



Umuryango w'Abibumbye

**Urukiko Mpanabyaha Mpuzamahanga
Rwashyiriweho u Rwanda**

Umwimerere: **Icyongereza**

Urugereko rwa Mbere rw'Iremezo II

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POROKIRERI

**Aburana
na**

**CLÉMENT KAYISHEMA
na
OBED RUZINDANA**

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INYANDIKO Y'URUBANZA

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I. INTANGIRIRO

1.1 Urukiko n'Ububasha bwarwo

1. Uru rubanza rukijijwe n'Urugereko rwa Mbere rw'Iremezo II rw'Urukiko Mpuzamahanga rwashyiriweho gucira imanza abantu bakoreye mu Rwanda ibikorwa binyuranyije ku buryo bukomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, n'Abanyarwanda bakoreye jenocide n'ibindi byaha nk'ibyo mu bihugu bituranye n'u Rwanda, hagati y'itariki ya 1 Mutarama n'ya 31 Ukuboza 1994 (Urukiko). Uru rubanza ruciwe hakurikijwe Inyandiko y'ibirego yakorewe Clément Kayishema na Obed Ruzindana kandi baburanishirijwe hamwe.
2. Urukiko rwashyizweho n'Icyemezo 955 cy'Inama Ishinzwe Amahoro ku Isi cyo ku itariki ya 8 Ugushyingo 1994¹. Nyuma y'iperereza ryakozwe n'inzego zibishinzwe, Inama Ishinzwe Amahoro ku Isi yasanze hari ibimenyetso bigaragaza ko habayeho ibikorwa binyuranyije ku buryo bukomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, hanyuma ifata umwanzuro wemeza ko ibintu byabaga muri icyo gihugu mu wa 1994 byari bibangamiye amahoro n'umutekano mpuzamahanga, nk'uko bisobanurwa n'umutwe wa VII w'Itegeko Shingiro ry'Umuryango w'Abibumbye, bityo ibishingiraho ishyiraho Urukiko.
3. Urukiko rugengwa na Sitati yarwo (Sitati) yometse ku Cyemezo 955, hamwe n'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso yarwo (Amategeko) yemejwe n'Abacamanza ku itariki ya 5 Nyakanga 1995, nk'uko yagiye ahindurwa nyuma yaho². Abacamanza b'Urukiko, ubu bose hamwe bagera kuri 14, batorwa n'Inama Rusange y'Umuryango w'Abibumbye kandi baturuka mu bihugu binyuranye hakurikijwe imiryango y'amategeko y'ingenzi ku isi.

¹ Inyandiko y'Umuryango w'Abibumbye, S/RES/955, 8 Ugushyingo 1994

² Amategeko yagiye ahindurwa ku matariki akurikira : 12 Mutarama 1996, 15 Gicurasi 1996, 4 Nyakanga 1996, 5 Kamena 1997, 8 Kamena 1998.

4. Ububasha bw'Urukiko ku birebana n'ibyaha byakozwe (*ratione materiae*) buteganywa n'ingingo ya 2, iya 3 n'iya 4 za Sitati. Hakurikijwe Sitati, Urukiko rufite ububasha bwo gucira imanza abantu bakekwaho kuba barakoze jenocide nk'uko isobanuye mu ngingo ya 2, abakoze ibyaha byibasiye inyokomuntu nk'uko bisobanuye mu ngingo ya 3, n'abakoze ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve yo ku itariki ya 12 Kanama 1949 agamije kurengera abakorewe ibyaha mu gihe cy'intambara, hamwe n'Amasezerano y'Inyongera ya II yo ku wa 8 Kamena 1977, ibyo bikaba bisobanuye mu ngingo ya 4 ya Sitati y'Urukiko³. Ingingo ya 8 ya Sitati iteganya ko Urukiko n'inkiko z'ibihugu bifite ububasha buhuriranye, ariko ko Urukiko rufite ububasha busumbye ubw'izo nkiko. Ububasha bw'Urukiko ku birebana n'igihe icyaha cyakorewe bugarukira ku bikorwa byakozwe hagati y'itariki ya 1 Mutarama 1994 n'iya 31 Ukuboza 1994.
5. Icyuma nyuma, Sitati iteganya ko Porokireri, ukora nk'urwego rwihariye rw'Urukiko, ashinzwe gukora iperereza kuri ibyo byaha no gukurikirana ababikoze. Porokireri yunganirwa na Porokireri Wungirije, n'ikipe igizwe n'abashinjacyaha («*senior trial attorneys*», «*trial attorneys*») n'abapererezi, bakorera i Kigali mu Rwanda.

1.2 Inyandiko y'ibirego

Inyandiko y'ibirego yakorewe Abaregwa yandukuwe yose uko yakabaye hano hasi.

³ Ibirebana n'ibi byaha bisobanurwa mu buryo burambuye mu gice cya IV cy'iyi Nyandiko y'urubanza cyiswe Amategeko akurikizwa.

URUKIKO MPANABYAHA MPUZAMAHANGA RWASHYIRIWEHO U RWANDA**URUBANZA N°: ICTR-95-1-1****POROKIRERI W'URUKIKO****ABURANA****na****CLEMENT KAYISHEMA****OBED RUZINDANA****INYANDIKO Y'IBIREGO YAHINDUWE BWA MBERE**

Richard J. Goldstone, Porokireri w'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda, ashingiye ku bubasha ahabwa n'ingingo ya 17 ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda (Sitati y'Urukiko), ashinja Abaregwa ibyaha bivugwa hano hasi.

1. Muri iyi Nyandiko y'ibirego, haregwa abantu bukurikiranyweho kuba barakoze ubwicanyi bukurikira bwabereye muri Perefegitura ya Kibuye, Repubulika y'u Rwanda:
 - 1.1 Ubwicanyi bwakorewe kuri kiriziya gatolika no mu kigo cya Home Saint-Jean mu mujyi wa Kibuye hafi y'itariki ya 17 Mata 1994, bwahitanye abagabo, abagore n'abana, bose hamwe babarirwa mu bihumbi, abandi benshi barakomereka.
 - 1.2 Ubwicanyi bwakorewe muri sitade mu mujyi wa Kibuye hafi y'itariki ya 18 n'iya 19 Mata 1994 bwahitanye abagabo, abagore n'abana, bose hamwe babarirwa mu bihumbi, abandi benshi barakomereka.

- 1.3 Ubwicanyi bwakorewe ku kiriziya yo ku Mubuga hagati y’ahagana ku itariki ya 14 n’iya 17 Mata 1994 bwahitanye abagabo, abagore n’abana, bose babarirwa mu bihumbi, abandi benshi barakomereka.
- 1.4 Ubwicanyi bwakorewe mu karere ka Bisesero hagati y’ahagana ku itariki ya 10 Mata n’iya 30 Kamena 1994, bwahitanye abagabo, abagore n’abana, bose hamwe babarirwa mu bihumbi, abandi benshi barakomereka.

AHO UBWICANYI BWAKOREWE

2. Repubulika y’u Rwanda igizwe na perefegitura 11. Aya maperefegitura na yo agizwe n’amakomini. Perefegitura ya Kibuye igizwe n’amakomini icyenda. Ubwicanyi buvugwa muri iyi Nyandiko y’ibirego bwakorewe muri Perefegitura ya Kibuye, mu makomini ya Gitesi, Gishyita na Gisovu.
3. Ahantu hakorewe ubwicanyi ha mbere havugwa muri iyi Nyandiko y’ibirego ni kuri kiriziya gatolika no mu kigo cya Home Saint-Jean, haherereye mu muji wa Kibuye muri Komini ya Gitesi, mu isambu ikikijwe ku mpande eshatu n’ikiyaga cya Kivu. Hari umuhanda uca imbere y’aho umuntu yinjirira agana ku kiriziya gatolika no ku kigo cya Home Saint-Jean. Iyo umuntu ari muri uwo muhanda abona iyi kiriziya gatolika. Home Saint-Jean iri inyuma ya kiriziya, umuntu akaba atayibona iyo ari muri uyu muhanda uvugwa.
4. Ahakorewe ubwicanyi ha kabiri havugwa muri iyi Nyandiko y’ibirego ni muri sitade, iri hafi ya rompuwe nini yo mu muji wa Kibuye, muri Komini ya Gitesi. Umuhanda munini wo muri uyu muji uca imbere ya sitade. Inyuma ya sitade neza neza, hari agasozi karekare.
5. Ahakorewe ubwicanyi ha gatatu havugwa muri iyi Nyandiko y’ibirego ni ku kiriziya yo ku Mubuga, iri muri Komini ya Gishyita. Komini ya Gishyita iri mu

majyepfo ya Perefegitura ya Kibuye. Kiriziya yo ku Mubuga iri nko muri kilometero 20 uvuye mu mujyi wa Kibuye.

6. Ahakorewe ubwicanyi ha kane havugwa muri iyi Nyandiko y'ibirego ni mu karere ka Bisesero. Akarere ka Bisesero kari muri Perefegitura ya Kibuye, igice kimwe cyako kikaba kiri muri Komini ya Gishyita, naho ikindi kikaba kiri muri Komini ya Gisovu. Bisesero ni akarere kagizwe n'udusozi tureturu dukurikirana, kakaba gaherereye mu gice cy'amajyepfo ya Perefegitura ya Kibuye. Udusozi tugize akarere ka Bisesero ni tugari cyane, ahanini tukaba dutandukanywa n'utubande tureturu.

AMAVU N'AMAVUKO

7. Imiterere y'ubutegetsi nyubahirizategeko n'ububasha bw'abakozi babwo biteganywa mu mategeko y'u Rwanda. Muri perefegitura, perefefe ni we muyobozi wo mu rwego rwo hejuru uhagararariye guverinoma kandi ni intumwa ya Leta. Perefefe ni we ugenzura ibikorwa bya guverinoma n'iby'imiryango iyishamikiyeho muri perefegitura yose.
8. Muri buri komini yo muri perefegitura, hari inama ya komini iyoborwa na burugumesitiri w'iyi komini. Burugumesitiri wa komini ashirwaho na Perezida abisabwe na Minisitiri w'Ubutegetsi bw'Igihugu. Nk'uhagarariye ubutegetsi nyubahirizategeko, burugumesitiri akuriwe na perefefe, ariko burugumesitiri ni we uyobora imirimo ya guverinoma muri komini ashinzwe.
9. Perefefe ashinzwe kubahiriza amahoro, umudendezo wa rubanda n'umutekano w'abantu n'ibintu muri perefegitura. Mu kuzuza inshingano zo kubahiriza amahoro, perefefe ashobora kwitabaza Ingabo z'igihugu na Jandarumori y'igihugu. Burugumesitiri na we afite ububasha ku bajandarume bakorera muri komini ayobora.

10. Jandarumori y'igihugu ni umutwe w'ingabo washyiriweho kubungabunga umudendezo wa rubanda no kubahiriza amategeko. Iyoborwa na Minisitiri w'ingabo, ariko ishobora kurangiza inshingano zayo zo kubungabunga umudendezo wa rubanda ibisabwe n'umuyobozi mu gihugu ubifitiye ububasha, ari we perefefe. Jandarumori y'igihugu ifite inshingano zo kumenyesha perefefe amakuru ashobora guhungabanya umudendezo wa rubanda, n'izo gutabara umuntu wese usumbirijwe uyitabaje. Kuva muri Mutarama kugera muri Nyakanga 1994, hari abajandarume bagera kuri 200 muri Perefegitura ya Kibuye.
11. Abagize ubutegetsi nyubahirizategeko bafite n'ububasha ku bapolisi ba komini. Buri komini ifite abapolisi bashyirwaho na burugumesitiri wa komini. Ubusanzwe, burugumesitiri ni we utegeka abapolisi ba komini. Nyamara ariko iyo habayeho ibiza, perefefe ashobora guhamagaza abapolisi ba komini akaba ari we ubage-nzura.
12. Interahamwe ni umutwe udateganywa n'amategeko, wari ugizwe n'abantu bitwaraga gisirikare kandi hafi ya bose b'Abahutu b'intagondwa. Izo Interahamwe zagize uruhare rukomeye mu byabaye bivugwa muri iyi Nyandiko y'ibirego. Muvoma Revolisiyoneri Iharanira Amajyambere y'u Rwanda (MRND) yashyizeho Interahamwe nk'umutwe ugamije guha imyitozo ya gisirikare urubwiruko rwa MRND. Inzego z'ubuyobozi bw'Interahamwe zari ziteye kimwe n'iza MRND, ku buryo Interahamwe zari zifite ubuyobozi mu rwego rw'igihugu, urwa perefegitura n'urwa komini. Nta sano izwi mu mategeko yari hagati y'Interahamwe n'igisirikare cy'u Rwanda, ariko abasirikare n'abajeppe batozaga, bakagira inama kandi bagashyigikira Interahamwe. Rimwe na rimwe, abasirikare bo mu gisirikare cy'u Rwanda cyangwa abajeppe bajyaga mu bikorwa by'Interahamwe.
13. Ku itariki ya 6 Mata 1994, indege yari itwaye uwari Perezida w'u Rwanda icyo gihe, ari we Juvénal Habyarimana, yarahanutse ubwo yiteguraga kugwa ku

kibuga cy'indege cy'i Kigali mu Rwanda. icywa ry'abasiviri ryahise ritangira mu Rwanda hose. Muri icyo gihe, abantu bahigaga Abatutsi, bibanze ku hantu hazwi, kubera ko Abatutsi, bari bazi ko bugarijwe, akenshi bahungaga ari benshi kandi bagahungira ahantu bakekaga ko bashobora kugirira umutekano nko muri za kiriziya no mu mazu ya komini. Ibi byari bizwi n'abantu benshi kubera ko mbere Abatutsi bagiye bahungira ahantu nk'aho ntiyahagire ubatera. Bityo rero, mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, amatsinda y'abantu yahungiyeye bene aho hantu urebye yari agizwe ahanini n'Abatutsi.

14. Na none kandi, mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, Guverinoma y'u Rwanda yasabaga Abanyarwanda bese kwitwaza buri gihe indangamuntu yagaragazaga ko nyirayo ari Umuhutu, Umututsi, Umutwa, cyangwa ko yahawe ubwenegihugu. Kugira ngo abashakishaga Abatutsi bashobore kubatahura, basabaga abantu kwerekana indangamuntu zabo.

IBIREGO MURI RUSANGE

15. Ibyo Abaregwa bakoze cyangwa bateshutse gukora bivugwa muri iyi Nyandiko y'ibirego byabereye muri Repubulika y'u Rwanda, hagati y'itariki ya 1 Mutarama 1994 n'ya 31 Ukuboza 1994.
16. Muri buri gika gikubiyemo icyaha cya jenocide, kinyuranyije n'ingingo ya 2 ya Sitati y'Urukiko, abantu bakoze ibikorwa bivugwa cyangwa bateshutse gukora ibyo bari bategetswe bari bafite igitekerezo cyo gutsemba itsinda ry'abantu bese bahuriye ku bwoko runaka cyangwa se igice cyabo.
17. Muri buri gika gikubiyemo ibyaha byibasiye inyokomuntu, binyuranyije n'ingingo ya 3 ya Sitati y'Urukiko, ibivugwa abantu bakoze cyangwa bateshutse gukora byari mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa ubwoko.

18. Mu bihe byose bivugwa muri iyi Nyandiko y'ibirego, abakorewe ibyaha bavugwa muri iyi Nyandiko y'ibirego barengerwaga n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve hamwe n'Inyongera yayo ya II.
19. Mu bihe byose bivugwa muri iyi Nyandiko y'ibirego, mu Rwanda hari intambara itari iyo mu rwego mpuzamahanga.
20. Mu bihe byose bivugwa muri iyi Nyandiko y'ibirego, **Clément Kayishema** yari Perefefu wa Kibuye, akaba yaragenzuraga ibyaberaga muri iyo perefefitura, abakozi yari akuriye mu butegetsi nyubahirizategeko, n'abajandarume.
21. Buri wese mu Baregwa agomba kuryozwa nka gatozi ibyaha ashinjwa muri iyi Nyandiko y'ibirego, hashingiwe ku ngingo ya 6 (1) ya Sitati y'Urukiko. Uburyozwacyaha bwa buri wese bukubiyemo gutegura umugambi, kuwuhamagarira abandi, gutegeka abandi gukora icyaha, kugikora cyangwa ku bundi buryo ubwo ari bwo bwose gushyigikira abandi mu gucura umugambi, gutegura cyangwa gutsotsoba icyaha icyo ari cyo cyose kivugwa kuva ku ngingo ya 2 kugera ku ya 4 za Sitati y'Urukiko.
22. Ikindi kandi, **Clément Kayishema** agomba kuryozwa ibyaha byakozwe n'abo yayoboraga mu rwego rw'ubutegetsi, urwa Jandarumori y'igihugu n'urw'abapolisi ba komini, hashingiwe ku ngingo ya 6 (3) ya Sitati y'Urukiko, cyangwa se ibyaha bivugwa mu gika kibanzirira iki byaramuka bitamuhanye nka gatozi, akaryozwa icyaha nk'ukuriye abandi hashingiwe kuri iyi ngingo. Uburyozwacyaha bw'ukuriye abandi ni uburyozwacyaha bushingiye ku bikorwa byakozwe n'abo umuntu akuriye, iyo yari azi cyangwa yagombye kuba yari azi ko abo akuriye bari hafi gukora ibyaha runaka cyangwa se babikoze, ariko ntafate ingamba za ngombwa kandi ziciye mu gaciro zo kubiburizamo cyangwa zo guhana ababikoze.

ABAREGWA

23. **Clément Kayishema** yavukiye muri Segiteri ya Bwishyura, Komini ya Gitesi, Perefegitura ya Kibuye, mu Rwanda, mu wa 1954. Ni mwene Jean-Baptiste Nabagiziki na Anastasie Nyirabakunzi. Yagizwe Perefefe wa Kibuye ku itariki ya 3 Nyakanga 1992, bidatinze ahita atangira gukora imirimo ye y'ubuperefe. **Clément Kayishema** yabaye Perefefe wa Kibuye kugeza ahungiyeye muri Zayire muri Nyakanga 1994. Muri iki gihe, yaba abarizwa i Bukavu muri Zayire.
24. **Obed Ruzindana** yaba yaravutse mu wa 1959, muri Segiteri ya Gisovu, Komini ya Gisovu, Perefegitura ya Kibuye, mu Rwanda. Ni mwene Elie Murakaza. **Obed Ruzindana** yari umucuruzi i Kigali mu gihe ibyaha bivugwa muri iyi Nyandiko y'ibirego byakorwaga. Muri iki gihe, yaba abarizwa muri Zayire ariko ahantu hatazwi neza.

Ubwicanyi bwakorewe kuri kiriziya gatolika no mu kigo cya Home Saint-Jean

IBIREGO 1 - 6

25. Hafi y'itariki ya 17 Mata 1994, abagabo, abagore n'abana, bose babarirwaga mu bihumbi baturutse ahantu hanyuranye bari bamaze guhungira kuri kiriziya gatolika no mu kigo cya Home Saint-Jean mu muji wa Kibuye. Abo bagabo, abagore n'abana nta ntwaro bari bafite kandi abenshi muri bo bari Abatutsi. Bari baje muri icyo kigo bahunga ibitero byagabwaga ku Batutsi muri Perefegitura ya Kibuye yose.
26. Bamwe mu bantu bahungiyeye muri icyo kigo bari babitegetswe na Clément Kayishema. Ubwo Clément Kayishema yabategekaga kujya muri icyo kigo, yari azi cyangwa yagombaga kuba azi ko hazagabwa igitero.
27. Abantu bamaze guteranira muri icyo kigo, cyagoswe n'abantu bagenzurwaga na Clément Kayishema, barimo abajandarume. Abo bantu babujije abagabo, L1892(K)

abagore n'abana bari muri icyo kigo kugisohokamo, kandi Clément Kayishema yari azi cyangwa yagombaga kuba azi ko hazagabwa igitero.

28. Hafi y'itariki ya 17 Mata 1994, Clément Kayishema yategetse abajandarume, abapolisi ba Komini ya Gitesi, Interahamwe n'abaturage bari bafite intwaro kugaba igitero kuri icyo kigo, kandi na we icyo gitero yakigiyemo. Abagabye igitero bishe abantu bari muri icyo kigo bakoresheje imbunda, amagerenade, imipanga, amacumu, ibibando n'izindi ntwaro.
29. Icyo gitero cyahitanye abantu babarirwaga mu bihumbi kinakomeretsa abandi benshi bari muri icyo kigo (Umugereka A urimo amazina ya bamwe mu bantu bishwe muri icyo gitero). Nyuma y'igitero, abajandarume, Interahamwe n'abasiviri bari bafite intwaro, bashakashatse abarokotse, maze bicamo bamwe abandi barabakomeretsa.
30. Mbere y'igitero cyagabwe kuri icyo kigo, Clément Kayishema nta ngamba yafashe zo kukiburizamo, kandi na nyuma yacyo ntiyahannyeye abakigabye.
31. Kubera ibyo bikorwa n'ibyo yateshutse gukora, Clément Kayishema agomba kuryozwa ibyaha bikurikira:

Ikirego cya 1: ICYAHA CYA JENOSIDE, kinyuranyije n'ingingo ya 2 (3) (a) ya Sitati y'Urukiko;

Ikirego cya 2: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (a) (ubuhotozi) ya Sitati y'Urukiko;

Ikirego cya 3: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (b) (itsembatsemba) ya Sitati y'Urukiko;

- Ikirego cya 4: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (i) (ibindi bikorwa bibi birenze kamere muntu) ya Sitati y'Urukiko;
- Ikirego cya 5: IBIKORWA BINYURANYIJE N'INGINGO YA 3 IHURIWEHO N'AMASEZERANO Y'I JENEVE, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko; na
- Ikirego cya 6: IBIKORWA BINYURANYIJE N'AMASEZERANO Y'INYONGERA YA II, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko.

Ubwicanyi bwakorewe muri sitade iri mu muji wa Kibuye

IBIREGO 7 – 12

32. Hafi y'itariki ya 18 Mata 1994, abagabo, abagore n'abana, bose hamwe babarirwaga mu bihumbi baturukaga ahantu hanyuranye bari bamaze guhungira muri sitade iri mu muji wa Kibuye. Abo bagabo, abagore n'abana nta ntwaro bari bafite kandi abenshi muri bo bari Abatutsi. Bari baje muri sitade bahunga ibitero byagabwaga ku Batutsi muri Perefegitura ya Kibuye yose.
33. Bamwe mu bantu bahungiye muri iyo sitade bari babitegetswe na Clément Kayishema. Ubwo Clément Kayishema yabategekaga kujya aho hantu, yari azi cyangwa yagombaga kuba azi ko hari igitero kizahagabwa.
34. Abantu bamaze guteranira muri sitade, iyo sitade yagoswe n'abantu bagenzurwaga na Clément Kayishema, barimo abajandarume. Abo bantu babujije abagabo, abagore n'abana bari muri iyo sitade kuyisohokamo, kandi Clément Kayishema yari azi cyangwa yagombaga kuba azi ko hari igitero kizahagabwa.

35. Ku itariki ya 18 Mata 1994 cyangwa hafi yayo, Clément Kayishema, yagiye muri sitade ateguka abajandarume, abapolisi ba Komini ya Gitesi, Interahamwe n’abasiviri bari bafite intwari kugaba igitero muri sitade. Clément Kayishema yatangiye icyo gitero arasa mu kirere. Ikindi kandi, Clément Kayishema na we yari muri icyo gitero. Abagabye igitero bishe abantu bari muri sitade bakoresheje imbunda, amagerenade, imipanga, amacumu, ibibando n’izindi ntware. Hari abantu barokotse icyo gitero cyo ku itariki ya 18 Mata 1994. Mu ijoro ryo ku itariki ya 18 Mata 1994 no mu gitondo cyo ku itariki ya 19 Mata 1994, abajandarume bari bagose sitade babujije abari barokotse kuyivamo. Igitero cyo muri sitade cyakomeje ku itariki ya 19 Mata 1994. Mu gihe cyose igitero cyamaze, abagabo, abagore n’abana bageragezaga guhunga barishwe.
36. Ibyo bitero byamaze iminsi ibiri byahitanye abagabo, abagore n’abana bose hamwe babarirwaga mu bihumbi bari muri sitade, binakomeretsa abandi benshi (Umugereka B urimo amazina ya bamwe mu bantu bishwe muri icyo gitero).
37. Mbere y’uko ibitero bigabwa muri sitade, Clément Kayishema nta ngamba yafashe zo kubiburizamo, kandi na nyuma yabyo ntiyahannye ababigabye.
38. Kubera ibi bikorwa n’ibyo yateshutse gukora, Clément Kayishema agomba kuryozwa ibyaha bikurikira:

Ikirego cya 7: ICYAHA CYA JENOSIDE, kinyuranyije n’ingingo ya 2 (3) (a) ya Sitati y’Urukiko;

Ikirego cya 8: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n’ingingo ya 3 (a) (ubuhotozi) ya Sitati y’Urukiko;

Ikirego cya 9: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n’ingingo ya 3 (b) (itsembatsemba) ya Sitati y’Urukiko;

- Ikirego cya 10: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (i) (ibindi bikorwa bibi birenze kamere muntu) ya Sitati y'Urukiko;
- Ikirego cya 11: IBIKORWA BINYURANYIJE N'INGINGO YA 3 IHURIWEHO N'AMASEZERANO Y'I JENEVE, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko; na
- Ikirego cya 12: IBIKORWA BINYURANYIJE N'AMASEZERANO Y'INYONGERA YA II, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko.

Ubwicanyi bwakorewe ku kiriziya yo ku Mubuga

IBIREGO 13 – 18

39. Hafi y'itariki ya 14 Mata 1994, abagabo, abagore n'abana, bose babarirwaga mu bihumbi baturutse ahantu hanyuranye bari bateraniye muri kiriziya yo ku Mubuga, muri Komini ya Gishyita. Abenshi muri abo bagabo, abagore n'abana bari Abatutsi. Bari baje muri icyo kiriziya bahunga ibitero byagabwaga ku Batutsi muri Perefegitura ya Kibuye yose.
40. Abo bagabo, abagore n'abana batangiyeye gukoranira muri icyo kiriziya, Clément Kayishema yasuye icyo kiriziya inshuro zinyuranye. Ku itariki ya 10 Mata cyangwa hafi yayo, Clément Kayishema yazanye ku kiriziya abajandarume yagenzuraga. Abo bajandarume babujije abagabo, abagore n'abana bari mu kiriziya gusohoka.
41. Ku itariki ya 14 Mata 1994 cyangwa hafi yayo, abantu barimo abo Clément Kayishema yagenzuraga, bategetse abajandarume, abapolisi ba Komini ya Gishyita, Interahamwe n'abasiviri bari bafite intwari kugaba igitero kuri kiriziya. Ikindi kandi, abo bantu na bo bishoye muri icyo gitero. Abagabye igitero bishe abantu bari mu kiriziya bakoresheje imbunda, amagerenade, imipanga,

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amacumu, ibibando n'izindi ntwaro. Kubera ko bitashobotse kwica abo bantu bose icyarimwe, byatumye ibitero bikomeza mu minsi yakurikiyeho. Haba mbere y'ibitero, haba no mu gihe byabaga, abantu bagenzurwaga na Clément Kayishema, barimo abajandarume n'abapolisi ba Komini, babujije abagabo, abagore n'abana bari muri iyo kiriziya gusohoka.

42. Ibyo bitero byahitanye abagabo, abagore n'abana bari mu kiriziya bose hamwe babarirwa mu bihumbi, binakomeretsa abandi benshi (Umugereka C urimo amazina ya bamwe mu bantu bishwe muri ibyo bitero).
43. Mbere y'uko ibitero bigabwa kuri kiriziya ya Mubuga, Clément Kayishema nta ngamba yafashe zo kubiburizamo, kandi na nyuma yabyo ntiyahannye ababigabye.
44. Kubera ibi bikorwa bye n'ibyo yateshutse gukora, Clément Kayishema agomba kuryozwa ibyaha bikurikira:

Ikirego cya 13: ICYAHA CYA JENOSIDE, kinyuranyije n'ingingo ya 2 (3) (a) ya Sitati y'Urukiko;

Ikirego cya 14: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (a) (ubuhotozi) ya Sitati y'Urukiko;

Ikirego cya 15: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (b) (itsembatsemba) ya Sitati y'Urukiko;

Ikirego cya 16: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (i) (ibindi bikorwa bibi birenze kamere-muntu) ya Sitati y'Urukiko;

Ikirego cya 17: IBIKORWA BINYURANYIJE N'INGINGO YA 3 IHURIWEHO N'AMASEZERANO Y'I JENEVE, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko; na

Ikirego cya 18: IBIKORWA BINYURANYIJE N'AMASEZERANO Y'INYONGERA YA II, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko.

Ubwicanyi bwakorewe mu karere ka Bisesero

IBIREGO 19-24

45. Akarere ka Bisesero kagizwe n'ibice by'amakomini abiri yo muri Perefegitura ya Kibuye. Kuva hafi y'itariki ya 9 Mata 1994 kugeza ku ya 30 Kamena 1994, abagabo, abagore n'abana bahungiyeye mu karere ka Bisesero. Abenshi muri abo bagabo, abagore n'abana bari Abatutsi, bakaba barahungaga ibitero byagabwaga ku Batutsi muri Perefegitura ya Kibuye yose.
46. Akarere ka Bisesero kagiye kagabwaho ibitero hafi buri muni, guhera hafi y'itariki ya 9 Mata 1994 kugeza ku ya 30 Kamena 1994. Abagabye ibitero bishe Abatutsi mu Bisesero bakoresheje imbunda, amagerenade, imipanga, amacumu, ibibando n'izindi ntwaro. Abagabo, abagore n'abana bari bahungiyeye mu Bisesero bagerageje kwirwanaho inshuro zinyuranye bakumira ibyo bitero bakoresheje amabuye, inkoni n'izindi ntwaro zidafashije.
47. Muri Mata, Gicurasi na Kamena 1994, kandi akenshi babyumvikanyeho, Clément Kayishema na Obed Ruzindana bajyanye ahantu hanyuranye no mu bihe binyuranye mu karere ka Bisesero, abajandarume, abapolisi ba za Komini Gishyita na Gisovu, Interahamwe n'abasiviri bari bafite intwaro, maze babategeka kugaba ibitero ku bantu bari bahahungiyeye. Ikindi kandi, Clément Kayishema na Obed Ruzindana ubwabo bishoye mu bitero banica abantu bari

bahungiyeye mu Bisesero, ahantu hanyuranye no mu bihe binyuranye, kandi akenshi babyumvikanyeho.

