



United States Department of State

Washington, D.C. 20520

February 28, 2022

Case No. FL-2021-00512

[REDACTED]
Citizens for Responsibility & Ethics in Washington
[REDACTED]

Dear [REDACTED]

As we noted in our letter dated January 24, 2022, we are processing your request for material under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The Department of State has identified an additional five responsive records subject to the FOIA. Upon review, we have determined that two records may be released in part, and three records must be withheld in their entirety.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made redactions, the applicable FOIA exemptions are marked on each record. The records withheld in full are exempt from release pursuant to FOIA Exemption(s) 5 and 6, 5 U.S.C. §§ 552 (b)(5) and (b)(6). All non-exempt material that is reasonably segregable from the exempt material has been released and is enclosed.

We will keep you informed as your case progresses. If you have any questions, your attorney may contact Derek S. Hammond, Assistant U.S. Attorney, at 202-252-2511. Please refer to the case number, FL-2021-00512, and the civil action number, 21-cv-01246, in all correspondence about this request.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne Miller".

Jeanne Miller
Chief, Programs and Policies Division
Office of Information Programs and Services

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

(b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

(b)(2) Related solely to the internal personnel rules and practices of an agency

(b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

(b)(4) Trade secrets and confidential commercial or financial information

(b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

(b)(6) Personal privacy information

(b)(7) Law enforcement information whose disclosure would:

- (A) interfere with enforcement proceedings
- (B) deprive a person of a fair trial
- (C) constitute an unwarranted invasion of personal privacy
- (D) disclose confidential sources
- (E) disclose investigation techniques
- (F) endanger life or physical safety of an individual

(b)(8) Prepared by or for a government agency regulating or supervising financial institutions

(b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

NR Material not responsive to a FOIA request excised with the agreement of the requester

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SBU



MRN: 20 USEU BRUSSELS 754
Date/DTG: Sep 17, 2020 / 171547Z SEP 20
From: USEU BRUSSELS
Action: WASHDC, SECSTATE *ROUTINE*
E.O.: 13526
TAGS: PGOV, PREL, PHUM, KAWC, KJUS, KSAN, ASEC, UN, EP, EUN, 1C, CD
Captions: SENSITIVE
Reference: A) 20 KINSHASA 898
B) 17 KINSHASA 1310
C) 20 USEU BRUSSELS 514
Subject: DRC's Denis Mukwege Seeks Transitional Justice, International Court

1. (SBU) **Summary:** Speaking to the European Parliament (EP) about ongoing violence in the Democratic Republic of Congo (DRC), Nobel Peace Prize and Sakharov Prize winner Denis Mukwege called for a process of transitional justice through a range of mechanisms, including an international court and a truth and reconciliation commission. Members of Parliament (MEP) expressed strong support for bringing perpetrators to justice and focused on the role of transnational corporations in driving the conflict. MEPs also acknowledged the EU needed to do more to prevent the EU financial system from protecting these corporations and pointed to U.S. sanctions as a model for action, and agreed that human rights defenders and whistleblowers needed more protections. **End Summary.**

A Call for Justice

2. (SBU) During a session of the EP's Subcommittee on Human Rights (DROI) on August 31, and following a string of death threats against him in the DRC (Ref A), Mukwege discussed his personal safety as well as transitional justice for acts of violence in the DRC, particularly in the context of the 2010 Mapping Report from the UN Office of the High Commissioner for Human Rights (OHCHR). (Note: The Mapping Report presented detailed evidence of violence in the country from 1993-2003, as well as recommendations for further action. End note.) Guests and MEPs agreed that the report laid out clear, corroborated evidence of crimes against humanity, with clear recommendations, some of which were reflected in Mukwege's testimony. They also noted a lack of action despite the widespread evidence presented and the passage of ten years.

3. (SBU) Mukwege called for a multi-tiered approach to transitional justice, including an international court, specialized Congolese courts, and a truth and reconciliation commission. He called for an ad hoc international court under UN chapter 7 authority to bring perpetrators to justice, both Congolese and foreign citizens, pointing to Uganda, Rwanda, and Burundi as key

regional participants in the violence that were outside of the Congolese legal system. MEP Seán Kelly (European People's Party – EPP, Ireland) expressed support for including a call for an international court in a forthcoming EP resolution, and MEP Charles Goerens (Renew Europe – RE, Luxembourg) suggested that DRC violence should be an agenda item at the October 28-30 EU-AU Summit in Brussels (Note: The October Summit was subsequently postponed until 2021. End Note.) Director of the United Nations Joint Human Rights Office (UNJHRO) Abdoul Aziz Thioye stated that the DRC government issued decrees on truth and reconciliation, but they were not followed up with action. He also recommended more open communication with DRC stakeholders on the subject of an international court, saying there was resistance within the DRC to foreigners sitting on such a court.

