

resource matters

The Global Magnitsky Effect

How will U.S. sanctions against Israeli billionaire Dan Gertler affect the DR Congo's extractive sector?



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In December 2017, the U.S. government sanctioned Israeli billionaire Dan Gertler under the Global Magnitsky Act for high-level corruption

The sanctions intend to cut off the businessman, as well as other designated companies, from the U.S. financial system and will have major impacts well beyond the American borders.

Resource Matters estimates that Swiss commodity trader Glencore owes nearly \$200 million in royalties to Gertler-affiliated companies over the next two years.

South African miner Randgold has committed to providing exploration assistance on a Gertler-controlled gold concession. Both companies have said they would “comply with sanctions,” but neither has stated whether it has broken off their partnership with Gertler for good.

Nor has the Congolese government said how it would deal with Gertler’s companies that own two oil blocks in eastern Congo. Will the government revoke those titles – or will it instead retaliate against sanctions that affect one of its closest business associates?

The real impact of Global Magnitsky will depend on them – and on the U.S. Treasury, tasked with enforcing the measures and adding new entities to the sanctions list.

The Global Magnitsky Effect

How will the U.S. sanctions against Israeli billionaire Gertler affect Congo's extractive sector?

2017 ended rather dramatically for Israeli billionaire Dan Gertler, one of the most controversial businessmen in the Democratic Republic of Congo. On December 21st, two days before the mining magnate's 44th birthday, U.S. President Donald Trump sanctioned him under the Global Magnitsky Act,¹ a new law that allows the American president to sanction human rights abusers and corrupt actors.²

While the international press and civil society have criticized Gertler's controversial mining and oil deals in Congo for many years,³ this is the first time a foreign government has explicitly targeted the mining magnate for high-level corruption in Congo.

It is also the first time a government has imposed "tangible and significant consequences"⁴ for such practices. Other Congo-focused sanctions had so far targeted security officials involved in human rights violations or ministers who obstructed the electoral process as President Kabila has sought to cling on to power beyond the constitutional mandate, which ended in December 2016. This time, the sanctions touch the core of a financial system. According to the U.S. Treasury, "Gertler has acted for or on behalf of [Congolese President Joseph] Kabila."⁵

The sanctions intend to cut off Gertler and his businesses from the American financial system. "It

doesn't get much worse for a businessman than U.S. sanctions," an investment banker told Resource Matters.

And yet, the real impact will depend on how Gertler's existing partners comply with the sanctions. Six weeks after the sanctions, Randgold, Congo's foremost gold operator, announced that it is called 'force majeure' and said that it wanted to stop providing exploration services to Gertler's gold mining company. Likewise, Glencore, the Swiss commodity trading giant that owes Gertler nearly \$200 million in royalties over the next two years under outstanding contracts, told Resource Matters that it has not paid any royalties since the sanctions were enacted. However, the legal conundrum for both of Gertler's partners is not over yet, and neither company has provided a final update on whether they have definitively interrupted their business relationship with Gertler's companies.

The real impact of Magnitsky will depend on their ultimate decisions as to how to deal with Gertler going forward. It will also depend on the reaction of Congo's political authorities. Will the government keep protecting the businessman? Or will the government revoke the two oil blocks that Gertler's sanctioned companies own in eastern Congo?

A corrupt network "that threatens the stability of political systems"

The U.S. Treasury said Gertler is a "billionaire who has amassed his

fortune through hundreds of millions of dollars' worth of opaque and corrupt mining and oil deals in the Democratic Republic of the Congo.”⁶ The deals allegedly resulted in a \$1.3 billion loss to Congo.⁷ According to the Global Magnitsky Executive Order, his corrupt practices have “reached such scope and gravity that they threaten the stability of international political and economic systems.”

The U.S. Treasury also sanctioned key components of Gertler's network, including his holding companies Fleurette and Rozaro, 16 of their subsidiaries, the Gertler Family Foundation and Gertler's Congo-based manager, Pieter Deboutte.⁸ Jarvis, the company that runs in-country operations from an office located a few blocks away from President Kabila's residence, also features on the sanctions list. Nearly half of all entities the United States targeted that day were linked to Dan Gertler.

Fleurette Group declined to comment on the sanctions.⁹ The group has systematically denied any wrongdoing.

One direct effect is that Gertler is no longer welcome in the United States of America. This might be the least of the billionaire's worries. The American judiciary, in an action that pre-exists and is separate from the sanctions, is investigating the corrupt deals of one of Gertler's most important former business partners, New York hedge fund Och-Ziff, including the role of Och-Ziff's former managers.¹⁰

More fundamental is that the sanctions intend to cut Gertler's ties with the U.S. dollar system. U.S. persons, which includes individuals

and companies, risk severe penalties if they grant him loans or process his wire transfers.¹¹ American individuals risk up to 20 years in prison for violating the sanctions.¹²

Even non-American banks will most likely decline to process dollar transactions involving sanctioned entities. Such wires generally have to transit through correspondent banks in the United States, which have to block and report on any attempted wire that comes to their attention.¹³ French bank BNP Paribas settled for a record \$8.9 billion penalty for concealing its financial operations in Sudan, Iran and Cuba in violation of U.S. sanctions.¹⁴ In the largely dollarized extractive sector, the extraterritorial impact on Gertler, his holdings and subsidiaries will be significant.

No more Euros? No more WhatsApp?

Gertler and his counterparts could theoretically still rely on euros, Congolese francs or any other non-U.S. currency. And yet, even non-US entities will think twice before doing business with the Gertler network.

This is in part because of the vivid red due diligence flag fluttering front and center as a result of the Magnitsky sanctions' allegations of corruption. For years, PR firms, tax haven-based registered agents and some foreign investors have dismissed media coverage of Gertler's suspicious deals. This time, the warning comes straight from America's Office of Foreign Assets Control (OFAC). This brings due diligence obligations to a whole new level.

Under Construction



More importantly, any of Gertler's partners is at risk of being sanctioned if it keeps dealing with the billionaire. The U.S. Treasury can sanction anyone it determines to have "provided financial, material, or technological support for, or goods or services to or in support of" a sanctioned entity. It does not matter whether such support is in cash or in kind, in dollar or in Swiss francs. It also does not matter whether the service provider is American, Israeli or Kazakh.