48. Ibitero bimaze kuvugwa haruguru byahitanye abagabo, abagore n'abana bose hamwe babarirwaga mu bihumbi bari mu karere ka Bisesero, binakomeretsa abandi benshi (Umugereka D urimo amazina ya bamwe mu bantu bishwe muri ibyo bitero).
49. Muri iki gihe cyose, Clément Kayishema nta ngamba yafashe zo kuburizamo ibitero, kandi na nyuma yabyo ntiyahannyeye ababigabye.
50. Kubera ibi bikorwa n'ibyo bateshutse gukora, Clément Kayishema na Obed Ruzindana bagomba kuryozwa ibyaha bikurikira:

Ikirego cya 19: ICYAHA CYA JENOSIDE, kinyuranyije n'ingingo ya 2 (3) (a) ya Sitati y'Urukiko;

Ikirego cya 20: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (a) (ubuhotozi) ya Sitati y'Urukiko;

Ikirego cya 21: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (b) (itsembatsemba) ya Sitati y'Urukiko;

Ikirego cya 22: IBYAHA BYIBASIYE INYOKOMUNTU, binyuranyije n'ingingo ya 3 (i) (ibindi bikorwa bibi birenze kamere muntu) ya Sitati y'Urukiko;

Ikirego cya 23: IBIKORWA BINYURANYIJE N'INGINGO YA 3 IHURIWEHO N'AMASEZERANO Y'I JENEVE, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko; na

Ikirego cya 24: IBIKORWA BINYURANYIJE N'AMASEZERANO Y'INYO-NGERA YA II, biteganywa n'ingingo ya 4 (a) ya Sitati y'Urukiko.

1996, Arusha -Tanzania

[umukono]

Richard J. Goldstone, Porokireri

Iyi nyandiko yakorewe ubugororangingo ijyanye n'Itegeko ryatanzwe n'Urugereko rwa Mbere rw'Iremezo II mu Cyemezo rwafashe ku itariki ya 10 Mata 1997, kirebana n'Inyandiko y'ibirego yo ku itariki ya 28 Ugushyingo 1995 yemejwe n'Umucamanza Pillay ikaza guhindurwa ku itariki ya 29 Mata 1996, kugira ngo ikoreshe nk'Inyandiko y'ibirego mu rubanza ICTR 95-1-I rwa Clément Kayishema na Obed Ruzindana.

1.3 Abaregwa

Clément Kayishema

6. Mu buhamya bwe, Clément Kayishema yavuze ko yavukiye mu muryango w'Abahutu muri Segiteri ya Bwishyura, Perefegitura ya Kibuye, mu Rwanda, mu wa 1954. Se yakoze akazi k'ubwarimu, nyuma aza kuba umuzamu ku bitaro. Nyuma yaho yabaye umunyamabanga wa komini, aza no kuba umucamanza mu Rukiko rwa kanto. Abavandimwe barindwi ba Kayishema kimwe na nyina bari abahinzi kandi ntibari barize.
7. Mu wa 1974, Kayishema yagizwe gerefiye mu rukiko rwa kanto ya Kagangare. Hashize umwaka, yabonye buruse yo kwiga muri Kaminuza y'u Rwanda i Butare, mu ishami ry'ubuvuzi. Amaze kubona impamyabumenyi, yakoze akazi nka muganga uvura indwara zose muri rusange, abifatanyije no kubaga. Mu wa 1984, Guverinoma y'u Rwanda yamwohereje gukora akazi k'ubuganga mu nkambi y'impunzi ya Uganda. Kuva mu wa

1986 kugeza mu wa 1991, yabaye umuyobozi w'ibitaro by'i Nyanza, hanyuma aza kwimurirwa mu bitaro bya Kibuye.

8. Mu wa 1987, Kayishema yarongoye Umunyarwandakazi witwa Mukandoli, bakaba barabyaranye abana babiri. Mukandoli afite impamyabumenyi yahawe na Kaminuza y'u Rwanda mu by'uburezi, nk'inzobere mu bumenyamyifatire («*psychology* »).
9. Kayishema yinjiye mu Ishyamba Riharanira Demokarasi ya Gikirisitu (PDC) muri Mata 1992, intego yaryo ikaba yari « umurimo, ubutabera, ubuvandimwe ». Ku itariki ya 3 Nyakanga 1992, Kayishema yagizwe Perefefu wa Perefefitura ya Kibuye. Ibi byabaye ubwo ubutegetsi bushingiye ku mashyamba menshi bwatangiraga mu Rwanda. Nyuma y'urupfu rwa Perezida mu wa 1994, Guverinoma y'agateganyo yamugumishije kuri uwo mwanya.

Obed Ruzindana

10. Abatangabuhamya bavuze ko Obed Ruzindana yavukiye mu muryango w'Abahutu b'abakungu muri Komini ya Gisovu, Perefefitura ya Kibuye, mu Rwanda, mu wa 1962. Se, witwa Elie Murakaza, yabaye Burugumesitiri wa Komini ya Mugonero, aho umuryango we wabaga. Murakaza, n'umuryango we muri rusange bari bazwi neza muri rubanda kandi bubashywe.
11. Ruzindana yavuye iwabo ku Kibuye ajya i Kigali mu wa 1986-1987, maze akora akazi ko gutwara ibicuruzwa abijyana mu mahanga no gutumiza ibiza mu Rwanda. Yakoreshaga abashoferi bane, kandi abantu bavugaga ko yari umucuruzi ukomeye.
12. Mu wa 1991, Ruzindana yarongoye umugore bari baramenyanye kuva bakiri abana. Mu buhamya bwe, umugore wa Ruzindana yavuze ko n'ubwo ababyeyi be bombi bari Abatutsi, indangamuntu ya se yari yanditsemo ko ari Umuhutu. Madamu Ruzindana yavuze kandi ko umuntu yashoboraga « gutanga amafaranga » kugira ngo ahindurirwe ubwoko mu ndangamuntu. Babyaranye abana babiri, umwe mu wa 1991 naho undi mu wa 1993. Ruzindana n'umuryango we bari batuye i Remera, Kigali kugeza ubwo

amarorerwa yabaga mu wa 1994 ari na bwo basubiraga iwabo wa Ruzindana mu rugo rw'ababyeyi be ku Mugonero.

1.4 Uko imiburanishirize yagenze

Icyiciro kibanziriza iburanisha

13. Mu Nyandiko y'ibirego yo mu ikubitiro yatanzwe na Porokireri Richard Goldstone⁴ ku itariki ya 22 Ugushyingo 1995, Kayishema na Ruzindana babanje kuregwa hamwe n'abandi bantu batandatu bakekwaho icyaha. Ibyo birego byari bikubiye-mo ubwumvikane bugamije gukora jenocide, jenocide, ibyaha byibasiye inyokomuntu, n'ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve hamwe n'Inyongera yayo ya II. Iyo Nyandiko y'ibirego yemejwe n'Umucamanza Navanethem Pillay ku itariki ya 28 Ugushyingo 1995. Ku itariki ya 6 Gicurasi 1996, Umucamanza Pillay yategetse ko Inyandiko y'ibirego ihindurwa hagakurwamo ikirego cy'ubwumvikane bugamije gukora icyaha. Ni ngombwa na none kwibutsa ko Ruzindana yakorewe Inyandiko y'ibirego ya kabiri ku itariki ya 17 Kamena 1996, iburanisha ryerekeranye na yo rikaba n'ubu ritaraba. Iyo Inyandiko y'ibirego yemejwe n'Umucamanza Tafazzal H. Khan ku itariki ya 21 Kamena 1996.
14. Kayishema yafatiwe muri Zambia ku itariki ya 2 Gicurasi 1996, hanyuma yoherezwa Gereza y'Urukiko Arusha ku itariki ya 26 Gicurasi 1996. Yitabye urukiko bwa mbere ku itariki ya 31 Gicurasi 1996, imbere y'Urugereko rwa Mbere rw'Iremezo I. Kayishema, wunganirwaga na André Ferran na Philippe Moriceau bo mu Rugaga rw'Abavoka rw'i Montpellier, mu Bufaransa, yahakanye ibyaha byose ashinjwa.
15. Ruzindana yafatiwe i Nairobi muri Kenya ku itariki ya 20 Nzeri 1996, hanyuma yoherezwa Gereza y'Urukiko ku itariki ya 22 Nzeri 1996. Yitabye urukiko bwa mbere ku itariki ya 29 Ukwakira 1996, mu Rugereko rwa Mbere rw'Iremezo II. Ruzindana, wunganirwaga na Pascal Besnier, wo mu Rugaga rw'Abavoka rw'i Paris mu Bufaransa,

⁴ Ku itariki ya 1 Ukwakira 1996, Louise Arbour yasimbuye Richard Goldstone ku mwanya wa Porokireri w'Urukiko.

- na Willem Van der Griend wo mu Rugaga rw'Abavoka rw'i Rotterdam mu Buholandi, yahakanye ibyaha byose ashinjwa. Urugereko rwategetse ko iburanisha ry'urubanza rizatangira ku itariki ya 20 Gashyantare 1997, ariko ruvuga ko hagati aho ruzareba niba rushobora kuruburanishiriza hamwe n'urwa Kayishema.
16. Mu cyiciro kibanziriza iburanisha, ababuranyi bagejeje ku Rugereko rwa Mbere rw'Iremezo ibyifuzo by'ingoboka byinshi kandi rwabifasheho ibyemezo. Bimwe mu by'ingenzi biravugwa hano hasi mu buryo burambuye.
 17. Kayishema yatanze icyifuzo mbanzirizarubanza ku itariki ya 26 Nyakanga 1996 asaba ko ibirebana n'imiburanishirize byaseswa maze akarekurwa by'agateganyo. Ababuranyi bumviswe ku itariki ya 5 Ugushyingo 1996, maze Urugereko rufata icyemezo cyo kutemera icyifuzo cy'Ubwunganizi. Kayishema yatanze ikindi cyifuzo cy'ingoboka ku itariki ya 23 Ukwakira 1996 asaba ko iburanisha ry'urubanza ryakwimurirwa ku yindi tariki kugira ngo ashobore gutegura urubanza. Porokireri ntiyarwanyije icyo cyifuzo ariko ku itariki ya 5 Ugushyingo 1996, yatanze icyifuzo cy'ingoboka gisaba ko urubanza rwa Kayishema n'urwa Ruzindana zaburanishirizwa hamwe. Urukiko rwategetse ko Abaregwa bombi baburanishirizwa hamwe. Bityo, itariki y'iburanisha ry'urubanza rwa Kayishema yarimuwe, ishyirwa ku munsu umwe n'iyagenewe urubanza rwa Ruzindana, ari yo, nk'uko byavuzwe hano hejuru, iya 20 Gashyantare 1997⁵.
 18. Ku itariki ya 30 Ukuboza 1996, Ruzindana yatanze icyifuzo mbanzirizarubanza kibyutsa ibibazo ku miterere y'Inyandiko y'ibirego kandi kirwanya icyemezo cyo kuburanishiriza urubanza rwe hamwe n'urwa Kayishema, avuga ko Inyandiko y'ibirego kimwe n'urupapuro rumufata birimo inenge ku birebana n'imiburanishirize. icyifuzo cy'ingoboka gisaba ivanwaho ry'Inyandiko z'ibirego zombi, igisaba ifungurwa ry'agateganyo kimwe n'ikirwanya ikomatanya ry'amadosiye byose ntibyemewe n'Urugereko.

⁵ icyemezo cyerekeranye no gufatanya imanza z'Abaregwa kandi kigena itariki iburanisha rizatangiriraho, *Urubanza Porokireri aburana na Clement Kayishema*, N° ICTR-95-1-T, 6 Ugushyingo 1996.

19. Ku itariki ya 27 Werurwe 1997, Porokireri yatanze icyifuzo cy'ingoboka gisaba uruhushya rwo gutandukanya urubanza n'urundi, no gufatanyiriza mu Nyandiko y'ibirego imwe urubanza rwa Kayishema, urwa Gérard Ntakirutimana, n'urwa Ruzindana ashingiye ku mpamvu y'uko bari bahuriye ku mugambi umwe. Urugereko ntirwemeye icyo Cyifuzo kubera ko nta kimenyetso na kimwe yatanze cyerekana imiterere y'uwo mugambi uhuriweho.
20. Kayishema yatanze ikindi Cyifuzo cy'ingoboka ku itariki ya 7 Werurwe 1997 gisaba ko Porokireri yategekwa kubahiriza ingingo ya 20(2) na (4)(b) (uburenganzira bw'uregwa) za Sitati y'Urukiko. Ubwunganizi kwasabye kandi ko Porokireri yamenyekanisha umubare w'abahanga mu by'amategeko, abagishwanama, abafasha n'abapererezi bakora kuri uru rubanza kandi ko yabagabanya. Urugereko rwafashe umwanzuro wemeza ko⁶ uburenganzira bw'uregwa n'uburinganire hagati y'ababuranyi bitagomba kwitiranywa n'uburinganire bw'amikoro n'ibikoresho. Urugereko rwemeje ko Ubwunganizi butatanze ikimenyetso cyerekana ko uburenganzira bw'Uregwa, nk'uko buteganywa n'ingingo ya 20(2) n'iya (4)(b) za Sitati, bwahungabanyijwe.

Iburanisha

21. Ku itariki ya 11 Mata 1997 ni bwo iburanisha ry'urubanza rwa Kayishema na Ruzindana ryatangiyeye imbere y'Urugereko rwa Mbere rw'Iremezo II, rugizwe n'Abacamanza William H. Sekule ari na we Perezida w'Inteko, Yakov A. Ostrovsky na Tafazzal H. Khan, iryo buranisha rikaba ryarabaye hashingiwe ku Nyandiko y'ibirego yahinduwe bwa mbere yatanzwe mu Biro bya Gerefiye uwo munsu. Abashinjacyaha bo mu Biro bya Porokireri bari Jonah Rahetlah, Brenda Sue Thornton na Holo Makwaia. Kayishema yunganirwaga na Andre Ferran na Philippe Moriceau. Pascal Besnier na Van der Griend ni bo bunganiraga Ruzindana. Porokireri yarangije gutanga ibimenyetso bye ku itariki ya

⁶ icyemezo ku Cyifuzo cy'ingoboka cy'Ubwunganizi gisaba ko hakubahirizwa ingingo ya 20 (2) na (4) (b) ya Sitati y'Urukiko Mpuzamahanga Rwashyirirweho u Rwanda, Urubanza Porokireri aburana na Clement Kayishema, N° ICTR-95-1-T, na Obed Ruzindana, N° ICTR-96-10-T, 5 Gicurasi 1997.

- 13 Werurwe 1998, amaze guhamagaza abatangabuhamya 51 kandi amaze gutanga ibimenyetso gihamya birenga 350.
22. Ku itariki ya 18 Gashyantare 1998, Porokireri yatanze icyifuzo cy'ingoboka hashingiwe ku ngingo ya 73 y'Amategeko, gisaba Urugereko rwa Mbere rw'Iremezo gutegeka ko iburanisha rikomeza ridahagaze kugeza rirangiye, no kuvugana n'ababuranyi ku birebana n'ingengabihe y'iryo komeza ry'urubanza. Urugereko rwasanze, hashingiwe ku ngingo 20(4)(b) ya Sitati, Abaregwa bagomba guhabwa igihe gikwiye n'uburyo bwo gutegura urubanza rwabo⁷.
23. Ubwunganizi bwatangiye gutanga ibimenyetso byabwo ku itariki ya 11 Gicurasi 1998 maze burangiza ku ya 15 Nzeri 1998. Ni ngombwa kwibutsa ko ubwo Porokireri yasoze itangwa ry'ibimenyetso bye, Ubwunganizi bwabaye ko iburanisha ryigizwayo kugira ngo bushobore gutegura urubanza. Ku bw'inyungu z'ubutabera, Urugereko rwa Mbere rw'Iremezo rwashyize Ubwunganizi igorora rubwemerera amezi abiri yo gutegura urubanza. Ubwunganizi bwahamagaje abatangabuhamya bose hamwe 28, 16 ku ruhande rwa Ruzindana, barindwi ku ruhande rwa Kayishema naho 5 bashinjura Abaregwa bombi. Kayishema yatanze ubuhamya mu rubanza rwe. Hakiriwe ibimenyetso gihamya birenga 59 byatanzwe n'Ubwunganizi.
24. Porokireri yatanze imyanzuro nsozarubanza ye mu magambo kuva ku itariki ya 21 kugeza ku ya 28 Ukwakira 1998, Abavoka bunganira Ruzindana bayitanga kuva ku itariki ya 28 Ukwakira kugeza ku ya 2 Ugushyingo 1998, naho abunganira Kayishema bayitanga kuva ku itariki ya 3 kugeza ku ya 16 Ugushyingo 1998. Porokireri yatanze ingingo ze zisubiza iz'Ubwunganizi ku itariki ya 17 Ugushyingo 1998. Uwo munsu ni bwo iburanisha ry'urubanza ryapfundikiwe maze Urugereko rwa Mbere rw'Iremezo rutangira kwihereza kugira ngo ruruce.

⁷ icyemezo ku Cyifuzo cy'ingoboka cya Porokireri gisaba ko iburanisha ry'urubanza rwa Clement Kayishema na Obed Ruzindana rikomeza ku birebana n'ibyaha bikubiye mu Nyandiko y'ibirego N° ICTR-95-1-T, 12 Werurwe 1998.

25. Mu iburanisha ry'urubanza, hatanzwe ibyifuzo byinshi haba mu nyandiko cyangwa mu magambo. Ku itariki ya 17 Mata 1997, Ubwunganizi bwabyukije ikibazo ku birebana n'ukwizerwa k'umutangabuhamya buvuga ko ubuhamya yatangiye mu Rukiko bwari butandukanye n'ubuhamya bwe bwanditswe mbere n'abapererezi b'Iburo bya Porokireri. Urugereko rwemeye ko rimwe na rimwe hashobora kubaho ukunyuranya biturutse ku mpamvu zumvikana, ariko ruvuga ko nta wabiheraho ngo yange ubuhamya bwose uko bwakabaye cyangwa igice cyabwo⁸. Urugereko rwemeje ko iyo avoka wunganira uregwa abonye hariho ukuvuguruzanya hagati y'ubuhamya bwanditswe mbere n'ubutangiye mu Rukiko, abaza umutangabuhamya ibibazo ku gice cy'ubuhamya iryo vuguruzanya rigaragaramo, bityo akanamuha umwanya wo kubisobanura imbere y'Urukiko. Nyuma yaho, avoka wunganira uregwa ni we ufata icyo gice cy'ubuhamya bwanditse akaba yagitangaho ikimenyetso gihamya iyo abona ko uko kuvuguruzanya cyangwa kunyuranya ari ibintu bikomeye byatuma umutangabuhamya atizerwa.
26. Ku itariki ya 9 Nyakanga 1997, Ruzindana, ashingiye ku ngingo ya 75 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, yatanze icyifuzo cy'ingoboka gisaba ko hafatwa ingamba zo kubungabunga umutekano w'abantu bashoboraga guhamagazwa nk'abatangabuhamya bashinjura, avuga ko izo ngamba zitabuza ariko ko bashobora kuba bakurikiranwa n'inzego zibifitiye ububasha. Urugereko rwa Mbere rw'Iremezo⁹ rwemeye icyo Cyifuzo. Mu Cyemezo cyarwo cyo ku itariki ya 23 Werurwe 1998¹⁰, Urugereko rwemeye kandi icyifuzo cy'ingoboka cya Kayishema cyasabaga ko hafatwa ingamba rusange zo kubungabunga umutekano w'abatangabuhamya bamushinjura.
27. Ku itariki ya 12 Werurwe 1998, Porokireri yatanze icyifuzo cy'ingoboka gisaba ko Urugereko rwategeka Ubwunganizi kubahiriza ingingo ya 67 (A) (ii) n'ya 67 (C)

⁸ icyemezo ku gaciro kahabwa ibivugwa ko hariho ivuguruzanya hagati y'ubuhamya bwatangiye mu Rukiko n'ubwanditse bwatanzwe mbere n'umutangabuhamya, Urubanza Porokireri aburana na Clement Kayishema na Obed Ruzindana, n° ICTR-95-1-T, 17 Mata 1997.

⁹ icyemezo ku Cyifuzo gisaba ko hafatwa ingamba zo kurinda abatangabuhamya bashinja, Urubanza Porokireri aburana na Clement Kayishema na Obed Ruzindana, n° ICTR-95-1-T, 6 Ukwakira 1997.

¹⁰ icyemezo ku Cyifuzo cy'Ubwunganizi gisaba ko hafatwa ingamba zo kurinda umutekano w'abatangabuhamya, Urubanza Porokireri aburana na Clement Kayishema na Obed Ruzindana, n° ICTR-95-1-T, 23 Gashyantare 1998.

z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso. Porokireri avuga ko niba Ubwunganizi buteganya kwiyambaza imyiregurire ya sinari mpari, bugomba kubimumenyesha bidatinze, kandi uko byagenda kose mbere y'uko urubanza rutangira kuburanishwa. Urugereko rwasanze Kayishema agomba guhita akora iryo menyesha niba ateganya kwiyambaza imyiregurire ya sinari mpari cyangwa indi myiregurire idasanzwe. Nyamara ariko, ku itariki ya 30 Mata 1998, Ubwunganizi bwatanze icyifuzo gishamikiye kuri icyo busaba Urugereko gusobanura inshoza y'imyiregurire ya sinari mpari n'iy'imyiregurire idasanzwe iteganywa n'ingingo ya 67 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso. Urugereko ntirwemeye icyo Cyifuzo cy'Ubwunganizi ku mpamvu y'uko rudashobora gusobanura ingingo ya 67 mu cyuka gusa rudashingiye ku kibazo runaka kigomba gukemurwa¹¹.

28. Kubera ko Ubwunganizi bwakomeje kwirengagiza ibitegenywa n'ingingo ya 67 (A) (ii) y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, ku itariki ya 11 Kanama 1998, Porokireri yatanze ikindi Cyifuzo cy'ingoboka, mu byo cyasabaga hakaba harimo n'uko Urugereko rwafata icyemezo kibuzza Ubwunganizi kwiyambaza imyiregurire ya sinari mpari cyangwa indi myiregurire iyo ari yo yose idasanzwe. Ubwunganizi bwasubije buvuga ko, hakurikijwe ingingo ya 67 (B) y'Amategeko, kuba Ubwunganizi butaramenyeshesheje Porokireri ko buziyambaza imyiregurire ya sinari mpari cyangwa imyiregurire idasanzwe iyo ari yo yose bitavutsa uregwa uburenganzira bwo gukoresha ubwo buryo bwo kwiregura. Urugereko ntirwemeye impamvu zatanze n'Ubwunganizi zibubuzza guha Porokireri ibisobanuro birambuye, kandi rwasanze Uregwa yarashoboraga ubwe gushyikiriza Porokireri nibura ibisobanuro bimwe birambuye. Rushingiye kuri ibyo, Urugereko rwahamishijeho icyemezo rwari rwafashe mbere kuri icyo kibazo¹².

¹¹ icyemezo ku Cyifuzo cya Porokireri gisaba ko Ubwunganizi bwategekwa kubahiriza ibitegenywa n'ingingo ya 67 A) (ii) na (C) y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, *Urubanza Porokireri aburana na Clément Kayishema na Obed Ruzindana*, 15 Kamena 1998.

¹² icyemezo ku Cyifuzo cya Porokireri gisaba Urugereko gufata icyemezo ku birebana n'uko Ubwunganizi bukomeje kwangira kubahiriza ibitaganywa n'ingingo ya 67 (A) (ii) y'Amategeko Agenga Imiburanishirize L1892(K)

29. Ku itariki ya 22 Kamena 1998, Porokireri yatanze icyifuzo cy'ingoboka gisaba Urugereko kutakira ubuhamya bw'umuganga w'indwara zo mu mutwe wahamagajwe n'Ubwunganizi nk'umutangabuhamya w'impuguke. Urugereko rwasanze ari ngombwa kubahiriza uburenganzira bw'uregwa bwo gucirwa urubanza mu buryo buboneye, nk'uko biteganywa n'ingingo ya 20 ya Sitati, cyane cyane mu gika cyayo cya (4) (e), ivuga ko uregwa afite uburenganzira bwo guhamagaza abatangabuhamya bamushinjura. Rwemeye rero kumva uwo mutangabuhamya w'impuguke¹³.
30. Ku itariki ya 19 Kanama 1998, Urugereko ntirwemeye icyifuzo cy'Ubwunganizi cyasabaga kubaza umutangabuhamya wiswe DE ibibazo by'inyongera. Urugereko rwasanze Kayishema atabangamirwa no kuba nta bimenyetso by'inyongera yabashije kuvana kuri uwo mutangabuhamya maze ntirwemera icyifuzo cye¹⁴.

n'Itangwa ry'Ibimenyetso, no gutanga amabwiriza yanditse ndetse n'ayatanzwe mu magambo n'Urugereko, *Urubanza Porokireri aburana na Clément Kayishema na Obed Ruzindana*, n° ICTR-95-1-T, 3 Nzeri 1998.

¹³ icyemezo ku Cyifuzo cya Porokireri gisaba Urugereko kutakira ububuhamya bwa Dogiteri Pouget, umutangabuhamya w'impuguke wahamagajwe n'Ubwunganizi, *Urubanza Porokireri aburana na Clément Kayishema na Obed Ruzindana*, n° ICTR-95-1-T, 29 Kamena 1998.

¹⁴ icyemezo ku Cyifuzo cy'Ubwunganizi gisaba Urugereko uruhushya rwo kubaza ibibazo by'inyongera umutangabuhamya wiswe DE, *Urubanza Porokireri aburana na Clément Kayishema na Obed Ruzindana*, n° ICTR-95-1-T, 19 Kanama 1998.

II. AMAVU N'AMAVUKO Y'IBYABAYE MU RWANDA MU WA 1994

31. Ni ngombwa kubanza kureba uko ibintu byari byifashe hakurikijwe amateka y'u Rwanda mu gihe ibivugwa byabaga mu wa 1994, kugira ngo Urugereko rubashe kumva ku buryo bwuzuye ibikubiye mu Nyandiko y'ibirego hamwe n'ibimenyetso bitangwa mu Rukiko. Ntabwo tujya mu isesengura rirambuye ry'ibibazo byo mu rwego rwa politiki yo mu karere cyangwa byo mu mateka y'u Rwanda kubera ko hari za raporo n'izindi nyandiko zibisesengura kandi zishobora kwifashishwa na buri wese wabikenera.
32. Urugereko rusanga bidahwitse ndetse nta n'akamaro byagira kugerageza gusobanura ahangaha aho amateka y'u Rwanda yaba ahuriye n'amahano yagwiririye icyo gihugu mu wa 1994. Nta wapfa gufata ku buryo bujjetse impamvu zose zatumye habaho ubwicanyi bukabije kariya kageni. Bityo, amakuru avugwa hano hasi ni incamake y'ibisobanuro ku bibazo byerekeranye n'amoko mu Rwanda, amateka y'u Rwanda ya nyuma y'ubwigenge, hakubiyemo no kumama akajisho ku Itegeko Nshinga ryo mu wa 1991, ku Masezerano ya Arusha, no ku ishyirwaho ry'imitwe yitwara gisirikare.
33. Urugereko rwahisemo kuvuga uko ibintu byabaye rukoresheje amagambo adafite aho abogamiye, kandi aho byari ngombwa, rwagiye rusesengura ibaza rinyomoza ry'abatangabuhamya bashinja. Incamake ikurikira ishingiyeye gusa ku bimenyetso byashyikirijwe uru Rugereko, kandi nta na hamwe havugwa ibimenyetso cyangwa inyandiko bitari muri dosiye y'uru rubanza.

Ikibazo cy'amoko mu Rwanda

34. Mu wa 1994, usibye abanyamahanga bake, byari bizwi ko u Rwanda rwari rutuwe n'abantu babarirwa mu moko anyuranye ari yo Abahutu, Abatutsi, n'Abatwa. Abahutu ni bo bari bagize umubare munini cyane w'abaturage. Ni ngombwa gusobanura uko Abanyarwanda bumva ijamba «ubwoko», kuko ukurikije ibivugwa na André Guichauoa, Porofeseri w'imibanire y'abantu n'ubukungu [*Sociology and economics*] muri kaminuza y'i Lille (mu Bufaransa) akaba n'umutangabuhamya ushinja, Abanyarwanda bahuriye ku butaka bumwe mu gihugu hose, bavuga ururimi rumwe,

kandi bahuriye ku mihango imwe n'umuco umwe. Urugereko rusanga ibyo bibaranga basangiye byavuga ko bahuriye ku bwoko bumwe. Birazwi ko mbere y'uko u Rwanda rukoronizwa n'Ubudage ndetse n'Ububiligi bwabusimbuye, hagati y'itsinda ry'Abahutu n'iry'Abatutsi nta rubibi ntarengwa rwarimo rwabuzaga umuntu kuba yava mu itsinda rimwe akajya mu rindi, kubera ko ayo matsinda yari ashingiye ku mibereho n'imirimo byabo. Mu yandi magambo, iyo Umuhutu yageraga ku mutungo utubutse, yashoboraga gufatwa nk'Umututsi.

35. Ikibazo umuntu yakwibaza rero ni ukumenya uburyo umuturage w'Umunyarwanda yaje gusanga aboheye burundu mu itsinda ry'ubwoko ubu n'ubu nyuma y'umwaduko w'abakoloni. Mu wa 1931, Ababiligi babitewe n'impamvu zijyana n'imiyoborere, bashyizeho indangamuntu ifite ahantu handitse amagambo Hutu, Tutsi na Twa. N'ubwo na mbere y'uko umukoroni w'umuzungu agera mu Rwanda, buri Munyarwanda yibonagamo ko ari Umuhutu, Umututsi, cyangwa Umutwa, nyuma y'icyo gihe ni bwo ibiranga buri tsinda byashyizwemo umugaga maze amatsinda yari asanzwe ashingiye ku mibereho y'abantu n'imirimo yabo ahinduka ubwoko. Kuva indangamuntu yajyaho mu Rwanda, yakoreshejwe hagamijwe kuvangura amoko mu buryo bubangamira itsinda iri n'iri; nk'urugero, mu gushyira mu bikorwa gahunda y'iringaniza ry'amoko mu mashuri no mu kazi, cyangwa gahunda ya jenoside nk'uko byagenze mu wa 1994.
36. Mu gihe cy'imyaka ibarirwa muri mirongo, abantu bamwe bagiye bemeza ko Abahutu n'Abatwa ari bo baturage gakondo b'u Rwanda, naho ko Abatutsi bo ari « abantu bakomotse mu karere k'uruzi rwa Nile»¹⁵. Ubwo yasubizaga ibibazo binyomoza, Guichaoua yavuze ko icyo gitekerezo kitigeze gitangirwa ibimenyetso mu rwego rw'ubuhanga, kandi ko nta « tsinda runaka ry'abaturage rifite uburenganzira busumba ubw'ayandi »¹⁶. Nyamara ariko, bamwe mu banyapolitiki b'Abahutu bakomeje kugendera kuri icyo gitekerezo kugira ngo berekane ko guhamagarira Abahutu kujya muri « Hutu pawa » bifite ishingiro, no kugira ngo bakangurire Abanyarwanda kwishora mu nzangano n'ivangura, nk'uko bisobanurwa hano hasi.

