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SECRECY SURROUNDING GLENCORE'S BUSINESS DEALS IN THE DEMOCRATIC REPUBLIC OF CONGO RISKS EXPOSING SHAREHOLDERS TO CORRUPT PRACTICES

Introduction

Glencore's recent acquisitions of world class mining assets in the Democratic Republic of Congo have taken place amid opaque dealings involving the Congolese government, Glencore and its long-standing partner Dan Gertler, an Israeli businessman who is a close friend of President Joseph Kabila.[1]

The dealings raise questions over whether Glencore played a role in secret and possibly corrupt sales of stakes in the Kansuki and Mutanda mines in Congo's southern Katanga province in 2010 and 2011. They also raise questions over whether cash invested by Glencore shareholders is being used wisely.

Mr Gertler is a key intermediary through whom Glencore has acquired stakes in Congolese mining assets.[2] He is also a partner in all three mining ventures in Congo in which Glencore has acquired stakes collectively valued at an estimated $4.6 billion.[3] Two of those ventures, the Kansuki and Mutanda mines, together are expected to produce the equivalent of 40 per cent of the world's cobalt production and will also add almost 40 per cent to Congo's copper output once they are fully developed (based on 2011 data).[4]

Since early 2010 the Congolese state has sold off stakes in six prize mining projects -- including Kansuki and Mutanda -- in secret and at vastly undervalued prices, according to commercial valuations by several internationally recognised brokerage houses. Those stakes were divested to offshore companies, most of which are associated with Mr Gertler but whose precise beneficial owners are not known.[5] The sales prices of all these stakes were far below commercial valuations attributed to them by financial analysts, resulting in the loss of billions of dollars to the Congolese state.[6] In all but one of these six projects, the Congolese government has sold off the mines in their entirety, foregoing any future production revenues from the mines.[7] Mr Gertler's representatives have challenged the accuracy of some of the commercial valuations, including a key technical valuation in Glencore's Initial Public Offering prospectus.

Some of the proceeds of mining sales in 2011 were used by the Congolese government to cover costs related to the 2011 election[8], which returned incumbent president Joseph Kabila to power. The polls were condemned as flawed by international diplomats and election observers[9] and were marred by killings committed by government security forces.[10] The Kabila regime has failed to lift the Congolese people out of abject poverty. Congo is bottom of the UN's human development index[11] in spite of its vast mineral assets, much of which have now been sold off. [12]

Three mining deals involving Glencore and Mr Gertler stand out. Global Witness believes these deals carry with them risks of corruption. This is categorically rejected by Mr Gertler whose spokesman says he has always operated with "utmost honesty, integrity and fairness" and that "President Kabila has never been directly or indirectly involved in any deal or negotiations" involving Mr Gertler's mining interests. Glencore has also denied any corruption, stating that "there have been no material breaches of any applicable law or regulations" in its business activities.

Global Witness is concerned for a number of reasons, notably:

- The deals were all conducted in secret.
- Financial transactions in relation to the deals are either unknown or demonstrate assets were sold off at heavily undervalued prices.
- All the deals involve companies associated with a businessman who has a track record (see footnotes 5 and 6) of acquiring undervalued mining assets in secret and who could have unduly benefited from his friendship with President Kabila.
- Companies involved in the deals have not revealed their full list of beneficial owners and could be covering for corrupt Congolese officials.

The three deals are specifically as follows:

1. **Glencore's acquisition of its stake in Kansuki**: Congo's government transferred a 75 per cent stake in Kansuki mine in secret in July 2010 to a company in which Dan Gertler has an interest .[13] Just a month later in August 2010, Glencore took half the shares of the company that acquired that 75 per cent stake, becoming the operator of the mine. Glencore is financing the entire development of the Kansuki mine, thereby carrying the costs for its other partner companies which are associated with Mr Gertler. The full list of beneficial owners of those companies linked to Mr Gertler is not known. In the opinion of Global Witness this represents a corruption risk given Mr Gertler's friendship with President Kabila.

2. **Glencore's waiving of its right of first refusal on a residual stake in Kansuki:** The company should make clear its role in recommending that Congo's state-run company Gecamines sell a 25 per cent residual share in Kansuki to an offshore company associated with Dan Gertler.[14] This sale took place in secret and at a heavily undervalued price.

3. **Glencore's waiving of its right of first refusal on a residual stake in Mutanda**: The company should also make clear its role in recommending that Congo's state-run company Gecamines sell a 20 per cent residual share in Mutanda to another offshore company associated with Dan Gertler.[15] This sale also took place in secret and at a heavily undervalued price.

Details of the secret deals relating to the above mining assets were eventually revealed through disclosures in the May 2011 Glencore IPO prospectus and by the Congolese government, due in large part to pressure from the IMF and World Bank.

The award of Congo's mining assets should be executed through transparent processes of open tenders based on technical criteria and with full disclosure of payments and beneficial owners of companies involved. A lack of such transparency and Glencore's participation in secretive and cosy deal-making therefore risk tying the company's activities in Congo to political interests that could affect the company's reputation in the long term and could be vulnerable to review by subsequent Congolese governments.

