

MICT-13-37
03-07-2015
(42 - 1/476bis)

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MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

THE PRESIDENT OF THE MECHANISM

Before: Judge Theodor Meron, President

Registrar: Mr John Hocking

Date:

THE PROSECUTOR
v.
FERDINAND NAHIMANA

UNCLASSIFIED

REQUEST FOR REVIEW

Office of the Prosecutor:
Mr Hassan Bubacar Jallow

Counsel for the Accused:
Jean Marie BIJU-DUVAL
Diana ELLIS QC
Joanna EVANS

Received by the Registry
Mechanism for International Criminal Tribunals
03/07/2015 10:28



SUBJECT OF THE MOTION

1. Pursuant to Article 24 of the Statute of the International Mechanism established to carry out the residual functions of the criminal tribunals (“Mechanism”) and Rule 146 of the Rules of Procedure and Evidence of the Mechanism, Mr Ferdinand NAHIMANA respectfully seeks a review of the judgement rendered on 28 November 2007 by the Appeals Chamber of the International Criminal Tribunal for Rwanda (“Appeals Chamber”) sentencing him to 30 years in prison for the crimes of direct and public incitement to commit genocide and persecution as a crime against humanity.

CONTEXT

2. In its Appeal Judgement of 28 November 2007, the Appeals Chamber “*affirms the convictions of Appellant Nahimana based on Article 6 (3) of the Statute, but only in respect of RTLM broadcasts after 6 April 1994, for the crimes of direct and public incitement to commit genocide and, Judge MERON dissenting, persecution as a crime against humanity*”;¹ it reversed all other convictions.
3. This conviction is essentially founded on the finding that Mr Ferdinand NAHIMANA “*had the material capacity to prevent or punish RTML broadcasts of criminal discourse even after 6 April 1994*”.²
4. This finding stems from the observations made in paragraphs 829, 831, 832 and 833 reproduced hereinafter:
5. “829. *The Trial Chamber found in paragraphs 565, 568 and 972 of the Judgement that Appellant Nahimana intervened in late June or early July 1994 to put an end to RTLM attacks on General Dallaire and UNAMIR. The Appeals Chamber observes that these findings rely exclusively on Expert Witness Des Forges’ report and testimony, according to which the French*

¹ Disposition, p. 410 of the French version.

Ambassador Yannick Gérard told the Appellant around the end of June or the beginning of July 1994 that the RTLM broadcasts attacking General Dallaire and UNAMIR must cease, that the Appellant promised to intervene with the RTLM journalists, and that the attacks ceased shortly after.”

6. *“831. “Turning to the argument that the information received from Expert Witness Des Forges was secondary hearsay collected more than five years after the event, the Appeals Chamber recalls that trial chambers may admit and rely on hearsay testimony if they consider it to have probative value. In the instant case, the Trial Chamber noted that ‘[Expert Witness] Des Forges specifies in detail that her source of information about Nahimana’s interaction with the French Government is a diplomat who was himself present in meetings between Nahimana and French Ambassador Yannick Gérard, who had a documentary record of the interaction in the form of a diplomatic telegram’ and it considered that this piece of information was reliable.”*

7. *“832. The Appellant further submits that, even if matters reported by Expert Witness Des Forges were true, they could not constitute evidence that the Appellant effectively intervened with RTLM journalists to halt the attacks on UNAMIR and General Dallaire. The Appeals Chamber notes that according to Expert Witness Des Forges’s report and testimony, the said attacks ceased ‘immediately’ or within two days after the Appellant met Ambassador Gérard. In these circumstances, the Appeals Chamber is of the view that the Trial Chamber could reasonably conclude that it was the Appellant’s intervention that put an end to these attacks. The fact that the Appellant and Witness Bemeriki denied that there was such an intervention in their respective testimonies does not show that the Trial Chamber’s conclusion was erroneous. The Trial Chamber in fact rejected these testimonies and the Appellant has failed to show that it was unreasonable to.”*

8. *“833. The Appeals Chamber finds that the Appellant has not demonstrated that the Trial Chamber erred in concluding that he intervened with RTLM*

² Para. 834.

journalists to halt attacks on General Dallaire and UNAMIR in late June or early July 1994.”

9. These factual findings, which are the basis for upholding the conviction of Mr Ferdinand NAHIMANA under Article 6(3) of the Statute, recall:
 - that Mr Ferdinand NAHIMANA did effectively intervene with the *RTL*M journalists in late June or early July 1994, following his meeting with Ambassador Yannick Gérard;
 - that the proof of effectiveness and efficiency of this intervention is the circumstance that *“the attacks ceased ‘immediately’ or within two days after the Appellant met with Ambassador Gérard”*;
 - that the reliability and probative value of single hearsay testimony, which constitutes the only proof of this effective and efficient intervention, rests, essentially, on the statements by the witness that diplomatic telegrams were evidence of the relations between Mr Ferdinand NAHIMANA and French diplomats.³
10. Mr Ferdinand NAHIMANA always maintained that he had met with French diplomats Yannick Gérard and Jean-Christophe Belliard; on the other hand, he always denied having intervened with the *RTL*M journalists.
11. None of the diplomats present at these meetings testified as witnesses; the Trial Chamber expressly refused to hear these witnesses on the grounds that their testimony was not essential to truth-seeking⁴ and that, moreover, the

³ The press release of 7 July, mentioned by Expert Witness Des Forges in her report and noted by the Appeals Chamber in its judgement of 28 November 2007 (footnote 1904), was expressly dismissed by the Trial Chamber in its decision of 14 March 2002 (T(E), English version, 14 March 2002, pp. 193-194), as was the testimony of its author, Ms Anne Chaon (Witness AFI), in the Trial Chamber’s written decisions of 9 and 13 May 2003 on the ground of the indirect nature of her potential testimony.

