

ICTR-2001-73-T
4-9-2004
(6851 - 6847)

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

Before Trial Chamber III

Before: Hon Judge Inés Mónica de Roca, Presiding
Hon Judge Khalida Rachid Khan
Hon Judge Lee Gacuiga Muthoga

Registrar: Mr. Adama Dieng

Date filed: 07 September 2007

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2007 SEP - 11 P 12: 33

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The PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No.: ICTR-2001-73-T

**PROSECUTOR'S NOTICE OF OBJECTION TO QUALIFICATIONS AND
STATEMENT OF DR BERNARD LUGAN
(Rules 94(B) *bis* of the Rules of Procedure and Evidence)**

For the Prosecutor:

Mr. Wallace Kapaya – Senior Trial Attorney
Mr. Sylver Ntukamazina – Trial Attorney
Mr. Brian Wallace – Associate Appeals Counsel
Mr. Iskandar Ismail – Assistant Trial Attorney
Ms. Jane Mukangira - Case Manager

For the Defence:

Mr John Philpot
Mr. Peter Zaduk

PROSECUTOR'S NOTICE OF OBJECTION TO QUALIFICATIONS AND STATEMENT OF DR BERNARD LUGAN.

I. Introduction

1. On 20 August 2007, the Defence filed a motion to vary the witness list, in which he stated that he abandons 15 witnesses, and applied to add 4 more witnesses, including Dr Bernard Lugan as expert witness.
2. On 24 August 2007, the Prosecutor filed a response to the defense motion to vary the witness list and objected to the inclusion of the four proposed witnesses including the expert witness.
3. On 26 August 2007, the Defence filed the curriculum vitae and the statement of Dr Bernard Lugan¹.
4. The Prosecutor files today the notice of objection to qualifications and statement of Dr Bernard Lugan.

II. The Law

5. Rule 94 *bis* (B) and (C) of the Rules of Procedure and Evidence provides as follows:
 - “(B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:
 - (i) It accepts or does not accept the witness's qualification as an expert;
 - (ii) It accepts the expert witness statement; or
 - (iii) It wishes to cross-examine the expert witness.
 - (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.”
6. The Rules of Procedure and Evidence of the Tribunal are silent on the role and utility of an expert witness. However, the Prosecutor states that the role of an expert is to provide opinions and inferences to assist the finders of fact in understanding a fact at issue. Before being permitted to submit opinion testimony, the Chamber must find that the expert is competent in his proposed field or field of expertise. “The expert must possess some special knowledge acquired through education, experience, or training in a field that may assist the

¹ *Rapport de Bernard Lugan, Août 2007.*

fact finders to understand the evidence or to assess a fact at issue².” The standard for admission of expert testimony is whether the specialized knowledge possessed by the expert, applied to the evidence which is the foundation of the opinion, may assist the Chamber in understanding the evidence³.” This is not the case for the expert witness presented by the Defense.

7. The Prosecutor does not accept the qualifications and statements of Dr. Bernard Lugan, and request the Trial Chamber to reject the said qualifications and statements for the reasons underlined below.

III. Prosecutor's Argument

8. The Prosecutor does not accept Dr Bernard Lugan's qualifications as an expert and does not accept his statement for the following reasons:

- (i) Dr Bernard Lugan claims to be expert of the Rwandan situation in 1994. However, according to his CV, the last time he was in Rwanda was in 1983. He has therefore been absent from the ground for the last 24 years. One cannot understand how he has an understanding of the 1994 situation in Rwanda.
- (ii) Dr Bernard Lugan's CV shows a temporary limitation of his expertise as it relates to an expertise in political and administrative history of Rwanda from 1972 to 1983. Also his expertise as an African historian does not give him any expertise in what constitutes planning and conspiracy to commit genocide. The expertise he is offering in the present case lacks any foundation.
- (iii) Dr Bernard Lugan obtained all his degrees and doctorates in 1983, which relate to pre-colonial or ancient Rwanda, and to subjects that predated 1970 in Rwanda. None of those degrees are in politics or political sciences, or directly touch the subject of the history of Rwanda after 1993. He does not have a degree in law although he claims that his current report has a legal perspective⁴. It is the Prosecutor's submissions that his knowledge does not rise to the level of expert in genocide issues or expert on issues of civil self-defense.
- (iv) Dr Bernard Lugan's methodology of work is unclear, his report does not show whether or not he carried any research work in Rwanda at any time from 1983 up to now.

