

The Honorable Antony Blinken
Secretary of State
Washington, D.C. 20520

The Honorable Janet Yellen
Secretary of the Treasury
Washington, D.C. 20220

March 8, 2023

Re: Potential Sanctions Relief for Mr. Dan Gertler

Dear Mr. Secretary,

Dear Madam Secretary,

We, the undersigned members of Congolese and international civil society organizations, write to you once again to express our growing concern about potential sanctions relief for businessman Dan Gertler. We believe that the statutory grounds for lifting sanctions are not fulfilled and that doing so would harm US interests in fighting corruption, promoting prosperity in the Democratic Republic of Congo (DRC), and keeping sanctions tools like the Global Magnitsky program credible and effective.

The Department of the Treasury sanctioned Mr. Gertler and his companies for high-level corruption related to the DRC in December 2017. According to the Treasury's [press release](#), "the DRC reportedly lost over \$1.36 billion" as a result of his "opaque and corrupt mining and oil deals." (Mr. Gertler has consistently denied any wrongdoing.)

After persistent lobbying by Mr. Gertler's attorneys, the previous administration granted him a last-minute license in January 2021, one so broad that it effectively annulled the sanctions. Many of the undersigned organizations requested that the incoming administration urgently reconsider the license. Under your leadership, the license was swiftly revoked in March 2021 and characterized as "inconsistent with America's strong foreign policy interests in combating corruption around the world."

Despite calls for an investigation, there has been hardly any information yet as to how and why the January 2021 license was granted. Following a Freedom of Information Act lawsuit filed by Citizens for Responsibility and Ethics in Washington (CREW), the public came to learn that the previous administration had granted another earlier and narrower license to Mr. Gertler ostensibly for "charitable purposes."

The lack of accountability and transparency for both of the licenses is especially concerning given our understanding that the government and presidency of the DRC is now urging the US government to once again grant Mr. Gertler sanctions relief. The DRC is doing so following the settlement agreement (the

“Settlement”) it signed with Mr. Gertler’s company Ventora in February 2022. The deal was only partially published after much pressure from the International Monetary Fund and civil society organizations.

According to the [Global Magnitsky Human Rights Accountability Act](#), sanctions imposed under this program may only be terminated if (1) credible information exists that the person did not engage in the activity for which sanctions were imposed; (2) the person has been prosecuted for said activity; (3) the person has demonstrated a significant change in behavior, paid an appropriate consequence, and credibly committed not to engage in similar behavior; or (4) it would be in the national security interests of the United States.

As discussed below, we believe none of these four grounds are fulfilled.

Firstly, as you know, multiple government agencies and courts have found credible the allegations that Mr. Gertler was involved in acts that could be sanctionable. For instance, in October 2016, the Department of Justice reached a [settlement](#) with a subsidiary of New York hedge fund Och-Ziff for corruption in the DRC. Och-Ziff recognized that their “DRC partner,” who has been [widely identified](#) as Dan Gertler (including in [court documents](#)), paid multiple bribes. According to the statement of facts, the “DRC Partner, together with others, paid more than one-hundred million U.S. dollars in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector in the DRC.” Although Mr. Gertler was not directly charged in this case, a US judge [sentenced](#) a subsidiary of Och-Ziff on the basis of this information.

Secondly, Mr. Gertler has never been prosecuted for his alleged role in these past corrupt practices. Despite the evidence gathered in the Och-Ziff investigation, Mr. Gertler himself was not prosecuted for his part in this alleged bribery scheme. The [UK](#) and [US criminal investigations](#) into Glencore, another company that worked closely with Mr. Gertler, mainly focused on other countries and events. [Investigations](#) in the Netherlands and Switzerland into Glencore’s alleged corrupt practices in DRC, potentially [involving](#) Mr. Gertler, have yet to come to a conclusion. The UK’s investigation into Mr. Gertler’s third business partner, Eurasian Natural Resources Corp, is also still ongoing.

The Settlement provides no further prospect of accountability. On the contrary, it explicitly shields Gertler-affiliated companies from prosecution in the DRC, the country he has harmed. Instead of receiving restitution for the billions it lost, the DRC will make a [net payment of 189 million euros](#) to Mr. Gertler’s company to buy back oil blocks and mining permits that Mr. Gertler failed to sell well before he was sanctioned. One of the bases for the sanctions, according to the press release announcing them, was Mr. Gertler acting as a middleman for opaque and corrupt mining and oil deals that reportedly resulted in a loss of \$1.36 billion to the state between 2010 and 2012 alone. This amounts to nearly half of the country’s health budget over those three years, which falls far below both the [regional](#) average and the per capita spending a World Health Organization-supported study identified as the minimum to provide adequate health care in DRC. It is hard to fathom why the DRC would have to pay Mr. Gertler anything when the scale and nature of the corruption he facilitated likely had a significant impact on the human rights of many Congolese.