Glencore states as part of its corporate compliance policy that the company "*will not assist any third party in violating the law in any country, nor pay or receive bribes, nor participate in any other criminal, fraudulent or corrupt practice*". The company also maintains it conducts appropriate due diligence. Global Witness therefore calls for a thorough explanation by Glencore to satisfy shareholders that its involvement in mining deals orchestrated behind closed doors has not facilitated potentially corrupt practices by third parties. Global Witness has three chief recommendations for now:

1. *Glencore shareholders should demand the company state in its next quarterly report what precise mechanisms it employs to prevent, detect, report and investigate potential corruption. Shareholders should also urge Glencore's audit committee to produce specific policies binding company traders and executives to disclose all relevant information concerning major investments. The audit committee should have the power to hold up any investment which appears to pose a serious risk of corruption.*

2. *As part of improving corporate governance standards, shareholders should demand Glencore publicly disclose who its partners are in all its investments, including providing the names of all individuals and beneficial owners of companies it is in business with. A commitment to identify individuals and entities it is in business with would chime with the enhanced due diligence requirements of the UK Bribery Act. Where Glencore cannot provide details of beneficial ownership, it should suspend relationships until such information has been gathered.*

3. *Shareholders should call for a comprehensive external audit of Glencore's activities in the Democratic Republic of Congo since it first entered the country in 2007. The audit should detail the beneficial owners of all companies partnered with Glencore in the country's mines or linked in any way to its activities in the country. The audit should consider whether companies associated with Mr Gertler have posed a corruption risk or not. The results of this inquiry must be made public in printed form. The board must play no intermediary role.*

Global Witness submitted questionnaires to Glencore and Mr Gertler in April 2012, and has posted these online at www.globalwitness.org/secretsales in addition to their responses.

This note now examines in more detail the three mining deals referred to above, and will also outline questions surrounding financial transactions between Glencore and other companies associated with Mr Gertler.

Glencore's acquisition of its stake in Kansuki

Glencore estimates that Kansuki mine will produce 100,000 metric tonnes of copper per annum once developed by 2014 or 2015[16] while calculations based on some analyst reports estimate

Kansuki could produce up to 17,000 tonnes of cobalt per annum.[17] By one analyst's estimate the mine could be worth over $830 million.[18]

In August 2010 Glencore acquired 50 per cent of the shares of a Congolese registered company, Kansuki Investments SPRL.[19], which one month earlier had acquired 75 per cent of Kansuki mine in a secretly formed joint-venture with the state mining company Gecamines[20] The contract and financial details relating to the formation of this July 2010 joint venture between Kansuki Investments SPRL and Gecamines have never been made public.[21]

At the time of the July 2010 joint venture Kansuki Investments SPRL was fully held by another company, the Fleurette Group, which is owned by a trust for the benefit of the family of Dan Gertler, according to Mr Gertler's spokesman. When Glencore acquired its 50 per cent in Kansuki Investments in August 2010, the Fleurette Group's stake in Kansuki Investments SPRL was therefore reduced to 50 per cent.[22] The Fleurette Group has not revealed its full list of beneficial owners or those of its subsidiaries that control assets in Congo. [23]

A spokesman for Mr Gertler says that the July 2010 joint venture between Kansuki Investments SPRL (then held by Fleurette Group) and Gecamines covering Kansuki mine was "spun out" on "fundamentally the same terms" from an earlier joint venture between the Fleurette Group and Gecamines that had covered Kansuki and other mines since 2006.[24] However, beyond this very little has been revealed about how the Fleurette Group was actually awarded the stakes in these mines in 2006.

Glencore has now committed to finance the first $400 million of development-related expenditures for Kansuki mine through a loan to Kansuki Investments SPRL. This loan effectively covers all the costs for the other partners in Kansuki, which are all associated with Mr Gertler.[25]

Global Witness believes that by acquiring a share of Kansuki mine which has been subject to hidden ownership arrangements stretching back to at least 2006 involving Mr Gertler, Glencore risks complicity in potentially corrupt activities. By carrying the entire financial load for the development of the mine on behalf of secretive companies whose beneficial owners are not known, Glencore risks facilitating potentially corrupt activities.

Glencore's waiving of its right of first refusal on a residual stake in Kansuki

As noted above, the joint venture covering Kansuki mine was divided between Kansuki Investments SPRL's 75 per cent and Gecamines' 25 per cent. This 25 per cent was sold in March 2011, in secret.

Gecamines stated in a 28 March 2011 sales contract, which was not disclosed until nearly a year later[26], that Kansuki Investments SPRL (of which Glencore now owned half) had declined to execute a right of first refusal to acquire the remaining 25 per cent of Kansuki mine .

Instead, according to the contract, Kansuki Investments SPRL recommended on 1 March 2011 that Gecamines sell the 25 per cent share to Biko Invest Corp, a British Virgin Islands registered company. In May 2011, Glencore described Biko Invest Corp in its IPO prospectus as "an entity associated with Dan Gertler", although its ultimate beneficiaries remain unclear.

According to the contract, the sales price for the 25 per cent of Kansuki mine to Biko Invest Corp was just $17 million, several times less than the stake is worth according to two commercial valuations seen by Global Witness. Those valuations given by Liberum Capital and Deutsche Bank priced the stake at $86 million and $209 million respectively.[27]

Glencore maintains that the right of first refusal on the 25 per cent share of Kansuki mine was a right assigned to Kansuki Investments SPRL and not to Glencore. However, this argument is difficult to accept given that Glencore itself acknowledges that it holds 50 per cent of the shares of Kansuki Investments SPRL[28] and has already been designated operator[29] of Kansuki mine.

Glencore also maintains that it did not want to increase its shareholding in Kansuki due to concerns over political instability prior to the 2011 elections and because it preferred to spend additional capital on "building kit on the ground" rather than buying additional stakes in the mine.[30] These arguments are also not entirely convincing given how low the price on offer was.

