

Billions Lost:

A Financial Investigation into Dan Gertler's Mining Deals

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LE CONGO
N'EST PAS A VENDRE

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The Democratic Republic of Congo stands to lose \$3.71 billion from mining deals with middleman Dan Gertler

The Democratic Republic of Congo (DRC) faces losses of at least \$3.71 billion from suspect mining and oil deals with businessman Dan Gertler, according to new calculations by the civil society coalition *Congo is Not for Sale*. The DRC has lost \$1.95 billion so far. The US treasury sanctioned Gertler for “corrupt and opaque deals” in 2017, while several transactions are currently the subject of international bribery investigations. The DRC stands to lose \$1.76 billion more in future royalty payments to Gertler’s companies if it does not take immediate action to review the deals. President Félix Tshisekedi has so far failed to stop the haemorrhage. The coalition calls on Congolese authorities to end their silence on this matter and take urgent measures to ensure that Congo’s mineral wealth benefits the DRC treasury and its people.

The mining sector is critical to the Congolese economy, representing 55% of the government’s total revenue in 2017, 99% of total exports, and a quarter of total employment.¹ *Congo is Not for Sale*’s new findings show that the Congolese state stands to lose out on a total of \$3.71 billion. This is more than the DRC state’s mining revenues for 2017 and 2018 combined.²

Gertler has benefited from a privileged and protected position in Congo since his friend Joseph Kabila was made president in 2001. Kabila ruled for almost two decades, eventually stepping down in January 2019 after delayed and contested elections. While Congo was stuck in the bottom rungs of the UN Human Development Index throughout his presidency, Gertler’s business as an intermediary for the country’s biggest mining deals thrived, and Kabila and his family built up a vast business empire.³

“Extensive public corruption”

Corruption allegations have followed Gertler for years. According to the US Treasury Department, Gertler secretly acquired mining or oil licences from the DRC government or state-owned mining companies at knockdown prices before selling them on to international partners, or even back to the government, for incredible profits.⁴ He also acquired rights to royalty payments, normally paid to the state and its companies, under dubious circumstances.⁵

Gertler’s biggest deals involved two multinational mining giants: Glencore and the Eurasian Natural Resources Corporation (renamed the “Eurasian Resources Group”, or ERG). Law enforcement in the United Kingdom, the United States and Switzerland are investigating several of these deals, and

¹Extractive Industries Transparency Initiative DRC, ‘Overview’ < <https://eiti.org/democratic-republic-of-congo> >.

² The mining sector brought revenues of \$1.68 billion in 2017 and \$1.57 billion in 2018. See: EITI DRC, ‘Rapport initial 2017 (October 2019) 14 <<https://drive.google.com/file/d/19w5rrGDzJMvC7VxHlwzTu5Abi69ZH2j6/view>> and <<https://deskeco.com/rdc-le-secteur-minier-apporte-157-milliards-de-dollars-americains-au-budget-de-letat-en-2018#:~:text=Le%20secteur%20minier%20a%20g%C3%A9n%C3%A9r%C3%A9,hausse%20de%209%2C%201%25>> .

³ Congo Research Group, ‘All the President’s Wealth: The Kabila Family Business’ (20 July 2017) <<http://congoreserchgroup.org/all-the-presidents-wealth/>>; See also: Forbes, ‘Dan Gertler, Real Time Net Worth’ [net worth estimated at \$1.2 billion when accessed] <<https://www.forbes.com/profile/dan-gertler/?sh=3911454e348d>> .

⁴ United States Department of the Treasury, ‘United States sanctions human rights abusers and corrupt actors across the globe’ (21 December 2017) <<https://home.treasury.gov/news/pressreleases/sm0243>>.

⁵ See Congo n’est pas à vendre, ‘YaBiso: le parapluie de Dan Gertler’ (22 April 2021) <https://corruptiontue.org/dossiers/dossier/yabiso-dan-gertler-s-lifeline>. On 2 April 2021, the *Congo is Not for Sale* coalition wrote to Dan Gertler via Powerscourt, Gertler’s public relations company, requesting comment on the information in this report. He did not respond.

Gertler was put under US sanctions for alleged corruption in 2017. The sanctions have subsequently made it more difficult for Gertler to benefit from the proceeds of his disputed deals in the DRC.

Gertler has always strongly denied the corruption allegations against him and insisted that he has brought huge investment to the DRC. Glencore and ERG have also asserted that they were not involved in any corruption or wrongdoing. In the final days of the Trump administration in January 2021, US authorities passed a secret measure effectively suspending the sanctions against Gertler. After *Congo is Not for Sale* and other civil society groups called for the measure to be rolled back, the Biden administration revoked the license a few weeks after taking office, on the grounds that Gertler had indeed engaged in “extensive public corruption.”⁶

Two decades of suspicious deals costing Congo \$1.95 billion

Congo is Not for Sale calls on DRC President Félix Tshisekedi to end his silence on this case and launch an investigation into Gertler’s deals, which span over two decades. Concerns about Gertler’s deals were first flagged by the UN Panel of Experts on the Illegal Exploitation of Natural Resources in the early 2000s.⁷ In 2013, Kofi Annan’s Africa Progress Panel (APP) published a landmark report that highlighted the astonishing sums the DRC was missing out on by doing business with Gertler’s offshore companies.⁸ That report concluded that Gertler’s deals for five prized copper and cobalt concessions had caused the DRC to lose out on \$1.36 billion.

In 2013, Gertler criticised the Africa Progress Panel for “basic errors” in its calculations.⁹ “Rather than causing a loss, the DRC has benefited from the various transactions through favourable terms of new joint ventures,” said a statement from his company Fleurette. Gécamines published its own report in 2018, arguing that the Africa Progress Panel was using valuations multiple times too high.¹⁰

Eight years on, *Congo is Not for Sale* has reviewed and updated the panel’s figures using newly available data, while adding a handful of additional transactions in which Gertler played a key role.

Using the new data, ***Congo is Not for Sale* estimates that the total loss to the Congolese state from Gertler’s deals has, so far, come to at least \$1.9467 billion.**

This loss, for a country that ranks 175 out of 189 on the UN Human Development Index¹¹ is devastating for its citizens. With this money, the Congolese government could have:

⁶ US Department of State, ‘Revocation of License Granted for Dan Gertler’ (8 March 2021) <<https://www.state.gov/revocation-of-license-granted-for-dan-gertler/>>.

⁷ UN Security Council, ‘Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo’ *UN Report S/2001/357* (12 April 2001) <<https://reliefweb.int/report/democratic-republic-congo/report-panel-experts-illegal-exploitation-natural-resources-and> >

⁸ Africa Progress Panel, ‘Equity in Extractives - Stewarding Africa’s natural resources for all’ *Africa Progress Report 2013* (2013) 101 <<https://reliefweb.int/report/world/africa-progress-report-2013-equity-extractives-stewarding-africa-s-natural-resources>> (‘Equity in Extractives’).

⁹ Fleurette’s Response to the 2013 Africa Progress Panel Report, 1 (on file with the *Congo is not for Sale* coalition).

¹⁰ Gécamines, ‘The truth about the lies of NGOs in the Democratic Republic of Congo’ (November 2018) 22 <https://www.gecamines.cd/rapport_en.pdf> (French version: https://www.gecamines.cd/rapport_fr.pdf). (‘The truth about the lies of NGOs’).