Since this is the first round of Global Magnitsky sanctions and no implementation regulations have been issued, there is no definition yet of 'financial, material or technological support' that could trigger these so-called secondary sanctions. Under a similar sanctions program specifically relating to the Democratic Republic of Congo however, this concept has been defined very broadly: anyone who helps a sanctioned individual to a computer, a vehicle or lodging could potentially end up on the sanctions list.¹⁵

Some IT service providers have adapted their policies to this risk, although application of sanctions in the Internet world has been tricky. WhatsApp, a messaging service actively used in Congolese

business and political circles, prevents its users from transferring its services to sanctioned individuals.¹⁶ Fleurette's website, fully operational on the day of the sanctions, has since reverted to being 'under construction'.¹⁷ Facebook has blocked the account of a warlord with 4 million followers who was sanctioned on the same day as Gertler – although Gertler's own profile still seems active.¹⁸ "It's hard to see how [Facebook] wouldn't be bound by this law," sanctions expert Philippe Urofsky told online media outlet Quartz.¹⁹

Anyone who helps a sanctioned entity to a computer, a vehicle or lodging could potentially end up on the sanctions list.

When asked whether it is still providing services to Fleurette, PR firm Powerscourt said it does not comment on its clients. In the same email, it did answer in name of Fleurette that the latter declines to comment, suggesting it is still providing PR support to the sanctioned entity.²⁰

How does this affect Congo's extractive sector?

In the Congolese extractive sector, the primary source of Mr. Gertler's wealth, several investors have cut ties with him years ago. They still face consequences for their controversial deals today. In a 2016 settlement with the American Justice Department, New York's largest listed hedge fund, Och-Ziff, recognized its complicity in allegedly bribing high-level officials through its "DRC partner", whose description matches that of Dan Gertler.²¹ Kazakh multinational Eurasian Resources Group bought out Gertler in 2012. The UK Serious Fraud Office is still investigating its Congo deals.²²

Two multinationals still had an active business relationship with Gertler-affiliated companies when they were sanctioned in December 2017: the Swiss commodity trader Glencore and South African gold mining company Randgold Resources. Both have stated that they would 'comply' with the sanctions, initiating legal analysis of what that should mean.²³

Will these companies cut ties for good, will they merely put the relationship on hold, or will they find ways around the sanctions and keep collaborating despite Global Magnitsky?

Glencore's royalty conundrum

Glencore, one of the top five mining operators in the world,²⁴ runs two major large copper-cobalt operations in southeastern Congo: Kamoto Copper Company (KCC) and Mutanda Mining. Both subsidiaries have been making substantial royalty payments to Gertler-affiliated companies since 2011 (Mutanda) and 2013 (KCC) in compliance with undisclosed agreements.²⁵

Based on a number of assumptions, Resource Matters estimates the royalties to the Gertler-affiliated companies can be expected to amount to about \$110 million for 2018 and nearly \$100 million for 2019.²⁶ This means that Gertler risks losing about \$270,000 in revenue from Glencore's operations *per day*. That is nearly twice as much as the world's best paid soccer player, Lionel Messi, makes at Barcelona.²⁷

Some newspapers have been quick to conclude that Glencore's statement that it would "comply" means that these payments had stopped.²⁸ When pressed, Glencore confirmed that neither Glencore nor its subsidiaries had made any royalty payments since the sanctions were adopted.²⁹ Its spokesman added however that "Glencore is still considering its position in relation to its pre-existing contractual obligations to companies owned by Mr. Gertler".³⁰ In other words, the final decision about the royalty payments has yet to be made.

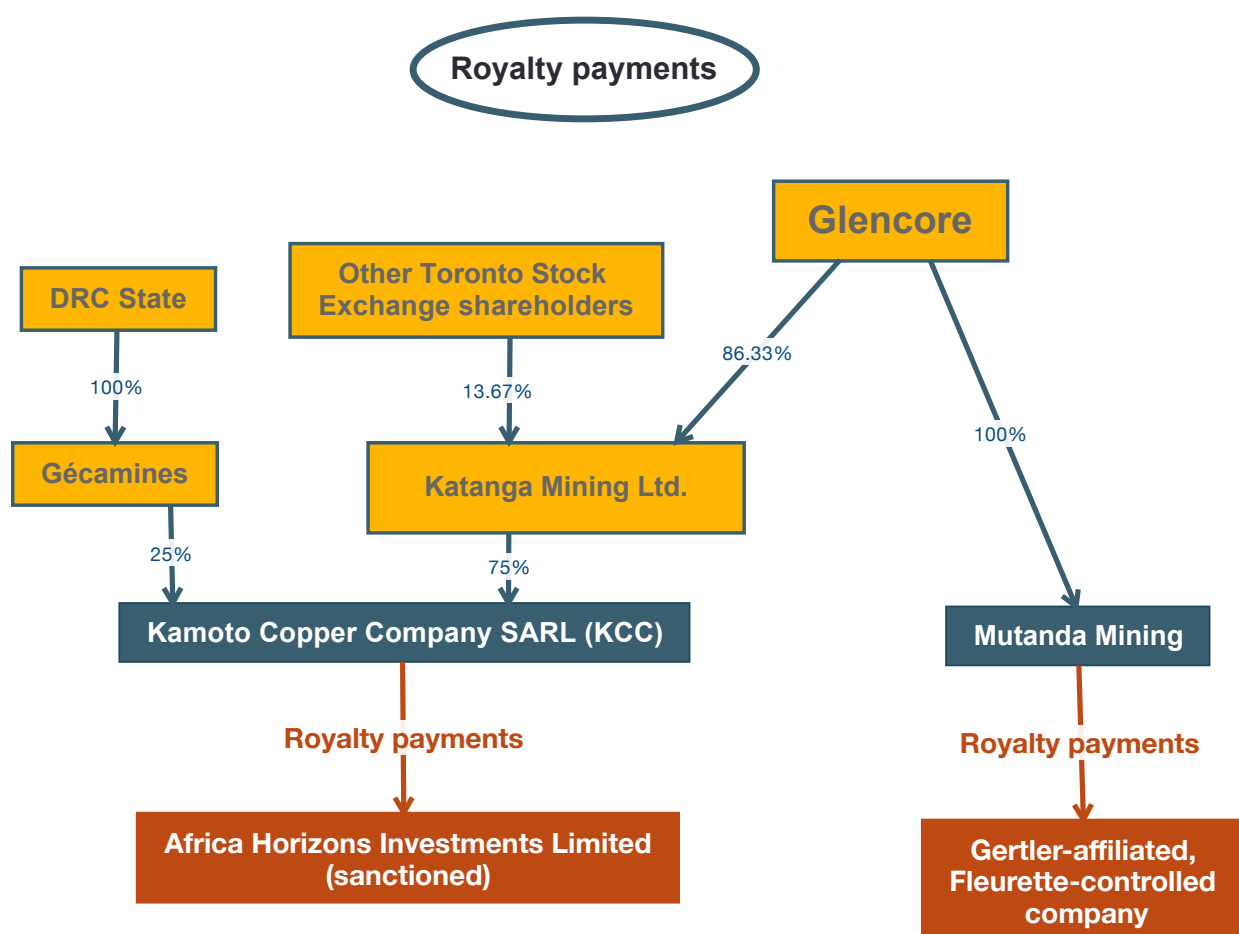


Figure 1 - Two separate contracts linked Glencore subsidiaries to Gertler-affiliated companies when the sanctions were enacted, which entitle the latter to an estimated \$197 million in royalties in 2018 and 2019.

