



Kinshasa, 1 July 2020

## **Glencore, Gertler, Gécamines : \$150 Million at Risk**

The “Congo is Not for Sale” campaign calls on the justice system of the Democratic Republic of Congo to disclose the results of an investigation opened at the end of 2019 into state copper company, Gécamines, and to announce the legal measures it intends to take to prevent a payment from Glencore to Gécamines entering into the pockets of billionaire Dan Gertler, who is subject to sanctions imposed by the United States.

Several months ago, Congolese justice officials ordered Kamoto Copper Company (KCC), a subsidiary of global mining giant Glencore, to suspend a payment of USD \$150 million to Gécamines following the signing of a new contract in December 2019<sup>1</sup>. There is a risk that the funds may be transferred to Dan Gertler and his companies who are claiming repayment of a previous loan made to Gécamines. The Israeli businessman has been under US sanctions since December 2017 for amassing a fortune estimated at hundreds of millions of dollars through opaque and corrupt mining and oil operations in the Democratic Republic of the Congo (DRC)<sup>2</sup>.

The "Congo is Not for Sale" campaign calls on Congolese justice officials, government and parliament to ensure that this money is not allocated to a sanctioned individual, but rather is used to rebuild Gécamines.

Dan Gertler has been at the heart of questionable transactions in the Congo for more than twenty years, resulting in him being placed under US sanctions. In the former Katanga province, several large multinational companies involved in business with Dan Gertler to acquire mining concessions are currently facing criminal investigations for suspicion of corruption. Last month, justice officials in Switzerland opened an investigation against Glencore relating to its operations in Congo<sup>3</sup>.

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<sup>1</sup> Katanga Mining Ltd, Katanga Enters into Agreement to Acquire Land Rights from Gécamines, 20 décembre 2019, <http://www.katangamining.com/~media/Files/K/Katanga-mining-v2/media/newsreleases/news2019/pr-gecamines-transfer-2019-dec-20.pdf>.

<sup>2</sup> US Department of the Treasury, United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe, 21 December 2017, <https://home.treasury.gov/news/press-releases/sm0243>.

<sup>3</sup> Glencore, Investigation by the Office of the Attorney General of Switzerland, 19 June 2020, <https://www.glencore.com/media-and-insights/news/investigation-by-the-office-of-the-attorney-general-of-switzerland>.

Glencore is also under investigation in the United States<sup>4</sup> as well as in the United Kingdom<sup>5</sup>. Its subsidiary Katanga Mining Ltd, the owner of KCC, was fined in Canada for failing, among other things, to disclose details of its relationship with Gertler<sup>6</sup>.

"Since Glencore is under criminal investigation in the United Kingdom, the United States, and more recently in Switzerland, it is crucial that the Congolese justice system conducts a rigorous investigation into business dealings between Glencore and Gertler in the DRC," said Freddy Kasongo, activist and Executive Director of Congolese NGO, OEARSE. "It is also essential that an investigation is launched into the role played by Gécamines and its management who may have benefited from these deals."

It was only at the end of 2019 that Congolese justice authorities opened an investigation into the business affairs between Gertler and Gécamines in Congo, particularly focusing on "the case of 128 million euros". The matter began in October 2017, when a Gertler company lent 128 million euros to Gécamines just before he was placed under American sanctions. The loan was repayable in April 2018, but Gertler waited until September 2019 to launch judicial proceedings in a Congolese court to demand payment.

In November 2019, Ventora Development SASU, a Gertler company, obtained a favourable judgment from the Commercial Court of Lubumbashi against Gécamines ordering payment of the sum of 151.88 million euros (128 million euros plus interest) for the debt repayment. Gécamines appealed the judgment, but did not request the court at first instance to suspend the execution of the judgment pending the decision of the court of appeal. Dan Gertler's company could therefore seize up to 151.88 million euros from Gécamines.

Gécamines is due to receive \$150 million from KCC for the recent sale of a land rights in Kolwezi. This is the largest amount of funds owed to Gécamines since President Tshisekedi came to power, and the funds are badly needed for the state company's recovery. Civil society groups fear Gertler may seize the \$150 million as soon as it enters Gécamines' accounts.

The existence of the loan was kept secret for more than two years. In December 2019, the Attorney General at the Court of Cassation opened an investigation into this loan. When Gécamines was summoned by the General Prosecutor's Office, Albert Yuma, the Chairman of the Gécamines Board of Directors, allegedly acknowledged the existence of the loan. Yuma said the money was used for "tax advances." However, the ultimate use of the funds remains unclear.

Since then, there has been silence on the conclusions of the investigation regarding the 128 million euro loan, and therefore also on the fate of the \$150 million due to Gécamines by KCC. According to KCC's parent company, the Congolese prosecutor ordered the suspension of all

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<sup>4</sup> Glencore, Subpoena from United States Department of Justice, 3 juillet 2018, <https://www.glencore.com/media-and-insights/news/Subpoena-from-United-States-Department-of-Justice>.

<sup>5</sup> Glencore, Investigation by the Serious Fraud Office, 5 décembre 2019, <https://www.glencore.com/media-and-insights/news/investigation-by-the-serious-fraud-office>.

<sup>6</sup> Ontario Securities Commission, OSC Panel approves settlement with Katanga Mining Limited, former and current directors and officers for misleading disclosure and internal control failures, 18 décembre 2018, [https://www.osc.gov.on.ca/en/NewsEvents\\_nr\\_20181218\\_osc-panel-approves-settlement-with-katanga-mining-limited.htm](https://www.osc.gov.on.ca/en/NewsEvents_nr_20181218_osc-panel-approves-settlement-with-katanga-mining-limited.htm).

payments pending "pending the conclusion of an investigation by the General Prosecutor relating to Gécamines' executives"<sup>7</sup>.

The "Congo is Not for Sale" campaign urged the various Congolese authorities to be as transparent as possible about the investigation and the fate of the \$ 150 million. Specifically, the "Congo is Not for Sale" campaign urged the following:

- To the General Prosecutor at the Court of Cassation, to publish the conclusions of the investigation into the use of funds linked to Gertler's loan to Gécamines in October 2017;
- To the Congolese governmental and judicial authorities to ensure that the payment of \$150 million to Gécamines by Glencore is not destined for Gertler, an individual under sanction, and that the funds are instead used to contribute to the effective revitalization of Gécamines;
- To the new Gécamines Board of Directors to ensure that the \$150 million does not end up in the accounts of Gertler or his companies, as has been the case in the past, but instead that the funds are used entirely for the company;
- And, finally, an independent audit of all of Dan Gertler's business and those of his companies in Congo, in order to shed a light on these questions.

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#### **List of signatory organizations:**

- African Resource Watch (AfreWatch)
- Cadre de Concertation pour les Ressources Naturelles de l'Ituri (CdC/RN)
- Mouvement citoyen Lutte pour le Changement (LUCHA)
- Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale (OEARSE)
- Plateforme de Protection des Lanceurs d'Alerte en Afrique (PPLAAF)
- Resource Matters
- Rights & Accountability in Development (RAID)
- UNIS contre la corruption

**LE CONGO**  
**N'EST PAS A VENDRE**

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<sup>7</sup> Katanga Mining, Katanga Mining postponing the filing of its annual information form due to COVID-19 and provides operational update, 30 mars 2020, <http://www.katangamining.com/~media/Files/K/Katanga-mining-v2/media/newsreleases/news2020/delayed-aif-2020-mar-30.pdf>