⁴ Decisions of 9 and 13 May 2003: “the Chamber sees no reason to call this witness under Rule 98 and does not find it essential to truth-seeking to do so”.

disputed conversations were not relevant to determine the responsibility of the accused.⁵

12. The diplomatic telegrams mentioned by Expert Witness Des Forges in support of her testimony were not introduced at trial by the Prosecution, either before the Trial Chamber or the Appeals Chamber; they were not brought to the attention of the Defence during trial.
13. It is in this context, subsequently to the judgement of the Appeals Chamber and following the multiple and complex actions taken vis-à-vis the French authorities, that the Defence was able to secure the disclosure of the diplomatic telegrams mentioned by Expert Witness Des Forges.
14. These telegrams constitute new evidence that was not in the possession of the Defence during the trial.
15. As will be shown below, these telegrams are proof, on the one hand, that Mr Ferdinand Nahimana had not intervened with the *RTL*M journalists and, on the other, in view of the date on which meetings between Mr Ferdinand NAHIMANA and the French diplomats took place (2 July 1994), no reasonable nexus could be drawn between these conversations and the cessation of broadcasting by this station; this evidence also proves that the testimony of Expert Witness Des Forges on this issue is devoid of reliability.
16. These new facts, based on new evidence, are such as to deprive the Chamber's finding of its factual basis that "[...] *he had the material capacity to prevent or punish RTL*M broadcasts of criminal discourse even after 6 April 1994".⁶
17. Therefore, they constitute new facts that should lead to a review of the Judgement rendered on 28 November 2007 by the Appeals Chamber.

⁵ Decisions of 9 and 13 May, para. 62: "As far as rebutting the evidence that Nahimana never spoke to Operation *Turquoise* officials about *RTL*M is concerned, this is also not directly relevant and would not in any case establish that Nahimana did in fact have control of *RTL*M".

⁶ Appeal Judgement of 28 November 2007, para. 834.

GROUND IN SUPPORT OF A REVIEW

1- On the discovery of the new facts

18. As previously noted, the Trial Chamber had expressly rejected the Prosecution's motion to hear the testimony of the French diplomats.
19. The search for the diplomatic telegrams mentioned by Expert Witness Des Forges and their presentation as evidence was a duty incumbent upon the Office of the Prosecutor; they were never disclosed to the Defence although the latter expressly requested their disclosure in a motion filed on 16 May 2002 (Annex 6).
20. The Defence, therefore, found itself in a situation where, on the one hand, the Trial Chamber refused to allow the testimony of a direct witness likely to corroborate or deny the testimony of Expert Witness Des Forges and, on the other, where there was no follow-up by the Office of the Prosecutor and the Trial Chamber to the disclosure request from the Defence for the diplomatic telegrams mentioned by the expert witness in support of her testimony.
21. Such a situation should have led to the testimony of Expert Witness Des Forges being dismissed as hearsay due to its lack of reliability.
22. Subsequently to the judgement rendered on 28 November 2007 by the Appeals Chamber, the Defence conducted an investigation into the alleged meetings between Mr Ferdinand NAHIMANA and the French diplomats in late June or early July 1994; however, the French authorities systematically objected to the admissibility of the Defence motions seeking an investigation into the meetings between Mr Ferdinand NAHIMANA and diplomats Jean-Christophe Belliard and Yannick Gérard, on the ground that the French government was only required to respond to the orders of the Tribunal or the Mechanism.

23. As such, in a registered letter dated 13 January 2014, Counsel for Mr Ferdinand NAHIMANA sent the French Minister of Foreign Affairs a request to have the two diplomats testify and to see the diplomatic telegrams regarding these meetings (Annex 1).
24. In a letter dated 27 January 2014, the French Ministry of Foreign Affairs refused all cooperation regarding these matters (Annex 2).
25. In a request dated 6 February 2014 sent to the French Ministry of Foreign Affairs, Counsel for Mr Ferdinand NAHIMANA once again seized the French authorities of a request for access to the diplomatic telegrams; this request was based on French law governing access to administrative documents (Annex 3).
26. There was no response to this request.
27. In a request dated 6 June 2014, Counsel for Mr Ferdinand NAHIMANA seized the Committee of Access to Administrative Documents (CADA) of a request seeking a favourable recommendation in the matter of the Ministry of Foreign Affairs disclosing the documents sought in the request of 6 February 2014 (Annex 4); this request was the first phase of a procedure that could lead to the French State being held accountable.
28. In a letter dated 10 June 2014, the Ministry of Foreign Affairs disclosed to Counsel for Mr Ferdinand NAHIMANA a copy of the *“four telegrams dated July 1994 showing the conversation between Mr Gérard and Mr Nahimana”* (Annex 5).
29. It would seem therefore that the efforts of the Defence to obtain disclosure of the diplomatic telegrams mentioned by Expert Witness Des Forges came up against the fact that the request it had submitted to the Trial Chamber was not accepted. The Defence also came up against a lack of cooperation from the French authorities, who only granted the insistent requests of the Defence following an initiation of contentious proceedings against the French State.

30. Consequently, the Defence cannot be accused of failing to exercise diligence.

2- On the decisive nature of the new facts

31. In his telegram of 25 July 1994, Ambassador Yannick Gérard writes: “From my first contact (on 2 July) with the Minister of Foreign Affairs of the interim government and the presidential advisor, the founder of Radio des Mille Collines, I left them with no illusions about our position: Operation Tourquoise was strictly humanitarian, politically neutral and impartial; it was not there to help the interim government or the RDF. I requested that everything be implemented so that this operation proceeds accordingly, that the authorities put a stop to the propaganda of Mille Collines and exert their influence, in the proper sense, on the militias. Commitments were made by my interlocutors but they were not credible and they did not respect them.” (Our emphasis.)

- **The date of these meetings, established by these telegrams, excludes from consideration the cessation of broadcasts as circumstantial proof of Mr Ferdinand NAHIMANA’s intervention with the journalists of radio station *RTLM***

32. The telegrams sent by Ambassador Yannick Gérard on 25 July 1994 date very precisely his first contacts with Mr Ferdinand NAHIMANA as being 2 July 1994; in his telegram of 2 July 1994, he mentions the afternoon of that date as the time when Mr Ferdinand NAHIMANA made a commitment that he would intervene with the *RTLM* journalists to cease attacks against General Dallaire.

33. It is not under contention that on this date, radio *RTLM* was broadcasting from its studios in Kigali.

34. It is also not contested that the RDF troops had completely surrounded the town of Kigali on 4 July 1994, thereby forcing the journalists of this radio station to cease broadcasting from 3 July and to flee towards Gisenyi.

