



Le CNPAV appelle à une enquête judiciaire plutôt qu'une table ronde

Le Congo n'est pas à vendre a vu un document prétendument du « service de communication » de M. Gertler qui circule sur les réseaux sociaux depuis la publication du rapport « [Des Milliards Perdus – Enquête financière sur les transactions de Dan Gertler dans le secteur extractif](#) ». Ce document suggère une table ronde avec le Congo n'est pas à Vendre et avec d'autres groupes de la société civile non identifiés. Le Congo n'est pas à Vendre ne peut pas confirmer qu'il s'agisse réellement d'une proposition de M. Gertler. Nous n'avons rien reçu directement de sa part, ni de la part de sa société de communication à laquelle il fait généralement appel. Pourtant, il connaît nos coordonnées.

En effet, Le Congo n'est pas à vendre a fourni à M. Gertler l'opportunité de répondre à nos allégations. Nous lui avons écrit le 2 avril 2021 avec [des questions détaillées sur tous les chiffres](#) présentés dans notre rapport, soit plus d'un mois avant sa publication. La méthodologie et les sources utilisées sont clairement détaillées dans le rapport. Nous lui avons demandé de corriger toute erreur éventuelle et sollicité les éléments probants. Il n'a pas répondu.

En l'absence de réponse, le Congo n'est pas à Vendre estime que l'invitation à la table ronde – si elle provient réellement de M. Gertler – n'est pas pertinente. Une table ronde entre M. Gertler et la société civile ne résoudra pas les 3,7 milliards de dollars de pertes auxquels l'État de la RDC est confronté du fait de ses accords. Ces immenses pertes devraient être une question de la plus haute priorité pour le gouvernement congolais et il doit trouver une solution urgente. Ceci est particulièrement critique à un moment où la RDC recherche désespérément des financements pour soutenir son budget.

Plus concrètement, le gouvernement du président Tshisekedi devrait ouvrir une enquête judiciaire crédible et indépendante sur les accords passés avec M. Gertler et ses entreprises. A ce titre, Le Congo n'est pas à Vendre transmettra un dossier d'information au Procureur Général auprès de

la Cour de Cassation. Il appartient à M. Gertler de coopérer pleinement avec les instances judiciaires et de fournir tous les documents et paiements qu'il a effectués et reçus.

La lettre envoyée à M. Gertler est fournie en annexe à ce document. M. Gertler reste libre d'y répondre et de fournir tout élément de preuve qui permettrait d'éclairer l'opinion publique.

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Dear Mr. Gertler,

'Congo is Not for Sale' [Congo N'est Pas à Vendre – CNPAV] is a coalition of Congolese and international civil society organisations campaigning against corruption in the Democratic Republic of Congo (DRC).

We are currently preparing materials for publication. The materials will look at several deals in which you obtained mining or oil interests from the DRC State or its state-owned companies since 2010. We have analyzed some of the parameters of the Yabiso initiative, in particular the procedure your companies followed to obtain the Metalkol royalties as well as other comparable royalty rights for KCC and Mutanda Mining - rights that would normally go to the state or its state-owned companies. We believe these procedures did not comply with applicable standards.

These royalties are extremely profitable for you and are a great loss to the Congolese state as a whole. Our report will include calculations of how much the DRC has lost from these deals until now, and how much it stands to lose in the future under current contractual arrangements. We calculated that you will earn a minimum of \$1.763 billion from future royalties from the KCC, MUMI and Metalkol projects.

We have also reviewed, updated and complemented the assessment of the Africa Progress Panel published in 2013 and takes into account some of your earlier remarks on the report, e.g. the original sale price of the Mutanda shares Gécamines reported having received, to the extent we could triangulate or otherwise substantiate your claims.

In several instances, you appear to have obtained these mining or oil assets at prices below market value. You were then able to either sell these assets on to international companies, or back to the DRC state for a profit. Rather than using commercial valuations, we are basing our analysis on the actual consideration your partners paid for the assets. We have calculated that the DRC lost at least \$1.946 billion until December 2020 from these deals, with a net present value of \$712 million.

We believe that the deals we analysed (detailed below) present serious corruption risks because of the questionable circumstances in which many of the assets were obtained, the extremely low prices you paid, and publicly available documents from the Och Ziff settlement. Moreover, the official US sanctions listing says that you used your “close friendship with DRC President Joseph Kabilo to act as a middleman for mining asset sales in the DRC” and that you profited from “corruption and misconduct”.