¹⁵ Ikimenyetso gihamya n° 103A cyatanzwe na Porokireri, urup. 8.

¹⁶ Ni kimwe no haruguru.

Incamake ku gihe cya nyuma y'ubwigenge

37. Mu wa 1959, mbere gato y'ubwigenge, u Rwanda rwatangiyeye kubamo ubushyamirane bukomeye hagati y'amoko. Muri uwo mwaka, abashyamba benshi b'Abatutsi, abahinzi n'abandi bantu barishwe, n'amazu yabo aratwikwa. Abandi Batutsi babarirwa mu bihumbi bahungiyeye mu bihugu bituranye n'u Rwanda. Guichaoua yavuze ko icyo gitotsi mu mibanire hagati y'amoko gishobora kuba cyaratewe n'uko ubutegetsi bwa gikoloni bwari bwaratonesheje Abatutsi.

Repubulika ya mbere

38. Perezida wa mbere w'u Rwanda, Grégoire Kayibanda yatowe mu wa 1962, ari na cyo gihe amashyamba y'Abahutu yatangiye kugaragaza kurushaho ubutagondwa. Mu buhamya bwe, Porofeseri Guichaoua yavuze ko amashyamba arwanya Abatutsi yari amaze kugira ubukana bwinshi ku buryo guhera mu wa 1963, Abatutsi babarirwa hagati ya 200.000 na 300.000 bahisemo guhungira mu bihugu bituranye n'u Rwanda. Hagati ya 1962 na 1966, imitwe y'Abatutsi yitwaje intwari (izwi ku izina ry'Inyenzi) yagerageje inshuro nyinshi kwisubiza ubutegetsi igaba ibitero iturutse mu bihugu bituranye n'u Rwanda cyane cyane u Burundi. Guichaoua avugaga ko Abahutu, bitwaje ko kimwe muri ibyo bitero cyari cyageze mu nkengero za Kigali, batangiye guhiga Abatutsi mu Rwanda hose. Uko kwiyongera k'umwuka mubi kwatumye « Abahutu barusha abandi kuba intagondwa ari bo bagira ijamba mu butegetsi, gutuma kandi hagabanuka amacakubiri akomeye yari mu butegetsi bwariho, bwarangwaga n'imitegekere ya Perezida Grégoire Kayibanda yarimo igitugu no kwikanyiza »¹⁷.
39. Kuba mu wa 1965 mu Rwanda harabayeho mu by'ukuri ishyamba rimwe rukumbi, bigaragaza ku buryo bweruye ubushake bwa Perezida Kayibanda bwo kugundira ubutegetsi. Koko rero, ishyamba rye, Muvoma Iharanira Demokarasi muri Repubulika (*MDR-PARMEHUTU*) ryavanyeho andi mashyamba y'Abatutsi, n'ay'Abahutu nk'Ishyamba Riharanira Guteza Imbere Imibereho ya Rubanda (*APROSOMA*). Politiki y'amacakubiri

¹⁷ Ikimenyetso gihamya n° 102 cyatanze na Porokireri, urup. 12.

ashingiye ku turere yiyongereye ku bibazo by'amoko u Rwanda rwari rufite icyo gihe. Ni bwo hatangiye igitekerezo cyo kumva ko hari rubanda nyamwinshi rufite uburenganzira busumba ubw'abandi, bikaba byaratumye habaho ubwicanyi bwibasiye Abatutsi mu Rwanda no mu Burundi mu myaka ya 1972-73. Bityo, kuba Repubulika ya mbere yarananiwe gukemura ikibazo cy'ubushyamirane hagati y'amoko byayiviriyemo guhirikwa, maze Perezida Kayibanda arahotorwa.

Repubulika ya kabiri

40. Ku tariki ya 5 Nyakanga 1973, Umugaba w'ingabo, ari we Majoro Juvénal Habyarimana, wakomokaga muri Perefegitura ya Gisenyi, yafashe ubutegetsi ahiritse ubwari busanzweho. Uwari ushinze urwego rw'iperereza muri icyo gihe, ari we Alexis Kanyarengwe, yashyizeho gahunda yo kubiba ubushyamirane bushingiye ku mpamvu za politiki no ku moko hagamijwe kwerekana ko ihirikwa ry'ubutegetsi ryari ngombwa kugira ngo umutekano ugaruke mu gihugu. N'ubwo ihirikwa ry'ubutegetsi mu wa 1973 ryafashwe nk'igikorwa cyo « gupiganwa hagati y'amatsinda yari ahanganye »¹⁸ kidafitanye isano n'ishyamirana ry'amoko ryagaragaraga mu gihugu, abari ku butegetsi bashishikariye Abahutu kwirukana inshuti na bagenzi babo b'Abatutsi mu mashuri no mu kazi. Nk'uko byari byagenze mu wa 1959, Abatutsi benshi baguye na none mu bitero byagabwe n'Abahutu, abandi babarirwa mu bihumbi bahungira hanze y'igihugu. Ni muri ibyo bihe Repubulika ya kabiri yatangiye.
41. Hashize imyaka ibiri, mu wa 1975, hashinzwe Muvoma Revolisiyoneri Iharanira Amajyambere y'u Rwanda(MRND) iyobowe na Perezida Habyarimana, maze isimbura MDR. Iryo shyamba rishya ryayoboye igihugu kugeza ubwo amarorerwa yabaga mu wa 1994. Mu wa 1978, Perezida Habyarimana yavuze ko ikibazo hagati y'Abahutu n'Abatutsi cyarangizwa n'uko Abanyarwanda bose, kuva bavutse, bakwibumbira muri MRND. Koko rero, gushyira abatwaga bose muri iryo shyamba ryonyine kandi ku gahato

¹⁸ Ni kimwe no haruguru, urup. 15. Porofeseri Guichaoua asubiramo igice cy'itangazo ryakozwe na Komanda Théoneste Lizinde nyuma y'ihirikwa ry'ubutegetsi, kandi muri icyo gice nta na hamwe havugwa ishyamirana hagati y'amoko.

byatumye nta tandukanyirizo ribaho hagati y'inzego za Leta n'iz'ishyaka. Habyarimana yijeje kandi abantu ko amatsinda yose agize umuryango nyarwanda azahagararirwa mu nzego z'ubuyobozi zo hejuru, hakurikijwe umubare w'abagize buri tsinda nk'uko uba ugaragazwa n'ijanisha rishingiye ku mubare w'abaturage b'u Rwanda. Birumvikana ko iki gitekerezo gikubiyemo gahunda y'iringaniza ishobora kuba nyuma yarabangamiye ibikorwa bigamije ubwiyunge hagati y'amoko.

42. Mu myaka yakurikiyeho ya hafi, Leta ya Habyarimana yashyize imbaraga muri gahunda yo gukemura ibibazo by'amajyambere. Porofeseri Guichaoua avuga ko nta wahakana ko mu mpera za 70 n'igice cya za 80, gahunda Leta yashyizemo imbaraga zagize umusaruro, haba mu rwego rwo kugabanya imyenda y'igihugu, kubungabunga ubukungu rusange bw'igihugu, kurinda ifaranga ngo ridata agaciro, kwihaza mu biribwa, n'ibindi. Muri icyo gihe kandi Leta yagaruye umuganda, mu Rwanda bikaba bivuga imirimo rusange igamije amajyambere. Ubwo buryo bwo gukorera hamwe bwari bugamije guha agaciro ubufatanye bw'abaturage mu cyaro (ubufatanye hagati y'abaturanyi) mu bikorwa byateguwe cyangwa abaturage bibwirije¹⁹. Ikindi kandi, imibanire myiza hagati y'abaturage b'icyo gihugu cyiganjemo abahinzi, hamwe no guhatira abo baturage gukurikira gahunda z'igitugu kandi zinaniza byaterwaga ahanini na politiki yari yabashije gushyiraho gahunda z'imibereho y'abaturage itarangwamo ubusumbane cyane²⁰. Ng'uko uko mu wa 1994, cya cyizere kiraza amasinde n'icyubahiro Abanyarwanda bagiriraga abayobozi mu gihe cy'ubukoronu byongeye kugenderwaho.
43. N'ubwo gahunda yo mu rwego rw'ubukungu yari yaragize icyo igeraho kandi Leta ikaba yari yarashoboye guhuza abaturage binyuze mu mirimo y'umuganda, igice kinini cy'abaturage kigizwe n'abahinzi n'icyagerwagaho n'inyungu zikomoka kuri icyo politiki. Abanyarwanda batangiyeye kwibura akarengane, babona ko guverinoma yamunzwe na ruswa kandi irangwa no gutonesha bamwe. Gahunda y'iringaniza yavuzwe haruguru na yo yabaye inkomoko y'ibindi bibazo ku Banyarwanda. Ubusumbane bugaragara

¹⁹ Ni kimwe no haruguru, urup. 16.

²⁰ Ni kimwe no haruguru, urup. 18.

bwakomeje kubaho, bwiyoungereyeho ibibazo by'ubukungu n'amapfa yo mu wa 1988-1989, byatumye Abatutsi bo hanze bagerageza kwisubiza ubutegetsu.

44. Mbere, ku nshuro zinyuranye, Abatutsi bari hanze bagiye bagerageza kugaruka mu Rwanda, ariko buri gihe bagakumirwa ku mupaka hitwajwe ko u Rwanda ari rutoya cyane rukaba rutabasha kubakira. Nk'urugero, mu wa 1982, ubwo impunzi z'ingeri zose zirukanwaga muri Uganda, u Rwanda rwafunze imipaka, bityo rwanga gufasha abantu babarirwaga mu bihumbi bari mu kaga, na nyuma yaho rwemerera gusa impunzi nkeya z'Abatutsi kwinjira no gutura mu Rwanda. Kubera ibyo bibazo, Abanyarwanda babarirwa mu bihumbi bari mu bihugu bituranye n'u Rwanda nk'u Burundi, Tanzaniya, Uganda na Zaïre batangiye gushishikariza amahanga na Leta z'ibihugu bacumbitsemo gushakira umuti ikibazo gikomeye cyabo.
45. FPR yashinzwe ari nk'igisubizo cy'akarengane k'Abatutsi bo hanze kubera ko amahanga atitaye nyabyo ku kibazo gikomeye cy'impunzi. Mu Ukwakira 1990, FPR yagabye igitero mu majyaruguru y'iburasirazuba bw'u Rwanda iturutse muri Uganda. Mu bateye inkunga icyo gitero harimo benshi mu Batutsi bo hanze, kandi cyatumye haba igihe cy'imishyikirano ikomeye ishingiye kuri dipolomasi yageze ku bintu bimwe bifatika. Nk'urugero, mu kwezi ku Ugushyingo 1990, iringaniza rishingiye ku moko mu burezi no mu mirimo ya Leta ryavuyeho ku mugaragaro. Mu kwezi ku Ukuboza, Leta y'u Rwanda yatanze imbabazi ku mfungwa zimwe na zimwe. Muri Werurwe 1991, hasabwe ko imirwano yahagarara, ariko bamwe mu bayobozi b'u Rwanda batari bashishikajwe no kubona habaho gahunda nk'iyi bagiye bakora uko bashoboye kugira ngo iby'ingenzi mu byo Leta y'u Rwanda yemeye bitubahirizwa mu buryo bwihuse. Na none kandi, ibikorwa bikomeye by'urugomo byibasiraga Abatutsi byarakomeje mu giturage, bituma FPR ikomeza gahunda yayo yo kurwana intambara ndende. Nyamara ariko, hagati ya 1991 na 1993, habayeho ibikorwa bigamije gushyiraho inzibacyuho yubahiriza demokarasi mu Rwanda.

Itegeko Nshinga ryo mu wa 1991 n'amashyaka menshi

46. François Nsanuwera, akaba ari impuguke y'Umunyarwanda, yavuze mu buhamya bwe ko Itegeko Nshinga ry'u Rwanda ryo mu wa 1991 ryakuyeho politiki y'ishyaka rimwe rukumbi rikemera amashyaka menshi. Ryahaye Inteko Ishinga Amategeko ububasha bwo gushyiraho amategeko, naho Perezida wa Repubulika ahabwa ububasha nyubahirizategeko. Nyamara ariko, iryo Tegeko Nshinga ntaho ryateganyije ko Perezida wa Repubulika ashobora kwisobanura ku mikorere ye imbere y'Inteko Ishinga Amategeko.
47. Amashyaka yemewe yari abujijwe gukoresha imitwe yitwara gisirikare (Ingingo ya 26), kandi yari yemerewe gukoresha itangazamakuru rya Leta. Nyuma, hashinzwe amashyaka akurikira : Ishyaka Riharanira Demokarasi muri Repubulika (MDR), Ishyaka ryo Kwishyira Ukizana (PL), Ishyaka Riharanira Demokarasi n'Imibereho Myiza y'Abaturage (PSD), Ishyaka Riharanira Demokarasi ya Gikiristu (PDC), n'Impuzamugambi Ziharanira Repubulika (CDR).
48. Aho amashyaka menshi agiriyeho, bisa nk'aho ntacyahindutse ku birebana n'ibyari bisanzweho mu Itegeko Nshinga n'ubutegetsi mu Rwanda. Ibyo ni ibivugwa na Porofeseri Guibal wigisha amategeko yerekeranye n'Itegeko Nshinga n'ubutegetsi [*Constitutional and administrative law*] muri Kaminuza ya Montpellier, mu Bufaransa. Yahamagajwe n'Ubwunganizi kugira ngo asobanure uko ibintu byari byifashe mu Rwanda nyuma y'ishyirwaho ry'amategeko yakurikizwaga mu gihe cy'ibyabaye mu wa 1994 na mbere yaho²¹.
49. Porofeseri Guibal avuga ko kubera amashyaka menshi yagiyeho bikomotse ku Itegeko Nshinga ryo mu wa 1991, urubibi rusanzwe rwarangaga inzego z'ubutegetsi bwa Leta rutagaragaye neza. Bityo, nta tandukanyirizo rigaragara ryari hagati y'ubutegetsi nyubahirizategeko n'ubutabera, no hagati y'ubutegetsi bwite bwa Leta n'ubuyobozi bw'uturere. Avuga ko ahubwo Itegeko Nshinga ryashyizweho nyuma y'uwa 1991 ryakozwe hazirikanwa ko hariho amashyaka menshi. Ibyo byatumye mu nzego zose no

²¹ Hakurikiraho incamake ya raporo ya Porofeseri Guibal n'ubuhamya bwe bwo ku itariki ya 27 n'ya 28 Gicurasi 1998.

mu mikoranire yazo bisa nk'aho harimo imitwe ibiri, ndetse ibyo bikaba byaranageze mu nzego z'ubutegetsi bwa Leta – mu rwego rw'ubutegetsi ku ruhanda rumwe, no mu rwego rw'amashyaka ku rundi ruhanda.

50. Porofeseri Guibal akomeza agaragaza ingaruka mu rwego rw'ihange z'imiterere y'ubutegetsi mu Rwanda, iyo urebye ibyabaye mu wa 1994 n'imvururu muri icyo gihe. Kuri we, kuva igihugu cyinjiye mu mvururu n'umutekano muke, ubwo butegetsi bushingiye ku mashyaka menshi bwahindutse ubutegetsi bw'amashyaka menshi yo mu bihe by'amahina. Urugereko rwamenyeshejwe ko ubwo butegetsi bw'amashyaka menshi yo mu bihe by'amahina bwatewe n'uko abantu bari ku isonga ry'ubutegetsi bwa Leta bahyizweho kugira ngo bahoshe imvururu n'ubushyamirane bagenderaga ku mabwiriza yatanze n'amashyaka bakomokamo, aho kugira ngo bakurikize inzira zateganywaga n'Itegeko Nshinga.

Amasezerano ya Arusha

51. Mu buhamya bwe, Nsanzuwera yavuze ko ku itariki ya 4 Kanama 1993, Leta y'u Rwanda na FPR basinyiye Arusha (Tanzaniya) amasezerano yari agamije gukemura mu mahoro ibibazo byo mu rwego rwa politiki n'urwa gisirikare byariho mu Rwanda. Ayo Masezerano y'amahoro agizwe n'andi Masezerano yihariye anyuranye hamwe n'Inyongera zayo, harimo nk'ayerekeranye n'ihagarikwa ry'imirwano n'igabana ry'ubutegetsi hagati y'impande zombi zarwanaga. Ingingo 47 zo mu Itegeko Nshinga ryo mu wa 1991 zasimbuwe n'izo mu Masezerano ya Arusha, zimwe muri zo zikaba ari izijyana n'igabana ry'ubutegetsi, n'izongera ububasha bwa Minisitiri w'Intebe n'ubw'inzego zimwe na zimwe za Leta.

Ishingwa ry'imitwe yitwara gisirikare

52. Mu gihe iyo mishyikirano igamije kugarura amahoro no kugabana ubutegetsi yaberaga Arusha, MRND na CDR zongereye imbaraga mu gikorwa cyo gushakisha abayoboke, cyane cyane mu rubyiruko. Ayo mashyaka yombi, yari amashyaka y'Abahutu, yakajije umurego mu guha imbaraga urubyiruko ruyashamikiyeho rwari ruzwi ku mazina

y'Interahamwe zari zishamikiye kuri MRND, n'Impuzamugambi zari zishamikiye kuri CDR. Mu gihe gito cyane, abo bayoboke bashya bahindutse imitwe yitwara gisirikare. Ayo mashyaka yakoze ibishoboka kugira ngo abo bayoboke b'insoresore biganjemo ahanini abahoze ari abasirikare, abajandarume, n'imfungwa bahabwe imyitozo ya gisirikare ya ngombwa kandi bacengezwemo amatwara y'amashyaka yabo. Ibyo bikorwa byose byakozwe bicishije ukubiri n'ingingo ya 26 y'Itegeko Nshinga ryo mu wa 1991, kandi byari bizwi na Ministiri wari ushinze ubutegetsi bw'igihugu icyo gihe ari na we wari ufite inshingano yo guhagarika ishyamba rya politiki ryose ryishora mu bikorwa nk'ibyo.

53. Mu mpera z'umwaka wa 1993, disikuru za CDR zanyuze kuri radiyo ya Leta zavugaga ko Abatutsi n'Abahutu bari mu mashyaka ataravugaga rumwe na Leta bafatanyaga na FPR. Izo disikuru zashishikariye abantu bo mu mitwe yitwaraga gisirikare kwibasira Abatutsi mu bikorwa by'urugomo bakoraga buri muni. Byaragaragaye ko hagati ya 1992 na 1994 abo bantu bo mu mitwe yitwaraga gisirikare bagiye bashyigikirwa na bamwe mu basirikare basanzwe n'abajepi. Muri icyo gihe, benshi mu bari mu rwego rw'ubucamanza baba barafunze amaso ku byaha byakorwaga n'imitwe yitwaraga gisirikare kubera ko bari bashyigikiye ibikorwa byayo, cyangwa se kubera gutinya ko iyo mitwe yabihimuraho. Bamwe mu bacamanza bagerageje gukorana akazi kabo umutimanama barahotowe abandi bakorerwa gahunda yo guhotorwa ariko bararusimbuka. Nsanzuwera avuga ko hari abantu babonaga icyo gihe imitwe yitwaraga gisirikare ifite imbaraga zisumba iz'ingabo z'igihugu. Nk'uko bivugwa hano hasi, abantu bitwaraga gisirikare bagize uruhare runini muri jenocide yakorewe mu Rwanda mu wa 1994.

Umwanzuro

54. Ubushyamirane hagati y'amoko bwakoreshejwe n'abari ku butegetsi mu wa 1994 kugira ngo barangize imigambi yabo yo kuburizamo igabana ry'ubutegetsi. Amashyaka yabigizemo uruhare yirengagije Amasezerano ya Arusha maze akoresha abantu bitwaraga gisirikare kugira ngo ashyire mu bikorwa umugambi wayo wa jenocide, kandi

akangurire Abahutu gufata nk'ibitso bya FPR Abatutsi bose ndetse n'abandi bantu bashobora kuba batari bashyigikiye intambara Leta yarwanaga na FPR. Uko ni ko ibintu byari byifashe ubwo mu gihe cy'amezi atatu gusa abantu babarirwaga mu bihumbi bishwe bakanacibwa ingingo z'umubiri.

III. IBIMENYETSO

3.1 Guhabwa uburyo bungana

55. Ihame ryo guhabwa uburyo bungana ryemezwa n'ingingo ya 20 ya Sitati. By'umwihariko, ingingo ya 20(2) ivuga ko « ... buri muntu wese warezwe afite uburenganzira bwo kuburanishwa mu ruhame kandi mu buryo buboneye ... ». Ingingo ya 20(4) na yo ivuga ko « ... umuntu wese warezwe afite uburenganzira, mu buringanire busesuye, nibura kuri ibi bikurikira ... ». Hanyuma iyo ngingo ikomeza yerekana urutonde rw'uburenganzira bugomba kubahirizwa, hakubiyemo n'uburenganzira bwo kunganirwa na avoka, n'ubwo guhabwa igihe n'ibyangombwa akeneye kugira ngo ategure imyiregurire ye.
56. Ku itariki ya 13 Werurwe 1997, Avoka wunganira Kayishema yatanze icyifuzo gisaba ko hakubahirizwa ibivugwa mu ngingo ya 20(2) n'iya (4)²². Ubwunganizi bwavuze ko kugira ngo urubanza rushobore kuburanishwa mu buryo buboneye, hagomba kubaho uburinganire busesuye hagati ya Porokireri n'Ubwunganizi ku birebana n'uburyo n'ibikoresho bahabwa. Muri urwo rwego, Ubwunganizi kwasabye ko Porokireri yategekwe kumenyekanisha umubare w'abahanga mu by'amategeko, abagishwanama, abafasha n'abapererezi bakora kuri uru rubanza guhera mu ntangiriro zarwo. Bwasabye kandi ko Urugereko rwategeka Porokireri kwerekana igihe dosiye imaze n'amafaranga yayitanzweho. Icyo nyuma, Ubwunganizi kwasabye Urugereko kugabanya umubare w'abafasha Porokireri mu rubanza maze rukawuringaniza n'uw'abo Ubwunganizi bwemerewe.
57. Ku ngingo ebyiri za mbere zatanzwe n'Ubwunganizi (gusaba kumenyeshwa abantu n'umutungo Porokireri akoresha), Porokireri yavuze ko amakuru Ubwunganizi busaba

²² icyifuzo cyatanzwe na Avoka wunganira Kayishema gisaba ko Porokireri yakubahiriza ingingo ya 20 (2) na (4) (b) ya Sitati, cyashyikirijwe ibiro bya Gerefiye ku itariki ya 13 Werurwe 1997. Iki kibazo cyongeye kubyutswa na Me Ferran mu myanzuro nsozarubanza ye mu magambo, Inyandikomvugo y'iburanisha, 3 Ugushyingo 1998, kuva ku rupapuro rwa 30.

kumenyeshwa atari mu mubare watangarizwa rubanda kandi ko ajyanye n'uburyo Porokireri arangiza inshingano ze, hakurikijwe ingingo ya 15 ya Sitati²³.

58. Ku ngingo ya gatatu (gusaba ko habaho umubare ntarengwa w'abafasha Porokireri mu rubanza), Porokireri yavuze ko ingingo ya 20 ya Sitati iteganya ko abaturanyi bagomba kugira uburenganzira bungana, ko ariko itavuga ko bagomba kunganya uburyo, abakozi n'umutungo.
59. Urugereko rwasanze Ubwunganizi nta kimenyetso na kimwe bwatanze cyerekana ko uburenganzira bw'Uregwa buvugwa mu ngingo ya 20 (2) n'iya (4) bwabangamiwe²⁴. Urugereko rwasobanuye ko Ubwunganizi bwagombye kuba bwarabyukije ibyo bibazo bushingiye ku ngingo ya 17(C) y'Amabwiriza yerekeye ishyingiraho ry'abavoka bunganira abaregwa. Iyo ngingo ivuga mu buryo busobanutse ko:

amafaranga yose cyangwa igice ya ngombwa kandi ashyize mu gaciro yakoreshejwe mu bwunganizi arihwa n'Urukiko, *iyi adashobora kwishyurwa n'ukekwaho icyaha cyangwa uregwa bitewe n'amikoro yabo.* [Ni twe twabitsindagiye tubishyira mu nyuguti ziberamye]

60. Iyi ngingo igomba gufatirwa hamwe n'iya 20 (4)(d) ya Sitati iteganya ko Urukiko rugomba kugenera uregwa avoka umwunganira « ... *iyi adafite amikoro ahagije yo kumuhemba*». [Ni twe twabitsindagiye tubishyira mu nyuguti ziberamye]. Kubera iyi mpamvu, Urugereko rusanga rugomba gushimangira icyemezo rwafashe mbere kirebana n'iki cyifuzo cy'ingoboka, kivuga ko uburenganzira bw'uregwa butagomba kwitiranywa n'uburinganire bw'amikoro n'ibikoresho. Indi myumvire yose yaba icishije ukubiri n'ibisanzwe bikorwa mu nkiko ku isi yose kandi yaba inyuranye n'icyo abanditse umushinga wa Sitati y'Urukiko bari bagamije.

²³ Igisubizo cya Porokireri kuri icyo Cyifuzo cyashyikirijwe Ibiro bya Gerefiye ku itariki ya 29 Mata 1997, hanyuma atanga amakuru y'inyongera ku itariki ya 5 Gicurasi 1997.

²⁴ icyemezo ku Cyifuzo cy'ingoboka cyatanzwe na Avoka wunganira Uregwa asaba ko hakubahirizwa Ingingo ya 20 (2) na (4) (b) ya Sitati, 5 Gicurasi 1997.

61. Ikibazo kirebana no guhabwa uburyo bungana cyabyukijwe no mu magambo mu bindi bihe. Nk'urugero, Avoka wunganira Uregwa yinubiye ibyo kuba adashobora kugenzura amakuru yerekeranye n'ibyabaye cyangwa n'ibintu bikoranye ubuhanga byatanzwe na Porokireri ku birebana na Perefegitura ya Kibuye²⁵. Nyamara ariko, Urugereko ruzi ko Ubwunganizi bwagenewe abapererezi kuri ibyo bahembwa n'Urukiko. Ikindi kandi, ingingo ya 17(C) ivuga ko amafaranga yakoreshejwe mu gutegura imyiregurire, harimo n'ay'iperereza arihwa n'Urukiko. Urugereko rusanga, muri uru rubanza, uburyo n'ibyangombwa byose bikenerwa mu gutegura imyiregurire ku buryo bwuzuye byaragenewe Abavoka bose bunganira Abaregwa. Uko ibyo byangombwa byakoreshejwe nta kibazo Urugereko rubifiteho.
62. Avoka wunganira Kayishema yagarutse ku kibazo cy'uko igihe Ubwunganizi bwahawe cyo gutegura urubanza ari kigufi²⁶. Kuri iyi ngingo, Urugereko rusanga Kayishema yaritabye urukiko bwa mbere ku itariki ya 31 Gicurasi 1996, hakaba hari hashize iminsi ibiri Avoka umwunganira ashyizweho. Iburanisha ry'urubanza ryatangiyeye ku itariki ya 11 Mata 1997, naho Ubwunganizi butangira gutanga ibimenyetso bishinjura ku itariki ya 11 Gicurasi 1998, ni ukuvuga hashize imyaka igera kuri ibiri Uregwa yitabye urukiko bwa mbere. Kubera ibyo, Urugereko rusanga impande zombi zahawe igihe gihagije cyo gutegura urubanza.
63. By'umwihariko, ku birebana n'igihe impande zombi zahawe cyo gutegura imyanzuro nsozarubanza, Ubwunganizi aho na ho bwagaragaje ko butanyuzwe²⁷. Nyuma yo kuvuga ko « iburanisha ryabaye mu buryo buboneye », Avoka wunganira Kayishema yavuze ko kuba yarahawe iminsi umunani yo gutegura imyanzuro nsozarubanza ye kandi Porokireri yarahawe ukwezi, birimo akarengane. Nyamara ariko, mu gihe cy'iburanisha kandi rutiriwe rujya mu mwiherero, Urugereko rwafashe icyemezo kuri icyo kibazo muri aya magambo :

²⁵ Imyanzuro nsozarubanza y'Ubwunganizi bwa Kayishema, 16 Ukwakira 1998, urup. 3.

²⁶ Ni kimwe no haruguru, imp. 2-3.

²⁷ Reba imyanzuro nsozarubanza mu magambo ya Me Ferran. Inyandikomvugo y'iburanisha, 3 Ugushyamba 1998, imp. 54-55.

... urebye ibiri muri dosiye, ndakeka ko ababuranyi... bemeye ko gutanga imyanzuro mu magambo hamwe n'inyandiko zifitanye isano n'urubanza bizakorwa mu gihe runaka ... Bityo, ibyo guha uruhande rumwe ukwezi ntaho biri... Byagiweho impaka ku buryo bweruye kandi umuntu yumvaga ko buri ruhande rwari rufite akazi kagomba gukorwa... bishatse kuvuga ko Ubwunganizi bwashoboraga gutegura imyiregurire yabwo ... ako kanya urubanza rugitangira (Perezida w'Urugereko)²⁸.

64. Byongeye kandi, n'iyi hazza kuba hari ibibazo bigibwaho impaka cyangwa ibintu bitanyuze umuburanyi, Urugereko rwagombaga kuba rwarabishyikirijwe binyuze mu nzira zabigenewe kandi mu gihe gikwiye. Kubikomozaho mu myanzuro nsozarubanza kandi mu buryo budasobanutse neza nta bwo ari uburyo bwemewe bwo kubyutsa ikibazo imbere y'Urugereko.

