

**Annexe 49 : Le rapport de Michaël Hourigan, enquêteur du TPIR, à la procureure
Louise Arbour sur l'attentat du 6 avril 1994 (janvier 1997)**

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49.1 Internal Memorandum de la National Team Inquiry

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This document was created by UN investigator Michael Hourigan in January 1997 in order to brief Judge Louise Arbour, the head of the International Criminal Tribunal for Rwanda. The document is a summary of what three high level source told the UN's 25-man National Team investigating war crimes in Rwanda. The sources implicated Rwandan President Paul Kagame, in the shooting down of a plane in April 1994 that was carrying the then president of Rwanda. The plane crash triggered the genocide.

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NATIONAL TEAM INQUIRY

INTERNAL MEMORANDUM

Information

Sources have advised that a highly secret attack team formed from a cell within the former RPF known as the "network" was responsible for the rocket attack upon the President Habyarimana's Falcon aircraft killing the President of Rwanda, the President of Burundi and other VIP's on board.

◆ Source 1

Contact through [REDACTED] This person is a current senior commissioned officer in the Rwandan Government Forces (RGF). He has advised that he is still a member of the secret RGF "network". He acted as an aviation consultant for the attack team.

◆ Source 2

Contact through [REDACTED] This person is a current soldier in the RGF and also a serving member of the "network". He was a team member of the attack team on the President.

◆ Source 3

Contact through [REDACTED] This person is a former member of the "network" and a member of the preparatory team for the attack on the President.

Informant Sources

Investigators from the ICTR National Team [REDACTED] [REDACTED] [REDACTED] and Michael Hourigan) have been in recent contact with sources (3 male persons) in Kigali Rwanda.

These sources have provided crucial information concerning the fatal rocket attack upon the Rwandan Presidential aircraft at about 2030 hours on 6 April 1994.

The Network

Sources advise that the former RPF, now known as the RGF, has within it a cell of elite soldiers who are activated and deactivated from time to time to

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conduct special operations. One such operation was the successful rocket attack upon President Habyarimana in 1994.

We have been advised that the same cell is being reactivated to conduct high level assassinations of major Genocide offenders currently living in and around Rwanda.

We have also been advised that there is a distinct possibility that the same cell was responsible for the recent murders of Medicine Monde staff (3 persons) in Ruhengeri in January 1997 and UN Human Rights staff (5 Persons) in Cyangugu. However at this time there is absolutely no corroboration for this last piece of intelligence.

The Network Members

The Intelligence Network working in Kigali during late 1993 and early 1994, was comprised of the following 10 persons:

- 1- Capt. [REDACTED]
(Working out of CND HQ, he was a Ugandan and in charge of Intelligence Operations in Kigali)
- 2- Capt. [REDACTED]
(He was a Burundian and second in charge of Intelligence Operations in Kigali)
- 3- Lt. [REDACTED] (N) *Ed. L...*
(He was a Ugandan and in charge of Administration)
- 4- Adjutant [REDACTED]
(He was a Rwandan)
- 5- [REDACTED]
(He was a Zairian)
- 6- [REDACTED]
(He was a Ugandan)
- 7- Sgt. [REDACTED]
(He was a Burundian)
- 8- Sgt. [REDACTED]
(He was a Rwandan)
- 9- Sgt. [REDACTED]
(He was a Rwandan)
- 10- Sgt. [REDACTED]
(He was a Ugandan)

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According to the source, this group was advised to put in place a contingency plan to eliminate President HABYARIMANA on or about 15 Mar. 84 as the Arusha talks were not progressing to the extent hoped and anticipated. Their assignment consisted of setting-up five (5) deployment points, 2 in Kigali and 3 around the airport perimeter in the areas of Maseka, Kanombe and Gasogi. This assignment was communicated through meetings; never was there a specific written directive to carry out this task.

Of the two (2) groups, RPF and FAR the chain of command was as follows:

R.P.F.

1- Col. [REDACTED]
(Chairman of RPF and now Minister of Internal Affairs and Deputy Prime Minister)

2- Paul KAGAME
(Chairman of the Military High Command and now Vice President of Rwanda)

3- Col. [REDACTED]
(Deputy Chairman of the Military High Command and now a retired businessman in the transport business)

4- Col. [REDACTED] - Approximately 37 yrs. old
(Head of Intelligence Network whom Capt. [REDACTED] in charge of Kigali Intelligence Operations, reported to directly)

F.A.R.

