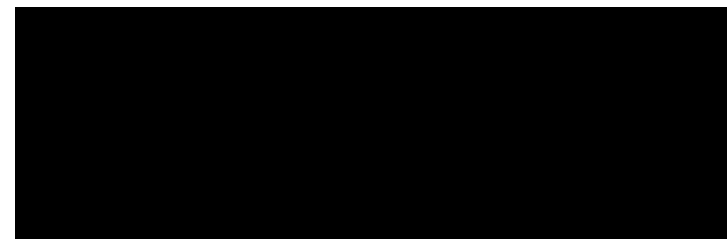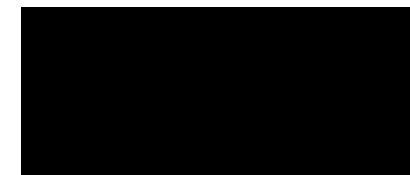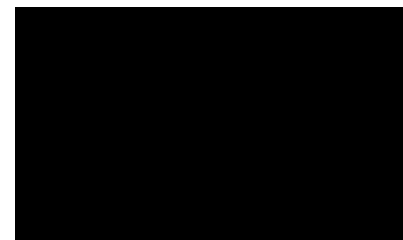# SECOND PUBLIC
# REDACTED ANNEX F

# Preliminary Assessment of the Economic Damage

**suffered by Mr. Jean-Pierre Bemba Gombo**

Your ▮ contacts for any questions relating to this document are:

███

**PRIVATE AND CONFIDENTIAL**

M.L.C.

Mr Jean-Pierre Bemba Gombo

███

Cc. Mr. Peter Haynes QC and Mrs. Kate Gibson

Amsterdam, 6 March 2019

Reference: Engagement Letter no. 180048.001

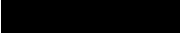**Subject: Economic Damage**

Dear Sir,

You have appointed ███ to perform a preliminary assessment (hereafter: "Economic Damage Assessment" or the "Work") of the Economic Damage per 10 December 2018 (hereafter: "Reference Date"), or as close as possible to this date, you and your assets suffered.

The purpose of our work is to assist you with the identification of any financial compensation as a result of your arrest on 24 May 2008 (hereafter: "Damage Event") at the instigation of the International Crime Court (hereafter: "ICC") of which you were acquitted on appeal on 8 June 2018. This Economic Damage Assessment will most probably be used for negotiations about financial compensation.

We performed the Work in accordance with the terms of our Engagement Letter (no. 180048.001), dated 1 November 2018 and approved by you dated 5 November 2018, which is subject to the attached limited conditions.

Please do not hesitate to contact me in case of any questions or amendment requests on matters discussed herein.

Your sincerely,

On behalf of ███

███
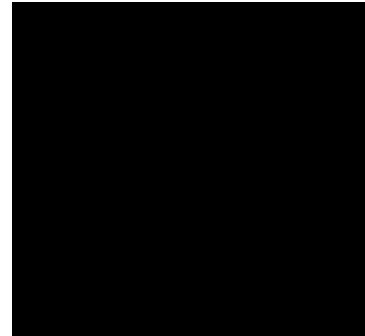
## List of Abbreviations and Definitions

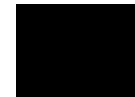| | |
|---|---|
| ∞ | Infinite |
| CDF | Congolese Franc |
| CI | Compounded Interest |
| CIT | Corporate Income Taxes |
| Damage | The indicative quantification of Economic Damage ('ED'). |
| Damage Event | The arrestment of Mr. Bemba at the instigation of the ICC on 24 May 2008. |
| DRC | Democratic Republic of the Congo |
| Economic Damage | Economic Damage, i.e. damage that involve loss of profits, wages or earnings, loss of future earning capacity, damage to real property and personal property, and loss of value. |
| End-date | The hypothetical end-date of the Economic Damage. |
| EUR | Euro |
| ICC | International Criminal Court |
| k | Thousand |
| Loss-making Date | 24 May 2008 |
| m | Million |
| Mr. Bemba | Mr. Jean-Pierre Bemba Gombo and/or his respective companies. |
| NPV | Net Present Value |
| Reference Date | 10 December 2018 |
| t | Taxes |
| $T_0$ | 24 May 2008; the moment just before the Damage Event occurred. |
| TBD | To be determined |
| $T_1$ | 10 December 2018, i.e. the original date on which the statement of Damage was to be submitted to the ICC. |
| TV | Terminal Value |
| USD | United States Dollar |

# Contents

# 1. Cover Letter

We were engaged by Mr Bemba on 1 November 2018 to assist him with the preliminary assessment of the economic damage suffered following from his arrest on 24 May 2008. In order to be able to make this assessment, we requested and received different types of information from different sources. Although the information was sometimes fragmented or no longer available, we made an effort to structure and then analyse the information that was available to us. In addition, we have had several telephone consultations with Mr Bemba's advisors to collect and/or verify received information and discuss missing information.

The damage Mr Bemba has suffered has occurred within different asset classes. Consequently, we determined for nearly every individual object per asset class the economic damage suffered. According to accepted methodologies for determining economic damage we compared, where possible, Mr Bemba's current position (i.e., the Ist-position) with the hypothetical situation he would have been in without the damaging event (i.e., the Soll-position).

In general, we used the Discounted Cash Flow (DCF) method as the fundamental, leading valuation method to calculate economic damage. The DCF method is based on discounting projected (operating) cash flows at the prevailing cost of capital. A significant part of the economic damage can be attributed to the aircraft. In this respect, we have to mention that information concerning the aircraft was obtained through telephone consultations with Mr Bemba's licensed aircraft expert as subsequently confirmed by his witness statement.

Our work has resulted in the present report. Our final report in the context of the Engagement is intended solely for Mr Bemba, his lawyers and relevant organs of the ICC. This report may not be disclosed to other external parties without the prior written consent of ▮▮▮▮▮

# 2. Introduction

## 2.1. Background and scope of services

o   We were informed that following the arrest of Mr Bemba (i.e., the Damage Event; a loss-causing event) on 24 May 2008 (i.e., the Loss-making Date or $T_0$) at the instigation of the ICC and the subsequent detention period, his conviction dated 21 March 2016 was overturned by the appeals chamber of the ICC on 8 June 2018.

o   As a result of the Damage Event, we understood Mr Bemba's assets were frozen and/or transferred to the ICC and/or seized or destroyed by the Congolese State on or just after 24 May 2008. As at 10 December 2018 (i.e., Reference Date; $T_1$) some of the assets are still frozen. In any event, up to now, Mr Bemba cannot act in economic freedom nor has he been able to remedy the consequences of the Damage Event at $T_0$.

o   We understood that the Economic Damage relating to Mr Bemba's assets has therefore occurred in the period 2008-2018, and still continue.

o   We were informed that the assets that were present at the time of Mr Bemba's arrest (i.e., 24 May 2008 or $T_0$), can be divided into four asset classes, i.e. (i) Aircraft, (ii) Property and Land, (iii) Cash and Equivalents, and (iv) Vehicles and Boats. In this report we will discuss them separately due to their nature and specific characteristics.

o   We were informed that the majority of his assets at $T_0$ were located in Belgium, Portugal and the Democratic Republic of the Congo (hereinafter: "DRC").

o   We understand that the ICC did not look after your frozen assets with due care after $T_0$, following the Damage Event. In other words: the assets frozen by the ICC were not maintained to a 'prudent man principle' such that most of these assets are today beyond economic recovery.

o ▮ has been retained by Mr Bemba (hereinafter: the "Engagement") in order to provide an estimation of the Damage as a result of the Damage Event. Strictly speaking, we perceive 24 May 2008 as the date on which the damage occurred (i.e., $T_0$), and 10 December 2018 as the date on which the damage, initially, could be terminated (i.e., $T_1$) as this was the original date by which he had to submit his statement of Damage at the ICC. However, we have concluded that the Economic Damage still continues until now.

## 2.2. Limiting Conditions

o This report has been prepared solely for the client for the purposes stated herein and should not be relied upon for any other purpose. Unless required by law, the client shall not provide this report to any third party requiring this Economic Damage Assessment or refer to us or our services without our prior written consent, which we may at our discretion grant, withhold, or grant subject to conditions. However, we do approve that this report is shared with your (i) legal counsel who represent you in the present case and (ii) the relevant representatives of the ICC.  In order to release the report to persons other than those mentioned under (i) and (ii), the client is required to sign a Release Letter first, after which we then send the recipient a Surety Letter which must be signed before we send the report to the party concerned. In no event, regardless of whether consent has been provided, shall we assume any responsibility to the client or any third party to which the report is disclosed or otherwise made available.

o Our procedures did not include an investigation of, and we assume no responsibility for, the titles to, or any liens against, the identified assets. Furthermore, we assume there are no hidden, unapparent, or unexpected conditions that could affect the original existence or value of the assets (or business as a whole) and we accept no responsibility for discovering such conditions.

o While our work has involved an assessment of both general and financial information, our Engagement does not include an audit in accordance with generally accepted auditing standards (where applicable, of the Company's existing business records), or an independent study of the assets, and we express no assurance of any kind in relation to that. Our Economic Damage Assessment is in no way an opinion of fairness to you or others, or a solvency opinion. Accordingly, we assume no responsibility and make no representations with respect to the accuracy or completeness of any information provided by and on behalf of the client.

o The scope of our work included the following: collecting and assessing information, including but not limited to information presented in the received asset register and other received (financial) information, as well as performing various (financial) assessments. The main principles, assumptions and procedures underlying the Economic Damage Assessment are described in this report. Our main findings and calculations are based on financial and other information, including historical and current information of the individual assets such as bank accounts and balances, acquisition prices, current values and appraisals, maintenance costs, insurance certificates, etc. obtained from Mr Bemba and his advisors, but are not necessarily limited to this. Where applicable, we have used various other financial, public, non-public and industry sources. Our conclusion is dependent on all received information being complete and accurate in all material respects. ▮ does not accept any responsibility for the accuracy and completeness of such provided information.

o Budgets, projections and forecasts relate to future events and are based on assumptions, which may not remain valid for the whole of the relevant period. Consequently, this information cannot be relied upon to the same extent as that derived from audited accounts for completed accounting periods. We express

no opinion as to how closely the actual results will correspond to those projected or forecast.

o  The client shall indemnify ▮ and provide a surety to ▮ in relation to any claims by third parties that may arise in relation to the Engagement, unless he demonstrates that the claims were caused by an intentional act or wilful recklessness on our part. This indemnity and surety shall apply also in respect of any shareholders, directors of shareholders, (managing) directors or employees (whether of ▮ or third parties whom we engage for the performance of the Engagement) who shall accordingly be able to invoke this indemnification directly.

## 2.3.   Sources of information

In the course of the Work, we relied upon received financial and other information, including historical and prospective (financial) information, as well as information from various public, financial, and industry sources.

The information used included, but was not limited to:

o  S&P Capital IQ.

o  Financial market data.

o  Desk Research.

o  Information provided by Mr. Bemba and/or his advisors (see Appendix 4).

Certain (financial) information with respect to the assets was obtained through telephone consultations the client, Mr. Bemba, or through telephone consultations with his advisors.

# 3. Conclusion

As a result of the Damage Event, we have calculated the indicative Economic Damage for the four identified asset classes of Mr Bemba (i.e., Aircraft, Property and Land, Cash and Equivalents, and Vehicles and Boats).

For pragmatic calculation purposes we have assumed the Damage Event took place on 30 June 2008. As a result of the Damage Event, some assets were destroyed, and some assets were seized by the Congolese State. Alternatively, some assets were frozen by the ICC and/or transferred to the ICC after the Damage Event and were not maintained properly according to a 'prudent man principle' such that most of these assets are beyond economic recovery.

