

# PUBLIC REDACTED ANNEX G

## WITNESS STATEMENT

### WITNESS IDENTITY

Last Name: [REDACTED]

First Name(s): [REDACTED]

Date of birth: [REDACTED]

Place of birth: [REDACTED]

Spoken Language(s): [REDACTED]

Language (s) in which the interview took place: English

Current occupation: Bank Manager at [REDACTED]

Previous occupation: Bank Manager at [REDACTED]

Date (s), time and place of interview: 12 February 2019, [REDACTED]

Person (s) interviewing: Peter Haynes, Kate Gibson

### A. BACKGROUND

1. I met Jean-Pierre Bemba in 2007 when he came to Portugal after an attempt on his life in the DRC.
2. At the time I was working as a bank manager for [REDACTED]  
[REDACTED]
3. Mr. Bemba was introduced to me by a client of mine. At that time, Mr. Bemba owned outright a villa on [REDACTED] which had been purchased on [REDACTED] 1996. Other than that, he had little financial interest in Portugal.
4. Mr. Bemba was concerned for his security. The Portuguese government provided him with a police detail of five officers, for his personal protection, a man having been arrested at Faro Airport who it was believed intended to assassinate him.
5. He informed me that the situation in the DRC made it impossible for him to return there in the foreseeable future, but neither did he feel secure in Brussels and so he had chosen to live in Portugal. The only people living with him then

were his brother [REDACTED] and a member of his personal staff [REDACTED] lived with them at the family villa on via [REDACTED]

6. Mr. Bemba and his brother undertook during the brief period that he resided in Portugal two property development schemes, both of which were financed with the bank through mortgages. [REDACTED] was meant to be the project manager and beneficiary of the developments, however, the financing of them depended upon the personal and financial guarantee and capacity of his brother.

7. The first involved the purchase of a plot of land and the building of a villa at [REDACTED]. It is customary in this part [REDACTED] for such schemes to be financed through the structure of an offshore company. Indeed, in my 14 years' experience as a bank manager here, approximately 90% of property developments in [REDACTED] are financed in this way. Effectively, rather than purchasing the property, one purchases the company. The financing of the first property was granted through a company called [REDACTED] and hereinafter this property will be referred to as the [REDACTED] development. The purchase deal was presented to them that way by the seller. However, I made the suggestion to Mr. Bemba and [REDACTED] to create another offshore company ([REDACTED] - a name chosen from a list of companies that had already been established for this purpose, and was provided to them by [REDACTED] a company directly related to the bank). This offshore company would hold the shares of [REDACTED] or other companies and would allow the sale of the each project independently once the building(s) were finished. This would also enable Mr. Bemba and [REDACTED] use the profits from [REDACTED] to build any other projects through companies whose shares would be controlled by [REDACTED]. They agreed with the structure.

8. The total price for the purchase for the plot of land and the building costs was projected to be 3.6 million euros, and it was hoped that eventually the property could be sold for around 6 million euros. All contracts were signed and agreed before Mr. Bemba's arrest, and the building work commenced in June 2008.

9. The second building project involved the purchase of a plot of land which already had a building on it. However, the villa was old, by the standards of [REDACTED]. It was intended that the house would be demolished, and a wholly new villa should be built on the plot. This second property, was financed through a company called [REDACTED] and will hereinafter be referred to as the [REDACTED] development. This company was already established when presented to the Bemba family, who were accordingly only required to purchase the shares in it through the company, [REDACTED] as mentioned above.

10. The bank was prepared to advance funds for this development firstly because of the equity in the [REDACTED] development; secondly because Mr. Bemba had an income and assets which justified it; and thirdly because the market in [REDACTED] has always been buoyant. The date of the [REDACTED] property purchase was December 2007. Plans for demolishing and construction of a new building were submitted for approval at the [REDACTED] town hall shortly after the purchase date. At the time of Mr. Bemba's arrest, no progress with this project had been made at all.

11. Before considering opening an account for Mr. Bemba and approving any credit facilities, it was important that the bank conducted due diligence in investigating his assets and income due to his political exposition. To that end, Mr. Bemba deposited in an account in Cape Verde the sum of 1.8 million euros. Cape Verde is a separate jurisdiction from the Republic of Portugal.

