IN THE MATTER OF AN APPEAL TO THE INFORMATION TRIBUNAL UNDER SECTION 57 OF THE
FREEDOM OF INFORMATION ACT 2000

EA/2015/0019

BETWEEN:-

PATRICIA FEENEY

Appellant

-and-

THE INFORMATION COMMISSIONER

First Respondent

-and-

HM TREASURY

Second Respondent

_____________________________________________________________________

Index to

PATRICIA FEENEY WITNESS STATEMENT

and ENCLOSURES

_____________________________________________________________________


**Section: Witness Statement**

<table>
<thead>
<tr>
<th>Document</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Witness Statement of Patricia Feeney</td>
<td>F 1</td>
</tr>
</tbody>
</table>

**Section: Annex A**

<table>
<thead>
<tr>
<th>Document</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex A: Key persons in the Zimbabwe regime on the EU sanctions list</td>
<td>F 30</td>
</tr>
</tbody>
</table>

**Section: Annex B**

<table>
<thead>
<tr>
<th>Document</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex B: Timeline of Contacts between RAID, the Treasury and the ICO</td>
<td>F 31</td>
</tr>
</tbody>
</table>

**Section: Documents**

<table>
<thead>
<tr>
<th>Document</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zimbabwe (Financial Sanctions) Regulations 2009</td>
<td>F 175</td>
</tr>
<tr>
<td>Andrew Alderson and Russell Hotten, ‘Business and morality: Is Phil Edmonds right to trade with Robert Mugabe?,’ The Telegraph, 15 June 2008</td>
<td>F 190</td>
</tr>
<tr>
<td>Miningmx, ‘Camec’s Zimbabwe platinum project threatened,’ 18 July 2008</td>
<td>F 195</td>
</tr>
<tr>
<td>Antony Sguazzin and Mark Herlihy, ‘Camec to Mine Platinum With Zimbabwe Government Unit,’ Bloomberg, 11 April 2008</td>
<td>F 198</td>
</tr>
<tr>
<td>Barry Sergeant, ‘Zimbabwe's pale barons’, Moneyweb, 28 June 2008</td>
<td>F 201</td>
</tr>
<tr>
<td>CAMEC, RNS 1641S, ‘Acquisition of Platinum Assets’, 11 April 2008</td>
<td>F 204</td>
</tr>
<tr>
<td>Source</td>
<td>Date</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Documents produced in High Court of South Africa Durban &amp; Coast Local Division, Court Order, Case No. 4975/08, 18 April 2008</td>
<td>F 234</td>
</tr>
<tr>
<td>Cam Simpson and Jesse Westbrook, ‘How Mugabe raised R1bn to win poll’, Business Times, 31 August 2014</td>
<td>F 238</td>
</tr>
<tr>
<td>MDC-T Treasurer, General Roy Bennett, in a SW Radio Africa interview, presented by Alex Bell, broadcast 14 August 2012</td>
<td>F 243</td>
</tr>
<tr>
<td>ENRC, RNS 1825Z, ‘Statement Regarding Press Speculation’, 16 September 2009</td>
<td>F 247</td>
</tr>
<tr>
<td>‘Recommended Cash Offer Eurasian Natural Resources Corporation PLC (&quot;ENRC&quot; or &quot;the Group&quot;) for Central African Mining &amp; Exploration Company PLC (&quot;CAMEC&quot;),’, 18 September 2009</td>
<td>F 249</td>
</tr>
<tr>
<td>ENRC, ‘Recommended Cash Offer by ENRC Africa Limited (a wholly-owned subsidiary of Eurasian Natural Resources Corporation PLC) to acquire Central African Mining &amp; Exploration Company plc’, (‘Offer Document’), 9 October 2009</td>
<td>F 276</td>
</tr>
<tr>
<td>‘Rautenbach can’t sell Camec stake to ENRC till UK Treasury approves’, Metal Bulletin, 07 October 2009</td>
<td>F 345</td>
</tr>
<tr>
<td>Garry White, ‘Kazakh miners seek Chinese funding of up to $2.4bn’, The Daily Telegraph, 12 October 2009</td>
<td>F 346</td>
</tr>
<tr>
<td>‘In the City,’ Private Eye, issue no. 1252, 25 December 2009 – 7 January 2010, p. 33.</td>
<td>F 348</td>
</tr>
<tr>
<td>Investigating Directorate, Serious Economic Offences, Warrant of Arrest, 27 September 2000, with supporting affidavits.</td>
<td>F 349</td>
</tr>
<tr>
<td>Antony Sguazzini and Brett Foley, ‘Rautenbach to Pay S. African Fine to End Legal Battle’, Bloomberg, 21 September 2009</td>
<td>F 353</td>
</tr>
<tr>
<td>RAID, Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights, July 2012</td>
<td>F 355</td>
</tr>
<tr>
<td>Ben Laurance, ‘UK freezes Mugabe’s ally’s holding in Edmonds firm’, Daily Mail, 30 March 2009</td>
<td>F 448</td>
</tr>
<tr>
<td>ENRC presentation, ‘Recommended Cash Offer for Central African Mining &amp; Exploration Company PLC (‘CAMEC’) 18 September 2009</td>
<td>F 449</td>
</tr>
<tr>
<td>ICO ‘How to access information from a public body’</td>
<td>F 469</td>
</tr>
<tr>
<td>Commons Hansard, 10 July 2008: Column 1547.</td>
<td>F 477</td>
</tr>
<tr>
<td>Stefaans Brümmer, Craig McKune and Owen Gagare, ‘The investor who saved Mugabe,’ Mail &amp; Guardian, 10 August 2012</td>
<td>F 478</td>
</tr>
<tr>
<td>Independent, 19 June 2014</td>
<td>F 490</td>
</tr>
<tr>
<td>Stefaans Brummer, 'Sexwale 'caught up' in US probe of suspect DRC mining deal', The National, 10 July 2014</td>
<td>F 498</td>
</tr>
<tr>
<td>Lords Hansard, 24 Sep 2012: Column WA183.</td>
<td>F 514</td>
</tr>
<tr>
<td>Tom Bawden, 'Sir Richard Sykes: voted out, but not down', The Guardian, 10 June 2011</td>
<td>F 516</td>
</tr>
<tr>
<td>Nikhil Kumar, 'ENRC shares a 'no go' over governance', The Independent, 18 August 2011</td>
<td>F 519</td>
</tr>
<tr>
<td>FCA, Press Release, 5 November 2013, 'The FCA strengthens the listing rules to enhance protection for shareholders'</td>
<td>F 521</td>
</tr>
<tr>
<td>Reuters, 'Och-Ziff hires former U.S. SEC general counsel as chief legal officer' 11 July 2014</td>
<td>F 527</td>
</tr>
</tbody>
</table>

**Section: Correspondence**

| HMT to Raid | 8th August 2011 | F 528 |
| Raid to HMT | 30th November 2011 | F 529 |
| Email exchange between HMT to Raid | 27th July - 5th October 2012 | F 531 |
| HMT to RAID | 5th October 2012 | F 535 |
| HT to RAID | 3rd December 2012 | F 536 |
| Raid to HMT | 22nd May 2013 | F 538 |
| HMT to Raid | 31st May 2013 | F 540 |
| Raid to HMT | 1st July 2013 | F 541 |
| Raid to HMT | 6th September 2013 | F 542 |
| HMT to Raid | 6th September 2013 | F 544 |
| HMT to Raid | 30th September 2013 | F 545 |
| ICO to Raid | 13th March 2014 | F 547 |
| HMT to Raid | 24th April 2014 | F 548 |
| Raid to HMT | 24th April 2014 | F 549 |
| HMT to Raid | 26th June 2014 | F 551 |
| ICO to Raid | 3rd July 2014 | F 553 |
| Raid to ICO | 15th November 2014 | F 555 |
| ICO to Raid | 17th November 2014 | F 557 |
IN THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS)
BETWEEN:

RIGHTS AND ACCOUNTABILITY IN DEVELOPMENT (RAID)  

Appellant

-v-

(1) THE INFORMATION COMMISSIONER
(2) HER MAJESTY’S TREASURY

Respondents

WITNESS STATEMENT OF PATRICIA FEENEY

I, PATRICIA FEENEY, of Rights and Accountability in Development (RAID), 1 Bladon Close, Oxford, OX2 8AD, WILL SAY as follows:

A. INTRODUCTION

1. I am the Executive Director of RAID. I make this witness statement in support of RAID’s appeal against the Information Commissioner’s Decision Notice of 8 December 2014.

2. RAID advocates for binding corporate accountability frameworks, particularly the development of international norms on the human rights responsibilities of companies. RAID works to hold companies to account for illegal and unethical practices by helping victims to obtain redress, and by campaigning for stronger domestic and international mechanisms of regulation for business.

