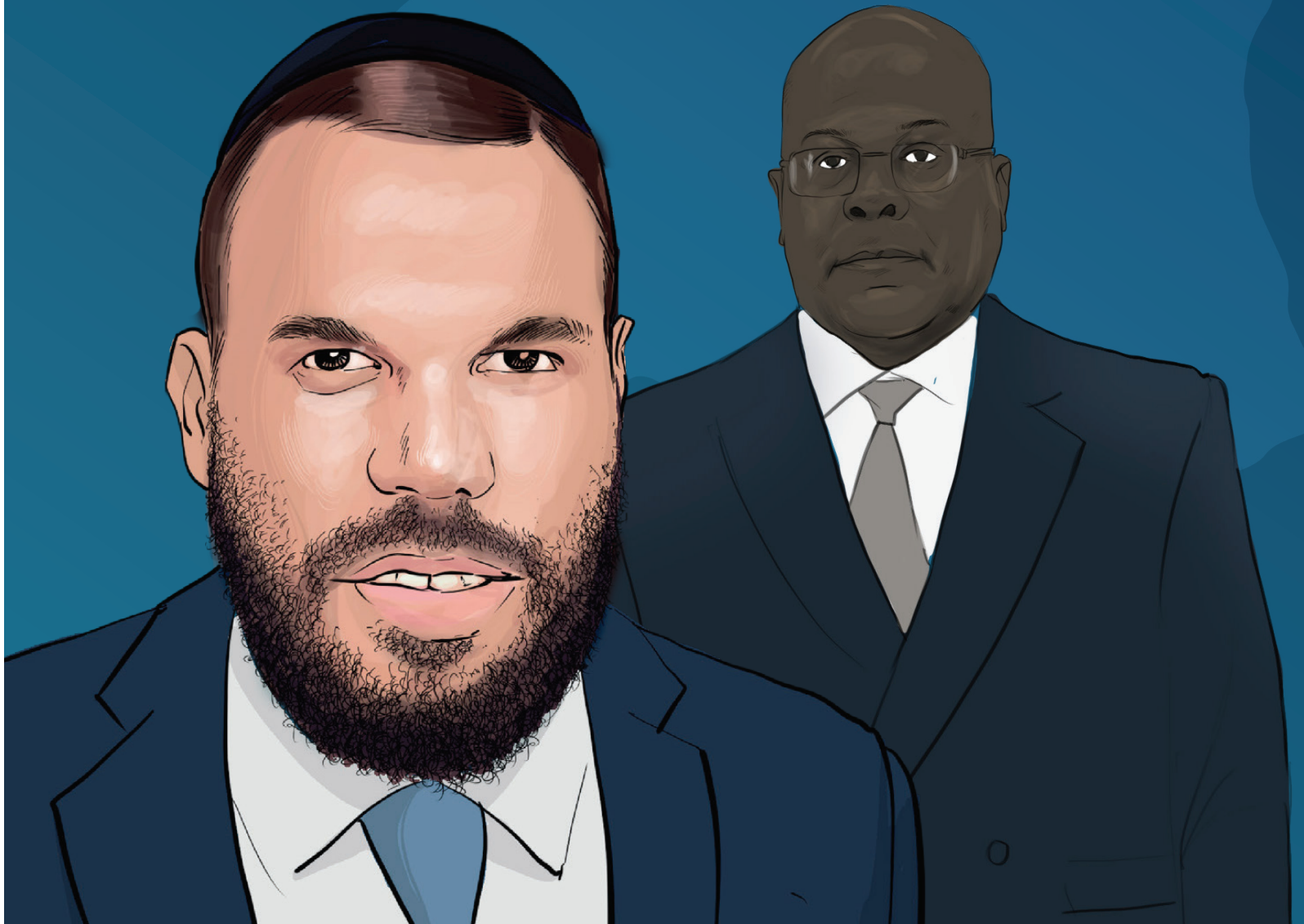


# LE CONGO

N'EST PAS A VENDRE



## Return to Congo What Belongs to Congo

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For a Fair Renegotiation of the Gertler Agreements



Published in October 2024

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# Executive Summary

According to civil society, the Democratic Republic of Congo [has already lost](#) billions of dollars due to Dan Gertler's deals in the country, and it is set to lose more. Although in some instances justice held Gertler's business partners accountable for corrupt activities, and although the US put him under [Global Magnitsky sanctions](#) for corruption back in 2017, he has never been directly incriminated.

In 2022, Gertler signed [a deal](#) with the DRC government where he committed to give back to the country the assets he still owns. However, the DRC not only has to pay to him a significant amount of money as part of the agreement, but it has also committed to advocate for sanctions lifting in the US. As a result, the US administration is currently considering granting Mr Gertler a license on sanctions. The *Congo Is Not for Sale (Congo N'est Pas A Vendre – CNPAV)* coalition urges the US to not lift sanctions against Gertler until a fairer deal is renegotiated between him and the DRC.

A fair agreement should take into account Mr Gertler's track record of deals that have been detrimental for the DRC, starting from the 1990s to these days. Over the past decades, Mr Gertler acquired a portfolio of assets, including royalty rights in three mining projects: the two Glencore-owned KCC and Mutanda Mining, and ERG's Metalkol. CNPAV, thanks to the evidence at its disposal, argues that a number of these assets, including royalties, have been acquired unlawfully. This was possible because of Mr Gertler's close friendship with the Congolese political elite. The strongest pieces of evidence suggesting that Gertler has engaged in unlawful practices in the DRC come from a [settlement](#) that the US Department of Justice reached with a hedge fund called Och-Ziff in 2016, and from investigations into Glencore in Switzerland, which were [closed in 2024](#). These have been complemented, over the years, by other investigations, leaks and revelations of investigative journalists.

The deal signed in 2022 does not take into account all these instances. On the contrary, Gertler is bound to receive more than €180 million from Congo. In addition, he is allowed to keep his royalty rights in all the three mining projects, and he is shielded from prosecution in the DRC. Finally, the Congolese government commits to advocate for sanctions lifting.

In light of all this, CNPAV proposes some key points that a renegotiation of the 2022 deal should include before any sanctions relief is considered:

- an acknowledgement of having acquired some assets unlawfully;
- an independent valuation of the asset portfolio affiliated with him;
- establishment of a restitution mechanism supervised by independent parties;
- compensation to the DRC for the unlawfully acquired assets;
- restoration of the civic space with total withdrawal of charges against civil society actors and protection of whistleblowers.

# Introduction

For 25 years, the Israeli businessman Dan Gertler has played a central but controversial role in the Congolese extractive sector. For several decades, he has acted as an intermediary who bought mining assets belonging to state entities and resold them to multinationals for much more, thus making a massive profit at the expense of the Republic. According to civil society calculations, Congo [has lost](#) (1) about \$2 billion due to Mr. Gertler's activities in the country. The DRC could lose more than \$1.5 billion more if the situation remains the same.

According to the U.S. administration, this scheme was possible thanks to Gertler's proximity to former DRC President Joseph Kabila and his corrupt practices that law enforcement authorities and the media have spent many years investigating and exposing. In 2016, according to the [U.S. Department of Justice](#) (2), Gertler paid at least \$100 million in bribes to Congolese officials. The following year, U.S. authorities [sanctioned him](#) (3) under the Global Magnitsky Act on grounds of corruption. This is the only form of accountability he has faced so far.

Internationally blacklisted and cut off from the U.S. banking system, Gertler has since advocated for the lifting of U.S. sanctions. These lobbying efforts led President Trump to grant a [short-term license](#) (4) at the end of his term. The Biden administration immediately revoked the license as soon as it took office.

After Joseph Kabila's departure from power and the arrival of his successor Felix Tshisekedi, the new Congolese government signed a [memorandum of understanding](#) (5) with Gertler's holding company, Ventora, in February 2022. The deal was publicly announced as a way for the country to recover some "valuable" assets that Gertler still controls in the DRC, despite sanctions.

However, the text of the agreement paints a radically less rosy picture. Not only would the DRC have to pay hundreds of millions for assets that could actually be worth relatively little; Gertler would also retain the right to collect lucrative royalties on three copper-cobalt projects. These royalties alone bring in about \$250,000 each day. Taking into account all the transactions covered by the agreement, the DRC would end up making a net payment to Gertler of [more than €180 million](#) (6). The agreement could also protect Gertler and his companies from prosecution in the DRC. It even predicts that the DRC government will advocate for Gertler's sanctions relief *against* the U.S. administration. Since the agreement, President [Tshisekedi has actually written](#) (7) to President Biden to request that Mr. Gertler be removed from the sanctions list.

As a direct result of this lobbying, the U.S. administration is now actively considering granting him another general license. The move could allow Gertler and his network to sell both the royalty rights back to the DRC, for a price that is likely to be much higher than what he initially paid or invested.

The *Congo Is Not For Sale* coalition (*Congo N'est Pas A Vendre* — CNPAV) fears that this type of license will be a major blow to the fight against corruption in the DRC and beyond. This could allow Gertler to sell assets to the DRC that he has unlawfully acquired over the past decade and make huge profits. In other words, it would allow him to engage in exactly the same "opaque and corrupt deals" that led the U.S. administration to impose sanctions on him in the first place. More broadly, this would undermine the credibility of the Global Magnitsky sanctions regime and its deterrent power, as it would encourage other actors to behave like Mr. Gertler and his companies, leading to an increased risk of corruption for the entire industry.

**The Congo Is Not for Sale coalition strongly believes that any agreement between Ventora and the DRC, and any form of sanctions relief, must meet a number of strict conditions. The agreement should take into account Mr. Gertler’s track record in the DRC, including instances of corruption and procedural violations, as outlined in Part 1 of this report. It should also enable the DRC to recover ill-gotten gains, ensure a genuine form of accountability for criminal behavior, and restore civic space, as explained in Part 2.**

When the U.S. Treasury sanctioned Gertler and dozens of his companies in 2017, it [described](#) (8) him as a billionaire who relied on his close friendship with the Congolese president to sign “opaque and corrupt” deals at the expense of the DRC and as a conduit for multinationals to access resource projects in the DRC.

It is worth dissecting this description to understand the nature, extent, and impact of Mr. Gertler’s experience in the Congolese extractive sector over the past 25 years. It is a record showing friendly deals, instances of bribery, procedural violations, and an almost total absence of accountability. Unfortunately, the 2022 agreement between the DRC and Ventora seems to be the latest chapter of this lopsided story. Mr Gertler’s full reply to CNPAV’s claims can be found in the Annex.