² Oral decision on qualification of Barrie Collins as an expert witness”, in the matter the *Prosecutor v. Casimir Bizimungu et al*, Case no ICTR-99-50-T (Trial Chamber II). Art 1 of the “Guidelines on the Remuneration of Expert Witnesses appearing before the International Criminal Tribunal for Rwanda” defines the expert witness in the same way.

³ “Decision on Motion for Exclusion of Expert Witness Statement of Filip Reyntjens,” in the matter the *Prosecutor v. Theoneste Bagosora, et al*, Case No ICTR-98-41-T.

⁴ *Rapport de Bernard Lugan, Août 2007, p.2*

- (v) Dr Bernard Lugan's purported expert report does not rely to any primary sources. It is a compilation of other's reports, statements or testimonies already before the Trial Chamber⁵, which compilation is not helpful in these proceedings. The report contains also a number of affirmations advanced without showing the sources of information or the criteria for determining the reliability of the information.
- (vi) All the 25 articles listed in Dr Bernard Lugan's CV are related to the History of Rwanda before 1990 and would not therefore help the Trial Chamber understand the events of 1994 and what transpired slightly before these events
- (vii) Among the 22 books mentioned in Dr Bernard Lugan's CV, only 4 books relate to Rwanda including three books published respectively in 2004, 2005 and 2007. The Prosecutor has not yet got a copy of the said books in order to check what kind of research work or methodology used to get independent, impartial and accurate information as the author has been absent from Rwanda for the last 24 years.
- (viii) The Defence offered Dr Bernard Lugan as an expert amongst others on informal power network known as Akazu and the theory of the planned genocide, while at the same time, Dr Lugan recognizes that he did not do any research work allowing him to have an idea of the power and the influence of the entourage of the President Habyarimana and in particular the power and influence of the family in law of the President during the Second Republic⁶. The Prosecutor submits that Dr Bernard Lugan does not possess sufficient knowledge, experience and expertise to be qualified to testify as an expert on the Akazu and on the genocide issue.
- (ix) Dr Bernard Lugan's purported expert report on planning of genocide and on the Akazu is not helpful to the Trial Chamber because it is a negation of the obvious. He states that the Akazu is a product of the imagination. But, the Trial Chamber has heard evidence from both the Prosecution and Defence witnesses that the term Akazu describes an informal system of power that existed long before Mr. Mfizi or Dr. Gasana labeled it as such.
- (x) The Prosecutor further submits that the probative value of expected testimony of Dr Bernard Lugan is minimal and his evidence is factually repetitive. Over 10 Defence Witnesses have discussed the Akazu which is one of the subject matters to be testified by this witness.

IV. Conclusion

9. It is the Prosecutor's submissions that for the reasons underlined above, Dr Bernard Lugan is not qualified as expert witness under the test established by the jurisprudence,

⁵ *Rapport de Bernard Lugan, Août 2007, p23 and 24 about the testimony of Jean Marie Nkezabera and Anastase Munyandekwe.*

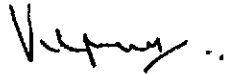
⁶ *Rapport de Bernard Lugan, Août 2007, p.4, foot notes 2.*

and that his expertise is not of the nature to assist the fact finders to understand the evidence and to assess a fact at issue.

V. Relief Sought

10. **WHEREFORE** the Prosecutor requests the Trial Chamber to find that Dr Bernard Lugan does not qualify as expert and to reject his purported expert witness statement.

Filed at Arusha this 7th day of September 2007



Wallace Kapaya
Senior Trial Attorney.



Sylvester Ntukamazina
Trial Attorney



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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Case Name:	The Prosecutor vs. Protais Zigiranyirazo		Case Number: ICTR-2001-73-T	
Dates:	Transmitted: 07/09/2007		Document's date: 07/09/2007	
No. of Pages:	5	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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Reference material is provided in annex to facilitate translation.

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