Thirdly, Mr. Gertler has apparently failed to demonstrate a significant change in behavior. Evidence published by the [Platform to Protect Whistleblowers in Africa \(PPLAAF\)](#) and [Global Witness](#) based on information provided by whistleblowers demonstrated the continued opaque nature of Mr. Gertler's revenue flows. Following their revelations, both whistleblowers were [sentenced to death](#) in the DRC and remain so to this day.

Far from paying an appropriate consequence for his actions, Mr. Gertler will keep collecting an average of [\\$200,000 a day](#) in royalties from three highly lucrative mining projects for at least another decade. The Settlement confirms the validity of those deals despite the questionable manner in which Mr. Gertler concluded them in the first place. While Mr. Gertler is entitled to challenge allegations made against him, his seemingly complete lack of contrition or introspection makes it difficult to say that he has "credibly committed" not to engage in similar practices in the future.

Finally, we believe that sanctions relief is contrary to the US national security interest. The ongoing involvement of Mr. Gertler taints a significant portion of the cobalt supply chain and limits the possibility of US companies sourcing from or investing in the DRC, particularly in the three projects from which he still collects royalties. If sanctions relief is granted on the basis of the lopsided Settlement, it would set a precedent of rewarding actors who have not shown a significant change in behavior while continuing to harm the people that the sanctions were intended to help. Any agreement that would allow Mr. Gertler to continue to profit from the corrupt activity for which he was sanctioned in the first place would undermine the credibility and integrity of the Global Magnitsky sanctions program and US sanctions efforts more generally. It would also further expose US companies and the US financial system to the risk of foreign corruption.

Simply put, the Settlement was negotiated in secret, and the result is bad for the DRC and its people. As such, no sanctions relief should be granted to Mr. Gertler on the basis of this deal. Any sanctions relief for Mr. Gertler and affiliated entities should only be based on a deal that follows the following principles:

- The immediate suspension of any further payments to Mr. Gertler, given the allegedly illegal process through which the right to collect those payments was acquired
- Transparent negotiations involving the DRC government, the DRC Parliament, and civil society before finalizing the deal
- A full declaration of all current business holdings Mr. Gertler and his affiliated companies and proxies still hold in the DRC, and their relinquishment free of charge to the DRC
- The conclusion of all state investigations into corruption in the DRC in which Mr. Gertler's business dealings are under scrutiny
- An independent analysis of all past losses incurred by the DRC to define appropriate compensation
- Full cooperation from DRC accomplices with investigations by the DRC judiciary
- The lifting of death sentences against the two Congolese whistleblowers

Furthermore, given the unfortunate circumstances that some have called an "[abuse of the process](#)" surrounding the license granted to Mr. Gertler in the waning days of the prior administration, it is essential

for the ongoing legitimacy of the Global Magnitsky sanctions program, and US sanctions more generally, that the US government institute an open and transparent process if it intends to consider any form of sanctions relief for Mr. Gertler. Such a process should include consultations with civil society, most importantly Congolese groups, and Congress.

The power of US sanctions has given you leverage over the current negotiations and a responsibility to ensure that the outcome does not compound past injustices. We urge you to use your voice and influence in support of the Congolese people.

Thank you in advance for your attention.

We remain at your disposal if you have any questions or require any further information.

Sincerely yours,

AFREWATCH

Cadre de Concertation de la société civile de l'Ituri sur les ressources naturelles (CdC/RN)

Centre congolais pour le Droit du développement durable (CODED)

Citizens for Responsibility and Ethics in Washington

CONGO NOUVEAU

FACT Coalition

FILIMBI

Freedom House

Human Rights First

Human Rights Watch

Initiative pour la Bonne Gouvernance et les Droits Humains (IBGDH)

Le Congo n'est pas à Vendre (Congo is not for sale)

Les Congolais Debout

LUCHA

Mouvement Justice en Action

Mouvement National des Consommateurs Lésés

Never Again Coalition

Open Society Foundations

Platform to Protect Whistleblowers in Africa (PPLAAF)

Publish What You Pay

Resource Matters

Rights and Accountability in Development (RAID)

The Sentry

Transparency International-US

UNIS