessments or their amendments. However, as we cite on page 29 of our report, Peru’s Ombudsman’s Office considers that “the best time to conduct a consultation is during the environmental impact assessment, since it provides the ideal opportunity to understand in detail and with certainty the possible effects of a future mining project on the collective rights of the indigenous people consulted.”

The Ministry of Culture has taken a similar view. Moreover, there are international human rights norms, such as the jurisprudence of the Inter-American Court of Human Rights (see paragraph 133 of the case of the Saramaka People vs. Suriname), that point in the same direction.

Your letter reaffirms the concern we express on page 33 of our report, that: “Peruvian legislation is a very weak basis for considering that due diligence has been fully complied with in the areas of human rights, environmental protection and indigenous rights.” Your insistence, in your letter, on Glencore’s compliance with Peruvian law, with which it is indeed obliged to comply, prompts the question: What proactive action is Glencore taking to ensure that this process does not just comply with Peruvian law but also with international due diligence guidance on human rights and with the International Finance Commission standards, among other instruments to which the company adheres?

In addition to these substantive aspects, we observe in our report (page 29) that the consultation process initiated by the government is irregular, because the company had not requested the administrative measure of authorization to commence mining operations, on the basis of which consultation is conducted (a fact that Glencore acknowledges in its letter, by pointing out how the government initiated consultation ex oficio after the approval of the MEIA). The process is also irregular because it has exceeded
the timeframes established by law, which were repeatedly extended, with the process currently at a standstill.

However, your letter provides a further argument for referring to the current consultation as irregular: by going back to the pre-feasibility stage, the environmental certification granted for the mining project is rendered null, since the project no longer exists as originally formulated (at feasibility design stage, an indispensable legal requirement to request environmental certification and other permits). In this regard, your company has clearly stated in its letter that “a new EIA” will be developed for the project. Therefore, all the permits received after approval of the MEIA have become void and should be declared as such. This has not happened and there is a consultation ongoing based on a project that formally no longer exists. We wonder whether, in a consultation, it is possible to discuss the impacts of a project whose new design is not yet known.

In view of this, the prior consultation process being carried out should be called off. There is no valid basis for following through with it.

As we have noted on page 31 of our report, “In saying that it ‘supports these consultations’, Antapaccay is giving its backing to a clearly irregular process.” For this reason, we stand by our recommendations, with a view to Glencore fulfilling its commitment to meeting international standards on the issue and demanding that the State implements a consultation process that is free of irregularities of the kind described and that gives the population a genuine opportunity to use their voice to influence the project’s development, in particular concerning its substantive aspects.

- **“Land acquisition and engagement with Indigenous communities**

_Antapaccay is undertaking a dialogue process to discuss the framework for land acquisition for the Coroccohuayco project with communities. To date Antapaccay has not signed land acquisition agreements with communities. Through dialogue, we would welcome discussion of:_

_The stakeholder engagement activities being undertaken to support land acquisition._

_How Antapaccay is informing communities of the compensation framework and the options available to them as a result of the land acquisition process._

_Requirements for community approval prior to land acquisition, queries and concerns._

In our report, we have highlighted our concern about dialogue processes on land acquisition having been initiated in parallel to carrying out baseline studies (social baseline study, census, land registry and inventory studies), which are intended to provide an objective basis for negotiation. We have also highlighted our concern about the changing information provided, at least to the community of Pacopata, on the area of the land requested, the magnitude of which would imply the effective disappearance of the community. We have also argued that this should give rise to a resettlement plan and have the consent of the population. We reaffirm these concerns.

What is more, we are concerned that the company is pushing forward with a process of negotiating over the land of the Pacopata and the Huini Coroccohuayco communities when it does not even have a project at the pre-feasibility stage, that is, when nothing is known about the scale of operations nor the areas of both communities’ territory that will need to be occupied. If there is no certainty about this, the extent of loss cannot be determined. Given the current situation, we wonder what kind of negotiation framework for land acquisition can be established if basic information is lacking.