

**Rwandan Genocide:
Sherpa, CPCR and Ibuka
France launched a complaint
against BNP Paribas on the
basis of complicity in a
genocide, in crimes against
humanity and in war crimes.**

* **Sherpa**

Who are we?

Sherpa, set up in 2001, brings together lawyers and legal experts to protect and defend victims of economic crimes through legal action, advocacy and training.

Why?

Globalization has disrupted countries' economic systems and modes of production. Economic actors are at times becoming more powerful than states and can cause environmental disasters and/or significant violation of workers' and communities' fundamental rights.

Whilst parent companies and companies in command have the upper hand over the strategic decisions and receive the profits from their foreign subsidiaries and subcontractors, legal loopholes still exist. Indeed their liability in case of severe damages caused by their activities remains complicated to demonstrate. Affected populations face many difficulties to access their rights and obtain compensation.

What do we aim for?

We believe that the law is an effective tool to support fair and sustainable development. Through our two programs, Globalisation and Human Rights and Illicit Financial Flows, we aim both to ensure that economic actors throughout the world respect human rights as well as to fight against corruption which stifles societies and harms local populations.

Which impact?

Our legal actions seek to improve legal rights and contribute to creating a legally binding framework which would hold transnational corporations accountable and would ensure that victims can access their rights.

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I. Legal proceedings against BNP Paribas

A. Facts

Whereas the UN Security Council voted the 17th of May 1994 an embargo which forbid the delivery of arms to Rwanda, the National Bank of Paris (BNP in French now BNP Paribas) authorized two money transfers on the 14th and 16th of June 1994 from the BNP account of the National Rwanda Bank (BNR in French) to a Swiss UBP bank account. This account belonged to Mr Willem Tertius Ehlers, former secretary of Pieter Willem Botha, Prime Minister of South Africa from 1978 to 1984, who owned, at the time, an arms' company named Delta Aero.

The first transfer from the BNP account of the BNR to the UBP account of Mr Ehlers, the 14th of June 1994 amounted to 592 784\$. The second transfer, on the 16th of June 1994, amounted to 734 099 \$. The BNP thus accepted to transfer more than 1.3 million dollars to the account of the BNR, first funder of the Rwandan government at the time to Switzerland, although the genocide had already started for months.

Prior to this financial transaction, the Hutu colonel Mr Théoneste Bagosora would have contacted South African authorities who would have told him to contact Mr Ehlers. The two men would have agreed upon the transaction in the Seychelles on the 17th of June in the presence of M. Nzambo HUNDA, a Zairians representative (now Democratic Republic of Congo – DRC), and of Mr Ruhorahoza who would have first introduced himself to the Seychelles under a Rwandese passport and then a second time under a Zaire passport. The weapons were thus officially bought for Zaire but two Rwandan citizens, one of which was the Colonel Bagosora found guilty of genocide afterwards by the International Criminal Tribunal for Rwanda (ICTR), were members of the Seychelles delegation.

The Colonel would have taken the last plane to have left the Seychelles in the direction of Goma. The government of Zaire would have made available two carrier flights to deliver those 80 tons of arms to Goma, a Zaire city bordering Rwanda. The delivery would have taken place on the 16th and 20th of June 1994. Once in Goma, these arms would have crossed the border and been brought to Gisenyi, Rwanda.

During his audition by the ICTR, the Colonel Bagosora testify of the arms' transportation and of their role in the genocide: « *At this time, there was a group of militia who had gathered in the Gisenyi stadium (...) according to the officers who were with me at the camp, [in the stadium] there were weapons that had come from the Seychelles. And the plane had landed in Goma. The military trucks had gone to the Goma airport and they brought back boxes, brought back cases and in the cases there was ammunition, there were weapons and these weapons were distributed to the militia who had stayed in the Gisenyi*

stadium, and then they left to give a hand to Kigali. »¹

B. Legal basis

On the 29th of June 2017, Sherpa, the Collectif des Parties Civiles pour le Rwanda (CPCR) and Ibuka France have launched a complaint against the first French bank BNP Paribas² on the basis of complicity with genocide, war crimes and crimes against humanity.