¹¹ See the latest UN Human Development Index (2019) <<http://hdr.undp.org/en/countries/profiles/COD#>>.

- built 10,551 school complexes¹², which is the equivalent of approximately a third of all existing primary and secondary schools in the DRC in 2009¹³, or
- paid for 21.32 million people to have access to basic health care in a Centre de Santé (Health Care Center)¹⁴ for 10 years, or
- paved 8,768.85 Km of surfaced roads,¹⁵ which would be more than twice the actual surfaced roads of the DRC countrywide¹⁶. To elaborate, this would have allowed for new paved roads between Kinshasa in the west and Lubumbashi in the south; Lubumbashi in the south to Goma in the east; Goma in the east to Kisangani in the north; *and* Kisangani in the north back to Kinshasa in the west.¹⁷

Our methodology for calculating the funds that the DRC missed out on was to combine the revenue that Gertler received from his various assets (what he earned by selling-on the assets, or from royalties or other contractual payments while he held onto them) and subtract the amount he paid for them.

It should be noted that Gertler's mining and oil deals were often complex, sophisticated, and opaque. Understanding what, if anything, he paid for assets and how much he has earned, is a complicated task, only made more difficult by the need to factor in the fluctuations of metal prices. When several contradicting prices are available, we have typically opted for the most conservative option, i.e. the option that would tend to underestimate the losses to Congo.

In several cases, however, we were able to replace the commercial valuations that the Africa Progress Panel had used in 2013 with the amount that Gertler actually received when he sold some of his most important assets in 2017. For instance, Africa Progress Panel had estimated the value of Gertler's stake in Mutanda Mining and Kansuki at \$766.6 million. In reality, he sold it for at least \$922 million. In other words, rather than overestimating Gertler's profits, in some cases the Panel had underestimated them.

¹² In 2015, the Minister of Education in collaboration with the Bureau Central de Coordination du Ministère des Finances de la RDC (BCECO) built 6 school complexes, which included 6 rooms, 1 administrative and 1 sanitary building (as per the Congolese State standards), for the cost of \$1,107,523. The average cost per school complex was around \$184,500. See: ISCO, 'PRRIS: Projet de Reconstruction/Réhabilitation des Infrastructures scolaires à travers les 11 Provinces de la RD Congo' (2016) <<https://isco-sc.it/internazionale/2016/04/10/prris-projet-de-reconstructionrehabilitation-des-infrastructures-scolaires-a-travers-les-11-provinces-de-la-rd-congo/>>

¹³ Ministère de l'Enseignement Primaire, Secondaire et Professionnel « EPSP », Projet d'Appui au Redressement du Secteur de l'Éducation PARSE (Unité de Coordination et de Gestion du Projet), 'Enquête de suivi des dépenses publiques à destination (ESDD) dans le secteur de l'éducation en RDC' (2012) 23 <<https://etico.iiep.unesco.org/es/resource/enquete-de-suivi-des-depenses-publiques-destination-esddd-dans-le-secteur-de-leducation-en>>.

¹⁴ According to a study by the Public Health Ministry, the cost for a Health centre with HIV and testing center is \$9.13/person/year. See: République Démocratique du Congo, Ministère de la Santé Publique, Secrétariat Général, *Plan National de Développement Sanitaire PND 2011-2015* (March 2010) 47 <[Microsoft Word - PND 2011-2015-KNT.doc \(who.int\)](#)>.

¹⁵ According to the World Bank Road Costs Knowledge System (ROCKS) data, the average cost per km of newly built road in sub-Saharan Africa is 220,000\$/km. See: E. Bosio, J. Arlet, A.A. Nogues Comas and N.A. Leger, 'Road Costs Knowledge Systems - Update' (1 June 2018) <<https://www.doingbusiness.org/en/reports/thematic-reports/road-costs-knowledge-system>>. This is in the range of the African Development Bank Group, according to its 'Study on Road Infrastructure Costs: Analysis of Unit Costs and Cost Overruns of Road Infrastructure Projects in Africa' (May 2014) <[Study on Road Infrastructure Costs- Analysis of Unit Costs and Cost Overruns of Road Infrastructure Projects in Africa \(afdb.org\)](#)>.

¹⁶ Ministère des Infrastructures, 'Situation des infrastructures routières en République Démocratique du Congo' <<https://www.celluleinfra.org/index.php/le-ministere/situation-des-infrastructures-en-rdc>>.

¹⁷ Kinshasa – Lubumbashi: ~ 2.300 km; Lubumbashi – Goma: ~1.600 km; Goma – Kisangani: ~675km; Kisangani – Kinshasa (via Tshikapa): ~2.300 km. This is a total of 6.875km. Since part of the Kisangani-Kinshasa road overlaps with the Kinshasa-Lubumbashi road, the actual number of kilometers is rather around 6.000km.

In response to the Africa Progress Panel in 2013, Gertler claimed that calculations of his earnings do not take into account his investments in the assets. For instance, he said that he has invested hundreds of millions of dollars in Mutanda.¹⁸ However, the reality is not quite as straightforward as this, because under Mutanda's contract terms he was a "carried partner". This means that he did not have to raise funds to co-invest in the projects. Instead, he was able to borrow the money from the operator, Glencore, and repay the loan using funds from the mine's future earnings.¹⁹ Gertler inherited this privilege from Gécamines in 2011, when he bought the state mining company's 20% share.²⁰ Gertler was also a carried partner in at least one other project, Metalkol, in which he held shares from 2010 to 2012.²¹

The Congo is Not for Sale coalition wrote to Dan Gertler on 2 April 2021 with the main findings of our research and requested him to comment, provide clarifications and/or provide additional information. He did not respond.

Another two decades of losses to come, estimated at \$1.76 billion

The losses are far from over. Gertler will keep collecting royalties for many years to come as a result of secretive contracts signed between 2011 and 2017. Royalties are revenues that typically accrue to the state or a state-owned company, and are paid as a share of the mining project's production. However, in at least three of its most important mining projects, Gécamines transferred the right to collect royalties to companies affiliated with Dan Gertler. This was the case for royalties from two of Glencore's projects, KCC and Mutanda, and one ERG project, Metalkol.

In written communication to the *Congo is Not for Sale* coalition on 22 April 2021, ERG said that as regards the royalties of the Metalkol project, Gécamines decided independently to sell them to a third party and "at no time have we consented to this assignment of the royalty."²² Glencore declined to comment and Gécamines did not respond to a letter requesting clarification.²³

Taken together, the three projects that pay royalties to Gertler could produce over 70,000 tons of cobalt per year at full capacity, equivalent to around half of world supply, according to Bloomberg News.²⁴

We estimate that if his present rights are not reviewed and rescinded, Gertler will receive at least \$1.76 billion in future royalties between 2021 and 2039. This comes down to over \$254,000 per

¹⁸ Fleurette Group, 'Sale of Stake in Mutanda to Glencore' (13 February 2017) <<https://www.prnewswire.com/news-releases/fleurette-group---sale-of-stake-in-mutanda-to-glencore-613602093.html>>.

¹⁹ Contrat de création de société N°474/10300/SG/GC/2001 du 16 mai 2001, Avenant N°3, Mutanda Mining Sprl, (6 January 2009) 5.