B. BACKGROUND

3. In this section, I have outlined the background to the request for information made by RAID under the Freedom of Information Act 2000 (‘FOIA’) to Her Majesty’s Treasury (‘the Treasury’) which is the subject of this appeal. I will briefly outline: (a) the financial sanctions regime against Zimbabwe; (b) the inclusion of individuals on the sanctions list of concern to RAID in making our request; (c) the consequences (the freezing of accounts and economic resources) for those on the list and; and (d) the Treasury’s issuing of licences to allow frozen assets (including shares) to be sold (about which RAID sought specific information).

4. I will also provide further background on two transactions engaging the sanctions regime, which were at the heart of RAID’s request for information. The first transaction concerns the
sale of a Zimbabwean platinum concession to a UK-registered and traded mining company, Central African Mining and Exploration Company plc (CAMEC). A significant part of the consideration paid for the platinum mine went to the Zimbabwe government regime of President Robert Mugabe, even though sanctions were in force at the time. The money was then used to fund a campaign of electoral violence to keep Mugabe in power. I will refer to this transaction as the "Platinum Mine Deal". The second transaction concerns the later sale of CAMEC to a Main-market-listed mining company. The takeover resulted in CAMEC shareholders receiving payment for their shares. Certain significant CAMEC shareholders were on the sanctions list and RAID’s requests for information sought to establish how the Treasury licensed the sale of these shares, to benefit those on the sanctions list. I will refer to this transaction as the "CAMEC Sale Deal".

*The sanctions regime against Zimbabwe: imposition and extension*

5. A series of restrictive measures and embargoes against Zimbabwe, at the UK-national and EU-level, were prompted by both domestic and external polices and acts of the governing regime in Zimbabwe – Robert Mugabe and the Zimbabwe African National Union Patriotic Front (ZANU-PF) party.

6. In August 1998, Zimbabwe intervened in the war that was raging in neighbouring Democratic Republic of Congo (DRC), supporting the forces of the DRC government, led by President Laurent Kabila.

7. The conflict in DRC had become a war over natural resources: the control of diamond fields, gold mines, other mineral resources and timber generated huge revenues from an illicit trade. In a self-sustaining cycle of violence, the proceeds were used to buy arms, which were then used by the warring factions to fight over resource-rich territory. RAID has researched and written extensive reports on the role of companies in exploiting the resource war in DRC and on the human rights violations associated with mining operations in the post-conflict period.

8. In Zimbabwe's case, Mugabe and figures in the ZANU-PF political and military elite were rewarded with lucrative diamond and mineral concessions in return for military support. This arrangement is the origin of the mining assets initially transferred to a business ally of Mugabe, Mr Billy Rautenbach (a key individual in the context of RAID’s request) and subsequently acquired by London-traded CAMEC. RAID was later to request information from the Treasury concerning both Rautenbach and CAMEC.
9. Rautenbach and his companies were named by a United Nations (UN) Panel examining the illegal exploitation of natural resources in DRC, which alleged that the former were party to a secret profit sharing agreement with the Zimbabwean regime.\(^1\) Another UN expert panel, mandated to report on the implementation of a UN arms embargo covering the entire DRC, examined ‘concession rights held by individuals of unknown or questionable standing’, naming Rautenbach as a major shareholder of CAMEC.\(^2\) The Experts reported “the consequences of insufficient due diligence procedures” in relation to Rautenbach and CAMEC.

10. The appalling human cost of the war in DRC focused international attention on the supply of arms to the region. Moreover, the spreading violence in Zimbabwe itself was of increasing concern to the UK Government and the international community. This resulted in a UK arms embargo against Zimbabwe, announced on 3 May 2000.

11. Relations between the EU member states, including the UK, and Zimbabwe deteriorated further in the run-up to presidential elections to be held in March 2002. Serious concerns were raised about the escalation of violence and intimidation of political opponents, harassment of the independent press, and the passing of laws curtailing free speech. When the Mugabe government refused to accredit certain EU election observers and refused them leave to stay, the EU decided to implement targeted sanctions.

12. In 2002, the Council of the European Union adopted a Common Position and imposed a prohibition on the supply of arms, technical training and equipment for internal repression and a travel ban and freezing of funds for “the Government of Zimbabwe and persons who bear a wide responsibility for serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly”. EU sanctions have been updated and implemented through successive Council Regulations.

13. In relation to RAID’s request for information, it is Council Regulation (EC) No 314/2004 of 19 February 2004, implementing restrictive measures in respect of Zimbabwe, which is the most pertinent.

---


14. Article 8 of Council Regulation (EC) No 314/2004 is proving pivotal in the refusal of the Treasury to provide the information requested. Article 8 states:

"1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, natural and legal persons, entities and bodies shall:

(a) supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 6, to the competent authorities of the Member States listed in Annex II where they are resident or located, and shall transmit such information, directly or through these competent authorities, to the Commission;

(b) cooperate with the competent authorities listed in Annex II in any verification of this information.

2. Any additional information directly received by the Commission shall be made available to the competent authorities of the Member State concerned.

3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received."


The EU sanctions list: persons and entities of key importance in RAID’s request

16. Mugabe and his key allies in the government, ZANU-PF, and the military, were all on the EU sanctions list at the time CAMEC transferred $100 million to the Zimbabwean regime as part of its acquisition of platinum assets – the Platinum Mine Deal (intra, paragraph 27ff.). Such persons, including Robert Mugabe identified in Annex A to my statement, are of particular relevance in the context of RAID’s requests for information on the action taken (or not taken) by the Treasury and British government following this transaction: all were members of a Zimbabwean government committee that coordinated the electoral violence (intra, paragraphs 37 and 40).

17. In a subsequent extension and update to EU sanctions in January 2009, Rautenbach, the Zimbabwean businessman fronting the DRC mining companies transferred to the Zimbabwean political elite as part of the Platinum Mine Deal, together with his company, Ridgepoint Overseas Developments Ltd, were added to the list. Muller Conrad (aka ‘Billy’)

---

Rautenbach is described thus: “Businessman with strong ties to the Government of Zimbabwe, including through support to senior regime officials during Zimbabwe’s intervention in DRC.” The EU list identifies Rautenbach under both his given name (Müller Conrad) and the name ‘Billy’, by which he is commonly known. When Rautenbach was added to the EU sanctions list, he was already wanted by the South African Authorities for fraud and theft arising from his business dealings in that country (see *intra*, paragraph 59).

18. Ridgepoint Overseas Developments Ltd is described in the EU list as “Owned by Billy Rautenbach”. DRC Government-owned mines were originally transferred to Ridgepoint during the war in DRC. Ridgepoint appears not to have played a part in the transactions of concern to RAID when making its request to the Treasury and, accordingly, it is not discussed in this witness statement.

19. Rautenbach was removed from the EU sanctions list on 23 February 2012, although he remained designated under US sanctions until April 2014.

20. Following constitutional reform in Zimbabwe in March 2013, the EU suspended the asset freeze and travel ban applying to the majority of individuals and entities. The EU and UK cautiously welcomed the conduct and outcome of democratic elections in Zimbabwe at the end of July 2013. Of those individuals and entities referred to in this witness statement, only Robert Gabriel Mugabe is still subject to EU restrictive measures. However, I should note that the current roll-back of sanctions does not mean that RAID’s requests are rendered historical: see *intra*, paragraph 83ff., on the continued relevance of the information sought.

**The restrictions applying to a person on the EU sanctions list**

21. In summary, Regulation 314/2004 provided that:

   a. All funds and economic resources of the persons on the EU sanctions list are frozen and should not be made available directly or indirectly to them (Article 6). It is a criminal offence to breach a financial sanction, without an appropriate licence or authorisation from the Treasury.

---

b. Natural and legal persons, entities and bodies are required to supply immediately any information which would facilitate compliance with financial sanctions in force, such as accounts and amounts frozen (Article 8).

22. The shareholdings of designated persons are included under the definition of ‘funds’ (Article 1(b)(iii)) and are therefore subject to the financial restrictions. Hence, dealing in such shares is prohibited because of the ultimate benefit to the designated person. However, provision is made to license the sale of such shares (intra, paragraph 25), for example, when there is a takeover of the company in which shares are held.

23. Under the Zimbabwe sanctions regime, there is provision, in certain situations, for a person on the sanctions list to make an application for a licence from the Treasury to allow funds to be released (Article 7). The applicant would have to show that their circumstances fell within one of the exemptions set out in the relevant legislation and that the transaction was therefore capable of being licensed.

24. Article 7 of Council Regulation (EC) No 314/2004 provides for derogation from financial sanctions, allowing the competent authorities to:

"...authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

(a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;

(b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

(d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to all other competent authorities and the Commission at least two weeks prior to the authorisation."

25. The Zimbabwe (Financial Sanctions) Regulations 2009 state that “[a] person (including the designated person) must not deal with funds or economic resources belonging to a designated person” (regulation 6(1)) and a “person must not make funds or economic resources
available, directly or indirectly, to or for the benefit of a designated person” (regulation 7(1)) “unless authorised by a licence granted under regulation 10”. Under regulation 10, the Treasury “may grant a licence to disapply the prohibition in regulation 6(1) or 7(1)” It is understood that a licence may be “general or granted to a particular person or to a category of persons”.