By allowing the financial transaction requested by the BNR during the Rwandan genocide, when an embargo voted by the UN resolution was in place, BNP Paribas would have participated to financing the purchase of 80 tons of weapons, which served to perpetrate the genocide. It would have thus contributed to the genocide recognized by the International Criminal Court for Rwanda.

We have gathered facts, testimonies and investigation reports such as the UN International Investigation Commission for Rwanda which tend to demonstrate that the Bank could not have doubted the genocidal intentions of the authorities of the country for which it allowed the transaction, particularly in the light of the identity and activities of the recipient of the beneficiary account, Mr Ehlers, and of the events' chronology.

As Jacques Simal, an employee of the Lambert Brussel Bank (BBL in French) posted to the Commercial Rwandan Bank (BCR in French) up until April 1994, testifies the banking sector had, at the time of the facts, a clear understanding of the crimes which were taking place in Rwanda which had justified the freezing of the BCR accounts by the BBL. According to Ezakar BIGILINKA, Director of Foreign Department at the BCR, « *the only institution which agreed to collaborate was the National Bank of Paris [BNP in French] who agreed to transfer the assets [from the BCR to the BNR]* »³.

If such facts were proven, this complaint would highlight the potential responsibility of investors in terms of war crimes and more generally in terms of violations of human rights. Applying the duty of care adopted in France on the 21st of February to banks would prevent the implications of investors in such violations.

¹ <http://francegenocidetutsi.org/BagosoraTranscript28novembre2002.pdf>

² <http://www.investopedia.com/articles/investing/122315/worlds-top-10-banks-jpm-wfc.asp>