12. It is, in effect, an offshore investment location, of which there are many examples around the world. The bank with which the funds were deposited in Cape Verde was called [REDACTED]. However, at that time, it was staffed by employees of [REDACTED] staff in Portugal had access to, for example, account details and balances held at that bank. Deposits in accounts of that bank in Cape Verde were deemed adequate security for the advance of funds in Portugal.

13. Additionally, Mr. Bemba provided evidence of income streams which resulted in funds being deposited in accounts held by him in Portugal. In particular, he provided the bank with copies of registration certificates in relation to seven aircraft. We were later informed that six of these aircraft were leased in the DRC through an organization called [REDACTED] managed by [REDACTED]. The seventh was parked at Faro Airport and was the plane in which Mr. Bemba had left the DRC for Portugal. All the Bank's due diligence procedures were deemed sufficient security to advance the funds for the purchase of the [REDACTED] development and the [REDACTED] development.

14. A list of the certificates of registration for the seven aircraft can be found as document CAR-OTP-0046-0678.<sup>1</sup>

#### **THE BOEING 727-000 [CAR-OTP-0016-0042]**

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<sup>1</sup> A list of the certificates of registration for the eight aircraft can be found at CAR-OTP-0046-0678



15. Mr. Bemba arrived by airplane at Faro Airport in early April 2007. From that date, the airplane remained parked at Faro Airport. As part of its service to Mr. Bemba, the bank was forwarded parking invoices from ANA and invoices for the maintenance of the plane. The maintenance and parking charges have been disclosed as (CAR-D04-0007-0038 and CAR-D04-0007-0052).

16. Further exhibited to this statement, is an invoice for parking charges for the period June to September 2007, paid by Mr. Bemba in October of that year (CAR-D04-0007-0060 and CAR-D04-0007-0064). After that period, Mr. Bemba was in negotiation with the Portuguese authorities as to whether the plane would attract further parking charges. If that were to be the case, I understood that Mr. Bemba had in mind to move the plane to a smaller airport in [REDACTED] Portugal, or to fly the plane back to Africa where it could have been leased along with his other planes. In any event, by May 2008, when Mr. Bemba was arrested, he had comfortably enough funds in Portugal alone to discharge any outstanding parking fees.

### C. MR. BEMBA'S ARREST

17. I learnt of Mr. Bemba's arrest from his brother [REDACTED] who called me by telephone to assure me that all ongoing liabilities would continue to be met. On 31 May 2008, the bank received instructions from lawyers in Belgium to comply with a transfer of 492,000 euros (+/- 25% of the capital held with [REDACTED] at the time) previously ordered into an account in the name of Mrs. Lilia Teixeira, to discharge liabilities and support herself and Mr. Bemba's children in Belgium. The transfer was to be made between two accounts in [REDACTED]. However, that transfer was blocked by the bank, and never made.

18. It was not until 5 June 2008, however, that the bank received any order from the central criminal court of Portugal to freeze Mr. Bemba's assets. As such, I believe the refusal of the bank to transfer the funds following the 31 May request was done in the absence of any legal authority really for two reasons; firstly, because the bank was not in possession of a legal freezing order from the Portuguese courts; and secondly, because the [REDACTED] accounts were outside the jurisdiction of both the ICC and Portugal.

19. Following this freezing order, the Portuguese authorities searched and seized various items from Mr. Bemba's properties in Portugal. These included the keys and all relevant documentation pertaining to the aircraft parked at Faro Airport. It is my understanding that all materials seized were passed to the ICC Prosecution, including the documents and keys of the plane.

### D. THE EFFECT OF THE SEIZURES AND FREEZING ORDERS

**(a) The Bank Accounts**

20. Following the issuance of the freezing orders, Mr. Bemba was not able to access any funds in any of his bank accounts in Portugal or [REDACTED]. No standing orders or direct debits could be met in relation to mortgages or other loans. The freezing orders also applied to accounts in the names of his wife, Mrs. Lilia Teixeira.

21. In June 2008, the bank received initial instructions to trace all assets of Mr. Bemba or his immediate family. However, this order only related to assets held within the Republic of Portugal. The [REDACTED] account fell outside the jurisdiction of the Portuguese court. But of course, because funds were being held at [REDACTED] bank, the bank had access to the account details of its customers there.