## **Timeline of Dan Gertler’s Activities**

- 2011** Acquisition of Mutanda royalties
- 2015** Acquisition (official) of royalties KCC
- 2016** Deferred Prosecution Agreement Och Ziff
- 2017** Acquisition of Metalkol royalties
- 2017** US sanctions
- 2022** RDC-Ventora agreement

PART 1:

# **A Fair Deal Must Consider Mr. Gertler's Background**

## Sweetheart deals

Until the late 1990s, the Congolese mining sector was largely state-owned. By the end of the decade, Congolese parastatals were virtually bankrupt and were no longer able to keep their mines in production. Their political protectors in Kinshasa embarked on a [wave of privatizations](#) (9), selling assets one by one to businessmen ready to ignore the context of war and instability that prevailed in the DRC at the time.

Mr. Gertler was one of these businessmen. He first became involved in the [diamond sector in the late 1990s](#) (10) and moved into the even more strategic copper-cobalt sector in the early 2000s. Over time, he has been involved in at least 18 different copper, cobalt, gold, iron, diamond, and oil projects across Congo.

Gertler's main modus operandi has been to buy highly strategic mining sites at bargain prices from state-owned enterprises and sell them to multinationals at a price many times higher.

Gertler has often justified his profits by stating that he has invested his savings in the sector. On occasions however, he has invested the money *of other companies*, especially the money of the same multinationals to whom he will later sell the assets. In this sense, his own risk has been relatively limited.

**To cite just one example, in 2010, a Gertler-owned company bought a stake in a copper-cobalt project from the Congolese state-owned company Gécamines for \$15 million. Gertler's company quickly sold that same stake for [\\$75 million](#) (11) to Eurasian Natural Resources Corp (ENRC), earning \$60 million in just four months. ENRC had loaned the money to Gertler's company *prior* to the initial \$15 million purchase.**

The same applies to Mr. Gertler's other partners. According to the leaked Paradise Papers, Glencore provided hundreds of millions of dollars in loans to Gertler to acquire assets, including a strategic stake in Mutanda Mining. The U.S. hedge fund Och-Ziff also loaned him money to get a stake in the Swanmines project, according to U.S. court documents.

Mr. Gertler's transactions gradually became more complex and difficult to decipher. However, behind the multiple layers of shell companies and the rapid succession of loans, term lists, and side agreements lies a simple pattern: that of buying the rights to Congo's resources at a very discounted price, often with money from other companies, and reselling them at a huge profit to those same companies.

## At the expense of the DRC

This trend has had costly consequences for the DRC. According to the [U.S. Treasury](#) (12), “between 2010 and 2012 alone, the DRC lost more than \$1.36 billion in revenue due to the undervaluation of mining assets that were sold to offshore companies linked to Gertler.”

More recent [calculations](#) (13) by the *Congo Is Not For Sale* coalition show that losses have increased since then, reaching around \$2 billion by 2021. This estimate covers only a selection of the 15 projects in which Mr. Gertler has been involved.

SOCIÉTÉ	ACTIF	MONTANT VERSÉ A L'ÉTAT	REVENUS PERÇUS PAR GERTLER	PERTES PASSÉES	PERTES PASSÉES PERTES A VENIR	PERTES TOTALES
Mutanda Mining	Parts	189 m	922 m	733 m		1 415 m
	Royalties		302.2m	302.2 m	379.68 m	
Kamoto Copper Company	Royalties	0 (emprunt totalement remboursé)	59.73 m	59.73 m	1 084.66 m	1144.4 m
SMKK	Parts	15 m	75 m	60 m		60 m
Metalkol	Parts (dans Comide)	63.5 m	685.75 m	622.25 m		921.25 m
	Royalties	55 m	26.9 m		298.97 m	
Sodifor/ Frontier	Parts	60 m	80 m	20 m		20 m
Nessergy	Blocs	0.5 m	150 m	149.5 m		149.5 m
<b>TOTAL</b>				<b>1 946.7 m</b>	<b>1 763.3 m</b>	<b>3710 m</b>

All amounts are expressed in millions of US dollars

Source: CNPAV report “[Billions Lost](#)” (2021)

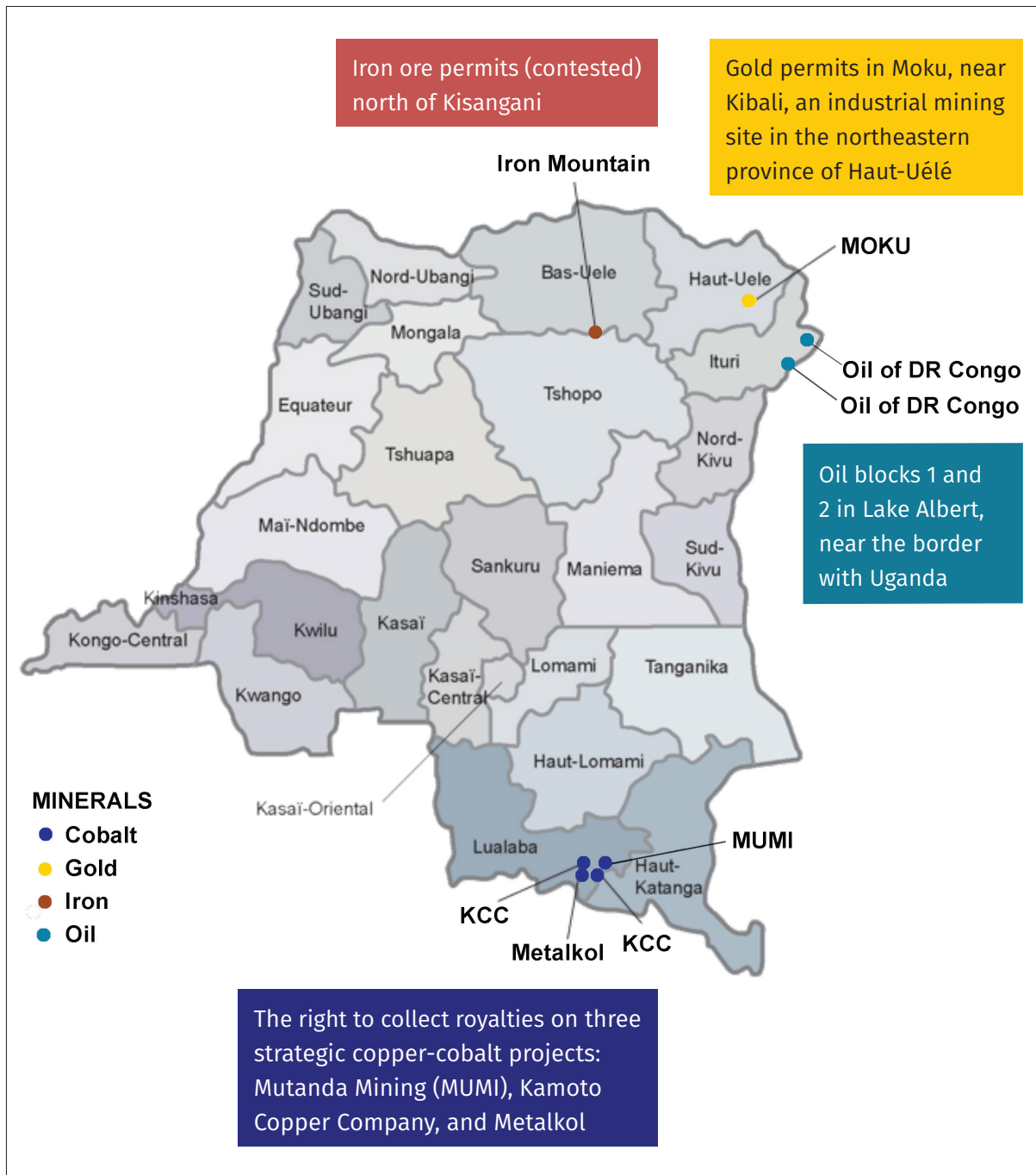
It also does not include indirect losses in certain projects. For example, when a subsidiary of Glencore was asked to pay a signing bonus of more than half a billion dollars for one of its projects, the board sent Gertler to renegotiate that amount, [according to Paradise Papers documents](#) (14). A few weeks later, he succeeded, shaving [\\$440 million off the bonus](#) (15) that was initially requested. Gertler’s lawyers rejected that Glencore got preferential treatment as a result of Gertler’s involvement in the negotiations.

Another example dates back to 2012, [when Bloomberg News revealed](#) (16) a secret transaction related to a copper-cobalt project, once again involving Dan Gertler. What happened is that Gécamines sold its 25% stake in a joint venture called Comide. Not only Mr Gertler was a shareholder in Comide at the time through his company Camrose, but there are also [strong suspicions](#) (17) that the BVI-registered company that bought Gécamines’ stake has ties with Mr Gertler. Despite intense pressure from the International Monetary Fund, the DRC government refused to publish the terms of the contract, even claiming that there was no contract. According to the U.S. Treasury, “the DRC’s failure to publish all the details of [this sale] prompted the International Monetary Fund to suspend loans to the DRC totaling \$225 million.”

## The rest of Mr. Gertler's portfolio of assets

Even though Gertler's main strategy was to sell the assets he had purchased in Congo, he was still active in a number of projects when the U.S. administration imposed sanctions in December 2017.

When the sanctions entered into force, the confirmed assets were as follows:



Mr. Gertler's portfolio of assets when the sanctions were imposed consisted of two types of assets: some that were difficult to sell and others that he apparently did not *want* to sell.

### **Hard-to-sell assets**

On the one hand, there are assets that Mr. Gertler failed to sell in the years leading up to his sanctioning.

At times, the value of the sites was uncertain and the likelihood that they could be put into production was very low. This is the case, for example, with the landlocked oil blocks of Lake Albert, or the iron deposits in the middle of the rainforest, thousands of miles from the nearest deep-water port. In both cases, the ownership of the title was also challenged.

In other cases, investors were reluctant to do business with him because of the governance risks associated with the relationship with Mr. Gertler. This was the case with Randgold, the operator of the Kibali gold mine, which wanted to expand its operations in the Moku gold permits but was unwilling to pay money to Mr. Gertler's company. Instead, the parties agreed that Kibali's operator would cover all exploration costs and, if successful, would obtain a majority stake in Moku without the money changing hands. Exploration was not fully completed at the time of the sanctions.