26. Accordingly, proceeds from the sale of shares held by a designated person would remain frozen, unless released by special licence. Certain of the information requested by RAID relates to the Treasury’s licensing of the CAMEC Sale Deal (intra, paragraph 42ff). Other parts of the information requested by RAID relates to the Treasury’s licensing of the release of funds to Rautenbach (intra, paragraphs 58 – 60).

Transactions engaging the Zimbabwe sanctions regime

The Platinum Mine Deal

27. As I will outline below, in the requests at issue in these proceedings, RAID sought information from the Treasury relating to how substantial funds were transferred by CAMEC to the Mugabe regime on the eve of Zimbabwean parliamentary and presidential elections in 2008 through the controversial Platinum Mine Deal. This deal was covered in the press at the time, but its full details and consequences were not known.4

28. In April 2008, CAMEC announced the acquisition of an interest in platinum mining assets in Zimbabwe via its acquisition of 100% of Lefever Finance Ltd, registered in BVI.5 Lefever owned 60% of Todal Mining (Private) Limited, a Zimbabwean company, which held the rights to the Bougai and Kironde claims south west of the city of Gweru in Zimbabwe. The remaining 40% of Todal was held by the state-owned Zimbabwe Mining Development Corporation (ZMDC). The consideration paid for Lefever was a cash payment of US$5 million and the issue of 215,000,000 new CAMEC ordinary shares. CAMEC identified the seller of the shares in Lefever as Meryweather Investments Limited, which “will on


completion of the transaction hold a 13.07% interest in the enlarged share capital of CAMEC”. Meryweather has since been linked to Rautenbach (intra, paragraphs 55 – 57): RAID’s information request sought to confirm this.

29. CAMEC’s announcement of the acquisition stated:

“...CAMEC has agreed to advance to Lefever an amount of US$100 million by way of loan to enable Lefever to comply with its contractual obligations to the Government of the Republic of Zimbabwe. Repayment to Lefever is to be made from the ZMDC’s share of dividends from Todal.”

30. CAMEC itself received the $100 million by way of a ‘private placement’ in which the subsidiary of the $47 billion US hedge fund, Och-Ziff Capital Management Group LLC, provided the investment in return for shares in CAMEC. The $100 million was used to fund the Mugabe regime’s horrific campaign of violence, which subverted the 2008 elections in Zimbabwe.

31. I will not go into extensive detail of the horrific use made by Mugabe of the $100 million received through the Platinum Mine Deal. I would simply note that the Deal went through shortly after Zimbabwe’s crucial election of 29 March 2006, but before the result was announced. As the Tribunal may be aware, the delay and conduct of that election was the subject of fierce criticism. When it was finally announced that the opposition Movement for Democratic Change’s presidential candidate Morgan Tsvangirai had defeated Robert Mugabe in the first round of elections (but without an outright majority) there followed a wave of violence and intimidation against MDC supporters and voters in the run-up to the crucial second round vote. Tsvangirai withdrew from the flawed process and Mugabe regained power.

32. The Mugabe regime, because of mismanagement of the economy and the effect of international sanctions, had little in the way of hard currency. The $100 million came, therefore, at a crucial time for the regime in seeking to retain its grip on power. Up to 200 people were killed, 5,000 more were beaten and tortured, and 36,000 people were displaced.

33. Just one example of the international outcry that followed the wave of violence is sufficient for present purposes. The UN High Commissioner for Human Rights, Louise Arbour, condemned the “perversion of democracy”, the “politically motivated extra-judicial killings” and the “arrests, harassment, intimidation and violence – directed not just at people with

8
political affiliations, but also at members of civil society— are continuing on a daily basis." Moreover, Both Amnesty International and Human Rights Watch reported extensively on the violations as these occurred. For example:

"ZANU-PF officials and ‘war veterans’ are beating, torturing and mutilating suspected MDC activists and supporters in hundreds of base camps, many of them army bases, established across the provinces as local operations centers."

"The abductions have taken an even more disturbing turn with at least five incidents of abductions and killings of known MDC activists recorded in May. In one particularly horrifying incident, at least 12 suspected ZANU-PF supporters abducted, beat, tortured and murdered three MDC activists on May 7... The eyes of the victims had been gouged out, and their tongues and lips cut off."
[“Bullets for Each of You”, p. 29]

34. Extensive press reports, at the time and subsequently, have also linked the payment received from the Platinum Mine Deal to a large shipment of arms destined for Zimbabwe from China.7 Unions in southern Africa, together with their international affiliates, sought to prevent the ship carrying arms from docking.8 US embassy reports later confirmed that Rautenbach had arranged the purchase of a 642 vehicle fleet of pickup trucks and minibuses—the transportation used to ferry ZANUPF thugs in the campaign of violence—following the Mugabe regime’s receipt of finance from the CAMEC deal.9

The engagement of sanctions

35. ZMDC (a body wholly owned by the Zimbabwean state) and Rautenbach were not designated at the time of the Platinum Mine Deal—they were made subject to the EU sanctions regime on 27 January 2009. However, the Platinum Mine Deal was (or should have been) subject to

---

9 Shortly after CAMEC’s platinum deal, in the second week of April 2008, a Chinese ship An Yue Jiang was at anchor waiting to dock at Durban, South Africa. Dockers represented by the South African Transport and Allied Workers Union (SATAWU) refused to unload or transport the shipment. (See David Beresford, ‘Chinese ship carries arms cargo to Mugabe regime,’ The Guardian, 18 April 2008, <http://www.theguardian.com/world/2008/apr/18/china.armstrade> High Court of South Africa Durban & Coast Local Division, Court Order, Case No. 4975/08, 18 April 2008, blocking transfer of the shipment through South Africa was obtained: the bill of lading and other documents detailed a cargo of 77 tons of bullets, rocket-propelled grenades, and mortars bound for Zimbabwe. The documents produced in court included the bill of lading, packing list and commercial invoice. Copies are available at: <http://wikileaks.org/wiki/Zimbabwe_Chinese_weapons_shipment_documentation_2008>.
the EU sanctions regime because there is clear evidence that the advance from CAMEC to Lefever was to be made available to the Government of the Republic of Zimbabwe and; that the government of Zimbabwe was synonymous with the Mugabe/ZANU-PF regime (i.e. to President Robert Mugabe and other Zimbabwean government members, who were existing sanctions targets on the EU list at the time of the Platinum Mine Deal. A key concern of RAID’s request was to understand how this financial transfer could have occurred, given the existence of sanctions against the Mugabe regime.

36. It should be recalled that CAMEC advanced the $100 million loan to its wholly-owned subsidiary, Lefever, to enable it “to comply with its contractual obligations to the Government of the Republic of Zimbabwe”. CAMEC, through a spokesperson and its chief executive, have confirmed that the loan was used by the Zimbabwean government.

37. As I set out below, informed commentators at the time and subsequently have stated that the loan was used by the Mugabe/ZANU-PF regime to fund the campaign of violence. In addition, persons on the EU sanctions list (see Annex A) were directly implicated in the planning and orchestration of Operation Makavhoterapapi (’Where Did You Put Your Vote?’). The objective of Operation Makavhoterapapi, planned and coordinated by the government’s Joint Operations Command (JOA – made up the heads of Zimbabwe’s police, prison, army and intelligence services) was to keep President Mugabe in power by seeking to ensure that those who voted for MDC in the first round of the elections – including many in the areas considered as the ZANU-PF heartland – did not do so again. For example,:

a. Reports from 2008, at the time the transaction took place, were unequivocal in stating the ultimate destination of the loan. Bloomberg reported that, under the deal to purchase the Zimbabwean platinum assets, CAMEC would “lend a further $100 million to President Robert Mugabe’s government.” Other mining commentators, referring to the loan, state:11 “This thinly disguised donation appears to be nothing less than an unsecured cash loan to the Zimbabwe Government; for that, read “the president Robert Mugabe regime”.”

b. An article in The Telegraph on 15 June 2008 quoted a spokesman from CAMEC on the matter of the $100m loan:12 “Drawdown of this loan was affected by payments to

---

10 11 "Zimbabwe's pale barons", op. cit.
12 "Business and morality: Is Phil Edmonds right to trade with Robert Mugabe?", op. cit.
a series of mainly international creditors for a variety of commodities primarily for seeds, grain, fertilizer and fuel."

c. An unnamed senior shareholder told The Telegraph that the issue of the use of payments from the platinum rights had been raised with CAMEC’s Chief Executive, Andrew Groves, and others in the company: “Some payments were apparently made to creditors of the Zimbabwe government but these payments, they say, were ‘hand-picked’ and totally legitimate.” The article in The Telegraph further referred to the use of the consideration and $100 million loan as payment for the platinum assets to pay for arms:

“Edmonds [Philippe Edmonds, then chairman of CAMEC] is facing criticism over the decision by his company to strike a lucrative business deal with a state-run company in Zimbabwe and for his willingness to cosy up to Mugabe’s government. In particular, critics...question whether part of the $129m (£60m) payment that Camec made earlier this year for platinum rights in Zimbabwe and a further $100m loan - have been used to pay for a massive arms cache from China: semi-automatic rifles, guns and bullets that may soon be used against Zimbabwe’s impoverished population if the situation turns ugly in the run-up to the next presidential elections on June 27.”