4. (SBU) MEPs and Mukwege also repeatedly stressed that impunity drives continued crimes against humanity in DRC. Mukwege said many of the perpetrators were hiding in positions of power in other countries and, without an international court, they could not be brought to justice. He also described a recent visit to a village where the commander responsible for acts of violence was walking free, with village members living in fear of him. At the same time, he expressed some hope for action under President Tshisekedi, noting that Tshisekedi called for transitional justice to put be on the DRC's government agenda, and stressing several times that Tshisekedi was not historically linked to the violence. MEP Maria Arena (Socialists and Democrats – S&D, Belgium), Chair of the DROI Subcommittee, said that the International Court of Justice (ICJ) found Uganda culpable for violence in the DRC in 2005, but no reparations were paid. She stressed that judgements, when issued but not followed up on, damaged the credibility of international institutions. She also highlighted that Rwanda rejected the court's jurisdiction.

EP Members Stress Role of Transnational Corporations in “Economic Violence”...

5. (SBU) Several MEPs stressed the role of transnational corporations as malign actors, specifically pointing to U.S.-sanctioned Israeli businessman Dan Gertler (Ref B) as an example. MEPs Hannah Neumann (Greens/EFA, Germany), Vice-Chair of the DROI Subcommittee, Isabel Santos (S&D, Portugal), and Miguel Urbán Crespo (European United Left/Nordic Green Left, Spain) all raised the issue of conflict minerals and associated transnational corporations, often describing their actions in the DRC as “economic violence.” MEP Arena criticized the free flow of Gertler's “dirty money,” saying there were “border guards in the EU to ensure there are no migrant smugglers across the Mediterranean, but there's no border control to stop people laundering money from Congo through Europe to Israel.”

...and Point to U.S. Sanctions as a Possible Model

6. (SBU) MEP Arena stated “we need to do what the U.S. has done” when it comes to sanctions against economic actors in the DRC. She said that Gertler is subject to U.S. sanctions, which prevents him from using U.S. banks and provides financial transparency to his actions, but that the EU did not have the same type of sanctions. She also said some Dutch banks and Belgian intermediaries were in fact working with him, saying “you can't launder money in the U.S. but you can do so in the EU.” MEP María Soraya Rodríguez Ramos (RE, Spain) also noted that the EU needed to approve a global human rights sanctions regime (Ref C). In a response, European

External Action Service (EEAS) Central Africa Division Head Gerardus Gielen pointed to existing human rights sanctions against individuals, but acknowledged that the current EU sanctions regime in the DRC did not apply to economic crimes.

Broad Agreement that Human Rights Defenders Need More Protection

7. (SBU) MEPs and guests were united in their support for more protection for human rights defenders. Many MEPs expressed concerns for Dr. Mukwege's personal safety in light of recent death threats against him and questioned the status of his UN-provided protection. Mr. Thioye noted that the UN often relies on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to provide protection for people like Mukwege, but that this requires resources, which are being reduced.

8. (SBU) **Comment:** Since the EP awarded its annual Sakharov Prize for Freedom of Thought to Mukwege in 2014 it has given him consistent political support, including issuing a resolution on his situation in [September 2020](#). Although EP resolutions are non-binding, the EP is putting pressure on the DRC and the international community to better protect Mukwege. Further, MEPs' comments and recurrent hearings that call for stronger EU sanctions keep the issue in the public discourse while Member States continue to work towards approval of a global human rights regime, expected later this year. **End Comment.**

SENSITIVE BUT UNCLASSIFIED

Signature: GIDWITZ

Drafted By: BRUSSELS: (b)(6)

Cleared By: POL (b)(6)

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ECON: (b)(6)

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Released By: BRUSSELS (b)(6)

Info: KINSHASA, AMEMBASSY ROUTINE; EU MEMBER STATES
COLLECTIVE ROUTINE

Dissemination Rule: Archive Copy

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Withheld pursuant to exemption

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Withheld pursuant to exemption

(b)(5); (b)(5); (b)(6)

Withheld pursuant to exemption

(b)(5); (b)(5); (b)(6)

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SBU



MRN: 17 KINSHASA 1324
Date/DTG: Dec 28, 2017 / 281301Z DEC 17
From: AMEMBASSY KINSHASA
Action: WASHDC, SECSTATE ROUTINE
E.O.: 13526
TAGS: EFIN, KSAN, KCOR, EINV, PGOV, PREL, CD
Captions: SENSITIVE
Reference: A) 17 KINSHASA 1310
B) 17 KINSHASA 1202
C) (b)(6) EMAILS OF DECEMBER 26
Subject: DRC: Bankers, Business and Civil Society Laud Gertler Listing; Urge Compliance