We would like to offer you the opportunity to respond to these statements and to comment on the deals in question ahead of publication. To that end, we have posed a series of specific questions below. Please do also provide comment on the overarching allegation that you pose a serious corruption risks in your dealings in the DRC.

To ensure that your comments can be reflected in our report, please provide responses by 09 April 2021.

We look forward to receiving your replies.

Yours sincerely,

The Congo N'est Pas à Vendre (CNPAV) coalition



QUESTIONS

Question on deals over mining company shares

Mutanda and Kansuki stakes

In March 2011, Gécamines sold its remaining stakes in Kansuki and Mutanda to your companies Rowny and Biko. While the sales contracts state that Gécamines sold the assets for \$137 million, in March 2011, Gécamines says that its board retrospectively raised the price to \$189 million, which we are taking as the final sales price. On 13 February 2017, you sold your shares to Glencore for at least \$922 million.

1. Based on the above, we calculated that you earned \$733 million in the purchase and resale of your stakes in Kansuki and Mutanda. Is this accurate? Please comment on the above if you believe it not to be the case.
2. According to the Mutanda joint venture agreement (amendment 3), the minority partner is carried by the majority partner. The debt that Fleurette owned to Glencore at the time of the buy-out seems to confirm the hypothesis that Rowny and its successors equally benefited from these provisions after it replaced Gécamines as the minority partner. Can you confirm this was the case? If it wasn't, could you provide documentary evidence to the contrary?

When Glencore bought Fleurette's shares in Mumi and KCC in February 2017, its press release included the following statement: "Glencore will set off against the cash consideration payable to Fleurette, loans owing to the Glencore group by Fleurette and its affiliates, and secured over the Mutanda Shares, amounting to \$556 million of which \$120 million comprises accrued interest. In addition, Glencore has acquired shareholder loans owed to the Fleurette group by Mutanda Mining Sarl in the amount of \$130 million. Accordingly, the aggregate cash consideration payable by the Glencore group in respect of the transactions is \$534 million."

1. Based on the above, is it correct that the total cash consideration of \$534 million consists of
 - (1) \$404m (i.e. \$960 million (payment for Katanga plus Mutanda shares) minus \$556 million



(the debt)) and (2) a \$130 million payment for the shareholder loans owed to Fleurette group by Mutanda?

2. If the above interpretation is not correct, could you explain which calculation applies to the February 2017 deal and the rationale of it? Your explanation should allow us to understand what is meant by Glencore acquiring a \$130 million loan from Mr. Gertler.

Société manière de Kabolela et de Kipese stake (SMKK)

Gécamines sold a 50% stake in SMKK on 1 February 2010 to your company Emerald Star for \$15 million. In June 2010, ENRC bought the stake from Emerald Star for \$75 million.

3. Based on the above, we calculated your profit from this transaction to \$60 million. Is this accurate? Please comment on the above if you believe it not to be the case.
4. Fleurette claimed in an earlier response to the Africa Progress Panel that the chronology of transactions with regards to SMKK were incorrect. However, the chronology was based on official documents from ENRC as well as publicly available contracts. Could you please provide evidence to substantiate the claim that the chronology was incorrect?

Comide and Metalkol stakes

We have reviewed and adopted the Africa Progress Panel's calculation that your profit from the sale of Comide and Kolwezi amounted to \$622.25 million (total payment of \$63.5 million and resale to ENRC for \$685.75 million).

5. Is this accurate? Please comment on the above if you believe not to be the case.

6. Fleurette previously claimed that Fleurette invested more than \$300 million in Comide, Metalkol and Swanmines. We have not been able to find independent proof of this assertion. Court documents and other contractual information obtained by the consortium indicates that Och Ziff, and later ENRC advanced the bulk of the financing. Can you provide proof to corroborate that Fleurette made investments other than the carried loans from its partners Och Ziff and ENRC in these three projects?

Sodifor joint venture (including Frontier and Lonshi mines)

We have reviewed and adopted the Africa Progress Panel's calculation on the Sodifor joint venture, but have excluded the value of Lonshi, as there is insufficient information in the Extractive Industries Transparency Initiative Reports and other publicly available information with regards to the evolution of the permits that belonged to Sodifor.



1. Based on the above, we calculated Fleurette's profit from these deals as \$20 million. Is this accurate? Please comment on the above if you believe it not to be the case.

2. Did Fleurette receive any consideration for any of the other Sodifor permits after it initially started purchasing them from Sodimico in 2010? If so, could you please clarify which consideration, for which permits, and from which counterpart?

Oil block

In 2006, your company Nessergy Limited paid \$500,000 to the DRC government for rights to an offshore block in disputed waters. There was no competitive tender. Nessergy sold the block back to the DRC government in 2013 for \$150 million.

