

# DAN GERTLER

RAMAT GAN, ISRAEL.

17 March 2023

Dear all,

Thank you for your letter of 15 March 2023 which was in response to my letter to you (and others amongst civil society) dated 7 February 2023.

I also refer to my exchanges with most of you since that initial letter.

The purpose of my previous letters would have been clear to you. Notwithstanding the many years of your advocacy against me and my business interests, I have invited you to a round-table meeting so that I can share with you, on a transparent and collaborative basis, all documents, materials and calculations that you might wish to see regarding my business activities in the DRC. (Indeed, I have made similar invitations previously, in particular my invitation to you from February 2021 (attached) in which I offered you the opportunity to review my past transactions with full transparency and openness. Sadly you declined that invitation. Had you taken up the offer, there would have been no need for your current questions- all would have been answered.)

My offer was without pre-conditions. I did not require you to renounce your previous allegations against me, nor to commit to any process or outcome. My offer was genuine and sincere and it remains open to you.

Although I have consistently rejected allegations made by certain NGOs in the past, I have never sought to stifle the work of civil society groups. Indeed, in contrast to your position, the majority of civil society groups within the DRC today support the Settlement. Whilst generally supporting the work of civil society, I cannot be expected to stand by or advocate freedom of expression under the guise of civil society that is defamatory against me and to my immediate personal detriment and who on occasion have broken the law.

I do not intend to address each of the allegations and implications of wrongdoing included in your letter. Suffice it to say that I reject them all absolutely. I would like, however, to bring just a few points to your attention:

- You refer to the assets that my company "will return". Please note that all assets were returned promptly following the signing of the Settlement. The transfer process, including all data relating to assets and all hardware and software required to utilise such data, was carried out during the course of March-April 2022.
- An independent international Tier 1 valuation expert carried out a valuation of the returned assets, from which you would understand that the estimated \$2bn value of returned assets and cash to the DRC is a conservative estimate.
- The amount of lost costs to be reimbursed by the DRC to Ventora has been verified and audited by the DRC and can be fully supported with documentary evidence. This sum has not yet been paid by the DRC notwithstanding them receiving the assets almost 12 months ago. Together with the Tier 1 valuation report mentioned above, this is an example of the material you would be privy to at the roundtable meeting I have invited you to.

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- The Settlement Agreement that you have already seen and has been published in the public domain, contains the entire deal between Ventora and the Democratic Republic of Congo. The missing annex (not annexes) was the non-binding term sheet of 9<sup>th</sup> February 2022 which outlined the exact same Settlement terms but in a non-binding format. The whole purpose of the 24<sup>th</sup> February agreement was to enshrine in a binding nature, the terms that were previously agreed. By its very nature, there is nothing in that annex that could alter the full Settlement terms of which you are aware. You will be welcome to review the non-binding term sheet when we meet.
- I have repeatedly stated and confirm again today, that neither I, nor any company of the Ventora Group nor any person or entity connected to me or in which me or my family are beneficiaries have any interest in any mining or natural resources asset, permit, license or project in the DRC whatsoever, other than the three remaining passive royalties of which you are already aware.
- Ventora's acquisition of royalty rights have been verified multiple times. Such deals have been investigated and audited by independent parties such as Ernst & Young as well as the Democratic Republic of Congo (in advance of the Settlement) and the General Inspectorate of Finance (IGF) in their Gécamines report. In each case, the parties concluded that the transactions were carried out on fair commercial terms and at market value taking into account all available data and market conditions at the time of such transactions. In light of the changes to certain parameters and circumstances in the years following those acquisitions, Ventora agreed to pay an additional €249m in respect of the KCC Royalties that it had previously acquired. That additional amount equates to actual future royalties of approximately €685m in absolute terms. According to CNPAV's own calculation, where the entire KCC Royalties has a net present value of \$380m (approx. €360m), Ventora's additional payment represents 70% of the entire value of the KCC royalties.
- As you know I vehemently deny the defamatory allegations made in connection with Afriland as set out in Global Witness and PPLAAF's July 2020 report. As a result of which I have taken legal action against them in multiple jurisdictions. It is noted that Bloomberg's piece on the report stated that the organizations (i.e. GW and PPLAAF) *"couldn't prove that the network was used to evade U.S. sanctions and it doesn't allege any criminal behaviour."* Indeed, Global Witness and PPLAAF themselves state in page 8 of the report that they *"cannot conclusively prove that Gertler has indeed established this complex network to evade U.S. sanctions since 2017."*
- I would be happy to share with you more detail on my governance and compliance protocols at a future meeting.