1. (SBU) **Summary:** Since the U.S. Treasury Department sanctioned Israeli billionaire Dan Gertler and associates for corruption in the Congolese mining sector on December 21 (ref A), there has been relatively little coverage in the local media and no official reaction from the Democratic Republic of the Congo (DRC) Government. DRC bankers, an American business executive, and U.S. civil society organization The Carter Center applauded the designations. The Carter Center – which in November released a report linking Gertler to missing state mining receipts (ref B) – called the designation a “big blow to the regime” and promised to keep Post apprised of any retaliation against The Carter Center. The head of one of the (b)(6)(b)(6) – also approved of Gertler’s listing, but noted that additional sanctions make business dealings harder as companies do not always know who their end customer is. Several bankers also demonstrated support for the announcement, with the (b)(6)(b)(6) instructing banks to comply. By December 27, one DRC bank had already blocked three accounts and Post assisted in response to their inquiry about how to report the blocked accounts to Treasury. The will to comply in this case would seem to contrast with concerns shared by one banker about some banks’ lack of reporting to Treasury after previous designations. **End Summary.**

2. (SBU) On December 22, DRC-based American civil society organization The Carter Center lauded the Gertler designation in communications with EconOff. The Carter Center, which in November reported that \$750 million of state miner Gécamines’ earnings from partners between 2011 and 2014 was not accounted for, cheered the announcement (ref B). On December 22, (b)(6) (b)(6) told DepEconCouns in respective conversations that it was “a celebration on our end” and that the move was a “big blow to the regime.” Despite The Carter Center’s recent report, which specifically links Dan Gertler with alleged wrongdoing in state mining deals, neither (b)(6) nor (b)(6) were immediately concerned about retaliation against The Carter Center but agreed to keep Post informed of any GDRC reactions.

3. (SBU) On December 26, (b)(6) DepEconCouns that even though the sanction is a good thing, these announcements make it harder for businesses to know who they can transact with, echoing views expressed by other Econ contacts. (b)(6)

(b)(6) that is one of the largest American investments in the DRC. (b)(6) said that it is not always easy to find out who buys (b)(6) and that they worry about costs associated with sanctions compliance and possible inadvertent violations. Last year, (b)(6) (b)(7)(C)

(b)(6): (b)(7)(C)

4. (SBU) Bankers in the DRC have been mostly supportive of the announcement, with some asking questions about its enforcement. (b)(6) told DepEconCouns on December 21 that it was a "good move that will raise awareness" of what will not be tolerated by the United States. (b)(6) told DepEconCouns on December 22 that the announcement was "long overdue," and "sends a strong message without hurting the wider economy." On December 26, (b)(6) (b)(6) wrote to the heads of all the banks advising members of Treasury's sanctions, urging compliance, and offering related support. (b)(6) wrote to DepEconCouns on December 26 asking for guidance on how to declare blocked accounts to OFAC. Post provided the relevant information after consulting with Treasury colleagues (ref C).

5. (SBU) (b)(6) expressed hope that the United States would enforce the sanctions and intimated that some banks had turned a blind eye to previous designations. "It is common knowledge where the money is," said (b)(6) adding, "Now it depends on what you guys are going to do about it." With Gertler's designation, (b)(6) said that large sums are involved and that parties in the DRC and the United States need to take enforcement seriously. (b)(6) lamented that following the previous designations, not a single DRC bank reported to OFAC, adding that it would be unreasonable to think those sanctioned individuals operate outside the banking system. He expressed frustration that previously sanctioned individuals closed their old businesses and opened new ones that were readily accepted as clients of some DRC banks. "A guy is sanctioned today, tomorrow a new company is formed and opens a bank account, and the next day that company is earning millions in revenues. It doesn't take a banking genius to know something is wrong there."

Signature: HASKELL

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Info: CIA WASHINGTON DC ROUTINE; DIA WASHINGTON DC ROUTINE; NATIONAL SECURITY COUNCIL WASHINGTON DC ROUTINE; CDR USAFRICOM STUTTGART GE ROUTINE; BRUSSELS, USEU ROUTINE; USUN NEW YORK, USMISSION ROUTINE; DEPT OF TREASURY WASHINGTON DC ROUTINE; AFRICAN UNION COLLECTIVE ROUTINE; RWANDA COLLECTIVE ROUTINE

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