A shareholder confirmed to the newspaper: “very heated conversations over the past two or three months between Andrew Groves and some of his shareholders...We are aware of the allegations that some of the payments for the platinum rights somehow found their way to being used for the Chinese arms payment.” According to the shareholder, Groves and others “vehemently deny that there were any direct payments to the Chinese”. I should note that CAMEC told The Telegraph that “None of the drawdown payments [on the loan], so far as Camec knows, had anything to do with the acquisition of arms” and denied that the company had been contacted by shareholders expressing concern about recent investment in Zimbabwe. CAMEC’s Chief Executive claimed that: “The $100m loan provided was used to pay off Zimbabwe’s external creditors.”

38. There are two points of note: firstly, CAMEC’s clear confirmation that the loan went to, and was used by, the Zimbabwean government with CAMEC’s knowledge; secondly, CAMEC’s careful emphasis on the use of the funds to pay external creditors, whereas other sources indicate that the money was used to fund ZANU-PF’s campaign of violence within Zimbabwe (infra, below).
39. In an August 2012 radio interview, MDC's Treasurer directly linked the $100 million loan to the Mugabe regime for use in financing its campaign of violence.\textsuperscript{13}

\textbf{AB [Alex Bell, presenter]}: “So I guess it’s not a stretch to say then that it seems that this deal [CAMEC’s acquisition of Todal] definitely helped to entrench the regime in their place of power back then?”

\textbf{RB [Roy Bennett]}: “Absolutely, it totally helped them entrench them. You would never have been able to get the military out into the areas to unleash the violence that they did. You would never have been able to get the militias into the areas to unleash the violence that they did. You would never have been able to have the election machinery of ZANU PF to be able to do what they did if they hadn’t accessed that money. That money totally brought about all the heartache, pain, gerrymandering, violence, intimidation, repression that took place at the 2008 election is directly linked to that 100 million.”

40. The loan cannot therefore be distanced from – and indeed funded and made possible – an orchestrated campaign of violence by the ZANU-PF-led government and the JOC, which resulted in incidents of horrific brutality. I have referred to the international outcry and just brief summaries of the violence that swept Zimbabwe at paragraphs 32 – 33 above. The use of the CAMEC loan to finance \textit{Operation Makavhoterapapi} also directly benefitted high-ranking members of the JOC; moreover, the majority of the JOC were on the EU sanctions list prior to CAMEC’s acquisition of the platinum assets (see \textit{intra}, Annex A, which, in addition to Mugabe, lists eight JOC members).\textsuperscript{14}

41. As I outline further below, RAID asked the Treasury whether CAMEC had notified or had sought advice from the Treasury before proceeding with the Zimbabwean platinum transaction; or whether licences or other permissions under the sanctions regime to allow the transaction and loan had been sought or granted.


\textsuperscript{14} Of the sanctioned persons referred to in Annex A, only Gideon Gono was added to the list after the Platinum Mine Deal.
The CAMEC Sale Deal

The Treasury's licensing of the sale of shares

42. On 18 September 2009, the UK-incorporated and London-listed, but largely Kazakh-owned, mining company Eurasian Natural Resources plc (ENRC) announced the terms of an offer for CAMEC.¹⁵

43. CAMEC owned mining assets in the DRC and a logistics operation (respectively Boss Mining Sprl and the Sabot Group), both of which had originally been acquired from Rautenbach-controlled entities. As noted above (paragraphs 8 – 9), the DRC mines had been transferred to Rautenbach by the DRC government in exchange for the military support of the Zimbabwean government during the war in the DRC.

44. To recap, Rautenbach was added to the EU sanctions list in January 2009. At the time of both the designation of Rautenbach and at the time of CAMEC’s acquisition by ENRC, Rautenbach held shares indirectly in CAMEC, which he had received as part of the consideration when he had sold companies to the latter. Shares fall within the definition of funds under the Zimbabwe financial sanctions regime and therefore any shares held by a designated person shall be frozen (intra, paragraph 22).

45. ENRC’s offer price was 20p per share, placing an overall value on CAMEC of £584 million. The offer document was posted to shareholders on 9 October 2009, setting a closing date for the offer of 9 November 2009. The threshold for sufficient acceptances was set at not less than 90 per cent of the CAMEC shares to which the offer relates. ENRC announced the offer as accepted and unconditional in all respects on 10 November 2009.

46. Rautenbach held a significant shareholding in CAMEC via a number of entities that it is known or suspected he controlled (Harvest View Limited, Meryweather Investments Limited, Temple Nominees Limited and Chambers Nominees Limited). When ENRC made its offer to acquire CAMEC, this entailed buying Rautenbach-controlled shares from which he – or those for whom he was acting – would ultimately benefit. In order to buy such shares, ENRC was required to obtain a licence from the Treasury (intra, paragraphs 22 and 25).

47. In its offer document of 9 October, ENRC included further information on “Sanctions and ongoing post-acquisition management issues”, noting “various issues have arisen in respect of the Offer in relation to the possible application of International Sanctions Laws” and that “United Kingdom rules apply... to ENRC as well”.\(^{16}\) Measures taken to prevent a breach of US sanctions included the establishment of ENRC Africa, a separate United Kingdom incorporated wholly-owned subsidiary of ENRC, set up by a special oversight committee to hold and acquire CAMEC Shares. In respect of the UK, ENRC stated in the offer document:\(^{17}\)

“...discussions with HMT [Her Majesty’s Treasury] in connection with the application of possible UK sanctions legislation are ongoing. ENRC is committed to maintaining this dialogue and intends to ensure that any post-acquisition asset management and/or other issues which may affect the ENRC Group adversely under UK or any other relevant sanctions regimes will be managed by ENRC so as to try and prevent the risk of ENRC breaching International Sanctions Laws.”

48. It should be noted that both ENRC and ENRC Africa are UK-incorporated and therefore fall under the UK’s sanctions regime.

49. Although neither Rautenbach nor Harvest View are referred to by ENRC in its Offer document, discussions with HM Treasury are noted. ENRC states:\(^{18}\)

“In addition, and irrespective of the deemed representation and warranty given by each CAMEC Shareholder who accepts the Offer..., if for whatever reason, whether or not as a result of International Sanctions Laws, it would be unlawful for ENRC to acquire your CAMEC Shares pursuant to the Offer, ENRC would not be able to accept your acceptance. However, ENRC reserves the right, subject to obtaining a licence or other legal or regulatory consent from an appropriate governmental or regulatory authority, to accept your acceptance...”

50. Moreover, Felix Vulis, ENRC’s chief executive officer, as part of a conference call with investors that took place on 18 September 2009, the day the offer was announced, stated:

“Our bid, the acquisition of any shares from those on the sanctions list will require United Kingdom license from the United Kingdom Treasury.”

---

\(^{16}\) ENRC, ‘Recommended Cash Offer by ENRC Africa Limited (a wholly-owned subsidiary of Eurasian Natural Resources Corporation PLC) to acquire Central African Mining & Exploration Company plc’, (‘Offer Document’), 9 October 2009, section 15, p.25.

\(^{17}\) Ibid., p.26.

\(^{18}\) Ibid., 12. Procedure for acceptance of the offer, pp. 18 - 19.
51. A number of specialist industry publications and newspapers reported that any sale of Rautenbach’s shares in CAMEC to ENRC required UK Treasury approval, including for example:\textsuperscript{19}

"Billy Rautenbach cannot tender his shares to Eurasian Natural Resources Corp’s (ENRC) $1-billion takeover bid for Central African Mining and Exploration Co. (CAMEC) until he gets permission from the UK Treasury due to sanctions on CAMEC’s controversial shareholder... Those sanctions will prevent him selling shares worth almost $70 million until the UK Treasury gives the go ahead, MB [Metal Bulletin] understands. Any transfer of assets and/or funds within the UK that are owned by anyone under sanction would need to be approved by the Treasury’s asset freezing unit. They would also not be able to access any funds."

52. In an article in the Daily Telegraph published on 12 October 2009, it was reported:\textsuperscript{20}

"Yesterday ENRC sent a letter to the Treasury seeking approval to buy the 3.2pc CAMEC stake owned by businessman Billy Rautenbach, whose assets have been frozen by the European Union."

53. Rautenbach’s confirmed holding of nearly 3.2% CAMEC shares via Harvest View was worth approximately £18.4 million at the time of ENRC’s acquisition of CAMEC. However, if, as suspected (as set out below), Rautenbach held shares via Meryweather, these would have accounted for an additional 7.49% and would have been worth £43 million. It should be recalled that Meryweather is at the heart of the Platinum Mine Deal. CAMEC identified the seller of the shares in Lefever – the company from which it bought its stake in the Zimbabwean platinum joint venture – as Meryweather Investments Limited (\textit{intra}, paragraph 28).

54. Rautenbach’s control over, and benefit from, Harvest View was already known; RAID sought information from the Treasury about the licensing of the sale of the latter’s shares under the sanctions regime, to corroborate and supplement press reporting of the sale.