35. Therefore, it is reasonable to consider that the real reason why this radio station stopped broadcasting “*immediately, or within the two days after the Appellant met Ambassador Gérard*”, according to the testimony of Expert Witness Des Forges, was the capture of Kigali by the RDF troops and not because of a supposed intervention with the *RTLM* journalists.
36. At the very least, this chronological precision makes it difficult to consider Mr Ferdinand NAHIMANA’s alleged intervention as the only reasonable explanation as to why the broadcasting stopped; consequently, the stopping of the broadcasting can no longer be held as circumstantial proof of the effective and efficient intervention by Mr Ferdinand NAHIMANA with the *RTLM* journalists.
37. This chronological precision, unknown until now, constitutes in itself a new fact that could have been a decisive element in the decision if it had been known during the trial because it deprives the hypothesis of an effective and efficient intervention by Mr Ferdinand NAHIMANA with the *RTLM* journalists of a sufficient factual basis.
38. It follows that the finding of the Appeals Chamber in paragraph 832 of its decision, that the broadcasting ceased “*immediately, or within the two days after the Appellant met Ambassador Gérard*”, which could have reasonably lead the Trial Chamber to conclude that it was the Appellant’s intervention that put an end to these attacks, must be re-examined.
- **The telegrams confirm that the commitment to intervene with the *RTLM* was not followed through**
39. In his telegram of 25 July 1994, Ambassador Yannick Gérard wrote: “*I requested [on 2 July 1994] that everything be implemented so that it would proceed accordingly, that the authorities put a stop to the propaganda of Mille Collines and exert their influence, in the proper sense, on the militias.*”

Commitments were made by my interlocutors but they were not credible and they did not respect them." (Our emphasis.)

40. He thereby expressly confirmed that the commitment to intervene with the *RTLM* journalists had not been kept; in other words, there had been no intervention with the journalists of this radio station.
41. Thus, not only do the diplomatic telegrams mentioned by Expert Witness Des Forges fail to confirm the hypothesis of an effective intervention but, on the contrary, they contradict the hearsay testimony of Expert Witness Des Forges; they prove that there had been no intervention.
42. Therefore, they reveal a new fact that, had it been known during the trial, could have been a decisive factor in the decision, seeing as the alleged effectiveness of this intervention is one of the necessary foundations for the conviction.
- **These telegrams show that Expert Witness Alison Des Forges, voluntarily or involuntarily, significantly misrepresented the information provided to her by Mr Jean-Christophe Belliard**

43. During her testimony, Expert Witness Des Forges stated:
44. *"In early July Mr Nahimana met with Mr Yannick Gérard, who was the head of the mission in the company of Mr Jean-Christophe Belliard. I met Mr Belliard again, myself. I had met him previously. But I met him again in Washington in December in the course of other duties and, knowing of this record in the French national assembly, of his contact with members of the Rwandan government, I asked him if he could tell me anything about his understanding of Mr Nahimana at that time. We agreed to speak by telephone, which we were not able to do until some time subsequent, and at that time he read to me a diplomatic telegram the contents of which are summarised in my expert report. He said that in a conversation with Mr Nahimana he had*

*complained vigorously about a recent RTLM broadcast which had specifically targeted General Dallaire. Dallaire himself, had been to see the French a day or two before and, apparently, it was Dallaire who had complained about this. And, in response, Belliard, who was anxious to assure good cooperation with the UNAMIR forces—excuse me, Mr Gerard complained to Mr Nahimana about these broadcasts, and they ceased within a day or two.*⁷ (Our emphasis.)

45. *“On the occasion of the second visit Mr Gerard, himself, refused to meet with Mr Nahimana and, instead, deputied that duty to Mr Belliard who met with Mr Nahimana, and I believe the second person with him at that time was Mr Mbonampeka, although I would have to consult my notes to be absolutely sure. So the French representatives saw Mr Nahimana twice. On one of those occasions they made a specific request that RTLM cease broadcasting threats against the UNAMIR commander and, according to the French diplomatic sources, these complaints then stopped.”*⁸ (Our emphasis.)
46. Consequently, Expert Witness Des Forges confirmed, by relying on her telephone conversation with Mr Jean-Christophe Belliard on 28 February 2000, that on the one hand, she knew the content of the diplomatic telegram regarding the meetings between Mr Ferdinand Nahimana and Mr Yannick Gérard and Jean-Christophe Belliard, and, on the other, that these “diplomatic sources” were proof that the criticised broadcasting ceased following these meetings.
47. This sole testimony was the supposed reliable basis of the existence and content of these diplomatic telegrams on which both the Trial Chamber and, subsequently, the Appeals Chamber concluded that Mr Ferdinand Nahimana had effectively and efficiently intervened with the journalists of *RTLM* radio.

⁷ Transcript of testimony of Alison Des Forges, English version, 23 May 2002, pages 211-212.

⁸ Transcript of testimony of Alison Des Forges, English version, 23 May 2002, page 213.

48. Contrary to what Expert Witness Des Forges claimed in her testimony, these telegrams do not confirm at any point that the disputed broadcasts ceased following these meetings; on the contrary, they prove that there had been no intervention with the journalists.
49. Consequently, Expert Witness Alison Des Forges had significantly misrepresented the content of these diplomatic telegrams of which she states to have had personal knowledge; this misrepresentation, voluntary or involuntary, deprives her testimony, on this issue, of any reliability.
50. This testimony is the sole basis for the finding that Mr Ferdinand NAHIMANA had effectively and efficiently intervened with the journalists of *RTLM* radio station.

51. It emerges from all of the aforementioned statements that the finding of the Appeals Chamber in paragraph 833 of its judgement that "*the Appellant has not demonstrated that the Trial Chamber erred in concluding that he intervened with RTLM journalists to halt attacks on General Dallaire and UNAMIR in late June or early July 1994*", which constitutes one of the necessary foundations for the conviction, cannot be upheld and that, consequently, the guilt of Mr Ferdinand NAHIMANA has not been established beyond a reasonable doubt.

FOR THE FOREGOING REASONS

52. ACCORDINGLY, Mr Ferdinand NAHIMANA respectfully requests, in light of these new facts, a review of the Judgement rendered on 28 November 2007 by the Appeals Chamber of the International Criminal Tribunal for Rwanda.

