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FM HARARE 140910Z JUL 83
TO IMMEDIATE FCO
TELEGRAM NUMBER 621 OF 14 JULY
INFO PRIORITY WASHINGTON

YOUR TELNO 349: AIR FORCE OFFICERS' TRIAL

1. I HAVE HITHERTO DELIBERATELY REFRAINED FROM MAKING CONTACT WITH OGNALL, THE DEFENCE QC. HOWEVER, NOW THAT THE TRIAL IS NEARING ITS END, HE AND I HAVE HAD A QUIET TALK BOTH ABOUT WHAT HAS HAPPENED SO FAR AND ABOUT THE PROSPECTS.
2. OGNALL IS CLEAR THAT HAD THE TRIAL TAKEN PLACE IN ENGLAND, IT WOULD HAVE FOLDED UP LONG BEFORE NOW. APART FROM THE CONFESSIONS OBTAINED FROM THE DEFENDANTS, THE EVIDENCE AGAINST THEM WAS INSUBSTANTIAL. IN AN ENGLISH COURT THERE WOULD HAVE BEEN A 'TRIAL WITHIN A TRIAL' TO DETERMINE THE ADMISSIBILITY OF THE CONFESSIONS AND OF THE STEPS TAKEN TO HAVE THEM 'CONFIRMED'. HE BELIEVED HE HAD SHOWN THAT IN 2 IF NOT 3 CASES THE MEDICAL EVIDENCE WAS, AT THE LEAST, COMPATIBLE WITH TORTURE AND, AT THE MOST, COMPATIBLE WITH NOTHING BUT TORTURE. MOREOVER, THE NORMAL CONVENTION WAS THAT WHERE UNDUE PRESSURE HAD BEEN ALLEGED IN THE OBTAINING OF CONFESSIONS, A COURT WOULD, IN THE VIEW OF THE OBVIOUS DIFFICULTY IN OBTAINING EVIDENCE OF THE ACTUAL APPLICATION OF THE PRESSURE, LEAN IN FAVOUR OF THE DEFENDANTS. ADDITIONALLY, OGNALL BELIEVED THAT HE HAD SUCCEEDED IN SHOWING THAT THE 'CONFIRMATIONS' OF THE CONFESSIONS BY THE MAGISTRATES CONCERNED HAD BEEN IMPROPERLY CARRIED OUT.
3. HOWEVER, THE JUDGE HAD DEFERRED RULINGS ON BOTH THESE QUESTIONS. THIS HAD LED HIM INTO THE ILLOGICAL SITUATION IN WHICH HE WAS HEARING REBUTTAL EVIDENCE WHICH, WERE THE CONFIRMATIONS TO BE ADJUDGED IMPROPER, IT WOULD NOT BE RIGHT FOR HIM TO HEAR. MOREOVER, THE ONUS HAD BEEN SHIFTED TO THE DEFENCE TO TRY TO DISPROVE THE CONTENT OF THE CONFESSIONS, RATHER THAN ON THE PROSECUTION TO TRY TO PROVE IT.
4. OGNALL EMPHASISED THAT THIS WAS THE FIRST TIME HE HAD PLEADED BEFORE AN AFRICAN COURT AND SO HE HAD PARTICULAR DIFFICULTY IN JUDGING THE OUTCOME. HIS BEST JUDGMENT WAS THAT THERE WAS A BETTER THAN EVENS CHANCE THAT THE DEFENDANTS WOULD BE ACQUITTED. WHEN I PRESSED HIM ON THIS, HOWEVER, HE CONCEDED THAT IT WAS PERHAPS MORE PROBABLE THAT THE 4 SENIOR OFFICERS WOULD BE ACQUITTED BUT THAT THE 2 JUNIOR, WEIR AND LLOYD, MIGHT BE FOUND GUILTY (ALTHOUGH IN LOGIC IT IS HARD TO SEE HOW THE PROSECUTION'S CASE CAN DO OTHER THAN STAND OR FALL AS A PIECE). OGNALL AGREED THAT THERE WAS LITTLE DOUBT THAT THERE HAD TO HAVE BEEN SOME COLLUSION WITHIN THORNHILL FOR THE ATTACK TO HAVE BEEN SUCCESSFUL, AND WHO MORE

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LIKELY THAN A FORMER SAS OFFICER AND A SECURITY OFFICER AT THE AIRFIELD? MOREOVER, NEITHER WEIR NOR LLOYD HAD COME OVER WELL IN COURT; LLOYD IN PARTICULAR WAS AN UNRELIABLE CHARACTER WITH DEPRESSIVE TENDENCIES. OGNALL CAME VERY NEAR TO SAYING THAT HE BELIEVED THAT THESE 2 MEN WERE GUILTY AS CHARGED. MOREOVER, ALTHOUGH HE KNEW THAT THE JUDGE, DUMBUTSHENA, HAD A GOOD REPUTATION, AND HE HAD NO COMPLAINTS ABOUT THE MANNER IN WHICH THE PROCEEDINGS HAD BEEN CONDUCTED, HE THOUGHT THAT DUMBUTSHENA MIGHT WELL CONCLUDE THAT THE MOST ACCEPTABLE OUTCOME, SAVING BOTH HIS FACE AND THAT OF THE GOVERNMENT, MIGHT BE TO ACQUIT SOME OF THE OFFICERS BUT FIND OTHERS GUILTY.