²⁰ Contrat de cession des parts sociales entre La Générale des Carrières et des Mines Sarl et Rowny Assets Limited, N° 1229/19218/SG/GC/2011 (28 March 2011) 3.

²¹ Global Witness, 'Memo to ENRC shareholders – ENRC must address corruption concerns in Congo and publish findings' (12 June 2012) 5 <https://www.globalwitness.org/documents/10871/global%20witness%20memo%20to%20enrc%20shareholders%2012.6.12_1.pdf> ('Memo to ENRC shareholders'). In the transcript of a January 5, 2012 conference call with analysts, ENRC CEO Felix Vulis confirmed his company would be financing all the development costs of Metalkol.

²² Electronic communication to CNPAV from Katrina White, Head of Compliance International, ERG, 22 April 2021 (on file at CNPAV).

²³ CNPAV wrote to Gécamines on 2 April 2021 requesting comment and clarifications. Gécamines did not respond.

²⁴ M. Kavanagh and W. Clowes, 'Billionaire Gertler Buys Royalty Rights in Congo Cobalt Project' *Bloomberg News* (16 November 2020) <<https://www.bloomberg.com/news/articles/2020-11-16/gertler-bought-gecamines-royalties-in-erg-congo-cobalt-project#:~:text=A%20company%20controlled%20by%20Israeli,the%20world's%20largest%20cobalt%20projects.>>> ('Billionaire Gertler buys royalty rights').

day on average for the next 19 years. In “net present value” terms, these future cash flows are worth \$711 million.²⁵ Two tables annexed to this note break down the calculations in detail. Table 1 lays out our calculations for estimated minimum losses to the DRC state so far. Table 2 details our estimates of the minimum future loss from royalties from KCC, Mutanda and Metalkol.

We base our estimates of these royalties on production forecasts from KCC and Mutanda, published in Glencore’s reports, and on data from ERG and the DRC mines administration for Metalkol.²⁶ Future copper and cobalt prices have been calculated conservatively, at an average of the lowest price for each year from 2011 to 2020. We have also not included certain assets due to a lack of data—such as eastern DRC oil licences that Gertler took over in 2010, even though they had already been awarded to other companies.²⁷

Gertler’s greatest future earnings are expected to come from royalties from Glencore’s projects (\$1.46 billion). While this figure seems high, this is still less than half the \$3 billion in damages that Gertler’s own representatives claimed in a 2018 lawsuit against Glencore, after the Swiss miner temporarily halted royalty payments in the wake of US sanctions against Gertler.²⁸

The royalty streams Gertler collects are immense when compared to DRC’s overall mining revenues. We estimate that he had the right to collect a total of \$238 million between 2018 and 2020, amounting to \$217,000 on average per day. This would have allowed for the building of a new school every day. In comparison, the average per capita income of mining communities living in the DRC copper and cobalt region is \$35 per month, according to a Berkeley University study.²⁹ “Two-thirds of households report being worried about not having enough to eat,” the study emphasises.

The *Congo is Not for Sale* coalition calls on the DRC government to open an investigation into Gertler’s transactions, prioritizing those that continue to generate revenue to this day.

²⁵ The net present value implies using a “discount rate” to gradually reduce the value of future royalties by a fixed percentage, to take account of inflation and greater uncertainty over whether royalties can be collected the further ahead in the future one looks. The discount rate used here is the same Glencore uses for its DRC projects: 13.5%. See also below.

²⁶ All references to sources are provided in the tables below.

²⁷ Fleurette Group, ‘Overview - 85% ownership of one of Africa’s most exciting concessions’ <<https://www.fleurettegroup.com/business-projects/oil-gas/>>.

²⁸ H. Sanderson and N. Hume, ‘Gertler seeks \$3bn damages from former partner Glencore’ *Financial Times* (27 April 2018) <<https://www.ft.com/content/a29b7ce6-4a39-11e8-8ae9-4b5ddcca99b3>>.

²⁹ B. Faber, B. Krause, R. Sánchez de la Sierra, ‘Artisanal Mining, Livelihoods, and Child Labor in the Cobalt Supply Chain of the Democratic Republic of Congo’, UC Berkeley CEGA White Paper (2017) 7 <<https://escholarship.org/uc/item/17m9g4wm>>.

Summary overview: Losses from deals involving Dan Gertler

All figures in millions of US dollar

Company	Asset	Price paid to state	Revenue received	Past losses	Future losses	Total losses
Mutanda Mining	Shares	\$189m	\$922m	\$733m		\$1,415m
	Royalties		\$302.2m	\$302.2m	\$379.68m	
Kamoto Copper Company	Royalties	\$0 (loans fully reimbursed)	\$59,73m	\$59.73m	\$1,084.66m	\$1,144.4m
SMKK	Shares	\$15m	\$75m	\$60m		\$60m
Metalkol & Comide	Shares (w/Comide)	\$63,5m	\$685,75m	\$622,25m		\$622.25m
	Royalties	\$55m	\$26,9m		\$298,97	\$299m
Sodifor/Frontier	Shares	\$60m	\$80m	\$20m		\$20m
Nessergy	Blocks	\$0.5m	\$150m	\$149.5m		\$149.5m
TOTAL				\$1,946.7m	\$1,763.3m	\$3,710m

Table 1: Estimated past losses to the DRC state

Mutanda Mining and Kansuki: shares and royalties

Mutanda has been among the top three mining companies in the DRC for most of the past decade.³⁰ Before it shut down at the end of 2019, Mutanda Mining was the single largest cobalt producer in the world.³¹ It still has reserves to produce significant amounts of copper and cobalt for over a decade to come.

Gécamines sold its stakes in Mutanda (20%) and Kansuki (25%) to Gertler's offshore companies Rowny and Biko in March 2011.³² As part of the purchase, Gertler also acquired the right to collect royalties, signing bonuses (*pas de porte*) and dividends.³³

Mutanda and Kansuki merged in July 2013, and rebranded as Mutanda Mining. Gertler held 31% ownership of the merged entity.³⁴ He then sold on this stake and the right to collect dividends in February 2017 to Glencore. However, he still holds the right to collect royalties to this date.³⁵

On November 30, 2019, production stopped at Mutanda, with Glencore stating the closure was needed due to care and maintenance. The company indicated the shut-down would last two years.³⁶ To err on the conservative side, we are assuming a three-year shut-down in our calculations.

³⁰ See production and *redevance* statistics from the Katanga Division des Mines, Haut-Katanga Division des Mines and Lualaba Division des Mines for 2011-2020, available on www.congomines.org.

³¹ See Lualaba Division des Mines, Statistiques des Exportations, Transferts, et intersites des produits miniers marchands au cours de l'année 2019.

³² Contrat de Cession des parts de la Gécamines dans Mutanda Mining (28 March 2011) ('Contrat de cession'). For the link between Gertler and the companies Rowny and Biko, see also: Global Witness, 'Secrecy surrounding Glencore's business deals in the Democratic Republic of Congo – Risks Exposing Shareholders to Corrupt Practices' (9 May 2012) <https://www.globalwitness.org/documents/17969/DRC-GW_secret_sales_memo_May_9_2012_ENG.pdf>.