We have assumed, for the same pragmatic calculation purposes, the damage period ended on 31 December 2018. Although damage after this date has been discounted, it has nonetheless indeed continued. In assessing accurately any financial compensation, this should be taken into consideration.

Based on the information received, we have identified and calculated the Economic Damage suffered as a result of the Damage Event. Our findings regarding the Damage, expressed in numerical terms, can only be considered as an indication of the Economic Damage. We do not claim that the calculation is at this stage either complete or exact. However, we believe the Work provides a realistic bottom line or starting point for discussions about financial compensation as a result of the Damage Event.

The Damage estimated at **EUR 42,4m** excluding any current appraisal values can be presented as follows, divided between Financial Loss and Property Loss: [1]

| Financial Loss | | | | | |
|---|---|---|---|---|---|
| **Asset Class** | **Estimated Damage** | **Currency** | **Exchange Rate EUR/USD[2]** | **Damage EUR** | **Page** |
| Aircraft | 34.657.890 | USD | 0,80 | 27.726.312 | 23 |
| Property and Land No. B | 4.921.988 | USD | 0,80 | 3.937.590 | 27 |
| Property and Land No. D and E | | EUR | n/a | 7.379.278 | 27  28 |
| Cash and Equivalents | | EUR | n/a | 2.104.645 | 29 |
| Vehicles and Boats | | | | | |
| Vehicles | 45.000 | EUR | | 45.000 | 31 |
| Boats | 1.458.656 | USD | 0,80 | 1.166.925 | 31 |
| **Subtotal** | | | | **42.359.750** | |
| **Property Loss** | | | | | |
| Property and Land No. A and C | TBD | TBD | TBD | TBD | |
| Vehicles | 45.000 | EUR | n/a | 45.000 | 31 |
| **Subtotal** | | | | **45.000** | |
| **Total EUR** | | | | **42.404.750** | |

Table 1. Summary of Economic Damage (Financial Loss and Property Loss).

*Note*: we converted USD into EUR against the average exchange rate for the period 06/2008 up to 12/2018.

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[1] Please see paragraph 4.4 for the distinction between Property Loss and Financial Loss with respect to this asset class.

[2] Average exchange rate 06/2008-12/2018.

# 4. Methodology

The concept of Economic Damage and its calculation must be, to the greatest extent possible, completed correctly in a consistent and methodological manner before any value can be attached to the results presented. This chapter discusses the method used which meets the general accepted requirements and conditions of such a calculation.

## 4.1. Conceptual Framework of Economic Damage

### 4.1.1. Expressing Financial Loss

Generally, the calculated amount of damage should put the plaintiff in an economically equivalent position to that which he would have been in before the loss-causing event. In this case, the aim is to put Mr. Bemba in an economically equivalent position to that which he would have been in just before the Damage Event.

In order to determine that equivalent position, the financial loss has to be determined. Usually, financial loss is understood to mean the (unfavourable) difference between the financial situation of the injured party (i.e., Mr. Bemba) before and after the Damage Event (i.e., Mr. Bemba's arrest on 24 May 2008). Central to this is the question whether Mr. Bemba's financial position has been reduced as a result of the Damage Event.

In other words: financial loss concerns the pure financial loss that cannot be traced back to personal loss (a collective term for loss from personal injury or death).

In general, property loss (i.e., the loss as a result of damage to or destruction of property such as a car or a house) is also considered not to belong to financial loss. Despite the fact that some of the damage which occurred in the asset classes 'Property and Land' and 'Vehicles and Boats' could at first sight be classified as property loss, this is not in fact the case.

Due to the nature and purpose of these assets, we consider the majority of these assets to have commercial characteristics, meaning that they generate or have the ability to generate, economic value. As a result of the Damage Event, Mr. Bemba's assets were not able to generate any future earnings in a similar way to that which they did before the Damage Event. As a result of the loss of earning capacity and/or value loss, we consider any property loss to be part of the financial loss suffered, unless otherwise specified.

### 4.1.2. Lost Profits and Loss in Value

Financial loss or Economic Damage can be expressed by, in general, lost (net)[3] profits/earnings or loss in (business) value.

1. Lost profits/earnings represent the difference between the earnings or cash flows with or without the loss-causing event (i.e., a wrongful act) during the damage period. Conceptually, this is calculated as earnings that would have been earned during the damage period but for the loss-causing event, less the costs avoided as a result of the loss of revenue.[4]

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[3] 'Net' refers to lost earning *minus* incremental costs *minus* the impact of mitigation.
[4] Everett P. Harry, Lost Profits and Lost Business Value – Differing Damage Measures, Dunn on Damage, Issue 1, Winter 2010 ((Harry (2010)), p. 6.

2. Loss in (business) value is determined as the difference between the present value of all future earnings or cash flows of the business (or composition of assets) with and without the wrongful act (i.e., by comparison of two business values),

According to Fannon and Dunitz (2018)[5], if a business - or a composition of assets - is completely destroyed, then the proper total measure of damage is initially the value of the business on the date of the loss. If the business is not completely destroyed, then it may recover lost profits/earnings.

Although the lost profits/earnings approach is more appropriate when the defendant's actions have negatively affected but not destroyed the business or the assets, or when damage occurs over a finite period, in this case, most of Mr. Bemba's assets have been destroyed or can be considered to have been destroyed. Moreover, damage is still occurring, as Mr. Bemba has not been placed in an equivalent position to that which he was in just before the Damage Event occurred. Therefore, in this Economic Damage Assessment we consider <u>loss in business value</u> the appropriate approach.

### 4.1.3. Ex ante approach

With respect to the knowledge and information available, we consider an ex ante approach, at least as far as possible, as the other appropriate approach for this Economic Damage Assessment. Because this ex ante position, i.e. the position Mr. Bemba had at $T_0$, is the position that must be restored and therefore we rely as much as possible on information that was known or knowable as of the date of the Damage Event. In other words: we have relied on reasonable expectations at the time of the

Damage Event. What follows from the foregoing is that Mr. Bemba must be fully compensated taking into account all relevant factors, such as applicable taxation, and currency movements, etc., both before and after the Damage Event.

### 4.1.4. Present Value and Standard of Value

Ultimately, Economic Damage should preferably be determined according to either the principle of *present value* of (i) lost future profits/earnings or (ii) the principle of loss in value of the business or assets. Indeed, the value of an asset is simply the present value of the future income to be earned by a business or an asset.[6] In this Economic Damage Assessment, we consider value according to a *fair market value* standard.

Under this standard of value [7], value is defined as:

> "The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."

Consequently, both principles lead to a fair market value which can be obtained by the application of an income approach. This income approach is based upon the concept that the value of any asset can be estimated by ascertaining the amount and timing of future cash flows that are generated by that asset, which future cash flows are then discounted to a relevant date by means of a risk-adjusted discount rate.

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[5] The Comprehensive Guide to Economic Damage: Volume One, 5th Edition, 2018.
[6] See, e.g., First Fed. Lincoln Bank v. United States, 518 F.3d 1308, 1317 (Fed. Cir. 2008) ("the market value of income-generating property reflects the market's estimate of the present value of the chance to earn future income, discounted by the market's view of the lower future value of the income and the uncertainty of the occurrence and amount of any future property."); Eateries, Inc. v. J.R. Simplot Co., 346 F.3d 1225, 1236

(10th Cir. 2003) ("Fair market value 'necessarily incorporate[s] expected future profits.'") (emphasis in original, citations omitted); Holland v. United States, 83 Fed. Cl. 507, 514 (2008) (market value reflects market's estimate of future profits, discounted to present value).
[7] International Glossary of Business Valuation Terms.

The scope of our Work did not include a detailed study of the risk-adjusted discount rate, nor did we receive sufficient information to determine a discount rate for the individual assets and their risks, consequently we constructed two indicative risk-adjusted discount rates, one for the asset class 'Property and Land' and one for the asset class 'Aircraft'. However, for the purpose of this Economic Damage Assessment we consider an indicative risk-adjusted discount rate as sufficient because a more in-depth constructed risk-adjusted discount rate can be further investigated in a subsequent phase, if necessary.

### 4.1.5. Accounting Profits versus Cash Flows

As set out before, financial loss can be measured by lost (net) profits/earnings or loss in (business) value. However, with respect to profits (i.e., accounting based profits), the concept of profit cannot be defined unambiguously and depends, among other things, on the selected valuation principles and depreciation system. Therefore, financial loss, whether or not it is expressed in lost profits/earnings or loss in value, is often expressed in economic quantities such as (free) cash flows. After all, ultimately it concerns those (incremental) cash flows, taking into account all necessary investments in (fixed) assets and net working capital, which someone may have missed as a result of any harmful act on the part of the other party.

The free cash flow is calculated as follows:

|      | Operating Result (EBIT)                |
|------|----------------------------------------|
| -/-  | Taxes                                  |
| =    | NOPAT (Net Operating Profit After Tax) |
| +/-  | Changes in provisions                  |
| +/+  | Depreciation                           |
| -/-  | Investments in fixed assets            |
| -/-  | Investments in net working capital     |
| **=** | **Free Cash Flow**                    |

Figure 1. Free Cash Flow.

On economic grounds, this means financial loss should ideally either be expressed in terms of lost net free cash flows (see footnote 3) or loss in value expressed in (free) cash flows.

## 4.2. Method of Comparison

Assessing damage directly (i.e. no comparison of cash flows) or indirectly depends mostly on whether or not the Damage Event impacted the cash flows generated by the respective asset. In this Economic Damage Assessment, we aim to assess the damage indirectly, meaning that we intend to make a comparison between the actual cash flows with the hypothetical cash flows but for the wrongful act (i.e., before the Damage Event). For such an indirect assessment it is important to exclude any financial impact resulting from unrelated influences to the Damage Event. For most of the assets in this case assessing the damage indirectly applies.

Based on the above, the extent of any financial loss should be determined by making a comparison between the financial situation in which Mr. Bemba finds himself at $T_1$ (i.e., 10 December 2018; the *Ist*-situation) and the hypothetical financial situation at the same time (i.e., $T_1$) which Mr. Bemba would have been in if the loss-causing event had <u>not</u> occurred (i.e., 10 December 2018; the *Soll*-situation).

This method - which is common practice in procedures for the determination of damage - implies that the following elements form the basis for a calculation of Economic Damage:

o   A causal element, i.e. causality;

o   An element of comparison;

o   A hypothetical element.

This (indirect) method of calculating Economic Damage is based on the so-called *Differenzhypothese*. This concerns the difference between the financial situation after a damage event and the situation that would probably have been realised without that event.

This method can be illustrated as follows (numbers are fictitious):



Figure 2. Differenzhypothese.
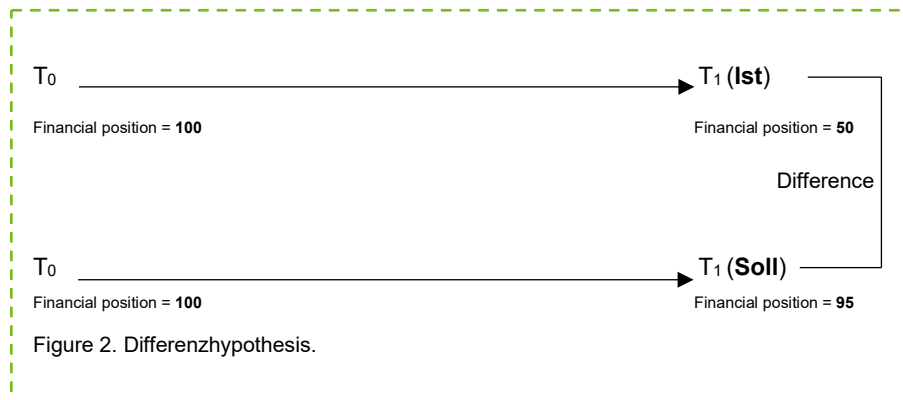
The damage in this example (see Figure 2) is the difference between the Soll-position at $T_1$ minus the Ist-position at $T_1$, being 95 - 50 = 45.