7. Based on the above, we calculated your profit from the deal at \$149.5 million. Is this accurate? Please comment on the above if you believe it not to be the case.

8. There is no evidence of any drilling by your company, and your spokesman has in the past referred solely to additional costs from tax and contributions to training and “national gas and oil work”. Could you please provide any written evidence of investments into the project during the period your company held the assets?

Royalty payments

Kamoto Copper Company (KCC) royalties

KCC royalties to date

According to our understanding, your company African Horizons Investment Ltd (AHIL) acquired the rights to royalties from the Kamoto Copper Company (KCC) pursuant to a series of loans from African Dawn and AHIL to Gécamines, starting with a \$196 million loan in December 2012.

You have, through your representatives, said that AHIL obtained the rights to 2.5% of KCC's net sales in May 2013 in exchange for a \$150 million reduction in the amount Gécamines owed it.



We understand, however, that the debt owed by Gécamines was not reduced by \$150 million on the day of that May 2013 agreement, that royalties and other revenue flows including the proceeds of Gécamines' Kipoi share sales were used to gradually reimburse the loan, and that the royalty rights were ultimately and definitely assigned to AHIL on or around 15 January 2015, as a result of Gécamines not being able to repay the debts owed to AHIL. We also understand that had the \$150 million consideration been reduced on the day of the May 2013 agreement, the debt would have been fully reimbursed and Gécamines would have kept the right to collect KCC royalties.

9. In light of the above, can you please clarify how you acquired the rights to the KCC royalties?

10. Can you please confirm whether or not Gécamines' debt to AHIL was reduced by \$150 million, and, if so, when exactly this reduction was made?

Details of the loan arrangements and how AHIL obtained KCC royalties have been disputed, but documents seen by the consortium indicate that all parties agreed that Gécamines had reimbursed its loans from AHIL by 27 October 2015 at the latest. We are counting the royalties flowing to you from this date. We are working on the basis that the only consideration Gécamines received are the series of loans you granted to Gécamines between December 2012 and January 2015, which were reimbursed in full by October 2015 at the latest.

We calculated the minimum amount of royalties that you would have received from KCC from 27 October 2015 to 31 December 2020 based on published copper and cobalt production from KCC, the lowest average copper and cobalt price for each year as quoted on the London Metal Exchange and average costs of 9.46% to convert gross revenues to net revenues. We have deducted from that amount the royalty advances Fleurette received from KCC in March 2015 (\$40.683.902 paid on March 3rd 2015) and \$14.065.932 paid on July 3rd 2015), since both payments were used for the reimbursement of Gécamines debt.



11. Based on the above, we calculated that from 27 October 2015 to 31 December 2020, you would have received at least \$59.73 million from net KCC royalty payments. Is this accurate? Please comment on the above if you believe it not to be the case.

Future royalties from KCC (2021-2039)

Our calculation is based on the KCC mine operating to at least 2039. We calculated the future royalties based on the forecast average production and average of the lowest annual prices for copper and cobalt on the London Metal Exchange from 2011 to 2020. We converted gross revenues to net using an average costs level of 9.46%.

12. Based on the above, we calculated that you stand to earn at least \$1.085 billion from the KCC royalties from 2021-39, and that the Net Present Value (NPV) of this would be \$381.1 million, based on a discount rate of 13.5%. Is this accurate? Please comment on the above if you believe it not to be the case.

Mutanda royalties

Mutanda royalties to date

Under the March 2011 contract between Gécamines and your company Rowny for the purchase of a 20% stake in Mutanda Mining, Rowny was assigned Gécamines' royalty rights, amounting to 2.5% of gross sales. This changed to 2.43% after Glencore purchased your stakes in the combined MutandaKansuki project in February 2017.

We calculated the minimum amount of royalties that you would have received from Mutanda from March 2011 to 31 December 2020 based on published copper and cobalt production from Glencore, the lowest average copper and cobalt price for each year as quoted on the London Metal Exchange and average costs of 9.46% to convert gross revenues to net revenues.



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13. Based on the above, we calculated that between March 2011 and end-2020 you would have received at least \$302 million in royalties from Mutanda. Is this accurate? Please comment on the above if you believe it not to be the case.

Future royalties from Mutanda (2021-2034)

Our calculation is based on the Mutanda mine operating to at least 2034, and that mining restart by the beginning of 2022. Our calculation conservatively assumes that Mutanda's copper production will be halved over the remaining life of the mine, to 100,000 tonnes, and used the forecast average production of cobalt and average of the lowest annual prices for copper and cobalt on the London Metal Exchange from 2011 to 2020. As for cobalt production, we have used the 2019 copper / cobalt ratio to estimate future cobalt production at approximately 23,000 tonnes of contained cobalt per year. We converted gross revenues to net using an average costs level of 9.46%.

