



ICTR-98-44D-T  
30-03-2011  
(6281-6275)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

6281  
AM

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Solomy Balungi Bossa, Presiding  
Bakhtiyar Tuzmukhamedov  
Mparany Rajohnson

**Registrar:** Adama Dieng

**Date:** 30 March 2011

JUDICIAL AUTHORITY  
2011 MAR 30 11:28  
S. Dieng

**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**

*Case No. ICTR-98-44D-T*

**DECISION ON PROSECUTION'S RULE 94BIS (B) NOTICE REJECTING DR.  
SUSAN THOMSON'S QUALIFICATIONS AS AN EXPERT**  
*Rule 94 bis (B) of the Rules of Procedure and Evidence*

**Office of the Prosecution**  
Paul Ng'arua  
Memory Maposa  
Simba Mawere  
Diana Karanja  
Marie Ka

**Defence Counsel for Callixte Nzabonimana**  
Vincent Courcelle-Labrousse  
Philippe Larochelle

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## INTRODUCTION

1. The Defence filed its witness list on 20 April 2010 indicating that Dr. Susan Thomson was scheduled to testify as an Expert Witness.<sup>1</sup> The Defence disclosed Dr. Thomson's report and *curriculum vitae* on 28 February 2011, and announced its intention to call her to testify during the week of 21 to 25 March 2011.<sup>2</sup>
2. On 14 March 2011, the Prosecution filed a Notice rejecting Dr. Thomson's report and her qualification as an Expert.<sup>3</sup>

## SUBMISSIONS

### *Introduction- Dr. Thomson's purported area of expertise*

3. In her report, Dr. Thomson indicates that the Defence expressed concerns to her "that certain witnesses testified to the effect that they were coerced or felt that they were coerced to fabricate evidence against M. Nzabonimana".<sup>4</sup> Her report therefore describes state-society relations in Rwanda and the context in which these interactions may "generate distorted evidence concerning the 1994 Genocide." Dr. Thomson's report draws on her expertise in political science on the topic of state-society relations.<sup>5</sup>

### *Prosecution Notice*

4. The Prosecution requests that the Trial Chamber reject Dr. Thomson's report and qualification as an expert, submitting that the Trial Chamber does not need an expert to testify that political factors may impact on a witness' credibility.<sup>6</sup>
5. The Prosecution does not dispute that Dr. Thomson has substantial academic qualifications.<sup>7</sup> However, the Prosecution submits that Dr. Thomson does not have sufficient relevant work experience, nor can she be qualified, or be characterised, as an authority in the

<sup>1</sup> Appearance Order of Defence Witnesses, 20 April 2010.

<sup>2</sup> Defence's Disclosure of Expert Dr. Susan Thomson's Report (Rule 94 Bis of the Rules of Procedure and Evidence). ("Thomson's report"), 28 February 2011; New List of Witnesses and Order of their Appearance of 23 January 2011.

<sup>3</sup> *Prosecutor v Nzabonimana*, ICTR-98-44D-T, Prosecution's Rule 94Bis (B) Notice Rejecting the Expertise Qualifications and Report of Dr. Susan Thomson, 14 March 2011 ("Notice").

<sup>4</sup> Thomson Report, Annex C, Registry number 5758.

<sup>5</sup> Thomson Report, Annex C, Registry number 5758.

<sup>6</sup> Notice, paras. 4-7.

<sup>7</sup> Notice, para. 25.

field of state-society relations in Africa, or power relations in Rwanda.<sup>8</sup> Moreover, Dr. Thomson has no academic title "to boost her credibility", and she has never been determined to qualify as an expert before this Tribunal or any other similar court.<sup>9</sup>

6. The Prosecution also submits that Dr. Thomson's theory is overly general and does not constitute new evidence. Moreover, the Defence has had the opportunity to address allegations regarding incentives to witnesses to fabricate evidence during the cross-examination of Prosecution witnesses.<sup>10</sup>

7. The Prosecution proposes that a *voir dire* be held to address Dr. Thomson's qualifications as an expert in the field of political science.<sup>11</sup>

## DELIBERATIONS

### *Applicable Law*

8. Rule 94 *bis* of the Rules governs the testimony of expert witnesses, and the disclosure of their reports:

#### Testimony of Expert Witness

"A) Notwithstanding the provisions of Rule 66 (A) (ii), Rule 73 bis (B) (iv) (b) and Rule 73 ter (B) (iii) (b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which he expert is expected to testify.

(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."

9. Rule 94 *bis* (B) of the Rules requires that the opposing party react to the expert statement or report tendered by the other party.<sup>12</sup> It shall indicate whether it accepts the

<sup>8</sup> Notice, paras 26-29.