Number of words /in original/: 3,594

3 June 2015,

For Mr Ferdinand NAHIMANA

Jean-Marie BIJU-DUVAL, Attorney-at-Law /signed/

Diana ELLIS, QC

Joanna EVANS

LIST OF ANNEXES

- Annex 1: Registered letter sent by Attorney-at-Law BIJU-DUVAL to the Minister of Foreign Affairs on 13 June 2014
- Annex 2: Letter sent by the Ministry of Foreign Affairs to Attorney-at-Law BIJU-DUVAL on 27 January 2014
- Annex 3: Registered letter sent to the Minister of Foreign Affairs by Attorney-at-Law BIJU-DUVAL on 6 February 2014
- Annex 4: Request addressed to the President of the Committee of Access to Administrative Documents (CADA) by Attorney-at-Law BIJU-DUVAL on 6 June 2014
- Annex 5: Letter from the Ministry of Foreign Affairs to Attorney-at-Law BIJU-DUVAL dated 10 June 2014 with four diplomatic telegrams enclosed
- Annex 6: Request for disclosure of documents supporting the claims made in the DESFORGES Expert Report filed with the ICTR Registry on 16 May 2002

Case: Ferdinand NAHIMANA

ANNEX 1

Case: Ferdinand NAHIMANA

SAINT-JACQUES
NON-TRADING PRIVATE COMPANY

FLORE ASSELINEAU
JEAN-MARIE BIJU-DUVAL
/illegible/

JUDITH HAROCHE
Association of Attorneys

In cooperation with:

ROMAIN BOIZET
HELENE GORKIEWIEZ
JULIE HOLLIER

To the Minister of Foreign Affairs
Ministry of Foreign Affairs
37, Quai d'Orsay
75700 Paris SP 07

Paris, 13 January 2014

LRAR /registered letter with notification of receipt/

Our ref: *ICTR-99-52-A; The Prosecutor v. Ferdinand NAHIMANA*
Subject: **Request for additional investigations**

Dear Sir,

I have the honour of addressing you in my capacity as counsel to Mr Ferdinand NAHIMANA, national of Rwanda currently detained in Mali and serving a 30-year sentence following a conviction by the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) of 28 November 2007.

As part of a request for review which I intend to submit to the authorities in charge of completing the proceedings begun by the ICTR, I am investigating the events that allegedly occurred in Goma (Democratic Republic of Congo) in late June or early July 1994 that the services of your Ministry must have been aware of.

These events implicate Mr Jean-Christophe BELLIARD, then First Secretary of the Embassy of France in Tanzania, and Mr Yannick GÉRARD, then Ambassador to

Uganda, both engaged in Operation *Turquoise* implemented by the French government under UN mandate.

The facts are as follows:

Ms Alison DESFORGES, an expert witness who testified before the ICTR Trial Chamber, gave evidence that Mr Jean-Christophe BELLIARD, who was contacted by telephone on 28 February 2000, had allegedly told her that he had been present at Goma (DRC) in late June or beginning of July 1994 during a conversation between Mr Yannick GÉRARD and Mr Ferdinand NAHIMANA, in which the latter had **allegedly volunteered to intervene with the journalists of *Radio Television Libre des Mille Collines* (RTL) to get them to stop broadcasts against UNAMIR.**

Ms Alison DESFORGES also stated that, during that telephone conversation with Mr Jean-Christophe BELLIARD, he said that there was a **diplomatic telegram** mentioning these discussions.

Lending credence to this hearsay evidence by Ms Alison DESFORGES, first the Trial Chamber (Judgment, para. 563), and then the Appeals Chamber of the ICTR (Appeal Judgment, paras 829-833) relied on these facts to convict Mr Ferdinand NAHIMANA; the latter, however, denies them.

Under the circumstances, I take the liberty of enquiring with you about the possibility of conducting further investigations to verify the information that was imparted to Ms Alison DESFORGES by Mr Jean-Christophe BELLIARD on the telephone.

For this purpose, I should like, first of all, to meet and question the direct witnesses to these alleged events, Mr Yannick GÉRARD, former French ambassador, and Mr Jean-Christophe BELLIARD, currently Chief of Department for Africa and the Indian Ocean at your Ministry.

Secondly, I should like to verify, with the help of your services and by consulting the archives of your Ministry, the existence and the exact content of the “diplomatic telegram” that Mr Jean-Christophe BELLIARD allegedly mentioned to Ms Alison DESFORGES and which, according to the latter, confirms the **commitment made** by Mr Ferdinand NAHIMANA to Mr Yannick GÉRARD to intervene with the journalists of the *Radio Television Libre des Mille Collines* (RTL) in order to put an end to the broadcasts against UNAMIR.

I would therefore be very grateful if you could be so kind as to grant your permission for the following investigations:

- my interviews with Mr Yannick GERARD and Mr Jean-Christophe BELLIARD, with records of interviews duly made and signed;
- my review of the diplomatic telegram(s), if any, mentioning a conversation between one or both of the aforesaid officials and Mr Ferdinand NAHIMANA during which he said he would intervene with *RTL* Radio; or, alternatively, an affidavit drafted by your services to the effect that no telegram of that nature exists in your archives;

These requests form part of the rights and duties to investigate that are vested in the defence counsel representing persons accused before an international criminal tribunal, as well as the undertakings made by France to cooperate with the International Criminal Tribunal for Rwanda.

I remain, of course, at your disposal to provide any additional information you may require, and to explore with your services the modalities of this cooperation.

Please accept, Sir, the assurances of my highest consideration.

Jean-Marie BIJU-DUVAL
Attorney-at-Law
/signed/

/REGISTERED MAIL SENT AND RECEIVED STAMP OF THE POSTAL
SERVICES/

ANNEX 2

Case: Ferdinand NAHIMANA

MINISTRY
OF FOREIGN AFFAIRS

REPUBLIC OF FRANCE

Paris, 27 January 2014 000508 CM

Head of Cabinet

Dear Sir,

In your letter of 13 January 2014, in your capacity as counsel of Mr Ferdinand Nahimana, a Rwandan national, currently detained in Mali and serving 30-year sentence following a conviction by the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR), you informed me of your wish to interview and produce a record of interview of the former French ambassador to Uganda, Mr Yannick Gérard, and of Mr Jean-Christophe Belliard, then serving in the Embassy of France in Tanzania. You also wish to be able to review telegrams of the Ministry of Foreign Affairs.

I regret to inform you that I am unable to grant your requests.

The Statute of the Mechanism and its incorporation into domestic French law are only applicable in the event of current prosecutions before the Mechanism. Furthermore, in any event, the obligation of the French authorities to provide cooperation and mutual judicial assistance extends solely to requests for assistance emanating from the Mechanism and the orders issued by it.