14. Based on the above, we calculate that you stand to receive at least \$379.7 million from the Mutanda royalties from 2021-34, and that the NPV of this would be \$174.6 million, based on a discount rate of 13.5%. Is this accurate? Please comment on the above if you believe it not to be the case.

Future royalties from Metalkol

In October 2020, Gécamines published a contract showing that the state mining company had sold the rights to the royalties from Metalkol to your company Multree, for \$55 million. Under this contract, Multree is due royalties at 2.5% of net revenues.



You have said the real purchase price is \$83 million, as \$28 million of royalties would first be affected to Gécamines' debt payments. However, our understanding is that all or most of these debt payments have already been paid to your own companies—at least \$20 million was disbursed by Metalkol to Gécamines between March and July 2015 but accounted for as loans from AHIL to

Gécamines, and these loans were fully repaid to AHIL by October 2015. We are therefore using the purchase price of \$55 million.

Our calculation is based on Metalkol operating to at least 2039 and are based on published production for 2019, “phase I” capacity for 2020 and 2021, and “phase II” capacity for 2022 to 2039. We used the same prices estimates as for the KCC and Mutanda future royalties and applied the same costs estimates of 9.46%.

15. Why did the 2017 royalty agreement between Multree and Gécamines not refer to any outstanding loans between Gécamines and Multree or any other affiliated company? Can you please provide any written evidence of such outstanding loans?

16. Based on the above, we calculated that you would receive at least \$354 million in royalties from Metalkol from 2019 to 2039, resulting in a net profit of \$299 million after deduction of the contractual purchase price, and that the NVP of this would be \$155 million for royalties from 2021 onward, based on a discount rate of 13.5%. Is this accurate? Please comment on the above if you believe it not to be the case.

The above estimates do not take into account any onward sale in the framework of the YaBiso initiative. Based on public statements, we understand that the Yabiso initiative would result in the sale of the right to collect 30% of future Metalkol royalties to Congolese citizens.

- Based on all above parameters, we estimate that 30% of future Metalkol royalties currently represent approximately 6.3% of all future royalty rights that your companies are entitled to as a result of the Metalkol, KCC and Mutanda royalty agreements. Is this accurate? Please comment on the above if you believe it not to be the case.



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According to the 2008 law on the privatization of state assets and according to the inter-ministerial circular sent by the Minister of Finance and the Minister of Portfolio of May 2011 to the representatives of Gécamines and other state-owned mining companies, the sale of assets by SOEs requires a specific procedure, including a public tender process, approval by the council of ministers and full disclosure of the terms of the sale.

However, in the case of the KCC, Mutanda and Metalkol royalty rights, Gécamines has not held any tender, nor are we aware of any formal approval by the council of ministers. We have also not been able to find details of the terms of the deals in the *Journal Officiel* or in major Congolese news outlets as required by law. In the case of the Multree-Gécamines contract for the Metalkol royalties, parties even agreed to keeping the existence of the contract secret for three years.

- Is it correct to say that no tender process was organised for the above three asset transfers? If there was a tender process, could you please provide written evidence?
- Is it correct to say that there was no formal approval of the council of ministers for the above three asset transfers? If there was such an approval, could you please provide written evidence?
- Is it correct to say that the contracts were not published in the *Journal Officiel* or in DRC mainstream news papers? Is it correct to say that:
 - In the case of the Metalkol royalty agreement, only the \$55 million purchase agreement was published on the EITI website, but no other agreements, e.g. with regard to the pre-existing loans, was published on any of the DRC websites (EITI, Ministry of Mines, Gécamines)?
 - In the case of the KCC royalty agreement, only the bipartite and tripartite agreements of 22 January 2015 were published on the Gécamines website, neither of which confirms that a \$150 million consideration was paid, and that no other agreements, *inter alia* the May 2013 agreement, was published on any of the DRC websites?
 - In the case of the Mutanda royalty agreement, only the 2011 asset sale agreements with regard to the 20% Mutanda stake and the 25% Kansuki stake for respectively



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\$120 million and \$17 million were published, and no other agreement was released, e.g. to explain the additional consideration that backs up the \$189 million Gécamines says to have received for the stakes?

- If any of the above is incorrect, can you please provide us with links to any other agreement, and/or fully executed copies thereof?