In the course of a short letter, I do not expect to convince you of the errors in the decade-long campaign you and your predecessors have waged against me. Nonetheless and notwithstanding your mistaken belief that I caused losses to the DRC, your consistent failure to acknowledge the extent of investment I made and brought to the DRC is disappointing. Since my involvement in business activities in the DRC, I invested more than \$2bn in the acquisition, financing, maintenance, exploration and development of mining projects and

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brought other foreign investors to the DRC who have invested an unprecedented \$15bn in DRC mining projects. These projects have gone on to pay billions of dollars of tax payments to the DRC, have provided mass employment and increased hugely in production and value (which the DRC benefits from as shareholder, royalty-owner and through taxes). The overwhelming and long-term benefit to the country is incalculable.

As a final word, I believe that the terms of the Settlement are unprecedented and on any view should be positively received - even by my detractors. Your response and continued campaign against me suggests that no settlement agreement would ever have satisfied you - only an illegal expropriation of Ventora's assets, which itself would have plunged Ventora and DRC into a decade-long arbitration during which time the assets would have been blocked and valueless to the DRC. The consequences of your desired outcome regarding Ventora and the DRC is fundamentally bad for the Congolese people and I would be able to demonstrate this to you if you accept my invitation in this letter.

Instead, you should be championing the Settlement as the first significant success of the US Global Magnitsky sanctions regime and use it as a blueprint for other sanctioned persons. Your reaction now risks achieving the opposite result - moving forward, why would any sanctioned person ever reach a consensual settlement, transfer significant assets and pay such a huge price as I have done? I respectfully request you take into account the voice of the overwhelming number of hard working local NGOs in DRC who have involved themselves in and support the Settlement yet whose opinion you appear to consider is unworthy. They include NGOs who previously worked tirelessly against me.

You and any other NGOs are welcome to accept my offer to meet for a full and transparent engagement, without pre-conditions. This is an opportunity you should be welcoming, and if you truly represent the interests of the Congolese people, you would not let this offer pass by.

Sincerely,

Dan Gertler

## An Open Letter to Congolese and International NGOs<sup>i</sup>

By Dan Gertler

On January 15 of this year, on the basis of my commitment to comply with the terms and conditions set by OFAC, my family trust and other related entities were issued a temporary license to engage in some previously prohibited activities. We have committed to adopt and implement the most stringent anti-bribery and anti-corruption policies and measures across all our global operations, meeting the strictest criteria set by OFAC, the UK, DRC and Israeli authorities.

Moving forward, transparency and accountability will be the foundation of our business, and we will work hand in hand with law enforcement, civil society and international organizations to guarantee this. In particular, I wish to extend a hand to NGOs active in DRC, for whom I have been an adversarial subject of scrutiny for many years.

I have read your letter dated February 2, 2021 addressed to Secretary of State Antony Blinken and Treasury Secretary Janet Yellen expressing your concerns over the issuance of this license. I believe wrong or misleading information has led you to take this position, as it has led you in the past to reach mistaken conclusions about our business activities in the Democratic Republic of Congo.

As a first step in my new approach of openness and transparency, I would like to invite you to appoint two representatives – one Congolese, one International – to review any past business deal which you deem fit, whether you have previously reported on this deal or not.

I will, in person, grant your representatives full access to all existing documentation on the deal which you chose to review, and you will be free to publish these documents and your conclusions at the end of this process. I am willing to spend as long as it takes with your team in Kinshasa.

I do so in good faith. I do so because I believe you have been misled. I do so because I believe we share a joint passion to see Congo, its people and its economy thrive.

Sincerely,

Dan Gertler

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Afrewatch	Agir pour des élections transparentes et apaisées
Congo Nouveau	Cadre de concentration sur les ressources naturelles de l'Ituri (CDC/RN)
Filimbi	Coalition pour la gouvernance des entreprises publiques du secteur extractif
Lucha	(COGEP)
EG Justice	Congo n'est pas à Vendre (« Congo is not for sale »)
FACT Coalition	Initiative bonne gouvernance et droits de l'Homme (IBGDH)
Freedom House	Observatoire citoyen des droits et de lutte contre la corruption en RDC (OCIDC)
Global Witness	Observatoire de la dépense publique (ODEP)
Human Rights First	Observatoire d'études et d'appui à la responsabilité sociale et environnementale
Human Rights	(OEARSE)
Watch	UNIS – Plateforme panafricaine de lutte contre la corruption
Never Again	Platform to Protect Whistleblowers in Africa (PPLAAF)
Coalition	Publish What You Pay – U.S.
The ONE Campaign	Resource Matters
Open Society	Rights and accountability in development (RAID)
Foundations	
Oxfam America	
The Sentry	
Transparency	
International	
Justice pour tous	