With my kindest regards,

/signed/

Alexandre ZIEGLER

Mr Jean-Marie BIJU-DUVAL
Attorney-at-Law
Cabinet Saint-Jacques
6, Villa Saint-Jacques
75014 PARIS

ANNEX 3

Case: Ferdinand NAHIMANA

SAINT-JACQUES
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JEAN-MARIE BIJU-DUVAL
/illegible/

JUDITH HAROCHE
Association of Attorneys

In cooperation with:
ROMAIN BOIZET
HELENE GORKIEWIEZ
JULIE HOLLIER

To the Minister of Foreign Affairs
Ministry of Foreign Affairs
37, Quai d'Orsay
75700 Paris SP 07

Paris, 6 February 2014

Registered letter with notification of receipt

JMBD-B14-034

CASE: Ferdinand NAHIMANA
B0.00188
ICTR-99-52-A; *The Prosecutor v. Ferdinand NAHIMANA*

SUBJECT: Request for access to possible diplomatic telegrams

Dear Sir,

In your letter of 27 January 2014, you indicate that you cannot grant my request to interview Mr Yannick GÉRARD and Mr Jean-Christophe BELLIARD, or my request to review diplomatic telegrams, if any, referring to a conversation between one or both of the aforesaid persons with Mr Ferdinand NAHIMANA.

You recall that neither the Statute of the Mechanism nor its incorporation into domestic French law make it incumbent upon you to offer the kind of cooperation that I request.

I take note, without sharing it, of your restrictive interpretation of the obligations on the part of the French authorities to provide cooperation and mutual judicial assistance in the proceedings before the ICTR and the Mechanism.

That being so, regardless of the provisions of the Statute of the Mechanism and the Law of 5 August 2013 incorporating them into domestic law, and without prejudice to

the rights to investigate of which he may avail himself, Mr Ferdinand NAHIMANA has grounds to request the disclosure of administrative documents that concern him, pursuant to the provisions of Law no. 78-753 of 17 July 1978.

Law no. 78-753 of 17 July 1978 guarantees to everyone the right of access to administrative documents.

It is an established fact that diplomatic telegrams, even those with restricted distribution, are administrative documents subject to disclosure under the Law of 17 July 1978.

Consequently, acting on behalf of Mr Ferdinand NAHIMANA, born on 15 January 1950 in Gatonde (Rwanda), a Rwandan national, currently detained in the Koulikoro prison in Mali, I have the honour of requesting from you the disclosure of any diplomatic telegram(s) that may have been sent between 1 June 1994 and 31 December 1994, that refer to a conversation between Mr Yannick GÉRARD and/or Mr Jean-Christophe BELLIARD with Mr Ferdinand NAHIMANA during which an intervention by the latter with Radio *RTL*M (“*Radio Télévision Libre des Mille Collines*”) was mentioned.

In general, Mr Ferdinand NAHIMANA hereby requests, pursuant to Law no. 78-753 of 17 July 1978, the disclosure of any document referring to a possible conversation as described above and specified in my letter of 13 January 2014.

Should verification by your services reveal that there is no such document in your archives, I would be grateful if you would confirm it to me.

Please accept, Sir, the assurances of my highest consideration.

Jean-Marie BIJU-DUVAL
Attorney-at-Law

/signature/

/REGISTERED MAIL SENT AND RECEIVED STAMP OF THE POSTAL
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ANNEX 4

Case: Ferdinand NAHIMANA

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FLORE ASSELINEAU
JEAN-MARIE BIJU-DUVAL
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JUDITH HAROCHE

Association of Attorneys

In cooperation with:

ROMAIN BOIZET
HELENE GORKIEWIES
JULIE HOLLIER

To the President
CADA /Committee of Access to
Administrative Documents/
37, Quai d'Orsay
75700 Paris SP 07

Paris, 6 June 2014

LRAR /registered letter with confirmation of receipt/

Subject: Request for recommendation

Dear Sir,

Acting as counsel for and on behalf of Mr Ferdinand NAHIMANA, a Rwandan national born on 15 January 1950 in Gatonde (Rwanda), currently detained in Koulikoro prison in Mali, I have the honour to present to your Commission this request for a recommendation on the implicit refusal by the Ministry of Foreign Affairs of a request for disclosure of documents supposedly in the archives of this ministry, specifically certain diplomatic telegrams.

The background of this request for opinion is this:

By its decision of 28 November 2007, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) convicted Mr Ferdinand NAHIMANA and sentenced him to 30 years in prison for the crime of instigation to commit genocide; this conviction is largely based on the alleged existence of a diplomatic telegram written in the course of French diplomatic activities in Rwanda in 1994 (Attachment no. 1).

According to witness testimony that was relied on by the judges in support of this conviction, Mr Jean-Christophe BELLIARD, a high-ranking French official currently

in charge of the Department for Africa and the Indian Ocean at the Foreign Ministry, had allegedly mentioned, during a telephone conversation with the witness, the existence of a diplomatic telegram involving Mr Ferdinand NAHIMANA.

This telegram was never produced, and the judges of the ICTR refused to summon Mr Jean-Christophe BELLIARD, who could have confirmed or denied the statements ascribed to him and shed some light on the existence and, possibly, the content of that diplomatic telegram.

In my letter of 13 January 2014 (Attachment no.2), acting in my capacity as counsel to Mr Ferdinand NAHIMANA, I addressed the Ministry of Foreign Affairs with a “request for additional investigations”, having in mind an interview with Mr Jean-Christophe BELLIARD as well as the disclosure of this diplomatic telegram, if it exists.

In a letter dated 27 January 2014 (Attachment no. 3), the Ministry of Foreign Affairs opposed this request.

By registered letter dated 6 February 2014 (Attachment no. 3), acting on behalf of Mr Ferdinand NAHIMANA, and pursuant to Law no. 78-553 of 17 July 1978, I addressed the Minister of Foreign Affairs with the request for “the disclosure of any diplomatic telegram(s) that may have been sent between 1 June 1994 and 31 December 1994, that refer to a conversation between Mr Yannick GÉRARD and/or Mr Jean-Christophe BELLIARD with Mr Ferdinand NAHIMANA during which an intervention by the latter with Radio *RTL*M (“*Radio Télévision Libre des Mille Collines*”) was mentioned”; in general, Mr Ferdinand NAHIMANA requested “the disclosure of any document referring to a possible conversation as described above and specified in my letter of 13 January 2014”.