In fact, Glencore seems to be in a catch 22. If Glencore keeps paying the royalties, for instance through an off-shore system in a foreign currency, the U.S. Treasury could determine that this amounts to “financial support” to a sanctioned entity. The Treasury could then decide to designate Glencore or elements of its billions-of-dollars corporate network for sanctions,³¹ and cut it off from the U.S. financial system. This would have far-reaching implications for Glencore operations in Congo and for the global cobalt supply chain in which Glencore plays a key role.

On the other hand, if Glencore *stops* paying Gertler, it might expose itself

to significant risk in Congo. Gertler would miss out on more than \$8 million per month and is unlikely to let this go down without a fight. He could initiate legal action.

Worse, he could activate his strong, high-level political connections at the local level to increase pressure on Glencore's Congo projects. Congolese authorities have already conveyed that they want more revenue from the cobalt boom through increased taxes, a contract review and an investment audit.³² Glencore's mines account for more than a third of Congo's cobalt exports.³³ If Glencore stops paying a businessman with narrow ties to the Congolese elite, its projects

could become a primary target of any or all of these measures.

Gertler risks losing about \$260.000 in revenue from Glencore's operations per day. That is nearly twice as much as the world's best soccer player, Lionel Messi, makes at Barcelona.

Glencore therefore has to balance the risk of increased pressure in Congo versus the risk of ending up on the U.S. sanctions list. This means that the royalty payments constitute a significant risk, whether they stop or continue. Investors should be able to know how Glencore will deal with this going forward. U.K anti-corruption organization Global Witness has repeatedly lamented the opacity of Glencore's royalty payments to Gertler's companies and called for better disclosure.³⁴ Glencore should disclose whether its subsidiaries have stopped the royalty payments for good, or whether they will accrue in an escrow account, or be paid in a non-US currency through a foreign bank.

Randgold's expansion at Kibali under threat

Another multinational in business with Gertler at the time of the sanctions is Randgold Resources, the operator of Congo's largest gold mine, Kibali, in northeastern Congo.³⁵ Randgold's CEO told the press in December 2017 that his company "would never bust any sanctions,"³⁶ but its interpretation of what compliance means in practice has evolved over the past two months.

Randgold had partnered up with Gertler when it sought to expand its thriving gold operations at Kibali. Trickily, some of the most prospective sites south and west of Kibali were in the hands of the Société Minière de Moku-Beverendi ('Moku-Beverendi').³⁷ A Gertler-affiliated subsidiary, Moku Goldmines, owns 65% of Moku-Beverendi, while state-owned gold miner SOKIMO owns 35%.³⁸

"We were very mindful of the potential issues and we spent a lot of time on due diligence," Randgold CEO Mark Bristow said when the partnership was set up in 2016³⁹ after several years of talks.⁴⁰ Concretely, Randgold agreed to fund and carry out all exploration activities on its neighbors' site, in exchange for a 51% stake in Moku-Beverendi if it finds promising gold reserves. It avoids direct payments to Gertler-affiliated entities, limiting the corruption risk.