This method leads to the following elements that should form the basis for the damage calculation:

o  **A causal element**: the financial loss suffered by Mr. Bemba as a result of any legal wrongs and/or the loss-causing event, i.e. the Damage Event;

o  **An element of comparison**: for the determination of the loss suffered or the loss of profit/earnings, it concerns the comparison of the financial situation of Mr. Bemba before (i.e., the Soll-situation) and after (i.e., the Ist-situation) the Damage Event on $T_1$.

o  **A hypothetical element**: for the purpose of determining the hypothetical situation, it is the financial situation (i.e. the Soll-situation) that would *reasonably* have occurred in the absence of the Damage Event. This means that the hypothetical situation should be determined taking into account only those facts, circumstances and expectations which were known or could have been known prior to or at the time of 24 May 2008, i.e. $T_0$.

In other words: for the determination of the financial situation in which Mr. Bemba would have been in if any legal wrongs and/or the Damage Event had not occurred, it concerns the financial situation that would have reasonably occurred if Mr. Bemba could have remained in the same situation just before the loss-causing event. Evidently, outside factors such as market constraints, economic trends, industry trends, technological changes, existing contracts, etc. should be taken into account at $T_0$.

In short, in order to make a correct calculation of the Economic Damage, the financial position of Mr. Bemba in the Soll-situation and the Ist-situation must be compared, the causality between the difference between Soll and Ist must be demonstrated, and a loss-causing event must be established.

██

## 4.3.    Damage Period

As far as we know, the date of the moment of the damage has not yet been determined by a court. However, typically, lost profits/earnings or loss of value begin on the date of the harmful act. In this case, we have defined the date of the Damage Event as 24 May 2008, i.e. the Loss-making Date; the date of Mr. Bemba's arrest.

The end date of the damage is generally when the injured party is returned to the position it would have been in originally if the harmful act had not occurred. Therefore, the loss period will generally be limited in time. However, with respect to most of Mr. Bemba's assets, Mr. Bemba cannot be returned into the position he would have been in before the Damage Event. Indeed, most assets are destroyed, seized, transferred or beyond economic repair. Therefore, we consider these assets to be destroyed and incapable of generating future income anymore, nor having any future value.

When determining financial loss, it is not uncommon to include a perpetual or indefinite effect, especially in situations where a business or an asset is destroyed. However, our conservative approach has led us to decide to apply an end-date for this Economic Damage Assessment. We have determined 10 December 2018 as the hypothetical end-date (hereafter: "End-date") of the damage period as this date reflects a moment in time at which the statement of damage was to be submitted to the ICC.

However, one should take into account that the damage continues and in a future phase further research will need to be conducted as to the extent and financial effects of the continuing damage. With respect to assets that are frozen, the damage also continues as Mr. Bemba cannot act in economic freedom with respect to these assets.

# 5.  Elements of Damage

██ tudied the elements that are involved in the Economic Damage suffered by Mr. Bemba as a result of the Damage Event. Four types of asset classes we consider as relevant elements to be included in the Damage. The assets concerned are (i) Aircraft, (ii) Property and Land, (iii) Cash and Equivalents, and (iv) Vehicles and Boats.

## 5.1.    Aircraft

### 5.1.1.   Introduction

At the time of the Damage Event and actually per $T_0$, Mr. Bemba owned through his companies several aircraft (please see Appendix 1). These aircraft were operated for commercial purposes, i.e. to generate cash flows. With respect to the aircraft Mr. Bemba acted in this case as lessor. At that time (i.e., $T_0$), all seven aircraft had been leased already for a long time, by ██████████ a Congolese airline who acted as the formal lessee.

As a result of the Damage Event, the Congolese State destroyed the aircraft immediately after the occurrence of the Damage Event. The exception was an airplane that at that time was located in Portugal and still is today. This airplane was effectively frozen by the ICC, for although not subject to an order in Portugal, the Court had retained its keys and documentation. This aircraft did not receive proper long-term storage or scheduled maintenance, as a result of which it is currently beyond economic recovery (e.g., we were informed that repair requirements currently exceeds USD 20m). Therefore, we also consider this aircraft to have been destroyed.

The aircraft concerned in the Damage are:

| Location | Type | Registration number | Current Appraisal Value (USD) per $T_1$ [8] |
|----------|------|---------------------|------------------------------------|
| Portugal | Boeing 727-100 | ███████ | 2.000.000 |
| DRC | Boeing 727-100 | ████ | 1.500.000 |
| DRC | Boeing 707-300 | █████ | 5.000.000 – 10.000.000 |
| DRC | Grumman 159 | █████ | 400.000 |
| DRC | HS 125 | █████ | 500.000 |
| DRC | Antonov 26 | ████ | 500.000 |
| DRC | Antonov 26 | █████ | 500.000 |

Table 2. Overview of aircraft.

As a result of the Damage Event, all seven aircraft owned by Mr. Bemba lost their cash flow generating capacity, and therefore their economic value, and their intrinsic value.

### 5.1.2. Main Economic Assumptions

With respect to the aircraft and the specifics of the lease agreements between Mr. Bemba and ████████████ we consulted a *licensed* aircraft broker who mediated between this lessor and lessee.

The most important observations are:

1. The lifespan of the aircraft concerned, if properly maintained, is in principle infinite.[9]

2. The contractually agreed number of hours the aircraft were leased concerned a minimum number of hours per year.

3. The hourly rate reflected a rate where the lessee was financially responsible for costs such as crew and maintenance.

4. The hourly rate was in line with market conditions.

5. The lease contracts concerned were assumed to be renewed annually.

6. The aircraft were insured by the lessor against liability in case of an accident. The lessee paid the insurance for the body of the aircraft.

> *Note*: We obtained the information with respect to the aircraft including the corresponding (financial) figures and assumptions solely through telephone consultations with Mr. Bemba's licensed aircraft broker as confirmed in his witness statement. Other information, figures and assumptions will lead to different outcomes.

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[8] Current Appraisal Values if the aircraft had been well-maintained according to the licensed aircraft broker.

[9] This is the opinion of the aircraft broker and is a conservative assessment. One obvious alternative approach would be to assume that the income from the aircraft might have led to an upgrade or even an expansion of the fleet

### 5.1.3. Free Cash Flow Period and Terminal Value

Based on the lease agreements then in place and the conditions agreed therein, we calculated the cash flows (see Figure 1) that could be realized by exploiting these seven aircraft on the basis of the then applicable conditions if the Damage Event did not occur.

We defined this cash flow generating period as one of 10,5 years. In other words: we assumed the incoming cash flows would start at 30 June 2008 and ended at 31 December 2018.[10] However, as set out before, it is not unrealistic to assume cash flows would have been generated after 31 December 2018 (i.e., $T_1$). Nonetheless, for the purpose of this preliminary assessment we choose to apply an end date of 31 December 2018 although the damage continued after this date.

Additionally, the assumption that the incoming cash flows would end at $T_1$ does not mean in any case the underlying value of the asset would be nil. At least the appraisal value of the aircraft should be taken into account assuming the aircraft were not destroyed or brought into a status such that the aircraft were beyond economic recovery.

### 5.1.4. Discount Rate and Present Value

As explained above, if an asset is destroyed completely it is common to measure the damage based on the value of the business (or the assets) on the date of the loss (i.e., T0). This value at T0 represents the present value of future cash flows in the relevant damage period at 24 May 2008.

Within the assumptions applied by us, the expected yearly cash flows in the period between $T_0$ and $T_1$ should be discounted to their present value at $T_0$ at an appropriate, risk-adjusted discount rate (i.e., a cost of capital). To calculate the present value of the future cash flows to be generated by the seven aircraft in the applicable period, we defined an indicative risk-adjusted discount rate.

| Premium | Type | Percentage |
|---|---|---|
| Risk-free Rate | United States 10-Year Bond Yield [11] | 3,98% |
| Country Risk Premium | Average Africa [12] | 1,97% |
| Equity Risk Premium | Average Africa [13] | 6,58% |
| Specific Risk Premium | Asset and Industry Risk Premium [14] | 12,50% |
| **Discount Rate** | | **25,03%** |
| **Rounded** | | **25,00%** |

Table 3. Discount Rate.

Finally, we discounted the cash flows for each individual aircraft for a period of 10,5 years against the indicative risk-adjusted discount rate of **25%** (see Table 3), resulting in a present value at $T_0$ for each individual aircraft (see Figure 3 up to Figure 9). Then we added up the individual present values to retrieve the total value loss per $T_0$ for the seven aircraft (see Figure 10).

*Note*: these figures do not include the appraisal values at $T_1$ for the individual aircraft. See Table 2 for the appraisal value at $T_1$.

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[10] For calculation purposes we applied a date of 30 June 2018 instead of 24 May 2018 as the start of the damage and 31 December 2018 instead of 10 December 2018 as the End-date.
[11] https://www.investing.com/rates-bonds/u.s.-10-year-bond-yield-historical-data (30 June 2008).

[12] http://pages.stern.nyu.edu/~adamodar/ (January 2008).
[13] http://pages.stern.nyu.edu/~adamodar/ (January 2008).
[14] Professional judgement.
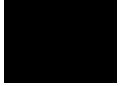
### 5.1.5. Taxation

Damage are sometimes determined on a pre-tax basis, assuming that any financial compensation will be taxed at the level of the damaged party. However, based on the information provided to us, for this asset class we applied after-tax cash flows following from the loss in value, i.e. resulting in an after-tax present value of the damage.

In due course, the tax implications of receiving an award of damages will need to be considered to avoid double taxation. Indeed, if the award of damages is taxed at the corporate income tax rate applicable in the country where Mr. Bemba resides, the after-tax present value of damage needs to be grossed up by utilizing the corporate income tax rate applicable to the award.[15]

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[15] The Guide to Damage in International Arbitration - Second Edition.

| | | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|

**Valuation date** 30 June 2008
**Currency** USD

| | | | | | | | | Periods | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Type** | Boeing 727-100 | | **0,5** | **1,5** | **2,5** | **3,5** | **4,5** | **5,5** | **6,5** | **7,5** | **8,5** | **9,5** | **10,5** |
| **Registration** | ⬛ | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| A | # hours per year | | 300 | 600 | 600 | 600 | 600 | 600 | 600 | 600 | 600 | 600 | 600 |
| B | Rate per hour | | 8.000 | 8.000 | 8.000 | 8.000 | 8.000 | 8.000 | 8.000 | 8.000 | 8.000 | 8.000 | 8.000 |
| C = A*B | Gross Revenue | | 2.400.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 |
| D | % for lessor | | 62,5% | 62,5% | 62,5% | 62,5% | 62,5% | 62,5% | 62,5% | 62,5% | 62,5% | 62,5% | 62,5% |
| E = C*D | Net Revenue | | 1.500.000 | 3.000.000 | 3.000.000 | 3.000.000 | 3.000.000 | 3.000.000 | 3.000.000 | 3.000.000 | 3.000.000 | 3.000.000 | 3.000.000 |
| F | Insurance Costs | | (50.000) | (100.000) | (100.000) | (100.000) | (100.000) | (100.000) | (100.000) | (100.000) | (100.000) | (100.000) | (100.000) |
| G = E-F | EBIT | | 1.450.000 | 2.900.000 | 2.900.000 | 2.900.000 | 2.900.000 | 2.900.000 | 2.900.000 | 2.900.000 | 2.900.000 | 2.900.000 | 2.900.000 |
| I | Corporate Taxes | 38% | (551.000) | (1.102.000) | (1.102.000) | (1.102.000) | (1.102.000) | (1.102.000) | (1.102.000) | (1.102.000) | (1.102.000) | (1.102.000) | (1.102.000) |
| J = G-I | Free Cash Flow (FCF) | | 899.000 | 1.798.000 | 1.798.000 | 1.798.000 | 1.798.000 | 1.798.000 | 1.798.000 | 1.798.000 | 1.798.000 | 1.798.000 | 1.798.000 |
| K | Discount rate | 25% | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| L = J*K | Present Value FCF | | 804.090 | 1.286.544 | 1.029.235 | 823.388 | 658.711 | 526.968 | 421.575 | 337.260 | 269.808 | 215.846 | 172.677 |
| M | Sum of PV FCF | 6.546.102 | | | | | | | | | | | |

Figure 3. PV Boeing 727-100 (9Q-CMC).