3.2 Ukwizerwa kw'abatangabuhamya babonye ibyabaye

65. Abayobozi b'ishyamba «*Nazi*» ryo mu Budage bagiye bashyira mu nyandiko mu buryo bwitondewe ibyo bakoraga byose mu ntambara ya kabiri y'isi yose, ibi bikaba bitandukanye n'iby'abateguye bakanakora ubwicanyi mu Rwanda mu wa 1994 kubera ko basize inyandiko nke cyane zerekeranye n'ibyo bakoze. Kubera ibyo, mu gushyigikira ingingo zazo, impande zombi zigendera ahanini ku buhamya bwatanzwe n'abatangabuhamya mu iburanisha.
66. Abenshi mu batangabuhamya bashinje ni Abatutsi barokotse ibitero byagabwe muri Perefegitura ya Kibuye (abatangabuhamya barokotse) Abaregwa bombi baba baragizemo uruhare. Kuri ibyo, Ubwunganizi bwahamagaje Dogiteri Régis Pouget kugira ngo aze gusobanurira Urugereko rwa Mbere rw'Iremezo muri rusange ibijyanye n'ukwizerwa k'ubuhamya bw'abatangabuhamya babonye ibyabaye kandi, by'umwihariko, ibirebana

²⁸ Inyandikomvugo y'iburanisha, 3 Ugushyingo 1998, imp. 55-56.

n'ubuhamya butangwa n'abantu barokotse ibitero baba barabonye ibikorwa by'urugomo byakorewe abantu bo mu miryango yabo, inshuti zabo se cyangwa abaturanyi babo²⁹.

67. Porokireri yanze ko iyo raporo yajya muri dosiye avuga ko itari ngombwa kandi ko nta kintu igaragaza³⁰. Nyamara ariko, Urugereko rwa Mbere rw'Iremezo, rukoresheje ububasha bwarwo busesuye, rwemeye kwakira iyo raporo kandi rwumvise ubuhamya bwa Dogiteri Pouget guhera ku itariki ya 29 Kamena kugera ku ya 2 Nyakanga 1998.

Ubuhamya bw'abantu babonye ibyabaye muri rusange

68. Kubera ko Abaregwa biyambaje imyiregurire ya « sinari mpari », ikibazo cyo kumenya niba abatangabuhamya barabashije kubamenya ni ikintu gikomeye by'umwihariko. Raporo yakozwe na Dogiteri Pouget, ikaba yarashyizwe muri dosiye bisabwe n'Ubwunganizi, ivuga ko abatangabuhamya babonye ibyabaye akenshi atari abantu bo kwizerwa.
69. Mu gushyigikira iki gitekerezo, Dogiteri Pouget atanga ingingo zinyuranye. Nk'urugero, avuga ko abantu batitegereza neza ibyo babona, nyamara ariko ko ibyo bitababuza gusubiza batajijinganya ibibazo babajijwe kabone n'iyo bashidikanya. Akomeza atanga izindi ngero zinyuranye kandi z'ibintu bikunda kuba bishobora gutuma ubuhamya bw'abantu babonye ibyabaye butakwizerwa muri rusange. Kimwe mu byo avuga ni uko ubushobozi bwo kwibuka neza ibyabaye bugabanuka ukurikije uko igihe kigenda gitambuka, kandi umuntu ashobora kuba afite umutwe utameze neza ku birebana no gushyira ku murongo ibintu byahise, cyangwa ibyo avuga yibuka bikaba atari

²⁹ Ikimenyetso gihamya n° 59 cyatanzwe n'Ubwunganizi, Raporo ku birebana n'ubumenyamyifatire bw'imbaga y'abantu (*Crowd Psychology*). Dogiteri Pouget yakoze imirimo inyuranye irimo no kuba Porofeseri w'ubumenyamyifatire n'indwara zo mu mutwe (*Professor of Psychiatry and Psychology*). Umuyobozi w'imyigishirize (*Director of Education*) muri Kaminuza ya Montpellier (u Bufaransa); impuguke yashyizweho mu byerekeye ubumenyamyifatire (*Psychology*), mu rukiko rw'ubujurire rw'i Nîmes n'urw'i Montpellier mu Bufaransa.

³⁰ icyifuzo cya Porokireri gisaba ko ubuhamya bw'umutangabuhamya w'impuguke wahamagajwe n'Ubwunganizi, ari we Dogiteri Pouget, butakwizerwa hashingiwe ku ngingo ya 19 (1) ya Sitati, no ku ya 54 n'ya 89 z'Amategeko.

ibyamukomotseho nyirizina ahubwo ari ibyo yagiye atara hanze, nko mu binyamakuru cyangwa mu biganiro byinshi byerekeranye n'ibyabaye.

70. Urugereko rusanga iki gitekerezo cyo mu rwego rusange nta wukirwanya. Na none, Urugereko rwemera ibivugwa na Dogiteri Pouget ko kuba hariho ubuhamya bwinshi buhuza ku byabaye, kabone n'iyo bwaba bukomoka ku batangabuhamya benshi, bitafatwa buri gihe nk'ikimenyetso cy'uko ibivugwa cyangwa amakuru abukubiyemo bihuye n'ibyabaye. Nyamara ariko, hatitawe ku bimaze kuvugwa, Urugereko ruzirikana ko umuntu atapfa kwanga ubuhamya bwose butanzwe n'abahagaze ku byabaye yitwaje ko baba batabyibuka neza. Urugereko rwa Mbere rw'Iremezo ni rwo rero rugena uburemere ruha ubuhamya ubu n'ubu rushingiye ku byavugiwe mu iburanisha no ku byakomotse mu ibaza rinyomoza kuri ubwo buhamya. Bityo, n'ubwo kuba ubuhamya nk'ubwo bushyigikirana bitagaragaza byanze bikunze ko buhuje n'ukuri, ni ikintu ariko Urugereko rwa Mbere rw'Iremezo rwagiye ruzirikana mu isesengura ry'ubuhamya ruba rwashyikirijwe.
71. Na none kandi, kuba abatangabuhamya bari basanzwe bazi Abaregwa bashoboye kumenya, ni ikindi kintu Urugereko rushobora gushingiraho mu gusesengura agaciro k'ubuhamya bwabo. Nk'urugero, mu rubanza rwaciriwe muri Tanzaniya, Waziri Amani aburana na Leta³¹, uregwa yabyukije ikibazo kirebana no kuba umutangabuhamya yamumenye cyangwa atamumenye. Urugereko rw'ubujurire rwatanze igitekerezo gikurikira:

Iyo ibazwa ry'umutangabuhamya rirangiye, umucamanza abona ko uburyo uwo mutangabuhamya yamenye uregwa nta makemwa bufite, nk'urugero iyo uwo mutangabuhamya, mu gihe ibivugwa byabaga, yitegereje uregwa umwanya munini, cyangwa se byakozwe mu buryo bwemewe, n'uwo bafitanye isano, umuturanyi cyangwa inshuti, mugenzi we mu kazi cyangwa se abandi bantu bo muri urwo rwego, turibwira ko iyo bimeze gutyo uwo mucamanza ashobora guhamya uregwa icyaha hashingiwe ku mpamvu y'uko abantu bashoboye kumumenya».

³¹ 1980, TLR 250, 252

Urubanza Leta Zunze Ubumwe zaburanye na *Telafaire*³² na rwo rugaragaza ibindi bintu bisobanutse Urugereko rwashingiraho. icya mbere, muri urwo rubanza, Urukiko rwasanze umucamanza usuzuma urubanza mu mizi yarwo agomba kuba yumva ko umutangabuhamya yari afite ubushobozi butuma yitegereza uwakoze icyaha kandi ari ahantu ashobora kumubona neza. icya kabiri, umutangabuhamya agomba kwerekana uregwa ari uko amwibutse we ubwe. icya gatatu, umucamanza usuzuma urubanza mu mizi yarwo agomba kuzirikana inyuranya iryo ari ryo ryose ku birebana n'uko umutangabuhamya yerekanye uregwa mu iburanisha. Hanyuma kandi, Urukiko rwasanze umucamanza usuzuma urubanza mu mizi yarwo agomba no kuzirikana ukwizerwa muri rusange k'umutangabuhamya, ni ukuvuga ukuri kwe n'ubushobozi yari afite bwo kwitegereza ibyarimo kuba.

72. Mu isesengura ry'ibimenyetso, Urugereko rwa Mbere rw'Iremezo rwazirikanye byimazeyo ubwo buryo butandukanye bwo kubona ibintu kandi, aho byari ngombwa, rwatsindagiye by'umwihariko ibitekerezo byarwo by'ingenzi bishyigikira imyanzuro yarwo.

Abatangabuhamya barokotse

73. Muri raporo ye, Dogiteri Pouget, impuguke mu by'ubumenyamyifatire (*psychology*), yasesenguye ukwizerwa kwagirirwa ubuhamya bw'abantu babonye ibintu bihamamurira. Avuga ko igishyika umuntu yagize ubwo yabonaga ibyabaye gituma atabyibuka neza. Kuri we, mu gihe cy'ibyabaye bihamamurira, mu mubiri w'umuntu habaho ibintu bituma atibuka neza ibyabaye, cyangwa se ibyo yibuka bikajya kure cyane mu bwonko ku buryo bigora kubyibuka cyangwa se umuntu ntanabyibuke na mba.
74. Uko ni ko umutangabuhamya w'impuguke ushinjura abibona. Ariko, nk'uko Porokireri yabivuze, hari ubundi buryo bwo kubona ibintu. Nk'urugero, Porokireri yerekanye izindi nyandiko z'intiti zigaragaza ko umuhangayiko umuntu yabayemo usiga mu mutima we

³² 469 F.2d 552 (D.C.Cir.1972)

ibintu bituma atibagirwa na gato, ahubwo akibuka neza ibyamubayeho³³. Icyo Urugereko rwa Mbere rw'Iremezo rubona kuri icyo kibazo ni uko abatangabuhamya banyuranye batekereza ku buryo bunyuranye, kimwe n'uko intiti zinyuranye zitekereza ku buryo bunyuranye.

75. Urugereko ruzirikana ingaruka ibyabaye bihamura bishobora kugira ku buhamya bw'abatangabuhamya mu Rukiko. Nyamara ariko, ubwo buhamya bwabo ntibwakwirengagizwa kubera gusa ko buvuga ku byabaye bihamura cyangwa by'amarorerwa. Kuba mu buhamya hagaragaramo utuntu tuterekeranye cyangwa tudasobanutse neza ni ibintu byari byitezwe kandi byasuzumanywe ubwitonzi hashingiwe ku buryo abatangabuhamya bari bameze.

3.3 Ubuhamya bwanditse abatangabuhamya batanze mbere

76. Ababuranyi bagiye babyutsa rimwe na rimwe imvugo bigaragara ko zinyuranye cyangwa zituzuye hagati y'ubuhamya bwanditse abatangabuhamya baba batanze mbere n'ubuhamya bwabo mu magambo imbere y'Urugereko. Ubwo buhamya bwatanze mbere bwanditswe n'abapererezi bo mu Biro bya Porokireri mu rwego rw'imihango y'iperereza. Imvugo bivugwa ko zinyuranye zagiye ziboneka mu batangabuhamya bashinje no mu bashinjura. Ubwo Urugereko rwa Mbere rw'Iremezo rwumvaga ubuhamya bw'umutangabuhamya ushinje wiswe A, rwerekanye uko ruzajya rubyifatamo iyo hariho imvugo zinyuranya ku buryo bugaragara. Icyo gihe, Urugereko rwemeje ko uko kunyuranya bizajya bimenyeshwa umutangabuhamya bireba kugira ngo abone akanya ko kubisobanura. Hashingiwe kuri iki gisobanuro, iyo avoka wunganira uregwa cyangwa se Porokireri babonye ko, nyuma y'ibisobanuro by'umutangabuhamya, hakomeje kugaragara iryo nyuranya, berekana igice cy'ubuhamya kigaragaramo uko kunyuranya maze kigashyirwa muri dosiye nk'ikimenyetso gihamya kugira ngo Urugereko

³³ Inyandiko ya Ann Maass na Gauthier Kohnken, yasohotse mu kinyamakuru cyitwa « *Law and Human Behavior Journal* », Umutumba 13, N° 4, 1989. Iyo nyandiko yeretswe umutangabuhamya kandi ikoreshwa mu ibaza rinyomoza. Inyandikomvugo y'iburanisha, 2 Nyakanga 1998, urup.104.

ruzabisuzume. Ibimenyetso gihamya nk'ibyo Porokireri ndetse na Avoka wunganira Uregwa babishyikirije Urugereko³⁴.

77. Ubuhamya bwanditse abatangabuhamya batanze mbere ubwabwo si ikimenyetso imbere y'Urugereko. Nyamara ariko, bushobora gushingirwaho mu kutemera umutangabuhamya. Iyo igice cy'ubuhamya gikemangwa gishyizwe muri dosiye nk'ikimenyetso gihamya, Urugereko rugisuzuma rwifashishije ubuhamya mu magambo bwatangiye mu Rukiko n'ibisobanuro byatanzwe n'umutangabuhamya. Urugereko ruzirikana ko muri rusange hari hahise igihe kinini uhereye ku gihe ibivugwa n'umutangabuhamya byabereye kugeza ubwo yatangaga ubuhamya bwanditswe mbere n'ubwo yatangaga ubuhamya mu Rukiko. Nyamara ariko, hatitawe ku bimaze kuvugwa, inyuranya rivugwa hano hejuru rishobora gutuma habaho ugushidikanya ku birebana n'igice cyihariye cy'ubuhamya bukemangwa cyangwa, uko kunyuranya kwaba gukomeye bikaba byatuma ubuhamya bw'uwo mutangabuhamya bwose uko bwakabaye bukemangwa.
78. Kumenya niba ibisobanuro by'umutangabuhamya bihagije kvanaho ugushidikanya cyangwa bidahagije ni ikintu gisuzumwa hakurikijwe imiterere ya buri rubanza, hitaweho impamvu zatumye iryo nyuranya ribaho ndetse n'ibisobanuro byatanzwe nyuma. Nyamara ariko, kugira ngo gushidikanya biveho, Urugereko rwa Mbere rw'Iremezo rusaba muri rusange ibisobanuro ku mizi y'ibyabaye aho kuba gusa ku birebana n'imiburanishirize. Nk'urugero, mu bisobanuro abatangabuhamya batanga, bakunze kwitwaza ko uwakoze iperereza atandukuye neza amagambo bamubwiye igihe cy'iperereza. N'ubwo igisobanuro nk'icyo gishobora kuba ari ukuri, by'umwihariko ushingiyeye ku bibazo by'isemura, ariko ntigihagije kvanaho ugushidikanya iyo hatabonetse ikindi kimenyetso kigishimangira. Koko rero, ntibiri mu nshingano z'Urugereko gushakisha impamvu zatumye ibintu bitagenda neza mu mirimo y'iperereza ikorwa n'Ibiro bya Porokireri.

³⁴ Reba ibimenyetso gihamya n° 350A, 350B, 350C byatanzwe na Porokireri.

79. Ahubwo, iyo ibisobanuro by'umutangabuhamya byumvikana kandi bishingiye ku mizi y'ibyabaye, wenda ku kibazo cy'umupererezi mu mizi yacyo, icyo gihe ibyo bisobanuro bishobora kuba bihagije gukuraho uko gushidikanya.
80. Gushidikanya ku buhamya runaka bishobora kvanwaho n'ubundi buhamya bubushyigikira. Nyamara ariko, ntaho amategeko ateganya ko ari ngombwa ko ubuhamya runaka bushimangirwa n'ubundi kugira ngo buhabwe agaciro. Ibyo ari byo byose, uru Rugereko ruzirikana akamaro ko gushyigikirana hagati y'ubuhamya kandi rwagiye rubusuzuma rubyitayeho. Iyi nshoza yaratsindagiwe mu myanzuro y'uru rubanza ishingiyeye ku byabaye.

3.4 Inyandiko y'ibirego isobanutse neza

Intangiriro

81. Mu gusobanura ibikorwa Uregwa ashinjwa, Inyandiko y'ibirego ivuga ibintu byabaye « hafi » y'itariki iyi n'iyi, cyangwa se hagati y'amatariki aya n'aya. Kayishema ashinjwa by'umwihariko, icyaha ku kindi, ubwicanyi bwabereye kuri kiriziya gatolika no kuri Home St Jean, kuri stade ya Kibuye no ku kiriziya yo ku Mubuga. Inyandiko y'ibirego, mu gika cya 28, icya 35 n'icya 41 itanga amakuru arambuye ku bwicanyi bwakozwe ivuga ko bwabaye ku itariki ya 17, iya 18, na 14 Mata 1994 cyangwa hafi y'ayo matariki. Ahantu ha kane habereye ubwicanyi bushinjwa Kayishema na Ruzindana hagati y'itariki ya 9 Mata n'ya 30 Kamena ni mu karere ka Bisesero. Ikibazo gihari rero ni ukumenya niba ibikorwa Kayishema ashinjwa bisobanuye bihagije ku buryo byatuma Ubwunganizi butegura neza imyiregurire yabwo, kugira ngo hubahirizwe uburenganzira bw'uregwa bwo gucirwa urubanza ku buryo buboneye.

Ibirego birebana n'ubwicanyi bwakorewe mu karere ka Bisesero

82. Urugereko rwa Mbere rw'Iremezo rusanga bikwiye gutandukanya ibirego birebana n'ahantu hatatu ha mbere havugwa mu Nyandiko y'ibirego n'ibirebana n'akarere ka Bisesero. Amatariki nyayo y'ubwicanyi bwakorewe kuri kiriziya gatolika na Home Saint-

- Jean, kimwe no kuri sitade no kuri kiriziya yo ku Mubuga byasobanuwe mu iburanisha, ubwo Porokireri yatangaga ibimenyetso bishinja. Bityo rero, imyanzuro y'Urugereko kuri icyo kibazo ikubiye hano hasi mu gice cyahariwe imyanzuro ishingiyeye ku byabaye.
83. Urugereko ruzirikana ingorane ziba mu gutegura imyiregurire kuri dosiye iyo ibigize ibyaha bivugwa mu Nyandiko y'ibirego bidasobanuye neza byose. Izo ngorane ziyongera kurushaho kubera ko imyiregurire ya sinari mpari Abaregwa bombi biyambaza iterekana ko batari mu karere ka Bisesero mu gihe kivugwa. Uregwa Tadic na we yahuye na bene izo ngorane³⁵. Muri urwo rubanza, Urugereko rwa Mbere rw'Iremezo rwasanze bisa n'ibitashobokera abaregwa kugaragaza aho bari amasaha 24 ku munsu, iminsi irindwi mu cyumweru n'ibyumweru bine mu kwezi, mu rwego rw'imyiregurire ya sinari mpari mu gihe cy'amezi. Urugereko rusanga ari ikibazo gikomeye.
84. Cyakora, ni ngombwa kwibutsa hano ko mu gihe cyose cy'iburanisha, kwerekana ku buryo budashidikanywaho ibimenyetso bya buri gikorwa gifatika kigize icyaha byakomeje kuba mu nshingano za Porokireri gusa. N'ubwo, rugikubita, ubona ko uregwa agomba kumenyeshwa ku buryo burambuye ibikorwa bigize ibyaha aregwa, ni na ngombwa kwemera ko amakuru agomba kumenyeshwa aterwa n'imiterere y'ibyaha bivugwa. Urugereko rusanga ubwo Porokireri yatangaga ibimenyetso bye yaribanze umwanya munini ku hantu hanyuranye ho mu karere ka Bisesero, ariko bikaba bitaramushobokeye gutanga amakuru asobanuye neza mu Nyandiko y'ibirego bitewe n'uko hagabwe ibitero byinshi cyane.
85. Cyakora, si ngombwa ko Porokireri yerekana itariki nyayo icyaha cyabereyeho iyo itariki cyangwa isaha cyakoreweho bitari mu bikorwa by'ingenzi bigize icyaha. N'ubwo byaba byiza herekanwe itariki nyayo ya buri cyaha, birumvikana neza ko ibyo bitaba icyangombwa gisabwa mbere yo guhamya uregwa icyaha iyo igihe kitari mu

³⁵ *Urubanza Porokireri aburana na Dusco Tadic*, Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze cyitwa Yugosilaviya, N° IT-94-1-T, 7 Gicurasi 1997, igika 533. (Inyandiko y'urubanza rwa Tadic mu rw'iremezo).

byangombwa by'ingenzi bigize icyaha³⁶. Byongeye kandi, n'iyi itariki yaba ari kimwe mu by'ingenzi bigize icyaha, ni ngombwa kwibaza ukuntu igisobanuro kigusha neza ku gihe icyaha cyakoreweho cyaba giteye. Ntabwo bishoboka buri gihe kwerekana neza igihe ibivugwa byabereye. Ibi ni ukuri cyane cyane ku birebana n'ibyabereye mu Rwanda mu mwaka wa 1994, kandi hakurikijwe ubuhamya Urugereko rwiyumviye. Bityo rero, Urugereko rwemera ko rwagerageje guhuza ingorane z'imikorere Porokireri aba afite mu gutanga ibimenyetso bye no kuba agomba kwerekana ku buryo busobanuye neza mu Nyandiko y'ibirego ibikorwa bigize icyaha n'ahantu byakorewe kugira ngo uregwa ashobore gutegura ku buryo bwuzuye imyiregurire ye.

86. Cyakora, Urugereko, rushingiye ku bimaze kuvugwa, rusanga iyo igihe icyaha cyakorewe ari ikintu cy'ingenzi mu bigize icyo cyaha, Porokireri agomba gusobanura ikirego mu buryo bwihariye aho gukomeza kukivuga mu buryo bwa rusange³⁷. Kuri ibyo, Urugereko rusanga ububasha bw'Urukiko bushingiye ku gihe icyaha cyakorewe ari ukuva ku itariki ya 1 Mutarama 1994 kugeza ku ya 31 Ukuboza 1994, ko kandi Inyandiko y'ibirego yibanda gusa ku byabaye hagati y'itariki ya 9 Mata n'ya 30 Kamena mu karere ka Bisesero. Mu by'ukuri, ubwo Porokireri yatangaga ibimenyetso bye yashoboye kwerekana neza ahantu ubwicanyi bwakorewe mu karere ka Bisesero, n'ibihe nyirizina ibikorwa bivugwa byabereyeho. Bityo, kwerekana itariki nyayo biba ngombwa gusa iyo itariki ari kimwe mu bintu by'ingenzi bigize icyaha. Iyo bimeze gutyo, gusobanura amatariki neza bigenda bihinduka hakurikijwe imiterere ya buri rubanza. Kubera ibyo, Urugereko rusanga kuba itariki ibyaha byakoreweho itaragarajwe neza ntacyo bitubuyaho ibirego byatanzwe mu buryo bwemewe kandi bisobanuye mu magambo arambuye, kandi nta cyo bibangamiyeho uburenganzira bw'uregwa bwo gucirwa urubanza ku buryo buboneye.

³⁶ Reba Inyandiko y'urubanza rwa Tadic, igika 534, n'ianza zivugwamo.

³⁷ Urugero, reba imanza zaciwe n'inkiko zo muri Kanada, nk'ianza *G.B. A.B. na C.S c R* (1990) 2s.c.r.30, n'urubanza R aburana na Colgan (1986) 30 C.C.C (3d) 193 (Urukiko rw'ubujurire) ; muri izo manza, umucamanza Monnin C.J.M yasanze n'ubwo haterekanwe igihe nyirizina icyaha cyakoreweho, icyo gihe cyaragarajwe ariko ku buryo buhagije herekanwa ko cyabaye mu ntera y'imyaka itandatu.

IV. AMATEGEKO AKURIKIZWA

4.1. Jenocide

87. Ingingo ya 2 (2) ya Sitati ya TPIR igira iti:

Icyaha cya jenocide ni kimwe mu bikorwa bikurikira cyakozwe kigamije kurimbura abantu bose cyangwa igice cyabo bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini, bazira icyo bari cyo:

- a) Kwica abo bantu;
- b) Kubatera ububabare buzahaza umubiri cyangwa mu mutwe;
- c) Gushyira ku bushake abo bantu mu nzitane z'ubuzima zigomba gutuma bose cyangwa igice cyabo barimbuka;
- d) Gushyiraho ingamba zigamije kubabuza kubyara;
- e) Kubanyaga urubyaro ukarushyira mu rindi tsinda.

Ibi bisobanuro ni inyandukuro y'ibikubiye mu ngingo ya II n'ya III z'Amasezerano yerekeye jenocide yo mu wa 1948 no mu ngingo ya 17 ya Raporo ya Komisiyo y'Amategeko Mpuzamahanga yo mu wa 1966, Umushinga w'Amategeko ahana ibyaha bihungabanya amahoro n'umutekano w'ikiremwamuntu (ILC, Umushinga w'amategeko ahana).

88. Inshoza y'icyaha cya jenocide yagaragaye bwa mbere mu rubanza rwaciwe n'Urukiko Mpuzamahanga rwa Gisirikare (Nuremberg) ku itariki ya 30 Nzeri n'ya 1 Ukwakira 1946, ahavugwa ibyo kurimbura itsinda ry'abantu. Nyuma, Inama Rusange y'Umuryango w'Abibumbye yemeye ko icyo cyaha kibujijwe, nk'ihame ry'amategeko mpuzamahanga. icyemezo 260 (A) (III) cyo ku itariki ya 9 Ukuboza 1948, cyemeje Umushinga w'Amasezerano yerekeye jenocide, cyinjije iryo hame mu mategeko mpuzamahanga. Ayo Masezerano nyuma yaje kwemerwa hirya no hino nk'amategeko

mpuzamahanga arengera uburenganzira bwa muntu. Na none, icyaha cya jenocide gifatwa nk'igikubiye mu mategeko mpuzamahanga ashingiye ku muco, kandi agomba kubahirizwa byanze bikunze.

89. Igisonaburo cya jenocide cyari gishingiye ku cy'ibyaha byibasiye inyokomuntu, ni ukuvuga ko ari uruhurirane rw'ibikorwa « by'itsembatsemba n'itoteza bikozwe kubera impamvu za politiki, iz'ubwoko cyangwa idini », kandi cyari kigamije kwibanda ku bikorwa « *bigamije kurimbura itsinda ry'abantu cyangwa igice kinini cyabo* » (Ni twe twabitsindangiye tubishyira mu nyuguti ziberamye). Jenocide ni icyaha kiri mu moko y'ibyaha byibasiye inyokomuntu. Nyama ariko, jenocide itandukanye cyane n'ibindi byaha byibasiye inyokomuntu. Ikibitandukanya cyane ni uko jenocide irangwa n'umugambi wihariye wo gutsembatsemba itsinda ry'abantu (bose cyangwa igice cyabo) barengerwa n'amategeko mpuzamahanga, mu gihe kugira ngo habeho icyaha cyibasiye inyokomuntu hagomba kwibasirwa abaturage b'abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda. Hari ubwo impamvu z'ivangura ibyo byaha byombi bishingiyeho zihurirana cyangwa zimwe muri zo zikagaragara hombi. Ibintu nk'ibyo biri busesengurwe ku buryo burambuye mu gice cya karindwi cy'uru rubanza cyagenewe ibyaha bikomatanyije.
90. Kugira ngo icyaha cya jenocide kibeho, hari ibintu bibiri bisabwa, ari byo igitekerezo cyo gukora icyaha ni ukuvuga umugambi wihariye, n'igikorwa gifatika ni ukuvuga igikorwa kibujijwe cyangwa kudakora ibitegetswe.

4.1.1 Igitekerezo cyo gukora icyaha

91. Icyaha cya jenocide kirangwa ni igitekerezo cyihariye (*dolus specialis*) cyo kurimbura abantu bose bagize itsinda runaka cyangwa igice cyabo. Igitekerezo cyihariye ni ngombwa ko kiba kiriho ku bikorwa byose bigize icyaha cya jenocide bivugwa mu ngingo ya 2 ya Sitati kuva ku gaka (a) kugeza kuri e), ni ukuvuga ko nyirugukora ibikorwa byose birondorwa aba «agamije kurimbura abantu bose bagize itsinda runaka cyangwa igice cyabo, kubera impamvu z'ubwenegihugu, ubwoko, cyangwa idini, bazira

icyo bari cyo. Icyo gitekerezo cyihariye ni cyo gitandukanya jenocide n'icyaha gisanzwe cy'ubwicanyi³⁸. Urugereko rusanga kugira ngo habeho icyaha cya jenocide ari ngombwa ko igitekerezo cyo gukora icyaha kiba cyabayeho mbere y'uko hakorwa ibikorwa bigize icyo cyaha. Nyamara ariko, si ngombwa ko igikorwa runaka kiba cyagambiriwe; icyitabwaho ni ukureba niba uwakoze icyo gikorwa yari afite igitekerezo cyo gukora jenocide.

92. Nk'uko ingingo ya 6 (3) ya Sitati ibiteganya, ukuriye abandi ariyozwa ibyaha byakozwe n'abo akuriye iyo yari azi cyangwa yaragombaga kuba yari azi ko abo akuriye bagiye gukora icyaha cyangwa ko bagikoze ariko ntafate ingamba za ngombwa kandi zishyize mu gaciro kugira ngo aburizemo ikorwa ry'icyo cyaha cyangwa ngo ahane abagikoze.

Ikimenyetso cyerekana ko umuntu yari afite igitekerezo cyihariye

93. Ku byerekeranye no kureba niba umuntu yari afite igitekerezo runaka cyihariye, Urugereko rwemera ko bishobora kutoroha kwerekana ko abakoze ibyaha bagaragaje ibitekerezo byabo ku buryo bweruye. Nyamara ariko, ibikorwa by'abakoze ibyaha, hakubiyemo n'ibimenyetso biziguye, bishobora kugaragaza ku buryo buhagije igitekerezo bari bafite. Komisiyo y'impuguke nayo yerekanye iyo ngorane muri raporo yayo ya nyuma yerekeranye n'uko ibintu byari byifashe mu Rwanda. Iyo raporo ivuga ko igitekerezo cya ngombwa cyo gukora icyaha gishobora kugaragazwa n'ibikorwa bihagije, nk'umubare w'abantu bagize itsinda runaka bahohotewe³⁹. Urugereko rusanga icyo gitekerezo gishobora kugaragarira mu magambo cyangwa mu bikorwa by'uwoze icyaha, no mu myitwarire asanganywe⁴⁰. By'umwihariko, Urugereko rufata nk'ikimenyetso igikorwa cyo kwibasira abantu bo mu itsinda runaka cyangwa ibyabo; gukoresha amagambo y'ibitutsi uyabwira abo bantu; intwari zakoreshejwe n'uko ibikomere byo ku mubiri bimeze; uko umugambi wacuzwe mu buryo bunonosoye, n'ubwicanyi buri kuri

³⁸ Virginia Morris & Michael Scharf, Urukiko Mpanabyaha Mpuzamahanga Rwashyirirahwe u Rwanda, 167 (1998).