³³ Contrat de création de société N°474/10300/SG/GC/2001 du 16 mai 2001, Avenant N°3, Mutanda Mining Sprl (6 January 2009) 17, art. 12(5). The sales contract of March 28, 2011 (Gecamines selling to Gertler's company Rowny) says that Rowny was buying the shares and all the rights attached to them (thus also the rights to royalties). See Contrat de Cession (n. 30) 3.

³⁴ Glencore XStrata, '2013 Half-Year Production Report for the six months from 1 January to 30 June 2013' (14 August 2013) 9 <https://www.rns-pdf.londonstockexchange.com/rns/6239L_1-2013-8-13.pdf>.

³⁵ Glencore did not announce that Gertler was entitled to the royalties at the time of the buy-out (Glencore, 'Glencore purchases stakes in Mutanda and Katanga' (13 February 2017) <<https://www.glencore.com/media-and-insights/news/glencore-purchases-stakes-in-mutanda-and-katanga#:~:text=Glencore%20has%20today%20purchased%20from,the%20%E2%80%9CKatanga%20Shares%E2%80%9D>>). It did in a press release of June 15, 2018. This press release indicates that the royalty rate changed slightly from 2.5% of sales to approximately 2.43% of gross sales.

³⁶ Glencore, '2019 Half-Year Report' (7 August 2019) 34 <<https://www.glencore.com/media-and-insights/news/2019-Half-Year-Report-release>>; Reuters, 'Glencore's Mutanda mine in Congo shuts down a month early' (26 November 2019) <<https://www.reuters.com/article/glencore-congo-idUSL8N2863D5>>.

ASSET AND DESCRIPTION	WHAT GERTLER'S COMPANIES PAID TO THE DRC/STATE COMPANIES TO ACQUIRE THE ASSET (US\$)	MONEY RECEIVED BY GERTLER FROM THE ASSET (\$US)	ESTIMATED LOSS TO THE DRC/STATE COMPANIES
MUTANDA AND KANSUKI SHARES March 2011 – February 2017	\$189 million According to Gécamines' financial statements, it sold its stake for \$189 million. ³⁷	\$922 million February 13, 2017: Gertler sold his shares to Glencore for (at least) ³⁸ \$922 million. ³⁹	\$733 million

³⁷ Gécamines, 'The truth about the lies of NGOs' (n.10) 23. The sales contract has a lower price: \$120 million for Mutanda and \$17 million for Kansuki. See 'Contrat de Cession' (n. 30) 6 ; Contrat de Cession des parts de la Gécamines dans Kansuki SPRL, (28 March 2011) 6. Gertler's Fleurette says it paid \$220m, including a debt of \$31.4m owed by Gécamines to Samref/Mutanda. See: Fleurette Properties Limited, 'Fleurette and Glencore Complete Merger of Mutanda and Kansuki Mining Operations' *prnewswire* (25 July 2013) <<https://www.prnewswire.com/news-releases/fleurette-and-glencore-complete-merger-of-mutanda-and-kansuki-mining-operations-216882021.html>>. We are using the Gécamines figure as more authoritative.

³⁸ It should be noted that Glencore's press release is ambiguous on the sale price, which may actually have been \$130 million higher. The press release of Feb. 13, 2017 states that "In addition [to the share purchase], Glencore has acquired shareholder loans owed to the Fleurette group by Mutanda Mining Sarl in the amount of US\$130 million." It is unclear whether these \$130 million should be added to the \$922 million consideration, or whether they were part of it. Glencore declined to clarify the ambiguity. Out of caution, we rely on the lower sale price.

³⁹ Glencore, 'Glencore purchases stakes in Mutanda and Katanga' (n.33).

<p>MUTANDA ROYALTIES</p> <p>March 2011 – December 2020</p>	<p>\$0</p> <p>The royalties were included in the purchase price for the Mutanda and Kansuki shares.</p> <p>From 2011 to 2016, the royalty rate was 2.5% of gross revenue.⁴⁰ In 2017, the royalty rate was reduced to 2.43% after Glencore purchased Gertler’s stake on February 13, 2017.</p> <p>This means there was no separate amount paid specifically for the royalties.</p>	<p>\$302 million</p> <p>Gertler still has the right to collect royalties to this date, as long as Mutanda Mining is in production.</p> <p>Between March 2011 and December 2020, Gertler was entitled to at least \$302 million.⁴¹</p>	<p>\$302 million</p>
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⁴⁰ Contrat de création de société N°474/10300/SG/GC/2001 du 16 mai 2001, Avenant N°3, Mutanda Mining Sprl, (6 January 2009) 17, art. 12(5).

⁴¹ **Total Gertler royalties 2011-2020: \$302,327,546.65.** Calculating royalties requires data on revenue, an estimate of deductible costs (if applicable), and metal price data. Revenues for 2011 are based on Glencore’s annual report, and multiplied by 0.76 since Gertler had the royalties only from March 28, 2011 (see: Glencore, ‘Production Report for the 12 months ended 31 December 2012’ (12 February 2013) 2 <<https://www.glencore.com/dam/jcr:6cecd234-a237-4dbf-a67b-269fa197c263/GLEN-Production-report-2012.pdf> >). Revenues for 2012-2015 are based on DRC EITI reports (see Rapport de conciliation ITIE RDC exercice 2012 (December 2014) 177; Rapport ITIE - RDC 2013 (July 2015) 212; Rapport ITIE - RDC 2014 (December 2015) 150; Rapport ITIE - RDC 2015 (December 2017) 153). For lack of equivalent 2016-2019 EITI data, we calculate used Glencore’s annual production reports to calculate gross revenue (see: Glencore, ‘Preliminary Results 2017’ (21 February 2018) 125; Glencore, ‘Production Report for the 12 months ended 31 December 2017’ (1 February 2018) 11; Glencore, ‘Full Year 2018 Production Report’ (1 February 2019) 10; Glencore, ‘Full Year 2019 Production Report’ (4 February 2020) 11). For prices, see the LME website: for copper, see <https://www.lme.com/Metals/Non-ferrous/Copper#tabIndex=2> and for cobalt, see <https://www.lme.com/Metals/Minor-metals/Cobalt#tabIndex=2>.

Kamoto Copper Company: royalties

Kamoto Copper Company (KCC) acquired the most important mining sites that Gécamines operated in Kolwezi in the 1970s and 1980s, and has been among the largest Congolese copper and cobalt producers in the last 15 years, ranking first in 2020.⁴² From 2009 on, as a result of the DRC mining contract review, Gécamines has had the right to collect royalties amounting to 2.5% of KCC's net sales of copper and cobalt.⁴³

However, Gertler secretly started collecting these royalties in Gécamines' place in the first half of 2013.⁴⁴ This was initially done to reimburse a complex series of loans that Gertler's companies made to Gécamines between December 2012 and January 2015. We have not counted these loan reimbursements as losses to the DRC as part of this report.

Even when the loans were fully reimbursed, Gertler's company Africa Horizons Investment Limited (AHIL) remained entitled to the royalties.⁴⁵ None of the publicly available contracts for this transaction refer to any payment Gertler made to acquire the right to collect the KCC royalties. Gertler's lawyers told Bloomberg News that their client paid \$150 million to acquire the right to collect royalties, supposedly by reducing the debt Gécamines owed to Gertler by such an amount.⁴⁶ However, there is reason to suspect that that the \$150m was never effectively 'paid'.⁴⁷ Had the \$150 million been deducted from the outstanding loans at the time of the deal in May 2013, Gécamines would have completed its reimbursements in 2014 and the right to collect royalties would have returned to Gécamines.⁴⁸ Instead, Gertler kept the royalties even after the debt was fully reimbursed.