1- President HABYARIMANA

2- The Minister of Defence

3- Col. [REDACTED] (MOD)

4- Lt. Col. [REDACTED]
(Director of Military Intelligence)

One of the Military Intelligence operatives under Lt. Col. [REDACTED] who often went with Pres. HABYARIMANA to Arusha to attend the negotiations, was Lt. Col. [REDACTED] now head of Rwanda's G-2 Army Intelligence Unit.

The implication with these chains of command is that Capt. [REDACTED] as i/c of Intelligence Operations in Kigali for the RPF and

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reporting to Col. [REDACTED] would have received cautions for his operations from the 3 key figures above him namely, NDUGUTE, KAGAME and KANYAREMUNGU.

Two sources advise that the current Vice President, Paul KAGAME and the Minister of Internal Affairs and Deputy Prime Minister, Alex [REDACTED] were part of the plot to eliminate the President.

The Rocket Attack

The sources have all confirmed that the "network" under the Command of General Paul Kagame planned and executed the rocket attack upon President Habyarimana.

*** The Sites**

3 rocket sites were identified to investigators. First, [REDACTED] (SAM) and used by the attack team. Second, [REDACTED] (SAM) and used by the attack team. Third, [REDACTED] (RPG) and not required to be used by the attack team.

• Control Posts

3 command posts were used. Operations were controlled overall out of [REDACTED] field control in Kigali was maintained at a second post and initial control regarding the president's aircraft schedule was controlled in Arusha at a third post.

• Rocket Firms

Two FAR soldiers fired the SAM's from Muzaka and Gasogi Hills. One survives and may be available to the ICTR through the intervention of the sources.

• Attack Plan

Sources advise that they can provide the ICTR with hard copy evidence of the attack plan. To date the ICTR has requested that this not be provided.

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CONFIDENTIAL
INVESTIGATIONS SECTION / OIOS

PARAGRAPH 17 REPORT

(54-14787)

(This document is protected by the provisions of ST/SGB/273 of 7 September 1994)

Date of Report: 1 August 1997
Data Information Obtained: Between 6 April 1996 & 1 May 1997
Source of Information (i.e. Name or C.I. index):

CAVEATS (i.e. for IS Chief's eyes only, or for USG/OIOS's eyes only): To be discussed only by Frank Montil & Barbara Dixon

RELIABILITY of information source: (Indicate which level applies:
A: Completely reliable; B: Usually reliable; C: Sometimes reliable, but not yet established; or D: Unknown)
RELIABILITY RATING IS:

CREDIBILITY of Information: (Indicate which level applies:
①: True, corroborated; ②: Possibly true, but untested; ③: Doubtful credibility; or ④: Cannot be verified)
CREDIBILITY RATING IS: 2

LOCATION: (refer to the UN System structure/PAN logging list): OIOS

TEXT of information: Hourigan worked with the ICTR as the Team Leader of the National Team which was investigating Colonel [redacted] and other principal offenders of the 1994 Genocide in Rwanda. These investigations involved high level contact with the UN QPK and a number of foreign gov'ts and their intelligence services in particular Belgium, France, Canada & the US. Despite public statements of support for the ICTR, to date almost all of these countries and their foreign intelligence services have completely failed to cooperate with the National Team and any other section of the ICTR.

National Team investigations have revealed a number of critical factors:-

- (i) In late 1993 and early 1994 UNAMIR I (UN Assistance Mission to Rwanda I) began receiving extremely high quality intelligence from a senior member of the Interahamwe who provided General Dallaire's G2 office concerning the existence of a cell formulating death lists to kill senior Tutsis and moderate Hutus, secret arms caches in Kigali, secret training of militia groups throughout the country and very real plans to put in effect widespread killings of Tutsi civilians. Much of this information was corroborated by other Belgian sources, together with considerable public comment among leading moderates within the Rwandan community and international communities.
- (ii) Some internal UN documents were obtained by the National Team confirm that in early January 1994 General Dallaire advised Mr Ansan, then Chief of UNOPK of the source and accuracy of information. The General asked permission to safely re-locate the informant and also requested an increased mandate to raid arms caches and confiscate weapons, more troops and armor to deal with the impending outbreak of hostilities and generally the ability to be pro-active instead of re-active. All these requests were denied instead Dallaire was advised to approach the foreign embassies of the US, France, Belgium etc and advise them of the sensitive situation and, in particular, let was to advise the extremist President Juvenal Habyarimana of the UN's knowledge of these matters. Habyarimana promised to look into these matters but as he was intimately involved nothing was achieved by discussing these matters with him. Instead arms caches were moved and hidden elsewhere and the formulation of death lists continued. General [redacted] was unable to offer and substantive protection

Michael Hourigan created this document for the UN's internal investigation division in New York in August after his plane crash investigation was shut down. This explosive document exposes the UN's failings in Rwanda.

the informant who became dispirited and melted back into the population.