55. The relationship between Rautenbach and Meryweather was the subject of informed analysis, but was not (and remains) unconfirmed. Certain of the information sought by RAID from the Treasury was to help ascertain whether Meryweather was controlled by Rautenbach and whether or not he was the ultimate beneficiary when Meryweather’s shares in CAMEC were acquired by ENRC.

56. According to the public relations company representing CAMEC at the time of the acquisition, CAMEC was not disclosing the identity of Meryweather’s owners.21 Other commentators have suggested that Meryweather is linked to Rautenbach. For example, Private Eye magazine reported that:22

“CAMEC... is understood to have informed the Treasury earlier this year that Meryweather was linked to Zimbabwean businessman ‘Billy’ Rautenbach, whose assets are supposedly frozen by UK and US sanctions against the Mugabe regime...

Rautenbach himself denies any links to Meryweather (Eye 1246), so that must be true. Yet new information concerning Meryweather and its dealings with CAMEC suggest that Rautenbach may at least have a very good idea as to who stands to benefit from the Meryweather millions....The sole director of Lefever, and who also appeared to sign for Meryweather, was one James Ramsay. Now that's a remarkable coincidence. For a lawyer named James Ramsay has for many years represented Rautenbach... So were the two Ramsays one and the same?"

“Neither Temple nor Chambers appears to have any connection to CAMEC. However, the letters accepting the bid for the Meryweather shares were signed by the CAMEC company secretary, Philip Enoch. This suggests that CAMEC is well acquainted with the real owners and empowered to act for them. Which would be so if, as is suggested, CAMEC had volunteered to the Treasury that the Meryweather shares were linked to Rautenbach and as such covered by the sanctions freeze.”

“Has the money been passed on to the hidden Meryweather owners – who may not be so hidden to Rautenbach – or has the £43m been paid into an escrow account pending clearance from the Treasury and Washington? Might that be the reason why Enoch signed for the shares? But how can clearance be given if there is a suspicion that interests close to Rautenbach or other Mugabe sympathisers will benefit?"

57. It has emerged in legal proceedings in the US (see intra, paragraph 94) – in which Och-Ziff has been subpoenaed as a non-party – that, in mid-2008, Och-Ziff had drawn up a valuation model of CAMEC that included a reference to its Zimbabwean operations: “Platinum (Zim)” and also to “Meryweather (BR)”, an apparent reference to Billy Rautenbach.

The Treasury’s authorisation for the release of funds

58. As set out above (intra, paragraphs 23 – 24), there is provision under the EU regulation imposing sanctions for designated individuals to obtain a licence allowing them access to frozen funds in certain specified circumstances, inter alia, intended to pay for legal services and necessary for ‘extraordinary expenses’. On the very day that ENRC’s offer for CAMEC

---

was announced, Rautenbach returned to South Africa to reach a settlement with the National Prosecuting Authority over fraud charges.

59. A warrant for Rautenbach's arrest on charges of fraud, theft and corruption, had been issued by South Africa's Deputy Director of Public Prosecutions and the Investigating Directorate, Serious Economic Offences on 27 September 2000. Rautenbach returned to South Africa on 18 September 2009, was arrested, and appeared before the Specialised Commercial Crimes Court on the same day. According to the National Prosecuting Authority (NPA), Rautenbach pleaded guilty to 326 charges of fraud as a representative of his company, SA Botswana Hauliers Ltd. Rautenbach was fined a total of 40 million Rand (around £3.3 million).

60. As I set out further below, RAID sought to establish from the Treasury whether it had sought derogation under the sanctions regime authorising and licensing access by Rautenbach to economic funds or resources.

C. THE REQUESTS

61. Questions seeking information were first put to HM Treasury in a memorandum sent, with a covering letter, by RAID to the Treasury on 6 July 2011. Later, a copy of RAID's public report Asset laundering and AIM: Congo, corporate misconduct and the market value of human rights, published the previous week, was sent to the Treasury on 27 July 2012. The letter accompanying this report drew the Treasury's attention to the questions seeking information from the department on the Zimbabwe Sanctions regime, which were re-stated in the public report.

62. For further details of exchanges concerning the request for information, see *intra*, Annex B: Timeline of Contacts between RAID, the Treasury and the ICO.

63. In total, 30 or so questions requesting information were put by RAID to the AFU. Each question was specific in nature. The principal questions fall into four categories:

- CAMEC's Platinum Mine Deal;

---

23 Investigating Directorate, Serious Economic Offences, Warrant of Arrest, 27 September 2000, with supporting affidavits.
- the administration of Rautenbach-controlled shares;
- the requirement for licence(s) from HM Treasury;
- proceeds from any sale of Camec shares.

64. The principal questions are summarised in the table:

<table>
<thead>
<tr>
<th>Camec's Platinum Mine Deal</th>
</tr>
</thead>
<tbody>
<tr>
<td>In respect of HM Treasury and the implementation of sanctions, did Camec at the time of the Platinum Mine Deal:</td>
</tr>
<tr>
<td>- Notify or otherwise seek the advice of the Treasury as to whether its proposed acquisition complied with the sanctions then in force?</td>
</tr>
<tr>
<td>- Require a licence or other permission from the Treasury in order to make loan finance (via a company called Lefever) available to the Zimbabwean government, given that President Robert Mugabe and other senior Zimbabwean government members and ZANU-PF officials all were designated under EU sanctions?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The administration of Rautenbach-controlled shares</th>
</tr>
</thead>
</table>
| The Treasury was asked to comment on who would take over the administration of shares in a company held by a designated person when they first appear on the sanctions list. A March 2009 report in the press stated:

> "The company [CAMEC] said: "As soon as the sanctions were announced CAMEC took appropriate legal advice and subsequently, in early February, made a notification to the Treasury. CAMEC is in full compliance with its requirements under the sanctions." RAID sought to clarify, inter alia:

- The date upon which CAMEC made its notification to the Treasury;
- Whether or not CAMEC disclosed Rautenbach’s direct or indirect holdings in Camec shares, the names of any Rautenbach-controlled or associated entities disclosed by CAMEC and whether his direct or indirect holdings were quantified. |

| The requirement for licence(s) from HM Treasury: prior approval? |

---


18
ENRC confirmed on the very day its offer for CAMEC was announced, and prior to the posting of the offer document, that it already had approval: 27 "The HM Treasury has approved ENRC making the offer for the shares of CAMEC."

In light of the requirement for a licence to deal with funds or economic resources belonging to a designated person, the Treasury was asked to confirm: 28

- Did ENRC require and apply for a licence to purchase, or CAMEC or any other person (including Rautenbach) or entity apply for a licence to sell, any Rautenbach-controlled direct or indirect shareholdings in CAMEC? When were any such licences refused or granted?
- Whether any licence application made to allow the purchase and/or sale of certain CAMEC shares included the purchase of any CAMEC shares owned by Harvest View, Meryweather Investments or administered by Temple Nominees Limited or Chambers Nominees Limited [all entities known or suspected to be controlled by Rautenbach]? Who made any such licence application(s)?
- On what date(s) was/were any application(s) for any licence(s) to sell/purchase/deal in CAMEC shares made? On what date(s) was/were any licences refused or granted?

**Proceeds from any sale of CAMEC shares**

- What has happened to the consideration from the sale of Harvest View’s or Meryweather’s holdings in CAMEC or those from any other Rautenbach-controlled holdings?
- Who administers the account(s) in which any such considerations are held?

[The AFU’s general response stated that “any sale of a designated person’s shares could take place only on the basis that any consideration for the shares remains frozen”.]

- Given the understanding that a designated person can apply for a derogation from Council Regulation (EC) No 314/2004 and that a designated person may seek a licence from the Treasury authorising access to economic funds or resources, has any consideration arising from ENRC’s acquisition of any shares benefiting

---

28 The Zimbabwe (Financial Sanctions) Regulations 2009 state that “[a] person (including the designated person) must not deal with funds or economic resources belonging to a designated person” (regulation 6(1)) and “[a] person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person” (regulation 7(1)) ‘unless authorised by a licence granted under regulation 10.’
D. THE REFUSAL OF THE REQUESTS

65. On 3 December 2012, RAID received a letter from the Treasury, signed ‘Asset Freezing Unit’, which stated:

"we cannot reply specifically to your various queries relating to ENRC, CAMEC and Mr Rautenbach. However, in the interests of being helpful we have provided information about our general approach to implementing financial sanctions in the UK, in so far as it relates to some of the main issues you raised."

66. The Treasury’s response continued:

"There are also restrictions in EU Regulation 314/2004 which mean that the Treasury cannot respond to the vast majority of the very specific questions contained in your memorandum dated 6th July 2011. Article 8 of the EU Regulation explains that information obtained to facilitate compliance with the Regulation cannot be used for any purpose other than that for which it was provided. Therefore, it would be a breach of EU law for the Treasury to release such information."