<sup>9</sup> Notice, para. 12.

<sup>10</sup> Notice, paras. 18-21.

<sup>11</sup> Notice, Disposition (c).

expert statement or report, whether it wishes to cross-examine the expert witness and whether it challenges the qualifications of the expert witness or the relevance of all or parts of the statement or report.<sup>13</sup>

10. The Appeals Chamber of the ICTR has defined an expert as a person who "offers a view based on his or her specialized knowledge regarding a technical, scientific, or otherwise discrete set of ideas or concepts that is expected to lie outside the lay person's ken".<sup>14</sup> "Moreover, in contributing special knowledge to assist the Chamber, the expert must do so with the utmost neutrality and with scientific objectivity...[A] witness's qualification as an expert turns on the contribution he or she can make to a Trial Chamber's analysis of a particular case."<sup>15</sup>

11. For the purposes of determining whether a witness meets this requirement, the witness' former and present positions and professional experience are important. The qualifications and expertise of a witness can be determined by utilising the witness' *curriculum vitae*, but also with the help of scholarly articles, other publications, or any other information.<sup>16</sup>

12. After having established that the witness qualifies as an expert, the Chamber may review the reliability of the report in light of the expert's field of expertise.<sup>17</sup> The purpose of expert testimony is to supply specialised knowledge that might assist the trier of fact in understanding the evidence before it.<sup>18</sup> The Expert Witness is meant to be independent and must not offer any personal opinion in relation to the criminal liability of the accused.<sup>19</sup> Ultimately, "the determination of whether an expert witness is qualified is subject to the Trial Chamber's discretion".<sup>20</sup>

<sup>12</sup> *Blagojević and Jokić*, Case No. IT-02-60-T Decision on Prosecution's Motion for Admission of Expert Statements, 7 November 2003, para. 23, Quoting *Galić* Case No. IT-98-29-T Decision on Interlocutory Appeal Concerning rule 92 bis (C), 7 June 2002 para. 39.

<sup>13</sup> *Dragomir Milošević* Case No. IT-98-29/1-T Decision on Admission of Expert Report of Robert Donia, 15 February 2007 para 5.

<sup>14</sup> *Nahimana et al.* Appeal Judgement paras. 196-199. Quoting *Semanza* Appeal Judgement para. 303.

<sup>15</sup> *Gacumbitsi* Appeal Judgement Case No. ICTR-2001-64-A, para. 32.

<sup>16</sup> *Dragomir Milošević* Case No. IT-98-29/1-T Decision on Admission of Expert Report of Robert Donia, 15 February 2007 para. 7.

<sup>17</sup> *Dragomir Milošević* Case No. IT-98-29/1-T Decision on Admission of Expert Report of Robert Donia, 15 February 2007 para. 8.

<sup>18</sup> *Semanza* Appeal Judgement, para. 303; see also *Bagosora et al* Case No. ICTR-98-41-T Decision on Motion for Exclusion of Expert Witness Statement of Filip Reyntjens, 28 September 2004 para. 8.

<sup>19</sup> *Hadžihasanović and Kubura*, Case No. IT-01-47-T Decision on report of Prosecution Expert Klaus Reinhardt, 11 February 2004 page 3.

<sup>20</sup> *Gacumbitsi* Appeal Judgement, para. 31.

*Ms. Thomson's academic and professional qualifications*

13. An expert witness gives testimony on a specialised field of knowledge arising from his/her formal training, education or from her experience.<sup>21</sup> The Trial Chamber observes that Dr. Thomson received her PhD in Political Science in May 2009, and that her dissertation was entitled: "Resisting Reconciliation: State Power and Everyday Life in Post-Genocide Rwanda". In addition to speaking on the subject at numerous conferences, she has 10 years of teaching experience which includes conducting undergraduate seminars on African Politics at various universities including Hampshire College and the National University of Rwanda in Butare. Finally, she has published widely on issues related to Rwanda in the post-genocide period.<sup>22</sup> The Trial Chamber rejects the Prosecution's argument that she cannot be an expert because she taught undergraduate rather than graduate students. The Chamber also notes that Dr. Thomson lived in Rwanda for more than 3 years post-genocide, working for the United Nations, as a human rights officer, and the United States Agency for International Development (USAID).<sup>23</sup>

14. In response to the Prosecution submission that the ICTR has never found Dr. Thomson to qualify as an expert witness in the past, the Chamber notes that there is no evidence that a party has ever sought to have her qualified as an expert before the Tribunal prior to the instant proceedings.