(iii). General [redacted] G2 office and the Belgium Army G2 office continued to receive extraordinary intelligence pointing to the existence of an extremist core within the President's government planning death lists and the impending Genocide. I am informed that these intelligence reports were very accurate. For example one informant, a senior Commissioned Officer of the now exiled Hutu army (the FAR), advised the UNAMIR G2 on 17 February 1994 that the Chief of the Court of Appeal [redacted] was to be murdered by members of the elite Presidential Guard. The intelligence report even named the soldiers who were to conduct the execution at some future unspecified time. On the morning of 7 April 1994 following the shooting down of President Habyarimana, members of the Presidential Guard attended at the Judge's home and executed him. Earlier this year another member of the Presidential confirmed that the report of 17 February, 1994, taken some 2 months prior to 1994 genocide was exactly correct and that the murder occurred as predicted. Remarkably, UNAMIR did not act on any of these reports in advance either by telling the victims or preparing some serious counter measures. Once the lack of interest was shown by OPK then much of the intelligence gathered became redundant.

(iv). Of course the Genocide occurred on the evening of the 6 April 1994 with the shooting down of the Presidential jet returning from Arusha. President Habyarimana, the President of Burundi and other leading officials were killed. It was first thought that extremists inside his family circle were involved. Now our investigations have found 3 sources in the current Tutsi regime who say that they were part of an elite covert strike team known as the "Network" and with the assistance of a foreign government shot down the Presidential aircraft. They advise that Major General Paul Kagame was the overall operations commander and they provided accurate descriptions of the operation together with names, ranks and roles of each soldier involved. They also advised that they can produce hard copy documents of the operation. This information fitted in with claims by the Hutu extremists that the RPF killed their President. Two of the sources wanted to cooperate with investigations if their safety could be guaranteed. Their information and request was raised with Judge Arbour and, although she was at first very positive, she later advised that this issue was not within the ICTR mandate and would not be investigated.

(v). Interestingly, some internal UN correspondence suggests that there was a considerable amount of discussion between the UN and Canada on whether General [redacted] would or should give evidence in 1996 in a Belgian court investigating the abduction and murder on 7 April 1994 of 10 Belgian paratroopers. Colonel Luc Marchal, Commanding Officer of the Belgian Parachute regiment in Rwanda in 1994, had been charged as criminally negligent with their deaths. General Dallaire had been summoned to give the official situation. Dallaire had made it clear that [redacted] was not at fault and that he placed the blame squarely at the feet of the UN and international community for failing to act in advance in late 1993 and early 1994, and that even worse still, that they had completely failed to act in April 1994 once the genocide erupted as predicted. [redacted] wrote to Mr [redacted] and advised of certain undisclosed difficulties should [redacted] give evidence. It was decided that [redacted] would not be given any immunity from prosecution in Belgium and therefore should he attend there he could be arrested. [redacted] was effectively gagged. A statement was prepared by the UN and the Canadian Army leaving out all the prior intelligence and [redacted] was requested to sign same. He objected to the accuracy and truth of the document but reluctantly signed. [redacted] never attended the trial. Marchal was ultimately cleared. However, certain forces within the Belgian community continue to press the Belgian foreign affairs for the truth about 1994.

(vi). To date not official assistance from any foreign government intelligence agencies or of the UN itself has been given to the ICTR. My national team was effectively starved of all high level intelligence regarding the planning and preparation of the 1994 Genocide. I am told by members of

...missions in Rwanda that the negligence of the UN, and other foreign powers will not be revealed. It is for these and other reasons the ICTR struggles to achieve its mandate.

(vii). Forwarded for your information.