67. On 22 May 2013, RAID wrote to the Treasury stating that our original 6 July 2011 request for information should have been treated as a FOIA request. We expressed our dissatisfaction with the Treasury’s refusal of our request and asked for an internal review. On 30 May 2013, RAID received an apology from the Treasury that our request was “not initially highlighted as a request under the Freedom of Information Act”. The Treasury stated that it was now treating “your original letter as a new request under the Act”.

68. On 20 June 2013, the Treasury informed RAID that it had identified some information as falling within the exemptions at section 42 (legal professional privilege). As this was a qualified exemption, we were advised of the need for additional time to balance public interest between disclosure and non-disclosure. On 25 July 2013, RAID was notified of the Treasury’s refusal to provide the information requested, citing exemptions under section 42 and section 44 of FOIA. The Treasury claimed that Article 8(3) of Regulation 314/2004 amounted to a statutory bar to disclosure pursuant to section 44(1)(b) FOIA.

69. Although the Treasury also elaborated to a limited extent on the engagement of section 42(1) of FOIA, it is the absolute exemption under section 44 that the Information Commissioner, in upholding the Treasury’s decision to refuse the request, would come to rely upon.
70. On 6 September 2013, notwithstanding that RAID had already requested an internal review, we indicated our willingness to go through further internal review if this helped to ‘narrow the scope’ of any disputed refusal. We also set out our expectations for the review, which included an expectation that the Treasury would explain which exemption it relied upon in respect of which aspects of the requests for information, and an expectation that in doing so the Treasury would re-examine whether all of the information held was covered by the so-called Article 8 statutory bar and legal professional privilege. See *intra*, paragraph 99 on requested information manifestly falling out the scope of Article 8 of the Regulation.

71. I should note that RAID did not accept, in any event, that Article 8 of the Regulation amounted to a statutory bar for the purposes of section 44 FOIA. See *intra*, paragraph 98 for a summary of RAID’s position on this point.

72. On 30 September 2013, the Treasury advised RAID that this was a ‘complex case’ requiring more time for consideration.

73. On 1 November 2013, RAID was informed by letter that the Treasury’s internal review of the request had upheld the refusal to provide information on the basis of exemptions under section 42(1) (legal professional privilege), section 44(1)(b) (statutory bar); and added further exemptions under section 27(1)(b) (where release could potentially prejudice UK relations with the EU), section 36(2)(c) (Prejudice to effective conduct of public affairs) and section 43(2) (commercial prejudice).

74. On 27 February 2014, RAID complained to the Information Commissioner’s Office (ICO) about the Treasury’s refusal to provide information. RAID also complained about the Treasury’s handling of the request and the failure to consider our July 2011 and July 2012 requests for information as requests under FOIA.

75. On 8 December 2014, the Information Commissioner decided that the Treasury was entitled to withhold all the information on the basis of the exemption under section 44 (1)(b) of FOIA. Given the absolute nature of this exemption, the Information Commissioner did not consider the other exemptions under FOIA cited by the Treasury. The Information Commissioner also concluded that it was reasonable for the Treasury to have initially treated the requests in July 2011 and July 2012 as part of an “ongoing stream of correspondence until the complainant expressly indicated otherwise on 22 May 2013”.

21
E. THE 16 MONTH DELAY IN RESPONDING TO THE REQUESTS

76. Given the then existing, and continuing, public interest (referred to in paragraphs 81ff. and 83ff., below), the delay by the Treasury in responding to RAID’s request for information is significant as it has thwarted the timely determination of whether or not the Treasury is right to withhold all the information sought. This information, if disclosed, would shed light on events and potentially feed into ongoing investigations, including any legal or regulatory action that may result in the UK or US.

77. According to publicly issued advice from the Information Commissioner’s Office, it was, and remains, RAID’s understanding that the information originally asked for from the Treasury already constituted a freedom of information request and should have been treated as such:29

“For a request to be valid under the Freedom of Information Act it must be in writing, but requesters do not have to mention the Act or direct their request to a designated member of staff.... Any letter or email to a public authority asking for information is a request for recorded information under the Act.”

78. I have set out the full sequence of events in Annex B to my witness statement.

79. In respect of RAID’s original July 2011 request, the Treasury therefore failed to comply with the requirement to reply within 20 working days to inform us that it needed more time to consider the public interest in disclosing or withholding the information; it failed to tell us when to expect a response; moreover, the AFU’s eventual response was only received some 16 months after RAID’s original memorandum.

80. It should also be noted that it took a further nine months from RAID submitting its complaint on the Treasury’s refusal to provide information to the ICO on 27 February 2014 until the Information Commissioner issued the Decision Notice on 8 December 2014. Correspondence in September 2014 with the ICO confirms that the Treasury was issued with an Information Notice in accordance with the Information Commissioner’s powers under section 51 FOIA requesting access to the withheld information.

29<http://www.ico.org.uk/for_organisations/freedom_of_information/guide/receiving_a_request.aspx>. See also, <http://www.ico.org.uk/for_the_public/official_information.aspx>: “What are the legal requirements for a request? For your request to be dealt with according to the Freedom of Information Act, you must: contact the relevant authority directly; make the request in writing, for example in a letter or an email.... give your real name; and give an address to which the authority can reply.... This can be a postal or email address.... You do not have to: mention the Freedom of Information Act or Environmental Information Regulations, although it may help to do so; know whether the information is covered by the Freedom of Information Act; or say why you want the information.”

22
F. THE REASONS WHY RAID MADE THE REQUEST

81. Having set out the background to both the Platinum Mine Deal and the CAMEC Sale Deal above, the public interest in the disclosure of information held will be clear. I will only summarise therefore the key reasons why RAID made the requests for information:

a. There were, and remain, key questions as to the appropriateness of the Platinum Mine Deal given the existence of the financial sanctions regime.

b. The link between the Platinum Mine Deal and the violent subversion of democratic elections and arms transfers from China requires investigation. The victims of violence in Zimbabwe, their families, and surviving relatives have a right to know the truth about the role of a UK company, financed by a US hedge fund, in their dealings with the murderous Mugabe regime. This truth extends to the release of information concerning what the UK government knew about the deal, what action it took under the sanctions regime, and how it subsequently licensed the release of funds to benefit persons on the sanctions list.

c. In July 2008, Prime Minister Gordon Brown, "[i]n the face of the deepening tragedy in Zimbabwe—the intimidation and deaths, the violation of human rights, the detention of political prisoners" stated:30 "our aim is that there will be no safe haven and no hiding place for the criminal cabal that surrounds the Mugabe regime." It would, of course, be paradoxical if money from a UK company had ultimately financed the electoral violence that led to the EU tightening sanctions against Zimbabwe; that is why RAID made its information request, given the potential for such a transaction to undermine EU and UK policy on Zimbabwe. It would be of serious concern should it transpire that the Treasury had already been consulted about the transaction and that the UK authorities had given approval, tacit or otherwise.

d. There is a public interest in establishing whether the entities were properly scrutinised by the UK authorities when determining the advice to be given, and the licences to be issued, by the Treasury. Every one of the companies and individuals concerned has a dubious track-record or provenance, which should have given rise to greater scrutiny. This same track-record also explains why there is a continued public

30 Commons Hansard, 10 July 2008: Column 1547.
and press interest (as set out below) in these entities and their dealings with the UK (and other) authorities.

e. Rautenbach, acting as a front for the Mugabe regime, had illicitly acquired DRC mining assets in a resource war condemned by the United Nations (intra, paragraph 9). He was also a businessman wanted for, and later convicted of, fraud.

f. As already noted, another UN expert panel, reporting on the arms embargo against DRC (intra, paragraph 9), criticised the failure to exercise due diligence over Rautenbach and CAMEC. This criticism, which must reflect badly on the UK authorities regulating the AIM market upon which CAMEC was listed, was voiced over 18 months prior to the Platinum Mine Deal.

82. In respect of the public interest, there is also a contradiction between the existence of a public sanctions list of named individuals and entities and the total absence of information pertaining to how the sanctions regime, including licensing, is applied to those on the list. There can be no public scrutiny of implementation without release of the kind of information sought in RAID’s request (see intra, paragraph 100, on the dangers of a blanket bar to disclosure).

The continued relevance of the information sought

83. I am told that the Tribunal will consider whether the Treasury was entitled to refuse RAID’s requests for information circa the time of the requests and the Treasury’s refusal. However, I have briefly set out here the continuing relevance of the information sought.

