

Congo Is Not For Sale

Statement following the roundtable on the agreement between Dan Gertler's Ventora Group and the DRC, regarding the restitution of oil and mining assets

May 2022

i. Participation in the roundtable

1. On April 12, 2022, DRC President's Office invited representatives of civil society to a roundtable discussion on the settlement of all disputes between the DRC and the Ventora Group owned by businessman Dan Gertler. Representatives of seven member organizations of the coalition *Congo Is Not For Sale* (CNPAV) were invited.¹
2. During the roundtable on April 13 and 14, 2022, the Deputy Director of the President's office, André Wameso, the main speaker, presented two documents: (1) an unsigned version of the Memorandum of Understanding (MOU) for the settlement of all disputes between the DRC and Gertler and (2) a signed annex to this MOU, entitled "final documentation". No hard copy was provided.
3. CNPAV welcomes the initiative which enhanced our understanding of the context that led to the signing of the MOU, as well as the President's commitment to the participation of civil society in future processes relating to the renegotiation of mining contracts. However, these steps cannot replace the transparency obligations to which the DRC is bound, nor the government's prerogatives in the management of the extractive sector. CNPAV will express a separate and detailed opinion on these processes.
4. Furthermore, the roundtable did not remove our fears regarding the content of the agreement. Instead, rather than obtaining compensation for past and future losses incurred as a result of transactions with Mr Gertler, the DRC will pay compensation to Dan Gertler. The purpose of this statement is to provide some preliminary details on those concerns.

ii. Obligation to disclose the agreement and its annexes

5. CNPAV noted ongoing discrepancies in the settlement. These discrepancies stem from the Negotiating Commission's inaccurate understanding of transparency requirements in the extractive sector, as well as the legal and regulatory provisions requiring the publication of the agreement and all of its annexes.
6. CNPAV reiterates that the confidentiality clause mentioned in this agreement is null and void under Congolese law in the extractive sector. The law on the general

¹ These organizations are ODEP, RECIC, Afrewatch, UNIS, Resource Matters, LUCHA and Filimbi. Due to differences of opinion on the agreement, ODEP and RECIC have decided to leave the coalition. This statement is from the remaining 14 members of the coalition.

regime of hydrocarbons,² the mining code,³ as well as the requirements set out by the Extractive Industries Transparency Initiative (EITI),⁴ provide for transparency of any contract concerning natural resources and their annexes. The transparency requirements also extend to acquisition and disposal procedures for licenses. Therefore, as the ultimate act of this agreement is the transfer of ownership of the relevant assets from one party to another, the process leading to this transfer is required to meet these transparency and disclosure obligations.

7. CNPAV further recalls that several similar amicable settlement agreements signed by the DRC and mining operators have been fully published by previous governments. These include, for example, the amicable settlement agreement signed between the DRC and the Banro Corporation Group of April 2002, and the amicable settlement agreement between the DRC, First Quantum Minerals and ENRC of March 1, 2012 relating to the release of KMT, Frontier and Comisa.
8. CNPAV stresses that any refusal to publish this agreement and its annexes within the 60-day legal deadline constitutes an obstruction of transparency and is punishable under Article 311 of the Mining Code. It also goes against President Félix Tshisekedi's declarations regarding his policy of good governance and the government's commitments as part of its program with the International Monetary Fund.⁵
9. In light of the above, the CNPAV calls on the Congolese State, through the President of the Republic and the Prime Minister, to have this agreement and all its annexes published by the Ministries of Mines and Hydrocarbons in accordance with the principle of good governance, DRC's legal provisions, and the EITI's requirements for the disclosure of contracts and transactions related to extractive resources.

iii. Content of the agreement

a) Commitment by the DRC to assist Mr Gertler in lifting the sanctions

10. CNPAV notes with astonishment the inclusion in the agreement of a clause requiring the DRC government to defend the agreement to the media, NGOs and the U.S. administration in order to obtain the lifting of US sanctions targeting Mr Gertler and his affiliates.
11. This almost immoral commitment by the DRC is totally incomprehensible and unacceptable, especially since it risks using other important financial resources of Congolese taxpayers to lobby the US administration.

b) Value of the assets recovered and compensation to be paid by the DRC

12. CNPAV welcomes the action and commitment of the Congolese state to begin the process of recovering the mining and oil assets which have been sold-off, while recalling that this must preserve the DRC's interests.

² Article 41 1st point Act n° 15/012 of 1 August 2015 on the general regime for hydrocarbons.

³ Article 1 point 54 bis and article 7 quarter of the revised mining code.

⁴ Requirement 2.4 litera a of the EITI Standard.

⁵ Point 1.2.4 of the Code of Good Practices on Fiscal Transparency, on the publication of contracts.

13. CNPAV notes that according to the Presidency, the value of the announced recovered oil and mining assets represents approximately US \$2.5 billion. This figure is based on an evaluation carried out by a Canadian firm, not otherwise identified, a copy of which has not been presented. CNPAV recalls that the exploration work carried out in the field has been poor and that Mr Gertler himself has not managed to sell his oil blocks. Thus, CNPAV requests the sharing of the Canadian valuation details to ensure that no overestimation of the value of the recovered assets has occurred.
14. CNPAV notes that the Congolese state has undertaken to pay €240 million to compensate Mr Gertler for the investments he made in all the mining and oil assets recovered by the DRC. This sum will be due even if Congo fails to sell the assets. CNPAV notes that this represents a risk of further debt for the country.