ANALYSIS of information:

ACTION REQUIRED:

NAME of IS staff member making the Information Report: Michael Hourigan

Signature: [Signature] Date: 1 August 1997

IS Chief's comments: It would be useful for this subject to provide assistance to the Tribunal in the next phase for the G. H. in Rwanda Tribunal

Signature: [Signature] Date: 1/3/97

Senior Investigator's comments: This is an extremely "sensitive" document. The information it contains is "confidential". The information and the context in which it was obtained should be taken into account in the review of the work of the Tribunal. (For use only in the Tribunal)

Signature: [Signature] Date: 1/3/97

DISTRIBUTION: _____

[IF] - LIST OF CASES TO WHICH THIS REPORT CONTRIBUTES: _____

49.2 Note de présentation (Nick McKenzie)

www.theage.com.au

Uncovering Rwanda's secrets

Nick McKenzie

February 10, 2007

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* *UN 'shut down' Rwanda probe*

« MICHAEL Hourigan reviewed his orders as the car pulled into Rwanda's main airport. He had finished a memo on the intelligence gathered by his Rwandan war crimes investigation team. Check. He had saved it onto a disk placed in a secure UN diplomatic bag. Check. He had ordered his investigators to leave Rwanda. Check.

For the Australian policeman-turned-lawyer, everything appeared to be going smoothly.

But airports are unreliable places and the bullet-scarred Kigali terminal in the African state of Rwanda was no exception. As Hourigan prepared to board his plane, he was approached by the flight manager. "You cannot board this flight, Mr Hourigan. I am afraid it is already full."

It is early 1997. Just days before, Hourigan has used a secure phone in the US embassy to brief the head of the International Criminal Tribunal for Rwanda (ICTR), Judge Louise Arbour, about his team's discovery. They have obtained incendiary information linking the Tutsi rebel leader and now Rwandan President Paul Kagame to the incident precipitating the Rwandan genocide — the shooting down in April 1994 of a plane carrying Rwandan president Juvenal Habyarimana and the president of Burundi, Cyprien Ntaryamira.

Hours after the crash, extremists from the Hutu ethnic group begin slaughtering ethnic Tutsis and moderate members of their own clan, unleashing one of the most notorious massacres of the late 20th century.

Hourigan's four-page memo summarises what three informants have told his UN investigators about Kagame's role in the attack. Until now, that memo has never been made public.

But last November, almost a decade after Hourigan writes the memo, claims that Kagame is behind the plane crash make international headlines. The claims are made by French anti-terror judge Jean-Louis Brugiere, who finds Kagame and his aides responsible for the attack.

Brugiere's findings follow years of speculation about the existence of Hourigan's memo and what happened to his original investigation. The French case confirms the central claims in Hourigan's memo. It raises questions about why the UN cut short Hourigan's inquiry and, once again, highlights the organisation's failure to deliver justice.

A decade later, Hourigan still feels bitterly let down by that failure to act. "To this day, there has been a decisive effort by the UN not to investigate the plane crash," he says during an interview with The Age this week.

Back in 1997 at Kigali airport, Hourigan's only focus is getting on the UN-chartered plane. When he is told to return the next day, Hourigan's escort, a senior UN security officer, steps in. "I have been directed by the Secretary-General to get this man on the plane. If you treasure your job, you will make it happen."

Minutes later, Hourigan is bracing for take-off, bound for The Hague. He has no idea that within 48 hours, his investigation will be over and he will quit his job.

Michael Hourigan never intended to work in Africa. After a decade policing in Adelaide, and a brief stint as a public prosecutor, some former colleagues ask him to join them as investigators with the International Criminal Tribunal in Yugoslavia. It has been set up to prosecute war criminals involved in the Balkans conflict. Hourigan applies but is told there are too many English speakers. There are, however, jobs going in Rwanda.

Hourigan's knowledge of Rwanda is limited to CNN reports of the genocide and the film *Gorillas in the Mist*. Back then, he says he was no bleeding heart. However, Rwanda perceptibly changed Hourigan, sharpening his drive for justice and human rights. He later worked in Washington for a US Democratic congresswoman and has a photo of Bobby Kennedy as his screen saver.

Before Rwanda, Hourigan was more of a "garden variety Liberal". He is attracted to the ICTR because it promises complex investigations, and Hourigan loves to investigate.

He touches down in Rwanda on April 6, 1996. It is the second anniversary of the 100-day genocide in which extremist Hutus slaughter up to a million Tutsis and moderate Hutus while the international community sits on its hands. The genocide ends in mid-July when Kagame's Rwandan Patriotic Front seizes control of Kigali.

"There was great tension, a great dislike of white people and UN people. And I arrived there as a white male in my mid-30s with a UN passport," Hourigan recalls. "My first day, I was just wide-eyed. You could smell the sewage and see the suffering."

The ICTR is set up by the UN Security Council at the end of 1994 to prosecute the genocide's leaders and investigate breaches of international humanitarian law. Hourigan is appointed leader of "The National Team". It is made up of police from Africa, the US, Canada and Europe. Hourigan's commander is Jim Lyons, a former senior anti-terror FBI agent who led crime scene investigations at the first World Trade Centre bombing.