While the details remain disputed, all parties to the transactions agree in documents seen by *Congo is Not for Sale* that the loans to Gécamines were reimbursed by 27 October 2015 at the very latest. After definitively acquiring the royalty rights in January 2015, KCC granted AHIL two royalty advances, in March and July 2015, for a total of \$54.7 million.⁴⁹ These sums went towards paying off Gécamines' outstanding debt to Gertler. As a result, we have deducted the total of these advances

⁴² See Lualaba Division des Mines statistics available at www.congomines.org.

⁴³ Convention KCC (Gécamines – KFL – Global Enterprises Corporate) (2009) art. 6(10).
<<https://congomines.org/reports/626-convention-kcc-qecamines-kfl-global-enterprises-corporate-2009>>.

⁴⁴ Debt registers according to Gécamines and according to AHIL (on file with the *Congo is not for Sale* coalition) (hereinafter "Gécamines-AHIL debt registers).

⁴⁵ Accord Tripartite sur les Royalties entre la Générale des Carrières et des Mines, Africa Horizons Investment Limited et Kamoto Copper Company SA du 22 janvier 2015.

⁴⁶ W. Clowes, F. Wild and M. Kavanagh, 'Sanctioned Israeli Billionaire to Gain From Elon Musk Cobalt Deal' *Bloomberg* (24 July 2020) <[⁴⁷ Gécamines-AHIL debt registers seen by *Le Congo n'est pas à vendre* reference a \\$150 million deal in May 2013, a copy of which has not been published as of yet. However, at no point do these debt registers confirm that the \\$150 million amount was deducted from the outstanding debt that Gécamines owed to Gertler on the date of that agreement.](https://www.bloomberg.com/news/features/2020-07-22/tesla-congo-cobalt-deal-means-millions-for-sanctioned-dan-gertler#:~:text=Sanctioned%20Israeli%20Billionaire%20to%20Gain,metal%20for%20batteries%20from%20Glencore.>>.</p></div><div data-bbox=)

⁴⁸ According to Gécamines-AHIL debt registers seen by CNPAV, the AHIL-Gécamines loan agreement gave Gécamines the option of buying back the KCC debt – that is, the rights to royalties and signature bonuses. In May 2014, a new agreement contradicts first: it says that Fleurette will return the rights only once the debt is fully repaid (and the debt, at that point, stood at \$188 million). This suggests that if the debt is not repaid, then AHIL can keep the rights. This interpretation is confirmed by a 24 December, 2014, agreement (protocole d'entente), which says Gécamines must repay the outstanding debt by 2 February, 2015, in order to regain the rights to royalties and signature bonuses. On January 22, 2015, as Gécamines defaulted on the outstanding loan instalment, it ceded all the rights to AHIL permanently.

⁴⁹ Gécamines-AHIL debt registers seen by *Le Congo n'est pas à vendre*.

from the royalties due to AHIL after October 2015, since the funds had already been paid to AHIL to reimburse the loan.

Once these royalty advances were offset – which we expect to have happened in 2019, royalty payments to Gertler should be equated with his net earnings.⁵⁰

ASSET AND DESCRIPTION	WHAT GERTLER'S COMPANIES PAID TO THE DRC/STATE COMPANIES TO ACQUIRE THE ASSET (US\$)	MONEY RECEIVED BY GERTLER FROM THE ASSET (\$US)	ESTIMATED LOSS TO THE DRC/STATE COMPANIES
KAMOTO COPPER COMPANY (KCC) ROYALTIES, 27 OCTOBER 2015 TO END-2020	<p>\$0</p> <p>Gécamines first assigned its KCC royalties to a Gertler company in 2013 to reimburse a loan it had received from a Gertler-affiliated company. A complex series of additional loans and reimbursements ensued for the next three years.</p> <p>Based on a conservative approach, we estimate that the loans were fully reimbursed in October 2015, and that the royalty advances KCC made to reimburse those loans were fully offset by 2019.⁵¹</p>	<p>\$59.73 million</p> <p>A minimum of \$114.4 million was earned since 27 October 2015. We deducted a \$54.7 million royalty advance from this amount, since that amount was used to reimburse loans Gécamines had received.⁵²</p>	<p>59.73 million</p>

⁵⁰ Gécamines-AHIL debt registers seen by Le Congo n'est pas à vendre.

⁵¹ See notes above for further details on why CNPAV used this date as a starting point for net earnings for Gertler's companies.

⁵² Royalties are 2.5% of net revenues. Royalties for 2017-2019 amount to \$70,931,830.04. Our calculations for 2017-2019 are based on the annual copper and cobalt output of KCC as published in Glencore's annual production reports, and the lowest average price every year for the commodities on the London Metal Exchange. This data allows us to estimate minimum gross revenues, which we convert to net by subtracting 9.5% for the relevant costs, based on a 2011 analysis of KCC by Golder Associates (see: Golder Associates, 'Mineral Expert's Report: Kamoto Copper Company (KCC)' (4 May 2011) 152 <https://www1.hkexnews.hk/listedco/listconews/sehk/2011/0513/00805_1074520/ewpglencore-20110511-42.pdf>). Royalties for 2020 amount to \$43,498,629.72. We used the 2020 "production guidance" from Katanga Mining's Q1 2020 report: 270,000 tonnes of copper and 29,000 tonnes of cobalt, and updated it to 26,000 tonnes of cobalt following a Reuters report (see: Reuters, 'Glencore says Kamoto Copper Company ramping up to full production' (22 September 2020) <<https://www.reuters.com/article/glencore-congo/glencore-says-kamoto-copper-company-ramping-up-to-full-production-idUSL5N2GJ5PO>>). Total net royalties from KCC to Gertler, from October 27, 2015 to end-2020 amount to \$114,096,435.51. From this figure, we deducted the \$54,7 million in royalty advances Gertler received in 2015 since these were used to reimburse Gécamines' loans.

SMKK: shares

Gécamines owned 50% in the Société Minière de Koboleta et Kipese until early 2010. In February of that year, it sold its stake to a Gertler-affiliated company. The latter sold it on a few months later for five times the price.

ASSET AND DESCRIPTION	WHAT GERTLER'S COMPANIES PAID TO THE DRC/STATE COMPANIES TO ACQUIRE THE ASSET (US\$)	MONEY RECEIVED BY GERTLER FROM THE ASSET (\$US)	ESTIMATED LOSS TO THE DRC/STATE COMPANIES
50% STAKE IN SOCIETE MINIÈRE DE KABOLELA ET DE KIPESE (COPPER/COBALT)	\$15 million Gécamines sold its 50% stake to Gertler's Emerald Star company for \$15 million on February 2010. ⁵³	\$75 million Gertler sold the same 50% stake to ENRC for \$75 million a few months later, in June 2010. ⁵⁴	\$60 million

⁵³ Contrat de cession des parts entre la Générale des Carrières et des Mines et Emerald Stars Enterprises Limited, N° 1053/20519/SG/GC/2010, (1 February 2010) 6.