³⁹ Byasubiwemo na Bassiouni, mu gitabo cyitwa « *The Law of the International Criminal Tribunal for the Former Yugoslavia* » urup. 524; na *UN and RWANDA*, 1993-6, urup.432, igika 166.

⁴⁰ Ikinyamakuru cyitwa « *Wisconsin International Law Journal* », 243 (1996).

gahunda. Na none kandi, umubare w'abantu bahohotewe ni ikintu gikomeye. Muri raporo ya Sukomisiyo kuri jenocide, Intumwa yihariye yagize iti «kurimbura abantu cyangwa kugerageza kubarimbura, hakoze igikorwa icyo ari cyo cyose kirondorwa mu ngingo ya II n'ya III z'Amasezerano yerekeye jenocide, ni ikimenyetso gikomeye cyerekana ko nyirugukora icyaha yari yaritswemo n'igitekerezo cya ngombwa cyo kurimbura abantu bagize itsinda runaka bese cyangwa igice cyabo»⁴¹.

94. Urugereko rusanga kandi n'ubwo umugambi wihariye wo kurimbura abantu utari mu bigize icyaha cya jenocide, bisa nk'aho bitoroshye gukora icyaha cya jenocide nta mugambi wacuzwe cyangwa bitarateguwe. Morris na Scharf berekana ko « bisa n'ibidashoboka ko icyaha cya jenocide cyakorwa Leta itabigizemo uruhare n'ubwo rwaba ruziguye, urebye ukuntu icyo cyaha ari karundura »⁴². Bavuze ko atari « ngombwa ko umuntu aba azi ku buryo burambuye imiterere y'umugambi wa jenocide cyangwa ya gahunda y'icyo cyaha ». Urugereko rwemera iki gitekerezo.

Kurimbura itsinda ry'abantu

95. Uwakoze icyaha cya jenocide agomba kuba yari afite umugambi wo kurimbura abantu bese bagize itsinda runaka cyangwa igice cyabo. Ibyo bituma umuntu yibaza icyo amagambo « kurimbura itsinda » avuga. Porokireri avuga ko ayo magambo agomba gusobanurwa mu buryo bwagutse kandi ko adakubiyemo gusa ibikorwa bigamije kwica abantu ahubwo ko akubiyemo n'ibindi bibura gato ngo bibahitane⁴³. Mu nyandiko y'urubanza rwa Akayesu mu rw'iremezo, Urugereko rwavuze ko ibikorwa by'urugomo rushingiye ku gitsina byakorewe muri Komini ya Taba byari muri gahunda yo kurimbura abantu, byibasira by'umwihariko Abatutsikazi kandi ko byari nk'uburyo bwo kubarimbura cyangwa kurimbura Abatutsi nk'abantu bahuriye ku itsinda runaka⁴⁴. Urugereko rwemera icyo gitekerezo kimwe n'icya Komisiyo y'Amategeko

⁴¹ Inyandiko y'Umuryango w'Abibumbye, E/CN.4/Sub.2/1985/6, Urup. 16, igika 29.

⁴² Morris & Scharf, bavuzwe haruguru, urup. 168.

⁴³ Imyanzuro ya Porokireri, 9 Ukwakira 1998, urup. 30.

⁴⁴ Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika. 731.

Mpuzamahanga (ILC) yavuze ko « atari ngombwa ko haba hagamijwe kurimbura itsinda ry'abantu aba n'aba aho baba bari hose hirya no hino ku isi⁴⁵.

Abagize itsinda bose cyangwa igice cyabo

96. Ikindi kintu kigomba kwitabwaho ni uko kurimbura itsinda ry'abantu bigomba kuba bigamije kurimbura « abagize itsinda bose cyangwa se igice cyabo ». Komisiyo y'Amategeko Mpuzamahanga (ILC) yavuze ko bitewe n'imiterere yacyo ubwayo, icyaha cya jenocide kiba kigamije kurimbura nibura igice kinini cy'abantu bo mu itsinda runaka⁴⁶. Muri raporo ya Sukomisiyo kuri jenocide, Intumwa yihariye yavuze ko ijambo « igice » ryasa n'iryerekana umubare munini bihagije ugereranyije n'umubare wose w'abantu bagize itsinda, cyangwa se igice kigaragara cy'iryo tsinda, nk'abayobozi baryo. Bityo, byaba byiza kwita ku mubare w'abantu bose bagize itsinda no ku mubare w'igice runaka cyibasiwe⁴⁷.
97. Urugereko rusanga rero amagambo « igice cy'abantu bagize itsinda » ashaka kuvuga ko habayeho igitekerezo cyo kurimbura umubare munini w'abantu bagize itsinda runaka. Kugira ngo bihuze n'ibivugwa muri iki gisobanuro, abantu bagomba kuba bibasiwe bazira ko bagize itsinda runaka.

Abantu bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini

98. Hagomba kuba hariho umugambi wo « kurimbura abantu bose bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini ». Bityo, ibikorwa bigomba kuba byibasiye abantu runaka hashingiwe ku mpamvu z'ivangura zimaze kuvugwa. Ubwoko (« *ethnic group* ») buba bugizwe n'abantu bahuje ururimi n'umuco; cyangwa abantu bibonamo ko babugize (ni bo ubwabo babyibonamo); cyangwa abantu bafatwa gutyo n'abandi, barimo n'abakoze ibyaha (abandi ni ko babafata). Ubwoko (« *racial group* ») bushobora kandi

⁴⁵ ILC Draft Code of Cimes, urup.42, igika 8 [Umushinga w'amategeko ahana wateguwe na Komisiyo y'Amategeko Mpuzamahanga (ILC), urup. 42 igika 8].

⁴⁶ Ni kimwe no haruguru.

⁴⁷ M. Whitaker, mu nyandiko y'Umuryango w'Abibumbye, E/CN.4/Sub.2/1985/6, urup. 16, igika 29.

kuba bugizwe n'abantu bahuje isura bakomora ku bisekuru byabo akenshi bitewe n'uduce tw'isi baherereyemo. Abantu bahuriye ku idini bakubiyemo abahuriye ku madini runaka azwi cyangwa ku buryo bwo gusenga bwabo, cyangwa basangiye ukwemera.

Kurimbura abantu bose bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini, cyangwa igice cyabo

99. Amagambo avugwa hejuru yerekeza ku mugambi wihariye (nk'igitekerezo cya ngombwa kiri mu bigize icyaha cya jenocide). Igikorwa cyo « kurimbura » kigomba kuba cyibasiye itsinda ry'abantu bazira icyo bari cyo, ni ukuvuga itsinda ry'abantu runaka, nk'uko bivugwa mu ngingo ya 2(2) ya 2 ya Sitati.

4.1.2 Igikorwa kigize icyaha

100. Ingingo ya 2(2) kuva ku gaka (a) kugeza kuri (e) ya Sitati ya TPIR, hamwe n'ingingo ya II kuva ku gaka (a) kugeza kuri (e) y'Amasezerano yerekeye jenocide zirondora ibikorwa bigize icyaha cya jenocide iyo ababikoze bari bafite umugambi wihariye.

Iyicwa ry'abantu bagize itsinda

101. Ingingo ya 2 (2) (a) ya Sitati mu rurimi rw'icyongereza ivuga ko jenocide ari igikorwa cy'ubwicanyi (« *killling* ») kigamije kurimbura abantu bose cyangwa igice cyabo bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini. Mu rurimi rw'igifaransa bakoresha ijambo « *meurtre* », bishaka kuvuga ubwicanyi umuntu yakoze ku bushake.
102. Mu myanzuro nsozarubanza y'ababuranyi mu magambo, bavuze ko ibyanditse mu rurimi rw'icyongereza n'ibyanditse mu rurimi rw'igifaransa bitandukanye. Porokireri yavuze ko ijambo « *meurtre* » rikoreshe mu rurimi rw'igifaransa rifite uko ryumvikana mu mategeko y'Abafaransa, ko rishaka kuvuga ubwicanyi bukozwe n'umuntu ku bushake, mu gihe ijambo « *killling* » ryo mu cyongereza rishaka kuvuga gusa igikorwa

cyose gihitana umuntu⁴⁸. Porokireri yavuze ko ijambo rikoreshwa mu rurimi rw'icyongereza ari ryo umuntu yagoragoza kurushaho, ko kandi ryatuma, bibaye ngombwa, habaho igisobanuro cyaguye⁴⁹. Ubwunganizi bwavuze ko ijambo «*meurtre*» ari ryo ryagombye gukoreshwa nk'uko ryakoreshejwe mu rubanza rwa Akayesu. Bwanavuze ko mu gihe haba hariho ugushidikanya kuri icyo kibazo, hakubahirizwa ihame rusange ry'amategeko ahana rivuga ko iyo hariho ugushidikanya harebwa igifitiye uregwa akamaro.

103. Urugereko rwemera ko mu rwego rwo gusobanura inyandiko z'amategeko, iyo habayeho ugushidikanya uko ari ko kose, hagomba kurebwa igifitiye uregwa akamaro. Bityo igikorwa kivugwa mu ngingo ya 2 (2)(a) ni «*ubwicanyi*», ni ukuvuga igikorwa kinyuranyije n'amategeko cy'ubwicanyi umuntu akora ku bushake. Nyamara ariko, ibikorwa byose birondorwa bigomba kuba byakozwe hagamijwe kurimbura abantu bose bagize itsinda runaka cyangwa igice cyabo. Nk'uko Komisiyo y'Amategeko Mpuzamahanga (*ILC*) yabyemeje, ibikorwa birondorwa «*urebye imiterere yabyo ubwabyo biba byakozwe n'umuntu uzi icyo akora, ku bushake, cyangwa yabitekerejeho, kandi bidashoboka ubusanzwe ko yabikora atazi ingaruka zishobora kuvamo. Bene ibyo bikorwa akenshi ntibigwirira umuntu cyangwa ngo biterwe n'uburangare busanzwe...* Kugira ngo icyo cyaha kibeho, bisaba ko ubwenge buba bufite uko bumeze cyangwa igitekerezo cyihariye ku birebana n'ingaruka zose z'igikorwa kibujijwe⁵⁰. Bityo rero, urebye ayo magambo yakoreshejwe muri izo ndimi bisa nk'aho adatandukanye kubera ko ijambo «*killing*» ryo mu cyongereza rigendana n'igikorwa cy'ubwicanyi hagamijwe kurimbura abantu bose bagize itsinda runaka cyangwa igice cyabo.

104. Urugereko rusanga Inyandiko y'urubanza rwa Akayesu mu rw'iremezo idatanga igisobanuro gihagije cy'ijambo «*killing*»⁵¹ ryakoreshejwe mu nyandiko y'icyongereza

⁴⁸ Inyandikomvugo y'iburanisha, 21 Ukwakira 1998, urup. 91.

⁴⁹ Ni kimwe no haruguru.

⁵⁰ Umushinga w'amategeko ahana wateguwe na Komisiyo y'Amategeko Mpuzamahanga (*ILC*), urup. 42 (hasobanurwa ibivugwa mu ngingo ya 17, kuva ku gaka (a) kugeza kuri (e)).

⁵¹ Ibika 500 - 501, urup. 206.

n'icy'ijambo « *meurtre* » ryo mu nyandiko y'igifaransa, ari mu ngingo ya 2 (2)(a) ya Sitati iyo urebye igitekerezo cyihariye kiba cyaritse mu muntu ukora jenocide. Bityo rero, amagambo « *killing* » na « *meurtre* » agomba gusuzumirwa hamwe n'igitekerezo cyihariye cyo gukora jenocide, ni ukuvuga igitekerezo cyo kurimbura abantu bose bahuriye ku bwenegihugu, ubwoko n'idini cyangwa igice cyabo, bazira icyo bari cyo.

Gutera abantu bo mu itsinda runaka ububabare bubazahaza umubiri cyangwa mu mutwe

105. Mu bikorwa bigize jenocide bivugwa mu ngingo ya 2 (2)(b) ya Sitati harimo ibyo « gutera abantu bagize itsinda runaka ububabare bubazahaza umubiri cyangwa mu mutwe ».
106. Ayo magambo adasobanurwa muri Sitati yakuruye impaka mu myanzuro nsozarubanza y'ababuranyi. Porokireri yavuze ko « gutera umuntu ububabare bumuzahaza umubiri cyangwa mu mutwe » bivuga kumukorera ibikorwa bimutera ubwo bubabare, hazirikanwa ko umuntu afatwa wese uko yakabaye, agizwe n'ingingo nyinshi zikorana zose kandi zidasobanya; ko ijambo « bukomeye » ryo rijyanye n'ubwo bubabare ryerekana ingano yabwo.
107. Porokireri yavuze ko « ububabare buzahaza » bushobora kugira ingaruka zituma urugingo rumwe cyangwa ingingo zinyuranye z'umuntu zigagara cyangwa bukazibuza gukora ku buryo busanzwe. Bityo, ubwo bubabare si ngombwa ko buhitana umuntu ariko bushobora kumumugaza ku buryo nta kamaro aba agifite mu muryango mugari w'abantu cyangwa ku buryo aba ameze nk'uwapfuye ahagaze. Porokireri yavuze kandi ko « gukubita no gukomeretsa » bishobora kuzahaza iyo bikomeye ku buryo imikorere y'urugingo rumwe rw'umubiri cyangwa y'ingingo nyinshi ihinduka. Porokireri yavuze kandi ko ibikorwa bitibasira umubiri, nko gukoresha iterabwoba cyangwa ibikangisho ku buryo bukomeye, no kuka igitutu bikabije, bibarirwa mu bitera ububabare buzahaza mu mutwe⁵².

⁵² Rahetlah, imyanzuro, 21 Ukwakira 1998, imp. 114-121.

Ububabare buzahaza umubiri

108. Amagambo « ububabare buzahaza umubiri » agomba gusuzumwa hakurikijwe imiterere ya buri kibazo, umuntu ashize mu gaciro. Mu nyandiko y’urubanza rwa Akayesu mu rw’iremezo, Urugereko rwafashe umwanzuro wemeza ko kuvuga ububabare buzahaza umubiri bidasobanura byanze bikunze ko ubwo bubabare buhoraho cyangwa se ko budashobora gukura⁵³. Muri urwo rubanza, havuzwe kandi ko ibikorwa by’urugomo rushingiye ku gitsina, gusambanya ku gahato, guca ingingo z’umubiri no guhata umuntu ibibazo akubitwa, no/cyangwa gukangisha umuntu kumwica, ibyo byose ari ibikorwa bizahaza umubiri⁵⁴. Urugereko rwa Mbere rw’iremezo rwemera iyo myanzuro.
109. Urugereko rusanga muri rusange amagambo « ububabare buzahaza umubiri » ubwayo yumvikana neza. Ashobora gusobanurwa nk’igikorwa giteza ububabare bukomeye amagara y’uwahohotewe, kimwangiza isura mu maso, cyangwa kizahaza ingingo z’umubiri z’inyuma, iz’imbere cyangwa ibyumviro.

Ubumuga buzahaza mu mutwe

110. Amagambo « ububabare buzahaza mu mutwe » agomba na yo gusuzumwa hakurikijwe imiterere ya buri kibazo. Porokireri avuga ko ububabare bwo mu mutwe atari ingaruka byanze bikuze y’ububabare bw’umubiri. Mu gushyigikira iyo ngingo, ashingira ku bivugwa mu gisobanuro cy’ibyaha cyatanzwe na Komite yateguye ishyirwaho ry’Urukiko Mpanabyaha Mpuzamahanga Ruhoraho (ICC), kivuga ko ububabare buzahaza mu mutwe bugomba kuba bukubiyemo « ububabare bukomeye bwo mu mutwe, atari ubworoheje cyangwa ubw’igihe gito⁵⁵. Porokireri avuga ko gukoresha iterabwoba cyangwa ibikangisho ku buryo bukomeye, no kuka igitutu bikabije, bishobora kubarirwa mu bitera ububabare buzahaza mu mutwe.

⁵³ Inyandiko y’urubanza rwa Akayesu mu rw’iremezo, igika 502.

⁵⁴ Inyandiko y’urubanza rwa Akayesu mu rw’iremezo, ibika 706-707, 711-712.

⁵⁵ Raporo ya Komite nteguramirimo ku ishyirwaho ry’Urukiko Mpanabyaha Mpuzamahanga (ICC). Imirimo ya Komite nteguramirimo, Werurwe-Mata na Kanama 1996, Inyandiko z’Umuryango w’Abibumbye. A/51/22, urup.18.

111. Abunganira Abaregwa bavuze ko ububabare buzahaza umubiri no mu mutwe Porokireri avuga ari ingaruka gusa z'ubwinjiracyaha cy'ubwicanyi, ko rero ubwo bubabare ubwabwo butakwitwa icyaha cya jenocide. Bavuze kandi ko abatangabuhamya bashinja bakomeretse batatanze ibimenyetso byerekana ko ababibasiye bari bafite umugambi wo kubateza ububabare bubazahaza umubiri cyangwa mu mutwe. Bityo rero, Ubwunganizi buvuga ko umugambi wari uwo kwica, ko utari uwo guteza ububabare buzahaza umubiri cyangwa mu mutwe.
112. Urugereko rusanga iyo ibintu bimeze gutyo, uregwa ashobora kuryozwa icyaha ari uko gusa mu gihe icyaha cyakorwaga yari afite umugambi wo guteza ububabare buzahaza umubiri no mu mutwe, mu rwego rw'igitekerezo cyihariye cyo kurimbura abantu bagize itsinda runaka cyangwa igice cyabo.
113. Urugereko rusanga amagambo « ububabare buzahaza umubiri cyangwa mu mutwe » agomba gusobanurwa hashingiwe ku miterere ya buri kibazo hifashishijwe ubukemuramanza burebana na byo.

Gushyira ku bushake abantu bagize itsinda runaka mu nzitizi z'ubuzima zituma bose cyangwa igice cyabo barimbuka

114. Ingingo ya 2 (2)(c) ya Sitati iteganya igikorwa cyo « gushyira ku bushake abantu bagize itsinda runaka mu nzitizi z'ubuzima zituma bose cyangwa igice cyabo barimbuka ». Porokireri avuga ko iyo ngingo yerekeranye n'ibikorwa bishobora guhitana abahohotewe, kabone n'iyi batapfa kandi ko iryoza icyaha abantu bashyira abandi mu nzitizi z'ubuzima zishobora kubarimbura, ziramutse zidahagaritswe⁵⁶.
115. Urugereko rwemera impamvu zitangwa mu Mushinga w'Amasezerano wateguwe n'Ubunyamabanga bw'Umuryango w'Abibumbye, usobanura ko ibyo bikorwa bikubiyemo ibishobora gutuma abantu bapfa uruhongohongo, nk'urugero, gutuma batagira

⁵⁶ Imyanzuro nsozarubanza ya Porokireri, 9 Ukwakira 1998, urup. 21.

amacumbi n'imyambaro bikwiye, gutuma babura isuku ntibanavurwe bikwiye, kubakoresha imirimo ku buryo bukabije cyangwa ibamaramo imbaraga⁵⁷.

116. Urugereko rusanga « gushyira ku bushake abantu bagize itsinda runaka mu nzitizi z'ubuzima zituma bose cyangwa igice cyabo barimbuka » ari igikorwa gikubiyemo uburyo bwo kurimbura abo bantu ariko atari ako kanya. Rwemera igisobanuro kimaze kuvugwa hano hejuru⁵⁸. Bityo, rusanga inzitizi z'ubuzima zivugwa zikubiyemo ibikorwa byo gusambanya ku gahato, kwicisha inzara abantu bagize itsinda runaka, kubavura bya nyirarureshwa, kubafungira ahantu hatwo kandi igihe kinini, iyo ibyo bikorwa bigamije kubarimbura bose cyangwa igice cyabo.

Ingamba zigamije kubuza abantu bagize itsinda runaka kubyara

117. Ingingo ya 2) (2)(d) ya Sitati iteganya igikorwa kigamije kubuza abantu bagize itsinda runaka kubyara. Urugereko rwemera igisobanuro gitangwa kuri icyo kibazo mu Nyandiko y'urubanza rwa Akayesu mu rw'iremezo.

Kunyaga itsinda urubyaro rwaryo ukarushyira mu rindi tsinda

118. Ingingo ya 2) (2)(e) ya Sitati iteganya igikorwa cyo kunyaga itsinda urubyaro rwaryo ukarushyira mu rindi tsinda. Urugereko rwemera igisobanuro gitangwa kuri icyo kibazo mu Nyandiko y'urubanza rwa Akayesu mu rw'iremezo.

4.2 Ibyaha byibasiye inyokomuntu

119. Ingingo ya 3 ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda igira iti:

Urukiko Mpuzamahanga Rwashyiriweho u Rwanda rufite ububasha bwo gucira imanza abantu bakekwaho kuba barakoze ibyaha bikurikira, mu gihe byakozwe

⁵⁷ Nehemiah Robinson, mu nyandiko yitwa « *The Genocide Convention: A Commentary* » [Amasezerano Mpuzamahanga yerekeye jenocide : Ibisobanuro] (1960), urup. 123.

⁵⁸ Robinson, ni kimwe no haruguru, imp. 63-64.

mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri abo ari bo bose bazira impamvu z'ubwenehugu, iza politiki, iz'ubwoko cyangwa iz'idini:

- a) *Ubuhotozi;*
- b) *Itsembatsemba;*
- c) *Gushyira mu bucakara;*
- d) *Gucira ishyanga*
- e) *Gufunga;*
- f) *Ibikorwa by'urubozo;*
- g) *Gusambanya ku gahato;*
- h) *Gutoteza ;*
- i) *Ibindi bikorwa bibi birenze kameremuntu.*

120. Ibyaha byibasiye inyokomuntu byaburanishijwe n'Urukiko rw'i Nuremberg. Ingingo ya 6(c) ya Sitati y'Urukiko Mpuzamahanga rwa Gisirikare rw'i Nuremberg⁵⁹ (iri ku Mugereka w'Amasezerano yo gucira imanza no guhana ba ruharwa bakoze ibyaha by'intambara bo mu bihugu by'i Bulayi byari byibumbiye mu cyiswe «*European Axis*» (Amasezerano y'i Londres), isobanura mu buryo bukurikira ibyaha byibasiye inyokomuntu :

... ari byo ubuhotozi, itsembatsemba, gushyira mu bucakara, gucira ishyanga, n'ibindi bikorwa bibi birenze kameremuntu bikorewe abaturage b'abasiviri mu gihe cy'intambara cyangwa mbere yaho ; cyangwa itotezwa rishingiye ku mpamvu za politiki, iz'ubwoko cyangwa iz'idini, iyo ibyo bikorwa bifite aho bihuriye n'ibyaha Urukiko rufitiye ububasha bwo kuburanisha cyangwa iyo byakozwe mu rwego rwo gutsotsoba ibyo byaha, kabone n'iyi byaba bitanyuranyije n'amategeko y'igihugu byakorewemo.

⁵⁹ *Law No 10 of Control Council for Germany* [Itegeko n° 10 ry'Inama Ishinzwe Ubugenzuzi yashyiriweho u Budage].

121. Na none, ibyaha byibasiye inyokomuntu byakurikiranwe hashingiwe ku ngingo ya 2 y'Itegeko n°10 rya « *Control Council Law* »⁶⁰ [Inama Ishinzwe Ubugenzuzi], kandi igisobanuro cyabyo cyagiye gitera imbere kurushaho mu manza zaciwe n'inkiko zo mu bihugu, nko mu rwa Eichmann⁶¹, Barbie⁶², na Touvier. Vuba aha kandi, Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda n'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze cyitwa Yugosilaviya zaburanishije ibyaha byibasiye inyokomuntu.

4.2.1 Igitero

122. Ibyaha birondorwa bigomba kuba byarakozwe mu rwego rw'igitero rusange cyangwa kiri kuri gahunda cyibasiye abaturage b'abasiviri abo ari bo bose kubera impamvu z'ubwenegihugu, iza politiki, iz'ubwoko cyangwa iz'idini. Igitero kiba ari igikorwa ibyaha bivugwa bishamikiyeho. Koko rero, mu gitero kimwe hashobora gukorwamo icyarimwe ibyaha binyuranye byarondowe, nk'urugero ubuhotozi, gusambanya ku gahato no gucira abantu ishyanga. Mu gitero, ibyaha byakozwe n'umuntu kubera impamvu ze bwite, cyangwa bitari mu rwego rwa gahunda cyangwa mu rw'umugambi rusange ntibibarirwa mu byaha byibasiye inyokomuntu. Ubwunganizi bwagiye buganisha ibitekerezo byabwo muri iyo nzira.

Igitero rusange cyangwa kiri kuri gahunda

123. Igitero kigomba kuba cyujuje kimwe muri ibi bisabwa, ari byo kuba ari rusange cyangwa kiri kuri gahunda⁶³. Igitero rusange kirangwa no kuba cyibasiye abantu benshi⁶⁴. Igitero

⁶⁰ *International Law Reports* » [ILR] [Raporo z'Amategeko Mpuzamahanga], umutumba 36, urup. 31.

⁶¹ ILR, 36.

⁶² ILR, 125.

⁶³ N'ubwo inyandiko y'igifaransa ikoresha ijamba « na » mu mwanya wa « cyangwa » hagati y'amagambo « cya rusange » na « kiri kuri gahunda », Urugereko ntrushidikanya ko hagati y'ayo magambo yombi hakwiye gukoreshwa « cyangwa ». Iki kibazo cyarakemuwe mu Nyandiko y'urubanza rwa Akayesu mu rw'iremezo, kikaba rero kitagomba kongera gusuzumwa hano.

kiri kuri gahunda cyumvikana nk'igitero kigabwe mu rwego rwo gushyira mu bikorwa gahunda cyangwa umugambi byacuzwe mbere. Iyo habuze kimwe muri ibyo bibiri bisabwa, ibikorwa bibi birenze kamere muntu bidafite aho bihuriye n'ibindi cyangwa byakozwe ku buryo butateguwe kubera impamvu bwite z'uwabikoze ntibibarirwa mu byaha byibasiye inyokomuntu⁶⁵.

Kuba igikorwa kiri kuri gahunda

124. Kugira ngo igikorwa gihitana imbaga kibe icyaha cyibasiye inyokomuntu, ni ngombwa ko kiba cyakozwe mu rwego rwa gahunda runaka. Ibikorwa bitari mu rwego rwa gahunda cyangwa mu rwego rw'umugambi runaka waguye ntibyitabwaho iyo bitagaragajwe ko byari rusange cyangwa ko byari byateguwe. Ikindi kandi, kuba igitero kigomba kuba cyibasiye abasiviri bivuga byanze bikunze ko haba habayeho umugambi uko waba uteye kose, kandi ivangura mu gitero urebye imiterere yaryo ntiryashobora kubaho bitakorewe gahunda.
125. Ni nde nyirabayazana w'iyi gahunda cyangwa iterwa n'iki? Umuntu ashobora kuvuga ko kugira ngo habeho ibyaha byibasiye inyokomuntu mu mategeko mpuzamahanga ashingiye ku mucu, hagomba kugaragazwa ibimenyetso by'uko ibyaha byakozwe mu rwego rwo gushyira mu bikorwa gahunda ya Leta. Cyakora, biragaragara ko muri Sitati ya TPIR ntaho biteganyijwe ko Leta igomba kuba ibifitemo uruhare. Mu rwego rwo gushyira ibisobanuro kuri icyo kibazo, hashobora kwifashishwa Umushinga w'Amategeko ahana wateguwe na Komisiyo y'Amategeko Mpuzamahanga (ILC) ahavugwa ko ibyaha byibasiye inyokomuntu ari ibikorwa bibi birenze kameremuntu

⁶⁴ *The ILC Draft Code of Crimes* [Umushinga w'Amategeko ahana wateguwe na ILC] usobanura ko amagambo igitero « cya rusange » ashaka kuvuga igitero « cyibasiye imbaga y'abantu ». Ingingo ya 18, igika 4 cy'ibisobanuro byayo.

⁶⁵ *The ILC Draft Code of Crimes* usobanura ko amagambo igitero « kiri kuri gahunda » ashaka kuvuga « igitero cyakozwe hakurikijwe umugambi wacuzwe cyangwa gahunda runaka. Mu rwego rwo gushyira mu bikorwa uwo mugambi cyangwa iyo gahunda, hakorwa ibyaha ndengakamere by'ubutitsa cyangwa bya hato na hato. Icyo ibi bisabwa bigamije ni ukudakurikirana ibyaha bihuriyeho bikorwa hadakurikijwe umugambi cyangwa gahunda runaka » (Ingingo 18, igika 3 cy'ibisobanuro byayo).

« abantu bakoze babihamagariwe cyangwa babiyobowemo na guverinoma, umuryango cyangwa itsinda runaka »⁶⁶. Iyo komisiyo isobanura ko ibyo bisabwa,

kugira ngo hatabarirwamo igikorwa kibi kirenze kameremuntu cyakozwe n'umuntu abyibwirije mu rwego rw'umugambi we wo gukora icyaha ku giti cye, atabihamagariwe cyangwa atabiyobowemo na Guverinoma, itsinda cyangwa umuryango runaka ...Kuba igikorwa abantu baba bagikoze babihamagariwe cyangwa babiyobowemo na Guverinoma, itsinda cyangwa umuryango runaka ni byo biha icyo gikorwa intera nini bigatuma kiba icyaha cyibasiye inyokomuntu, abantu ku giti cyabo cyangwa abakozi ba Leta bashobora kuryozwa⁶⁷.

126. Urugereko rwa Mbere rw'Iremezo rwemera iyo mitekerereze kandi rusanga Urukiko rufite ububasha bwo kuburanisha abantu bakoreraga Leta n'abatarayikorera. Nka perefefu, Clément Kayishema yakoreraga Leta. Nk'umucuruzi, Ruzindana ntiyakoreraga Leta. Bityo, kugira ngo Urugereko rushobore kugira ububasha bwo kuburanisha buri wese mu baregwa, rugomba kubanza kureba niba ibikorwa bakoze barabihamagariwe cyangwa barabiyobowemo na guverinoma, umuryango cyangwa se itsinda runaka.

Abaturage b'abasiviri

127. Ubsanzwe, amagambo « abasiviri » cyangwa « abaturage b'abasiviri » yagiye asesengurwa mu rwego rw'intambara. Nyamara ariko, hakurikijwe Sitati, ibyaha byibasiye inyokomuntu bishobora gukorwa mu ntambara cyangwa mu gihe kitari icy'intambara. Bityo, ijamba « abasiviri » rigomba kumvikana nk'irikoresha mu gihe cy'intambara ndetse no mu gihe gisa n'icy'amahoro. Urugereko rusanga igisobanuro cyaguye cy'ijamba « abasiviri » ari cyo kigomba gukurikizwa kandi, ku birebana n'ibyabereye muri Perefegitura ya Kibuye hatari intambara, abasiviri bakaba bakubiyemo abantu bose uretse gusa abari bashinzwe kubungabunga umudendezo wa rubanda kandi bafite ububasha bwo gukoresha ingufu za Leta. Nk'urugero, abasirikare bo mu ngabo z'Igihugu (FAR), aba FPR, abapolisi n'abajandarume ntibafatwa nk'abasiviri.

