



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR:
ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 25 April 2006

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

**ORAL RULING ON THE QUALIFICATION OF BARRIE COLLINS TO
TESTIFY AS AN EXPERT WITNESS**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyamlal Rajapaksa
Mr. Olivier De Schutter
Mr. William Mubiru

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**
Mr. Pierre Gaudreau and Mr. Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulain for **Prosper Mugiraneza**

English Transcript, 25 April 2006, pages 1-4, from page 1, line 14 onwards:

MADAM PRESIDENT:

Thank you. We are a little bit late. In fact, we needed more time to work on the decision.

The oral decision on qualification of Barrie Collins as an expert witness is as follows: On 14th March 2006, the Prosecution filed a motion for the exclusion of proposed expert reports of Barrie Collins. In that motion the Prosecution sought an order from the Chamber that the proposed expert report of Barrie Collins be ruled inadmissible on the grounds that, one, Barrie Collins does not qualify as an expert whose opinion ought to be received by the Chamber; two, the expert report proffers evidence which is irrelevant to the matters to be determined by the Trial Chamber; and, three, the field of expertise of Barrie Collins has not been disclosed.

On 17th March 2006, the Prosecution filed a motion to strike out the testimony of Barrie Collins as incomplete or, alternatively, to order the supply of further and better particulars. In that motion the Prosecution complained that the curriculum vitae of Barrie Collins was insufficient to inform it as to his field of expertise.

On 20th March 2006, the Defence for Justin Mugenzi replied to the Prosecution's motion of 17th March 2006, providing further and better particulars.

On 21st March 2006, the Prosecution filed a response to further and better particulars filed by Barrie Collins dated 20th March. In that response the Prosecutor complained that a number of questions raised in the Prosecutor's motion of 20 -- 14th March had been left unanswered.

On 24th April 2006, Mr. Barrie Collins appeared before this Chamber for the purposes of testifying in *voir dire* proceedings in order that the Chamber could make a determination as to his expertise. During those proceedings, Mr. Gumpert led Mr. Collins in chief on his qualifications and expertise, following which the Prosecution cross-examined him. Following

a brief re-examination of the witness by Mr. Gumpert, the parties made oral submissions on the question for determination by the Chamber, whether Mr. Collins qualifies as an expert in the area of expertise for which he's offered.

Mr. Gumpert relied upon a decision of Trial Chamber I dated 4 September 2002 in the case of Bagosora, et al. In that decision the Chamber had relied upon an oral decision of the Trial Chamber in the case of *Nahimana, et al*, dated 20th May 2002, in which the Chamber said that, before being permitted to submit opinion testimony, the Chamber must find that an expert is competent in his or her proposed field or fields of expertise. The expert must possess some specialised knowledge acquired through education, experience, or training in the field that may assist the factfinders to understand the evidence or to assess a fact at issue.

The Bagosora Chamber went on to say that, according to submissions of the evidence, there is no requirement that the opinion of the expert be essentially -- essential or strictly necessary or that areas of our knowledge lie beyond the understanding of the trier's effect as a predicate for admissibility. All that is required is that your expert opinion be helpful to assist the Chamber in understanding the evidence or to assess facts at issue in this case.

With respect to Mr. Collins's qualification as an expert, Mr. Gumpert submitted that there could be no doubt that he had specialised knowledge in the particular field of Rwandan history and politics at the time relevant to this trial. He argued that this was clear from the regularity with which he had published and spoken at the respectable academic seminars, organised by respectable universities, and is teaching at one of the preeminent universities of the world.

With respect to how the specialised knowledge to be offered by the -- by Collins would be of assistance to this Chamber, Mr. Gumpert submitted that -- that his expert testimony would be relevant to three matters for consideration by this Chamber: Firstly, with respect to count nine of the indictment, the witness's testimony would be relevant with respect to the question of whether or not the conflict in Rwanda in 1994 was of a non-international nature.