Global Witness is concerned that Glencore is, therefore, tightly wound up in a secret sale of an asset to a company associated with Mr Gertler and is therefore at risk of being involved in potential corruption given that the beneficial shareholders of the company remain hidden.

Glencore's waiving of its right of first refusal on a residual stake in Mutanda

Mutanda is already a producing mine, and Glencore states in its prospectus that it should reach production levels of 110,000 metric tonnes of copper and 23,000 tonnes of cobalt per annum by the end of 2012. The mine has been valued at over $3 billion by the analyst company used by Glencore in its May 2011 prospectus.[31]

The mine was originally covered by a joint venture agreement in 2001 giving 80 per cent of it to SAMREF Congo SPRL[32], a Congolese registered company which was then partly owned by Groupe Bazano[33] (a private company). The remaining 20 per cent was held by Gecamines but was sold off in secret in 2011.

Glencore has stated that it acquired half of the shares in SAMREF Congo SPRL in 2007, giving it a 40 per cent overall stake in the mine.[34] Glencore is now operator of the mine.[35]

On 28 March 2011, Gecamines signed a contract to sell its 20 per cent share in the joint venture to another British Virgin Islands registered company, Rowny Assets Limited. This contract was not published until almost a year later.[36] According to Glencore's May 2011 IPO prospectus Rowny Assets Limited is "an entity associated with Dan Gertler", though its ultimate beneficial owners remain unclear.

According to the 28 March 2011 contract, SAMREF Congo SPRL (which had issued half its shares to Glencore) had declined to exercise its right of refusal to purchase the 20 per cent share. Instead it recommended on 1 March 2011 that Gecamines sell this share to Rowny Assets Limited.

Glencore maintains that this pre-emptive right on the 25 per cent share of Mutanda mine was a right assigned to SAMREF Congo SPRL and not to Glencore. However, Glencore itself acknowledges that it holds 50 per cent of the shares of SAMREF Congo SPRL and has already been designated operator of Mutanda mine. The holding company of SAMREF Congo SPRL is SAMREF Overseas S.A., a Panamaregistered company which lists Glencore executives Cornelius Erasmus and Aristotelis Mistakidis as President and Vice President of the company. Mr Mistakidis is one of six billionaires created by Glencore's flotation.

Global Witness, therefore, does not consider it credible for Glencore to distance itself from the decision by SAMREF Congo SPRL to forego its pre-emptive option and recommend the sale of the share to a company associated with Dan Gertler.

The share sale contract stated that the price offered by Gecamines to Rowny Assets Limited was $120 million, far below the $849 million net present value attributable to the 20 per cent share of Mutanda on the basis of a valuation done by Golder Associates, the analysts used by Glencore in its IPO prospectus.[37] The contract also stated that Rowny Assets Limited will receive royalties and *pas de porte* (signature bonus) payments, which would normally go to the Congolese state.[38]

A spokesman for Mr Gertler has rejected the Golder Associates valuation of Mutanda, saying that it does not take into account $1 billion of debt, "which has to be deducted to determine the real value of the asset". He did not give details about the nature of this debt, however. He also maintained that the Golder Associates valuation is "not an appropriate indicator", as Glencore's share price is now well below its IPO target valuation.

As with Kansuki, Glencore has stated it preferred to spend the money on developing Mutanda rather than purchasing additional shares of the mine. However Global Witness again has difficulty accepting such an argument, given how low the price on offer was. Indeed, the 20 per cent would have generated a return on investment by a factor of seven over the long term[39], but starting with nearly immediate effect.

Global Witness is concerned that Glencore is, therefore, tightly wound up in a secret sale of an asset to a company associated with Mr Gertler and is therefore at risk of being involved in potential corruption given that the beneficial shareholders of the company remain hidden.

<u>Additional issues</u>

Questions over planned acquisitions in Kansuki and Mutanda

Glencore chief executive officer Ivan Glasenberg announced in August 2011 that the company was considering expanding its combined share of Mutanda and Kansuki.[40] Glencore's 2011 annual report states that "*discussions with respect to a potential combination of the Mutanda and Kansuki operations are ongoing with a view to ultimately obtaining a majority stake in the merged entity*".[41]

As explained above, Glencore forewent increasing its stake in both mines in March 2011 after its joint venture partners Kansuki Investments SPRL and SAMREF Congo SPRL recommended Gecamines sell to Biko Invest Corp and Rowny Assets Limited. If Glencore is now in discussions to increase its stake in Mutanda and Kansuki it must clarify immediately with whom it is in discussions.[42]

Glencore states in its May 2011 prospectus that one of the joint venture partners of "Kansuki" has a right to sell to Glencore an 18.75 per cent share of its share in the mine.

Glencore must clarify who this joint venture partner is, when the agreement was made, and whether the partner has exercised this right to sell. Now that Glencore is in discussions to expand its share of

Kansuki and Mutanda, Glencore must clarify whether it intends to do so through this 18.75 per cent option or otherwise.

Loan agreements and share deals supporting Dan Gertler

Global Witness has been analysing a number of financial transactions between Glencore and companies associated with Mr Gertler. These transactions have until now received minimal public attention.

Prior to Glencore's acquisition in Kansuki, it had already taken a major share in one of the biggest producing mines in Congo, Katanga Mining Limited, a Toronto-listed mining company in which Dan Gertler had interests.[43] After the financial crisis of 2008, which saw a more than 90 per cent slump in the Katanga Mining Limited share price, Glencore upped its share in the company to 75 per cent.