Going forward, this report will refer to these unsold assets as "hard-to-sell assets."

### **Lucrative assets**

On the other hand, there are assets that Mr. Gertler did not *want* to sell. These are so valuable in the long run that Gertler apparently preferred to remain involved. Hereinafter, this report will refer to these as "lucrative assets."

This is the case for the royalty rights to three world-class copper-cobalt projects in the country: Kamoto Copper Company and Mutanda Mining, owned by Glencore, and Metalkol, owned by Eurasian Resources Group – ERG (formerly known as ENRC). To this day, Gertler still holds royalty rights on these three mining projects, despite no longer owning any shares.

**Royalties are taxes that private entities pay to the state as compensation for the exploitation of public lands, and all mining companies are required to pay these royalties (called *redevances* in French) to the Congolese treasury when they come to operate in the DRC.**

In addition to these royalties, the state-owned mining company Gécamines renegotiated some of the largest mining contracts it had with private companies in the early 2000s and managed to insert a clause in most of these renegotiated agreements that would commit the mining companies to pay another "royalty" (this time called by its English name) to Gécamines itself. The value of these royalties can vary from contract to contract, but in most contracts, it amounts to 2.5% of sales. It is this second type of royalty that Mr. Gertler was able to obtain for himself in these three mining projects.

Unlike all the assets mentioned above, these royalties are pure profit: as long as the project owners keep the sites in production, Mr. Gertler's company will receive a portion of sales. Mr. Gertler does

not need to invest anything to continue to receive this income. While these hard-to-sell assets are not expected to generate much revenue in the near future, Gertler makes an average of more than \$250,000 a day from the lucrative assets, i.e., royalties. These royalties used to be paid to the Congolese state-owned company Gécamines and the DRC itself. As will be seen below, Mr. Gertler obtained them in very problematic circumstances. To date, these deals are depriving the DRC of important revenue.

The following sections will explain how this happened and how this process did not comply with the law.

## Ill-gotten acquisitions

Mr. Gertler's existing portfolio of assets is problematic for a number of reasons. First of all, according to analysis performed by the coalition, the process by which Mr. Gertler acquired his remaining assets was not in accordance with DRC law.

As for the oil blocks, Mr. Gertler acquired them when they belonged to other companies, without their knowledge and consent.

With regard to the royalties, their acquisition was in violation of the [Congolese Law on the Privatization of State Assets](#) (18) of 2008. This law requires:

- **Bidding process:** The sale of assets held by state-owned mining companies must follow a transparent and competitive bidding process.
- **Preliminary evaluation:** Before the call for tenders, the value of the asset must be evaluated.
- **Involvement of the DRC government:** Final approval of the transaction must be granted by the Prime Minister after validation by the Council of Ministers.
- **Public announcement:** The notice of divestment, indicating the intention to privatize the assets, must be published in the Government Gazette. In addition, it should be advertised by at least three media outlets in order to ensure transparency and public awareness of the privatization process.
- **Transparency of contracts:** According to the Mining Code, mining contracts must be published within 60 days of the date of their signature.

Several ministers, including the Minister of Finance and the Minister of Portfolio, [have confirmed](#) (19) in an inter-ministerial circular that this law also applies to assets sold by state-owned companies such as Gécamines.

**As explained below, it appears that Dan Gertler acquired royalties on three mining projects (Kamoto Copper Company, Mutanda Mining, and Metalkol) without complying with the law.**

Mr Gertler and Ventora claim (see Annex) that the Inspectorat Général de Finances (IGF) concluded in 2022 that all the transactions took place at fair commercial terms. The IGF reports this one to be Gécamines position regarding the transfer of KCC royalties, but it is not made explicit whether the IGF shares these conclusions.

## Royalties from Mutanda Mining

In 2011, Gécamines [secretly sold its stake and royalties in Mutanda Mining](#) (20) to a company registered in the British Virgin Islands linked to Mr. Gertler, which later became Ventora. A few months later, driven by suspicions that the transaction had not taken place in accordance with proper procedures, the Congolese Minister of Finance and the Minister of Portfolio issued the [inter-ministerial circular](#) (21) mentioned above, reminding the heads of state-owned enterprises that they must comply with the 2008 law on the privatization of state-owned assets. As a reminder, the law provides for five conditions to be complied with: a tender process, a prior valuation of the asset, the involvement of the DRC government, a public announcement of the sale, and finally transparent contracts.

To begin, it does not appear that there was a tendering process as this would have been public, while the sale took place in secret.

Second, the stake was sold for \$189 million, a relatively small amount considering that Mutanda is one of the richest sites in the world. According to Mr Gertler, the terms of the sale were decided on the basis of a valuation of Gécamines stakes made by BNP Paribas. CNPAV did not obtain this valuation, despite reiterated requests.

Third, the fact that government officials issued a circular following the sale impliedly expressing their dissatisfaction with it, suggests that the sale was not subject to the ministerial approval process. With regard to the public announcement and the transparency of the contract, the secrecy of the sale shows that these two legal requirements were also not complied with.

In 2017, Glencore purchased Gertler's stake in Mutanda [for \\$922 million](#) (22), decoupling the acquisition of the stake from the right to collect royalties, which was retained by Gertler's Ventora. Even though the contract has not been made publicly available, in 2018 Glencore issued a [press release](#) (23) confirming that Ventora is entitled to royalties from Mutanda.

## Royalties from Kamoto Copper Company

Shortly after the sale of the Mutanda royalties to Gertler, Gécamines also sold the royalties from another mining project, KCC, to AHIL, a company owned by Gertler. Gécamines had already planned to sell its stake in KCC to Gertler in 2013 without having obtained the prior approval of the DRC government (in violation of the 2008 law, which explicitly requires the government's agreement to sell public assets to individuals). As soon as he became aware of this project, the Minister of Mines, Martin Kabwelulu, expressed his opposition to the sale in a [strongly worded letter addressed to the Chairman of Gécamines](#) (24), Albert Yuma. Instead of proceeding with the sale of the stake, Yuma pursued an alternative strategy by transferring KCC's royalty rights from Gécamines to AHIL. This strategy involved a series of loans, which eventually resulted in a default on the part of the state-owned company. As a result of this scheme, it is likely that AHIL did not provide any compensation for KCC's receivables, including royalties and signing bonus payments. Mr. [Gertler alleges that Ernst & Young](#) (25) verified that this transaction was carried out at arm's length, but has to date not made the assessment public.

The DRC government acknowledged that there had been problems with the deal that led to Gertler acquiring KCC's royalties. In the [annex](#) (26) (doc 5801, pages 5–7) of the latest 2022 agreement between

Ventora and the DRC, the parties acknowledge the need to renegotiate the terms of the royalty rights for KCC, without, however, challenging the overall validity of the original agreement. In fact, by not revoking Mr. Gertler's right to obtain these royalties, the Ventora agreement ultimately validates Gertler's right to collect them, a right that was unlawfully acquired.

## **Royalties from Metalkol**

As for Metalkol's royalties, the sale took place in 2017 without the involvement of the DRC government and was kept confidential for more than two years, not complying with the criteria of the 2008 law for government involvement, public announcement and contract transparency. The contract contained an unprecedented confidentiality clause, which prohibited the parties concerned from even acknowledging the existence of the deal for a period of three years. This was in direct contravention not only of the 2008 law on the sale of state-owned assets, but also of the transparency requirements set out in the 2011 Decree on Contract Transparency, which were later incorporated into the [2018 revision of the mining code](#) (27).

## **Oil Blocks 1 and 2**

In May 2010, Dan Gertler [acquired the oil blocks](#) (28) 1 and 2 of Graben Albertine. The two blocks were previously owned by DIG Oil and Tullow Oil, respectively, which had valid permits at the time of the sale. Not only was there no public tender for this sale, but both companies were secretly stripped of their licenses without even being informed. The two dispossessed companies each filed a complaint, on the grounds that the blocks had been confiscated from them while their production-sharing contracts were still in force. As a result of the arbitration initiated by DIG Oil, the DRC [was ordered to pay damages](#) (29) of more than \$600 million for authorizing this transfer of permits without following the correct procedure. After acquiring the blocks, Gertler was supposed to make some payments in relation to the same. First, the contract provided for a signing bonus of \$6 million for both blocks, or \$3 million per block. Other payments at this stage were the exploration license fee (\$2.5 million for the two blocks) and, later, the exploration license renewal fee (\$2.5 million for the two blocks).

The 2010 report of the DRC Extractive Industries Transparency Initiative (EITI) confirmed that the signing bonus had been paid. However, while the company confirmed that it had paid for the exploration permit, the State did not acknowledge receipt of the same. With respect to renewal, the law provides for the payment of a renewal fee, but what Mr. Gertler was able to obtain was an *extension* of the license, a term that does not exist in this context, but which allowed him to obtain the renewal of the license for free.

## **Transfers before sanctions: the opaque 2017 loan**

In October 2017, the Congolese state-owned mining company Gécamines [borrowed €128 million](#) (30) (with a maximum of €200 millions made available by the lender) from a company owned by Mr. Gertler: Fleurette Mumi. This has since become Ventora, the same company that negotiated the agreement with the DRC in 2022.

Officially, Gécamines borrowed money from Ventora to pay an advance on taxes. This aroused [suspicions within CNPAV](#) (31) for two main reasons:

- 1 It appears unlikely that a heavily indebted public company like Gécamines would ask for a loan to pay taxes that it did not even owe.**
- 2 In other cases where Mr. Gertler has lent money to Gécamines, he has always taken care to secure the repayment of the loan through certain assets (for example, he acquired KCC royalties following a loan default by Gécamines). In this case, it is not clear to which assets Mr. Gertler linked his loan.**

After Gertler was sanctioned by the United States in late 2017, Gécamines refused to repay its debt for fear of violating U.S. sanctions. This triggered an investigation by Congolese authorities and a [political debate](#) (32) due to suspicions that the \$200 million paid by Gécamines in the form of “tax advances” ultimately did not reach the Congolese treasury.

The answer to the question of how this loan will be repaid is in the 2022 agreement between Ventora and the Congolese government. As mentioned at the beginning, the agreement provides for a payment from Ventora to Gécamines of €249 million in compensation for KCC’s royalties. However, €192 million will be deducted from this amount in order to repay this 2017 loan, leaving Gécamines with only €57 million in compensation for KCC’s royalties.