**Valuation date** 30 June 2008
**Currency** USD

| | | | | | | | | Periods | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Type** | Boeing 727-100 | | **0,5** | **1,5** | **2,5** | **3,5** | **4,5** | **5,5** | **6,5** | **7,5** | **8,5** | **9,5** | **10,5** |
| **Registration** | ⬛ | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| A | # hours per year | | 300 | 600 | 600 | 600 | 600 | 600 | 600 | 600 | 600 | 600 | 600 |
| B | Rate per hour | | 6.000 | 6.000 | 6.000 | 6.000 | 6.000 | 6.000 | 6.000 | 6.000 | 6.000 | 6.000 | 6.000 |
| C = A*B | Gross Revenue | | 1.800.000 | 3.600.000 | 3.600.000 | 3.600.000 | 3.600.000 | 3.600.000 | 3.600.000 | 3.600.000 | 3.600.000 | 3.600.000 | 3.600.000 |
| D | % for lessor | | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% |
| E = C*D | Net Revenue | | 900.000 | 1.800.000 | 1.800.000 | 1.800.000 | 1.800.000 | 1.800.000 | 1.800.000 | 1.800.000 | 1.800.000 | 1.800.000 | 1.800.000 |
| F | Insurance Costs | | (25.000) | (50.000) | (50.000) | (50.000) | (50.000) | (50.000) | (50.000) | (50.000) | (50.000) | (50.000) | (50.000) |
| G = E-F | EBIT | | 875.000 | 1.750.000 | 1.750.000 | 1.750.000 | 1.750.000 | 1.750.000 | 1.750.000 | 1.750.000 | 1.750.000 | 1.750.000 | 1.750.000 |
| I | Corporate Taxes | 38% | (332.500) | (665.000) | (665.000) | (665.000) | (665.000) | (665.000) | (665.000) | (665.000) | (665.000) | (665.000) | (665.000) |
| J = G-I | Free Cash Flow (FCF) | | 542.500 | 1.085.000 | 1.085.000 | 1.085.000 | 1.085.000 | 1.085.000 | 1.085.000 | 1.085.000 | 1.085.000 | 1.085.000 | 1.085.000 |
| K | Discount rate | 25% | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| L = J*K | Present Value FCF | | 485.227 | 776.363 | 621.090 | 496.872 | 397.498 | 317.998 | 254.399 | 203.519 | 162.815 | 130.252 | 104.202 |
| M | Sum of PV FCF | 3.950.234 | | | | | | | | | | | |

Figure 4. PV Boeing 727-100 (9Q-CBF).

| | | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|

**Valuation date** 30 June 2008
**Currency** USD
**Periods**
**Type** Boeing 707-300

| | | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Registration** | | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| A | # hours per year | | 200 | 400 | 400 | 400 | 400 | 400 | 400 | 400 | 400 | 400 | 400 |
| B | Rate per hour | | 12.000 | 12.000 | 12.000 | 12.000 | 12.000 | 12.000 | 12.000 | 12.000 | 12.000 | 12.000 | 12.000 |
| C = A*B | Gross Revenue | | 2.400.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 | 4.800.000 |
| D | % for lessor | | 66,7% | 66,7% | 66,7% | 66,7% | 66,7% | 66,7% | 66,7% | 66,7% | 66,7% | 66,7% | 66,7% |
| E = C*D | Net Revenue | | 1.600.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 |
| F | Insurance Costs | | (75.000) | (150.000) | (150.000) | (150.000) | (150.000) | (150.000) | (150.000) | (150.000) | (150.000) | (150.000) | (150.000) |
| G = E-F | EBIT | | 1.525.000 | 3.050.000 | 3.050.000 | 3.050.000 | 3.050.000 | 3.050.000 | 3.050.000 | 3.050.000 | 3.050.000 | 3.050.000 | 3.050.000 |
| I | Corporate Taxes | 38% | (579.500) | (1.159.000) | (1.159.000) | (1.159.000) | (1.159.000) | (1.159.000) | (1.159.000) | (1.159.000) | (1.159.000) | (1.159.000) | (1.159.000) |
| J = G-I | Free Cash Flow (FCF) | | 945.500 | 1.891.000 | 1.891.000 | 1.891.000 | 1.891.000 | 1.891.000 | 1.891.000 | 1.891.000 | 1.891.000 | 1.891.000 | 1.891.000 |
| K | Discount rate | 25% | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| L = J*K | Present Value FCF | | 845.681 | 1.353.089 | 1.082.472 | 865.977 | 692.782 | 554.225 | 443.380 | 354.704 | 283.763 | 227.011 | 181.609 |
| M | Sum of PV FCF | 6.884.694 | | | | | | | | | | | |

Figure 5. PV Boeing 707-300 (9Q-CBW).

**Valuation date** 30 June 2008
**Currency** USD
**Periods**
**Type** Grumman 159

| | | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Registration** | | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| A | # hours per year | | 100 | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 200 | 200 |
| B | Rate per hour | | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 |
| C = A*B | Gross Revenue | | 400.000 | 800.000 | 800.000 | 800.000 | 800.000 | 800.000 | 800.000 | 800.000 | 800.000 | 800.000 | 800.000 |
| D | % for lessor | | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% |
| E = C*D | Net Revenue | | 200.000 | 400.000 | 400.000 | 400.000 | 400.000 | 400.000 | 400.000 | 400.000 | 400.000 | 400.000 | 400.000 |
| F | Insurance Costs | | (10.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) |
| G = E-F | EBIT | | 190.000 | 380.000 | 380.000 | 380.000 | 380.000 | 380.000 | 380.000 | 380.000 | 380.000 | 380.000 | 380.000 |
| I | Corporate Taxes | 38% | (72.200) | (144.400) | (144.400) | (144.400) | (144.400) | (144.400) | (144.400) | (144.400) | (144.400) | (144.400) | (144.400) |
| J = G-I | Free Cash Flow (FCF) | | 117.800 | 235.600 | 235.600 | 235.600 | 235.600 | 235.600 | 235.600 | 235.600 | 235.600 | 235.600 | 235.600 |
| K | Discount rate | 25% | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| L = J*K | Present Value FCF | | 105.364 | 168.582 | 134.865 | 107.892 | 86.314 | 69.051 | 55.241 | 44.193 | 35.354 | 28.283 | 22.627 |
| M | Sum of PV FCF | 857.765 | | | | | | | | | | | |

Figure 6. PV Grumman 159 (9Q-CBJ).

| | Valuation date | 30 June 2008 | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Currency | USD | | | | | | Periods | | | | | |
| | Type | HS 125 | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
| | Registration | ▮ | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| A | # hours per year | | | 150 | 300 | 300 | 300 | 300 | 300 | 300 | 300 | 300 | 300 | 300 |
| B | Rate per hour | | | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 |
| C = A*B | Gross Revenue | | | 600.000 | 1.200.000 | 1.200.000 | 1.200.000 | 1.200.000 | 1.200.000 | 1.200.000 | 1.200.000 | 1.200.000 | 1.200.000 | 1.200.000 |
| D | % for lessor | | | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% |
| E = C*D | Net Revenue | | | 300.000 | 600.000 | 600.000 | 600.000 | 600.000 | 600.000 | 600.000 | 600.000 | 600.000 | 600.000 | 600.000 |
| F | Insurance Costs | | | (10.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) |
| G = E-F | EBIT | | | 290.000 | 580.000 | 580.000 | 580.000 | 580.000 | 580.000 | 580.000 | 580.000 | 580.000 | 580.000 | 580.000 |
| I | Corporate Taxes | 38% | | (110.200) | (220.400) | (220.400) | (220.400) | (220.400) | (220.400) | (220.400) | (220.400) | (220.400) | (220.400) | (220.400) |
| J = G-I | Free Cash Flow (FCF) | | | 179.800 | 359.600 | 359.600 | 359.600 | 359.600 | 359.600 | 359.600 | 359.600 | 359.600 | 359.600 | 359.600 |
| K | Discount rate | 25% | | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| L = J*K | Present Value FCF | | | 160.818 | 257.309 | 205.847 | 164.678 | 131.742 | 105.394 | 84.315 | 67.452 | 53.962 | 43.169 | 34.535 |
| M | Sum of PV FCF | 1.309.220 | | | | | | | | | | | | |

Figure 7. PV HS 125 (9Q-CBC).

| | Valuation date | 30 June 2008 | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Currency | USD | | | | | | Periods | | | | | |
| | Type | Antonov 26 | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
| | Registration | ▮ | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| A | # hours per year | | | 400 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 |
| B | Rate per hour | | | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 |
| C = A*B | Gross Revenue | | | 1.600.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 |
| D | % for lessor | | | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% |
| E = C*D | Net Revenue | | | 800.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 |
| F | Insurance Costs | | | (15.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) |
| G = E-F | EBIT | | | 785.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 |
| I | Corporate Taxes | 38% | | (298.300) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) |
| J = G-I | Free Cash Flow (FCF) | | | 486.700 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 |
| K | Discount rate | 25% | | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| L = J*K | Present Value FCF | | | 435.318 | 696.508 | 557.207 | 445.765 | 356.612 | 285.290 | 228.232 | 182.585 | 146.068 | 116.855 | 93.484 |
| M | Sum of PV FCF | 3.543.924 | | | | | | | | | | | | |

Figure 8. PV Antonov 26 (9Q-CML).

| | | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Valuation date** | 30 June 2008 | | | | | | | | | | | | |
| **Currency** | USD | | | | | | Periods | | | | | | |
| **Type** | Antonov 26 | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| **Registration** | ▮ | | | | | | | | | | | | |
| A | # hours per year | | 400 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 | 800 |
| B | Rate per hour | | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 | 4.000 |
| C = A*B | Gross Revenue | | 1.600.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 | 3.200.000 |
| D | % for lessor | | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% | 50,0% |
| E = C*D | Net Revenue | | 800.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 | 1.600.000 |
| F | Insurance Costs | | (15.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) | (30.000) |
| G = E-F | EBIT | | 785.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 | 1.570.000 |
| I | Corporate Taxes | 38% | (298.300) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) | (596.600) |
| J = G-I | Free Cash Flow (FCF) | | 486.700 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 | 973.400 |
| | | | | | | | | | | | | | |
| K | Discount rate | 25% | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| L = J*K | Present Value FCF | | 435.318 | 696.508 | 557.207 | 445.765 | 356.612 | 285.290 | 228.232 | 182.585 | 146.068 | 116.855 | 93.484 |
| | | | | | | | | | | | | | |
| M | Sum of PV FCF | 3.543.924 | | | | | | | | | | | |

Figure 9. PV Antonov 26 (9Q-CLA).

| PV 30 June 2008 (T0) | USD |
|---|---|
| Boeing 727-100 | 6.546.102 |
| Boeing 727-100 | 3.950.234 |
| Boeing 727-300 | 6.884.694 |
| Grumman 159 | 857.765 |
| HS 125 | 1.309.220 |
| Antonov 26 | 3.543.924 |
| Antonov 26 | 3.543.924 |
| **Total** | **26.635.865** |

Figure 10. Sum of PV per 30 June 2008.
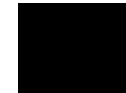
### 5.1.6. Interest Rate USD

Fundamentally, it should be borne in mind that Mr. Bemba could (re)invest the calculated present value at $T_0$ during the period between 24 May 2008 and 10 December 2018. As a result of the Damage Event, at least a reinvestment has not happened. For this reason, among others, interest is routinely added to a claim to account for the effects of money losing its value over time, as well as the lost opportunity to an injured party from not having the capital at its disposal.