With me as the intermediary, in the same letter, Mr Ferdinand NAHIMANA specifically requested: “should verification by your services reveal that there is no such document in your archives, I would be grateful if you would confirm it to me”.

To this day, there has been no reply to these requests.

It is of extreme importance for Mr Ferdinand NAHIMANA to have either a confirmation that, contrary to the unverified allegations levelled against him, this telegram, or documents of a similar nature, never existed, or, if such a document did indeed exist, to have it disclosed to him so that he can review it and discuss its exact content.

As your Commission has decided in several opinions rendered thus far, diplomatic telegrams are administrative documents subject to disclosure pursuant to the law of 17 July 1978.

Mr Ferdinand NAHIMANA is therefore eligible and well within his rights to request the disclosure of such documents, if they exist, or to be informed that they do not exist in the archives of the Ministry of Foreign Affairs.

To date, the Ministry of Foreign Affairs has opposed all access to its archives and refuses to answer the enquiries of Mr Ferdinand NAHIMANA.

For this reason, Mr Ferdinand NAHIMANA kindly asks your Commission to issue a favourable recommendation on the disclosure by the Ministry of Foreign Affairs of the documents requested, or, alternatively, to be explicitly informed that these documents do not exist in the archives of that ministry.

Please accept, Mr President, the assurances of my highest consideration.

Jean-Marie BIJU-DUVAL
Attorney-at-Law

/signed/

Attachments:

1. Copy of the Decision of the ICTR Appeals Chamber of 28 November 2007
2. Registered letter addressed to the Minister of Foreign Affairs on 13 January 2014
3. Letter from the Ministry of Foreign Affairs of 27 January 2014
4. Registered letter addressed to the Minister of Foreign Affairs on 6 February 2014

/REGISTERED MAIL SENT AND RECEIVED STAMP OF THE POSTAL
SERVICES/

ANNEX 5

Case: Ferdinand NAHIMANA

MINISTRY OF FOREIGN AFFAIRS
AND
INTERNATIONAL DEVELOPMENT

REPUBLIC OF FRANCE

Paris, 10 June 2014

—
Chief of Staff

Dear Sir,

In your letter dated 6 February 2014, you requested the disclosure, pursuant to the provisions of Law no. 78-753 of 17 July 1978, of any diplomatic telegrams relating to a conversation between Mr Yannick Gérard and/or Mr Jean-Christophe Belliard and Mr Ferdinand Nahimana.

A search has uncovered four telegrams dated July 1994 relating to conversations between Mr Gérard and Mr Nahimana. Please find enclosed copies of this communication.

Yours faithfully,

Alexandre ZIEGLER
/signed/

Mr Jean-Marie BIJU-DUVAL, Attorney-at-Law
6, villa Saint-Jacques
75014

PARIS

/handwritten: TD KIGALI 384 – KIGALI, 2 July 1994 at 1925 hours/

Subject: Meeting with Mr Jerome BICAMUMPAKA and Ferdinand NAHIMANA
(founder of *Radio des Mille Collines*)

Summary: The founder of *Radio des Mille Collines* made a commitment to put a stop to the attacks on General Dallaire. This will be the first test of our relations with the Rwandan authorities.

XXX

Following a meeting this afternoon with the Minister of Foreign Affairs and the founder of *Radio des Mille Collines* and the advisor to the President of the Republic, I came away with the following main points:

I – OPERATION *TURQUOISE*

- After hearing my description of the philosophy of Operation *Turquoise* during which I insisted on its strictly humanitarian and politically neutral and impartial nature, Mr BICAMUMPAKA thanked us on behalf of the Rwandan authorities and raised the following issues: France should do everything in its power to bring about a cease-fire as soon as possible. The Rwandan government was ready to enter into a dialogue with the RPF /Rwandan Patriotic Front/ immediately. The Arusha Accords remained the basis for the dialogue, but they failed to address the ethnic problem. Until the ethnic issue is /line missing/

- After raising several issues regarding the zone that would be covered by Operation *Turquoise*, its duration and connection with UNAMIR 2 (would the latter operate within the same context of Ch. VII as Operation *Turquoise*?) Mr BICAMUMPAKA stated that the Rwandan authorities wanted to engage in cooperation, that is to say to have working contacts with us in regard to this operation. My reply to this was that such “cooperation” would have gone against the neutral and impartial nature of the

operation but that the mission I was in charge of was, on the diplomatic level, precisely aimed at facilitating the smooth running of the operation.

II – *RADIO DES MILLE COLLINES*

I did not mince words when deploring the intolerable nature of the broadcasts by this radio station and requested that the calls to murder and the criticism of General Dallaire cease immediately. I rejected the various arguments put forth by Mr NAHIMANA and pointed out that if these kinds of broadcasts continued, we would consider it a serious obstacle to the smooth running of Operation *Turquoise*. Mr NAHIMANA ultimately promised to intervene with the journalists to have the attacks against General DALLAIRE cease, and he asked us to inquire about the impartiality of the General. I concluded by saying that we had no doubts whatsoever about that matter.

III – TENSIONS WITH THE MILITIA IN KIVUYE

- Referring to the hostile attitude of the militia towards staff of Operation *Turquoise* in the Kivuye region, I asked Mr BICAMUMPAKA for general guidelines to be issued to the militia throughout the zone of Operation *Turquoise* to ensure that it proceeds as intended. It is in everyone's interest that the operation succeeds and if the Rwandan authorities truly want this, then they have to do everything they can to make that possible.

IV – SUBSEQUENT CONTACTS

I clearly told my interlocutors that that my contacts with the Rwandan authorities had the primary and immediate aim of facilitating the successful implementation of Operation *Turquoise*. This was the condition of the meetings that I reserved the choice and the right to make. Mr BICAMUMPAKA told me that the head of state, or the prime minister and a few other ministers (the new minister of the interior, defence,

justice, and of social affairs and health in a few days, following their return from mission) would most likely be available to meet with me. He would also be able to make it possible for me to meet with the heads of political parties, prefects and church leaders...

COMMENTS:

- This first meeting in Goma was courteous. The Rwandan “representative authorities” seemed to me so eager to have any kind of contact with us that they were ready to accept a great deal of frankness and firmness on our part.