In conclusion, it appears that Dan Gertler’s presence in the Congolese extractive sector has been quite detrimental to the country. He acquired valuable public assets through an unlawful procedure and thus secured a long-term flow of income, in the form of royalties that should have gone to the State-owned company. In addition, in partnership with multinationals such as Glencore, he has managed to negotiate agreements that are advantageous for himself and his partners, but not for the DRC, which is constantly losing money.

## Close friendship

How did Mr. Gertler manage to buy so many assets at such low prices from the DRC?

And if the DRC sold its rights to profit from its own natural resources at a low price, why would multinationals like Glencore and ENRC not buy them directly from the DRC? Why did they lend Mr. Gertler money to access these sites for them, and then pay him a multiple of what the DRC had ostensibly quoted for these same sites?

Gertler’s main strength was — and probably still is — his unparalleled access to Congolese policymakers. The U.S. [Treasury said](#) (33) that “Gertler has used his close friendship with former DRC President Joseph Kabila to act as a middleman for mining asset sales in the DRC, requiring some multinational companies to go through Gertler to do business with the Congolese state.” Gertler acted for or on behalf of Kabila, helping Kabila organize offshore leasing companies. Kabila’s senior adviser, Augustin Katumba Mwanke, who has long been the top decision-maker in the mining sector, described Gertler as “the twin brother I never had.”

## Evidence of corruption

Over the past 15 years, Mr. Gertler’s ability to garner special favors has raised suspicions among civil society groups and the media that Mr. Gertler has resorted to bribery to gain these friendships and close relationships with the DRC’s political elite.

Mr. Gertler consistently claimed that all allegations of corruption were false and that his transactions were legal, yet evidence of bribery has surfaced over time in investigations targeting its multinational partners such as Och-Ziff, ENRC, and Glencore. The following is the most compelling evidence available to date.



**Bribes paid by Gertler between December 2010 and February 2011 according to documents from the Och-Ziff case (2016)**

DATE	AMOUNT IN USD	BRIBE RECIPIENT
December 1, 2010	\$1 million	DRC Official 1
December 3, 2010	\$2 million	DRC Official 1
December 7, 2010	\$2 million	DRC Official 1
December 9, 2010	\$2 million	DRC Official 1
December 15, 2010	\$350,000	DRC Official 2
December 17, 2010	\$250,000	DRC Official 2
January 13, 2011	\$500,000	DRC Official 2
February 9, 2011	\$3 million	DRC Official 1
February 9, 2011	\$1 million	DRC Official 2
February 23, 2011	\$750,000	DRC Official 1

## The Och-Ziff case

In 2016, the U.S. hedge fund Och-Ziff [acknowledged](#) (34) in a settlement with the U.S. Department of Justice that Gertler had paid huge bribes to Congolese officials in order to gain preferential access to valuable mining assets.

Och-Ziff pleaded guilty to multiple counts of foreign bribery, including a scheme in which it relied on Mr. Gertler (referred to as a “DRC Partner” throughout the statement of facts) to bribe DRC officials and judges to acquire strategic mining assets in Congo’s cobalt and copper sector.

Court [documents](#) (35) show that Gertler paid more than \$100 million in bribes “to obtain special access and preferential prices for opportunities in the DRC’s government-controlled mining sector” between 2005 and 2015. Among those who received the bribes are former President Joseph Kabila, as well as his former senior adviser, the late Augustin Katumba Mwanke.

The statement of facts in the Och-Ziff case is extremely detailed and precise. For example, the document states that in 2008, Och-Ziff reached an agreement with a company to buy 150 million shares for about \$150 million. On the same day, Gertler arranged for the delivery of \$11 million to “DRC Official 2” (Katumba Mwanke). For a total payment of \$20 million between 2010 and 2011, the Court document provides a detailed table with specific dates, amounts, and recipients. Mr Gertler has always denied any wrongdoing.

As a result of this settlement, Och-Ziff paid a \$213 million criminal fine and a \$199 million regulatory fine to the Securities and Exchange Committee (SEC). Gertler, on the other hand, was never prosecuted in connection with the scheme, although he was sanctioned by the U.S. Treasury a year later.

## Evidence of corruption found by Switzerland and the United Kingdom

As part of the criminal investigation into ENRC (now ERG), another of Mr. Gertler’s multinational partners, the UK Serious Fraud Office requested legal assistance from Switzerland. As [Bloomberg reported](#) (36) in March 2021, a [Swiss court document](#) (37) shows that a company affiliated with Gertler made payments in the DRC totaling \$378 million between 2006 and 2011, suggesting that the \$100 million in bribes described in the Och-Ziff case during the same period may in fact be only a portion of the total amount in bribes paid by Gertler during that decade. Gertler and his lawyers denied his involvement in this or any corruption scheme.

This payment schedule was allegedly presented by Mr. Gertler during arbitration proceedings against one of his former co-investors. The arbitration documents indicate that the company intended to use the money for large cash payments to a highly influential MP in the DRC (probably Katumba Mwanke). The same documents also reveal payments to other senior Congolese government officials.

Mr Gertler and Ventora replied to CNPAV that neither the SFO investigation nor the arbitration proceedings found any wrongdoing (see Annex). However, the documents made available to the authorities in these two cases show a record of bribes.

## Glencore investigations

Further suggestions of Gertler's corruption in the Congolese mining sector can be found in his well-documented business relationship with the Swiss mining company Glencore, which owns two of the largest copper and cobalt mining projects in the DRC (and the world): Kamoto Copper Company (KCC) and Mutanda Mining.

Thanks to the work of civil society and leaks such as the Congo hold-up and subsequent investigations, there is now ample evidence of the relationship between the two. Gertler has operated for the past two decades as an intermediary between the company and the Congolese political elite, negotiating rebates and privileged access to the sector for the former, while making a profit himself.

In 2022, Glencore reached an [agreement](#) (38) with the U.S. Department of Justice, the UK Serious Fraud Office, and the Brazilian Public Prosecutor's Office, in which it acknowledged the existence of a "culture of corruption" within the company, linked to its activities in a series of countries, including the DRC. Following this event, in December of the same year, Glencore reached an agreement with the DRC, committing to pay \$180 million for all past and future "alleged acts of corruption." Unfortunately, these judicial developments do not directly address the relationship between Glencore and Gertler, and the amount is not at all proportional to the losses Glencore has brought to the country, but it has been a first acknowledgement of Glencore's improper business conduct in the DRC.

More significant developments took place in August 2024, when the Swiss Office of the Attorney General, in collaboration with the Dutch authorities, [closed its investigations on Glencore](#) (39), ordering the company to pay a fine of 2 million Swiss francs, and a compensation order of \$150 million for failing to take all the necessary measures to prevent the corruption of its business partner in the DRC. The documents that CNPAV obtained are redacted, but it is possible to identify Mr Gertler as Glencore's business partner.

The facts of the investigation refer to one specific transaction that took place in 2011, when the Congolese State mining company Gécamines sold its minority stakes in a Glencore-owned project ([Mutanda](#) (40) and [Kansuki](#) (41), which will later be merged into Mutanda Mining) to two companies owned by Mr Gertler at a very low price. Despite not being comprehensive of all the business activities of Glencore and Gertler that CNPAV has denounced over the years, this decision of the Swiss justice is still the first formal acknowledgment of Gertler's corruption in Glencore-owned projects in the DRC.

Most importantly, when Gertler acquired the shares in Mutanda from Gécamines, he also acquired the rights to collect royalties. Despite [selling his shares in Mutanda](#) (42) to Glencore in 2017 for more than \$900 million, Gertler has kept the right to receive these royalties to this day. The Swiss decision confirms what CNPAV has been saying for years: those royalty rights were acquired unlawfully.

## Bribes in Israel?

In April 2024, Israeli newspaper [TheMarker revealed](#) (43) that Gertler may have bribed an Israeli police commissioner. The newspaper has had access to documents produced for the conviction of Mr. Gertler's former lawyer, Avi Lavi, in the United States.

According to TheMarker, in the documents, Lavi confessed to being part of a corruption scheme in which he paid bribes to Israeli law enforcement authorities on Gertler's behalf, in order to obtain

confidential information about ongoing investigations into Gertler's business activities, including those in the DRC. Lavi submitted a hard drive containing evidence of bribes to three people in the DRC: former President Joseph Kabila, his adviser the late Augustin Katumba Mwanke, and former governor of the Katanga region Moïse Katumbi. According to the documents obtained by TheMarker, the payments were facilitated by an account opened in Switzerland. He also confessed that he had helped produce false evidence to support the payments.

Gertler denied the version of events of his former lawyer and sought to prove that Lavi had fabricated evidence. While there is much more light to be shed on this secret affair, it once again reinforces the suggestion of Mr. Gertler's history of corruption and, therefore, the need for the DRC to renegotiate the deal with him and for the United States to reconsider the plan to lift sanctions.

## **There is virtually no accountability**

Despite evidence of corruption and repeated procedural irregularities, neither Gertler nor his companies have faced any real form of accountability, and nor did his political allies such as Joseph Kabila.

So far, all completed major investigations have focused on Gertler's multinational partners, such as Glencore, ENRC, and Och-Ziff.

**Two countries are best placed to investigate and potentially prosecute Gertler: Israel, his home country, and the DRC, which has had the most to lose from his activities. Respect for the rule of law would imply that either or both of these countries should actively seek legal assistance from countries that have collected evidence of corruption to hold the Gertler network and his political co-conspirators to account.**

Unfortunately, Israel has never officially announced the opening of an investigation, although it has been able to respond to requests for mutual legal assistance from other jurisdictions, according to the OECD's report on Israel's implementation of the OECD Anti-Bribery Convention. As mentioned above, in light of the allegations that surfaced in US Court proceedings of Gertler bribing an Israeli police commissioner, the questions must be asked as to whether this has allowed Gertler to avoid a formal prosecution.

As for the DRC, where Gertler built his fortune, the administration that came to power in early 2019 has begun [arbitration](#) (44) procedures in Paris against one of Gertler's companies, focusing specifically on the two oil blocks. In addition, the new Congolese authorities [contested](#) (45) the conditions under which Mr Gertler acquired the KCC royalties, although it is unclear whether the DRC took legal action.

However, the 2022 agreement between the DRC and Ventora has seemingly put an end to these first attempts to hold him accountable.

## Making things worse: the DRC-Ventora agreement of 2022

In February 2022, the Congolese government, through its Minister of Justice, signed a [memorandum of understanding](#) (46) (and annexes) with the company Ventora Development SASU, owned by Gertler. The DRC government and Gertler’s communications team say that the [2022 deal](#) (47) allows the DRC to recover assets “worth \$2 billion.”