Financial compensation aims to place Mr. Bemba in the position he would have been in had there been no Damage Event and therefore should compensate him for his loss. To determine the applicable interest rate, the relevant question in terms of adding this interest is what Mr. Bemba would have done with the funds that he lost at the time. There are two approaches that can be considered with respect to the applicable interest rate:

1. One metric that takes this aspect into account is the cost of capital. The cost of capital reflects the 'normal' returns that a claimant such as Mr. Bemba can expect to earn in the long run. Thus, damage uprated at the cost of capital would capture the expected returns that the claimant could have earned on the amounts lost had they been available for investment.

2. An alternative option is the risk-free rate. This is usually approximated by the rate of a virtually risk-free investment such as a government bond. The rationale for this is that the repayment of damage is certain once awarded (subject to the defendant's inability to pay). Using the risk-free rate therefore only compensates the claimant for the time value of money, without a risk component.

As we apply a conservative approach in this Economic Damage Assessment, we use an average (i.e., 30 June 2008 - 31 December 2018) risk-free rate of **2,54%** for assets generating cash flows in USD based on the United States 10-Year Bond, assuming Mr. Bemba would invest the calculated value at $T_0$ in United States 10-Year Bonds, i.e. a mature USD-market.



Figure 11. United States 10-Year Bond 30 June 2008 - 31 December 2018.

### 5.1.7. Compound Interest

Next, it has to be decided whether to apply a simple methodology to calculate the interest, i.e. solely a percentage of the principal sum, or a compound interest (hereafter: "CI"), i.e. a percentage on accumulated interest from prior periods. In most commercial cases, the calculation should include compound interest.

From an economic perspective, compounding interest is also the usual, and conceptually correct, approach.[16] To bring the present value at $T_0$ to a value at $T_1$ (Soll) we applied a *fixed, annually compound interest rate* based on the average risk-free rate (see Figure 11).

### 5.1.8. Estimated Value Loss

As set out before, we first calculated the value (loss) at $T_0$ (i.e., just before the Damage Event). As the assets are destroyed, the value at $T_1$ Ist is nil. Next, the value at $T_0$ is subsequently increased with compound interest (CI) to retrieve the value at $T_1$ Soll as this would be the financial position Mr. Bemba would be in, at a certain moment in time, without the occurrence of the Damage Event.

The difference between $T_1$ Ist and $T_1$ Soll can be considered as value loss, excluding any value to be added after $T_1$ and the appraisal value of the assets at $T_1$.

Graphically, this method can be represented as follows:
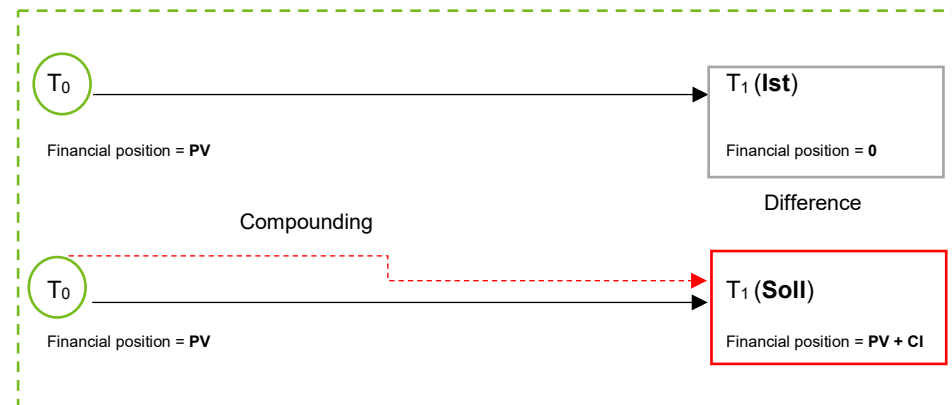


Figure 12. Calculation of Value Loss.

We calculated the value loss as the difference between $T_1$ Soll and $T_1$ Ist, meaning USD 34,66m minus USD nil = **USD 34,66m** excluding the existing appraisal value of the aircraft at $T_1$. Including this appraisal value at $T_1$ the value loss is estimated at **USD 47,56m** (see Figure 13).

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[16] Valuation for Arbitration; Compensation Standards, Valuation Methods and Expert Evidence (2008).

| PV | 30 June 2008 (T0) | USD | Average CI Rate on annual basis | Value T1 Soll Compounded | Value T1 Soll Simple |
|---|---|---|---|---|---|
| | Boeing 727-100 | 6.546.102 | 2,54% | 8.517.617 | 8.291.260 |
| | Boeing 727-100 | 3.950.234 | 2,54% | 5.139.941 | 5.003.347 |
| | Boeing 707-300 | 6.884.694 | 2,54% | 8.958.183 | 8.720.119 |
| | Grumman 159 | 857.765 | 2,54% | 1.116.102 | 1.086.441 |
| | HS 125 | 1.309.220 | 2,54% | 1.703.523 | 1.658.252 |
| | Antonov 26 | 3.543.924 | 2,54% | 4.611.262 | 4.488.717 |
| | Antonov 26 | 3.543.924 | 2,54% | 4.611.262 | 4.488.717 |
| | **Total** | **26.635.865** | | **34.657.890** | **33.736.853** |
| | | Appraisal Value T1 | | 12.900.000 | 12.900.000 |
| | | Total Value Loss | | 47.557.890 | 46.636.853 |

Figure 13. Value Loss.

## 5.2. Property and Land

### 5.2.1. Introduction

At the time of the Damage Event, Mr. Bemba owned several properties and/or development land in Portugal, the DRC and Belgium. Some objects were used for investment purposes and some for residence purposes (e.g., Property No. C). in addition, two private residences we consider not to have suffered any value loss and these are therefore not included in the Economic Damage Assessment.

Based on the received information, we assessed the damage that occurred for each relevant 'Property and Land' as a result of the Damage Event, as well as an estimation of either the financial loss or the property loss. It should be noted that only those objects from which we have received information, on the basis of which we can calculate any indicative value loss, are numerically included in the Economic Damage Assessment.

| No. | Location | Type | Purpose | Included |
|---|---|---|---|---|
| A | DRC | | Investment | Yes |
| B | DRC | | Investment | Yes |
| C | DRC | | Residence | Yes |
| D | Portugal | | Investment | Yes |
| E | Portugal | | Investment | Yes |

Table 4. Overview of Property and Land.

[17] Sources: Purchase agreement dated 1 March 1994.
[18] Sources: Investment Plan retrieved verbally by Mr. Bemba plus purchase agreement 4 September 1996 and 28 February 1997.

[19] Sources: See Appendix 2.
[20] Sources: Appraisal Report (2007), Mortgage Overview (2018), Land Registry (2018).
[21] Sources: Land Registry (2018).

### 5.2.2. Discount Rate and Present Value

As set out above, if a business or an asset is destroyed completely it is common to measure the damage based on the value of the business (or the assets) on the date of the loss (i.e., $T_0$). This value at $T_0$ initially represents the present value of future cash flows in the relevant damage period at 24 May 2008. Within the assumptions applied by us, ideally the expected yearly cash flows in the period between $T_0$ and $T_1$ should be discounted to their present value at $T_0$ at an appropriate, risk-adjusted discount rate (i.e., a cost of capital).

To calculate the present value of the future cash flows (i.e., rental incomes) to be generated by for example Property No. B. (see Table 4), we defined an indicative risk-adjusted discount rate (see Table 5).

Finally, where applicable and possible, we calculated the present value of the individual cash flows for each property against the calculated indicative and rounded risk-adjusted discount rate of **17,5%**. This resulted in the present value per $T_0$ for the property or land concerned.

| Premium | Type | Percentage |
|---|---|---|
| Risk-free Rate | United States 10-Year Bond Yield [22] | 3,98% |
| Country Risk Premium | Average Africa [23] | 1,97% |
| Equity Risk Premium | Average Africa [24] | 6,58% |
| Specific Risk Premium | Asset and Industry Risk Premium [25] | 5,00% |
| **Discount Rate** | | **17,53%** |
| **Rounded** | | **17,50%** |

Table 5. Discount Rate.

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[22] https://www.investing.com/rates-bonds/u.s.-10-year-bond-yield-historical-data (30 June 2008).
[23] http://pages.stern.nyu.edu/~adamodar/ (January 2008).

### 5.2.3. Interest Rate EUR

As we applied a conservative approach for this Economic Damage Assessment, we used an average (i.e., 30 June 2008 - 31 December 2018) risk-free rate of **1,54%** for assets generating cash flows in EUR based on the German 10-Year Bond, assuming Mr. Bemba would invest the calculated value at $T_0$ in German 10-Year Bonds, i.e. a mature EUR-market. For further explanation on the interest rate see paragraph 5.1.6.



Figure 14. German 10-Year Bond, 30 June 2008 - 31 December 2018.

*Note*: The interest rate applied for assets generating cash flows in USD is 2,54% (see paragraph 5.1.6).

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[24] http://pages.stern.nyu.edu/~adamodar/ (January 2008).
[25] Professional judgement.

### 5.2.4. Compound Interest

Consistent with the approach we applied for the aircraft (see paragraph 5.1.7), it has to be decided whether to apply a simple methodology to calculate the interest, i.e. solely a percentage of the principal sum, or a compound interest, i.e. a percentage on accumulated interest from prior periods. In most commercial cases, the calculation should include compound interest.

From an economic perspective, compounding interest is also the usual, and conceptually correct, approach. To bring the present value at $T_0$ to a value at $T_1$ (Soll) we applied a fixed, annual compound interest rate based on the applicable average risk-free rate (see Figure 11 and Figure 14).

### 5.2.5. Estimated Value Loss

Finally, we calculated the value of loss of the individual properties (see Figure 16 up to Figure 18) by comparing the value difference between $T_1$ Ist and $T_1$ Soll. Where we had insufficient information about the asset concerned or where most likely no damage occurred, we have mentioned this with the asset in question.

### 5.2.6. Taxation

Damages are sometimes determined on a pre-tax basis, assuming that any compensation will be taxed at the level of the damaged party. However, based on the information provided for Property No. B we applied after-tax cash flows following from loss in value, i.e. resulting in an after-tax present value of the damage. With respect to Properties No. D and E we assume that selling prices of the properties are after-tax.