c) Uncompensated past losses and unrecovered permits

15. CNPAV notes with surprise that the agreement does not include any compensation for the enormous past losses and damages suffered by the DRC as a result of the corrupt acts for which Mr Gertler has been sanctioned. As a reminder, CNPAV has estimated these losses at nearly US\$2 billion.⁶
16. Furthermore, one of the clauses presented during the roundtable states that the DRC commits itself not to act as a civil party in international proceedings to seek compensation for these past losses. This approach, which downplays and legitimizes serious past economic crimes, is a dangerous precedent that could undermine the process of renegotiating similar contracts, as other corrupt parties or economic criminals may be emboldened to take advantage of it.
17. The CNPAV also notes that the agreement presented concerns only some of the mining permits held by Mr Gertler, to the exclusion of many others, in particular the permits held by the company Orama in the manganese sector.⁷ There is also no clarity on the fate of the copper-cobalt discharge permits held by Evelyne Investment⁸ and Interactive Energy,⁹ two companies whose ultimate beneficiaries remain unknown but which may have links with Ventora. Thus, we believe that there is no certainty that the Congo has recovered all of Mr Gertler's oil and mining assets as claimed by the Negotiators Commission for this agreement.

d) KCC, Metalkol, and Mutanda Royalties will continue to benefit Dan Gertler

18. CNPAV critiques the fact that the agreement confirms Mr Gertler's right to continue to receive all royalties from the three mining projects (Mutanda, Metalkol, and KCC) until the mines are no longer in operation. CNPAV recalls that according to analysis we conducted,¹⁰ these royalties were acquired illegally and should be returned to the state and Gécamines. CNPAV condemns this attempt to legitimize and legalize the fraudulent acquisition of mining and oil assets, including the privatization of royalties from Mutanda, Metalkol, and a majority of KCC.

⁶ Congo is Not for Sale, Billions Lost: Financial Investigation of Dan Gertler's Extractive Sector Transactions, May 2021, <https://www.corruptiontue.org/posts/des-milliard-perdus>

⁷ In particular, operating permits PE 21, 22, 23, 25.

⁸ These include the Mupine North, Mupine South, Dikuluwe North, Dikuluwe South and Potopoto mining permits (PE 9687, PER 9685 and PER 9683) and the PE 8841 and PE 11229 mining permits.

⁹ In particular, the exploration permits for the Kakanda mine releases (PER 9696).

¹⁰ Congo is not for sale, Yabiso: The lifeline to protect ill-gotten gains ?, <https://www.corruptiontue.org/posts/yabiso>.

19. The presidency explained that Gécamines would receive compensation of **€249 million euros** to cover the overpayment of KCC royalties to Mr Gertler. According to CNPAV calculations, however, these royalties are worth \$1.085 billion in absolute terms, and \$380 million in net present value.¹¹ Thus, the compensation offered appears to be below the value of the asset.
20. More worryingly, it is likely that Gécamines will never receive the money. Gécamines had received a loan from Mr Gertler in the amount of **€191 million euros**,¹² which allegedly helped finance the 2018 electoral process. This amount will be deducted from the compensation for the KCC royalties, reducing the compensation for Gécamines to **€58 million**. In addition, compensation of €240 million euros for Mr Gertler's "investments" in oil blocks and mining licenses will also be deducted.

iv. Preliminary conclusion based on the information presented

21. CNPAV notes, with astonishment, that overall, it is **the DRC that will pay Dan Gertler €189 million euros, rather than the other way around**. This amount is to be paid by the DRC one year after the signing of the agreement, regardless of whether or not the recovered assets are sold. In addition, Mr Gertler will continue to receive royalties from the KCC, Mutanda and Metalkol mines, estimated to total \$1.7 billion in absolute terms over the next 20 years.

Amount in euros (€)	Reason
249 million	Compensation from Ventora to DRC for the 'overpayment' of KCC royalties
191 million	Reimbursement to Ventora for the loan granted to fund the 2018 elections
240 million	Reimbursement to Ventora for 'investments' in recovered mining and oil assets
Balance: €189 million to be paid by the DRC to Ventora	

¹¹ Calculation details are available in the following publication: CNPAV, *Billions Lost, Financial Investigation of Dan Gertler's Extractive Sector Transactions*, May 2021, <https://www.corruptiontue.org/posts/des-milliard-perdus>.

¹² The CNPAV would like to clarify that the proof of disbursement of the loan only mentions an amount of €135 million euros and not €191 million euros. We therefore assume that the difference between the two amounts constitutes the interest on arrears.

22. On the other hand, the gains for the DRC are deferred to the future – when the hypothetical sale of the recovered assets takes place – without compensation for the huge past losses suffered by the Congolese people because of the transactions with Mr Dan Gertler.
23. Taking into account the points above, CNPAV notes that, according to the information provided, the agreement signed between the DRC and businessman Dan Gertler is unbalanced and benefits Mr Dan Gertler and his network, including part of the Congolese elite who benefited from it to the detriment of Congolese citizens.
24. CNPAV announces that it will soon make available to the government, and to the general public, the problematic technical elements of this agreement.

v. Perspectives

25. CNPAV informs the public that it will maintain its campaign to obtain (i) the publication of the agreement and all its annexes, and (ii) the full and effective recovery of all mining and oil assets fraudulently acquired by Dan Gertler and all his network, and specifically the royalties from the KCC, Metalkol and MUMI projects;
26. CNPAV is willing to maintain constructive exchanges with the DRC authorities to fully and transparently recover assets sold off to the detriment of the Congolese population. In this regard, CNPAV will submit to the Congolese government the additional list of assets held by Dan Gertler's network as well as all other useful information;
27. CNPAV is committed to promoting citizen control over the use of the formally recovered assets.

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