- Judging by their various comments, they obviously did not refrain from “ethnicizing” the ongoing conflict and continued to ignore the political aspects, to deny their responsibilities for the tragedy that followed the death of President HABYARIMANA and endeavoured to have us find a solution that would suit them. Consequently, I believe that prudence is warranted.

- I propose waiting a few days to see the concrete results of this initial contact, particularly in regard to *Radio des Mille Collines*, before accepting to have another meeting.

Gérard

/handwritten: TD KIGALI 391-KIGALI 3 July 1994 at 2018 hours/

Subject: Safe humanitarian zone

Reference: TD Diplomacy 19486 AND 19488

Summary: The “Rwandan interim government” has a difficult time accepting the creation of a safe humanitarian zone. “President” SINDIKUBWABO expressed his disappointment and stated that this zone could compromise the success of Operation *Turquoise*.

XXX

This afternoon, I was received in Giseny by President SINDIKUBWABO for over an hour and a half. He was accompanied by the director and Colonel ANATOLE, who had been until recently the commander of the northern military district in the country. Following this meeting, held in a rather tense atmosphere, I came away with the following main points:

1) SAFE HUMANITARIAN ZONE

Having listened attentively to my presentation, and notably our expectations that instructions would be given to the FAR /Rwandan Armed Forces/ and the militia to refrain from military activities and threats against the population in this zone, the “President” immediately stated that he found the creation of the zone rather “harmful”. Rather than preventing the displacement of the population, why were we not addressing the causes of this displacement? The creation of this zone constitutes a “selection”, while the rest of the population continues to be killed.

All of his associates, one after the other, went further by asking: Why not extend this zone to cover the entire area in which Operation *Turquoise* will be implemented, and even in certain areas in Kigali? Why abandon Ruhengeri, Kigali, Gisenyi and Gitarama to their fate? The efforts put in by France risk being destroyed by the creation of this zone.

In response to these remarks, I commented to my interlocutors that this was a case of urgently dealing with a situation that risked becoming even more serious. By implementing Operation *Turquoise*, France was not claiming that it would be able to protect all of the populations. This operation had already saved a lot of lives. It is also up to the international community to follow our example and to take responsibility.

This being said, we believe that all of the necessary instructions will be given to the FAR and the militia in order for the operation, and in particular the humanitarian zone, to be successful.

2) REQUEST FOR WEAPONS AND AMMUNITION

Mr Mathieu NGIRUMPATSE said he was concerned by the arms embargo imposed by the Security Council and expressed his wish that France would assist the FAR in its fight against the RPF.

I replied that this was out of the question. I recalled the strictly humanitarian, neutral and impartial philosophy behind Operation *Turquoise* and the moral commitment we made in resolution no. 929 with regard to the international community. We have been adhering to this position since the Arusha Accords, and it would be completely unacceptable to change it.

3) PARTICIPATION OF BELGIAN SOLDIERS IN OPERATION *TURQUOISE*

The Chief of Staff mentioned that a request concerning the arrival of Belgian soldiers to Cyangugu had been received. Was the French government aware of the impression that the Belgian soldiers left on the Rwandan population?

I replied that, to my knowledge, this was a medical contribution by Belgium to Operation *Turquoise*. The priority should be to care for the population, should it not?

4) GENERAL DALLAIRE

Several associates of the president pointed out that the “interim government” was requesting the departure of General DALLAIRE and made an effort to denounce him and to point out his so-called impartiality ... I reacted by requesting that Mr NAHIMANA reiterate the assurances he had given to me the day before regarding

putting a stop to the attacks against UNAMIR by *Radio Des Mille Collines*, which he did. I took note of this and said that the "President" was a witness to it.

5) THE INTERNATIONAL COMMUNITY SUPPORTS THE RPF

/words missing/ international for the benefit of the RPF, its refusal to acknowledge that the Tutsi were massacred en masse by the latter, the support that it gave to it in several areas and the lack of objectivity and seriousness in the report of Mr SEGUI.

I was also told that the Hutu majority refused "to be reduced to slaves by a minority".

COMMENTS:

I note that when he thanked me for this initial contact, the President expressed hope that it would not be the last. I question the meaning behind his words.

Gérard

/handwritten: TD KIGALI 428. KIGALI, 9 July 1994 at 1420 hours/

Subject: Action taken by three political figures

Summary: Two former ministers and one ambassador, probably sent by the interim government, asked us to extend the safe humanitarian zone immediately to the north-west, to involve ourselves in the composition of the Kigali government and told us that hundreds of thousands of persons forced out by the fighting were walking towards Gisenyi.

XXX

This morning I received Mr Stanislas MBONAMPEKA, a former minister and, until 1993, a member of the new national assembly (PL), Charles NYANDWI (former minister, from 1981 to 1991) and Mr MUNYESHYAKA (former ambassador to Moscow and Brussels).

The main points they raised seemed to me to be a reflection of the immediate concerns of the authorities in Gisenyi. They were also accompanied during their trip to Goma by Mr Ferdinand NAHIMANA (advisor to the president and founder of *Radio des Mille Collines*) with whom I did not meet.

Following this long meeting, I was aware that their main concern was the continuation of combat that was currently pushing out hundreds of thousands of people to the roads towards Ruhengeri and Gisenyi. I assured them that all our diplomatic efforts were directed towards a cease-fire and that this was the number one priority.

They expressed their concern over the embargo. I explained to them that Operation *Turquoise* was only possible under the auspice of the United Nations and with commitment and will from our side to remain completely neutral and impartial.

They expressed their wish for the safe humanitarian zone to be extended to the north-west. I explained to them that we created this zone as a response to the humanitarian emergency. We are not claiming that we will take care of the safety of all of the Rwandan populations on our own. The international community also has to take responsibility. We are sparing no efforts to mobilise it and to appeal to it to follow our example.

They insisted that Mr TWAGIRAMUNGU not be allowed to pick on his own the moderate Hutus called to take part in the government but to leave that up to the political parties. The representatives of the opposition party to the RPF should in fact be representing the populations and their frame of mind towards the RPF.

COMMENTS:

As the interim government was unable to establish further direct contact with me, they sent us politicians who were supposedly independent to probe our intentions regarding the north-west. While taking time to listen to them very attentively and to explain to them in depth the philosophy of Operation *Turquoise* and the safe humanitarian zone south, I left them in no doubt about our feelings towards the Gisenyi authorities. They appeared rather ill-at-ease when I questioned them about the content of the current reports (of which I am completely unaware) broadcast by Rwandan radio. They told me that they have been waiting for a statement from the government since the capture of Kigali, but one has not been issued yet.

