



global witness

****EMBARGOED UNTIL 00H01 GMT TUESDAY 15 NOVEMBER 2016****

Congo signs over potential \$880m of royalties in Glencore project to offshore company belonging to friend of Congolese President

Dan Gertler's business confirms deal but challenges valuation as Global Witness goes to press

Global Witness today reveals that the state mining company in Democratic Republic of Congo last year signed over royalty rights in its most lucrative mining project, owned and operated by giant London-listed commodities trader Glencore, to an offshore company belonging to a friend of the president. The contract does not explain what, if anything, Congo's state mining company received in compensation for handing over these rights, and neither Gecamines nor the offshore company involved has provided a full explanation.

Global Witness estimates that the royalties could generate as much as \$880m – more than Congo's annual health spending. Typically royalties like this are for the benefit of the population. This is especially vital in Congo, which ranks near the bottom of the UN Human Development Index and has one of the lowest rates of GDP per capita in the world.

Under the terms of the agreement, dated January 2015, the royalties due to state mining company Gecamines from Glencore's KCC copper project in southeast Congo were assigned to an anonymous Cayman Islands company called Africa Horizons Investment Limited. Africa Horizons is part of Dan Gertler's Fleurette Group. Gertler is an Israeli billionaire mining magnate and close friend of Congolese President Joseph Kabila. He was the Congo partner of US hedge fund Och-Ziff in deals for which it was charged by US authorities for foreign corruption, eventually [paying out over \\$400m](#) in a settlement. Gertler has been linked to several other [suspicious mining deals in Congo](#), some of which involved Glencore.

"It's troubling that the state miner Gecamines has signed away rights to potentially huge flows of cash that should go towards building Congo's future. It's even worse that it has handed them to this unknown, anonymous company belonging to an individual with a track record of suspicious deals," said Pete Jones, campaigner at Global Witness. "The state mining company should be trying to make money for the Congolese people, but here it is signing away its rights to potentially huge royalties."

"The contract we have seen provides no reason for Gecamines giving away these royalties. Neither Gecamines nor Gertler's representatives have told us whether Gecamines received any payment in return. It is imperative that Gecamines and Gertler explain what is behind this agreement. If they can't show that this is a good deal for Congo, there should be an investigation into what's really behind the agreement," said Jones.

A spokesperson for Gertler's holding company, Fleurette, from Powerscourt public relations firm did not comment after having been granted extra time to respond to questions from Global Witness.

As Global Witness went to press it became aware of a statement from Fleurette via Powerscourt that said the agreement between Africa Horizons and Gecamines ends in early 2019, and that this information is "publicly available". Powerscourt did not respond to requests to provide this information or explain where it could be located. Fleurette also said the valuation of the royalties was "entirely wrong" and said it had made a "considerable loss" on the deal.

Glencore confirmed the transaction to Global Witness, asserting that Gecamines had "sold its rights to certain royalties" from its subsidiary KCC to Africa Horizon. It added that KCC was not involved in the original discussions and had subsequently "acted in accordance with the instructions it received from Gecamines" after having taken "reasonable measures" to check out the validity of the sale. Gecamines representatives did not respond to emailed questions and a phone call from Global Witness.

At the time of the deal, KCC was Congo's third-largest copper mine by production volume and its largest tax contributor, according to statistics published by the Extractive Industries Transparency Initiative (EITI). EITI reported that KCC paid royalties totalling over \$63m to Gecamines in 2014, but now any such payments will go to Africa Horizons. The document seen by Global Witness suggests that royalty payments were made from KCC to Africa Horizons beginning 9 July 2014 under a separate earlier agreement. Gertler's representatives did not say how much had been transferred to date in royalties under the agreement.

Congo is in the midst of an escalating political crisis. Kabila is obliged by the constitution to step down when his second term ends in December, but elections have been postponed and the opposition has accused Kabila of clinging to power. Riots against Kabila's government have led to the deaths of at least 80 civilians in two major protests in January 2015 and September 2016, according to Human Rights Watch. Global Witness [warned in May](#) that off-the-books sales of natural resource rights could be used to finance a political campaign.

Notes to editor

1. The document seen by Global Witness is a tripartite agreement between Gecamines, Africa Horizons Investment Limited and Kamoto Copper Company (KCC), signed and dated 22 January 2015. The mandated signatory for Africa Horizons in the agreement seen by Global Witness is [Pieter Deboutte, the head of Congo operations](#) for Gertler's holding company, Fleurette. Contact details for Africa Horizons are listed as the offices of Hassans law firm in Gibraltar – the firm used by Gertler in many of his previous transactions.
2. The signatory on the agreement representing KCC and its holding company is a Glencore employee. Glencore owns Toronto-listed Katanga Mining Limited, which in turn owns 75 per cent of KCC.
3. Glencore's full statement is as follows: "Gecamines concluded a transaction with a third party, Africa Horizons Investment Limited (AHIL), pursuant to which it sold its rights to certain royalties from KCC to AHIL. Pursuant to such transaction, Gecamines initially sent a payment direction to KCC instructing it to make payment of such royalties to AHIL instead of Gecamines. Thereafter, KCC concluded an agreement with Gecamines to reflect this. KCC acted in accordance with the

instructions it received from Gecamines and was not involved in the discussions between AHIL and Gecamines. It did, however, take reasonable measures in accordance with its procedures to satisfy itself that the sale was authorised by Gecamines and that there was an underlying basis for the sale.”

4. As Global Witness went to press it became aware of a statement from Dan Gertler’s Fleurette Group which included the following:

“Fleurette Group rejects Global Witnesses’ inaccurate and misleading KCC report:

- Global Witness’ statement implies that KCC royalties were worth \$880m to Fleurette. This is entirely wrong and reflects poor understanding of basic business and valuation principles.
- Independent international financial institutions advised both sides, and the transaction was priced in accordance with the valuations provided to the parties.
- Although publicly available, Global Witness have omitted information that hugely impacts the assessment of value for the KCC Royalty, most importantly that AHIL’s royalty right will fall away in early 2019.
- The transaction ultimately resulted in Gecamines safeguarding value for the DRC economy and Fleurette making a considerable loss due to the subsequent collapse in commodity prices and suspension of KCC’s operations. Fleurette recognizes this as inherent industry risk in the mining sector.”

5. KCC announced in September 2015 that operations would be suspended while equipment at the mine was upgraded to improve efficiency and output. KCC hopes that the modernisation drive will raise annual production to 300,000 tonnes of copper and cobalt; the most it has achieved to date was 158,000 tonnes in 2014. An increase in output would normally lead to a jump in turnover and, as a result, in royalty payments.
6. Global Witness has [previously revealed](#) how Gertler used offshore companies to secure mining and oil assets at knockdown prices before using them to secure lucrative onward deals with major mining companies, particularly Kazakh miner ENRC and Glencore. In just six such deals [Congo lost out on \\$1.5bn](#). A portion of the proceeds from one of these six deals was directed into a Treasury election account ahead of the 2011 poll, which was won by Kabila’s government but also marred by irregularities and claims of fraud.
7. Global Witness’ calculation of the potential value of the rights to the KCC royalties was based on the latest available technical report for KCC on the website of the Toronto stock exchange, where KCC’s holding company Katanga Mining Limited is listed. This shows projected potential royalty payments for the life of the mine as totalling \$1.596bn. Royalties are paid to the state at a rate of 2.0 per cent and to Gecamines at a rate of 2.5 per cent, Gecamines’ share of the total royalties amounts to approximately 55.6 per cent of \$1.596bn, or \$887m.