On 12 January 2009, Katanga Mining Limited received the final instalment of a $265 million convertible loan from Glencore, in which a number of private companies participated.[44]

One of the companies that participated was Lora Enterprises Limited, which Katanga Mining Limited announced as being owned by a trust for the benefit of family members of Dan Gertler.[45] However, just six days before Lora Enterprises participated in the convertible loan on February 9 2009[46] to the tune of $45 million[47], Glencore entered into an agreement with Zuppa Holdings Limited, the parent company of Lora Enterprises Limited, where Glencore was given as collateral all Zuppa's shares in Lora in exchange for a promise by Zuppa to repay Glencore the sum of $45.9 million at a later date.[48] Asked about this arrangement, a spokesman for Mr Gertler confirmed that Glencore had loaned Zuppa $45 million in order to finance Lora's participation in the syndicated loan. [49]

Katanga Mining shares are today trading significantly higher, having partially recovered from their slump. Lora has therefore achieved significant windfall profits as a result.

Global Witness calls on Glencore to clarify why it lent money to the parent company of Lora Enterprises, a company related to Dan Gertler, and whether similar loans were extended to any company participating in the Katanga Mining Limited convertible loan agreement that did not have an affiliation to Mr Gertler.

Global Witness is still analysing a series of other stock trades between Glencore and companies associated with Mr Gertler. Global Witness plans to engage further with Glencore and Mr Gertler on these questions but, for the time being, the questions submitted by Global Witness to Glencore, together with the replies, can be viewed at www.globalwitness.org/secretsales.

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[1] In a Sunday Times article dated 6 March 2011, Antoine Ghonda, a roving ambassador for President Kabila said: "Dan Gertler is a friend. The way our president works, he has close contacts and protects them." A spokesman for Mr Gertler confirmed he is a friend of President Kabila. Mr Gertler was pictured with President Kabila at his wedding (see http://congosiasa.blogspot.co.uk/2010/06/dan-gertler-at-it-again.html) and at the funeral of presidential aide Katumba Mwanke in 2012, where he was sitting two seats away from the President (see photos at http://www.digitalcongo.net/article/81501 and video at http://www.youtube.com/watch?v=kmNUYi3WVsE). Links last accessed 19 April 2012.

[2] Glencore's first transaction with Mr Gertler took place in 2007 when Glencore acquired a stake in Nikanor, the holding company of G.E.C., a Canadian firm which controlled the prized KOV mine in Katanga and in which Mr Gertler had interests. In 2008 Katanga Mining Limited merged with Nikanor. Since then, Glencore has acquired 75 per cent of Katanga Mining Limited (see Glencore web page on Katanga Mining, last accessed 25 April 2012: http://www.glencore.com/katanga-mining.php for confirmation of shareholding). In addition, Glencore obtained its shareholding in the Kansuki mine from Kansuki Investments SPRL, a company registered in Congo, in which a company associated with Mr Gertler holds a 50 per cent interest (see footnotes 13 and 21).

[3] Calculations based on Deutsche Bank estimates cited in June 2011 investment analyst report available at http://www.scribd.com/doc/57254342/34/Mutanda-%E2%80%93-a-tier-1-greenfield-development-asset. Using valuations cited on

Appendix C on page 118, in the "low value" column, Glencore's share in Katanga Mining is cited at $3.049 bn, its share of Mutanda is cited at $1.251 bn and its share of Kansuki is cited at $313m, for a combined total of $4.613 bn. Using an alternative valuation that Deutsche Bank gives in the same report for Glencore's share in Katanga Mining, of $2.554 bn, would give a total of $4.118 bn.

[4] In its 2012 mineral commodity summary for cobalt (http://minerals.usgs.gov/minerals/pubs/commodity/cobalt/mcs-2012-cobal.pdf, last accessed 23 April 2012), the US Geological Survey put 2011 world cobalt production at 98,000 metric tonnes (compared to 89,500 tonnes for 2010). It is worth noting, however, that Glencore's May 2011 IPO prospectus gives a lower estimate for 2010, putting that year's world cobalt output at 77,000 tonnes, based on figures from CRU International Group (p. 50). Kansuki and Mutanda are expected to generate 40,000 tonnes of cobalt a year at full production, according to Deutsche Bank, citing its own data and information from Golders, who produced valuations and surveys in the Glencore IPO prospectus. Congo's Central Bank estimated copper output in 2011 at 522,000 tonnes, whereas Kansuki and Mutanda should produce over 200,000 metric tonnes according to Glencore (see http://www.bcc.cd/downloads/pub/bulstat/Bulletin_statistiques_janvier_2012.pdf