³ <http://www.francegenocidetutsi.org/EzakarBigilinkaTPIR17avril2003.pdf>

1994 >

APRIL 7TH

First massacres
Start of the genocide

MAY 17TH

Vote by the UN Council of an embargo which
forbid the delivery of arms to Rwanda

JUNE 14TH

First bank transfer

JUNE 16TH

Second bank transfer and
first arms delivery in Goma

JUNE 17TH

Arms Payment
to the Seychelles

JUNE 18TH

Second arms delivery in Goma in Zaire
than in Gisenyi in Rwanda

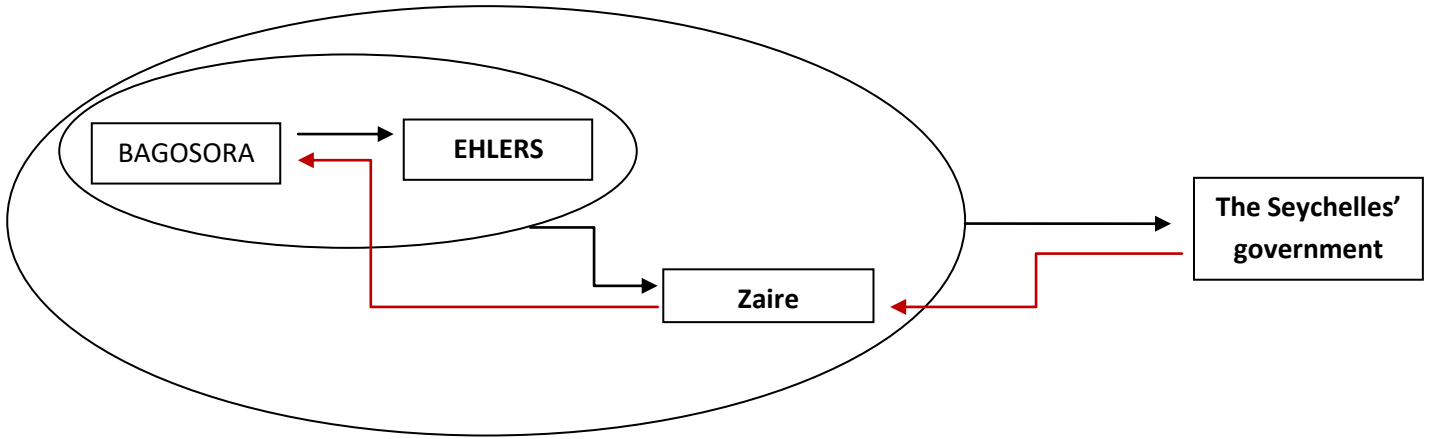
JULY 4TH

Official taking of Kigali
by the RPF
End of the genocide

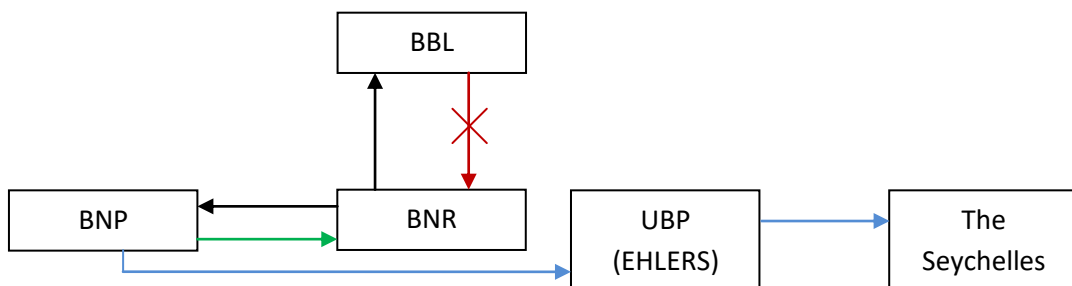
< **1996**

AUGUST 16TH

Lifting of the embargo
on arms delivery to Rwanda



- Getting in contact
- Sale of arms



- Request for a financial transaction
- × Rejected fund transfer
- Accepted fund transfer
- Fund transfer

II. BNP Paribas

Formed in 1822, the National Bank of Paris (BNP in French) expanded through the industrial boom of the XIXth century.

In 2000, BNP acquire Paribas and became the BNP Paribas group. This financial group has more than 192 092 employees in 74 countries⁴, declares a net banking income of 43.4 billion euros and a net profit of 7.7 billion euros in 2016⁵, which places BNP Paribas as the first French Bank.

This bank is leaded by Jean Lemierre, President of the Board of Directors and by Jean-Laurent Bonnafé, Director and CEO.

BNP Paribas claims to « *play an active role in civil society* » as reflected by its numerous ethical commitments in terms of social and environmental responsibility⁶.

Signatory to the Global Compact, the universal framework in terms of social responsibility adopted by the United Nations, and requiring its subsidiaries to embed its ten principles in their CSR declaration⁷, the bank aims to « *fight against social exclusion and the violations of human rights*»⁸. As compared to other companies, the bank has initiated real initiatives on this matter and thus showcases a particularly strong commitment to CSR:

*«In 2012 we wrote our own Declaration in order to showcase our commitment and ensure that human rights are respected within our sphere of influence. »*⁹

In this Declaration, BNP ensure the respect of human right and of « *internationally recognized related norms* ». According to the bank, this responsibility « *which fall to companies implies that they avoid any direct contribution through their activities to situations capable of having a negative effect on human rights* ». Thus « *BNP Paribas acknowledges its own responsibility as a provider of financial services* », and « *thus seeks to ensure it is not complicit, neither directly or indirectly, in the violation of Human Rights*»¹⁰.

In the United States, BNP Paribas has already been condemned to pay a fine of almost 9 billion dollars for having violated a US embargo on Sudan during the Darfur massacres¹¹.

⁴ <https://group.bnpparibas/en/group/bnp-paribas-worldwide>

⁵ <https://group.bnpparibas/en/group>

⁶ <https://group.bnpparibas/en/group/corporate-social-responsibility/civic-responsibility>

⁷ https://group.bnpparibas/uploads/file/suppliers_csr_charte_en_version2016.pdf

⁸ <https://group.bnpparibas/en/group/corporate-social-responsibility/civic-responsibility>

⁹ <https://group.bnpparibas/en/group/corporate-social-responsibility/civic-responsibility>

¹⁰ https://group.bnpparibas/uploads/file/uk_declaration_bnp_sur_droit_de_l_homme.pdf

¹¹ <http://www.reuters.com/article/us-bnp-paribas-settlement-sentencing-idUSKBN0NM41K20150501>

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