84. The information sought by RAID is not merely historical. On the contrary, there has been considerable recent press coverage and public interest concerning CAMEC’s ban to the Mugabe regime, which includes condemnation of the transaction by the former US ambassador to Zimbabwe. Moreover, the role of a major US hedge fund in providing finance is under scrutiny, not least because huge US state pension funds have used Och-Ziff to manage certain of their investments. In March 2014, it was announced that both the Department of Justice and the Securities and Exchange Commission had launched investigations into Och-Ziff. As referred to already, the SFO began an investigation into ENRC: further details are given below.
Renewed press and public interest

85. In July 2012, South Africa’s Mail & Guardian reported that the $100 million used to finance the Zimbabwean platinum loan came from Och-Ziff.31 As noted (intra, paragraph 39), in an August 2012 interview for SW Radio Africa, the Zimbabwean opposition directly linked the $100 million loan to the Mugabe regime for use in financing its campaign of violence.32


87. Several press reports have followed from these RAID reports. In April 2014, The Wall Street Journal published ‘Och-Ziff Loans Financed Controversial Congo Deals’.33 In June 2014, The Independent wrote about ‘The London connection: Former UK boss of Wall Street hedge fund could be drawn into corruption investigation’.34 In July, South Africa’s Mail & Guardian detailed the dealings of a former government minister and Och-Ziff business partner: ‘Sexwale ’caught up’ in US probe of suspect DRC mining deal’.35 More recently, on 21 and 22 August 2014, Businessweek and Bloomberg published ‘Och-Ziff Platinum Deal Aided Despot in Time of Need’ and ‘The Hedge Fund and the Despot’, in which the former US ambassador to Zimbabwe condemns the CAMEC platinum deal with Mugabe.36 In the UK, on 31 August 2014, The Sunday Times ran a feature ‘The hedge fund, the spin bowler and Mugabe’s brutal crackdown’. (The ‘spin bowler’ is a reference to Philippe Edmonds, a former England cricketer, as well as chairman of CAMEC). A similar story was published on the same day in South Africa’s Business Times.37

---

32 Transcript of Diaspora Diaries with Roy Bennett, op. cit.
37 ‘How Mugabe raised R1bn to win poll’, op. cit.
88. In July 2012, Lord Chidgey also tabled a question in the House of Lords, which received a written answer on 31 July 2012.38

“To ask Her Majesty’s Government whether in 2009 they granted a licence allowing the release of funds to Billy Rautenbach, or any entity linked with that individual, when he was on the European Union sanctions list for his alleged links with the Government of Robert Mugabe; and, if so, why. [HL1851]"

The Commercial Secretary to the Treasury (Lord Sassoon): Conrad Muller Rautenbach was designated under EU Regulation 314/2004 on 27 January 2009 and delisted on 23 February 2012. All EU financial sanctions regulations include grounds under which licences can be issued authorising payments or actions otherwise prohibited. The Treasury considers all licence applications on a case-by-case basis against the licensing grounds of the relevant regulation and the purpose of the sanctions. Article 7 of EU Regulation 314/2004 sets out the grounds under which Member States can consider issuing a licence in respect of the Zimbabwe Regulation. However, for reasons of personal confidentiality, I regret that the Treasury is not able either to confirm or deny the information requested about named individuals.”

Investigations and regulatory action in the United Kingdom and the USA

89. ENRC, the purchaser of CAMEC, faced public criticism after two independent directors were voted off the board in June 2011 for raising concerns over corporate governance because of the company’s dealings in DRC.39 Concerns in the city over the governance of ENRC fed through into a strengthening by the Financial Conduct Authority (FCA) of listing rules to enhance shareholder protection.40

90. In April 2013, press reports, based on a leaked letter from a law firm (Dechert), formerly engaged by ENRC to conduct an internal investigation and ‘self-report process’ (required by the SFO), indicated that the law firm had been reviewing, inter alia, the CAMEC transactions. According to the Dechert letter, the SFO was to be updated on:41 “Camec – sanctions – where evidence of possible breaches of financial sanctions by senior executives and employees was to be presented.”

91. On 25 April 2013, the SFO announced that it had launched a criminal investigation into ENRC focusing upon “allegations of fraud, bribery and corruption relating to the activities

---

38 Lords Hansard, 24 Sep 2012: Column WA183.
of the company or its subsidiaries in Kazakhstan and Africa”. RAID has submitted information to the continuing SFO investigation.

92. The company was allowed to delist from the London stock market on 25 November 2013.

93. On 18 March 2014, Och-Ziff disclosed that it had been subpoenaed by the Securities and Exchange Commission and that an investigation under the Foreign Corrupt Practices Act (FCPA) concerned, inter alia, “investments by some of our funds, both directly and indirectly, in a number of companies in Africa.”

94. In July 2014, Och-Ziff hired a former General Counsel for the US Securities and Exchange Commission as its new chief legal and chief compliance officer. Investigations by the US authorities into Och-Ziff are ongoing and RAID has submitted information to the FCPA Coordinator at the US Department of Justice. Additionally, as I noted above, Oeh-Ziff has also been subpoenaed in a US court case as a non-party. As I indicated at paragraph 57 above, information potentially linking Meryweather and Rautenbach has been disclosed as part of this case. Counsel for the plaintiffs refer to how: “The identity of the fronts or “begmen” for Zimbabwe is also critically important...some of Africa’s most notorious businessmen were involved with CAMEC” and; the need for disclosure “In order to assess whether these individuals or any of their affiliated companies are in fact fronts from the republic of Zimbabwe, holding or transferring assets”.

RAID’s on-going activities

95. As will be clear from the above, RAID continues to act in the public interest by engaging in the various investigations into those behind the CAMEC Sale Deal and the Platinum Mine Deal. For example, it has written to pension funds who at the time of the Platinum Mine Deal used Och-Ziff to manage their portfolios. One such pension fund raised RAID’s concerns with Och-Ziff, later announcing it would divest from hedge funds within its portfolio, citing ‘complexity and costs’ as the reasons behind its decision.

96. Despite all of RAID’s activities, and the various investigations and court cases which are ongoing, many questions remain unanswered about both the Platinum Mine Deal and the

---


CAMERIC Sale Deal and, in particular, how they were able to proceed in the light of the existence of the sanctions regime. It therefore remains essential that the information requested by RAID, to the extent it is held, is made public.

G. RESISTING THE BLANKETING EFFECT OF ARTICLE 8 UNDER THE SECTION 44 EXEMPTION

97. RAID appreciates that it is the Tribunal’s role to determine whether or not the Treasury was entitled to refuse to disclose information in response to RAID’s request and that the reliance upon the exemption under section 44(1)(b) of FOIA for refusing each and every information request, with reference to Article 8 of the EU Regulation, is likely to be a matter primarily for legal submission.

98. I would simply note that RAID does not accept that Article 8 of the Regulation amounts to a statutory bar for the purposes of section 44 FOIA. The relevant EU obligation under that provision is not to use information provided or received in accordance with that Article for purposes other than that for which it was provided or received. Aside from the fact that much of the information we have requested would not have been provided or received in accordance with the Article, see below, disclosure under FOIA of information covered by the Article is not a further ‘use’ of that information by the Treasury.

99. I would also note the following key points of fact. The Treasury’s refusal stated: “The information held by HM Treasury and falling within the scope of your request falls also within the scope of Article 8 of the EU Regulation.” It is clear that certain information – for example, on whether licences to trade in shares were issued, the dates of any such licences, and information relating to Article 7 of Council Regulation 314/2004 on the release of frozen funds – manifestly fell outside the scope of Article 8 and therefore did not fall under the exemption in Section 44(1)(b). The same would presumably apply to at least most of information obtained and generated by the Treasury in its own consideration of the application of the sanctions regime.

100. Should the view prevail that Article 8 – the provisions of which appear in other EU Regulations implementing sanctions against other countries – constitutes a statutory bar under the exemption in section 44(1)(b) of FOIA, then RAID is extremely concerned that this will have a profound blanketing effect on the release of any information requested on the implementation of sanctions.

28
101. RAID is also concerned by the lack of transparency in respect of the Treasury’s reasoning behind its decision to refuse the request. Again, this is a matter for legal submission and so I will not develop RAID’s points on this issue here other than to state that the Information Commissioner’s decision not to include the “reasoning for his decision in” the Open Decision Notice denies RAID the opportunity to challenge its cogency and legitimacy.

I believe the contents of this statement are true.

Signed:

Dated:
Annex A

KEY PERSONS IN THE ZIMBABWE REGIME ON THE EU SANCTIONS LIST


- Emmerson Mnangagwa – Parliamentary Speaker when listed, Rural Housing Minister and Chair of the Joint Operations Command (JOC) after the electoral defeat, first named in the Annex to Common Position 2002/145/CFSP, 21 February 2002.

- Didymus Mutsara – Secretary for External Relations when listed, former chair of the JOC prior to the electoral defeat, first named in the Annex to Common Position 2002/600/CFSP, 22 July 2002.