22. As a precaution, because it was unclear how [REDACTED] was legally structured and because the bank wanted to demonstrate its willingness to cooperate with the ICC, details of the funds held in Mr. Bemba's Cape Verde accounts were communicated. Those details should not have been. However, subsequently, in a later report, the bank was aware of the risks attendant to unlawful communication, and accordingly withheld information relating to Mr. Bemba's Cape Verde accounts. This caused a degree of consternation at the ICC, who jumped to the conclusion that Mr. Bemba had transferred 1.8 million euros out of a frozen account in Portugal. In fact, this had not taken place. The bank had merely corrected its original error of communicating the Cape Verde account details to the ICC by not doing so.

23. During the investigation into the alleged disappearance of funds, the Bank explained the error and explained that its initial communication had been based on a willingness to cooperate. In all subsequent communications to the Court, the details of the Cape Verde accounts were (wrongly) included.

24. At the time of the original freezing orders, the ICC did not have the ability to order the authorities in Cape Verde to freeze Mr. Bemba's assets, as it was not a State Party, nor could the Portuguese Court make such an order. Nonetheless, the bank did in fact freeze those accounts. The freezing was exclusively based on a Portuguese court order which was of no legal effect in Cape Verde. The Portuguese authorities simply assumed that [REDACTED] Portugal and [REDACTED] Cape Verde were one and the same company/legal entity and, therefore, that Portuguese court orders should apply. As such, a Portuguese court ordered that the off-shore accounts (that had been wrongly communicated to them in the first place) be frozen and the Bank did not question the order.



25. In March 2009, The ICC indicated that it had no authority over accounts in Cape Verde and the freezing order was lifted for a period of about a week. In response, and I believe in an attempt to cover up the erroneous procedures previously adopted in communicating and freezing the accounts, the Bank raised concerns with the Prosecutor General in Cape Verde over alleged money laundering, and he duly ordered the accounts to be refrozen. After a few years and once Cape Verde became a member party, the account was emptied and the funds transferred directly to the ICC.

**(b) The Properties**

**(i) Villa [REDACTED]**

26. The Villa at [REDACTED] was not the subject of a legal freezing order under Portuguese law. A simple caution was placed on the title at the land registry, that it could not be sold. A copy of that caution has been disclosed as CAR-D04-0007-0065.

27. It was closed down, as though it was a crime scene; sealed and locked, notwithstanding the fact that [REDACTED] Mr. Bemba's member of staff, was still living there. He was required to leave, and Mr. Bemba's salary to him was stopped as a result of the freezing orders. Over the course of the following 10 years, the property fell into serious dilapidation, and significantly diminished in value. For example, the plants and trees in the garden died as a result of him being unable to pay his gardeners, the property has not been modified in 10 years and has developed damp in the walls, mould grew on the outside fixtures, a tree died and collapsed onto the roof, and though of considerable value still, it is worth far less than any neighbouring property.

**(ii) [REDACTED] Development**

28. The [REDACTED] development continued after Mr Bemba's arrest and was deemed 99.4% complete by the Bank during the initial years of Mr. Bemba's detention (see disclosed valuation at CAR-D04-0007-0070 and CAR-D04-0007-0084). Some bannisters on stairwells had not been installed, but the construction work was otherwise finished (see disclosed document CAR-D04-0007-0084). However, the mortgage payments were not met, and as a result, the bank repossessed and sold the property at a considerable loss, for 1.9 million euros on 25 June 2014.

29. On 18 January 2016, 1.5 years later, the new owner sold the property for 3.8 million euros. The estimated value of this property in December 2018 would

have been about 7 million euros. The state mortgage company ██████ issued a declaration in April 2018 to the effect that even after the property had been sold, Mr. Bemba's outstanding debt was 3.52 million euros. This sum remains to be paid (CAR-D04-0007-0080 and CAR-D04-0007-0081).

**(ii) The ██████ Development**

30. The ██████ development was subject to a legal freezing order. The effect of this order was to void the mortgage, given a clause which stated that any legal proceedings instituted in relation to the property would render the agreement void.

31. It is perhaps useful to understand the importance to the bank of monitoring the various financial assets of Mr. Bemba within the Portuguese jurisdiction. The bank was significantly exposed in terms of its lendings to Mr. Bemba. Accordingly, it was part of my function, to keep an eye on, amongst other things, both the ██████ developments.