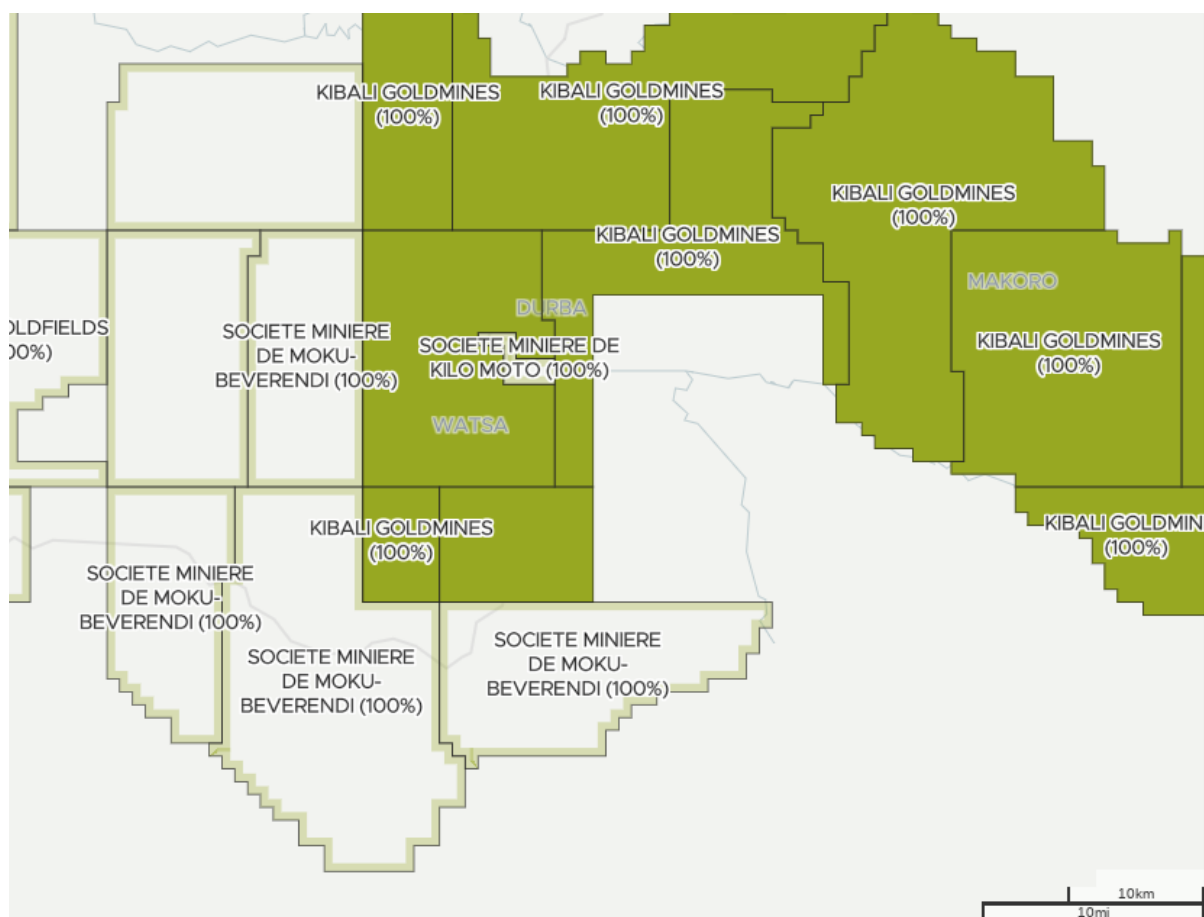


Figure 2 - In 2016, Randgold signed an exploration agreement with Société Minière de Moku-Beverendi, the Gertler-affiliated company that holds most permits west and south of Randgold's Kibali project.

Since then, Randgold has actively explored several target zones at Moku-Beverendi, including along a stretch that starts on the Kibali permits and extends for 23 kilometers into Moku's.⁴¹

At the announcement of the Magnitsky sanctions, Randgold CEO Mark Bristow told Bloomberg News that "from our initial consultation with our attorneys we see no issue. (...) We're not transacting with him at all, we didn't buy anything from him."⁴²

This conclusion was somewhat hasty. Gertler's gold companies do not explicitly feature on the sanctions list, but that in itself does not matter. Under the U.S. Treasury's so-called 50%-rule, any

company owned at least 50% by a sanctioned entity is considered, per se, sanctioned because it is deemed to be "blocked property" of the sanctioned person.⁴³ Both Moku Goldmines and Société Minière de Moku-Beverendi are at least 50% owned by Fleurette, a sanctioned entity, and should be considered sanctioned, too.

In addition, the fact that no payments are made to Gertler does not shield Randgold from the risk of being sanctioned. The U.S. Treasury could qualify Randgold's exploration activities at Moku-Beverendi as 'material support' to a sanctioned entity and impose sanctions on Randgold.

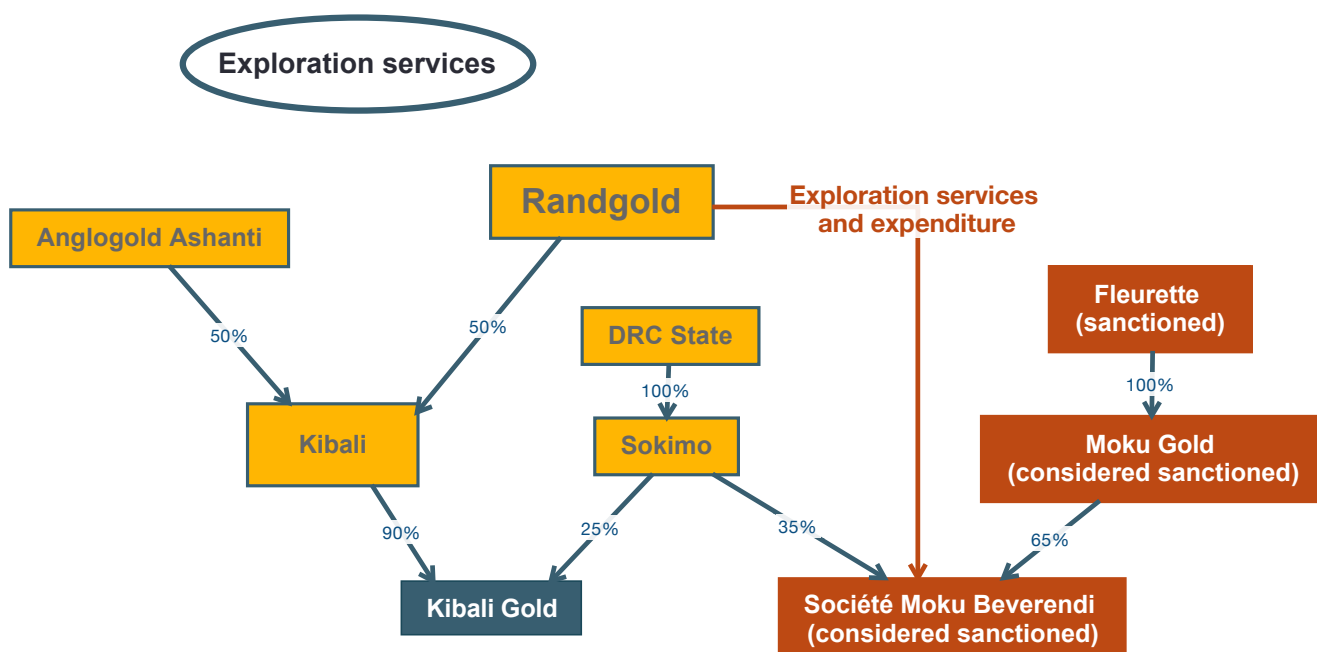


Figure 3 - Even though Randgold was providing exploration services rather than making cash payments to the Gertler-controlled company, it called force majeure a few weeks after the sanctions were enacted. Fleurette has yet to accept the suspension of operations.

Once it receives a response from Gertler's holding, Randgold will have to duly inform its shareholders on NASDAQ and on the London Stock Exchange about the final measures it has taken to comply with Global Magnitsky.⁴⁴ And it will be up to the U.S. Treasury, and perhaps the Securities and Exchange Commission (SEC), to decide whether those measures duly comply with Trump's Executive order and securities laws.

"We cannot entertain transacting in any form," Randgold's CEO told Bloomberg. "We are a global company and we're just not going to compromise that."

Frozen oil blocks

The sanctions may also worry Congo's most senior officials running state-owned companies or tasked with managing the country's oil and mining licenses.

Several state-owned companies had ongoing relationships with Gertler-affiliated companies at the time of the sanctions. State-owned copper miner Gécamines is involved in one of the deals for the above-mentioned Glencore royalties, while gold parastatal SOKIMO has a joint-venture agreement with Moku Goldmines. They have so far remained silent about the sanctions.