[5] The six mining projects are Mutanda, Kansuki, SMKK, Kolwezi, Frontier and Lonshi. Congo's state-run company Gecamines sold a 20 per cent stake of Mutanda in March 2011 to Rowny Assets Limited, a British Virgin Islands company Glencore says is "associated with Dan Gertler" (IPO prospectus, p. 70). Gecamines transferred a 75 per cent share in Kansuki mine to Kansuki Investments SPRL in July 2010 (see list of Gecamines joint ventures on the Gecamines website: http://mines-rdc.cd/fr/documents/Liste_partenariats_Gecamines.pdf , last accessed 25 April 2011). Mr Gertler's spokesman has confirmed that Fleurette Group, another offshore entity, is a 50 per cent shareholder in Kansuki Investments SPRL and is owned by a trust for the benefit of Mr Gertler's family. In March 2011 the remaining 25 per cent share in Kansuki mine was sold to Biko Invest Corp (see contract published on Geamines website: http://www.gecamines.cd/files/contrat_cession_parts_sociales_biko.pdf, last accessed 25 April 2012), a British Virgin Islands company that Glencore has described as "associated with Dan Gertler" (see Glencore IPO prospectus, p. 70). Gecamines sold a 50 per cent stake in SMKK in early 2010 to Emerald Star Enterprises Limited (according to Gecamines minutes dated 9 April 2010, provided by a source who requested anonymity). Emerald Star Enterprises Limited is registered in the British Virgin Islands. Emerald Star Enterprises Limited sold its interest to ENRC, which declared in a 23 March 2011 statement that Emerald Star Enterprises Ltd is an entity "controlled by the Gertler family trust" (see ENRC 2010 preliminary results, p. 67, http://www.enrc.com/PageFiles/5041/23-03-11%20Announcement%20of%202010%20Preliminary%20Results.pdf, last accessed 25 April 2012,). In January 2010 Gecamines sold 70 per cent of the Kolwezi project to four British Virgin Island companies (Highwind Properties Limited, Pareas Limited, Interim Holdings Limited and Blue Narcissus Limited) – see contract published on the Congolese Ministry of Mines website, last accessed 25 April 2012: http://mines-rdc.cd/fr/documents/contrat_gcm_highwind.pdf . In August 2010 ENRC announced it acquired a 50.5 per cent in Camrose, the parent company of those four companies (see ENRC press release of 20 August 2010: http://www.enrc.com/Documents/PressReleases/CamroseAnn2(20_8_2010_15_29_221).pdf). ENRC announced that it purchased the Camrose shares from Silvertide Global Limited, Zanette Limited and Cerida Global Limited which it described as all being "held by the Gertler Family Trust". Seventy per cent of the Frontier and Lonshi projects were sold off in June 2010 to a Hong Kong-registered company, Fortune Ahead Limited (See contract on Ministry of Mines website, under which state mining company Sodimico formed a joint venture to run the mines with Fortune Ahead: http://mines-rdc.cd/fr/documents/Contrat_convention_sodifor.pdf, last accessed 26 April 2012). The remaining 30 percent was sold off to two British Virgin Islands companies (Sandro Resources Limited and Garetto Holdings Limited) on the same day that the Mutanda and Kansuki shares were sold to Rowny Assets Limited and Biko Invest Corp (for Sandro and Garetto contract and accompanying document detailing the price see Miinistry of Mines website: http://mines-rdc.cd/fr/documents/accord_cession_parts_sodimico_sandro_garetto.pdf and http://mines-rdc.cd/fr/documents/accord_prix_achat_sodimico_sandro_garetto.pdf, last accessed 26 April 2012).

[6] The contracts relating to the transfer of 75 per cent of Kansuki mine to Kansuki Investments SPRL has never been published, save for the briefest of references in Gecamines list of joint ventures published online some time after the deal (see footnote 5). Gecamines sold the remaining 25 per cent share of Kansuki to Biko Invest Corp in March 2011 at the extremely low price of $17 million. A Deutsche Bank valuation published 6 June 2011 put Glencore's 37.5 per cent stake in Kansuki at $313m – extrapolating from this would give a value of $209m for a 25 per cent stake. Later that month, Liberum Capital valued Glencore's stake in Kansuki at $86m, which would put a 25 per cent share at $57.25m ("Glencore: unapologetically unique", 29 June 2011). Also in March 2011, Gecamines sold its remaining 20 per cent in Mutanda mine to Rowny Assets Limited for $120m, again far below commercial estimates. Based on the same reports cited above from Deutsche Bank and Liberum Capital, this 20 per cent stake would be worth, respectively, $626m or $965m. Additionally, the 20 per cent stake in Mutanda would be worth: $353m on the basis of a Nomura Equity Research briefing of May 2011; approximately $375m on the basis of a graph published in a December 2011 research note by BMO Capital Markets; and $849m on the basis of figures presented in Glencore's May 2011 IPO prospectus, once royalties are taken into account. It should be noted that in September 2011 Gecamines responded to queries from the IMF with a public letter, saying: "Gecamines Sarl valued its shares in MUMI SPRL [Mutanda Mining} at $137m, far more than the valuation BNP Paribas did in April 2010 of $108m in an approach *basé sur un escompte des flux de trésorerie*." (http://www.congomines.org/wp-content/uploads/2011/11/GCM-2011-ResponseFMIVenteMumi.pdf) The letter gives the impression that Mutanda alone was sold for $137m – whereas in fact this sales tag was for Kansuki and Mutanda combined. Regarding the reference to a BNP valuation of $108m for Mutanda, Global Witness has difficulty accepting this as credible, given that: BNP has declined to say whether or not it did indeed value the mine at this level (see Bloomberg story of 12 October 2011: Gecamines of Congo Defends Sale of Stakes in Glencore Mines; BNP Paribas has not yet replied to a telephone call on 26 April 2012 and an e-mail on the same day with questions from Global Witness regarding the valuation); neither Gecamines nor any other party has published the valuation nor even any details relating to it; and that it differs so widely from the other five valuations obtained by Global Witness, some of which were received in printed form, along with details of the calculations. In January 2010, the Dan Gertler-associated Highwind Group bought 70 per cent of the Kolwezi project for a $60m signature bonus. On the basis of a July 2010 Numis estimate - putting 65 per cent of Kolwezi at $2.498 bn - a 70 per cent stake would have been worth $2.69 bn. On the basis of two other valuations, which Global Witness obtained on condition of anonymity from financial institutions of international repute, 70 per cent of Kolwezi would be worth respectively $334m (December 2009) and $1.58 bn (May 2010). Between June 2010 and March 2011, Frontier and Lonshi mines were entirely sold off by Congo for a total of $60m. According to a 17 August 2011 Bloomberg piece, Oriel Securities in September 2010 valued Frontier at $1.4 bn and Lonshi at $250m (Congolese State Miner Sells Stake in Former First Quantum Mines). A July 2010 report by Numis valued 100 per cent of Lonshi at $392m and 95 per cent of Frontier at $1.568 bn. Additionally, two other valuations, obtained by Global Witness on condition of anonymity from financial institutions of international repute, put 95 per cent of Frontier at $1.01 bn and $1.851 bn.