⁶⁶ ILC Draft Code of Crimes, ingingo ya 18

⁶⁷ ILC Draft Code of Crimes, ingingo ya 18, igika 5 cy'ibisobanuro byayo.

128. Ku birebana n'abasiviri bibasiwe, Urugereko rwemera imyanzuro ikubiye mu Nyandiko y'urubanza rwa Tadic mu rw'iremezo, ahavugwa ko abaturage bibasiwe bagomba kuba ahanini ari abasiviri, kuba harimo abantu bake batari abasiviri bikaba nta cyo bihindura ku busiviri bw'abo baturage⁶⁸.
129. Ibyo ari byo byose, abunganira Abaregwa ntibigeze bahakana ko abahohotewe n'ibitero bivugwa bari abasiviri. Kandi, Porokireri yavuze ko abahohotewe ahantu hane habereye ubwicanyi bari abahinzi, abarimu n'abandi bantu bahungaga ibitero.

Impamvu z'ivangura

130. Sitati y'uru Rukiko iteganya ikindi kintu cy'inyongera kitaboneka muri Sitati y'Urukiko rw'i Nuremberg ndetse no mu y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze cyitwa Yugosilaviya. Koko rero, ivuga ko igitero kigomba kuba cyagabwe ku bantu kubera impamvu z'ubwengehugu, iza politiki, iz'ubwoko cyangwa iz'idini. Porokireri avuga ko ivangura rivugwa ryari rishingiye ku bwoko cyangwa, bitaba ibyo, ku mpamvu za politiki⁶⁹. Yemeza ko ivangura abahohotewe bakorewe ryari rishingiye ku bwoko kuko bari Abatutsi, rikaba ryari rinashingiye ku mpamvu za politiki kuko Abatutsi bavugwagaho kuba ibyitso bya FPR cyangwa kuyishyigikira. Ubwunganizi ntibwahakanye ko hariho ubwoko bw'Abatutsi⁷⁰. Mu mubare w'impamvu za politiki habarirwamo ibyo umuntu yemera mu birebana na politiki hamwe n'ingengabitekerezo y'ishyaka.
131. Porokireri yavuze ko umugambi w'abakoze ibyaha wo kuvangura abantu bagize itsinda runaka ari cyo kintu gikomeye kurusha ibyo kureba niba uwahohotewe yari koko umwe mu bagize iryo tsinda ryibasiwe. Aha, hari ibibazo bibiri Urugereko rugomba gusuzuma. icya mbere ni icyo kumenya uko byagenda mu gihe uwakoze icyaha yari afite umugambi wo gutsembatsemba Abatutsi ariko, mu rwego rw'uwo mugambi akaza no kwica

⁶⁸ Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 638.

⁶⁹ Imyanzuro nsozarubanza ya Porokireri, urup. 42.

⁷⁰ Ku birebana n'isesengura rirambuye ku by'ubwoko, reba igice cy'Inyandiko y'uru rubanza cyahariwe amavu n'amavuko y'ibyabaye.

umupadiri w'Umubiligi warengeraga Abatutsi. Urugereko rwasanze igikorwa nk'icyo cyafatwa ko ari ivangura rikorewe Abatutsi.

132. icya kabiri ni icyo kumenya uko byagenda mu gihe uwakoze icyaha yibasiye abantu abaziza ko bagize itsinda runaka kandi ariko abyemera, nyamara mu by'ukuri batari muri iryo tsinda abitirira, nk'urugero iyo uwakoze icyaha yatekerezaga ko Abatutsi bashyigikiye FPR, bityo rero ko ari ibyitso. Aha, Urugereko rusanga Porokireri ari we ugomba kwerekana ko ibyo uwakoze icyaha yemeraga byari bishyize mu gaciro bidashingiye ku marangamutima –hashingiwe ku bikorwa bifatika, aho kuba bishingiye ku gushakisha gusa cyangwa ku mwanzuro ugoretse.

Igitekerezo cyo gukora icyaha

133. Uwakoze icyaha agomba kuba yarabikoze azi neza ko ari icyaha byibasiye inyokomuntu, ni ukuvuga ko agomba kuba yarabonaga neza uko ibintu byifashe muri rusange mu gihe yakoraga igikorwa aregwa. Avoka wunganira Ruzindana yavuze ko kugira ngo umuntu ahamwe n'ibyaha byibasiye inyokomuntu, agomba kuba yari azi ko hariho igitero cyibasira abaturage b'abasiviri, ko kandi igikorwa akurikiranweho cyari mu rwego rw'icyo gitero⁷¹. icyo kibazo cyasuzumwe n'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze cyitwa Yugosilaviya rwasanze uwakoze icyaha agomba kuba yari azi uko ibintu byifashe muri rusange ubwo yagikoraga⁷². Ibyo bijyanye n'ingingo ya 7 ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga (ICC).
134. Urugereko rwemera ibivugwa n'Ubwunganizi kuri icyo kibazo. Mu bituma igikorwa cy'umuntu gihinduka icyaha cyibasiye inyokomuntu, harimo icy'uko icyo gikorwa kibarirwa mu byaha by'indengakamere. Uregwa yagombye rero kuba yari azi ubukana bw'ibyo byaha kugira ngo bibe byamuhama. Kubera iyo mpamvu, kugira ngo hemezwe ko uregwa yari afite igitekerezo cyo gukora icyaha, ni ngombwa kuba yari azi mu by'ukuri cyangwa mu buryo bushyize mu gaciro uko ibintu byari byifashe muri rusange

⁷¹ Imyanzuro nsozarubanza ya Porokireri, urup. 20.

⁷² Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 656, « bityo, uretse kuba afite umugambi wo gukora icyaha, nyirugukora icyaha agomba kuba azi uko ibintu byifashe muri rusange mu gihe icyaha kirimo gukorwa » .

ubwo igitero cyagabwaga, ni ukuvuga ko uregwa agomba kumenya ko igikorwa cye kiri mu rwego rw'igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abasiviri, kandi ko cyakozwe hakurikijwe gahunda cyangwa umugambi runaka. Ibyo bisabwa byongera gushimangira ko ibikorwa abantu bikoreye bonyine kubera impamvu zabo bwite bitabarirwa mu byaha byibasiye inyokomuntu.

4.2.2 Ibyaha

135. Ingingo ya 3 ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda iha urwo Rukiko ububasha bwo gucira imanza abantu baregwa ibyaha biteganywa na Sitati. Ibyo byaha bigomba kuba byarakozwe mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri abo ari bo bose, bazira ubwenegihugu, impamvu za politiki, ubwoko cyangwa idini. Si ngombwa ko ibyaha ubwabyo biba byujuje ibisabwa bitatu biranga igitero (ni ukuvuga kuba ari rusange cyangwa kiri kuri gahunda, kuba cyaragabwe ku baturage b'abasiviri abo ari bo bose, no kuba gishingiye ku ivangura), ariko bigomba kuba biri mu rwego rw'icyo gitero. Koko rero, buri cyaha kiba gifite ibyangombwa bikigize byihariye. Kugira ngo uregwa ahamwe n'ibyaha byibasiye inyokomuntu, Porokireri agomba kugaragaza ibimenyetso byerekana ko yaryozwa kimwe mu byaha bivugwa hashingiwe ku ngingo ya 6 (1) na/cyangwa ya 6 (3) ya Sitati. Urugereko ruributsa ko ibyaha bikurikira byaregwe mu Nyandiko y'Ibirego : ubuhotozi, itsembatsemba, n'ibindi bikorwa bibi birenze kamere-muntu.

Ubuhotozi

136. Porokireri ashinja Clément Kayishema ibyaha byibasiye inyokomuntu ashingiye ku bikorwa by'ubuhotozi bikubiye mu kirego cya 2, icya 8, icya 14 n'icya 20 by'Inyandiko y'ibirego, ashinja kandi Obed Ruzindana ibyaha byibasiye inyokomuntu ashingiye ku bikorwa by'ubuhotozi bikubiye mu kirego cya 20 cy'Inyandiko y'ibirego.

137. Ingingo ya 3(a) ya Sitati mu rurimi rw'icyongereza ikoresha ijambo « *murder* » [ubwicanyi], naho mu rurimi rw'igifaransa handitse « *assassinat* »⁷³ [ubuhotozi]. Ikoreshwa ry'ayo magambo ryakunze kugenda rikurura impaka kubera ko igitekerezo cyo gukora icyaha cy'ubwicanyi, nk'uko gisobanurwa n'inkiko nyinshi zo mu muryango w'amategeko akomoka ku y'Abongereza [*Common Law*], gikubiyemo no kuba cyateguwe ariko ibyo si ngombwa. Naho mu muryango w'amategeko akomoka ku y'Abaromani [*Civil Law*], kugira ngo habeho icyaha cy'ubuhotozi ni ngombwa iteka ko kiba cyacuriwe umugambi⁷⁴. Mu Nyandiko y'urubanza rwa Akayesu mu rw'iremezo, akaba ari rwo rubanza rwonyine rwagize icyo ruvuga kuri icyo kibazo, Urugereko rwasanze mu mategeko mpuzamahanga ashingiye ku mucu, ubwicanyi ari cyo gikorwa kigize icyaha cyibasiye inyokomuntu, aho kuba ubuhotozi. Rwavuze na none ko hariho impamvu zihagije zatuma umuntu abona ko inyandiko y'igifaransa ya Sitati yabayemo ikosa mu gihe yahindurwaga ivanwa mu cyongereza⁷⁵. Mu byavuzwe n'Ubwunganizi harimo ko ibivugwa ko habaye ikosa mu ihindurwa ry'inyandiko mu rundi rurimi bidafashije kandi bitakwemerwa bitewe n'uko inyandiko za Sitati mu gifaransa no mu cyongereza zombi ari imyimerere. Ubwunganizi buvuga ko ijambo « *murder* » ryo mu cyongereza ryakoreshejwe bashaka kuvuga « *assassinat* » mu gifaransa. Cyakora, Porokireri avuga ko atari ngombwa ko icyaha kiba cyagambiriwe, akongeraho ko « kwica umuntu binyuranyije n'amategeko bitewe n'uko uwagikoze yagaragaje imyitwarire idaha agaciro ubuzima bw'abandi » ubwabyo bihagije.
138. Urugereko rwemera ibivugwa n'Ubwunganizi kuri icyo kibazo. Iyo hasemurwa ijambo biva mu rurimi rumwe bijya mu rundi, umuntu ashobora gusanga muri urwo rurimi rundi nta jambo rihuza neza ku tuntu twose n'irisemurwa. Ibi ni byo by'umwihariko ku birebana n'amagambo yo mu mategeko akubiyemo ibitekerezo byo mu bukemuramanza. Aha, mu muryango w'amategeko akomoka ku y'Abongereza, igitekerezo cyo gukora

⁷³ Koko rero, ingingo ya 2 (2) (a) ya Sitati ikoresha ijambo « *killling* » – « *meurtre* » mu gifaransa, mu gihe ingingo ya 4 (a) ikoresha « *murder* » -«*meurtre* » mu gifaransa.

⁷⁴ Igitabo gishya cy'Amategeko ahana, ingingo 221-3: « Ubwicanyi bukozwe byagambiriwe bwitwa ubuhotozi. Buhanihwa igifungo cya burundu (...) ».

⁷⁵ Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 588.

icyaha kiranga « *murder* » ni na cyo kiranga « *meurtre* » [ubwicanyi] na « *assassinat* » [ubuhotozi] (ubuhotozi ni ubwicanyi burimo impamvu zongera ububi bw'icyaha) mu muryango w'amategeko akomoka ku y'Abaromani⁷⁶. Abateguye umushinga bahisemo gukoresha ijamba « *assassinat* » aho gukoresha « *meurtre* ». Ku bijyanye n'ibisobanuro by'amagambo, umuntu yagombye uko bishobotse kose kugendera ku gitekerezo cy'abakoze umushinga w'amategeko avugwa⁷⁷. Ibyo ari byo byose, Urugereko rusanga itegeko iryo ari ryo ryose rigomba gusobanurwa hakurikije amagambo asanzwe yarikoreshejwemo. Kubera ko inshoza « *murder* » na « *assassinat* » bishobora kugira aho bihurira, Urugereko rusanga atari ngombwa guhindura uburyo Sitati yabivuzemo. N'ubwo umuntu ashobora kuvuga ko mu mategeko mpuzamahanga agendera ku muco atari « *assassinat* » ifatwa nk'icyaha cyibasiye inyokomuntu ahubwo ari « *meurtre* », (nk'uko Urugereko rwabyemeje mu rubanza rwa Akayesu), uru Rugereko rwumva rugomba gukurikiza rwose amagambo ari muri Sitati ya TPIR kuri icyo kibazo. Koko rero, iyo Sitati ni yo igaragaza igitekerezo cy'umuryango mpuzamahanga cyo gucira imanza abantu baregwa kuba barakoreye mu Rwanda ibikorwa binyuranyije n'amategeko mpuzamahanga. Ikindi kandi, mu gihe handikwaga umushinga wa Sitati ya TPIR n'uwa Sitati ya TPIY, iyo nyandiko ntaho igaragaza ibirebana n'amategeko mpuzamahanga ashingiye ku muco. Ikibigaragaza neza ni uko muri Sitati ya TPIY hateganyijwe ko ibyo bikorwa bigomba kuba byakozwe mu gihe cy'intambara, naho muri Sitati ya TPIR hakavugwa ko ibyo byaha bisaba ko habayeho igitekerezo

⁷⁶ Nk'urugero, mu rwego rwo hejuru, igitekerezo cyo gukora icyaha kiranga « *murder* » [ubwicanyi] ni kimwe n'ikiranga « *assassinat* » [ubuhotozi], ni ukuvuga kwica umuntu binyuranyije n'amategeko kandi byagambiriwe. Ku rundi ruhande, mu rwego rworoheje, igitekerezo cyo gukora icyaha kiranga « *murder* » [ubwicanyi] ni kimwe n'ikiranga « *meurtre* » [ubwicanyi] kubera ko kuba harabayeho ubushake bwo kuvutsa ubuzima cyangwa ubushishozi buke ubwabyo bihagije, hakaba hadasabwa ko uwagikoze aba yarabanje kubigambira.

⁷⁷ Ni ngombwa kwibutsa ko Sitati yanditswe mu cyongereza no mu gifaransa, kandi inyandiko zayo muri izo ndimi zombi zikaba ari imvaho n'umwimerere. Nyuma, Sitati yaje guhindurwa mu zindi ndimi enye zisigaye z'Umuryango w'Abibumbye. Bityo rero, hagati y'icyongereza n'igifaransa nta guhindura uvana mu rurimi ujyana mu rundi byabayeho. Kubera ibyo, nta wavuga ko habayeho « ikosa mu buhinduzi bw'indimi » ubwabyo, ahubwo yavugaga ko habayeho ikosa mu itegurwa ry'umushinga w'inyandiko y'umwimerere. Nko muri Sitati ya TPIY, hakoreshejwe ijamba « *assassinat* » [ubuhotozi] (Ingingo ya 5 (a) ya Sitati ya TPIY)

cy'ivangura. Kubera ibyo, umuntu ashobora kuvuga ko abanditsi b'izo Sitati bari bafite igitekerezo cyo gukoresha « *assassinat* » ariko bataretse na « *murder* ». Koko rero, mu gukoresha ijambo « *assassinat* » ryo mu gifaransa, abanditsi ba Sitati ahari bashatse kuvuga ko kugira ngo habeho icyaha, ingingo yonyine igomba kwitabwaho ari ububi bukabije cyane bw'igitekerezo cyo gukora icyaha cya « *murder* »⁷⁸.

139. Iyo hariho ugushidikanya, igisobanuro kigomba gutangwa mu buryo burengera inyungu z'uregwa ; kuri iki kibazo kuvuga ko habayeho gucura umugambi ni byo birengera Uregwa. Urugereko rusanga rero amagambo « *murder* » na « *assassinat* » agomba gukoresherezwa hamwe kugira ngo umuntu agere ku rwego rw'igitekerezo cya ngombwa abanditsi ba Sitati bifuzaga kandi gisabwa na Sitati ya TPIR. Urugereko rusanga ijambo « *murder* » riramutse rikoresherejwe hamwe n'ijambo « *assassinat* », urwego rw'igitekerezo cya ngombwa gisabwa ari rumwe n'urusabwa ku birebana n'ubwicanyi bukozwe nkana kandi bwagambiriwe. Igikorwa kigerwaho kiba cyagambiriwe iyo uwagikoze aba yihaye igihe gihagije kugira ngo anononsore igitekerezo cyo kwica⁷⁹. Igikorwa kiba cyakozwe ku bushake iyo uwagikoze afite umugambi ashaka kugeraho, cyangwa azi ko ibintu biramutse bigenze neza uwo mugambi uzagerwaho.

140. Uregwa ahamwa n'icyaha cy'ubuhotozi iyo, kubera imyifatire ye inyuranyije n'amategeko:

1. yishe umuntu;
2. mu gikorwa cyagambiriwe cyangwa yagambiriye kudakora icyo ategetswe;

⁷⁸ Koko rero, mu muryango w'amategeko akomoka ku y'Abongereza [*Common Law*], nta kindi cyaha cy'ubwicanyi bunyuranyije n'amategeko kirimo igipimo ngenderwaho cy'umugambi urenze usabwa mu cyaha cy'ubuhotozi. Bityo rero, n'ubwo abateguye umushinga w'amategeko baba barashatse kuvuga ko igipimo ngenderwaho cy'igitekerezo cyo gukora ubuhotozi cyaba gihagije, byari ngombwa rwose ko bakoresha ijambo ryo mu cyongereza « *murder* ».

⁷⁹ Icyo gisobanuro gihuye n'ubukemuramanza bwo mu nkiko mpanabyaha z'u Bufaransa, n'ubw'Urukiko rw'Ikirenga rwo muri Leta Zunze Ubumwe z'Amerika.

3. hagambiriwe kwica; cyangwa

4. hagambiriwe gukora igikorwa kizahaza umubiri w'umuntu uwo ari we wese.

Bityo rero, ubwicanyi bwagambiriwe, bukozwe mu rwego rw'igitero rusange cyangwa kiri kuri gahunda cyibasiye abasiviri kubera impamvu z'ivangura, ni icyaha cyibasiye inyokomuntu. Ni ko binameze ku birebana n'ubwicanyi bukozwe bidaturutse ku itegeko ry'urukiko, ni ukuvuga « ubwicanyi bunyuranyije n'amategeko kandi bukozwe nkana bitegetswe na Guverinoma, cyangwa se Guverinoma ari icyitso muri ubwo bwicanyi cyangwa se bwakozwe yabyemeye »⁸⁰.

Itsembatsemba

141. Mu kirego cya 3, icya 9, icya 15, n'icya 21 by'Inyandiko y'ibirego, Porokireri ashinja Clément Kayishema itsembatsemba nk'icyaha cyibasiye inyokomuntu, naho Obed Ruzindana agashinjwa itsembatsemba nk'icyaha cyibasiye inyokomuntu mu kirego cya 21 cy'Inyandiko y'ibirego.

142. Icyaha cy'itsembatsemba nticyasobanuwe mu buryo bwihariye muri Sitati ya TPIR no mu Rukiko rwa Nuremberg. Koko kandi, ubukemuramanza ku birebana n'ibisabwa kugira ngo habeho itsembatsemba ni buke cyane. Mu Nyandiko y'urubanza rwa Akayesu, Urugereko rwa Mbere rw'Iremezo I rwavuze ko itsembatsemba mu miterere yaryo ari icyaha cyibasira itsinda ry'abantu kandi ko ritandukanye n'ubuhotozi kubera ko rigomba gukorerwa abantu benshi; nyamara mu buhotozi si ngombwa ko hicwa benshi⁸¹. Porokireri yavuze ko atari ngombwa ko umubare uyu n'uyu w'abantu wicwa kugira ngo ubwo bwicanyi bwitwe itsembatsemba; ibyo bisuzumwa hitawe ku miterere ya buri kibazo n'ubwo hagombye kubaho imibare runaka⁸². Urwo Rugereko rwasanze Akayesu ahamwa n'icyaha cy'itsembatsemba kuko yatanze amategeko yo kwica

⁸⁰ Reba *Amnesty International*, Porogaramu mu ngingo 14 ku birebana n'iburizamo ry'ubwicanyi bukorwa bidaturutse ku cyemezo cy'urukiko.

⁸¹ Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 591.

⁸² Imyanzuro nsozarubanza ya Porokireri, urup. 36.

abantu⁸³. Urugereko rwemera ko aho icyaha cy'ubuhotozi n'icy'itsembatsemba bitandukaniye ari ku mubare w'abantu bishwe. Rusanga itsembatsemba rishobora gufatwa nk'ubuhotozi bwibasira imbaga y'abantu. Ubwunganizi nta cyo buvuga ku kibazo cyerekeranye n'umubare w'abahohotewe, ariko ruvuga ko « ikiranga itsembatsemba ari uko ari igikorwa gihitana abantu nta kurobanura »⁸⁴.

143. Cherif Bassiouni avuga ko itsembatsemba ari ubuhotozi bwibasira imbaga y'abantu kandi ko rishobora kuba rikubiyemo ubwicanyi bwabayeho bidaturutse ku bushake :

Itsembatsemba ni igikorwa cy'ubwicanyi buturutse cyangwa budaturutse ku bushake. Impamvu ubwicanyi budaturutse ku bushake na bwo bubarirwa mu itsembatsemba ni uko kugira ngo habeho ubwicanyi buhitana imbaga bisaba ko haba hariho abantu babucurira umugambi kandi bakawushyira mu bikorwa, ariko n'ubwo baba bazi icyo ibikorwa byabo bigamije kandi ari cyo bashaka kugeraho, bashobora kuba batazi byanze bikunze abahohoterwa. Byongeye kandi, abo bantu bashobora kuba atari bo bakoze igikorwa gifatika cyahitanye abahohotewe, cyangwa batari bagambiriye kwica umuntu runaka⁸⁵.

Sitati y'Urukiko Mpanabyaha Mpuzamahanga (ICC) (Ingingo ya 7 (2)(b)) nta gisobanuro cya burundu cy'itsembatsemba itanga, ahubwo ikoresha ingero: « Itsembatsemba ni igikorwa cyo gushyira nkana abantu mu nzitane z'ubuzima zituma bavutswa ibintu bimwe na bimwe birimo ibiryo n'imiti, hagamijwe kurimbura igice kimwe cy'abaturage».

144. Kubera ibimaze kuvugwa haruguru, Urugereko rutanze igisobanuro gikurikira cy'ibisabwa kugira ngo habeho itsembatsemba:

Uwakoze icyaha yagize uruhare mu bwicanyi bwahitanye abantu cyangwa mu gikorwa cyo gushyira abantu mu nzitane z'ubuzima zibahitana, kubera ibikorwa

⁸³ Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 735-744.

⁸⁴ Imyanzuro nsozarubanza y'Ubwunganizi bwa Ruzindana mu magambo, urup.8.

⁸⁵ Cherif Bassiouni, igitabo cyitwa « *Crimes Against Humanity in International Law* (Martinus Nijhoff Publishers, 1992).

bye cyangwa kudakora ibyo yagombaga gukora ; yari agamije gukora ubwo bwicanyi cyangwa yagize ubushishozi buke cyangwa uburangare bukomeye mu kureba niba imyitwarire ye itaviramo abantu kwicwa ; azirikana ko ibikorwa bye cyangwa ibyo atakoze biri mu rwego rw'ubwicanyi buhitana imbaga, n'urw'igitero rusange cyangwa kiri kuri gahunda cyibasiye abaturage b'abasiviri abo ari bo bose, kubera impamvu z'ubwenehugu, iza politiki, iz'ubwoko cyangwa iz'idini.

145. Ijambo « imbaga », rishobora kumvikana ko ari « abantu benshi », ntirivuga ko hagomba kuba hariho umubare uyu n'uyu byanze bikunze ahubwo uwo mubare ugenwa mu buryo bushyize mu gaciro hakurikijwe imiterere ya buri kibazo. Si ngombwa ko uwakoze icyaha mu gihe yagikoraga yari afite umuntu runaka cyangwa abantu runaka ku giti cyabo yibasiye.
146. Ibyo umuntu aregwa bishobora kuba ari ibyo yakoze cyangwa yateshutse gukora, ku bushake, kubera ubushishozi buke cyangwa uburangare bukabije. « Gushyiraho inzitane z'ubuzima zihitana imbaga » ni ugukora ku buryo abantu bagira imibereho mibi iganisha ku rupfu rwa benshi muri bo. Urugero : Gufunga abantu benshi no kubima ibya ngombwa bituma babaho maze bikabaviramo gupfa ari benshi cyane; kubanduza nkana indwara hanyuma ukabima imiti noneho bikabaviramo gupfa ari benshi cyane. Itsembatsemba ntirikubiyemo gusa igikorwa cy'ubwicanyi bworeka imbaga, cyangwa icyo gushyira abantu mu nzitane z'ubuzima zihitana imbaga, ahubwo hanakubiyeho gucura umugambi w'ibyo bikorwa. Kuri icyo kibazo, Porokireri agomba gutanga ibimenyetso bigaragaza ko gucura umugambi bifite aho bihuriye n'ubwicanyi bwakozwe.
147. Uwakoze icyaha ashobora guhamwa n'itsembatsemba yarishe umuntu umwe gusa cyangwa yaramushyize mu nzitane z'ubuzima zamuhitanye, apfa gusa kuba yari azi neza ko ibyo yakoze cyangwa yateshutse gukora byari mu rwego rw'ibikorwa bigamije koreka imbaga⁸⁶. Kugira ngo kwica umuntu umwe bifatwe nk'itsembatsemba, bigomba

⁸⁶ Urugero, nk'abasirikare b'ingabo z'u Rwanda (FAR 10) barashe ku Batutsi benshi bagera kuri 200 bakabica bose, ariko muri abo basirikare harimo X utazi kurasa neza ku buryo we yishemo umuntu umwe gusa, naho mugenzi L1892(K)

kuba biri mu rwego rw'igikorwa cy'ubwicanyi buhitana imbaga. Igikorwa nk'icyo kibaho iyo ubwicanyi bworeka imbaga bwakorewe ahantu hegeranye kandi mu bihe byegeranye.

Ibindi bikorwa bibi birenze kameremuntu

148. Mu kirego cya 4, icya 10, icya 16, n'icya 22 by'Inyandiko y'ibirego, Porokireri ashinja Clément Kayishema ibikorwa bibi birenze kameremuntu nk'icyaha cyibasiye inyokomuntu, naho Ruzindana agashinjwa ibikorwa bibi birenze kameremuntu nk'icyaha cyibasiye inyokomuntu mu kirego cya 22 cy'Inyandiko y'ibirego.
149. Kuva kuri Sitati y'Urukiko rwa Nuremberg, icyiciro cy'ibyaha byiswe « ibindi bikorwa bibi birenze kameremuntu », cyagumyeho nk'icyiciro cy'ingirakamaro gikubiyemo ibikorwa bitavuzwe mu buryo bwihariye ariko na byo bikomeye kimwe n'ibyo byavuzwe. Akamaro ko kurekeraho icyo cyiciro kasobanuwe neza na Komite Mpuzamahanga y'Umuryango Utabara Imbabare (ICRC) ubwo yasobanuraga « ibikorwa bibi birenze kameremuntu » bivugwa mu Ngingo ya 3 y'Amasezerano y'i Jeneve.

Nta na rimwe ari byiza kugerageza gukora inyandiko mu buryo burambuye cyane, by'umwihariko kuri iki kibazo. N'ubwo byitondewe cyane mu ishyirwaho ry'urutonde rw'imiterere y'ibikorwa bibi byose bishobora gukorwa, nta muntu washobora guteganya ibyo abagizi ba nabi b'ejo hazaza bazajya bakora mu rwego rwo gushimisha umutima wabo wa kinyamaswa. Kandi uko ugenda wuzuzamo urutonde ibindi bikorwa unashyiramo ibyihariye, ni nako urwo rutonde rugira ibyo rusiga inyuma. Uko byanditswe bishobora kugoragozwa kandi na none birasobanutse neza⁸⁷.

150. Ibindi bikorwa bibi birenze kameremuntu bikubiyemo ibyaha byibasiye inyokomuntu bitavugwa by'umwihariko mu Ngingo ya 3 y'Amasezerano y'i Jeneve ariko bikomeye

we Y akicamo 16. Kubera ko X na Y bagize uruhare mu iyicwa ry'abantu benshi kandi bombi bakaba bari bazi neza ko igikorwa cyabo cyari kigamije iyicwa ry'abantu benshi, bombi bazahamwa n'icyaha cy'itsembatsemba.

⁸⁷ Komite Mpuzamahanga y'Umuryango Utababara Imbabare [ICRC], Ibisobanuro ku Masezerano mpuzamahanga y'i Jeneve, urup. 54.

kimwe n'ibivugwa. Sitati ya ICC (Ingingo ya 7 (1) (k)) itanga igisobanuro kinonosoye « cy'ibindi bikorwa bibi birenze kameremuntu » kurusha ibikubiye muri Sitati ya TPIR: « ibindi bikorwa bibi birenze kameremuntu bigamije gutera umuntu ububabare bukomeye cyangwa bumuzahaza umubiri cyangwa mu mutwe ». Mu gisobanuro Komisiyo y'Amategeko Mpuzamahanga yatanze ku birebana n'ingingo ya 18 y'umushinga w'amategeko ahana yaragize iti:

Komisiyo yemera ko bitashobokaga gushyiraho urutonde rwuzuye rw'ibindi bikorwa bibi birenze kameremuntu bishobora kubarirwa mu byaha byibasiye inyokomuntu. icya mbere, iki cyiciro cy'ibikorwa kigamije kongeramo ibindi bikomeye kimwe n'ibyarondowe mu duka tubanza. icya kabiri, icyo gikorwa kigomba kuba gitera umuntu ububabare bwaba ubw'umubiri cyangwa ubwo mu mutwe, kimwangiza ubuzima cyangwa kimutesha agaciro.