In due course, the tax implications of receiving an award of damages needs to be considered to avoid double taxation. Indeed, if the award is taxed at the (corporate) income tax rate applicable in the country where Mr. Bemba resides, the after-tax present value of damages needs to be grossed up by utilizing the corporate income tax rate applicable to the award.

### 5.2.7. Property No. A

This property is assessed as a property loss (see paragraph 4.1.1) instead of financial loss. This property did not have a cash flow generating capacity nor was planned to be sold. However, it was acquired for investment purposes at the time of the investment and as a result of the Damage Event we understood this property was seized by the Officer of the Public Ministry of the Congolese State. It is not to be assumed this asset will be returned to Mr. Bemba.

Although we did not receive the appraisal value of this property before the Damage Event nor of the current appraisal value, nonetheless, we consider that significant property loss has occurred which will have to be quantified in due course.

### 5.2.8. Property No. B

The investment plan with respect to Property No. B was to develop high-end rental apartments for expats in the Kinshasa area and to rent out these apartments structurally. The viability of the plan was realistic at that time as in 2016 the World Economic Forum named Kinshasa as the sixth most expensive city in the world on the affordability of living for expats.[26] The main assumptions underlying this plan are as follows:

| | | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 | 10,5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | TV |
| A | # Apartments | | - | - | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | |
| B | Revenue per apartment | | - | - | 60.000 | 60.000 | 60.000 | 60.000 | 60.000 | 60.000 | 60.000 | 60.000 | 60.000 | |
| C = A*B | Revenues | | - | - | 6.000.000 | 6.000.000 | 6.000.000 | 6.000.000 | 6.000.000 | 6.000.000 | 6.000.000 | 6.000.000 | 6.000.000 | |
| D | Maintanance costs | | - | - | (480.000) | (480.000) | (480.000) | (480.000) | (480.000) | (480.000) | (480.000) | (480.000) | (480.000) | |
| E = C-D | EBIT | | - | - | 5.520.000 | 5.520.000 | 5.520.000 | 5.520.000 | 5.520.000 | 5.520.000 | 5.520.000 | 5.520.000 | 5.520.000 | |
| F | Taxes | 20% | - | - | (1.104.000) | (1.104.000) | (1.104.000) | (1.104.000) | (1.104.000) | (1.104.000) | (1.104.000) | (1.104.000) | (1.104.000) | |
| G | Investments | | (7.500.000) | (12.500.000) | - | - | - | - | - | - | - | - | - | |
| H = E-F-G | Free Cash Flow (FCF) | | (7.500.000) | (12.500.000) | 4.416.000 | 4.416.000 | 4.416.000 | 4.416.000 | 4.416.000 | 4.416.000 | 4.416.000 | 4.416.000 | 4.416.000 | 4.504.320 |
| | Terminal growth rate | 2% | | | | | | | | | | | | 29.060.129 |
| I | Discount rate | 17,5% | 0,92 | 0,79 | 0,67 | 0,57 | 0,48 | 0,41 | 0,35 | 0,30 | 0,25 | 0,22 | 0,18 | 0,18 |
| J = H*I | Present Value FCF | | (6.918.984) | (9.814.162) | 2.950.763 | 2.511.288 | 2.137.266 | 1.818.950 | 1.548.043 | 1.317.483 | 1.121.262 | 954.266 | 812.141 | 5.344.412 |
| K | Sum of PV FCF | 3.782.729 | | | | | | | | | | | | |

*Valuation date 30 June 2008 — Currency USD — Periods*

Figure 15. PV Property No. B.

**Main Assumptions**

o   For Property No. B we applied an infinite (∞) cash flow period.

o   Expected investments (USD 20m) and earnings (as of 2011) are based on the investment plan provided by Mr. Bemba.

o   The parcel is assumed not to be redeemed to Mr. Bemba at $T_1$.

o   Taxes resulting from rental income are assumed to be 20%. Earnings were assumed to be received in USD.

o   The Net Present Value (hereafter: "NPV") of the investment equals a value of **USD 3,78m** per 30 June 2008 taken into account a discount rate of 17,5%.

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[26] https://www.weforum.org/agenda/2016/07/the-most-expensive-cities-for-expats-and-theres-a-new-one-at-the-top-of-the-ranking.

o The present value of the investment is compounded to calculate the financial loss at $T_1$ (see paragraph 5.1.6 and 5.1.7 for further explanation). However, the damage continues after $T_1$. For the purpose of this Economic Damage Assessment we abstract from any value following from these future earnings.

o Based on a compounded method, the value loss at $T_1$ Soll is estimated at **USD 4,92m** (see Figure 16), being the result of the value at $T_1$ Ist minus the value at $T_1$ Soll.

| PV | 30 June 2008 (T0) | USD | Average CI Rate on annual basis | Value T1 Soll Compounded | Value T1 Soll Simple |
|---|---|---|---|---|---|
| ███████████ | | 3.782.729 | 2,54% | 4.921.988 | 4.791.186 |
| **Total** | | | | **4.921.988** | **4.791.186** |
| | | | **Total Value Loss** | **4.921.988** | **4.791.186** |

Figure 16. Value Loss Property No. B.

### 5.2.9. Property No. C

This property is assessed as a property loss (see paragraph 4.1.1) instead of financial loss. The reason for this is that this property was solely used for residential purposes and did not have a cash flow generating capacity nor was it planned to be sold. However, as a result of the Damage Event the property is in a position beyond economic recovery (see Appendix 2). Although we did not receive the appraisal value of this property before the Damage Event, nonetheless, we consider that significant property loss has occurred which has to be quantified in the next phase.

### 5.2.10. Property No. D

This property was acquired by Mr. Bemba in December 2007 for investment purposes (see Appendix 3). The property included a parcel and a villa. The aim was to upgrade the villa and resell it within a period of 36 months. However, we don't have any information on the upgrade plan. Therefore, we abstracted from any value increase following from the upgrade plan and assumed that the property was sold at 30 June 2011 for the appraisal value at $T_0$.

| Property: ████████████████████ | | |
|---|---|---|
| **EUR** | | |
| Appraisal Value 30 June 2008 (T0) | | 2.605.729 |
| Investments in Upgrade | | n/a |
| Estimated Selling Price 30 June 2011 | | 2.605.729 |
| Outstanding Mortgage per 30 June 2011 | | (1.980.000) |
| Result | | 625.729 |
| CI-rate | 1,54% | 75.993 |
| **Value T1 Soll** | | **701.721** |
| | | |
| Outstanding Mortgage per April 2018 | | (3.442.989) |
| Estimated Appraisal Value T1 | | 500.000 |
| **Value T1 Ist** | | **(2.942.989)** |
| | | |
| **Value Loss Δ T1 Ist and T1 Soll** | | **3.644.710** |

Figure 17. Value Loss Property No. D.

**Main Assumptions**

o We assumed the outstanding mortgage per 30 June 2011 would have been repaid as a result of the sale of the property. The remaining (positive) amount of EUR 626k is assumed to be reinvested. Therefore, the amount is compounded with an average risk-free rate (see paragraph 5.2.3).

◼

o At $T_1$ Ist the outstanding mortgage is EUR 3,44m as a result of the increase of financial penalties due to late repayments and non-paid interest.

o Based on the assumptions, the Value Loss at $T_1$ Soll is estimated at **EUR 3,64m** (see Figure 17).

### 5.2.11. Property No. E

This property, at that time only a parcel, was acquired by Mr. Bemba in March 2008 for investment purposes. The aim was to build a villa and to resell the property. In 2014, the property (i.e., parcel and villa) was sold by the bank for EUR 1,9m. The buyer subsequently resold this property in 2016 for EUR 3,8m.

For the purpose of this Economic Damage Assessment we hypothesized Mr. Bemba would have been able to sell this property under the same conditions, assuming no additional investments were made, just as the previous buyer was able to.

**Main Assumptions**

o At $T_1$ Soll, we assumed the outstanding mortgage of EUR 3,6m per mid 2016 would have been repaid as a result of the sale of the property based on a market transaction. The remaining (positive) amount of EUR 200k (a profit) is assumed to be reinvested. Therefore, this amount of EUR 200k is compounded with an average risk-free rate (see paragraph 5.2.3) for the remaining 2,5 years (i.e. mid 2016 – December 2018).

o At $T_1$ Ist, we understood the actual outstanding mortgage is EUR 3,53m. The original mortgage of EUR 3,6m is decreased due to the sale of the property of EUR 1,9m (by order of the bank), and increased due to financial penalties due to late repayments and non-paid interest.

o Based on the assumptions, the Value Loss at $T_1$ Soll is estimated at **EUR 3,73m** (see Figure 18).

| Property: ◼ | | |
|---|---|---|
| **EUR** | | |
| | | |
| Appraisal Value 30 June 2008 (T0) | | 2.340.000 |
| Building Costs | | 860.000 |
| | | 3.200.000 |
| Hypothethical sale per 2016 | | 3.800.000 |
| Outstanding Mortgage | | (3.600.000) |
| Result | | 200.000 |
| CI-rate | 1,54% | 7.789 |
| **Value T1 Soll** | | **207.789** |
| | | |
| Outstanding Mortgage per April 2018 | | (3.526.779) |
| **Value T1 Ist** | | **(3.526.779)** |
| | | |
| **Value Loss Δ T1 Ist and T1 Soll** | | 3.734.568 |

Figure 18. Value Loss Property No. E.

## 5.3. Cash and Equivalents

At the Loss-making Date, Mr. Bemba had access to over 25 bank accounts in Belgium, the DRC and Portugal. Considering the information received, we have identified one bank account that was frozen and/or transferred to the ICC and which had a significant balance at $T_0$. The other bank accounts Mr. Bemba had access to at $T_0$ either (i) had insignificant balances or (ii) have been used for family expenses and/or legal costs, or (iii) insufficient information about the bank account (i.e. opening/closing balance, usage of account) was available to us. Hence, these bank accounts are not included in this Economic Damage Assessment, however, this does not mean there is no financial loss with respect to these accounts.

The bank account that is considered in the Economic Damage Assessment is an account at ███████████████████ The initial balance (at $T_0$) was equal to EUR 1.792.622. Our information is that the bank account balance has been reduced to nil, the amount having been transferred to the ICC. Therefore, the nominal amount at $T_1$ Ist is assumed to be nil.

We assume this amount would have been available for investment purposes, had the Damage Event not occurred. We assumed that in this case the balance was reinvested against a minimum risk-free rate. Therefore, we applied a fixed, annual compound interest rate based on the average risk-free rate (see Figure 14).

Based on a compounded method, the value loss at $T_1$ is estimated at **USD 2,10m** (see Figure 19).

| Bank | Bank account | Currency | Nominal Amount T0 | Nominal Amount T1 Ist | CI Rate | Nominal Amount T1 Soll | Damages |
|------|------|------|------|------|------|------|------|
| ███ | | EUR | 1.792.622 | - | 1,54% | 2.104.645 | 2.104.645 |
| | | | | - | | 2.104.645 | 2.104.645 |

Figure 19. Damage bank account.

Due to the conservative approach in this Economic Damage Assessment we applied a EUR-based risk-free rate to calculate the value at $T_1$ Soll. However, it is to be assumed that a professional investor would invest such a cash amount in the equity market (stock) or in a diversified portfolio (e.g. stock, bonds, cash). A return expressed by the Equity Risk Premium of yearly 5% or higher has to be taken into account, consequently resulting in a higher value at $T_1$ Soll.