In a [letter](#) (48) from Gertler to the CNPAV coalition sent in February 2023, he writes: *“With an estimated \$2 billion in cash and assets transferred by me to the DRC, this settlement represents the largest consensual transfer ever made in the history of the region. Just imagine what these funds could do to improve the lives and livelihoods of ordinary citizens. From building new schools and hospitals to providing food to the hungry and medicine to the sick, this massive influx of income will mean a lot to so many people who need it so urgently.”*



Crédit photo: Actualite.cd

It took some time before the agreement was published, a choice that was against the Mining Code and the standards promoted by the EITI. In the end, thanks to the combined pressure of civil society and the International Monetary Fund (IMF), the agreement [was published](#) (49) more than nine months after it was signed.

Prior to its publication, the DRC presidency convened a roundtable to present and defend the agreement in April 2022. On the basis of what was presented at the time, [CNPAV criticized](#) (50) the terms of the agreement.

The text of the agreement and its annexes confirms and amplifies these concerns. Instead of laying the groundwork for a fair solution for the DRC, the 2022 agreement achieves the exact opposite: it allows Gertler to make a profit on hard-to-sell assets at the DRC’s expense, while keeping the lucrative assets. The below analysis sets out why we consider this to be the case.

## **DRC not compensated for past losses**

First, the agreement does not provide any form of compensation for past losses caused to the State by Mr. Gertler. On the contrary, the DRC undertakes not to bring any civil action abroad with the intention of demanding such compensation (art. 2.1.5).

## **DRC buys up hard-to-sell assets**

In addition, the DRC will pay Mr. Gertler €240 million for the assets he had not yet sold (art. 2.1.2): the two oil blocks and the iron and gold permits.

Perhaps in an attempt to justify this, the government has seemingly vastly overstated the value of the returned assets, putting it at [around \\$2.5 billion](#) (51). As [CNPAV has pointed out](#) (52), this amount has probably been overestimated. These blocks are landlocked, and even though the plan is to use the EACOP pipeline connecting Uganda to the ocean, an [analysis by Bloomberg News](#) (53) has shown that this may not be a viable solution. The difficulty of transporting Congolese oil makes such an assessment unreliable.

The estimate of \$2 billion was reportedly made by an international audit firm. The identity of this company is unknown and its findings have not been disclosed, making it impossible to understand how this inflated valuation has been calculated. However, the figure has been taken up in a series of press releases from the DRC and Ventora and repeated without nuance in the international press.

The €240 million would be intended to compensate for the investments that Gertler's companies claim to have made. This sum is due even in the event that the DRC fails to resell them to a third party. This constitutes a debt risk for the country.

According to the [second annex](#) (54) to the 2022 agreement, the amount was verified by the government "as actual lost costs incurred by the Ventora Group." However, the details of this assessment have never been provided to the public to verify its validity. The same applies to the disaggregated calculations which brought the total amount to €240.7 million. According to [the other published annex](#) (55), Ventora's investment costs (interest-free) amounted to €131 million for the two oil blocks, €43.9 million for Iron Mountain and Sanzetta, and €65.8 million for the Moku Beverendi gold mine. The latter amount in particular should be subject to further scrutiny, given that the costs of Moku's exploration were borne by [Randgold](#) (56), then a partner in a joint venture with Ventora, and not by Ventora itself.

In conclusion, there is no way to verify, using independent sources, the way in which the DRC and Ventora reached this sum.

## **Ventora keeps lucrative assets**

The agreement does not interrupt Mr. Gertler's right to collect royalties for the three projects (KCC, Mutanda, and Metalkol).

Indeed, the 2022 agreement explicitly states that these transactions were valid (art. 2.1.4), even though there is evidence to the contrary and even though the agreement acknowledged that the DRC had contested the conditions of the acquisition of royalties from KCC. This means that the 2022 deal acts as a measure to "legalize" transactions that were previously considered questionable at best. As

shown above, Gertler did not follow the relevant laws when he obtained the royalty rights from KCC, Mutanda, and Metalkol, but the 2022 agreement *de facto* validates their acquisition.

It is worth mentioning that the DRC, will indeed receive compensation of €249 million from Gertler for KCC's royalties as part of the agreement (art. 2.1.3). However, CNPAV has calculated that these royalties amount to \$380 million in net value. That does not include the fact that Gertler should have already received at least \$295 million in royalties from KCC over the past few years, according to civil society calculations. In other words, the compensation is far too low.

In addition, the Mutanda and Metalkol royalties have also been sold at rock-bottom prices, but no additional compensation is provided for these sources of income.

### **DRC commits to repaying an opaque loan**

Worse still, Gécamines will not receive as much as €249 million in terms of net payments. As already mentioned, this amount will be offset by additional payments that the DRC has promised to make to Mr. Gertler, including the repayment of an opaque loan (art. 2.1.3).

In October 2017, two months before the U.S. sanctions, Gécamines [borrowed €128 million](#) (57) from Mr. Gertler's company Fleurette, which later became Ventora.

Apparently, Gécamines used this loan to pay "[tax advances](#) (58)." The loan was kept secret for more than two years.

When its existence was made public in 2019, it [raised suspicions](#) (59) for two reasons: firstly, Gécamines' financial difficulties made the decision to borrow money to pay taxes strange, and secondly, there was uncertainty about the guarantee of the loan.

Thanks to investigations [by the Congo Hold Up](#) (60) consortium and [the General Inspectorate of Finance](#) (61) (IGF), it has since emerged that Gécamines' tax advances could have been a key mechanism for misappropriation of revenues, as most of these advances never reached the DRC's public Treasury. The DRC prosecutor [conducted an investigation](#) (62) into the loan between December 2019 and April 2020, suspecting that the proceeds had been misappropriated and laundered. The investigation died down after [Mr. Yuma was removed from](#) (63) his position as president of Gécamines. The results of the investigation have never [been published](#) (64).

Despite the opacity of the destination of the loan proceeds, the 2022 agreement between Ventora and the government provides that Gécamines will reimburse €192 million to Ventora, i.e. the principal of the loan and its interest (art. 2.1.3). This amount will be deducted from the compensation that Gécamines is expected to receive in respect of KCC's royalties. Gécamines would thus have €57 million at its disposal.

Taking into account that Mr. Gertler will receive compensation for his hard-to-sell assets, the final tally is in favor of Mr. Gertler, with a net payment of more than €180 million from the DRC to his company.



## **Gertler and his companies are immune from prosecution**

The DRC undertakes not to make any claim against Ventora, its directors, and officers, during the entire period that Ventora held the assets (art. 2.1.5). The CNPAV coalition believes that this clause in the DRC-Ventora agreement should be removed, first and foremost because it could limit the Congolese State's power to hold Mr. Gertler accountable, despite the existing evidence of the corruption.

Moreover, this clause is invalid under national law and in contradiction with international law. Under national law, no agreement between the parties can prevent the initiation of legal proceedings for acts of corruption, because the Congolese Criminal Code is superior to private agreements such as this one. In other words, the Congolese prosecutor's office can, on its own initiative or on the denunciation of Congolese citizens and/or associative movements, still investigate these facts and initiate criminal proceedings against Mr. Dan Gertler.

In addition, under international law, in particular the [Vienna Convention on the Law of Treaties, to which the DRC is a party](#) (65), the judicial authorities of the DRC are obliged to cooperate and provide assistance in criminal investigations against Dan Gertler by other countries if the DRC has entered into a mutual legal assistance agreement with such a country. If the DRC refused to cooperate on the basis of the 2022 Ventora agreement, it would incur international liability.

## **DRC pledges to push on his behalf for sanctions relief**

In the contract, the DRC also undertakes to assist Gertler in his attempts to obtain the lifting of U.S. sanctions against him. For the DRC, this would mean public approval of the agreement with Mr. Gertler at the level of the media, civil society, and American institutions.

Since the signing of the agreement, the DRC government has remained faithful to this commitment. While the agreement was not yet public, the presidency organized a [press conference](#) (66), and even a roundtable with civil society to defend the merits of the agreement, in which [CNPAV participated](#) (67) by expressing its concerns. President [Tshisekedi even wrote](#) (68) directly to President Biden asking him to remove Mr. Gertler from the sanctions list and to convince him of the good faith of the signed agreement.

Instead of him returning unlawfully acquired assets and money to the DRC, the country will pay him more than €180 million, while he will continue to receive about \$1.7 billion in royalties over the next two decades. Therefore, not only does the deal bring him additional money, it also does not even challenge previous unlawful acquisitions, allowing Mr. Gertler to continue to make considerable profits from the royalty deals. In light of the unbalanced nature of the agreement, the CNPAV coalition does not understand why the DRC government has chosen to promote an agreement that effectively extends an enrichment model at the expense of the DRC.

## **Sanctions, the only form of accountability so far**

As explained above, Mr. Gertler has so far escaped prosecution in the various jurisdictions that have investigated his multinational partners. As long as this remains the case, U.S. sanctions will remain

the only form of liability he has faced to date. Under the [U.S. Global Magnitsky Act](#) (69), one of the criteria for lifting sanctions is that the person has been prosecuted appropriately for the activities for which they have been sanctioned. This is not the case at present.

Until other forms of accountability are established, any form of sanctions relief would be, at best, premature.

PART 2:

# **What a Fair Deal Would Look Like**

Recent indications suggest that the U.S. administration is considering granting Gertler a license to lift sanctions imposed on him since 2017 under the Global Magnitsky Act. This license would be subject to the renegotiation of the DRC-Ventora agreement of 2022. Specifically, it appears that the U.S. is asking Gertler and his network to leave the DRC altogether and give up all assets, including both hard-to-sell and lucrative assets.

However, there is no guarantee that the United States will insist on him relinquishing these assets on terms favorable to the DRC. What is rather worrying is that there is a real possibility that Mr. Gertler will be allowed to resell to the DRC the assets he acquired unlawfully, potentially for many times the value of what he paid to acquire them. If this scenario materializes, any form of sanctions relief would effectively amount to complicity in the same type of transactions that originally led to his sanctions. Naturally, this has created great levels of controversy within the various factions of the U.S. administration.