151. Urugereko rurazirikana ibyo bisobanuro byatanzwe na Komisiyo y'Amategeko Mpuzamahanga. Muri Sitati ya TPIR, ibindi bikorwa bibi birenze kameremuntu bikubiyemo ibindi bikorwa bikomeye kimwe n'ibyarondowe ari byo ubwicanyi, itsembatsemba, gushyira mu bucakara, gucira umuntu ishyanga, gufunga, kwica urubozo, gusambanya ku gahato, cyangwa gutoteza kubera impamvu za politiki, iz'ubwoko n'iz'idini. Ibyo ni ibyo umuntu yakoze cyangwa yateshutse gukora hagamijwe kubabaza cyangwa kuzahaza uwahohotewe haba ku mubiri cyangwa haba mu mutwe, cyangwa hagamijwe kubangamira ku buryo bukomeye agaciro ka muntu. Porokireri agomba gutanga ibimenyetso bigaragaza ko igikorwa kibi kirenze kameremuntu gifite aho gihuriye n'ububabare bukabije cyangwa se ukuzahara k'uwahohotewe haba ku mubiri cyangwa mu mutwe. Urugereko rwemera ibivugwa na Porokireri ko buri gikorwa kigomba gusuzumwa ukwacyo ikindi ukwacyo mbere yo kwemeza ko kiri mu rwego rw'ibikorwa birenze kameremuntu⁸⁸.
152. Ubwunganizi buvuga ko kugira ngo uregwa ahamwe n'icyaha cyo gutera uwahohotewe ububabare bumuzahaza mu mutwe, hagomba kugaragazwa ko uwakoze icyaha hari aho

⁸⁸ Imyanzuro nsozarubanza ya Prokireri, urup.37.

ahuriye n'uwahohotewe⁸⁹. Porokireri we avuga ko abahohotewe batewe ububabare bwabazahaje mu mutwe ku buryo byafatwa nk'ibindi bikorwa bibi birenze kameremuntu bitewe n'uko biboneye andi marorerwa yakozwe n'uregwa. Urugero, ku birebana n'ikirego cya kane, Porokireri agira ati :

Ku birebana no guterwa ububabare buzahaza mu mutwe, abantu batandatu barokotse ubwo bwicanyi (hamwe n'abarokotse ubundi bwicanyi bose) bavuze ko biboneye iyicwa ry'abantu bo miryango yabo n'iry'inshuti zabo. Ibimenyetso byatanze bigaragaza ko abasiviri b'Abatutsi bashyizwe mu buzima butuma bagira ubwoba kandi biheba maze bagahatirwa kureba uko inshuti zabo, bene wabo n'abandi Batutsi bicwa cyangwa bakomeretswa ku buryo bukomeye. Ubwo bwicanyi bwakoranywe ubugome bukabije. Ubwicanyi bwakozwe babureba mu gihe abicanyi babaga baririmba ngo mubatsembatsembe, mubatsembatsembe.... Porokireri yemeza ko kuba mu buzima bumeze gutyo ubwabyo bizahaza umuntu mu mutwe⁹⁰.

153. Urugereko ntirushidikanya ko umuntu utarakorewe icyaha ashobora kugira ububabare bumuzahaza mu mutwe kubera kureba ibikorwa abandi, cyane cyane iyo bikorerwa abo mu muryango we cyangwa inshuti ze. Nyamara ariko, kugira ngo uregwa ahamwe n'icyaha nk'icyo mu rwego rw'ibyaha byibasiye inyokomuntu, Porokireri agomba kugaragaza igitekerezo cyo gukora icyo cyaha uregwa yari afite. Koko rero, nk'uko byavuzwe haruguru, mu bikorwa bibi birenze kameremuntu harimo n'ibyakoze hagamiye kuzahaza umuntu mu mutwe. Urugereko rusanga iyo bimeze gutyo uregwa ashobora guhamwa n'icyaha iyo gusa mu gihe yakoraga igikorwa kivugwa, yari agamiye kuzahaza mu mutwe undi muntu utarakorewe icyaha, cyangwa se yari azi ko igikorwa cye cyashoboraga gutera undi muntu ububabare bumuzahaza mu mutwe, ariko akaba atarashishoje kugira ngo amenye niba igikorwa cye kitatera ububabare nk'ubwo. Bityo rero, niba mu gihe yakoraga icyo gikorwa, uregwa atari azi ko hari undi muntu urimo ubireba, ntashobora kuryozwa ububabare buzahaza uwo muntu mu mutwe.

⁸⁹ Reba Imyanzuro nsozarubanza y'Ubwunganizi bwa Ruzindana mu magambo, imp. 38-41.

⁹⁰ Imyanzuro nsozarubanza ya Porokireri, urup. 80. Reba na none imp. 93, 101, 105, 134.

154. Mu magambo make, kugira ngo uregwa ahamwe n'ibikorwa bibi birenze kameremuntu nk'ibyaha byibasiye inyokomuntu, agomba kuba yarakoze igikorwa gikomeye kimwe n'ibindi birondorwa, akaba yaragikoze agamije «gukora ikindi gikorwa kirenze kameremuntu », kandi azi neza ko kiri mu rwego rw'ibitero rusange.

4.3 Ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve hamwe n'Inyongera yayo ya II

155. Hakurikijwe ingingo ya 4 ya Sitati, Urugereko rufite ububasha bwo gucira imanza abantu bakoze cyangwa bategetse abandi gukora ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho n'Amasezerano ane y'i Jeneve yo mu wa 1949 (Ingingo ya 3 ihuriweho) agamije kurengera abakorewe ibyaha mu gihe cy'intambara, hamwe n'Amasezerano y'Inyongera ya II yo mu wa 1977 (Inyongera ya II).

4.3.1 Amategeko ashingiye ku muco

156. Urugereko ruzirikana ko impaka zirimo zigibwa mu yandi mahuriro ku birebana no kumenya niba Amasezerano amaze kuvugwa haruguru yafatwa nk'amategeko mpuzamahanga ashingiye ku muco, ku buryo abakoze ibikorwa binyuranyije na yo ku buryo bukomeye babiryoze. Kuri icyo kibazo, Urugereko rusanga gukora iryo sesengura atari ngombwa kubera ko ibintu bisobanutse neza. U Rwanda rwemeye Amasezerano yo mu wa 1949 ku itariki ya 5 Gicurasi 1964 n'Inyongera yayo ya II ku itariki ya 19 Ugushyamba 1984. Bityo rero, ayo Masezerano yarakurikizwaga mu Rwanda ubwo haberaga amahano.
157. Ikindi kandi, ibyaha byose birondorwa mu ngingo ya 4 ya Sitati byari ibyaha mu mategeko yakurikizwaga mu Rwanda. Urundi ruhande rwari mu mirwano, ari rwo FPR, rwari rwaramenyeshije Komite Mpuzamahanga y'Umuryango Utabara Imbabare (CICR) ko rwemera gukurikiza amategeko mpuzamahanga arengera abantu mu gihe cy'intambara. Bityo rero, nta gushidikanya ko abantu bakoze ibikorwa binyuranyije

n'ayo Masezerano mpuzamahanga mu bintu byabereye mu Rwanda mu wa 1994, bashobora gukurikiranwa.

158. Bityo, ikibazo Urugereko rugomba gusubiza si ikijyanye no kumenya niba ayo Masezerano mpuzamahanga yakurikizwa muri rusange, ahubwo n'icyo kureba ukuntu yakoresha muri uru rubanza. Kugira ngo icyo kibazo gisubizwe, ni ngombwa kugisesengura neza mu rwego rw'amategako ndetse n'amateka yerekeranye n'uko ayo masezerano yaje kujyaho.

4.3.2 Amavu n'amavuko y'Ingingo ya 3 ihuriweho

159. Inama mpuzamahanga yo mu rwego rwa dipolomasi yo gushyiraho Amasezerano mpuzamahanga agamije kurengera abahohotewe n'intambara [*Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War*], yatumiye na Leta y'Ubusuwisi, yateraniye i Jeneve kuva ku itariki ya 21 Mata kugeza ku ya 12 Kanama 1949 (Inama). Iyo nama yize ku nyandiko zari zaranyuze mu nzira nyinshi zitandukanye zateguraga umushinga w'ayo masezerano. Nyuma y'amezi ane impaka zamaze nta guhagarara, Inama yemeje Amasezerano y'i Jeneve ya mbere, aya kabiri, aya gatatu n'aya kane⁹¹.
160. Kuva mu ntangiriro, abantu bumvaga ko ayo Masezerano ane azakoresha gusa mu ntambara mpuzamahanga. Nyamara ariko, Komite Mpuzamahanga y'Umuryango Utabara Imbabare (CICR) yari yasabye iyo Nama ko ayo Masezerano yanakoresha mu ntambara zitari mpuzamahanga. Icyo cyifuzo cya CICR nticyemewe kubera ko ibihugu hafi ya byose byakirwanyije.

⁹¹ Amagambo « Amasezerano ya mbere » asobanura Amasezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949 yerekeye kubungabunga imibereho y'inkomere n'abarwayi bo mu ngabo ziri ku rugamba ; « Amasezerano ya kabiri » asobanura Amasezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949 yerekeye kubungabunga imibereho y'inkomere, abarwayi, n'abarohamye bo mu ngabo zirwanira mu mazi ; « Amasezerano ya gatatu » asobanura Amasezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949 yerekeye uko abanyururu b'intambara bagomba gufatwa ; « Amasezerano ya kane », asobanura Amasezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949 yerekeye kurengera abaturage b'abasiviri mu bihe by'intambara.

161. Mu mpaka zabaye kuri icyo kibazo, Amasezerano ya kane y'i Jeneve ni yo yitaweho cyane. Hari hashize igihe kirekire abantu bumva nk'ikintu gisanzwe ko abasiviri batagomba kugira aho baturira n'imirwano. CICR yemera ko « ubwo intambara ya kabiri y'isi yose yatangiraga, nta masezerano mpuzamahanga ayo ari yo yose yariho yo kurengera nyabyo abasiviri »⁹².
162. CICR yashimangiye ko Amasezerano ya kane yari « intambwe ikomeye mu mategeko mpuzamahanga yanditse arebana no kurengera abantu mu gihe cy'intambara »⁹³. Ku bw'ibyo, CICR yabonaga ko byari ngombwa ko ayo masezerano akurikizwa no mu ntambara zitari mpuzamahanga. Nyamara ariko, abari mu nama babonaga ko gukurikiza ayo masezerano muri izo ntambara bishobora gukurura ibibazo byo mu rwego rwa politiki n'urwo kuyashyira mu bikorwa.
163. Bityo, muri icyo nama ikibazo cyabaye ingorabahizi. Ku ruhande rumwe, igitekerezo CICR yatanze cyo gukurikiza Amasezerano ane y'i Jeneve mu ntambara zitari mpuzamahanga cyafashwe na benshi mu bari mu nama nko kwivanga muri politiki y'ibihugu ndetse nk'uburyo buteruye bwo gushyigikira imyivumbagatanyo, inyeshyamba, akajagali n'ibindi bikorwa bigamije gucamo ibihugu ibice bisaba kwigenga, hamwe n'ibikorwa by'ububandi bisanzwe. Ku rundi ruhande ariko, abari muri icyo nama bemeye ko gufasha abagiriwe nabi mu ntambara zitari mpuzamahanga ari igikorwa cya ngombwa⁹⁴, kubera ko abo bantu bashobora kugirirwa nabi kurusha abo mu ntambara mpuzamahanga bitewe n'urwango rutuma abanyagihugu bicana ubwabo.
164. Iyo nama yanze kwakira imishinga inyuranye yasubizaga icyo kibazo mu bundi buryo, ariko kubera imbaraga nyinshi zashyizwemo n'igihe byafashe, kera kabaye Ingingo ya 3 ihuriweho n'Amasezerano ane y'i Jeneve yaremewe. Hakurikijwe icyo ngingo, buri ruhande rurwana mu ntambara itari mpuzamahanga, rugomba gukurikiza nibura ingingo

⁹² Amasezerano Mpuzamahanga y'i Jeneve yo ku itariki ya 12 kanama 1949, Ibisobanuro, Amasezerano ya kane y'i Jeneve, urup. 3 (ICRC, 1958). Hano hasi yitwa « Ibisobanuro ku Masezerano ya kane y'i Jeneve, ICRC ».

⁹³ Ni kimwe no haruguru, urup. 9.

⁹⁴ ICRC, Ibisobanuro ku Masezerano y'Inyongera ya II. Reba ku rubuga rwa interineti rwa ICRC (rwarebweho ku itariki ya 6 Gicurasi 1999), « <http://www.icrc.org> »

runaka zimwe na zimwe. Ijambo « nibura » rishaka kuvuga ko izo ngingo zigomba gukurikizwa byanze bikunze ariko bitabujije ko n'izindi zakurikizwa. Ikindi kandi, impande zihanganye zahamagariwe kudahagararira kuri izo ngingo za ngombwa gusa. Nk'uko Ingingo ya 3 ihuriweho ibivugwa, zasabwe « gukora ibishoboka byose kugira ngo, binyujijwe mu masezerano yihariye, zishyire mu bikorwa izindi ngingo zose z'ayo Masezerano cyangwa zimwe muri zo».

165. icyo gihe, CICR yagize ayayo amagambo y'umwe mu bari muri icyo nama wavuze ko Ingingo ya 3 isa n'aho ubwayo ari « Amasezerano magufi ». Iyo Ngingo ikurikizwa mu ntambara zitari mpuzamahanga gusa kandi ni yo yonyine igomba gukurikizwa mu gihe cyose haba hatariho ubwumvikane bwihariye hagati y'abashyize umukono ku Masezerano y'i Jeneve, bwatuma bashobora kubahiriza izindi ngingo zose z'ayo Masezerano cyangwa zimwe muri zo⁹⁵.

4.3.3 Amavu n'amavuko y'Amasezerano y'Inyongera ya II

166. Nyuma y'Inama yo mu wa 1949, igitekerezo cyo kurengera kurushaho abashobora guhohoterwa mu ntambara zitari mpuzamahanga cyagumye ku murongo w'ibigomba kwigwa. Kubera ko Ingingo ya 3 ihuriweho yashyizweho ku bworoherane biturutse ku mpaka z'urudaca, ntiyanditswe mu buryo busobanutse neza, bityo kuyishyira mu bikorwa bigatera ibibazo. Ikindi kandi, kubera umubare munini w'intambara zariho ku isi yose, ikibazo cyo gushyiraho ingamba zikomeye zirengera abasiviri mu gihe cy'intambara cyagombaga kubonerwa igisubizo ku buryo bwihutirwa cyane. Kubera ibyo, CICR yasanze ari ngombwa gushimangira ko « kuba hakorwa intwari nshya kandi ingabo zikaba zishobora kubiba amasasu mu karere kanini bitewe n'ibikoresho bigezweho zikoresha, bigaragaza ko, hatitawe ku byo abantu bibwira, abasiviri na bo bagerwaho n'intambara kandi ko ibashyira mu makuba kimwe n'abarwanyu, ko ndetse rimwe na rimwe abasiviri bahura n'amakuba kurusha abarwanyu⁹⁶.

⁹⁵ Ibisobanuro ku Masezerano ya kane y'i Jeneve, urup. 34.

⁹⁶ CICR, Ibyitonderwa by'ibanze ku Masezerano y'i Jeneve yo ku itariki ya 12 Kanama 1949, urup.17.

167. Kubera ibyo, CICR yatangiye gutegura indi nama, yabaye mu wa 1977. Imwe mu ntego zikomeye zari zigamijwe n'iyi nama, harimo kunonosora ibirebana no kurengera abaturage b'abasiviri mu gihe cy'intambara. Imirimo yasojwe hashyizweho Amasezerano abiri yongerewe ku Masezerano y'i Jeneve yo mu wa 1949. Inyongera ya I yita ku birebana n'intambara mpuzamahanga naho Inyongera ya II ikita ku birebana n'intambara zitari mpuzamahanga. Ubwo CICR yasobanuraga vuba aha ingorane rusange ziboneka mu gushyira mu bikorwa Amasezerano ya kane y'i Jeneve, yavuze ko ayo Masezerano «adakubiyemo ingingo zisobanura ku buryo burambuye ibirebana no kurinda abaturage b'abasiviri amakuba aturuka ku bikorwa bya gisirikare nko kuraswaho n'indege cyangwa kuraswa ibisasu bya rutura. icyo kibazo cyaje nyuma gukemurwa n'ishyirwaho ry'Amasezerano y'Inyongera ya I, yongerewe ku Masezerano y'i Jeneve»⁹⁷. Na none, Amasezerano y'Inyongera ya II yaje kongerwa ku Ngingo ya 3 ihuriweho hagamijwe kunonosora ibirebana no kurengera abaturage b'abasiviri mu ntambara zitari mpuzamahanga.
168. Kimwe mu bintu by'imena bikubiye mu Masezerano y'Inyongera ya II, yongewe ku Ngingo ya 3 ihuriweho, ni Interuro ya IV yiswe « Abaturage b'abasiviri ». Iyi Nteruro ntikubiyemo gusa ibyo kurengera « abasiviri ku giti cyabo », ahubwo inakemura ku buryo butaziguye ikibazo kirebana no kurengera « abaturage b'abasiviri muri rusange ». Ingingo ya 13 y'Inyongera ya II ivuga ko « abaturage b'abasiviri muri rusange n'abasiviri ku giti cyabo bagomba kurindwa muri rusange amakuba akomoka ku bikorwa bya gisirikare ». Iyo Nteruro ikubiyemo ingingo esheshatu zisobanuye neza zerekeranye no kurinda ibintu bya ngombwa abaturage b'abasiviri bakenera kugira ngo bashobore kubaho, kurinda ibikorwa n'inyubako zirimo intwari zishobora gutera amakuba, kurinda ibikorwa by'indangamuco n'insengero, kubuza ibyo kubuyereza abaturage ku ngufu; no guteganya ibikorwa by'ubutabazi bikorwa n'imiryango itabara imbabare, n'ibindi.

⁹⁷ Raporo yakozwe na Komite y'impuguke za ICRC, Jeneve 27-29 Ukwakira 1998, urup. 2. Reba urubuga rwa interineti rwa ICRC (rwarebweho ku itariki ya 29 Ukuboza 1998): « <http://www.icrc.org> ».

4.3.4 Kureba niba Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II byakurikizwa

Intangiriro

169. Urugereko rusanga kugira ngo igikorwa kube kinyuranyije n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II, hagomba kwerekanwa ko ibisabwa binyuranye byujujwe. Hagomba kugaragazwa ko mu gihe kivugwa, mu Rwanda hari intambara itari mpuzamahanga. Uregwa agomba kandi kuba afite aho ahuriye n'ingabo. Ibyaha bigomba kuba byarakorewe ahantu havugwa mu nyandiko zabigenewe kandi byarakorewe abantu runaka bavugwa na none muri izo nyandiko. Hanyuma, icyaha kiregerwa kigomba kuba gifite aho gihuriye n'intambara ivugwa. Kubera ibyo, Urugereko rurasuzuma ibyo bisabwa kimwe ku kindi.

Imiterere y'intambara

170. Amasezerano mpuzamahanga yombi, ari yo Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II, yarakurikizwaga mu Rwanda mu wa 1994. Bityo, birakwiye gusuzumira hamwe ayo Masezerano yombi, ariko umuntu ntagomba kwibagirwa ko Amasezerano y'Inyongera ya II « yagura kandi yuzuzza Ingingo ya 3 ihuriweho ariko ko ntacyo ihinduraho ku birebana n'ikurikizwa ryayo⁹⁸. Kimwe mu bintu by'ingenzi Amasezerano y'Inyongera ya II yujujeho Ingingo ya 3 ihuriweho, ni ibigenderwaho muri rusange mu kureba niba intambara atari mpuzamahanga. Intambara ibereye mu gihugu hagati y'ingabo z'icyo gihugu n'izindi ngabo zigometse, cyangwa se hagati y'ingabo z'igihugu n'indi mitwe yitwaje intwaro ariko ifite inzego z'ubuyobozi, ni intambara itari mpuzamahanga hakurikijwe Amasezerano y'Inyongera ya II. Ibi ni byo bigaragaza itandukanyirizo ry'ingenzi hagati y'intambara mpuzamahanga ikocoranya Leta ebyiri cyangwa zirenzeho, n'intambara itari mpuzamahanga hagati ya Leta n'undi mutwe witwaje intwaro ariko udafatwa nka Leta.

⁹⁸ Reba ingingo ya mbere y'Amasezerano y'Inyongera ya II.

171. Hari imirwano ibera mu gihugu imbere ntifatwe nk'intambara zitari mpuzamahanga hashingiwe ku Ngingo ya 1(2) kubera ko iba itujuje nibura ibigenderwaho. Muri urwo rwego, umuntu yavuga « imvururu n'ubushyamirane mu gihugu, nk'imyivumbagatanyo, ibikorwa by'ubugizi bwa nabi bikorwa hirya no hino kandi bidafitanye isano, n'ibindi bisa na byo ». Ibindi bigenderwaho bisobanura ibiranga agatsiko k'ingabo zigometse cyangwa ak'indi mitwe yitwaje intwari, ari byo ibi bikurikira :

1. Kuba ako gatsiko gafite ubuyobozi bubazwa ibikorwa by'ako gatsiko;
1. Kuba gafite igice cy'icyo gihugu kagenzura;
2. Kuba gakora ibikorwa bya gisirikare bihoraho kandi biri kuri gahunda;
3. Kubasha gashobora kubahiriza ibikubiye mu Masezerano y'Inyongera.

172. Bityo rero, muri uru rubanza, ibigenderwaho biruzuye kugira ngo hemezwe ko mu Rwanda, muri Mata, Gicurasi, Kamena na Nyakanga 1994, hari intambara kandi itari mpuzamahanga. Iyo ntambara yabereye ku butaka bw'u Rwanda hagati y'Ingabo z'igihugu (Ingabo z'u Rwanda-FAR) n'ingabo zigometse (Front Patriotique Rwandais-FPR). Izo ngabo zigometse, zari ziyobowe na Jenerali Kagame, zari zifite igice cy'ubutaka bw'u Rwanda zigenzura kandi zashoboraga gukora ibikorwa bya gisirikare bihoraho kandi biri kuri gahunda, ndetse zashoboraga kubahiriza Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II.

Kuba uregwa afite aho ahuriye n'Ingabo

173. Hakurikijwe ingingo ya 6 ya Sitati ya TPIR, umuntu uwo ari we wese «wacuze umugambi, uwawuhamagariye abandi, uwategetse gukora icyaha, uwagikoze cyangwa ku bundi buryo ubwo ari bwo bwose, agafasha kandi agashishikaza mu gucura umugambi, gutegura, cyangwa gutsotsoba icyaha kivugwa kuva ku ngingo ya 2 kugeza ku ya 4 z'iyi Sitati, akiryoza nka gatozi ». Ingingo ya 4 ya Sitati iteganya by'umwihariko ikurikiranwa ry'abantu bakoze ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II. Bityo

rero, ikibazo ni ukumenya niba uregwa ari mu cyiciro cy'abantu bashobora kuryozwa ibikorwa binyuranyije ku buryo bukomeye n'ayo Masezerano mpuzamahanga.

174. Ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II bishobora kubaho mu gihe cy'ibikorwa bya gisirikare cyangwa bikaba ingaruka z'ibyo bikorwa bya gisirikare. Ni ukuvuga ko impande zirwana ari zo zagombye kuryozwa ibyo bikorwa. Ibi bivuga ko abantu bo muri FAR no muri FPR ari bo bakurikiranwa. Ubushobozi bwa FPR, nk'ingabo zigometse, bwo kubahiriza Amasezerano mpuzamahanga ni ikintu Amasezerano y'Inyongera ya II afata nk'ingenzi mu kureba niba intambara itari mpuzamahanga. Ubushobozi bw'ingabo za Leta bwo kubahiriza ayo mategeko bwo ntibushidikanywaho. Muri icyo gihe, izo ngabo zombi zari zifite inzego z'ubuyobozi zihamye kandi ziyoborwa mu bikorwa bya gisirikare n'abayobozi b'izo nzego. Bityo, hakurikijwe ingingo ya 6(1) ya Sitati ya TPIR, umwanzuro wafatwa ni uko abasirikare ba FAR na FPR ari bo bagombye kuryozwa ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II, ibyabaye biramutse bitangiwe ibimenyetso bibihamya.
175. Kubera ibyo, abasirikare bo muri izo ngabo zari zihanganye, hatitawe amapete yabo, ni bo bashobora kubarirwa mu bakoze ibyo byaha. Niba umuntu atari muri izo ngabo nta shobora kuryozwa ibyo byaha, keretse igihe haramuka hagaragajwe ko yari afite aho ahuriye n'igisirikare. Nta wakwiyibagiza ko abasirikare ba Leta igihe cyose baba bagenzurwa n'abategetsi bahagarariye guverinoma, kandi ko abo bategetsi bagombaga gutanga inkunga y'intambara no kugira inshingano barangiza. Kuri iki kibazo, mu rubanza rwa Akayesu, Urugereko rwa Mbere rw'Iremezo rwanyuze mu kuri rushyira mu cyiciro cy'abakoze ibyaha bivugwa « abantu bari bafite inshingano bakomoraga ku mategeko kandi bagombaga, nk'abategetsi, abakozi ba Leta cyangwa abantu bari mu myanya y'ubutegetsi ku bundi buryo, cyangwa bari bahagarariye Guverinoma batabikomora ariko ku mategeko, gutanga inkunga y'intambara cyangwa gukora ku buryo iyo nkunga iboneka⁹⁹ .

⁹⁹ Inyandiko y'urubanza rwa Akayesu, igika 631.

176. Bityo, Urugereko rusanga amategeko y'intambara adakoreshwa ku basirikare gusa ahubwo, mu bihe bimwe, akoreshwa no ku basiviri iyo ibyabaye bitangiwe ibimenyetso. Aha, Abaregwa bashobora kubarirwa mu cyiciro cy'abantu baryozwa ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II. Ibikorwa binyuranyije n'ayo masezerano mpuzamahanga bishobora gukorerwa ahantu hatari ku rugamba. Urugero, abasirikare ba FPR bafashwe bashoboraga kujyanwa aho ariho hose mu Rwanda bagashyirwa mu maboko y'abantu batari abasirikare cyangwa abo bantu bakaba ari bo babagenzura. Bityo rero, ibyaba bigomba gusuzumwa kimwe ukwacyo ikindi ukwacyo hakurikijwe ibimenyetso bifatika byatanzwe na Porokireri. Mu yandi magambo, ibimenyetso bitanzwe bigomba kugaragaza nta gushidikanya ko uregwa yari afite aho ahuriye n'ingabo.

Ububasha bushingiye ku baregwa ibyaha no ku babikorewe

177. Hari ibibazo bibiri binyuranye ku byerekeranye n'ububasha bushingiye ku bantu barebwa n'ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II. Uretse abaregwa ibyaha bavuzwe haruguru, ikibazo cy'ababikorewe na cyo kigomba gusuzumwa.

178. Mu gika cya 1 cy'Inyandiko y'ibirego, havugwamo ko hagati y'itariki ya 10 Mata n'iya 30 Kamena 1994 « hishwe abagabo, abagore n'abana, bose hamwe babarirwaga mu bihumbi naho abandi benshi bagakomeretswa », bikaba byarabereye ahantu hane muri Perefegitura ya Kibuye. Igika cya 25, icya 32, icya 39, n'icya 45 by'Inyandiko y'ibirego byongeraho ko «benshi muri abo bagabo, abagore n'abana, bari Abatutsi kandi ko nta ntwaro bari bitwaje ».

179. Hashingiwe ku gisobanuro cy'abaturage b'abasiviri kiri mu ngingo ya 50 y'Amasezerano y'Inyongera ya I, umuntu ashobora gufata umwanzuro wemeza ko abaguye muri ubwo bwicanyi bwakorewe aho hantu hane havugwa mu Nyandiko y'ibirego, ari abaturage b'abasiviri. Muri icyo gisobanuro havugwamo ko « abaturage b'abasiviri ari abantu bose b'abasiviri ». Igika cya mbere cy'iyo ngingo gisobanura ko «umusiviri ari umuntu wese utari muri kimwe mu byiciro bivugwa mu ngingo ya 4 (A)

(1), (2), (3) na (6) y'Amasezerano ya gatatu no mu ngingo ya 43 y'aya Masezerano y'Inyongera ». Buri ngingo muri izo ironдора ibyiciro binyuranye by'abarwanyi. Kubera ibyo, hakurikijwe icyo gisobanuro kandi hagamijwe kurengera abashobora guhohoterwa mu ntambara, abantu bose batari abarwanyi bagombye gufatwa nk'abasiviri.

180. Hashingiwe ku bimaze kuvugwa, Komite Mpuzamahanga y'Umuryango Utabara Imbarare (CICR) yageze ku mwanzuro ukurikira: «Bityo, Amasezerano yemeje igisubizo kimwe gishimishije, aho mu gusobanuro ijamba yerekanye icyo ritavuga aho kwerekana icyo rivuga, bivuga ko ayo masezerano yasobanuye ko abaturage b'abasiviri ari abantu batari abasirikare »¹⁰⁰. Ni ngombwa kwibutsa ko hari itandukaniro hagati y'ijamba « abasiviri » n'amagambo « abaturage b'abasiviri ». Habaho abasiviri baherekeza abasirikare cyangwa se bakorana na bo. Abasiviri bashobora kandi kuba bari mu barwanyi bitabira imirwano mu buryo butaziguye. Ibyo bikaba byemezwa n'Amasezerano y'Inyongera ya II avuga ko « abasiviri barengerwa n'iyi nteruro uretse iyo bagize uruhare rutaziguye mu mirwano ariko gusa mu gihe cyose bayitabiriye »¹⁰¹. Nyamara ariko, ubundi abaturage b'abasiviri ntibaba bari mu mirwano. Ingingo ya 50 y'Amasezerano y'Inyongera ya I igira iti « Kuba mu baturage b'abasiviri hivanzemo abantu bamwe batari abasiviri ntibibuza ko abo baturage bafatwa nk'abasiviri »¹⁰².
181. Birazwi ko muri rusange abaturage b'abasiviri nta ntwaro bitwaza kandi ko nta ruhare urwo ari rwo rwose bagira mu mirwano. Urugereko ruzirikana kandi ko Ubwunganizi butigeze buhinyuza ko abahohotewe bari abasiviri. Ibyo kumenya niba Porokireri yarerekanye ibikorwa bifatika birebana n'ibyaha biteganywa n'ingingo ya 4 ya Sitati, Urugereko rusanga icyo kibazo kirebana n'imyanzuro ku byabaye, kikaba gisuzumwa mu mutwe wa VI w'uru rubanza.

¹⁰⁰ Ibisobanuro ku Masezerano y'Inyongera (bihagarikiwe na Jean Pictet) (ICRC, Martinus Nijhoff Publisher, Jeneve, 1987), urup. 610, icyiciro 1913.