More importantly, five active companies on the sanctions list own oil blocks I and II in northeastern Congo.⁴⁵ Fleurette has called the blocks "one of the most exciting new concessions emerging in Sub-Saharan Africa over the past decade."⁴⁶ It has tried to find an investor to continue exploration on the sites, like Randgold has been helping out at Moku.

Unfruitful before the Magnitsky sanctions, the search for a suitor will become even more challenging now. French oil major Total controls block III just south of Gertler's concessions; there has been speculation that it might be interested in expanding its interests.⁴⁷ Total has told Resource Matters that it "is not in negotiations for the acquisition of Blocs I and II [...] and does not plan on being so in the short or medium term."⁴⁸ It added that "the group makes sure it respects applicable compliance rules arising from due diligence programs relating to anti-corruption and U.S. sanction regimes."

Other investors may show similar reluctance to buy assets from a sanctioned entity. This would effectively freeze the blocks for the time being. The Congolese oil minister might be tempted to revoke the blocks from its current owner and sell them on to new investors. On the other hand, he might be hesitant to affect the interests of one of the current regime's most loyal business allies.

Will the regime stand by Dan Gertler?

“We don’t want one Gertler, we need ten Gertlers,” Kabila’s spokesperson told the media when the Israeli billionaire came under fire for allegations of corruption a year before the Magnitsky sanctions.⁴⁹ He defended Gertler for having brought large-scale investors to the country: “if Glencore is here, it is thanks to Mr. Gertler,” he said.⁵⁰

The Global Magnitsky sanctions drastically affect Gertler’s capacity to entertain business relationships with stock-listed investors. His two most significant partners – Glencore and Randgold – have said they would comply with the sanctions, although they have not yet found a way to disentangle their contractual ties. Glencore is still ‘considering its position’ with regards to the hundreds of millions it owes in royalty payments to Gertler’s sanctioned companies. Randgold has called force majeure for its gold exploration activities at Moku but is awaiting Fleurette’s reaction. The impact of Magnitsky will depend on their ultimate decisions, which will have to be duly reported to shareholders given the risk of dealing with sanctioned entities.

The sanctions make it even more difficult for Gertler to set up *new* partnerships. Only the most hardnosed investors will want to acquire the two oil blocks at Lake Albert or any other assets Gertler may still own in Congo or elsewhere. The Congolese government has not said what it would do with these assets.

The broader question is how the regime will react to the sanctions on

a political level. The Magnitsky sanctions sends a warning signal to Congolese politicians that the United States is ready to sanction not only security officials and rebel leaders, but also companies it suspects of providing illicit financing to top officials. According to Trump’s executive order, the Treasury can decide to sanction “a current or former government official who is responsible for or complicit in, or has directly or indirectly engaged in corruption.”⁵¹ The Treasury alleged that “Gertler has acted for or on behalf of Kabila, helping Kabila organize offshore leasing companies,” making that signal even stronger.⁵²

Congo’s decision-makers could react in two opposite ways. On the one hand, they could become more cautious. The Global Magnitsky list shows that the U.S. administration won’t shy away from sanctioning senior officials, such as the former president of the Gambia, Yahya Jammeh.⁵³ In that sense, Global Magnitsky could be a deterrent against more corrupt deals.

Alternatively, the sanctions could harden the regime’s position and incite retaliation. The spokesperson of the Congolese president said in 2016 that “for us an attack on [Gertler] is an attack on the Congo”.⁵⁴ However Gertler might have done business in the past, it seems to be a way of doing business the current regime back. If the U.S. administration was right about Gertler being a source of income for high-level officials, they might be looking for other means to raise funds, either from Gertler’s partners or others. In that case, the sector as a whole could feel the indirect effect of Global Magnitsky.

Ultimately, the impact of Magnitsky will also depend on those tasked with following up on the executive order: the U.S. Secretary of the Treasury in consultation with the U.S. Secretary of State. They have the mandate to issue regulations which would provide greater guidance to anyone facing compliance issues. They also have

the mandate to add to the sanctions list any entity that has engaged or facilitated corruption, or that has provided support to a sanctioned entity. It won't be until other sanctions are issued – whether with regards to Gertler or any other entity sanctioned under Global Magnitsky – that the ripple effect will become fully clear.

Annex 1 - Estimates of royalty payments from Glencore subsidiaries to Gertler-affiliated subsidiaries

2018 royalties

Glencore subsidiary	Gertler-affiliated company	Commodity	Production estimate (t)	Price estimate	Estimate (\$ million)
KCC	Africa Horizons Investment Ltd	Copper	150.000t	\$6.500/t	\$21,94
KCC	Africa Horizons Investment Ltd	Cobalt	11.000t	\$65.000/t	\$16,09
Mutanda	Unknown subsidiary	Copper	205.000t	\$6.500/t	\$33,31
Mutanda	Unknown subsidiary	Cobalt	24.000t	\$65.000/t	\$39,00
Total 2018					\$110,34 million

2019 royalties

Glencore subsidiary	Gertler-affiliated company	Commodity	Production estimate (t)	Price estimate	Estimate (\$ million)
KCC	Africa Horizons Investment Ltd	Copper	50.000t	\$6.500/t	\$7,31
KCC	Africa Horizons Investment Ltd	Cobalt	5.666t	\$65.000/t	\$8,29
Mutanda	Fleurette subsidiary	Copper	200.000t	\$6.500/t	\$32,50
Mutanda	Fleurette subsidiary	Cobalt	24.000t	\$65.000/t	\$39,00
Total 2019					\$87,1 million

In its calculations, Resource Matters has made the following assumptions:

- Mutanda royalties are calculated at 2.5% of gross sales.⁵⁵
- KCC royalties are calculated at 2.5% of sales net of costs.⁵⁶
- The deductible costs to calculate KCC's royalties are estimated at 10% of gross revenue.

- There have been no royalty advances to neither Africa Horizons Investment Limited nor the Fleurette subsidiary that collects royalties from Mutanda Mining.
- In line with Fleurette's statement, Africa Horizons Investment Limited will no longer be entitled to royalties from KCC starting March 1st, 2019.⁵⁷
- KCC production estimates are based on Glencore's investors update.⁵⁸ Mutanda estimates are based on direct information received from Glencore.⁵⁹
- The copper price is estimated at \$6.500 per metric ton. Current prices are around \$7.000/t.
- The cobalt price is estimates at \$65.000 per metric ton. Actual prices are possibly higher (the current cobalt LME price is around \$81.000/t), but the discount takes into account the fact that both Mutanda and KCC produce cobalt concentrates rather than metals, which might sell for less than the LME price.