⁵⁴ Eurasian Natural Resources Corporation PLC, 'Announcement of 2010 Preliminary Results' (23 March 2011) 6 <<https://www.investigate.co.uk/eurasian-natural-res--enrc-/rns/final-results/201103230700124402D/>>; ENRC Africa Holdings Limited (formerly known as Central African Mining & Exploration Company PLC), 'Financial statements for the year ended 31 March 2010' (30 September 2010) 21 para. 27 <<https://ericjoycemp.files.wordpress.com/2011/11/7-enrc-africa-holdings-limited-financial-statement-for-t.pdf>>.

Metalkol and Comide: shares

Between 2002 and 2011, Gécamines sold all of its shares of a company called Comide in several steps. The first 80% of Comide (later adjusted to 75%) was sold between 2002 and 2006 and ended up with a Gertler-affiliated company. Available evidence suggests that a signing bonus of \$3.5 million was paid. The remaining 25% was transferred to a Gertler-affiliated company in June 2011, at no direct cost to this company. Gécamines also sold a majority stake in Metalkol for a \$60 million signing bonus to a series of companies known as the Highwind Group affiliated with Dan Gertler.

Gertler sold both his shares in Comide and in Metalkol as a package to ENRC in two steps between 2010⁵⁵ and 2012⁵⁶ for \$685.75 million.

ASSET AND DESCRIPTION	WHAT GERTLER'S COMPANIES PAID TO THE DRC/STATE COMPANIES TO ACQUIRE THE ASSET (US\$)	MONEY RECEIVED BY GERTLER FROM THE ASSET (\$US)	ESTIMATED LOSS TO THE DRC/STATE COMPANIES
COMIDE AND 70% OF METALKOL (COPPER/COBALT)	\$63.5 million Gertler paid a total of \$63.5 million for his stakes in Comide and Metalkol between 2002 and 2011. ⁵⁷	\$685.75 million Comide and Metalkol were resold in two stages – August 20, 2010 and December 28, 2012 for a total of \$685.75 million . ⁵⁸	\$622.25 million

⁵⁵ Eurasian Natural Resources Corporation PLC, 'Acquisition of 50.5% of the Shares of Camrose Resources Limited' (20 August 2010) <<https://www.newswire.ca/news-releases/eurasian-natural-resources-corporation-plc-acquisition-of-505-of-the-shares-of-camrose-resources-limited-545326102.html>>.

⁵⁶ Eurasian Natural Resources Corporation PLC, 'ENRC Has Announced the Acquisition of the Remaining 49.5% of the Shares in Camrose Resources Limited and the Outstanding Minority Shareholdings in Certain Camrose Subsidiaries' (7 December 2012) <<https://miningnewsmagazine.org/enrc-has-announced-the-acquisition-of-the-remaining-49-5-of-the-shares-in-camrose-and-minority-shareholdings-in-certain-camrose-subsidiaries/>>.

⁵⁷ Gertler's company Fleurette says it spent more than \$300m on "acquisition costs, financing costs, purchase price and transaction costs with respect to all three projects [Metalkol, Comide and Africo]". See: Fleurette Properties Limited, 'Fleurette and Glencore Complete Merger of Mutanda and Kansuki Mining Operations' *prnewswire* (25 July 2013) <<https://www.prnewswire.com/news-releases/fleurette-and-glencore-complete-merger-of-mutanda-and-kansuki-mining-operations-216882021.html>>.

⁵⁸ See: 'Equity in Extractives' (n.8) 102, endnote 8: "ENRC pledged \$175 million cash (excluding loans) in a deal on 20 August 2010 and a further \$550 million cash in a deal approved by shareholders on 23 December 2012, giving a total of \$725 million. The value of the [45.4 million] Africo [Resources Ltd] shares (\$39.25 million, on the basis of Toronto Stock Exchange data from the day of the deal) has been excluded from our calculations, giving the total of \$685.75 million". For the additional information in brackets, see: Global Witness, 'Memo to ENRC shareholders' (n.21) 9, endnote 3.

Sodifor: mining permit

In 2010, state-owned mining company Sodimico got back the copper permits in Sakania, the southern tip of Katanga province, after a dispute with First Quantum Minerals. This included the permit for the Frontier mine. In June 2010, Sodimico sold a 70% stake in a new joint venture holding those permits to Fortune Ahead, a company affiliated to Gertler.⁵⁹ In March 2011, two more Gertler-affiliated companies bought the remaining 30% stake.⁶⁰ After these deals, the DRC bought back and then resold the Frontier licence to ENRC (see next column). It is unclear what the Gertler-companies did with the remaining permits, including that of the Lonshi mine. As a result, we have not included any additional profits Gertler's companies may have made from the possible onwards sale of the remaining licenses, especially since the most valuable license for the Lonshi mine seems to have expired.⁶¹

ASSET AND DESCRIPTION	WHAT GERTLER'S COMPANIES PAID TO THE DRC/STATE COMPANIES TO ACQUIRE THE ASSET (US\$)	MONEY RECEIVED BY GERTLER FROM THE ASSET (\$US)	ESTIMATED LOSS TO THE DRC/STATE COMPANIES
SALE OF FRONTIER MINING PERMIT	<p>\$60 million</p> <p>Sodimico sold the first 70% of the joint venture on 10 June 2010 for \$30 million.⁶² The remaining 30% was sold on 28 March 2011 for an additional \$30 million.⁶³</p> <p>Total: \$60 million</p>	<p>\$80 million</p> <p>In 2012, Gertler sold the Frontier mining licence alone back to the government for \$80 million.⁶⁴</p>	<p>\$20 million⁶⁵</p> <p>The state lost at least \$20 million through the sale of Sodifor to the offshore companies and its subsequent repurchase.⁶⁶</p>

⁵⁹ Convention de Joint-Venture entre la Société de Développement Industriel et Minier du Congo et Fortune Ahead Limited relative à l'exploitation des gisements de cuivre et de cobalt dans la province du Katanga, territoire de Sakania, (10 June 2010).

⁶⁰ See for instance Fleurette's Response to the 2013 Africa Progress Panel Report, Fleurette, 2, where Fleurette acknowledges having acquired the Frontier licence, and implicitly acknowledges having also acquired Lonshi.

⁶¹ Africa Progress Panel, 'Equity in Extractives' (n.8) 101. See the DRC's mining cadastre, available at: <http://drclicences.cami.cd/fr/>. A search for the Compagnie minière de Sakania, which had immediate ownership of Lonshi, shows its licences all expired by November 1, 2018.

⁶² Convention de Joint-Venture entre la Société de Développement Industriel et Minier du Congo et Fortune Ahead Limited relative à l'exploitation des gisements de cuivre et de cobalt dans la province du Katanga, territoire de Sakania, (10 June 2010) 19.

⁶³ Accord relatif au prix d'achat entre la Société de Développement Industriel et Minier du Congo, Sandro Resources Limited et Garetto Holdings Limited (28 March 28 2011) 1.

⁶⁴ See Africa Progress Panel, 'Equity in Extractives' (n.8) 103, endnote 15, citing a DRC government document saying that Sodifor received 74.7 billion Congolese francs, equal to \$80 million. The Africa Progress Panel report cites statistics supporting this (from the Banque Centrale du Congo's Condensé hebdomadaire d'informations statistiques, no. 49/2012, for the week of December 7, 2012, p. 25 <http://www.bcc.cd/downloads/pub/condinformat/cond_n_49_7dec2012.pdf>).