The CNPAV considers that it would be entirely inappropriate to grant Mr. Gertler an authorization to escape sanctions in these circumstances. Instead, the coalition urges the U.S. administration to establish certain conditions, including full transparency on the list of assets still held by Gertler and his network, conducting thorough audits of the conditions under which they were acquired, and insisting on his delivering any unlawfully obtained gains to the Congolese State without providing Gertler with any financial compensation. The United States should also ensure that civic space in the DRC is restored – in practice, rather than promises – before assisting him.

**A detailed action plan is proposed below, which can be summarized as follows:**

- **Acknowledgement of unlawfully acquired assets, as considered by the U.S. administration in 2017. The agreement is expected to include a clause in which Dan Gertler acknowledges and agrees that some of his assets were acquired unlawfully. This is a starting point to establish a basis for the return of these assets to the DRC.**
- **Independent valuation of the asset portfolio affiliated with Dan Gertler.**
- **Clear and transparent restitution mechanism supervised by independent parties, to allow for the effective restitution of assets unlawfully acquired by Gertler without any conditions, including financial conditions, submitted to the DRC.**
- **Compensation in favor of the DRC for the damage caused by the unlawful acquisition of assets by Dan Gertler. This compensation must reflect the real value of the assets and the damages suffered by the DRC.**
- **Total withdrawal of all charges against organizations and actors from civil society, and protection of whistleblowers.**

## Independent valuation of Mr. Gertler's portfolio of assets

For the coalition, no agreement between the DRC and Ventora should be signed, nor should any sanctions relief be granted, until an independent picture has been obtained of how Mr. Gertler and his companies acquired the assets that he could sell back to the DRC government and the fair value of those transactions.

### Publication of the list of assets and related documents

First, Mr. Gertler should be asked to publish a complete register of all assets that he owns in the DRC, including those that are not directly registered in his name, the exact amount he paid to acquire those assets, the amount he invested in them, and the acquisition process he followed for each of the assets.

Mr. Gertler and the representatives of his company should be asked to sign a declaration of honor stating that the list of assets is exhaustive. The affidavit must also include an explicit statement about any involvement in tailings projects held since 2018 by Evelyne Investment and Interactive Energy. According to the [investigation](#) (70) by the Platform to Protect Whistleblowers in Africa (PPLAAF) and Global Witness, as well as recent [revelations](#) (71) by the Israeli newspaper TheMarker, these are two companies whose ultimate beneficiaries may have links to Mr. Gertler and his companies, a link he has consistently denied.

The DRC, for its part, should publish the full history of the beneficial ownership of these two companies in particular, as required by the EITI standards. This history should cover all changes of ownership from the initial joint venture agreements signed with Gécamines in 2018 to the present.

### Comprehensive independent audit

On numerous occasions, Mr. Gertler relied on third-party "assessments" and "reports" to assert that his agreements were valid and fair. This includes, among others, Ernst & Young's review of KCC's royalty agreement and a report by an unidentified firm attesting to the \$2 billion value of his hard-to-sell assets. None of these documents have ever been shared despite multiple requests from the coalition.

Instead of these undisclosed reports, an independent international auditing firm should conduct a full audit of the assets. The identity of this auditing firm should be verified by the U.S. Treasury and disclosed to the public. The audit should take place before any license on sanctions is granted, and the license should be conditional upon the results of the audit.

The audit report should indicate the conditions under which each of the assets was obtained, whether the acquisition process complied with DRC law, and whether the compensation paid to DRC entities was based on arm's length prices at the time of the transaction. The audit firm should have full access to all of the above-mentioned third-party reports that support Mr. Gertler's claims, as well as any contracts that have not yet been fully disclosed.

The audit report must be made public in its entirety, and it must be drafted or at least formally translated into French and national languages so that Congolese citizens can understand the true extent and nature of Mr. Gertler's presence in the DRC.

# Judicial investigation into suspicious practices

## Investigations in the DRC

Rather than shielding Gertler and his network from future prosecution, DRC authorities should formally seek help from jurisdictions that have amassed evidence of corruption.

Based on this evidence, the DRC should define the steps it can realistically take to hold Mr. Gertler and his Congolese counterparts accountable for their past behavior. Measures could include requiring compensation for past losses, restitution of ill-gotten gains and proceeds of crime, penalties, or other forms of criminal sanctions, as appropriate.

Accountability measures should extend to politicians who have benefited from these corrupt practices. This includes opening claims to recover the \$100+ million in bribes paid to various senior Congolese officials.

## Investigations elsewhere

Other jurisdictions should also contribute to legal liability. First and foremost, there is Israel, which has ratified the OECD Convention on Bribery, among others. This gives the country the power to investigate Mr. Gertler's past. The investigation should not focus only on the transactions in the DRC, but also on recent corruption allegations involving an Israeli police chief who supposedly leaked information to Gertler and his former lawyer about the ongoing investigations, allegations that Gertler denies. The U.S. has already investigated Gertler's business partner, the Anglo-Swiss commodities trader Glencore, and reached a [settlement](#) (72) in 2022 that required Glencore to pay more than \$1 billion in fines for violating the Foreign Bribery Practices Act (FCPA). However, Mr. Gertler was not subject to these investigations as an intermediary for Glencore.

To the extent possible within the FCPA's mandate, the CNPAV also encourages U.S. authorities to investigate not only Mr. Gertler, but also Congolese authorities who were complicit in Gertler's corrupt activities, and hold them to account through the legal tools available in the United States. Within the possibilities of their mandates, our coalition encourages the Swiss and Dutch authorities to also explore any remaining option to ensure accountability, following the results of the investigations into Glencore.

While the U.S. agreement with Glencore did not provide for any form of compensation for victims, whether individual victims, groups or even state institutions, CNPAV encourages all of the above-mentioned jurisdictions to include a victim compensation mechanism in any agreement it enters into with Mr. Gertler following any investigation into his activities in the DRC.

## Relinquishment of ill-gotten gains without financial compensation

The CNPAV coalition is shocked to learn that the U.S. administration may be willing to provide a license allowing the DRC to make payments to Gertler and not the other way around. The DRC could be willing to *borrow* money so that it can buy back the royalty streams, regardless of the terms of the initial transaction and the clear return on investment that Gertler has already realized.

If such payments were to be approved, the U.S. administration would validate exactly the same type of agreement that led to Mr. Gertler's sanctioning in the first place.

This highly questionable approach had already been adopted in the 2022 agreement for oil blocks and mining permits. This agreement provides for compensation of €240.7 million, supposedly for the investment that Mr. Gertler made in these assets.

However, Mr. Gertler's own company, Fleurette, said it invested "\$70 million" in the blocks in 2013, and that figure has not been independently verified. His companies did not engage in any other notable exploration activities following this announcement. As for the gold permits, all exploration costs were to be covered by Kibali's operator, not Gertler's company, making it difficult to explain the difference between the supposed \$70 million investment in the blocks and the €240 million compensation that Gertler's company would receive as part of the 2022 deal.

If this clause were to be executed, Mr. Gertler's company would effectively recover four times more than his own company said it had invested. In addition, the way Gertler acquired the blocks, which involved the DRC government withdrawing the permit from the previous owners, was unlawful. The DRC even had to pay damages (73) of more than \$600 million for illegally dispossessing DIG Oil of its oil blocks and giving them to Dan Gertler.

Despite these glaring imbalances, the coalition has not heard the U.S. administration dispute the figure of €240.7 million. Worse still, some in the U.S. administration seem to endorse the idea that a similar approach should be taken for the royalties of KCC, Mutanda, and Metalkol.

A good agreement between the DRC and Ventora on the Albertine Graben Oil Blocks 1 and 2 would involve an objective assessment of the real value of Dan Gertler's investments in these blocks, while taking into account the various costs incurred by the DRC in order to give the blocks to Dan Gertler, in particular the damages that the DRC paid for illegally stripping DIG Oil of its permit to give it to Gertler, and unpaid exploration fees and their renewal fees.

More generally, the U.S. administration should independently verify whether his acquisitions were legitimate, free of corruption, and whether he has not already made a disproportionate return on his investment, *before* accepting payments to Mr. Gertler or his companies.

This can only happen once the independent audit and judicial review of the aforementioned evidence of corruption is completed and if it confirms that his asset acquisitions were legal and fairly valued, and that he has truly invested in increasing their value since their acquisition.

## Restoring civic space

### Drop all charges against civil society

A fundamental point that needs to be addressed before starting any conversation about sanctions relief for Mr. Gertler is the prosecution of civil society.

According to Gertler, the CNPAV's assessments are false, and he has taken legal action against the coalition's spokesperson, Jean Claude Mputu, and also against Resource Matters, a member organization and Mr. Mputu's employer. Gertler sued Mr. Mputu and Resource Matters in 2023 for defamation in the DRC. Numerous [written exchanges](#) (74) have taken place between him and the CNPAV on this subject, but despite [repeated calls by more than 150 civil society organizations](#) (75) to withdraw the charges, and his declarations that he wishes to withdraw them, he has not yet done so. During these exchanges, Mr. Gertler declared himself available to organize a meeting to share documents requested by the CNPAV, but he then obstructed the organization of the meeting, which has not yet taken place.

Despite the efforts of the CNPAV coalition, it has so far proved impossible to establish a meaningful dialogue with Gertler beyond the aforementioned letters. This behavior underscores a trend by Gertler, who is not new to prosecuting civil society organizations that try to expose his corrupt activities.

Our coalition urges the U.S. authorities not to consider sanctions relief until all claims against civil society are dropped, including the charge against Jean Claude Mputu and Resource Matters.

### Investigation into an irregular decision against whistleblowers

In addition, more clarity has to be made on the issue involving two whistleblowers at the Congolese branch of Afriland First Bank, who denounced some irregularities allegedly involving Mr. Gertler. In the course of their work at Afriland, Mr. Navy Malela and Mr. Gradi Koko had identified significant irregularities within their financial institution. They had thus raised the alarm internally, then forwarded documents to NGOs and journalists, taking risks for their personal safety and that of their families.

In September 2020, during a trial conducted by Afriland First Bank DRC that was particularly unusual as the procedure [had been irregular](#) (76), the two whistleblowers were [sentenced to death](#) (77). The two former bankers, who now live in exile, were not informed of this procedure and were therefore unable to defend themselves. This judgment was only made public in February 2021 by Afriland's lawyers at a press conference held in Kinshasa, on the eve [of new publications](#) (78).

This death sentence provoked strong criticism from [civil society](#) (79), many [embassies](#) (80), the [United Nations](#) (81), and European parliamentarians. The whistleblowers have since been trying to obtain the annulment of the judgment before the Congolese courts.