Annex 2 – Sanctioned entities directly or indirectly linked to Dan Gertler

Individuals

Dan Gertler, 17 Daniel Street, Bnei Brak, Israel; 28 Daniel Street, Bnei Brak, Israel; Avenue Tchatchi 29, Gombe, Kinshasa, DR Congo; DOB 23 Dec 1973; POB Tel Aviv, Israel; nationality Israel; alt. nationality DR Congo; Gender Male; Passport 10945182 (Israel) issued 28 Jun 2010 expires 27 Jun 2020; alt. Passport 10926248 (Israel) issued 25 Feb 2008 expires 27 Feb 2018; alt. Passport DB0009084 (DR Congo) issued 28 May 2015 expires 27 May 2020; National ID No. 027100619 (Israel).

Pieter Albert Deboutte; DOB 15 Jun 1966; POB Roeselare, Flanders, Belgium; nationality Belgium; Gender Male (Linked To: Gertler; Fleurette Properties Ltd.; Gertler Family Foundation).

Holding companies

Fleurette Properties Limited, Strawinskylaan 335, WTC, B-Tower 3rd floor, Amsterdam 1077 XX, Netherlands; Gustav Mahlerplein 60, 7th Floor, ITO Tower, Amsterdam 1082 MA, Netherlands; 70 Batetela Avenue, Tilapia Building, 5th floor, Kinshasa, Gombe, DR Congo; 57/63 Line Wall Road, Gibraltar GX11 1AA, Gibraltar; Public Registration Nr. 99450 (Gibraltar) (Linked To: Gertler).

Fleurette Holdings Netherlands B.V., Industrieweg 5, Nieuwkoop, Zuid-Holland 2421 LK, Netherlands; Chamber of Commerce Nr 55389694 (Netherlands); Legal Entity Nr 851683897 (Netherlands) (Linked To: Fleurette Properties Ltd.).

Rozaro Development Limited, 57/63 Line Wall Road, Gibraltar (Linked To: Fleurette Properties Ltd.).

Transversal DR Congo operations

Gertler Family Foundation, DR Congo (Linked To: Gertler).

JARVIS Congo SARL, No. 70 Batetela Avenue, Tilapia Building (Orange), 5th floor, Kinshasa, DR Congo; No. 790 Panda Avenue, Golf Quarter, Lubumbashi, DR Congo (Linked To: Deboutte; Fleurette Properties Ltd.).

Copper and cobalt sector in Lualaba province (former province of Katanga, DR Congo; Glencore, Katanga Mining related)

Africa Horizons Investment Limited, Cayman Islands; 57/63 Line Wall Road, Gibraltar GX11 1AA, Gibraltar (Linked To: Fleurette Properties Ltd.).

Lora Enterprises Limited, British Virgin Islands (Linked To: Fleurette Properties Limited; Zuppa Holdings Limited).

Zuppa Holdings Limited, British Virgin Islands (Linked To: Gertler; Fleurette Properties Ltd.).

Oil sector at Lake Albert (Ituri, DR Congo)

Caprikat SARL, DR Congo (Linked To: Fleurette Properties Ltd.; Foxwhelp SARL, Caprikat Ltd., Foxwhelp Ltd.).

Foxwhelp SARL, DR Congo (Linked To: Fleurette Properties Ltd.; Caprikat SARL, Caprikat Ltd., Foxwhelp Ltd.).

Caprikat Limited, Akara Building, 24 Castro Street, Wickhams Cay 1, P.O. Box 3136, Road Town, Tortola, British Virgin Islands; Public Registration Nr. 1577164 (British Virgin Islands) (Linked To: Fleurette Properties Ltd.).

Foxwhelp Limited, Akara Building, 24 Castro Street, Wickhams Cay 1, P.O. Box 3136, Road Town, Tortola, British Virgin Islands; Public Registration Nr. 1577165 (British Virgin Islands) (Linked To: Fleurette Properties Ltd.).

Oil of DR Congo SPRL, 14 Avenue Sergent Moke, Kinshasa, Gombe, DR Congo (Linked To: Fleurette Properties Ltd.).

Diamond sector in Kasai provinces (DR Congo) and Israel

D.G.D. Investments Ltd. (f.k.a. Dan Gertler Diamonds Ltd.), 23 Tuval, Ramat Gan 5252238, Israel; P.O. Box 101, Ramat Gan 5210002, Israel; Public Registration Nr. 512253352 (Israel) (Linked To: Gertler).

D.G.I. Israel Ltd., 23 Tuval, Ramat Gan 5252238, Israel; P.O. Box 101, Ramat Gan 5210002, Israel; Public Registration Nr. 513686220 (Israel) [GLOMAG] (Linked To: Gertler).

DGI Mining Ltd., Palm Grove House, P.O. Box 438, Road Town, Tortola, Virgin Islands, British; Public Registration Nr. 649877 (British Virgin Islands) (Linked To: Gertler).

Emaxon Finance International Inc. (a.k.a. International Financial Corporation Emaxon), 8356 Rue Labarre, Montreal, Quebec H4P2E7, Canada; Business Nr. 1160199932 (Canada) (Linked To: Gertler).

International Diamond Industries (a.k.a. "IDI"), Kinshasa, DR Congo (Linked To: Gertler).

Proglan Capital Ltd., 23 Tuval, Ramat Gan 5252238, Israel; P.O. Box 101, Ramat Gan 5210002, Israel; Public Registration Nr. 515000354 (Israel) (Linked To: D.G.D. Investments Ltd.).

Manganese sector in Lualaba province (ex-Katanga, DR Congo)

Orama Properties Ltd., Palm Grove House, P.O. Box 438, Road Town, Tortola, British Virgin Islands; Public Registration Nr. 1041202 (British Virgin Islands) (Linked To: Fleurette Properties Ltd.).

Endnotes

¹ U.S. President, Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption, December 21, 2017 [hereinafter 'Global Magnitsky Executive Order Dec. 2017'], available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20171221.aspx>.

² U.S. Global Magnitsky Human Rights Accountability Act, signed into law on December 23, 2016.

³ See e.g. Eric Joyce, Billions in Underpriced DRC State Asset Sales, November, 18, 2011; M. Kavanagh, F. Wild and J. Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest," Bloomberg Markets, December 5, 2012; Africa Progress Panel, Equity in Extractives: Stewarding Africa's Natural Resources for All: Africa Progress Report 2013 [hereinafter 'Africa Progress Panel Report 2013']; Global Witness, "Secret Sales" publications available on Global Witness's website.

