



THE SENTRY
WAR CRIMES SHOULDN'T PAY



resource matters



15 March 2023

Dear Mr. Gertler,

Thank you for your letter to our organizations dated 7 February 2023. While we appreciate your sentiment in reaching out to us, we are not in a position to endorse the [Settlement Agreement](#) your company, Ventora Development SASU, signed in February 2022 with the government of the Democratic Republic of Congo (the "Settlement"). In short, too many contractual clauses are not yet available for review, such as the annexes to the Settlement. Moreover, many outstanding questions remain about its substance.

We also remain concerned about the discrepancies between the "spirit of transparency and collaboration" you invoke in your letter and your actions targeting civil society groups. For example, in your letter you "welcome the role of civil society and the free press" and acknowledge that the advocacy conducted by civil society has had its desired effect. Yet at the same time, you or your network have pursued, and continue to pursue, legal action against anti-corruption and human rights activists such as the Platform to Protect Whistleblowers in Africa (PPLAAF), Global Witness, Resource Matters, and the spokesperson for the anti-corruption coalition, *Congo n'est pas a vendre*, all of whom have questioned your business dealings in Congo.

Furthermore, two whistle-blowers employed at Afriland First Bank in Kinshasa who exposed alleged money laundering involving you and your network were [prosecuted](#) by Congolese authorities and subsequently [sentenced to death](#) *in absentia* following a [deeply flawed](#) legal process. Although they face the death penalty, the alleged money laundering that they reported has not been investigated. Our understanding is that the Settlement you asked us to endorse may actually obviate such investigations since it would also immunize you and your companies from prosecution in DRC.

Congo's natural resources and the benefits derived from them ultimately belong to its people. They have the right to full transparency about all transactions related to such resources. Indeed, Congolese law requires it. Publication of all mining contracts is also a key condition set by the International Monetary Fund for its \$1.5 billion loan to Congo.

In [your letter](#) you expressed a willingness to "share further details and documentation in full transparency" and that a full copy of the Settlement was included as an addendum. Unfortunately, a copy of the Settlement was not attached. Nor has it been provided to us, despite our prior requests. We urge you to publish it in full alongside the documents that underpin it, including all contracts, annexes, loan agreements and similar documents pertaining to the acquisition of Congolese assets by your companies since 2010.

We understand that [civil society groups](#), former [US officials](#) and [others](#) have already expressed concerns and raised important questions about the parts of the Settlement that have been made public. As part of your commitment to “full transparency” we urge you to address these concerns, including those set out below:

1. **The value of the assets you will return to the DRC.** Your letter states that the mining and oil assets in north-eastern Congo that your company will return are worth \$2 billion, yet Congolese civil society groups and other financial experts say the assets are worth considerably less. We have not seen credible, transparent and independent verified information that would place the value of these assets at \$2 billion. Such information is vital to assess the Settlement and the true value of the assets to be returned to Congo.
2. **Reimbursements to your company.** The Settlement provides for a reimbursement of 240 million EUR to your company for the prior investments made in the mining and oil assets that you will return to the Congolese state. Again, no credible, transparent and independent assessment of the investment costs has been published, nor has an explanation been provided setting out why the costs of private exploration should be reimbursed by the Congolese state and its people.
3. **Reimbursement of a loan to your company.** The Settlement provides for a reimbursement of a \$192 million loan your company made to Gécamines, the Congolese state copper-cobalt company, shortly before US sanctions were imposed against you and your companies in 2017. Despite [civil society](#), the [DRC public prosecutor](#) and the [Inspection Générale des Finances](#) raising concerns about the use of these funds, there has not been enough information to ascertain the ultimate purpose or use of the proceeds of the loan. Additionally, information about the assets or receivables Gécamines may have pledged as securities and any other contractual agreements remain undisclosed.
4. **Ongoing royalty payments for three cobalt-copper mines.** The Settlement sets out that your company will retain the royalties from Mutanda Mining, Kamoto Copper Company and Metalkol, three lucrative copper and cobalt mines. However, [Congolese officials](#), [civil society](#) and others have questioned the legality of those transactions and the issues are still unresolved. For example, in 2011 two Congolese government ministers [explicitly warned](#) Gécamines that the sale of the stake and royalties in Mutanda Mining to your company was contrary to the DRC law, yet the sale went ahead.

Without clarity as to whether the procedure to privatize state royalties was legal, the allocation of these royalties to a private company and not to the DRC state, is at a minimum, premature. Without a clear resolution, this arrangement could improperly deprive the DRC Treasury of much needed revenue. A [recent financial analysis](#) by civil society groups estimates these royalties could generate \$1.8 billion over the next two decades, funds which could be used to alleviate poverty and improve the lives of Congolese citizens. Once again, a credible, independent and transparent

assessment of the validity of the deals needs to occur prior to allocating the royalties to your company in order to resolve these outstanding questions.

Another issue of concern for us is that there are ongoing criminal investigations in various jurisdictions, including in the [UK](#), [Netherlands](#) and [Switzerland](#), [related](#) to business activities of your closest partners in the DRC. Since 2017, the US government has also imposed sanctions on you and dozens of entities and individuals in your network for “opaque and corrupt mining deals” in Congo. In its [press statement](#) in 2021, the US Department of the Treasury said it remained “committed to ensuring that Gertler is not able to corruptly profit from continued access and influence in the DRC and globally.” You acknowledged that these sanctions have been “crippling,” and that your companies have now “implemented thorough compliance procedures.” We urge you to fully publish all these new procedures as well as a full assessment of where these were not followed in the past.

We note the Settlement specifically commits the Congolese government to assist you in your efforts to have the US sanctions cancelled. Without further clarity on what measures have been taken to justify removing sanctions, it is not clear why sanctions should be removed. We question why the DRC government should assist you in removing these sanctions. We understand that the statutory grounds for sanctions relief may not have been fulfilled and absent any evidence of what steps you have taken to obviate sanctions or how the law has been satisfied, lifting sanctions prematurely could be harmful to the Congo and risks the integrity of the sanctions process. In the interests of transparency, we joined a broad coalition of 25 international and Congolese civil society groups in a [public letter](#) to the US administration in this regard.

We are open to discuss our concerns with you in person. But for such a meeting to be productive, there would need to be a halt to all legal process against human rights defenders, anti-corruption activists, non-profit organizations and media outlets by your companies; full public disclosure of the Settlement Agreement and its annexes; a full declaration of all your current business holdings and your affiliated companies and/or proxies and comprehensive disclosure of all contracts that underpin those current holdings. Such actions by you would provide a basis for such a meeting.

Yours sincerely,

Human Rights Watch

Resource Matters

Rights & Accountability in Development (RAID)

The Sentry