[7] Mutanda, Kansuki, SMKK, Frontier and Lonshi have all been fully privatised.

[8] A letter dated 19 May 2011 from state run mining company Sodimico details instructions given by the Congolese government to the company to pay $10 million to the General Account for the Treasury for the financing of 2011 elections (see Reuters: "UPDATE 1-Congo sells mining assets to fund polls -MPs, docs", which mentions the date; Bloomberg story: "Congolese State Miner Sodimico Sells a Stake in Former First Quantum Mines". The Bloomberg article states: "Bloomberg News received a copy of the letters from the National Assembly's Economic and Financial Committee and Kangoa [Sodimico Chief Executive Officer Laurent Lambert Tshisola Kangoa] confirmed their

content.”). Sodimico had on 28 March 2011 agreed to sell its share of Frontier and Lonshi for $30m to two British Virgin Island companies (Sandro Resources Limited and Garetto Holdings Limited) registered by the same offshore agents that registered Biko Invest Corp and Rowny Assets Limited, two companies associated with Dan Gertler which also on the 28 March 2011 secretly purchased prime mining assets discussed in greater depth later in this note. It is not known where the proceeds from the sale of these mining assets were allocated.

[9] The US government described the elections as “seriously flawed” (US Ambassador to Congo James Entwistle, cited for example in BBC online article, “DR Congo election: US says poll was 'seriously flawed'”, 15/12/11: http://www.bbc.co.uk/news/world-africa-16191863, last accessed 26 April 2012). The Carter Centre electoral observation mission said the election results “lack credibility” (see Carter Center statement of 10 December 2011, “Carter Center: DRC Presidential Election Results Lack Credibility”: http://www.cartercenter.org/news/pr/drc-121011.html, last accessed 26 April 2012). In a report published on March 29 2012, the European Union observer mission said that the results "were not credible in the light of numerous irregularities and fraud witnessed during the electoral process” (AFP piece of 29 March 2012, “EU says DR Congo vote results 'not credible'”, http://www.google.com/hostednews/afp/article/ALeqM5gYKtHXkeY53LZw4zTCrseLXwE2sg?docId=CNG.e201d56eb2b61927ecd3238a3ab62220.771, last accessed 26 April 2012).

[10] Human Rights Watch documented at least 24 people killed in electoral and post-electoral violence, and dozens more arbitrarily arrested. See report of 22 December 2011, “DR Congo: 24 Killed since Election Results Announced”, http://www.hrw.org/news/2011/12/21/dr-congo-24-killed-election-results-announced, last accessed 26 April 2012.

[11] http://hdr.undp.org/en/media/HDR_2011_EN_Table1.pdf, last accessed 26 April 2012.

[12] A confidential five-year plan by state mining company Gecamines, issued in January 2012, and seen by Global Witness states that the company’s priority is to focus on boosting production rather than selling any more state assets. A senior Gecamines source has told Global Witness that the best Katangan mining assets have now been privatised.

[13] Kansuki Investments SPRL, a Congolese registered company, received the 75 per cent share. Fleurette Group, which is owned by a trust for the Gertler family, is a 50 per cent shareholder in Kansuki Investments SPRL according to a spokesman for Mr Gertler (also see footnote 21).

[14] The right of first refusal was issued to Kansuki Investments SPRL, but Glencore is a 50 per cent shareholder in Kansuki Investments SPRL and is the operator of Kansuki mine. For the clause in the Kansuki contract where it is stated that the half-owned Glencore joint venture waived its right of first refusal, see: http://www.gecamines.cd/files/contrat_cession_parts_sociales_biko.pdf (page 3, points c and d) Document last accessed online 26 April 2012.

[15] The right of first refusal was issued to SAMREF Congo SPRL, but Glencore is a 50 per cent shareholder in SAMREF Congo SPRL and is the operator of Mutanda mine. For the clause in the Mutanda contract where it is stated that the half-owned Glencore joint venture waived its right of first refusal, see http://www.gecamines.cd/files/contrat_cession_parts_sociales_rowny.pdf (pages 3-4, points c and d). Document last accessed online 3 May 2012.

[16] Figure cited in Glencore IPO May 2011 prospectus, page 89. Deutsche Bank suggests Kansuki will produce this volume in 2014 or 2015, on page 100 of its 6 June 2011 research note at http://www.scribd.com/doc/57254342/34/Mutanda-%E2%80%93-a-tier-1-greenfield-development-asset (last accessed 26 April 2012).