Secondly, with respect to the count of conspiracy in the indictment and the allegation that the Accused was involved in the planning of a genocide in the lead-up to the events in Rwanda of 1994, the witness's testimony would be relevant to the question of whether or not the Accused in this case had control over the events taking place in Rwanda in the lead-up to 1994.

Thirdly, the witness would respond to the testimony of Professor Mbonyinkebe, whose report includes an analysis on Mr. Collins's work.

The Prosecution responded that Mr. Collins does not meet the qualifications of an expert witness on the basis of either his academic qualifications or his experience. It relied upon the previous decision of this Chamber of 24th March 2005 regarding Mr. Rubaduka, whose status as an expert witness in this case was rejected. Having heard the testimony of Mr. Collins and submissions of the parties on the question of qualification, the Chamber retired to deliberate and decided on the -- on the said (*unintelligible*) issue.

The Rules of Procedure and Evidence of the Tribunal are silent on the role and utility of an expert witness. However, it is widely accepted that the role of an expert is to provide opinions and inferences to assist the finder -- 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 fields of expertise. The expert must possess some specialised knowledge acquired through education, experience, or training in the field that may assist the factfinders to understand the evidence or to assess a fact at issue.

The Chamber has carefully examined the material put forward as evidencing Mr. Collins's expertise, which consists of a number of publications, seminar papers, and book reviews and a brief teaching experience at SOAS as a part-time lecturer and tutor, during which time he taught a course in international politics of Africa.

Mr. Collins has also researched on the politics of Rwanda, although he does not show evidence of having undertaken field research on the subject in Rwanda. He did not, as a part of his research, visit Rwanda, and his contact with the Rwandans is limited to his interaction with Rwandans living in Europe and America.

The Chamber is not satisfied on the basis of curriculum vitae of Mr. Collins and his testimony before this Chamber that Mr. Collins qualifies as an expert witness under the test established by the jurisprudence. Whilst the Chamber considers the evidence before it discloses that Mr. Collins is taking steps towards attaining a certain level of expertise in the area for which he's offered, the Chamber is of the view that he has not yet attained that status.

In that respect, the Chamber notes -- notes the fact that Mr. Collins's first professional qualifications and endeavours were in the field of optometry, a profession in relation to which Mr. Collins still devotes the majority of his working week. Although Mr. Collins's interests and intellectual pursuits in the field of African politics and international relations are apparent to the Chamber, his competing professional endeavours in the field of optometry limit the extent to which he can devote his time to the field in relation to which he is offered as an expert to this Chamber.

Furthermore, Mr. Collins's educational history discloses that he was admitted to the rank of master of arts in international relations in late 1998 and is still in the process of acquiring Ph.D. in the field in which he's offered as an expert.

With respect to Mr. Collins's publications, the Chamber is of the view that the evidence discloses insufficient publications in international acclaimed journals, as well as insufficient critical review by his peers. The Chamber notes in this respect that Mr. Collins's publication, *Obedience in Rwanda: A Critical Question*, enjoyed limited circulation and peer review.

As a final matter, whilst Chamber accepts the arguments of the Defence in relation to the

basis upon which Mr. Collins's expertise was offered, namely, that there would be a nexus between the subject matter upon which Mr. Collins was to testify and specific allegations in the indictment, the Chamber is of the view that the question of relevancy of expert evidence is to be determined only if the witness is established to be an expert in the field for which he or she is offered.

Since the Chamber has determined that the -- that Mr. Collins has not attained the status necessary for him to qualify as an expert, the arguments concerning the relevancy of his testimony do not fall for consideration. Accordingly, the Chamber finds that Mr. Collins is not qualified to testify as an expert witness before this Chamber.

Finally, and for the sake of completeness, the Chamber notes that this oral decision, in addition to disposing with the issue of Mr. Collins's qualification as an expert witness, disposes with (*sic*) issues raised in the findings outlined in the introduction to this decision, namely, Prosecution motions of 14th and 17th March 2006, the Defence response of 20th March 2006, and Prosecutor's reply of 21st March 2006.

Thank you.