⁶⁵ In its 2013 response to the Africa Progress Panel, Gertler's company Fleurette said that it "made no profit from its involvement in relation to the Frontier licence and in fact the DRC earned additional revenue through Fleurette returning the licence". Fleurette said it had spent \$20 million in additional costs, on top of its \$60m purchase cost.

⁶⁶ After buying back the Frontier licence, the government sold it on to ENRC for \$101.5 million, announcing the deal on July 31, 2012. Eurasian Natural Resources Corp Plc, 'Acquisition of Frontier Licence' (31 July 2012) <<https://www.investigate.co.uk/eurasian-natural-res--enrc-/rns/acquisition-of-frontier-licence/201207310700198641/>>.

Nessergy: oil block

ASSET AND DESCRIPTION	WHAT GERTLER'S COMPANIES PAID TO THE DRC/STATE COMPANIES TO ACQUIRE THE ASSET (US\$)	MONEY RECEIVED BY GERTLER FROM THE ASSET (\$US)	ESTIMATED LOSS TO THE DRC/STATE COMPANIES
SALE BY DRC OF DISPUTED OIL BLOCK TO NESSERGY, AND SUBSEQUENT REPURCHASE	\$0.5 million In 2006, Gertler company Nessergy Limited paid \$500,000 to the DRC government for rights to an offshore block in disputed waters. ⁶⁷ There was no competitive tender. ⁶⁸	\$150 million Nessergy sold the block back to the DRC government in 2013, for \$150 million – 300 times the purchase price. ⁶⁹ There is no evidence of any drilling by Gertler's companies, ⁷⁰ and his spokesman referred solely to additional costs from tax, and contributions to training and "national gas and oil work". ⁷¹	\$149.5 million

⁶⁷ Contrat de partage de production entre la République Démocratique du Congo et l'association Nessergy/Cohydro sur l'offshore profond congolais (couloir maritime) (October 2006) 28. For evidence that no production took place while the block was owned by Gertler's companies, see: P. Jones, 'Israeli billionaire sells Congo oil rights for 300 times purchase price' *Reuters* (23 January 2014) <<https://www.reuters.com/article/congo-democratic-gertler/israeli-billionaire-sells-congo-oil-rights-for-300-times-purchase-price-idUSL5N0KW3WW20140123>> ('Israeli billionaire sells Congo oil rights'). For evidence of Gertler's majority share in Nessergy, see Global Witness, Press release, 'Congo fails to reveal loss-making oil deal with controversial businessman's offshore firm' (23 January 2014) <<https://www.globalwitness.org/en/archive/congo-fails-reveal-loss-making-oil-deal-controversial-businessmans-offshore-firm/>> ('Congo fails to reveal loss-making oil-deal').

⁶⁸ Email from Lior Chorev to Global Witness (19 January 2014): "[...] there was no tender process for the grant of the Nessergy license. As previously explained, the process for the grant of the Nessergy license was the same as for ALL oil block licenses previously granted by DRC, including others granted around the same time as Nessergy – ie. by way of direct negotiations between Cohydro/DRC and the new license-holder.", in Global Witness, 'Congo fails to reveal loss-making oil deal' (n.65) 10, endnote 3.

⁶⁹ P. Jones, 'Israeli billionaire sells Congo oil rights' (n.65) 1.

⁷⁰ *Ibid.* 2.

⁷¹ Global Witness, 'Congo fails to reveal loss-making oil deal' (n.65) 4.

Table 2: Estimated minimum future losses to the DRC state

Mutanda Mining: future royalty payments

As detailed in Table 1, the rights were acquired when Gertler bought Gécamines' 20% stake in Mutanda in March 2011. He kept the rights even when Glencore bought him out in February 2017.

Mutanda's parent company Glencore stated at the end of 2017 that the life of mine was 'in excess of 15 years'.⁷² Mutanda was shut down at the end of 2019 for at least two years, so our calculations are based on a two-year closure and assume that these two years of zero production will be made up for in later years.

ROYALTY STREAM AND DESCRIPTION	DETAILS OF CALCULATION	MINIMUM AMOUNT LOST TO DRC STATE
FUTURE ROYALTIES FROM MUTANDA	<ul style="list-style-type: none"> Life of mine estimate: from 2022 through 2034, based on Glencore's statements Production estimates for copper: 100,000 tonnes, based on Glencore's forecast.⁷³ Production estimates of cobalt: at least 23,000 tonnes a year of cobalt, based on Mutanda's 2019 copper/cobalt ratio⁷⁴ Conservative price forecast: \$5.724/t for copper, \$23.370/t for cobalt⁷⁵ 	<p>\$379.7 million</p> <p>Net present value of future losses: \$174.6 million⁷⁶</p>

⁷² Glencore, 'Resources & Reserves as at 31 December 2017' (2017) 8 <<https://www.glencore.com/dam/jcr:a2823ab5-5715-463d-83d2-a14ab0c0e8e3/GLEN-2017-Resources-Reserves-Report.pdf>>. This 15-year estimate would take the life of mine to at least 2032. Given Mutanda's two year closure, we add two more years to the life of the mine, taking it to 2034.

⁷³ Glencore had announced this change to its forecasts in 2019, while suggesting that the figure could be revised upwards again once it decides how to process deeper sulphide ores from the site. Glencore, 'Preliminary Results 2018' (20 February 2019) 2 <<https://www.glencore.com/dam/jcr:cc9f472a-2486-4e72-8a21-5197ef393fab/GLEN-2018-Preliminary-Results.pdf>>; Golder Associates, 'Mineral Expert's Report: Mutanda' (4 May 2011) 4 <https://www1.hkexnews.hk/listedco/listconews/sehk/2011/0513/00805_1074520/ewpglencore-20110511-44.pdf>.

⁷⁴ This target was announced in Glencore, 'Mutanda Mining Sarl – Sell side visit November 2013' (2013) 9 <<https://www.glencore.com/dam/jcr:851138e1-268a-4554-ad03-c6b8dea21308/Glencore-Sell-Side-Analyst-Visit-Mutanda-201311.pdf>>. While Glencore has since halved its copper target to 100,000 tonnes, its 2019 cobalt production stayed at comparable rates, with over 25kt of contained cobalt for 103kt of copper metal. See Glencore PLC, 'Glencore Annual Report 2019' (5 March 2020) 236 <<https://www.glencore.com/dam/jcr:79fd3300-ee50-4ee1-870d-6372274c71b5/glen-2019-annual-report-interactive.pdfZ>> ('Glencore 2019 Annual Report').

⁷⁵ We use the average of the lowest annual prices for copper and cobalt on the London Metal Exchange from 2011 to 2020 (\$5,724/tonne for copper, \$27,370/tonne for cobalt). Glencore gave much higher long-term price forecasts for copper and cobalt in its 2019 annual report, p. 166: \$6,500/tonne for copper, and \$27/lb for cobalt (\$59,525/tonne).

⁷⁶ The minimum net present value of future Mutanda royalties at \$174.6 million, using the discount rate applied by Glencore to its DRC operations: 13.5%. For the discount rate, see Glencore 2019 Annual Report (n.72) 166.