Among the irregularities identified was the existence of two simultaneous proceedings concerning the same leak of Afriland bank documents. The first, of which PPLAAF was aware and for which it was able to appoint a lawyer to appear at a hearing before the Court, was not successful since the hearing was postponed because Afriland never appeared at the hearing. During the second proceeding, which took place without the knowledge of PPLAAF's lawyer, Mr. Malela and Mr. Koko were sentenced to death in absentia.

CNPAV calls on the Congolese authorities, and in particular President Félix Tshisekedi, who has pledged to fight corruption, and the Superior Council of the Judiciary to investigate the circumstances of this trial, to commit to the protection of whistleblowers and freedom of expression, and to guarantee the independence of the Congolese judiciary.

# Conclusion and Recommendations

In summary, CNPAV urges the DRC government to renegotiate the 2022 agreement with Gertler's company Ventora, in light of his history of corruption and the unbalanced terms of the agreement, which will require the DRC to pay Mr. Gertler for the assets he acquired unlawfully while he will keep benefitting from royalty streams from KCC, Mutanda, and Metalkol.

In addition, the coalition urges the U.S. government to publish all terms and conditions of any potential future licenses. Any sanctions relief plan should include, at a minimum: no other financial gain for Mr. Gertler for unlawfully acquired assets; full transparency of the assets currently held by Mr. Gertler in the DRC (any inaccurate or partial statement by Mr. Gertler should be grounds for reversing sanctions relief, if provided); an end to legal proceedings against civil society actors and whistleblowers; and finally, Mr. Gertler should not be immune from future lawsuits, in the United States or elsewhere.

CNPAV wrote to the DRC government (Ministry of Mines, Ministry of Justice, Ministry of Communications and spokesperson of the government) and the Chief of Staff of the Presidency on October 16th 2024. No reply was received at the date of publication.

CNPAV wrote to Mr Gertler and the Ventora group on October 16th 2024, and received an answer on October 29th 2024. CNPAV's requests for comments and Ventora's reply are available in the Annex.

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# Annex: Right of Reply

Compilation of the statements made in this report and their supporting evidence, as they have been sent to Mr Gertler and his company Ventora Development on October 16, 2024 for their reply and comments:

**Statements:**

1. For several decades, you have acted as an intermediary who bought mining assets belonging to state entities and resold them to multinationals for much more, thus making profit at the expense of the DRC.
2. We will describe your experience in the Congolese extractive sector over the past 25 years mentioning examples of friendly deals, bribes, procedural violations, and an almost total absence of accountability.
3. You have bought highly strategic mining sites at bargain prices from state-owned enterprises and sell them to multinationals at a price many times higher. We will say that your own risk in buying these companies has been relatively limited.
4. In addition, in partnership with multinationals such as Glencore, you have managed to negotiate agreements that are advantageous for you and your partners, but not for the DRC, which is constantly losing money.
5. As a result of your activities in the DRC, according to civil society calculations the DRC [has lost](#) about \$2 billion and could lose more than \$1.5 billion more if the situation remains the same.
6. The scheme was possible thanks to your proximity to former DRC President Joseph Kabila.
7. Over the past 15 years, your ability to garner special favours has raised suspicions among civil society groups and the media that you have resorted to bribery to gain friendships and close relationships with the DRC's political elite.
8. You and your companies have unlawfully acquired valuable assets over a number of years.
9. Your existing portfolio of assets in the DRC is problematic because they were not acquired in accordance with DRC law.
10. Despite evidence of corruption and repeated procedural irregularities, neither you nor your companies have faced any real form of accountability.
11. The 2022 agreement ultimately validates your right to collect royalties despite them being unlawfully acquired.
12. The Swiss investigation into Glencore, concluded with a summary penalty order, states that the company failed "to take all necessary and reasonable organizational measures with regard to the bribery of foreign public officials by a business partner in connection with the latter's acquisition of minority stakes in two mining companies in the Democratic Republic of Congo (DRC) in 2011." Civil society believes that this statement refers to your acquisition of stakes in Mutanda and Kansuki from Gécamines in 2011 through your companies Rowny and Biko.

13. The DRC should formally seek help from jurisdictions that have amassed evidence of corruption and define the steps it can realistically take to hold you and your Congolese counterparts accountable for your past behaviour, such measures could include requiring compensation for past losses, restitution of ill-gotten gains and proceeds of crime, penalties, or other forms of criminal sanctions.

#### **Supporting evidence:**

1. According to the [US Treasury](#), “between 2010 and 2012 alone, the DRC lost more than \$1.36 billion in revenue due to the undervaluation of mining assets that were sold to offshore companies linked to Gertler.” According to the calculations made by the civil society coalition *Congo N’est Pas A Vendre* (CNPV – Congo Is Not for Sale) in the report [Milliards Perdus](#) (2021), Mr Gertler’s deals have already cost the DRC about US\$2 billion, and the country is set to lose around US\$1.5 billion more in the years to come, if the situation remains the same. This estimation only includes 15 of the projects involving Mr Gertler in the DRC. Please consult the report for the details of the calculations.
2. In 2016, the US Department of State identified, in the context of the [Och Ziff settlement](#), a bribery scheme involving Mr Gertler (mentioned as the “DRC Partner” in the Statement of Facts) paying at least US\$100 million in bribes to DRC officials, including former DRC President Joseph Kabila, and his right-hand man, the late Augustin Katumba Mwanke.
3. A Swiss court document produced in the context of a criminal investigation into ENRC (now ERG) in collaboration with the UK Serious Fraud Office (SFO), suggests that this amount might be even higher, as it shows that a company affiliated with Mr Gertler [made payments](#) in the DRC amounting to US\$378 million between 2006 and 2011. Allegedly, documents from an arbitration procedure involving Mr Gertler and his former co-investors show that these payments were aimed at giving money to a highly influential politician in the DRC, and other senior Congolese government officials.
4. In 2024, the Swiss Office of the Attorney General, in collaboration with Dutch authorities, [closed the criminal investigations](#) into Glencore, issuing a summary penalty order and an abandonment order. As a result of the first, the company was ordered to pay 2 million Swiss francs as a fine, and US\$150 million as compensation claim. The decision was taken on the grounds of “Glencore’s failure to take all necessary and reasonable organizational measures with regard to the bribery of foreign public officials by a business partner in connection with the latter’s acquisition of minority stakes in two mining companies in the Democratic Republic of Congo (DRC) in 2011.” Considering the circumstances outlined in the public communication of the Office of the Attorney General, civil society has identified the above-mentioned “business partner” with Mr Gertler, whose companies (Rowny and Biko) bought Gécamines minority shares (and royalty rights) in Mutanda and Kansuki in 2011.
5. In December 2017, Mr Gertler and his companies [became targets](#) of US Treasury’s sanctions under the Global Magnitsky Act, due to Mr Gertler’s practices of corruption in the DRC mining sector. Apart from a brief lifting of those sanctions at the end of President Trump’s term, Mr Gertler has remained sanctioned ever since.

The assets owned by Mr Gertler in the DRC at the time of the entry into force of the sanctions were the following:

- The right to collect royalties on Mutanda Mining (MUMI), Kamoto Copper Company and Metalkol;
  - Oil blocks I and II in Lake Albert;
  - Gold permits in Moku, near Kibali;
  - Iron ore permits (contested) north of Kisangani.
6. According to recent [revelations](#) by the Israeli newspaper TheMarker, it is possible that Mr. Gertler is the indirect owner of another mine, which has been hidden from the authorities through the use of a straw man. The possibility for Mr Gertler to indirectly own other assets in the DRC had already been pointed out [in a report](#) by Global Witness and the Platform to Protect Whistleblowers in Africa (PPLAAf from the French acronym). According to this investigation, the ultimate beneficiaries of two companies involved in some DRC tailing projects, Evelyne Investment and Interactive Energy, are potentially linked to Mr Gertler.
7. In February 2022, Mr Gertler's company Ventora Development SASU signed an agreement with the DRC government. Mr Gertler is bound to give back to the DRC State some assets. However, at the end of all the calculations, the DRC will end up making a net payment to Mr Gertler of more than 180 million euros.

The agreement further envisages that the DRC government will advocate for Mr Gertler's lifting of sanctions in the US. To achieve this goal, President Tshisekedi has even written a letter to President Biden. As a result of this lobbying activity, the US administration is now considering granting Mr Gertler a license on sanctions.

The agreement was published more than 9 months after its signing.

8. Mr Gertler's way of operating in the DRC is buying mining assets at a discounted price (often using money he borrowed from multinational companies) to then resell them to the same multinational companies that lent the money for a multiple of the price. For example, this happened in 2010 with a mine acquired by Mr Gertler for US\$15 million and resold to Eurasian Natural Resources Corp (ENRC) for [US\\$75 million](#). ENRC had lent him money before the \$15 million acquisition. Another [example](#) of a deal that was not carried out in transparency, always involving Mr Gertler and ENRC, was unveiled by Bloomberg in 2012, and it brought the IMF to suspend loans to the DRC.
9. Mr Gertler has negotiated some discounts and advantages for the Anglo-Swiss company Glencore, owning two mining projects in the DRC — Kamoto Copper Company (KCC) and Mutanda Mining — via its subsidiaries. Gertler has operated for the past two decades as an intermediary between the company and the Congolese political elite, negotiating rebates and privileged access to the sector for the former, while making a profit himself. [One example](#) is that Mr Gertler was able to negotiate a [US\\$440 million discount](#) on Glencore's signing bonus for KCC.
10. The acquisition of royalties from Mutanda, KCC and Metalkol by Mr Gertler did not happen in compliance with the 2008 [Law on the privatization of State assets](#). While to this day Mr Gertler does not own anymore any stake in the three projects, he is still entitled to receive royalties from all three of them.

According to the 2022 agreement, Mr Gertler will compensate the DRC for the KCC royalties, for a total of EUR 249 million. In the past years, Mr Gertler should have received around \$295 million from KCC royalties. No compensation has been envisaged for Mutanda and Metalkol royalties.

11. In 2010, Mr Gertler [acquired the oil blocks I and II](#) on Lake Albert without the previous consultation of the companies owning them at the time.

In addition, the DRC State has never acknowledged the payment of the fee for the exploration permit, and the payment for the renewal was avoided by obtaining an *extension*, which allowed Mr Gertler to *de facto* renew the permit for free.