[17] Deutsche Bank has said in its June 2011 report (cited in earlier footnote) that it expects a combined output of roughly 200,000 tonnes a year of copper and just over 40,000 tonnes of cobalt per annum from Kansuki and Mutanda by 2014 (see figure 147, p. 100 of Deutsche Bank report). Given Glencore’s May 2011 IPO prospectus gives an estimate of 23,000 tonnes of cobalt production a year for Mutanda (see, for example, p. 69), it is possible to deduce a rough estimate of 17,000 tonnes a year for Kansuki.

[18] Deutsche Bank has said in its June 2011 report, cited in the footnote above, that Glencore’s 37.5 per cent stake in Kansuki was worth $313 million, thereby valuing the entire mine at $835 million.

[19] See Glencore May 2011 IPO prospectus, page 88

[20] See list of Gecamines’ joint ventures on Ministry of Mines website, which lists date of the joint venture: http://mines-rdc.cd/fr/documents/Liste_partenariats_Gecamines.pdf. This document was produced at the very earliest in December 2010. The joint venture between Kansuki Investments SPRL (75 per cent) and Congo’s state mining company Gecamines (25 per cent) is known as Kansuki SPRL.

[21] The DRC government only passed a presidential decree which mandated mining contracts be published on the mines ministry website, in May 2011. However in a 30 November 2009 letter of intent to the IMF, Congo’s government pledged to publish “partnership agreements between public and private enterprises (including information on bonus signing shares, taxation system, private shareholders, and members of the board of directors)” (p 23 of http://www.imf/org/external/np/loi/2009/cod/113009.pdf, last accessed 2 May 2012).

[22] A spokesman for Mr Gertler has told Global Witness in an e-mail that the Fleurette Group now owns 50 per cent of Kansuki Investments SPRL, the other half of which is owned by Glencore. In an e-mail to Global Witness on 3 May 2012, the spokesman confirmed that Fleurette had controlled 75 per cent of the mine from 2006 under a joint venture known as Comide SPRL. The joint venture lasted until July 2010 when Comide SPRL was “spun out” into a new joint venture known as Kansuki SPRL with the Fleurette Group continuing to hold 75 per cent of Kansuki mine via Kansuki Investments SPRL until Glencore acquired 50 per cent of that share in August 2010.

[23] Global Witness asked Mr Gertler’s representatives in an e-mailed question, “Who are the beneficiaries of Fleurette Group, apart from Mr Gertler or the Gertler family trust?” and received the response: “Fleurette is owned by a discretionary trust held only for the benefit of family members of Mr Gertler.” Global Witness is pressing for declaration of the full list of shareholders of all companies associated with Mr Gertler that are linked to investments in Congo. Corporate records for Kansuki Investments SPRL officially obtained from Congo’s corporate registry show that the company is divided into 1,000 shares, one of which is held by a private shareholder and 999 of which are held by Kansuki Holdings (Bermuda) Ltd, a Bermuda-registered company that is represented by Maxi Torres, a senior associate at Hassans law firm in Gibraltar (see Hassans website: http://www.gibraltarlaw.com/people.php; last accessed 30 April 2012). Hassans has represented a number of other companies owned by trusts of the Gertler family (Global Witness has, for example, seen a document, “Letter of intent regarding the sale of shares in Camrose Resources Ltd” of 14 June 2010, which lists Maxi Torres as a director of Silvertide Global Limited, Zanette Limited and Cerida Global Limited, while Hassans Senior Associate Dino Chincotta is listed as the correspondent for these companies. Camrose, Silvertide, Zanette and Cerida are all ultimately owned by the Gertler Family Trust, as per ENRC press release of 20 August 2010: http://www.enrc.com/Documents/PressReleases/CamroseAnn2(20_8_2010_15_29_221).pdf). Corporate documents of Kansuki Investments SPRL show that prior to the August 2010 acquisition by Glencore of 50 per cent of Kansuki Investments SPRL the one share of Kansuki Holdings (Bermuda) Ltd was held by Laurent Okitonembo. This single share was transferred to Aristotelis Mistakidis, a senior Glencore executive, in August 2010, when Glencore said it acquired the 50 per cent share of Kansuki Investments SPRL. A spokesman for Mr Gertler has confirmed that Glencore’s acquisition of 50 per cent of Kansuki Investments SPRL “took place through Kansuki Holdings (Bermuda)”.

[24] In an email to Global Witness dated 3 May 2012, Mr Gertler’s spokesman said that Kansuki mine had been held under another joint venture after 2006 called Comide SPRL which in turn was 75 per cent held by the Fleurette Group and 25 per cent by Gecamines. In 2010

this joint venture was “spun out” into Kansuki SPRL which was in turn 75 per cent held by Fleurette Group on “fundamentally the same terms” as Comide SPRL.

[25] See Glencore May 2011 IPO prospectus p.182. In a written note to Global Witness on 2 May 2012, Glencore stated that it expected the $400m development loan would “cover the full cost of the programme”. The other partners in Kansuki mine apart from Glencore are the Fleurette Group, and Biko Invest Corp, an offshore company which is also part of the Fleurette Group according to a spokesman for Mr Gertler.

[26] The contract pertaining to the sale of the remaining 25 per cent share of Kansuki mine to Biko Invest Corp was finally published by the Congolese government in February 2012 in response to pressure from the International Monetary Fund, which has made transparency in the mining sector a condition for signing off loans to the Congolese government.

[27] As per earlier footnote, Deutsche Bank put Glencore’s 37.5 per cent share in Kansuki at $313m, making a 25 percent share worth $209m. Liberum Capital, a London based brokerage firm puts Glencore’s 37.5 percent stake at $86m.