Kamoto Copper Company: future royalty payments

According to the settlement between Glencore and Gertler’s holding company following the US sanctions against Gertler, Glencore’s KCC will keep paying royalties of 2.5 of net sales.⁷⁷

FUTURE ROYALTIES FROM KCC	<ul style="list-style-type: none"> ● Life of mine estimate: from 2021 until at least 2039, based on Glencore’s statements⁷⁸ ● Production estimate 2021: the same as for 2020 (270,000 tonnes of copper, 25,000 tonnes of cobalt).⁷⁹ ● Production estimate 2022-2039: 300,000 tonnes of copper and 30,000 tonnes of cobalt, based on statements from KCC’s parent company Katanga Mining⁸⁰ ● Prices are the same as those used for the Mutanda future royalties. 	\$1.085 billion⁸¹ Net present value of future losses: \$381 million
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⁷⁷ Glencore, ‘Settlement of dispute with Ventora and Africa Horizons’ (15 June 2018) <<https://www.glencore.com/media-and-insights/news/Settlement-of-dispute-with-Ventora-and-Africa-horizons>> (‘Ventora and Africa Horizons’).

⁷⁸ Glencore, ‘Resources & Reserves as at 31 December 2019’ (2019) 8: “Katanga: Remaining life of mine: expected to be in excess of 20 years”.

⁷⁹ The 2020 “production guidance” in Katanga Mining’s Q1 2020 report gives 270,000 tonnes of copper and 29,000 tonnes of cobalt. We updated the cobalt output figure to 25,000 tonnes of cobalt following a Reuters report (Reuters, ‘Glencore says Kamoto Copper Company ramping up to full production’ (n.50).

⁸⁰ Katanga Mining Limited, ‘Consolidated Financial Statements as at and for the years ended December 31, 2019 and 2018’ (2020) 11 <<https://www.sedar.com/FindCompanyDocuments.do>>.

⁸¹ We calculate the net present value at \$381.06 million, based on Glencore’s 13.5% discount rate. In a November 2016 press release, Gertler argued that a discount rate of 15% would be appropriate. See: Fleurette Group, ‘Fleurette Group Statement re: KCC Royalties’ (15 November 2016) <<https://www.prnewswire.com/news-releases/fleurette-group-statement-re-kcc-royalties-601252975.html>>. Gertler contradicted his own arguments two years later, however, when he argued in court that the KCC and Mutanda royalties were worth \$2.86 billion (a number that would be hard to arrive at if any discount rate were applied). See ‘Ventora and Africa Horizons’ (n.75).

Metalkol: future royalty payments

In October 2020, state mining company Gécamines published a contract showing that it had sold the rights to royalties from Metalkol to Gertler’s company Multree in June 2017, for **\$55 million**.⁸² Gertler is due royalties at 2.5% of net revenues.⁸³

<p>FUTURE ROYALTIES FROM METALKOL</p>	<p>We estimate that Gertler’s total royalties from Metalkol will come to at least \$353.97 million, from which we deducted the purchase price of \$55 million to estimate the total losses.</p> <ul style="list-style-type: none"> • Life of mine estimate: 14 years, from Q4 2018 until 2033, based on parent company ERG’s statements⁸⁴ • Production estimate 2019: 51,000 tonnes of copper and 6,700 tonnes of cobalt.⁸⁵ • Production estimate 2020-2021: Metalkol’s “phase I” capacity of 77,000 tonnes of copper and 14,000 tonnes of cobalt.⁸⁶ Production estimate 2022-2033: Metalkol’s “phase II” capacity at 105,000 tonnes of copper and 20,000 tonnes of cobalt.⁸⁷ • Prices are the same as those used for the Mutanda royalties. 	<p>\$298,97 million</p> <p>Net present value of future losses: \$155.9 million⁸⁸</p>
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⁸² La Générale des Carrières et des Mines SA (en qualité de Cédant) et Multree Limited (en qualité de Cessionnaire) – Contrat de vente et d’achat (relativement aux 2,5% de Royalties du Projet Metalkol), (19 June 2017) art. 2(2) (‘Gécamines-Multree contract (2017)’). Gertler told journalists that the real purchase price should be considered as \$83 million, as he also took on a \$28 million debt owed by Gécamines to Metalkol. See: ‘Billionaire Gertler Buys Royalty Rights’ (n. 22). However, the published contract does not make any reference to this additional consideration as would usually be the case. Gertler has said that he will receive his first royalties only in 2021, which is in line with our own estimates using the \$55 million purchase price.

⁸³ ‘Gécamines-Multree contrat (2017)’ (n.80) 3. To convert gross revenues to net, we have used the same cost estimates as for our calculation of KCC royalties, for lack of any specific data on Metalkol’s costs.

⁸⁴ For the life of mine, we are using the most recent figure publicly available, from Golder Associates Africa, ‘Metalkol Roan Tailings Reclamation Project - Environmental Impact Study Executive Summary (2019) 5 <<https://www.ergafrica.com/wp-content/uploads/Metalkol-ESIA-Executive-Summary.pdf>>, which gives a 14-year life of mine, producing an estimated 1.4 million tonnes of copper cathode. We do not include 2018 in the life of mine, as only copper was produced, and at a very low volume.

⁸⁵ Eurasian Resources Group, Annual Report and Accounts (2019) 14 (Metalkol reaching 45% of cobalt capacity, set at 14.000kt); Division des Mines/Lualaba Province, compiled production and royalty statistics January-December 2019 (17.8kt of cobalt hydroxides).

⁸⁶ ERG Africa, ‘Metalkol RTR, A greenfield, tailings re-treatment project’ <<https://www.ergafrica.com/cobalt-copper-division/metalkol-rtr/#:~:text=Metalkol%20RTR%20A%20greenfield%2C%20tailings,Dam%20and%20Musonoi%20River%20Valley.>>: “In Phase 1, Metalkol RTR is expected to produce 14ktpa of cobalt in hydroxide and 77ktpa of copper cathode.” See also ‘Billionaire Gertler Buys Royalty Rights’ (n.22).

⁸⁷ Eurasian Resources Group, ‘Sustainable Development Report 2019’ (14 October 2020) <<https://www.eurasianresources.lu/uploads/1/files/ERG%20SR%202019%20WEB.pdf>>: “Construction also started on Phase 2 of the operation, with plant fabrication completed in Q2 2020. Phase 2 will add 6ktpa of cobalt and 28ktpa of copper once it achieves full production in Q3 2020.” See also: M. Mamaila, ‘ERG committed to the Copperbelt’ *Mining Weekly* (6 December 2019) <<https://www.miningweekly.com/print-version/erg-committed-to-the-copperbelt-2019-12-06>>: “Upon completion of a second phase of development, Metalkol RTR will produce 105 000 t/y of copper and 20 000 t/y of cobalt.” Based on our conservative approach, we have used the lower phase II figures for the rest of the life of mine, starting in 2022 rather than 2020. We have halved these production figures for 2039, the final year of production in our calculations.

⁸⁸ We calculate the net present value of future Metalkol royalties from 2021 to 2033 at \$155.943.699,9. As a benchmark discount rate, we use the 13.5% rate applied by Glencore to its DRC operations (see above).”