In the context of the signing of the 2022 deal, the value of the blocks has been estimated at US\$2 billion. The estimation has allegedly been calculated by an international audit firm, but no details have been disclosed.

The DRC has been condemned to pay a fine of more than US\$600 million for having illegally dispossessed DIG Oil of its blocks, during legal proceedings initiated by the company.

12. In October 2017, Gécamines borrowed between [US\\$128 million and US\\$148 million](#) from Fleurette (now Ventora), which made available a maximum of EUR 200 million to pay an advance on taxes. The 2022 agreement envisages that EUR 192 million will be deducted from the EUR 249 million that Ventora commits to pay to Gécamines as a compensation for KCC royalties, as a way to reimburse the 2017 loan. As a result, Gécamines will be left with EUR 57 million to compensate for the KCC royalties.

13. In April 2024, the newspaper TheMarker [revealed](#) that Mr Gertler, with the help of his former lawyer, corrupted Israeli police officers to obtain information related to ongoing investigations upon his business, and that this allowed him to avoid formal prosecution. Apparently, Mr Lavi confessed to this bribery scheme and handed over a hard drive containing evidence of bribery to former DRC President Joseph Kabila, his adviser Augustin Katumba Mwanke, and former governor of Katanga Moïse Katumbi. Mr Gertler tried in turn to prove that Lavi had fabricated evidence; this attempt does not seem to have been successful.

14. The costs of exploration at the Moku Beverendi gold mine were carried out by [Randgold](#), a partner in a joint venture with Ventora, and not by Ventora itself. As for the oil blocks I and II in Lake Albert, Mr Gertler's Fleurette (now Ventora) allegedly invested \$70 million in 2013, an amount that has never been independently verified.

15. In 2023, Mr Gertler sued the CNPAV spokesperson Jean Claude Mputu in the DRC, as well as his employer, the non-profit organization (member of CNPAV) Resource Matters. Several written exchanges have occurred between Mr Gertler and CNPAV since then, but no agreement on a meeting between the two parties has been reached as a result of Mr Gertler's obstruction, and the claims have not been withdrawn. This behaviour underscores a trend by Gertler, who is not new to prosecuting civil society organizations that try to expose his corrupt activities.

16. The two Afriland whistleblowers, Mr Koko and Mr Malela, who denounced financial irregularities within the bank in relation to activities allegedly linked to Mr Gertler, have been sentenced to death *in absentia* in 2020 (Afriland only made the judgment public in 2021). The death sentence is still in place for them at the time of writing.



# Ventora Development

29 October 2024

Attention :

The CNPAV Coalition

Sent by e-mail

corruptiontuerdc@gmail.com

Dear Sir/Madam

We have reviewed your questions.

We shall not respond point-by-point. Your allegations are plainly agenda-driven. You have confused evidence with opinion, mixed fact with fiction and focus on distant history at the expense of the DRC's present and future.

We believe in the legal process and operating within all relevant laws. Neither Dan Gertler nor any of the companies affiliated with him has ever been prosecuted in the DRC or anywhere else - see Appendix, paragraphs 2, 3 and 4 below. Notably, as reported by Sonia Rolley in Le Monde (17 October 2024), a 14-year-long arbitration process could find "no convincing evidence [...] of unfair payments, bribes or irregular payments". The UK Serious Fraud Office came to a similar conclusion in 2023 (Appendix, paragraph 3).

People and organizations not involved in transactions are entitled to dislike or disagree with the commercial terms, but this is not evidence of wrongdoing. In all trusted legal jurisdictions, no evidence of wrongdoing denotes innocence despite multiple forensic and comprehensive investigations of the deal despite your personal opinions - see Appendix, paragraph 1 below.

As an example of your misuse of opinion as evidence, in the email attachment you sent to us last week in "Annex: Evidence in support", point 1, you refer to your own organization as if it is an independent authority, citing your own unsubstantiated calculation as evidence. Yours was an unfounded number in the first place and the fact that you used it in a previous report

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does not make it right. Rather, the value of the Mutanda minority stake was actually determined by BNP Paribas after analyzing Gécamines mining rights for 6 months to determine their fair market value.

Additionally, your analysis ignores the fact that the most significant mines (in terms of value) affiliated with Dan Gertler in the DRC were not bought from the government of the country or state-owned businesses. Katanga Mining (Katanga mine), CAMEC (Mukondo mine), Africo (Kalukundi mine) were subsidiary or public market-listed companies of firms in other countries. Any accusation of corruption in these transactions is nonsensical as they were conducted between private companies and did not involve any government entity.

Dan Gertler's initial investments in the DRC came at a time when the country was facing severe challenges, and since then, his affiliated companies' long-term investments have only continued to support the DRC's growth. These business activities in the DRC demonstrate a long-term commitment to the country's development, a willingness to take calculated risks, and a strategic approach that balances local benefits with global considerations.

The value of a mining asset changes with many factors - the market price of a commodity, transportation availability, political risk, the development phase of a mine, majority/minority stake, etc. So it is no surprise that some of our mining assets in the DRC increased in value over almost two decades.

Appendix, paragraph 1 shows that this does not mean that they were undersold, but that their value changed over time. For example, at the time of the transaction, Cobalt was not in high demand so the valuation was based primarily on copper. As a co-owner, we were lucky that demand for cobalt increased massively with the growth of the electro value chain many years later. This was not predicted at the time of the transaction. That said, Dan Gertler and affiliated companies invested approximately \$2 billion over almost two decades, an unmatched figure, to improve and develop the mines under their ownership, as well as public infrastructure connected to the sites. Many factors explain the increase in the value of these mines over time.

We read Le Monde's article on mining rights in the DRC (17 October 2024) with interest. Le Monde captures an important truth about the DRC, a country Dan Gertler deeply cares for - it is moving forward.

While you focus on the value of past transactions- in many cases, more than a decade old- the



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country's Government is focused on the future. In 2022, it reached a comprehensive and final settlement to resolve all outstanding claims relating to Gertler-related activities in the DRC. As part of this, Gertler-related companies agreed to transfer approximately \$2bn of assets and cash to the DRC. This included the hugely significant oil permits for Lake Albert Blocks I and II- which were transferred to the DRC in April 2022. The 2022 Settlement was reviewed by a large number of DRC-national NGOs and was approved by nearly all of them other than CNPAV.

This settlement is noteworthy for many reasons. It is binding on all parties, so should one party start trying to change it, the whole agreement would collapse, which would be bad news for the people of the DRC. The transfer of assets and the payment would be invalidated in the event of changes, which would deprive the DRC of real value.

More recently, as Le Monde noted, the DRC Government renegotiated its agreement with Sicomines, securing an extra \$7 billion for the country. The Government is once again successfully ensuring that the country benefits from the increased value of its natural resources, reflecting the increased market value of these commodities over time.

The DRC is in much better shape than it was 25 years ago, and Dan Gertler and his team wish it every success in the years ahead. There is so much potential in its future.

As we have previously agreed with you, we ask that you publish our response in full. Please feel free to include our email address: [dev.ventora@gmail.com](mailto:dev.ventora@gmail.com) for readers who would like more information.

Sincerely,

The Ventora communication team



# Ventora Development

## APPENDIX

### (1) BNP Paribas determined the independent, fair valuation of Gécamines

Following recommendations by the World Bank to the Government of the DRC in 2008 that it must privatize mining activities to raise financing, the DRC State company, Gécamines, appointed BNP Paribas Corporate Banking in 2009 to evaluate all its mining partnerships. BNP Paribas analyzed Gécamines mining rights for 6 months to determine their fair market value.

In April 2010, Gécamines used the BNP Paribas valuation report to assess the subsequent sale of minority mining rights. As reported by Reuters in 2011, the DRC Government then decided to proceed with an open sale process. <https://www.reuters.com/article/idUSJOE78H011/>

The Group was the successful purchaser of Gécamines' 20% stake in Mutanda Mining having offered to pay more than 10% above the BNP Paribas estimate of fair market value. Indeed, given the uncertainty about the wider context at the time and the fact that this was a minority stake, the Group was the only organization to submit a bid.

Please also note that at the time of the transaction, Cobalt was not in high demand so the valuation was based primarily on copper. As a co-owner over the subsequent years, we were lucky that demand for cobalt increased massively with the growth of the electro value chain.

BNP Paribas is a trusted independent expert and was appointed by Gécamines.

Any suggestion that the sale price of Gécamines minority share-holding was at less than fair market value, is not a reflection of the information available to all of the parties at the time of the transaction, but rather a determination made with almost 15 years of hindsight, during which period the mining operation and its production grew and during which time commodity prices and other key parameters changed materially. Indeed, the sale to the Group in 2011 was significantly higher than the \$25m paid by Glencore for its 25% in Mutanda in 2007.

Such analysis also fails to recognise that Gécamines initiated the sale of these minority holdings due to its financial predicament at the time.



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### **(2) The current DRC government investigation found no wrongdoing**

On 31 May 2022, the Congolese General Inspector of Finance (IGF) released its audit of the Gécamines sale. As the timing shows, this report was commissioned by a later Congolese administration than that in power during the sale process.

The IGF concluded that there was no wrongdoing by either the management of Gécamines or the Group and that all transactions were on fair commercial terms and at the correct market value at the time of the transaction.

The IGF found no evidence of wrongdoing.

### **(3) UK SFO found no wrongdoing in a similar case**

Following an investigation that lasted over 10 years, in August 2023, the UK's Serious Fraud Office (SFO) closed its investigation having found no evidence of wrongdoing. The SFO is trusted globally for its independence and rigour. Its investigation examined terabytes of emails, documents, financial records, banking records and messages and undertook witness statements and interviews under caution.

The SFO found no evidence of wrongdoing. <https://www.sfo.gov.uk/cases/enrc/>

### **(4) Israeli arbitration found no wrongdoing**

In one of Israel's longest-running legal disputes – 14 years, Judge Eitan Orenstein (former President of the Tel Aviv District Court) recently delivered his verdict on a claim against Dan Gertler and the Group.

The Hon. Judge Orenstein delivered a 1225-page judgment in April 2024 that dismissed most of the claims and stated in four separate places that the arbitrator could find no evidence of unlawful payments made by the Group.

On page 1178 of the arbitration judgment, the Hon. Judge stated that *“I would like to clearly and strongly emphasize no convincing evidence has been presented to me, and in any case there are no determinations in this arbitration award regarding the existence of actual unfair payments, bribe payments, improper payments.”*

The arbitrator found no evidence of wrongdoing.



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