⁴ Global Magnitsky Executive Order Dec. 2017, 1.

⁵ U.S. Treasury Press Release Dec. 2017.

⁶ U.S. Department of the Treasury, United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe, Press Release, December 21, 2017 [hereinafter 'U.S. Treasury Press Release Dec. 2017'], available at <https://home.treasury.gov/news/press-releases/sm0243>.

⁷ U.S. Treasury Press Release Dec. 2017; see also, Africa Progress Panel Report 2013, 100-101.

⁸ The sanctioned companies are listed in the attached annex. See U.S. Treasury Press Release Dec. 2017; U.S. Office of Foreign Assets Control, Issuance of Global Magnitsky Executive Order; Global Magnitsky Designations, Specially Designated Nationals List Update, December 21, 2017. [hereinafter 'OFAC SDN List Update Dec. 2017'], available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20171221.aspx>.

⁹ Giles Read on behalf of Powerscourt, Email in response to request for comments from Resource Matters, January 18, 2018.

¹⁰ Och-Ziff settled with the Department of Justice and with the U.S. Securities Commission for its deals in Congo, Libya and other African countries in September 2016. U.S. Securities and Exchange Commission, Administrative Proceedings File No. 3-17595 in the matter of Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och and Joel M. Frank, September 29, 2016; United States of America vs. Och-Ziff Capital Management Group LLC, Deferred Prosecution Agreement Cr. No. 16-516, September 29, 2016 [hereinafter 'Och-Ziff DPA, 2016'].

¹¹ See International Emergency Economic Powers Act, 50 U.S. §§§§ 1705(b); see also Department of the Treasury, Office of Foreign Asset Control, Economic Sanctions Enforcement Guidelines, Appendix A, I.B, published in Federal Register Vol. 74/215, November 9, 2009, available at <https://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx>.

¹² International Emergency Economic Powers Act, 50 U.S. §§§§ 1705(c).

¹³ U.S. Code of Federal Regulations Title 31 §501.603.

¹⁴ Department of Justice, BNP Paribas Sentenced for Conspiring to Violate the International Emergency Economic Powers Act and the Trading with the Enemy Act, Press Release, May 1, 2015.

¹⁵ See U.S. Code of Federal Regulations Title 31 section §547.313 : "means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. "Technologies" as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions."

¹⁶ <https://www.whatsapp.com/legal/>. WhatsApp prohibits its users from transferring or exporting its services "to any individual, entity, or country prohibited by [all applicable U.S. and non-U.S. export control and trade sanctions laws and] (b) to anyone on U.S. or non-U.S. government restricted parties lists." We have not been able to confirm whether WhatsApp automatically blocks numbers of sanctioned individuals, and have indeed found evidence that at least some sanctioned Congolese officials continue to use the service.

¹⁷ www.fleurettegroup.com (consulted December 22, 2017, January 9, 2018 and February 9, 2018). Resource Matters was not been able to confirm that this is a direct result of the sanctions.

¹⁸ <https://www.yahoo.com/news/facebook-won-t-why-selectively-171827940.html>; <https://www.facebook.com/dan.gertler.750> (consulted January 9th, 2017; Resource Matters did not seek to confirm whether this was Gertler's official Facebook page).

¹⁹ <https://qz.com/1171923/facebooks-ban-of-chechen-strongman-ramzan-kadyrov-means-it-is-selectively-adhering-to-us-sanctions/>

²⁰ Giles Read on behalf of Powerscourt, Email in response to request for comments from Resource Matters, January 18, 2018.

²¹ The DPA describes the DRC partner as "an Israeli businessman [who] had significant interests in the diamond and mineral mining industries in the Democratic Republic of Congo" (Och-Ziff DPA, 2016, A-4). The cases in which the DRC partner was involved (SMKK, Swanmines/Akam, CAMEC, the Kolwezi tailings, Katanga Mining, etc.) further confirm that the DRC partner is likely Gertler.

²² Tom Wilson, SFO Probes Israeli Billionaire, Ex-ENRC Directors on Congo Deals, Bloomberg News, December 5, 2016.

²³ Charles Watenphul on behalf of Glencore, Email in response to request for comments from Resource Matters, January 9, 2018.

²⁴ Frik Els, Top 50 mining companies reshuffle as Chinese, lithium firms climb rankings, Mining.com, July 7, 2017, available at <http://www.mining.com/top-50-mining-companies-reshuffle-chinese-lithium-firms-climb-rankings/>.

²⁵ Rowny Assets Ltd., a Gertler-affiliated company, acquired the right to receive royalties when it bought Gécamines' stake in Mutanda Mining in 2011. See Golders Associates, Mineral Expert's Report: Mutanda, Report No. 12971-10171-3, May 4, 2011, 125. Another Gertler-affiliated company, Africa Horizons Investment Limited, obtained the right to collect royalties from Kamoto Copper Company in 2013. See Glencore PLC, Response to Global Witness, March 3, 2017. The Fleurette group remained entitled to the royalties after Glencore bought Fleurette's stakes in Mutanda Mining and Kamoto Copper Company. Powerscourt, on behalf of Fleurette, Response to request for comments, February 15, 2017; Glencore PLC, Response to request for comments, February 15, 2017.

²⁶ Details and assumptions used in the calculations can be found in Annex 1 to this note.

²⁷ Thomas Wilson, Glencore Paid Gertler's Firm \$100 Million Congo Royalties, March 7, 2017; The Mirror, World's top 10 best-paid footballers revealed, January 18, 2018.

²⁸ Markus Leroux, Glencore cuts ties with 'corrupt' Israeli billionaire Dan Gertler, The Times, December 22, 2017, available at <https://www.thetimes.co.uk/article/glencore-cuts-ties-with-corrupt-israeli-billionaire-dan-gertler-mxzwcsz0>.

²⁹ Charles Watenphul on behalf of Glencore, Email in response to request for comments from Resource Matters, February 9, 2018 [hereinafter 'Glencore Response Feb. 2018'].

³⁰ Glencore Response Feb. 2018

³¹ Global Magnitsky Executive Order Dec. 2017, section 1.A(iii)(A)(2).