5. OGNALL WENT ON TO SAY THAT THE ASPECT OF THIS WHICH WORRIED HIM MOST WAS THAT THE CRIME ALLEGED CARRIED THE DEATH PENALTY. PERSONALLY, HE WAS AN ABOLITIONIST AND HE HAD COUNTED HIMSELF FORTUNATE IN THAT HE HAD NEVER HAD TO DEFEND SOMEONE WHO WAS ON TRIAL FOR HIS LIFE. MOREOVER, ALTHOUGH HE NORMALLY MADE IT A RULE NEVER TO BECOME EMOTIONALLY INVOLVED IN A CASE, IN THIS INSTANCE HE HAD NOT FOUND IT POSSIBLE TO REMAIN UNINVOLVED. HE WAS THEREFORE APPALLED AT THE PROSPECT THAT AT THE END OF THE DAY, HE MIGHT HAVE TO SAY FAREWELL TO MEN WHOM HE HAD DEFENDED AND WHO WERE UNDER SENTENCE OF DEATH. THE OFFICERS WERE IN GOOD SPIRITS AND WERE CONFIDENTLY EXPECTING ACQUITTAL; ANYTHING ELSE WOULD THEREFORE COME AS A PARTICULARLY VICIOUS SHOCK.

6. COMMENT. OGNALL MAY PERHAPS BE TAKING THIS POSSIBILITY TOO SERIOUSLY. THE DEATH PENALTY IS NOT MANDATORY AND, AS HE HIMSELF WILL ARGUE BEFORE THE COURT, NOBODY WAS KILLED AT THORNHILL AND THE PROSECUTION HAD GONE OUT OF ITS WAY TO EMPHASISE THAT IT MIGHT HAVE PROSECUTED THE OFFICERS FOR TREASON BUT HAD DELIBERATELY CHOSEN A LESS SERIOUS CHARGE. ON THE OTHER HAND, THE ZIMBABWE GOVERNMENT'S RECENT ACTION IN CONFIRMING THE DEATH SENTENCE IN THE CASE OF 2 FRENCH MERCENARIES MAY BE RELEVANT. IT IS TRUE THAT THEY HAD BEEN CONVICTED OF A PARTICULARLY BRUTAL AND PREMEDITATED MURDER, BUT THE SENTENCES WERE CONFIRMED IN SPITE OF EXTREMELY VIGOROUS PROTESTS ON THE PART OF THE FRENCH GOVERNMENT. THERE IS GOOD REASON TO BELIEVE, INDEED, THAT THE FRENCH EFFORTS ONLY HAD THE EFFECT OF STRENGTHENING THE ZIMBABWE GOVERNMENT IN THEIR DETERMINATION THAT THE DEATH PENALTY SHOULD BE CARRIED OUT. IN CONSIDERING A SITUATION, THEREFORE, IN WHICH SOME OF THE ACCUSED MAY BE ACQUITTED AND OTHER CONVICTED, WE MAY JUST CONCEIVABLY HAVE TO TAKE INTO OUR CALCULATIONS THE POSSIBILITY THAT WHAT MAY BE AT STAKE MAY NOT JUST BE THE LIBERTY OF THOSE ACQUITTED, BUT ALSO THE LIVES OF THOSE FOUND GUILTY.

7. OGNALL HAD LITTLE TO CONTRIBUTE ON THE POSSIBILITY OF REDETENTION, EXCEPT TO SAY THAT ALTHOUGH HE HAD BEEN ARGUING IN COURT THAT THE CONFESSIONS SHOULD NOT ONLY BE RULED INADMISSIBLE BUT ALSO BE JUDGED TO BE UNTRUE, HE NEVERTHELESS SUSPECTED THAT THE JUDGE WOULD

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TAKE THE EASIER COURSE OF PRONOUNCING ONLY ON THEIR INADMISSIBILITY. THE GOVERNMENT MIGHT THEREFORE BE ABLE TO TAKE THE LINE THAT WHATEVER THE MEANS USED TO EXTRACT THE CONFESSIONS, THE COURT HAD NEVER DETERMINED THAT THEY WERE ACTUALLY FALSE.

8. OGALL SAID THAT HE WAS BOOKED TO RETURN TO LONDON ON 21 JULY. HE WOULD BE AVAILABLE THERE UNTIL 3 AUGUST AND WOULD BE GLAD TO CALL AND DISCUSS THE TRIAL WITH THE DEPARTMENT IF YOU FELT THAT THIS WOULD BE HELPFUL. HE WAS ALMOST CERTAIN THAT JUDGMENT WOULD BE DELIVERED ON 29 AUGUST.

9. WASHINGTON TELELETTER OF 11 JULY. ACCORDING TO THE US EMBASSY HERE, THE FUNDS FOR THE DEFENCE HAVE, IN PART AT LEAST, BEEN CONTRIBUTED BY A GROUP OF AMERICANS WITH INFLUENCE IN CONGRESS.

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