## Annex B

### TIMELINE OF CONTACTS BETWEEN RAID, THE TREASURY AND THE ICO

<table>
<thead>
<tr>
<th>Date</th>
<th>Description/summary of contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 July 2011</td>
<td>Memorandum (abstracted from the complaint to the London Stock Exchange) and covering letter sent by RAID to the AFU concerning trading in CAMEC shares controlled by designated persons. Memorandum included 30 or so specific questions about this transaction and sanctions against Zimbabwe.</td>
</tr>
<tr>
<td>4 August 2011</td>
<td>E-mail from AFU, signed ‘Asset Freezing Unit’, acknowledging receipt of Memorandum. Assertion that: ‘it will take some time to review it and to consider your twenty-seven queries. Once we have done so, we will be able to determine how best to respond.’</td>
</tr>
<tr>
<td>30 November 2011</td>
<td>Follow-up letter e-mailed by RAID to the AFU, providing brief information from leaked US diplomatic cables and asking for a response to our 6 July memorandum.</td>
</tr>
<tr>
<td>27 July 2012</td>
<td>RAID sent the AFU a copy of our public report Asset laundering and the AIM: Congo, corporate misconduct and the market value of human rights, published the previous week.</td>
</tr>
<tr>
<td>30 July 2012</td>
<td>E-mail from AFU, signed ‘Asset Freezing Unit’, stating regret ‘that we do not appear to have received your letter of 30 November 2011’ and asking us to re-send it to enable them to ‘review this and respond to you’.</td>
</tr>
<tr>
<td>30 July 2012</td>
<td>30 November letter from RAID re-sent by e-mail to the AFU.</td>
</tr>
<tr>
<td>5 October 2012</td>
<td>E-mail from AFU, signed Bokhtiar Hoque (Sanctions and Illicit Finance), with attached letter of the same date. The letter, signed ‘Asset Freezing Unit’, acknowledged receipt of RAID’s Asset Laundering and AIM report and apologised ‘for the delay in responding to your letter and for the oversight which meant that you did not receive a response to your letter of 6 July 2011’. The AFU’s letter confirmed that the unit was ‘considering the questions raised and will provide a response in due course.’</td>
</tr>
<tr>
<td>3 December 2012</td>
<td>E-mail from AFU, signed Bokhtiar Hoque (Sanctions and Illicit Finance), with attached letter of the same date. The letter, signed ‘Asset Freezing Unit’, stated that ‘we cannot reply specifically to your various queries relating to ENRC, CAMEC and Mr Rautenbach. However, in the interests of being helpful we have provided information about our general approach to implementing financial sanctions in the UK, in so far as it relates to some of the main issues you raised.’</td>
</tr>
<tr>
<td>22 May 2013</td>
<td>E-mail from RAID, with letter of same date attached, stating that our original 6 July 2011 request for information should have been treated as an FOI request. Expressed our dissatisfaction with the Treasury’s refusal of our request and asked for an internal review.</td>
</tr>
</tbody>
</table>
| 30 May 2013     | E-mail from HM Treasury, signed James Underwood, Information Rights Acknowledged receipt of RAID’s 22 May 2013 letter. Apology that request ‘not
<table>
<thead>
<tr>
<th>Date</th>
<th>Description/summary of contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 May 2013</td>
<td>E-mail from HM Treasury, signed Adeola (<a href="mailto:Adeola.Otinwa@hmtreasury.gsi.gov.uk">Adeola.Otinwa@hmtreasury.gsi.gov.uk</a>), confirming receipt of RAID’s FOI request.</td>
</tr>
<tr>
<td>20 June 2013</td>
<td>E-mail from HM Treasury, signed James Underwood, Information Rights Identified some information as falling within the exemptions at section 42 (legal professional privilege). Qualified exemption. Advised the need for additional time to balance public interest between disclosure and non-disclosure, with expected response by 18th July.</td>
</tr>
<tr>
<td>1 July 2013</td>
<td>E-mail from RAID to HM Treasury (James Underwood): in respect of other information falling outside of section 42, RAID asked for identification of exemptions and why exemptions relied upon and; for this to be provided within the normal time limit, i.e. promptly and in any event not later than the twentieth working day following the date of receipt of the request.</td>
</tr>
<tr>
<td>25 July 2013</td>
<td>Letter from HM Treasury (attached to e-mail of same date), signed James Underwood, Information Rights. Refusal of request, citing exemptions under section 42 and section 44. Nb.: ‘as a result of your earlier correspondence [6 July 2011, 27 July 2012] now being treated as Freedom of Information requests this has not been treated as an internal review’.</td>
</tr>
<tr>
<td>6 September 2013</td>
<td>Letter (attached to e-mail of same date) from RAID to HM Treasury, James Underwood, Information Rights Unit. Notwithstanding that RAID had already requested an internal review, indicated our willingness to go through further internal review if this helped to ‘narrow the scope’ of any disputed refusal.</td>
</tr>
<tr>
<td>6 September 2013</td>
<td>E-mail from HM Treasury, signed Mohammad (<a href="mailto:Mohammad.Subratty@hmtreasury.gsi.gov.uk">Mohammad.Subratty@hmtreasury.gsi.gov.uk</a>), confirming receipt of FOI internal review request.</td>
</tr>
<tr>
<td>30 September 2013</td>
<td>Letter (attached to e-mail of same date) from HM Treasury, signed Marilyn Kamanyire, Information Rights Unit, advising that this was ‘a complex case’ requiring more time. Gave 1 November 2013 as the proposed completion date for the review.</td>
</tr>
<tr>
<td>1 November 2013</td>
<td>Letter (attached to e-mail of same date) from HM Treasury, signed Kate Jenkins, Head of Information Rights Unit. Internal review of the request: refusal to provide information on the basis of exemptions under section 42(I) (legal professional privilege), section 44(1)(b) (statutory bar); added further exemptions under section 27(1)(b) (where release could potentially prejudice UK relations with the EU), section 36(2)(c) (Prejudice to effective conduct of public affairs) and section 43(2) (commercial prejudice).</td>
</tr>
<tr>
<td>27 February 2014</td>
<td>Complaint submitted to the Information Commissioner’s Office (ICO) about the Treasury’s refusal to provide information.</td>
</tr>
<tr>
<td>Date</td>
<td>Description/summary of contact</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>13 March 2014</td>
<td>Acknowledgment from ICO that complaint received. Case Reference Number FS0532911. Informed that a case officer would be allocated as soon as possible.</td>
</tr>
<tr>
<td>17 April 2014</td>
<td>Letter (attached to e-mail of same date) from ICO Senior Case Officer, Terna Waya. Advised that 'investigation will focus on whether or not the Treasury was entitled to withhold information within the scope of these requests (ie the requests outlined in the letter of 25 July 2013) on the basis of the exemptions at sections 36, 44, 42 and 43 FOIA.' Once the Treasury's arguments had been received and considered, the next step would be either to contact RAID to discuss the matter further or to prepare a decision notice.</td>
</tr>
<tr>
<td>23 April 2014</td>
<td>Letter (attached to e-mail of same date) from RAID to ICO confirming that RAID was satisfied with the information that the Treasury had already supplied (in its response 25 July 2013) on a number of general points. Drew ICO's attention to RAID's letter to James Underwood of 6 September 2013 raising concerns about the Treasury's handling of the request: asked for the ICO investigation to assess whether the Treasury's delay in responding to RAID's repeated requests was reasonable.</td>
</tr>
<tr>
<td>24 April 2014</td>
<td>E-mail from ICO seeking confirmation that RAID would like the ICO to consider whether RAID's requests of July 2011 and July 2012 ought to have been considered under FOIA.</td>
</tr>
<tr>
<td>24 April 2014</td>
<td>E-mail from RAID to ICO confirming that the ICO should consider the question of whether RAID's July 2011 and July 2012 questions should have been considered FOIA requests by the Treasury.</td>
</tr>
<tr>
<td>26 June 2014</td>
<td>E-mail from RAID to the ICO requesting an update on the status of the investigation and forwarding on letter from Treasury outside of FOIA process.</td>
</tr>
<tr>
<td>3 July 2014</td>
<td>E-mail from ICO (Terna Waya) stating that a response form the Treasury had been received and was under consideration.</td>
</tr>
<tr>
<td>10 September 2014</td>
<td>E-mail from RAID to ICO (Terna Waya) asking for an update on the investigation and the envisaged timeframe for its conclusion.</td>
</tr>
<tr>
<td>11 September 2014</td>
<td>E-mail from ICO (Terna Waya) informing RAID that 'Treasury officials currently consider that they are also statutorily prohibited from providing the information withheld from you under FOIA to the Information Commissioner for the purposes of his investigation.' ICO therefore had issued an Information Notice in accordance with the Commissioner's powers under section 51 FOIA requesting access to the withheld information by the end of the month. Next update would be mid-October.</td>
</tr>
<tr>
<td>15 November 2014</td>
<td>E-mail from RAID to ICO (Terna Waya), prompting for a response.</td>
</tr>
<tr>
<td>17 November 2014</td>
<td>E-mail from ICO (Terna Waya). Decisions Notice drafted, but awaiting internal quality checks and final review (timescale 4-8 weeks). Confirmed that the Treasury had provided a response to the information notice, but in confidence.</td>
</tr>
<tr>
<td>Date</td>
<td>Description/summary of contact</td>
</tr>
<tr>
<td>--------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>8 December 2014</td>
<td>Decision Notice issued. The ICO decided that the Treasury was entitled to withhold all the information on the basis of the exemption under 44 (1)(b) FOIA. Also concluded that it was reasonable for the Treasury to have initially treated the requests in July 2011 and July 2012 as part of an 'ongoing stream of correspondence until the complainant expressly indicated otherwise on 22 May 2013'.</td>
</tr>
</tbody>
</table>