*Note*: We understood the applicable interest rate for this bank account was 4,6% p.a. for the period 29 December 2008 until 4 July 2009. For the period after 4 July 2009 we understood there is no information available to us about the applicable interest rate. If we assume the interest rate of 4,6%[27] would have been continued, the value of the initial amount on $T_1$ Soll was equal to EUR 2,87m.

| Bank | Bank account | Currency | Nominal Amount T0 | Nominal Amount T1 Ist | CI Rate | Nominal Amount T1 Soll | Damages |
|------|------|------|------|------|------|------|------|
| ███ | | EUR | 1.792.622 | - | 4,60% | 2.874.560 | 2.874.560 |
| | | | | - | | 2.874.560 | 2.874.560 |

Figure 20. Damage bank account 4,6%.

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[27] Source: Extractos IFI dated 30 April 2009 (189).

## 5.4. Vehicles and Boats

At the Damage Event, Mr. Bemba owned several vehicles and two boats. Some of these assets were used for personal purposes and some for commercial purposes. As a result of the Damage Event these assets were seized and/or destroyed. With respect to the boats we abstracted in our calculation from one boat as we do not have sufficient information about this boat. Hence, we included in this calculation only the commercial boat██████ that was located in the DRC and was used for cargo. With respect to the vehicles we were informed that most of the vehicles were located in Portugal and some in the DRC.

**River Cruiser (Boat)**

o   We were informed that the River Cruiser ██████ was a cargo ship, operating up to nine trips per year and generating positive cash flows. We applied the same discounting and compounding principles as we did for the aircraft.

o   We were informed the boat was seized and/or destroyed at T1. Subsequently we calculated the value loss as the difference between T1 Ist and T1 Soll, meaning USD 0 minus USD 1,46m. The value loss excluding the applicable appraisal value of the boat is USD 1,46m at T1. Including the appraisal value, the value loss is USD 1,80m (see Figure 21 and Figure 22) at T1.

| | | | 0,5 | 1,5 | 2,5 | 3,5 | 4,5 | 5,5 | 6,5 | 7,5 | 8,5 | 9,5 | 10,5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Valuation date** 30 June 2008 | | | | | | | | | | | | | |
| **Currency** USD | | | | | | | | **Periods** | | | | | |
| **Type** River Cruiser ████ | | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| **Registration** | | | | | | | | | | | | | |
| A | # trips per year | | 4 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 | 9 |
| B | Revenue per trip | | 80.000 | 80.000 | 80.000 | 80.000 | 80.000 | 80.000 | 80.000 | 80.000 | 80.000 | 80.000 | 80.000 |
| C = A*B | Gross Revenue | | 320.000 | 720.000 | 720.000 | 720.000 | 720.000 | 720.000 | 720.000 | 720.000 | 720.000 | 720.000 | 720.000 |
| D | Operational costs per trip | | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) | (20.000) |
| E = C-(D*A) | Net Revenue | | 240.000 | 540.000 | 540.000 | 540.000 | 540.000 | 540.000 | 540.000 | 540.000 | 540.000 | 540.000 | 540.000 |
| F | Personel costs | | (18.000) | (36.000) | (36.000) | (36.000) | (36.000) | (36.000) | (36.000) | (36.000) | (36.000) | (36.000) | (36.000) |
| G = E-F | EBIT | | 222.000 | 504.000 | 504.000 | 504.000 | 504.000 | 504.000 | 504.000 | 504.000 | 504.000 | 504.000 | 504.000 |
| H | Corporate Taxes | 38% | (84.360) | (191.520) | (191.520) | (191.520) | (191.520) | (191.520) | (191.520) | (191.520) | (191.520) | (191.520) | (191.520) |
| I = G-H | Free Cash Flow (FCF) | | 137.640 | 312.480 | 312.480 | 312.480 | 312.480 | 312.480 | 312.480 | 312.480 | 312.480 | 312.480 | 312.480 |
| J | Discount rate | 25% | 0,89 | 0,72 | 0,57 | 0,46 | 0,37 | 0,29 | 0,23 | 0,19 | 0,15 | 0,12 | 0,10 |
| K = I*J | Present Value FCF | | 123.109 | 223.592 | 178.874 | 143.099 | 114.479 | 91.583 | 73.267 | 58.613 | 46.891 | 37.513 | 30.010 |
| L | Sum of PV FCF | **1.121.031** | | | | | | | | | | | |

Figure 21. PV River Cruiser ████

| PV | 30 June 2008 (T0) | USD | Average CI Rate on annual basis | Value T1 Soll Compounded | Value T1 Soll Simple |
|---|---|---|---|---|---|
| River Cruiser ████ | | 1.121.031 | 2,54% | 1.458.656 | 1.419.892 |
| Total | | | | 1.458.656 | 1.419.892 |
| | Appraisal Value T1 | | | 345.000 | 345.000 |
| | Total Value Loss | | | 1.803.656 | 1.764.892 |

Figure 22. Value Loss.

## Vehicles

We assumed that the vehicles were used for both personal and commercial purposes. We have not been able to allocate the use per asset. Given the relatively low damage amount, we assumed that 50% of the vehicles can be allocated to property loss (i.e. no loss of earning capacity) and 50% to financial loss. As set out in paragraph 4.1.1, property loss is in principle not a part of financial loss, unless it represents or generates economic value.

Furthermore, we were informed that the vehicles located in Portugal and the DRC were destroyed or not maintained properly. Hence, the value of the vehicles at $T_1$ Ist is assumed to be nil as the non-maintained vehicles are assumed to be beyond economic recovery.

However, based on our desk research we estimated an appraisal value of each individual vehicle at $T_1$ Soll. To obtain these values we searched for current sale prices for similar vehicles (i.e., brand and construction year) via reputable online car reselling platforms. We took into account the average price per model and applied a discount of approximately 20%-30% to retrieve a proxy for the appraisal value.

The estimated value loss is assumed to be EUR 90k at $T_1$ Soll (see Figure 23) of which we consider **EUR 45k** as financial loss.

| Location | Type | Year | Damages | Value T0 | Value T1 Ist | Value T1 Soll |
|---|---|---|---|---|---|---|
| **EUR** | | | | | | |
| Portugal | Porsche Cayenne | 2007 | Yes | 47.840 | - | 10.000 |
| Portugal | Nissan Armada motor car | n/a | Yes | 20.000 | - | 7.000 |
| Portugal | Audi Q7 | n/a | No (lease) | n/a | n/a | n/a |
| DRC | Mercedes 13/17/ lorry | 2006 | Yes | n/a | - | 5.000 |
| DRC | Mercedes 13/17 lorry | n/a | Yes | n/a | - | 5.000 |
| DRC | Mercedes 500 V8 | 2003 | Yes | n/a | - | 10.000 |
| DRC | Misubishi Pajero | 2003 | Yes | n/a | - | 8.000 |
| DRC | Toyota Land Cruiser | 2003 | Yes | n/a | - | 17.500 |
| DRC | Toyota Land Cruiser | 2003 | Yes | n/a | - | 17.500 |
| DRC | Toyota Prado Jeep | 2005 | Yes | n/a | - | 7.500 |
| DRC | Toyota Bus | 2006 | Yes | n/a | - | 2.500 |
| DRC | Daimler Chrysler | 2000 | Yes | n/a | - | n/a |
| | Total | | | | - | 90.000 |
| | Total Value Loss | | | | | 90.000 |

Figure 23. Value Loss.

## 6. Appendices

## Appendix 1. Photos of Aircraft (stock photos to illustrate)
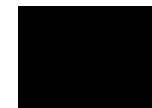


Figure 24. Boeing 727-100 (2x)



Figure 25. Grumman 159



Figure 26. Antonov 26 (2x)
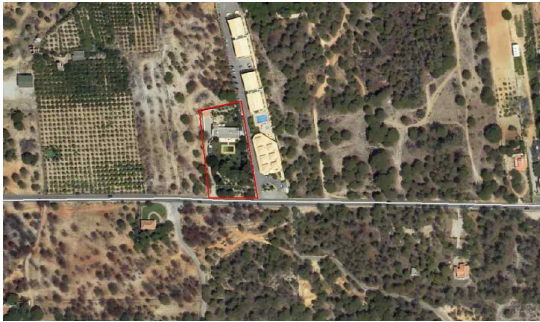


Figure 27. Boeing 707-300
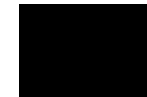


Figure 28. HS-125

## Appendix 2. Photos of Property No. C

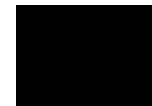## Appendix 3. Photos of Property No. D

██████████

## Appendix 4. List of Supporting Documents

| # | Filename | Notes |
|---|----------|-------|
| 1 | IMG-20181031-WA0000.jpg | Identification Vehicle |
| 2 | IMG-20181031-WA0001.jpg | Identification Vehicle |
| 3 | IMG-20181031-WA0002.jpg | Identification Vehicle: Mitsubishi |
| 4 | IMG-20181031-WA0003.jpg | Relevé d'identité Bancaire |
| 5 | IMG-20181031-WA0004.jpg | Confirmation immatriculation des aèonefs |
| 6 | IMG-20181031-WA0005.jpg | Identification Vehicle |
| 7 | IMG-20181031-WA0006.jpg | Identification Vehicle |
| 8 | IMG-20181031-WA0007.jpg | Identification Vehicle: Nissan |
| 9 | IMG-20181031-WA0008.jpg | - |
| 10 | IMG-20181031-WA0009.jpg | Identification Vehicle: Nissan |
| 11 | IMG-20181031-WA0010.jpg | Identification Vehicle: Nissan |
| 12 | IMG-20181031-WA0011.jpg | Idenification Vehicle |
| 13 | 2010 Brazzle 01.pdf | Financial Statements 2010 (1) |
| 14 | 2010 Brazzle 02.pdf | Financial Statements 2010 (2) |
| 15 | 2010 Brazzle 03.pdf | Financial Statements 2010 (3) |
| 16 | 2010 Brazzle 04.pdf | Financial Statements 2010 (4) |
| 17 | 2010 Brazzle 05.pdf | Financial Statements 2010 (5) |
| 18 | 2018 - Taxes in Debt Airplane Parking.pdf | |
| 19 | 2018 ANA Anexo I.PDF | Listagem de faturas nao liquidadas pelo Jean Pierre Bemba |
| 20 | 2018 ANA Letter.pdf | Envio da informação solicitada no âmbito do processo do Sr. Jean Pierre Bemba |
| 21 | Acta da ██████ autorizando a livrança e TAPL.PDF | |
| 22 | Avaliação imovel.xls | Agência da ████████ |
| 23 | ████ Hipothéque part 1.pdf | |
| 24 | ████ - Hipothéque part 2.pdf | |
| 25 | ████ - Hipothéque part 3.pdf | |
| 26 | ████ Registre de compagnie.pdf | |
| 27 | ████ Share Certificate.pdf | |
| 28 | ████ rticles of Association.pdf | |
| 29 | ████ Declaration Owner.pdf | |
| 30 | ████ Fiduciary Form.pdf | |
| 31 | ████ Memorandum of Association.pdf | |
| 32 | Carta de Cessão ████ .pdf | |
| 33 | Certificate of Good Standing.pdf | |
| 34 | Confirmation de matricule des avions.jpg | |
| 35 | Cours des Comptes ██████ .pdf | |
| 36 | Coza Kilolo.doc | |
| 37 | ██████ .xls | |
| 38 | Evaluation ██████ .xls | |
| 39 | ████ Garantie DEpot a Terme.pdf | |
| 40 | ████ Hipothéque part 1.pdf | |
| 41 | ████ Hipothéque part 2.pdf | |