³² See John Aglionby and Neil Hume, DRC mining co to renegotiate all contracts within next year, Financial Times, February 6, 2018, available at <https://www.ft.com/content/d6cb308a-0b4e-11e8-8eb7-42f857ea9f09>; William Clowes and Thomas Wilson, Miners Face Sudden Cost Increases After Congo Law Overhaul, Bloomberg News, January 31, 2018, available at <https://www.bloomberg.com/news/articles/2018-01-31/congo-surprises-miners-with-last-minute-changes-to-legal-reforms>.

³³ According to a Glencore presentation to investors, Glencore produced approximately 27,000 metric tons of cobalt in 2017. According to the US Geological Survey, Congo produced 64,000 metric tons of cobalt that same year. See Glencore, Investor Update, December 12, 2017; U.S. Geological Survey, Mineral Commodity Summaries, January 2018, 51.

³⁴ Global Witness, Glencore redirected over \$75 million in mining payments to scandal-hit friend of Congolese president, Global Witness reveals, Press Release, March 3, 2017, available at <https://www.globalwitness.org/en/press-releases/glencore-redirected-over-75-million-mining-payments-scandal-hit-friend-president-global-witness-reveals/>.

³⁵ See, generally, Kibali's overview page on the Randgold Resources website at <http://www.randgoldresources.com/kibali-gold-mine>.

³⁶ Thomas Biesheuvel, Miner Randgold Sees No Sanctions Breach With Gertler Venture, Bloomberg News, December 22, 2017 [hereinafter 'Bloomberg, Randgold Sees No Breach, Dec. 2017'].

³⁷ See the latest DRC mining concessions map available at www.cami.cd.

³⁸ See Article 5.1, Contrat d'Association entre la Société Minière de Kilo-Moto et Ferro (Swiss) AG relative à la constitution d'une société commune pour l'exploitation des gisements d'or et des

substances associées de “Moku I – Beverendi”, territoire de Watsa, dans la Province Orientale, April 16, 2011. See also DRC, Extractive Industries Transparency Initiative Report 2015, 134.

³⁹ Bloomberg, Randgold Sees No Sanctions, Dec. 2017.

⁴⁰ Gertler seeks to sell Moku Goldmines to Randgold, Africa Mining Intelligence, November 11, 2014, available at <https://www.africaintelligence.com/ama/exploration--production/2014/11/11/gertler-seeks-to-sell-moku-goldmines-to-randgold,108047215-eve?did=81901135&eid=209073/>; Aaron Ross, Randgold in Congo gold venture with Israel's Gertler, state miner, Reuters, April 19, 2016, available at <https://www.reuters.com/article/congodemocratic-mining/update-2-randgold-in-congo-gold-venture-with-israels-gertler-state-miner-idUSL5N17M5BA>; Fleurette, Fleurette's new joint venture agreement with Randgold, Press release, April 20, 2016.

⁴¹ Kibali Gold Mine, Kibali Tracks Guidance as it prepares for completion of underground mine in a dynamic political environment..., Corporate presentation, October 2017, slides 29-30.

⁴² Bloomberg, Randgold Sees No Breach, Dec. 2017.

⁴³ Department of the Treasury, Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked, August 13, 2014, accessible through https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#50_percent.

⁴⁴ NASDAQ, Equity Rules section 5250 b.1 (Disclosure of material information), accessible at http://nasdaq.cchwallstreet.com/nasdaq/main/nasdaq-equityrules/chp_1_1/chp_1_1_4/chp_1_1_4_3/chp_1_1_4_3_4/chp_1_1_4_3_4_8/default.asp.

⁴⁵ These companies are Caprikat DRC SARL and Foxwhelp DRC SARL (sanctioned as ‘Caprikat and Foxwhelp SARL’), Caprikat Limited (British Virgin Islands), Foxwhelp Limited (British Virgin Islands), Oil of DR Congo (DR Congo). See OFAC SDN List Update Dec. 2017.

⁴⁶ Oil page on Fleurette's website (formerly accessible at <http://fleurettegroup.com/business-projects/oil-gas#>; currently accessible at https://slideblast.com/oil-gas_59fc5ce21723dd14f8ff6f4e.html).

⁴⁷ See e.g. Jean-Jacques Wondo, Jusqu'ou Macron veut aller dans son soutien militaire au régime de Kabila, December 24, 2017, available at <http://desc-wondo.org/fr/jusquou-macron-veut-aller-soutien-militaire-regime-de-kabila-jj-wondo/>; François Misser, RDC: Manoeuvres pour pomper l'argent du pétrole, La Libre Afrique, January 22, 2018, available at <https://afrique.lalibre.be/13897/rdc-manoeuvres-pour-pomper-largent-du-petrole/>.

⁴⁸ Anne-Emmanuelle Sire-Albrecht on behalf of Total SA, Email in response to request for comments from Resource Matters, January 31, 2018.

⁴⁹ Bloomberg, Congo backs Gertler, Oct. 2016.

⁵⁰ Bloomberg, Congo backs Gertler, Oct. 2016.

⁵¹ Global Magnitsky Executive Order Dec. 2017, Section 1 (a) (ii) (B) (1).

⁵² U.S. Treasury Press Release Dec. 2017

⁵³ U.S. Treasury Press Release Dec. 2017.

⁵⁴ Tom Wilson, Franz Wild and Jesse Riseborough, Congo Backs Billionaire Gertler After U.S. Och-Ziff Allegations, Bloomberg News, October 4, 2016 [hereinafter ‘Bloomberg, Congo backs Gertler, Oct. 2016’].

⁵⁵ Article 10 modifying article 12.c), Mutanda Mining Contrat de Création de Société Nr.

N.474/10300/SG/GC/2001 – Avenant 3, January 6, 2009.

⁵⁶ Art. 1.1(19) and art. 6.10(a) of Convention de Joint-Venture Amendée, Consolidée et Réformulée entre la Générale des Carrières et des Mines et KFL Limited et Global Enterprises Limited relative à l'exploitation, en particulier, des mines de Kamoto, de Mashamba Est, de KOV, de Tilwezembe, de Kananga, de T17 et à la location des installations et des équipements dont le concentrateur de Kamoto (KTC) et les usines hydrométallurgiques et d'électro-raffinage de Luilu, Gécamines contract nr. 1014/19238/SG/GC/2009 of July 25, 2009.

⁵⁷ Fleurette Group, Fleurette Group responds to third Global Witness statement on KCC royalties, Press Release, March 3, 2017.

⁵⁸ See Glencore, Investors Update, December 12, 2017, 17.

⁵⁹ Resource Matters phone conversation with Glencore spokesperson, February 16, 2018.