The National Team has three core tasks: to investigate the Presidential Guard members who murdered Rwanda's intelligentsia; to investigate the political and military leaders behind the extermination programs; and to investigate the plane crash that kills the two presidents and triggers the genocide.

The earliest and most widely held theory blames Hutu extremists for shooting down the plane, over anger at the peace talks between Hutu and Tutsi leaders in Arusha, Tanzania. But some point the finger at Tutsi rebel leader Paul Kagame, claiming he is upset by the progress of the talks and knows the upheaval sparked by the plane crash will legitimise his invasion and begin his march to power.

In 2000, Kagame becomes president.

Foreign powers are also linked to the downing of the presidential jet. Rwanda's leaders have long counted on allegiances with external forces. The governing Hutu regime is in the Franco-

Belgian camp. Kagame, whose military career includes a stint in the US, looks to his Anglo-US supporters. After he wins power, the national language is changed from French to English.

It is in this messy geopolitical setting that Hourigan's team begin investigating.

"The ICTR had been pressured (by Rwanda and other countries) not to investigate the crash," Hourigan says. "I thought it was a time for the UN to step up to the plate and discover the truth about a major event. It would set a benchmark for reliability and transparency."

HOURIGAN models his team on a domestic police force. Investigators liaise closely with prosecutors to build cases. The crimes under scrutiny, of course, are far from ordinary. Death is everywhere and on an unimaginable scale. "I remember doing crime scene work on a church where there had been a slaughter. There were still bodies there. It struck me as so sad that so much of the killing in Rwanda happened around the churches and the schools," he says.

The National Team is quickly met with a reluctance from key overseas and regional players to offer assistance. Foreign intelligence services share nothing. After several months, Hourigan and his team are well versed in the rumours about the crash. What they needed is a break. It comes with a knock in the night.

"I was in Kigali. It was late one evening. One of my investigators came to me with information that he had met with a source," Hourigan says. A short time later, another source comes forward. And then a third.

"In the next 24 hours, they gave quite incredible information about the rocket attack. We had received lots of information about possible causes, but this was the most detailed, accurate and timely about one target: President Kagame and his administration."

Hourigan's memo summarises the informant's claims. Two of them were serving members of Kagame's military regime. All three claim to be existing or former members of a covert attack team called "the network".

The memo states: "Sources advise that the former RPF, now known as the RGF, has within it a cell of elite soldiers who are activated and deactivated from time to time to conduct special operations.

"One such operation was the successful rocket attack upon President Habyarimana in 1994. According to the sources, this group was advised to put in place a contingency plan to eliminate President Habyarimana on or about (March 15, 1994) as the Arusha talks were not progressing to the extent hoped and anticipated.

"Their assignment consisted of setting up five deployment points, two in Kigali and three around the airport perimeter.

"The sources have all confirmed that 'the network' under the command of General Paul Kagame planned and executed the rocket attack."

Hourigan treats the information warily. "We kept an open mind. But (we had contact) with one man who said he was one of the rocket firers. That he was responsible for firing one of the SAM missiles that brought the plane down.

"It (their information) was so detailed and named so many people that it could quickly be discarded or corroborated."

Hourigan knows he has to act fast. The UN has a poor record of protecting its informers.

"People in that part of the world with precious information have use-by dates," Hourigan, who never knew exactly why the sources came forward, says. "Maybe they realised they had a use-by date and that they would be murdered. They wanted help with their families and to be removed from Rwanda and protected."

Hourigan's commander, Jim Lyons, arranges a phone briefing with Arbour. The call takes place in the US embassy in Kigali on a "secure" US embassy line. Later, Hourigan will rue the call.

"I never realised that we may be compromising the investigation. I didn't understand the politics of the region. I didn't realise that Paul Kagame had been trained by the US, supported by the US. I thought that we were keeping the call discrete from the French and the Belgians. I never thought of the US. It was a blunder."

But on the other end of the phone, Arbour sounds excited.

"She said it corroborated some other information she had just received. She was concerned about our safety and the security of the information."

A few days later, Hourigan flies out of Kigali airport, bound for The Hague.

He has no idea that the fate of his investigation is most likely already decided.

Arbour is one of the more prominent residents in a city that promotes itself as the "centre of international justice and peace". The former ICTR chief and Canadian Supreme Court judge is now the UN's Human Rights Commissioner. The role demands a public presence.