*Objectivity and relevance and of Dr. Thomson's report and proposed testimony*

15. Nevertheless, the Trial Chamber has a number of concerns regarding Dr. Thomson's proposed evidence. First, it is concerned by discrepancies in her report that might cast doubt on her "neutrality" and "scientific objectivity."<sup>24</sup> For example, on one page of her report she affirms that "I have no personal knowledge of what M. Nzabonimana did during the genocide and my report in no way constitutes an analysis of the case against him,"<sup>25</sup> while on the next she states that "[m]y opinion is that it is possible that false allegations have been made against M. Nzabonimana at this trial."<sup>26</sup>

<sup>21</sup> *Pauline Nyiramasuhuko* Case No. ICTR-97-21-T, joint case No. ICTR-98-42-T, Oral Decision on Objection Raised by Defence Counsel on the Qualification of Expert Witness Filip Reyntjens, 19 September 2007.

<sup>22</sup> Thomson Report, Annex C, Witness' *curriculum vitae*.

<sup>23</sup> Thomson Report, Annex C, Witness' *curriculum vitae*.

<sup>24</sup> *Gacumbitsi* Appeal Judgement Case No. ICTR-2001-64-A, para. 32.

<sup>25</sup> Thomson Report, Annex C, Registry number 5758.

<sup>26</sup> Thomson Report, Annex C, Registry number 5757.

16. Of greater concern is the fact that Dr. Thomson's report addresses general historical trends that have no immediate bearing on the individual allegations at issue in this case. The Chamber recalls that it is Callixte Nzabonimana who is on trial in the instant case, not the RPF or the Government of Rwanda. Generally, the report includes a considerable quantity of opinion evidence that does not constitute specialized knowledge that may assist the Trial Chamber in understanding the evidence before it. The Chamber notes, for example, that while Annex B to Dr. Thomson's report is a long list of sources that the author relied on in drafting her report, the report itself does not include a single footnote.

17. Dr. Thomson's report concludes that "it is likely and plausible that false allegations have been made again [sic] Minister Nzabobimana [sic]."<sup>27</sup> The Chamber does not entirely dismiss the possibility that witnesses may have made false allegations against the Accused, but the Chamber considers that one of the purposes of cross-examination is to examine this possibility with respect to individual Prosecution witnesses. Indeed, the record shows that the Defence raised the possibility of inducements to testify for the Prosecution in its cross-examinations of Witnesses CNAА and CNAC, for example.<sup>28</sup> In addition, a number of Defence witnesses testified about the difficulties associated with their testimony for the Defence. Moreover, the Chamber has asked the Registrar to appoint *amicus curiae* in response to allegations of witness intimidation, and investigations are ongoing.<sup>29</sup> More general speculation that witnesses before the Tribunal have been interfered with does not assist the Chamber in determining whether the testimony of any individual witness who testified in this case lacks credibility.

18. Thus, the Trial Chamber is of the opinion that Dr. Thomson does not qualify as an expert for the purposes of this particular case.<sup>30</sup> Having made this determination, the Chamber considers that there is no need to hold a *voir dire* to further assess Dr. Thomson's qualifications. The aforesaid should not be considered as a reservation about her academic knowledge and expertise in the field of State-society relations in Rwanda, or as an impediment to her being called as a factual witness during this Trial.

<sup>27</sup> Thomson Report, para. 45.

<sup>28</sup> Witness CNAА, T. 15 December 2009, pp. 33-36; Witness CNAC, T. 12 April 2010, p. 25.

<sup>29</sup> *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Decision on Nzabonimana's Motion to Admit Exhibit DNZ-461 into evidence and to appoint an Amicus Curiae to Investigate Witness CNAL's False Testimony, 2 December 2010; *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Decision on Prosecution's Urgent Motion Alleging Contempt of the Tribunal, 15 December 2009.

<sup>30</sup> *Gacumbitsi* Appeal Judgement Case No. ICTR-2001-64-A, para. 32: "Thus, the same person might be qualified as an expert in one case and no in another."

**FOR THESE REASONS, THE TRIAL CHAMBER**


**DENIES** Dr. Susan Thomson status as an Expert in this case;

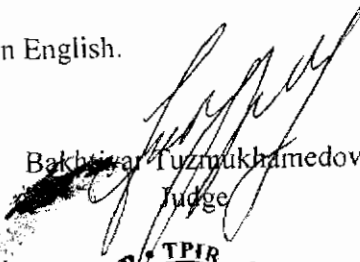
**CONCLUDES** that it is unnecessary to hold a *voir dire* to further assess Dr.


Susan's Thomson's qualifications as an Expert; and

**REJECTS** Dr. Susan Thomson's report.

Arusha, 30 March 2011, done in English.

  
Solomy Balungi Bossa  
Presiding Judge

  
Bakhtiyor Tuzmukhamedov  
Judge

  
Mparany Rajohnson  
Judge