| 42 | ██████ Hipotheque part 3.pdf | 65 | Re_ FW_ Documents concerning Mr. Bemba's assets.pdf |
| 43 | ██████ - Letter from Tribunal Judicial de ████ re payment of mortgage.PDF | 66 | Note of Telephone Conversation with Mr ████ docx |
| 44 | ██████ Formulaire Fiduciaire.pdf | 67 | 582-Conf-Exp-Anx1 01-11-2009.pdf | Conservatória do Registo Predial |
| 45 | ██████ Share certificate.pdf | 68 | 582-Conf-Exp-Anx2 01-11-2009.pdf | Conservatória do Registo Predial ████ |
| 46 | Land Registry ████ df | 69 | 1497-Conf-Exp-Anx2 08-06-2011.pdf | Information regarding aircraft |
| 47 | LAND Registry ████ .pdf | 70 | IMG-20181112-WA0004.jpg | Demande D'Immatriculation: Nissan |
| 48 | Memorandum ██████ pdf | 71 | IMG-20181112-WA0005.jpg | Demande D'Immatriculation: Mitsubishi |
| 49 | Ofício ████ 19393.pdf | 72 | IMG-20181112-WA0006.jpg | Demande D'Immatriculation: Nissan |
| 50 | Position bancaires JP.pdf | 73 | IMG-20181112-WA0007.jpg | Demande D'Immatriculation: Mitsubishi |
| 51 | ████ COnstitution of Trust.pdf | 74 | IMG-20181112-WA0008.jpg | Demande D'Immatriculation: Mitsubishi |
| 52 | ████ ertificate of Formation (1).pdf | 75 | IMG-20181112-WA0009.jpg | Demande D'Immatriculation: Nissan |
| 53 | ████ Certificate of Formation.pdf | 76 | IMG-20181112-WA0010.jpg | Demande D'Immatriculation: Nissan |
| 54 | ████ Formulaire Fidiciaire (1).pdf | 77 | IMG-20181112-WA0011.jpg | Demande D'Immatriculation: Mitsubishi |
| 55 | ████ Formulaire Fidiciaire.pdf | 78 | IMG-20181112-WA0012.jpg | Demande D'Immatriculation: Toyota |
| 56 | ████ Shares.pdf | 79 | IMG-20181112-WA0013.jpg | Demande D'Immatriculation: Mitsubishi |
| 57 | Structure Sociétés.pdf | 80 | IMG-20181112-WA0014.jpg | Demande D'Immatriculation: Nissan |
| 58 | TAX Procedure - Amounts in due.pdf | 81 | IMG-20181112-WA0015.jpg | Demande D'Immatriculation: Mitsubishi |
| 59 | ██████ - Apreensão de saldos bancários I.pdf | 82 | IMG-20181230-WA0004.jpg | Envio de Elementos (1) |
| 60 | ██████ Apreensão de saldos bancários II.pdf | 83 | IMG-20181230-WA0005.jpg | Envio de Elementos (2) |
| 61 | Titre Propriété ████ .jpg | 84 | IMG-20181230-WA0006.jpg | Envio de Elementos (3) |
| 62 | Updated Balance 2018.pdf | 85 | IMG-20181230-WA0007.jpg | Envio de Elementos (4) |
| 63 | Fwd_ Quelques question de la part de Maître Peter Haynes.pdf | 86 | IMG-20181230-WA0008.jpg | Apreensao de saldos bancarios - Aditamento (1) |
| 64 | Mr. Jean-Pierre Bemba's asset schedule 3.docx | 87 | IMG-20181230-WA0009.jpg | Apreensao de saldos bancarios - Aditamento (2) |

| 88 | IMG-20181230-WA0010.jpg | Conservatória do Registo Predial ███ | | 111 | IMG-20181230-WA0033.jpg | Extracto Global (2) |
| 89 | IMG-20181230-WA0011.jpg | Conservatória do Registo Predial ████ | | 112 | IMG-20181230-WA0035.jpg | Procuradoria da republica da comarca da praia |
| 90 | IMG-20181230-WA0012.jpg | Conservatória do Registo Predial ███ | | 113 | IMG-20181230-WA0036.jpg | Tribunal Judicial Da Comarca Da Praia |
| 91 | IMG-20181230-WA0013.jpg | Conservatória do Registo Predial ███ | | 114 | IMG-20181230-WA0037.jpg | ███ Senhor Jean Pierre Bemba Gombo |
| 92 | IMG-20181230-WA0014.jpg | Conservatória do Registo Predial ██ | | 115 | IMG-20181230-WA0038.jpg | Extracto Global (1) |
| 93 | IMG-20181230-WA0015.jpg | Envio de Elementos (4) | | 116 | IMG-20181230-WA0039.jpg | Quebra de Segredo e Solicitacqo de Elementos (4) |
| 94 | IMG-20181230-WA0016.jpg | Apreensao de saldos bancarios - Aditamento (1) | | 117 | IMG-20181230-WA0040.jpg | Quebra de Segredo e Solicitacqo de Elementos (2) |
| 95 | IMG-20181230-WA0017.jpg | Apreensao de saldos bancarios - Aditamento (2) | | 118 | IMG-20181230-WA0041.jpg | Procès-verbal (2) |
| 96 | IMG-20181230-WA0018.jpg | Conservatória do Registo Predial ███ | | 119 | IMG-20181230-WA0042.jpg | Contrato de promessa decompra e venda |
| 97 | IMG-20181230-WA0019.jpg | Conservatória do Registo Predial ██ | | 120 | IMG-20181230-WA0043.jpg | Contrato de aluuer de longa duracao |
| 98 | IMG-20181230-WA0020.jpg | Conservatória do Registo Predial ███ | | 121 | IMG-20181230-WA0044.jpg | Extracto Global |
| 99 | IMG-20181230-WA0021.jpg | Conservatória do Registo Predial ██ | | 122 | IMG-20181230-WA0045.jpg | Extracto Global |
| 100 | IMG-20181230-WA0022.jpg | Conservatória do Registo Predial ███ | | 123 | HISTO J BEMBA CDF.txt | |
| 101 | IMG-20181230-WA0023.jpg | Conservatória do Registo Predial ███ | | 124 | HISTO J BEMBA USD.txt | |
| 102 | IMG-20181230-WA0024.jpg | Conservatória do Registo Predial ██ | | 125 | 20181209_132105.jpg Pictures Villa/House ██ | |
| 103 | IMG-20181230-WA0025.jpg | Conservatória do Registo Predial ██ | | 126 | 20181209_132144.jpg Pictures Villa/House ██ | |
| 104 | IMG-20181230-WA0026.jpg | Conservatória do Registo Predial ███ | | 127 | 20181209_132307.jpg Pictures Villa/House ██ | |
| 105 | IMG-20181230-WA0027.jpg | Condicoes particulares do contrato | | 128 | 20181209_132545.jpg Pictures Villa/House ██ | |
| 106 | IMG-20181230-WA0028.jpg | Procès-verbal (1) | | 129 | 20181209_132612.jpg Pictures Villa/House █ | |
| 107 | IMG-20181230-WA0029.jpg | Quebra de Segredo e Solicitacqo de Elementos (1) | | 130 | 20181209_132821.jpg Pictures Villa/House ██ | |
| 108 | IMG-20181230-WA0030.jpg | Quebra de Segredo e Solicitacqo de Elementos (3) | | 131 | 20181209_133053.jpg Pictures Villa/House ██ | |
| 109 | IMG-20181230-WA0031.jpg | Solde de comptes bancaires (1) | | 132 | 20181209_133400.jpg Pictures Villa/House █ | |
| 110 | IMG-20181230-WA0032.jpg | Solde de comptes bancaires (2) | | 133 | 20181209_134001.jpg Pictures Villa/House ██ | |

| 134 | 20181209_134040.jpg Pictures Villa/House ███ |
| 135 | 20181209_134117.jpg Pictures Villa/House ███ |
| 136 | 20181209_134200.jpg Pictures Villa/House ███ |
| 137 | AIDE MEMOIRE DE ME█████████.pdf |
| 138 | 20181209_134040.jpg Pictures Villa/House ███ |
| 139 | 20181209_134117.jpg Pictures Villa/House ███ |
| 140 | 20181209_134200.jpg Pictures Villa/Hous ███ |
| 141 | 20181209_134241.jpg Pictures Villa/House ███ |
| 142 | 20181209_134309.jpg Pictures Villa/House ███ |
| 143 | 20181209_134330.jpg Pictures Villa/House ███ |
| 144 | 20181209_134339.jpg Pictures Villa/House ███ |
| 145 | 20181209_134414.jpg Pictures Villa/Hous ███ |
| 146 | 20181209_134645.jpg Pictures Villa/House ███ |
| 147 | 20181209_135342.jpg Pictures Villa/House ███ |
| 148 | 20181209_135449.jpg Pictures Villa/Hous ███ |
| 149 | 20181209_140437.jpg Pictures Villa/House ███ |
| 150 | 20181209_140526.jpg Pictures Villa/House ███ |
| 151 | 20181209_142044.jpg Pictures Villa/House ███ |
| 152 | 20181209_143616.jpg Pictures Villa/House ███ |
| 153 | 20181209_143650.jpg Pictures Villa/House ███ |
| 154 | 20181209_143722.jpg Pictures Villa/House ███ |
| 155 | Apperçu par actifs - v2.docx |
| 156 | Doc 1.jpg   Acte de Vente (1) |
| 157 | Doc 2.jpg   Acte de Vente (2) |
| 158 | Doc 3.jpg   Accusé de réception d'un paiement partiel |
| 159 | Doc 4.jpg   Accusé de réception d'un paiement partiel |
| 160 | Overview per assets - DRC.docx |
| 161 | Avaliação imovel.xls |
| 162 | BEMBA - Mapa Resumo Libertações Mensais.xls |
| 163 | img-116115000-0001.pdf   Conservatória do Registo Predial de ███ |
| 164 | ██████████.df   Information regarding mortgages |
| 165 | Aide memoire.docx |
| 166 | ███-7.pdf |
| 167 | ███ertificate1stMarch2007[2].doc |
| 168 | facture.jpg |
| 169 | inventaire 1.JPG |
| 170 | inventaire.JPG |
| 171 | procuration2.jpg |
| 172 | prolongation sejour.jpg |
| 173 | 2470-08-2.xls |
| 174 | ██████████████.oc |
| 175 | ███22-10-2008.xls |
| 176 | ███27-10-2011.xls |
| 177 | ███ Caderneta predial.pdf |
| 178 | ███ Escritura Compra.pdf |
| 179 | image_123923953 (1).JPG |

| | | |
|---|---|---|
| 180 | image_123923953 (2).JPG | |
| 181 | image_123923953 (3).JPG | |
| 182 | image_123923953 (4).JPG | |
| 183 | image_123923953 (5).JPG | |
| 184 | image_123923953.JPG | |
| 185 | ████.pdf | |
| 186 | ███2.pdf | |
| 187 | ███3.pdf | |
| 188 | ██4.pdf | |
| 189 | Draft Witness Statement-████████ | |
| 190 | Calcul Depot á terme 10 ans.xlsx | |
| 191 | Extracto IFI 31-12-2007.pdf | |
| 192 | Extractos IFI 30-04-2009.pdf | |
| 193 | Lilia Extrato 02-2009.pdf | |
| 194 | Lilia Extrato 06-2008.pdf | |
| 195 | Draft Witness Statement-████████████ | |
| 196 | Draft Witness Statement-██████████████ | |