But Hourigan says he is still waiting for her to publicly explain why she told him to shut down the plane crash investigation in early 1997 after he handed her his memo.

Arbour's version of these events is not known, despite efforts by this newspaper to secure them. Her spokesman did not return questions emailed by The Age.

Hourigan offers his version of the events with fearsome clarity: "She was aggressive and negative. She had done a 180-degree turn. She effectively told me that my inquiry was at an end."

Hourigan says Arbour claims his team exceeded its jurisdiction, a point he still disputes. He insists the crash is well within the ICTR's mandate.

"I was speechless. I thought about all I had seen and done in the tribunal and learning about the UN's complicity in the genocide. I couldn't believe that we as a tribunal were being compromised as well. It gutted me. I had put a year and a half of my life into this and my team had risked their lives and our informers had risked their lives to tell this story. And it was going to be swept under a rug. I couldn't believe it."

In the city of justice and peace, Hourigan decides to quit the ICTR.

After a further six-month secondment with the UN's oversight office in New York — where he creates a second memo outlining his frustrations with the UN in Rwanda — he resigns. He has never found out what happened to his team's three informants.

YET, in the ways of these tangled stories, all is not lost.

In France, a revolver-toting anti-terror judge who earned his reputation prosecuting terrorist Carlos the Jackal also has an interest in the events of April 6, 1994, as the shot-down plane's air crew are French nationals.

Hourigan has never heard of Brugiere. The judge is similarly unaware of Hourigan until March 2000, when a Canadian newspaper reveals details of Hourigan's struggle. According to a senior French source, the fact that the UN kept secret Hourigan's documents "fuelled our interest". So, too, does the UN's refusal to hand the documents over to the French.

Hourigan has no such qualms. After a call from Paris he, once again, boards an international flight. At Charles de Gaulle Airport, four men in black suits and dark glasses drive Hourigan to Brugiere's chambers, where he tells his story.

It will take until late November last year for Brugiere to issue indictments for several of Kagame's aides. The judge's brief includes testimony from several former military figures, linking Kagame to the attack.

Kagame has dismissed Brugiere's investigation, claiming it is driven by France's anger at losing its influence in Rwanda. "It is a political process," he tells the BBC.

Hourigan understands the wariness about France's agenda. "But I welcome what the French have done for nothing else but that it is done."

Kagame's aides can only be arrested if they enter a country with which France has an extradition treaty. Kagame is protected from state prosecution because of his head-of-state status. Only the ICTR has the power to hold him to account.

Despite several major prosecutions, Hourigan views the tribunal as a failure. Many suspects have not been held to account. Rwanda remains a deeply divided country.

"If there was a political will internationally, Kagame could be prosecuted," he says. "That is what is missing. It is not the lack of evidence or witnesses or ability to uncover the story." »

Nick McKenzie is an Age investigative reporter.

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49.3 Affidavit de Michaël Hourigan

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
ARUSHA TANZANIA**

AFFIDAVIT OF MICHAEL ANDREW HOURIGAN

Date of document: 27 November 2006

**Filed on behalf of the Plaintiff by: Michael Hourigan
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Date and time of filing or transmission: 27 November 2006

AFFIDAVIT

I, **MICHAEL ANDREW HOURIGAN** Lawyer of 61-63 Carrington Street Adelaide 5000 in the State of South Australia Solicitor **MAKE OATH AND SAY** as follows:

- 1 I am a qualified legal practitioner in the State of South Australia. I was also a former police detective before completing a law degree in 1995 after which time I took up a post as a Crown Prosecutor with the Director of Public Prosecutions (D.P.P. Adelaide).
- 2 In April, 1996 I left the D.P.P. in Adelaide and took up a position as an investigator with the International Criminal Tribunal for Rwanda.
- 3 Soon after my arrival in Rwanda I was put made a team leader in charge of a team consisting of about 20 members and the team was to be known as 'the National Team'.
- 4 I was directed by Judge Richard Goldstone (the then Chief Prosecutor) and Judge Honoré Rakotomana (the then ICTR Prosecutor) and Mr. Alphonse Breau (the then Director of Investigations) to focus my teams investigations on the following matters:-
 - 4.1. Investigate the criminal conduct of Colonel Theoneste Bagosora and then locate and arrest him;
 - 4.2. Investigate the criminal conduct of Colonel Anatole Nsengiyumva and then locate and arrest him;
 - 4.3. Investigate the murder of thousands of Rwandan elite in the first days of the genocide by the Rwandan Presidential.
 - 4.4. Identify the person(s) responsible for the fatal rocket attack on 6 April 1994 killing President Habyarimana and all others on board;
- 5 Together with my investigators we conducted investigations into these matters throughout the next year. During the course of 1996 I was called upon to brief Judge Goldstone and then his replacement Judge Louise Arbour and other senior prosecutors on the progress of our investigations into Bagosora, Nsengiyumva, the Presidential Guard and the rocket attack upon President Habyarimana's aircraft.
- 6 At no time did Judge Goldstone, Judge Arbour or any other member of the ICTR ever indicate to me that our investigations into the downing of the President Habyrimana's aircraft were outside the ICTR mandate. On the contrary, it was made clear to me that our investigations into the rocket attack upon the President's aircraft was an act of international terrorism which clearly fell within the ICTR statute Article 4 Violations of Article 3 common to the Geneva Conventions:-

Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b)
- c)
- d) Acts of terrorism;
- e)
- f)
- g)
- h)

7 I am pleased to say that the National Team was successful and we achieved the following results:-

- 7.1. Located, arrested and charged Colonel Theoneste Bagosora with Genocide and Crimes Against Humanity;
- 7.2. Located, arrested and charged Colonel Anatole Nsengiyumva Genocide and Crimes Against Humanity;
- 7.3. Gathered evidence against senior members of the Presidential Guard in relation to the killing of key Rwandan citizens, including but not limited to, UNAMIR-protected VIPS Justice Joseph Kavaruganda, (President of the Constitutional Court) and Vice President Lando Ndasingwa (the head of the Parti liberal);
- 7.4. In late January or early February 1997 members of the National Team were approached by three (3) informants (either former or serving member of the R.P.F.) claiming direct involvement in the 1994 fatal rocket attack upon the President's aircraft. Their evidence specifically implicated the direct involvement of President Paul Kagame, members of his administration and military. The informants also advised that the Kagame administration was actively involved in covert operations aimed at murdering high profile expatriate Rwandans – once such murder was the death of Seth Sedashonga in Nairobi.

- 8 With respect to the highly sensitive information from the three informants regarding the plane crash I immediately informed my Commander Jim Lyons. My Director Mr. Alphonse Breaux was out of the country and I arranged for him to be told by telephone.
- 9 The information from the sources was very detailed and seemed very credible. I was very concerned about the sensitivity of the information and arranged for an urgent 'secure' telephone call to Judge Arbour.
- 10 Commander Jim Lyons and I attended at the US Embassy in Kigali and I made a call to Judge Arbour at the US Embassy in the Hague using an encrypted ('secure') STU III telephone. I informed Judge Arbour in considerable detail about the information implicating President Kagame. She was excited by the break through and advised me that the information corroborated some other information she had just learnt from Alison Des Forge the week before. At no time did she suggest that our investigations were improper. On the contrary, I would describe her mood as upbeat and excited that at last we were making significant progress into the events surrounding the plane crash.
- 11 Judge Arbour was concerned about the safety of the informants and my men. I advised her that the informants' identities had been kept secure and if she so directed me I would arrange for my investigators involved in the plane crash to leave Rwanda. She directed that my investigators should leave and I agreed to have them travel from the country on suitable inquiries in Nairobi. As for me I declined to leave Rwanda and advised her that I wanted to stay with my team and assist them complete other important investigations. She consented to this but asked me to keep in touch with her while she considered what to do with this sensitive information.
- 12 During the next week I was directed by senior members of the UN in Kigali that I was required to travel to the ICTY in the Hague in order to meet with Judge Arbour and brief on her on our investigations in the rocket attack upon President Habyarimana's aircraft.
- 13 Some days later I was approached at the ICTR headquarters in Kigali by Mr. Michael Hall, UN Deputy Security (NY). He advised me that I would be flying to Arusha the next day on the ICTR aircraft and from there board an international KLM flight to Amsterdam. Mr. Hall asked me to give him any information that I had on air crash and he would convey it to the airport in a UN diplomatic pouch. I then gave Mr. Hall a single floppy disc containing a memorandum I had prepared for Judge Arbour.
- 14 The next day Mr. Hall conveyed me to the Kigali airport where I checked in for the UN flight. There Mr. Hall and I were told that the flight was overbooked and that I could not go to Arusha. Mr. Hall became agitated and told the UN flight officer that the UN Secretary General Mr. Kofi Annan had personally ordered my attendance in Arusha for an international connection the next day. As a consequence I was given a seat on the UN flight and flew to Arusha.
- 15 The next day I flew to the Hague and over-nighted in a hotel near the ICTY.
- 16 The following morning I met with Mr. Al Breaux and briefed him on the information