32. A manager had been put in place in relation to the ██████ property. From time to time I would pass by the property, and observe that it was occupied. It appeared to me that the manager was occasionally living there himself, or allowing his son to live there. At other times, it appeared the property was being let. Rentals for a property of this size, in this location, could rise to 10,000 euros per week in the summer months.

33. Rentals could, of course, have been applied to Mr. Bemba's borrowings in relation to this property, and significantly reduced them. If and when this property is unfrozen, Mr. Bemba will still have to repay the 3.44 million related to the capital borrowed and 10 years of ongoing interest and penalties against it to the state mortgage company, ██████. In its current state, it is unlikely that a sale of the property would generate enough funds to do that.

34. It is my understanding of the law and procedure that persons employed to manage frozen properties by the state are not authorized to occupy or let them.

**(c) The Plane**

35. During searches of Mr. Bemba's properties, Portuguese police seized on behalf of the ICC the keys and documentation to the plane parked at Faro Airport. Following the freezing orders, Mr. Bemba was unable to pay for the maintenance of the plane and discharge the ongoing parking fees. The airplane itself was not the subject of a freezing order.



36. Over the course of the next 10 years, the plane accrued 564.323,94 € parking charges up to July 2018, and fines for late repayment for the period of February 2008 to 2013 of 144.798,74 €. Additionally, In January 2009, the Portuguese government deemed that it was liable to VAT, as it was considered to have been imported, so long had it been parked at Faro. In 2011, its airworthiness certificate expired. It was valuable only as scrap thereafter. The VAT liability plus fine for late repayment was of 267.982,70 € on the 28/08/2018.

37. Although not frozen, by order of the Court, the retention of the keys and documents by the Prosecution of the ICC made any attempt to rescue its value, generate an income through it, or mitigate its ongoing losses, impossible. For example, a few years ago I was approached by a Portuguese policeman named [REDACTED] on behalf of a man who wished to buy the plane for 1 million euros. However, because Mr. Bemba did not have the keys and documentation, there was no way to proceed with the purchase.

38. Mr. Bemba's lawyers suggested to the Registry of the ICC that the plane be commercially leased thereby generating an income for the payment of his lawyers. This scheme foundered for the same reasons. At a very minimum, the plane could have been moved to a location where it attracted either lower parking charges, or no parking charges at all. Funds could have been deployed by the Court to pay off the parking fees. The plane is now virtually worthless and there is an outstanding (and growing) debt of 713.251,52 euros plus 268.702,85 € parking charges for the period of 21/10/2013 to 10/07/2018 - not yet invoiced, so the total is of 981.954,37 € (fines for late repayment from 10/2013 to present date excluded). Those values are both certified by the Portuguese Tax Authorities and the Portuguese Aeronautic Authorities.

**(c) The Cars**

39. I'm aware that the Portuguese police also seized three motor cars. All were new and current models. Through my dealings with the police in this case, I am aware that 2 cars have been taken to Lisbon. It is my experience from other cases in which the police have impounded cars, that they will have been stored in adverse conditions. It is highly unlikely after 10 years that they will be functional to any degree. The 3<sup>rd</sup> car, the Q7 had an ongoing loan and was property of the Bank so it was repossessed and sold by the Bank on March 2011 or shortly after.

**(d) Other Impacts on the Family**

40. Mr. Bemba's wife and children have had to make other arrangements to continue to live their lives with some sense of normality. As their bank manager, I have become aware that their family finances depended through the last 10

years almost entirely on assistance from other members of Mr. Bemba's family. Especially his brother [REDACTED] and his sister [REDACTED]

41. In addition to the regular family running costs, such as utility bills, accommodation costs, food, and clothing, five children had to be put through school and university. They had to travel regularly to visit Mr. Bemba in the prison.

42. Mr. Bemba's arrest additionally impacted upon his family's ability to function. During the period of his incarceration, banks had an overly cautious attitude to issues of money laundering, and the name "Bemba" had a red flag attached to it. During that time, his children were asked by two different banks to close their accounts. [REDACTED]

43. I have reviewed this statement, and it is true to the best of my knowledge and my recollection.

Date:

12/09/2019

Signature: [REDACTED]