[28] Glencore even states in an e-mail response on 2 May 2012 that “Glencore was not willing to match the offer”, suggesting it did indeed take a decision.

[29] See Glencore May 2011 IPO prospectus, page 88.

[30] Glencore e-mail response, 2 May 2012.

[31] Golder Associates, used by Glencore in its IPO prospectus values Glencore’s 40 per cent share of Mutanda at $1.3 billion, at the base case valuation, and the overall mine at $3.089 billion (p. 835 of prospectus, or p. 7 of mineral experts’ report on Mutanda).

[32] SAMREF Congo SPRL entered into a contract with Congo’s state-run mining company Gecamines in 2001, when it was awarded 80 per cent of the mine, with Gecamines holding onto 20 per cent. The joint venture was known as MUMI Sprl, and the contract can be downloaded at http://www.congomines.org/wp-content/uploads/2011/10/A3-MUMI-2001-ContratPartenariatCessionSamref-Gecamines.pdf

[33] Page 862 of the Glencore May 2011 IPO prospectus (p. 34 of the mineral experts’ report on Mutanda) makes reference to the Mutanda concession as having been awarded to Groupe Bazano, although a lawyer for Groupe Bazano has told Global Witness in April 2012 that the company only has a tiny stake in SAMREF Congo SPRL.

[34] Glencore May 2011 IPO prospectus page 87 is the first reference to the acquisition. Although no date for the acquisition was given in the prospectus, Glencore stated to Global Witness on 2 May 2012 in an e-mail that the acquisition took place in June 2007

[35] Ibid.

[36] The details of this contract were not disclosed until February 2012, when they were published by the Congolese government, partly in response to pressure from the International Monetary Fund.

[37] See page 958 of Glencore May 2011 IPO prospectus where Golder Associates values Glencore’s 40 per cent share of Mutanda at $1.3 billion, at the base case valuation. In a 16 September 2011 memorandum, Gecamines cite a BNP Paribas valuation of the 20 per cent share of Mutanda at only $108 million – regarding why Global Witness has difficulty accepting this as credible, see footnote 6.

[38] See http://www.gecamines.cd/files/contrat_cession_parts_sociales_rowny.pdf

[39] $849m is roughly seven times $120m.

[40] See Dow Jones, “Glencore CEO: Plan to combine Congo Kansuki, Mutanda Assets”, 25 August 2011; http://www.pennystocktradingalerts.com/market_outlook/glencore-ceo-plan-to-combine-congo-kansuki-mutanda-assets/. Last accessed 30 April 2012.

[41] Page 55 of 2011 Annual Report (http://www.glencore.com/documents/Annual_Report_2011.pdf).

[42] In an e-mailed response on 2 May 2012, Glencore said that “it is not prudent to make any disclosures beyond what we have done so already to our shareholders”. Mr Gertler’s spokesman said in a reply on the same day that there were no plans to sell interests in Rowny and Biko.

[43] Katanga Mining Limited was originally formed after private company Kinross-Forrest obtained 75 per cent of the Kamoto mine and renamed itself Katanga Mining Limited in 2005 via a reverse merger (i.e. the takeover of a company by a smaller company). In 2008 Katanga Mining Limited merged with Nikanor, the holding company of GEC, which had obtained a share in the KOV mine in 2005. Dan Gertler was one of the principle shareholders of GEC at the time. Both Kinross-Forrest’s and GEC’s acquisitions had been roundly criticised in a September 2005 World Bank memo (see Financial Times, 3 January 2007, Transparency Fears Lead to Review of Congo Contracts, http://www.ft.com/cms/s/0/c918d3a2-9a8a-11db-bbd2-0000779e2340.html#axzz1ru7A9HKx). The memo - a copy of which has been obtained by Global Witness - stated that thorough valuations of the assets had not been executed by Gecamines, that the negotiation of the contracts had been made with a “complete lack of transparency” and that the dimensions of the assets exceeded “the norms for rational and highest use of the mineral assets”. The Bank also called into question the technical competency of the companies who were awarded the assets.

[44] Katanga mining press release, 12 January 2009, http://www.katangamining.com/kat/investor_relations/newsreleases/pressrelease/?id=4871412 . Last accessed 30 April 2012.

[45] Katanga Mining Limited press release 11 February 2009. Last accessed 30 April 2012. http://www.katangamining.com/kat/investor_relations/newsreleases/pressrelease/?id=4902323 .

[46] The loan is described as effective on 9 February 2009 on page 9 of a Katanga Mining Short Form Prospectus dated 22 May 2009. Last accessed 30 April 2012. http://www.katangamining.com/kat/storage/short_form_prospectus.pdf.

[47] Katanga Mining Limited Press Release 11 February 2009. It notes that a participation of $61m was transferred to Lora Enterprises Limited whose ultimate owner is a trust for the benefit of family members of Dan Gertler. It also notes that Lora transferred $16m back to Glencore Finance (Bermuda) Limited, meaning Lora’s net participation amounted to $45m. See http://www.katangamining.com/kat/investor_relations/newsreleases/pressrelease/?id=4902323 last accessed 30 April 2012.

[48] Post-incorporation transactions filed in the BVI contain details of a charge over Zuppa’s shares of Lora in exchange for the loan on 3 February 2009. The release document for this loan stipulated that Zuppa would be liable for a net repayment of $45.9m at a later date.

[49] A spokesman for Mr Gertler said that Lora and Zuppa are companies ownbed by Fleurette Group which took a “pro rata participation” of $45m in the syndicated loan and “agreed terms with Glencore to borrow such amount on commercial terms”.