- concerning the plane crash. Together we discussed forming a special ICTR investigations unit based outside of Kigali to investigate the plane crash.
- 17 Following breakfast Mr. Breau and I attended at the ICTY and met with Judge Arbour. Also present was Mr. Mohammed Othman, Acting ICTR Prosecutor.
- 18 I briefed Judge Arbour on the informants and their information regarding the involvement of President Kagame and members of the RPF in the downing of President Habyrimana's aircraft.
- 19 I presented her with a copy of a memo I had prepared entitled '*Secret National Team Inquiry – Internal Memorandum*' and this document which is undated is attached to this statement. This document detailed the information provided by the three informants.
- 20 To my surprise Judge Arbour was aggressive and questioned me about the source of the information regarding the informants and the quality and potential reliability of their information. I advised her that the information was given to me by members from my team - the National Team. Those members were Amadou Deme and Peter Dnistriansky. I advised her that I held both investigators in the highest regard. I did say that I was not able to provide any advice as to the reliability of their information as it had not been tested. However, I did suggest that it was very detailed and this in itself meant that it could be subjected to considerable forensic examination.
- 21 Mr. Al Breau also expressed his strong view that both Amadou Deme and Peter Dnistriansky were highly effective and reliable men.
- 22 Judge Arbour then advised me that the National Team investigation was at an end because in her view it was not in our mandate. She suggested that the ICTR's mandate only extended to events within the genocide, which in her view began 'after' the plane crash.
- 23 I was astounded at this statement. I pointed to the temporal mandate of the ICTR being 1 January 1994 until 31 December 1994 and this clearly covered the time of the plane crash. I also addressed the 'terrorism' and 'murder' provisions of the ICTR statute.
- 24 More particularly I also told her that this was the first time she had ever suggested that this was outside the ICTR mandate. I reminded her that I had personally briefed her before about our investigations into the plane crash and that she had never ever expressed a view that this matter should be part of an ICTR inquiry.
- 25 I expressed my strong view to her that these Rwandan informants were courageous and were deserving of our protection. I cautioned her that the UN had a history of abandoning informants in Rwanda and I specifically reminded her of the UN's abandonment of Jean Pierre Turatsinze in 1994.
- 26 Judge then became hostile and asked me if I was challenging her authority to direct to end our investigations into the plane crash.
- 27 I told her that I was not questioning her authority only her judgement. I informed her

- that I was her servant and I would obey her direction.
- 28 Judge Arbour then asked me if the memo that I had prepared for her was the only copy. I told her that it was and she said she was pleased to hear that and placed in her office filing cabinet.
- 29 She then asked me to leave the room.
- 30 I was extremely concerned at Judge Arbour's decision and felt that it was wrong both in law and policy.
- 31 I returned to Kigali and a short time later resigned from the ICTR.
- 32 After my resignation from the ICTR I was offered a position as an investigator with the UN's Office of Internal Oversight Services (OIOS) in New York. Soon after taking up my appointment I was asked to provide OIOS investigators investigating corruption within the ICTR with a statement re my service in Rwanda for the ICTR.
- 33 On 1 August 1997 I prepared an internal memorandum detailing various issues which I felt lay behind some of the difficulties with the ICTR. A copy of this memorandum is attached here.
- 34 The OIOS leadership were not at all interested in the memorandum and they expressed their concern at some of the contents of the document implicating the Secretary General in some of the serious events in Rwanda in 1994.
- 35 I completed six months with OIOS and resigned.
- 36 I feel that unknown persons from within the UN leadership and possibly elsewhere pressured Judge Arbour to end the National Team's investigations into the shooting down of President Habyarimana.
- 37 Following my resignation my National Team was dismembered – the National Team investigations into the plane crash were brought to an end.
- 38 I have suffered at the hands of Judge Arbour and the UN because my career with the ICTR was brought to an untimely and ignominious end. I was proud of serving with the ICTR but I felt that I could not work for Judge Arbour when, in my view, she acted for personal reasons against the interests of the ICTR, the UN and world community which we served.
- 39 I know the facts deposed to herein to be true of my own knowledge, information and belief except where otherwise plainly appears.

SWORN by the above named Deponent)

at Adelaide South Australia on the day of)
November 2006

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Signature of Deponent

Before me:)
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