Gérard

/handwritten: TD KIGALI 530 – KIGALI, 25 July 1994 at 1515 hours/

Subject: Rwanda, Report on the Mission to Goma: 30 June to 25 July 1/2

INTRODUCTION:

The mission that the department entrusted to me at the start of Operation *Turquoise* on 28 June was identical to the one assigned to Mr J. WARIN involving the RPF: to conduct meetings in Goma with the “representative Rwandan authorities”. It was implied however that all of these contacts should be kept to the bare minimum required to have Operation *Turquoise* proceed properly; that was the criterion. Any other useful contact with moderate Rwandan figures who were present in Goma was encouraged. Furthermore, I was asked to supervise the implementation of the humanitarian operation that we launched.

1) - THE DECISIVE IMPORTANCE OF THE RADIO STATIONS

When I arrived to Goma on 30 June, I noted the decisive importance of the radio stations (Radio Rwanda and *Radio des Mille Collines*, both government-owned) on the state of mind of the populations in that part of Rwanda where Operation *Turquoise* was being implemented. I was astounded by the flood of ethnic hatred that it broadcast to its listeners, the confounding of the RPF and UNAMIR and the rabble-rousing against the enemy, the Tutsi, who should be gotten rid of. It seemed to me that there was a serious obstacle there to Operation *Turquoise* proceeding as it should. I immediately requested that means be made available so that I could at least follow these broadcasts every day; this was done irregularly.

Facts confirm this analysis: from 17 July (the capture of Gisenyi), hundreds of thousands of Rwandans fled the safe humanitarian zone, believing more in the instructions broadcast over the radio than in Operation *Turquoise*.

2) RELATIONS WITH THE REPRESENTATIVE AUTHORITIES

From my first contacts (on 2 July) with the Minister of Foreign Affairs of the interim government and the advisor to the president, the founder of *Radio des Mille Collines*, I left them with no illusions about our attitude regarding Operation *Turquoise* being of a strictly humanitarian nature, that it was politically neutral and impartial and that it was not being introduced to help the interim government or the FAR. I requested that everything be done so that Operation *Turquoise* proceeds as it should, that the authorities put a stop to the propaganda by *Radio des Mille Collines* and exert their influence, in the proper sense, on the militia. My interlocutors made commitments but they were not credible and they were not respected.

The creation of the “safe humanitarian zone” in the south-west of the country quickly marked a turning point in our relations with the interim government. The president, to whom I explained the concept on 3 July, did not hide his profound disappointment. From those meetings, I understood that the authorities in Gisenyi would deliberately worsen the situation. All the while increasing their attempts to have additional contact

with me to request weapons from us and the extension of the ZHS /safe humanitarian zone/ to the north-west, they were preparing to complicate our task and deliberately worsen the situation because they felt “abandoned”.

Simultaneously, I collected overwhelming and credible evidence on the personal conduct of some of these interlocutors over the previous months that convinced me that they were amongst those chiefly responsible for the genocide, not least through their influence over *Radio des Mille Collines*. This did not encourage me to maintain further contacts and, moreover, the department no longer saw the purpose. Nevertheless, I reiterated my availability to General LAFOURCADE to have contact with any of the local authorities in the ZHS that he deemed might be useful to ensure that Operation *Turquoise* proceed properly.

With respect to the Rwandan military authorities, we hoped that over time, after the capture of Kigali and before the capture of Ruhengeri, General BIZIMUNGU, the chief of the main staff, could play a role in the possible resolution with the RPF. This would entail, however, that he breaks from the interim government, which he did not do. When Mr Sharyar KHAN arrived in Giseny he could not meet with him in person. I saw Colonel ANATOLE several times but he also maintained his close ties to the government.

It is probably with mindset of deliberately making things worse that, following the capture of Giseny, the president and a few ministers went to the safe humanitarian zone in Cyangugu. Was that a provocation aimed at us? A more charitable mindset might interpret this as a somewhat conscious display of remorse on their part, murderers finally delivering themselves to justice. We were not able to act on this as, regretfully, it was not part of our mandate.

3) OTHER POLITICAL CONTACTS

Having declined requests for meetings (on 8 July) with the ministers of foreign affairs and defence, on 9 July I agreed to receive a delegation of two former ministers and a former ambassador. I hoped very much to see a new mindset, a fresh analysis of the

situation and another perspective. I quickly noted that although presented more skilfully, the requests (extending the zone, lifting the embargo, etc.) were the same and ethnic hatred remained strong. I should have guessed as much because Mr NAHIMANA, founder of *Mille Collines*, was travelling with them.

I would prefer to forget the meeting with the bishops from Cyangugu and Gikongoro, which was too disappointing, and to retain only the refreshing conversation with the bishops from Nyundo, especially with the vicar-general who accompanied them and whose spirit of tolerance, forgiveness, faith, humour and hope that motivated him were a real (and sadly rare) refreshing change.

As under the circumstances I was unable to meet directly with them, I am very happy that Operation *Turquoise* was able to save the lives of and evacuate the family of Mr TWAGIRAMUNGU, Mr Dimas NSENGIYAREMYE, the former prime minister and his family, and the widow and children of Mr NGULINZIRA, the former minister of foreign affairs (a negotiator in Arusha).

4. THE "POLITICAL RULES"

I did not believe in the hopes nourished by others for a few days after the capture of Kigali (4 July) that the RPF would stop there and negotiate a cease-fire. It seemed to me unimaginable that, regardless of the tragic consequences that could be expected if combat continued, the future leaders of Rwanda accepted not to take control of the borders with Zaire, the only ones that were not secure and that allowed the presence of a hostile force of over 20,000 men inside the country, a force that could, one day, constitute a threat.

Mr Sharyar KHAN, who kept us well-informed about his meetings in Kigali and Gisenyi, quickly understood the situation: there was no useful interlocutor on this side. He needed to take a stand and wait for the RPF to take military control over the country. His main task at present should be, in my opinion, to help the Kigali

government, on behalf of the international community, to convince the Rwandan population to return to the country. This will not be easy. To be continued.

Gérard

ANNEX 6