¹⁰¹ Amasezerano y'Inyongera ya II, ingingo ya 13 (3).

¹⁰² Amasezerano y'Inyongera ya I, ingingo ya 50 (3).

Ububasha bushingiye ku ifasi

182. N'ubwo mu Ngingo ya 3 ihuriweho cyangwa mu Masezerano y'Inyongera ya II hadateganyijwe mu buryo busobanutse neza uko ububasha bushingiye ku ifasi bukurikizwa, imiterere y'icyo kibazo mu rwego rw'amategeko irasobanutse. Urugereko ruributsa ko impande zombi zari zishyamiranye mu mirwano zagombaga kubahiriza byanze bikunze ingingo z'aya Masezerano Mpuzamahanga. Bityo rero, hashingiwe ku bigenderwaho mu mategeko mpuzamahanga, aya Masezerano Mpuzamahanga agomba gukurikizwa mu Rwanda hose. Byongeye kandi, mu ngingo ya 4 y'Amasezerano y'Inyongera ya II, urebye isubira mu Ngingo ya 3 ihuriweho, bigaragara neza ko ibyaha birondorwa « bibujijwe igihe cyose kandi n'ahantu hose ». Bityo rero, si ngombwa ko ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 hamwe n'Amasezerano y'Inyongera ya II biba byabereye ku rugamba nyirizina. Urugero, abantu bafashwe bashobora kujyanwa mu kindi gice cy'igihugu, ariko rero n'ubwo baba bajyanwe ahandi bagomba gufatwa kimuntu. Amagambo « igihe cyose » yerekana ko ibirebana n'igihe bigomba gusobanurwa mu buryo bwaguye. Iyi myumvire yashimangiwe n'Urugereko rw'Ubujurire rwa TPIY mu cyemezo kirebana n'ububasha bw'urukiko, mu Nyandiko y'urubanza rwa Tadic aho rugira ruti

... ibirebana n'ifasi iberamo intambara itari mpuzamahanga hamwe n'igihe iberamo na byo bigomba gufatwa mu buryo bwaguye. Iyi mitekerereze ishingiyeye ku mpamvu y'uko abarengerwa n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve ari abantu batitabiriye kujya mu mirwano (cyangwa batakiyirimo). Ibi bisobanura ko ibivugwa mu Ngingo ya 3 binakurikizwa ahantu hatari ku rugamba nyirizina¹⁰³».

183. Urugereko rw'Ubujurire rwavuze kandi muri iki gika « nk'uko bimeze mu Ngingo ihuriweho ya 3, ko irengera ku buryo bweruye abantu batitabira imirwano mu buryo butaziguye cyangwa batakiyitabira...Ingingo ya 2(1) [Amasezerano y'Inyongera ya II] ivuga ko « aya Masezerano azakurikizwa [...] ku bantu bose intambara ifiteho ingaruka

¹⁰³ TPIY, icyemezo ku bujurire bwakozwe n'Ubwunganizi bujuriyira icyemezo cyafashwe ku Cyifuzo cyabwo cy'ingoboka cyerekeranye n'ububasha bw'urukiko, 2 Ukwakira 1995, igika 69.

nk'uko bavugwa mu ngingo ya 1». Rumaze gusubira mu magambo y'ingingo ya 2(2) y'Amasezerano y'Inyongera ya II ku birebana n'abantu bavukijwe ubwisanzure bwabo, Urugereko rw'Ubujurire rwashimangiye ko « muri iyi ngingo ya nyuma, igihe kivugwa mu mategeko akurikizwa kirenze icyo imirwano nyirizina yabereyemo ...*Isano ikenewe ni iri gusa hagati y'intambara no kuvutswa ubwisanzure*, bitabaye ngombwa ko uko kuvutswa ubwisanzure biba byarabereye ku rugamba nyirizina». [Ni twe twabitsindagiye tubyandika mu nyuguti ziberamye]. Kubera ibimaze kuvugwa, Urugereko rw'Ubujurire rwafashe umwanzuro wemeza ko mu gihe cy'intambara itari mpuzamahanga, kugeza amahoro agarutse, amategeko arengera abantu mu gihe cy'intambara akomeza gukurikizwa mu gice cyose kigenzurwa n'uruhande uru n'uru, haba habera imirwano cyangwa itahabera, kandi ibyaha bihakorewe bigomba gufatwa nk'ibyaha « byakozwe mu gihe cy'intambara »¹⁰⁴. Bityo, Urugereko rw'Ubujurire rwasanze ibyaha bivugwa bigomba gusuzumwa hitaweho mu buryo bwaguye ahantu n'igihe byakorewe, kandi ko bigomba gufatwa nk'ibyaha byakozwe mu gihe cy'intambara, iyo hariho isano hagati y'iyi ntambara n'ibyo byaha.

Ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II

184. Ububasha bw'Urugereko bugarukira ku bikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II. Ingingo ya 4 ya Sitati ya TPIR ivuga ko abantu bakoze ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II cyangwa bategetse abandi kubikora bagomba gukurikiranwa. Urugereko rusanga iki gisobanuro kigabanya ububasha bw'Urukiko kandi amagambo « binyuranyije ku buryo bukomeye » agomba gufatwa nk'aho asobanura ibyaha bikurura ingaruka zikomeye. Ibikorwa bibujijwe birondorwa n'ingingo ya 4 ya Sitati ya TPIR kimwe no mu Ngingo ya 3 ihuriweho no mu ngingo ya 4 y'Amasezerano y'Inyongera ya II, bigomba gufatwa nta gushidikanya

¹⁰⁴ Ni kimwe no haruguru, igika 70

nk'ibinyuranyije ku buryo bukomeye n'izo ngingo kandi uwabikoze agomba kubiryoza nka gatozi.

Kuba imirwano ifite aho ihuriye n'icyaha

185. Ni ngombwa kumenya niba ibyaha byose byakozwe mu mirwano itari mpuzamahanga bigomba gufatwa nk'ibyaha bifitanye isano n'ibikorwa binyuranye ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II. Urugereko rusanga ibyaha bifite aho bihuriye n'imirwano ari byo byonyine bigomba gushyirwa muri iki cyiciro. Mu gihe nta sano itaziguye iriho hagati y'ibyaha n'imirwano, nta mpamvu yashingirwaho mu kwemeza ko Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II bitubahirijwe.
186. Ubukemuramanza kuri iki kibazo cyo mu rwego rw'amategeko busaba ko isano iri hagati y'intambara n'icyaha igaragazwa. Urugereko rwa Mbere rw'Iremezo mu rubanza rwa Zejnir Delalic, Zdravko Mucic, Hazim Delic na Esad Landzo (Inyandiko y'urubanza rwa Celebic) rwasobanuye ko «hagomba kuba isano igaragara hagati y'icyaha n'intambara»¹⁰⁵. icyo ni na cyo gitekerezo cyagaragajwe mu rubanza rwa Tadic. Mu rubanza rwa Tadic, Urugereko rwa Mbere rw'Iremezo rwagize ruti «muri buri rubanza, ikibazo kigomba gusubizwa ni ukumenya niba ibyaha byari bifitanye isano ya hafi n'intambara muri rusange»¹⁰⁶. Mu rubanza rwa Akayesu, Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro wemeza ko «bitagaragajwe ku buryo budashidikanywaho ko ibikorwa bya Akayesu ... bifite aho bihuriye n'intambara». Urwo Rugereko rusanga umwanzuro nk'uyu usobanura ko isano nk'iyi ari ngombwa.
187. Iki kibazo cyagiweho impaka mu minsi ishize mu nama ya mbere ya Komisiyo ishinzwe gutegura ishyirwaho ry'Urukiko Mpanabyaha Mpuzamahanga (ICC)(kuva ku itariki ya 16 kugeza ku ya 26 Gashyantare 1999). Abari bagize iyo Komisiyo basanze icyaha

¹⁰⁵ *Urubanza Porokireri aburana na Zejnir Delalic, Zdravko Mucic, Hazim Delic na Esad Landzo*, N° IT-96-21-T, 16 Ugushyngiro 1998, igika 193.

¹⁰⁶ Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 573.

cy'intambara kibaho iyo icyaha cyakozwe mu gihe cy'intambara kandi kikaba cyari gifitanye isano n'iyo ntambara¹⁰⁷.

188. Bityo, ijambo « isano » ntirigomba gufatwa nk'ikintu kidasobanutse kandi kidafite urubibi. Ibintu byabaye bigomba gutuma hagaragazwa isano itaziguye hagati y'imirwano n'ibyaha uregwa ashinjwa bivugwa mu Nyandiko y'ibirego. Ibi rero ntibishobora kugerwaho umuntu adashingiye ku kintu gifatika. Urugereko rwa Mbere rw'iremezo ni rwo rugomba kwemeza, kuri buri kirego runaka, rushingiye ku bintu byabaye rwagejejweho, niba isano nk'iyo yari iriho. Porokireri ni we ugomba kuvuga ibyo byabaye no kwerekana ku buryo budashidikanywaho ko iyo sano yari iriho.
189. Isano hagati y'icyaha n'intambara ni ikintu cy'ingenzi cyane kubera ko Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II bigamije kurengera abashobora guhohoterwa mu gihe cy'intambara. Ibyaha by'intambara bifitanye isano byanze bikunze n'ibikorwa binyuranyije ku buryo bukomeye n'Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II. Kumenya niba hari isano hagati y'ibyaha bivugwa n'intambara muri uru rubanza, ni ikibazo kiza gusuzumwa mu myanzuro yo mu rwego rw'amategeko, mu gice cya VI cy'iyi Nyandiko y'urubanza. Aho bigeze aha, ni ngombwa gutsindagira ko bikwiye gukurikiza Ingingo ya 3 ihuriweho hamwe n'Amasezerano y'Inyongera ya II, mu gihe byaba bigaragajwe ko iyo sano ivugwa iriho.

Umwanzuro

190. Igisigaye ni uko Urugereko rwafata umwanzuro ushingiyeye ku byabaye bivugwa mu Nyandiko y'ibirego ku birebana n'ibyaha Abaregwa bashinjwa hashingiye ku ngingo ya 4 Sitati y'Urukiko. Iki kibazo kiraza gusuzumwa mu gice cy'Inyandiko y'uru rubanza cyagenewe imyanzuro yo mu rwego rw'amategeko.

¹⁰⁷ Inyandiko yitwa «*The Second Discussion Paper* » (PCNICC/1999/WGE/RT.2).

4.4 Uburyozwacyaha, ingingo ya 6(1) na (3)

4.4.1 Uburyozwacyaha nka gatozi – Ingingo ya 6(1)

191. Inyandiko y'ibirego ivuga mu birego byayo rusange (igika cya 21) ko Kayishema na Ruzindana, hashingiwe ku ngingo ya 6(1) ya Sitati y'Urukiko, baryozwa buri wese nka gatozi ikorwa ry'ibyaha bivugwa kuva ku ngingo ya 2 kugeza ku ya 4 za Sitati y'Urukiko. N'ubwo Urugereko ruza gusuzuma ibyaha byihariye bivugwa mu Nyandiko y'ibirego mu bika bikurikira, rugomba kubanza gusuzuma niba Uregwa agomba kuryozwa nka gatozi ikorwa ry'ibyo byaha. Kuri ibyo, Sitati ifata ibintu mu buryo bwaguye. Ingingo ya 6(1) igira iti:

Umuntu wacuze umugambi, uwawuhamagariye abandi, uwategetse gukora icyaha, uwagikoze cyangwa ku bundi buryo ubwo ari bwo bwose, agafasha kandi agashikaza mu gucura umugambi, gutegura, cyangwa gutsotsoba icyaha icyo ari cyo cyose kivugwa kuva ku ngingo ya 2 kugeza ku ya 4 z'iyi Sitati, akiryozwa nka gatozi.

192. Urugereko rwumvise impande zombi ku birebana n'ukuntu iki gika kigomba kumvikana n'uko kigomba gukurikizwa mu byabaye bivugwa. Bityo, ni ngombwa kureba ingano y'uruhare rusabwa kuva ku ngingo ya 2 kugeza ku ya 4 za Sitati. Nyuma y'ibyo, kandi hashingiwe ku myanzuro ku byabaye iri hano hasi, ni bwo Urugereko rushobora kwemeza niba Ruzindana cyangwa Kayishema baryozwa ibyaha nka ba gatozi hakurikijwe ingingo ya 6(1).

193. Mbere yo gusuzuma ibyangombwa bisabwa mu kureba niba Uregwa yaryozwa icyaha nka gatozi hashingiwe ku ngingo ya 6(1), Urugereko rwa Mbere rw'Iremezo rugiyeye kubanza gusuzuma ikibazo Avoka wa Ruzindana yabyukije kijyanye n'ukuntu Sitati igomba gusobanurwa.

194. Ubwunganizi bwibanze ku gisobanuro cyihariye cyane kirebana n'ingingo ya 6(1). Buvuga ko imiterere y'uburyozwacyaha mu bikorwa byo « gucura umugambi,

kuwuhamagarira abandi, gutegeka abandi gukora icyaha, no gukora icyaha » igomba gufatirwa hamwe, ariko igatandukanywa n'ibikorwa byo « gushyigikira » [abakora ibyaha]¹⁰⁸. Buvuga ko ubu buryo ari bwo gusa buha uburemere ijamba « cyangwa » abanditse Sitati bakoresheje muri iyo ngingo. Ikindi kandi, Ubwunganizi buvuga ko, kubera ko amagambo y'icyongereza « *abetting* » [gufasha] na « *instigating* » [guhamagarira] asobanura ikintu kimwe, mu kwirinda kuvuga ikintu kimwe kabiri, hatitwe ku mwanzuro wafashwe mu rubanza rwa Akayesu, « *aiding* » [gufasha] na « *abetting* » [gushishikaza] byagombye gufatirwa hamwe.

195. Urugereko rwa Mbere rw'Iremezo rusanga igisobanuro cyatanzwe n'Ubwunganizi kitabangamiye gusa imyumvire ishize mu gaciro, ahubwo kinanyuranye n'imyanzuro y'Urugereko mu rubanza rwa Celebici, aho rwavuze nta kuzuyaza ko:

... kuba abantu ku giti cyabo bashobora kuryozwa ibyaha kubera uruhare bagize mu ikorwa ryabyo mu buryo *ubwo ari bwo bwose*, bijyanye n'amahame rusange y'amategeko ahana. Nk'uko Urugereko rwa Mbere rw'Iremezo II rwabyemeje mu rubanza rwa *Tadic*, nta we ushidikanya ko ibi bihuye n'ibikubiye mu mategeko mpuzamahanga ashingiye ku mucu¹⁰⁹. [Ni twe twabitsindagiye tubyandika mu nyuguti ziberamye)

196. Imitekerereze nk'iyi igaragara kandi no mu rubanza rwa Akayesu aho Urugereko rwavuze ko, « Ingingo ya 6(1) iteganya intera *zinyuranye* z'ikorwa ry'icyaha»¹¹⁰. [Ni twe twabitsindagiye tubyandika mu nyuguti ziberamye]. Muri urwo rubanza, Urugereko rwavuze kandi ko « *aiding* [gufasha] na *abetting* [gushishikaza]» bidasobanura ikintu

¹⁰⁸ Imyanzuro nsozarubanza y'Ubwunganizi mu magambo, byasomwe bivanywe mu myanzuro yanditse yatanzwe na Van der Griend mu izina rya Ruzindana, 28 Ukwakira 1998 (« Imyanzuro nsozarubanza ya Ruzindana »), urup. 45. Mu Myanzuro nsozarubanza ya Ruzindana, avoka umwunganira yasabye ko iyo miterere y'uburyozwacyaha yasomerwa hamwe, hanyuma kandi ashigikira ko hari aho yasomwa mu buryo butandukanye nk'uko byemejwe mu Nyandiko y'urubanza rwa Akayesu mu rw'iremezo, urup. 45. Mu rwego rwo kugira ngo ibintu bisobanuke neza, Urugereko rugiyeye gutanga igitekerezo cyarwo kuri icyo kibazo.

¹⁰⁹ Inyandiko y'urubanza rwa Celebici, igika 321. Reba kandi imanza n'Amasezerano mpuzamahanga avugwamo.

¹¹⁰ Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 473. Reba kandi igika 484 aho Urugereko rwa Mbere rw'Iremezo I rutandukanya « gufasha no gushishikaza».

kimwe, ko bityo umuntu ashobora kubiryoza nka gatozi mu buryo butandukanye. Rumaze kwemeza ayo mahame, Urugereko, mu rubanza rwa Akayesu, rwamuhamije ibyaha icyenda hashingiwe ku miterere y'uburyozwacyaha imwe cyangwa myinshi ivugwa mu ngingo ya 6(1).

197. Urugereko rwa Mbere rw'Iremezo ntirubona impamvu rugomba kwitandukanya n'ibi bisobanuro byumvikana kandi bifite ishingiro by'amategeko mpuzamahanga. Kubera ibyo, haramutse hagaragajwe uburyo ubwo ari bwo bwose buvugwa mu ingingo ya 6(1) kandi hakagaragazwa ibikorwa bifatika bigize icyaha (*actus reus*) n'igitekerezo cyo gukora icyaha (*mens rea*), uregwa ashobora kuryozwa ibyaha hashingiwe kuri iyi ngingo ya 6(1).
198. Urugereko rwa Mbere rw'Iremezo ruremeranya na Porokireri mu byo avuga ko hari ibintu bibiri bigomba na byo kugaragazwa, mbere y'uko uregwa ariyozwa icyaha nka gatozi hashingiwe ku ngingo ya 6(1). Hagomba kugaragazwa (i) ko uregwa yagize uruhare mu cyaha, ni ukuvuga ko imyitwarire ye yatumye icyaha gikorwa, kandi (ii) ko yari azi icyo akora cyangwa afite umugambi, ni ukuvuga ko yazirikanaga ko ari mu gukora icyaha¹¹¹.
199. Icyamba mbere gisabwa, ni ukuvuga igikorwa gifatika (*actus reus*) kigize icyaha, cyasesenguwe mu buryo burambuye n'Urugereko rwa Mbere rw'Iremezo I mu rubanza rwa Akayesu, na TPIY mu rubanza rwa Tadic¹¹². Ihame ritajegajega ryimakajwe ni uko kugira ngo uregwa ahamwe n'icyaha, hagomba kugaragazwa, ku buryo budashidikanywaho, ko imyitwarire ye yafashije mu gukora icyaha cyangwa se ko yatumye gikorwa¹¹³. Igikorwa gifatika kigize icyaha hamwe n'uruhare rwa ngombwa rusabwa mu mikorere yacyo, bigenda byanze bikunze bihinduka bitewe n'imiterere y'uburyozwa-

¹¹¹ Imyanzuro nsozarubanza ya Porokireri, urup. 17. Ibyo bisabwa byakomowe mu Nyandiko y'urubanza rwa Tadic, ahakoreshejwe ibisa n'ibyo biteganywa n'ingingo ya 7 (1) ya Sitati ya TPIY.

¹¹² Reba, ibika 480-484, 673-674 na 688-692.

¹¹³ Reba Inyandiko y'urubanza rwa Tadic mu rw'iremezo, ibika 673-674; Inyandiko y'urubanza rwa Celebici mu rw'iremezo, igika 326; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 473-475; Inyandiko y'urubanza rwa Furundzija mu rw'iremezo, igika 235; n'izindi nyandiko zivugwa muri izo manza.

cyaha ivugwa mu ngingo ya 6(1)¹¹⁴. Ikiyaragara ni uko uruhare mu cyaha rugomba kuba ari runini, kandi iki ni ikibazo kirebana n'ibyabaye kigomba gusuzumwa n'Urugereko rwa Mbere rw'Iremezo.

200. Kugira ngo uregwa ahamwe n'icyaha, si ngombwa ko aba yari aho cyakorewe cyangwa se ko yaba yaragize uruhare rutaziguye mu ikorwa ryacyo. Hakurikijwe icyemezo cyafashwe mu rubanza rwa Furundzija n'ubukemuramanza bwagikomotseho, ibyo bivuga ko uruhare rw'umuntu mu ikorwa ry'icyaha atari ngombwa igihe cyose ko ruba rufatika. Ibi ni ko bikurikizwa cyane cyane iyo uregwa ashinjwa « gufasha » cyangwa « gushishikaza » mu ikorwa ry'icyaha. Mu rubanza rwa Furundzija hemejwe ko « . . . umuntu w'indorezezi ishyigikiye ibirimo kuba, wubashywe n'abandi bantu barimo gukora icyaha ku buryo kuba ari aho icyaha gikorera bibashishikaza mu myitwarire yabo, ashobora guhamwa no kuba icyitso mu cyaha cyibasiye inyokomuntu »¹¹⁵.
201. Uru Rugereko na rwo ni uko rubibona. Kuba iyo ndorezezi iri aho icyaha gikorera si ngombwa ko biba kamara mu myitwarire y'uwasotsobye icyaha. Ibi bisobanuye ko mu gihe uregwa azi ko kuba ari aho hantu bifite ingaruka mu ikorwa ry'icyaha, ashobora kubiryoza hashingiwe ku ngingo ya 6(1) kubera iyo nkunga ye mu ikorwa ry'icyaha icyo ari cyo cyose kivugwa muri Sitati y'Urukiko.
202. Ubu bukemuramanza buragurwa ku buryo uregwa aryoze icyaha iyo yateshutse ku nshingano z'ibyo yari ategutse gukora. Ikibazo cy'uburyozwacyaha bukomoka ku nshingano umuntu yari afite no kuba yaraziteshutseho, gifatanye cyane n'icy'inshingano z'umuntu ukuriye abandi. Koko rero, ingingo ya 6(3) isaba abantu bafite ubutegetsi gukoresha uburyo bwose bahabwa n'inshingano zabo, kugira ngo baburizemo ikorwa ry'icyaha cyangwa bahane abagikoze. Nyamara ariko, uburyozwacyaha nka gatozi hakurikijwe ingingo ya 6(1), ntabwo muri uru rubanza bushingiye ku nshingano

¹¹⁴ Reba Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 480-485.

¹¹⁵ Inyandikio y'urubanza rwa Furundzija mu rw'iremezo, igika 207.

z'uregwa zo kugira icyo akora, ahubwo bushingiye ku gushishikaza no gushyigikira abatsotsobye icyaha bashobora kubona muri uko kwitaramira kwe¹¹⁶.

203. Kubera iyo miterere yaguye y'uruhare mu gukora icyaha ituma habaho uburyozwacyaha bushingiye ku ngingo ya 6(1), uregwa agomba kuba yarazirikanaga neza ko urwo ruhare rwe ruzatuma icyaha gikorwa¹¹⁷. Mu mutwe wa 5.1 w'Inyandiko y'uru rubanza, Urugereko rwa Mbere rw'Iremezo rusobanura ko icyo amarorerwa yakorewe mu Rwanda hose no muri Perefegitura ya Kibuye mu wa 1994 yari agamije kwari ukurimbura Abatutsi. Bityo rero, abakoze ibyo byaha bari bahuriye kuri icyo gitekerezo kimwe. Kuri iki kibazo, mu rubanza rwa Celebici, Urugereko rwavuze ko iyo,

. . . hariho umugambi, cyangwa se mu bundi buryo hakaba hariho ibimenyetso byerekana ko abantu bagize agatsiko aka n'aka bariho bakora ibikorwa biri mu mugambi umwe w'icyaha, abawugiyemo bose, kandi bagashyigikira mu buryo butaziguye kandi bugaragara ishyirwa mu bikorwa ryawo bashobora kuryozwa icyaha ... kandi ... bitewe n'uko ibintu biba byifashe, uregwa ashobora icyo gihe kuryozwa icyaha kivugwa nk'uwagitsotsobye cyangwa se nk'icyitso cyafashije mu ikorwa ry'icyo cyaha¹¹⁸.

204. Bityo rero, Urugereko rwa Mbere rw'Iremezo rusanga abantu bagize agatsiko nk'ako bashobora kuryozwa ingaruka y'ibikorwa ibyo ari byo byose byakozwe hagamijwe kugera ku mugambi uhuriweho, iyo bishobora kuwusohoza.

205. Kubera ibyo, si ngombwa ko uwatsotsobye icyaha n'uregwa baba basangiye igitekerezo cyo gukora icyaha (*mens rea*). N'ubwo kuba uregwa yari azi neza icyo akora cyangwa yari afite igitekerezo cyo gukora icyaha bituma abiryozwa nka gatozi hashingiwe ku

¹¹⁶ Reba Inyandiko y'urubanza rwa Akayesu mu rw'iremezo aho kuba Uregwa atarakoresheje umwanya we nk'umutegetsi ngo aburizemo ubwicanyi byafashwe nko gushishikariza mu buryo buteruye abantu gukora ibyaha, igika 705.

¹¹⁷ Ibikorwa bifatwa nk'ibyaha biteganywa na Sitati y'Urukiko. Bityo rero, gutsotsoba icyaha birahagije kugira ngo umuntu akiryozwe, uretse kuri jenocide havugwa by'umwihariko ko umuntu ariyozwa « ubwinjiracyaha » bugamije gukora jenocide, ingingo ya 2 (3) (d) ya Sitati.

¹¹⁸ Inyandiko y'urubanza rwa Celebic mu rw'iremezoi, igika 328.

ningingo ya 6(1), kubitandukanya bikenerwa gusa iyo ari ngombwa kumenya niba uregwa ari icyitso cyafashije mu ikorwa ry'icyaha cyangwa se niba ari umufatanyacyaha¹¹⁹.

206. Ibyo bisabwa kugira ngo habeho igitekerezo cyo gukora icyaha bihinyuza ibivugwa na Avoka wunganira Kayishema ko inshingano yo gutanga ibimenyetso yegekwa ku wundi muburanyi iyo igikorwa gifatika kivamo uburyozwacyaha, hakurikijwe iyi ngingo, gishingiye ku myitwarire y'uregwa yo kuba yarateshutse ku nshingano ze zo gukora ibyo yari ategetswe. Porokireri agomba gutanga ibimenyetso bigaragaza ko uregwa yazirikanaga ko uko kwitaramira kwe byashoboraga gutuma icyaha gikorwa.
207. Muri make rero, Urugereko rusanga buri buryo icyaha cyakozwemo bushobora, bumwe ukwabwo ubundi ukwabwo, gutuma uregwa aryozwa icyaha. Porokireri agomba kugaragaza ko kubera ubwo buryo icyaha cyakozwemo, byaba mu bikorwa cyangwa kudakora ibitegetswe, uregwa yateye inkunga ikomeye mu ikorwa ry'icyaha kandi ko, bitewe n'uburyo buvugwa icyaha cyakozwemo, yari azi nibura ko imyitwarire ye yashoboraga gutuma icyo cyaha gikorwa.

4.4.2 Uburyozwe bw'ukuriye abandi – Ingingo ya 6(3)

208. Inyandiko y'ibirego ivuga kandi ko, mu gihe haba hadashingiwe ku ngingo ya 6(1), Kayishema «ashinjwa nka gatozi ibyaha byakozwe n'abantu yategekaga» nk'uko biteganywa n'ingingo ya 6(3) igira iti:

Kuba igikorwa icyo ari cyo cyose kivugwa mu ngingo ya 2 kugeza ku ya 4 z'iyi Sitati cyarakozwe n'uyoborwa ntibibuzwa umukuriye kukiryoza, iyo yari azi cyangwa yagombye kuba yari azi ko uwo akuriye agiye gukora icyaha cyangwa ko yagikoze ariko uwo umukuriye ntafate ingamba za ngombwa kandi zishyize mu gaciro kugira ngo aburizemo ikorwa ry'icyo cyaha cyangwa ngo ahane abagikoze¹²⁰.

¹¹⁹ Reba Inyandiko y'urubanza rwa Furundzija mu rw'iremezo, ibika 250-257.

¹²⁰ Mu bika bikurikira, uburyozwacyaha buvugwa muri iyi ngingo buritwa « uburyozwacyaha bw'utegeka abandi », cyangwa « uburyozwacyaha bw'ukuriye abandi ». Aya magambo azajya akoreshwa amwe mu mwanya w'ayandi.

Ruzindana ntashinjwa icyaha hashingiwe ku ngingo ya 6(3).

209. Ihame ry'uburyozwacyaha bw'ukuriye abandi rifite imizi ikomeye mu mategeko mpuzamahanga, kandi umwanya waryo nk'ihame ryo mu mategeko mpuzamahanga ashingiye ku muco uherutse kwemezwa na TPIY mu rubanza rwa Celibici¹²¹. Kuba iri hame ryemewe ku buryo bweruye bigaragarira ubu mu ngingo ya 28 ya Sitati y'i Roma y'Urukiko Mpanabyaha Mpuzamahanga (ICC).
210. Kuba uregwa ariyozwa icyaha hashingiwe ku ngingo ya 6(1) ya Sitati ntibibuza Urugereko kwemeza ko yanakiryoza hashingiwe ku ngingo ya 6(3) cyangwa se ko yakiryoza gusa hashingiwe kuri iyi ngingo ya nyuma mu gihe yaba atakiryojwe hashingiwe ku ya 6(1). Nta kibaza ko iyi miterere yombi y'uburyozwacyaha ibangikana. Urugereko rugomba rero kuzirikana iyo miterere yombi y'uburyozwacyaha kugira ngo rugaragaze mu buryo bwuzuye uko icyaha kimuhama hashingiwe ku byabaye.
211. Ubwunganizi nta gitekerezo bwatanze ku birebana n'ishingiro ry'ingingo ya 6(3) mu rwego rw'amategeko. Kubera ibyo, Urugereko ruri busesengure ibyavuzwe na Porokireri kuri icyo kibazo mu gihe ruza gusuzuma niba ibisabwa binyuranye byujujwe kugira ngo uregwa ariyozwe icyaha nk'ukuriye abandi.
212. Ni ngombwa mbere na mbere kureba niba Kayishema, mu mwanya we nka Perefefu, arebwa n'iri hame ry'uburyozwacyaha bw'ukuriye abandi rivugwa mu ngingo ya 6(3). Icyamba kabiri, Urugereko rugomba kumenya abo bantu Kayishema yari akuriye ku buryo yashoboraga kubaha amategeko. Kuri ibyo, ni ngombwa na none gusobanura neza niba abo bantu yari abakuriye mu buryo buteganywa n'amategeko (*de jure*), cyangwa se niba kuba yari abakuriye mu buryo budateganywa n'amategeko (*de facto*) bihagije. Icyamba gatatu kigomba gusuzumwa ni ukureba niba umuntu wari ukuriye abandi yari azi mu buryo buhagije ibyo bakoraga. Icyamba nyuma Urugereko rugomba gukemura ni ikibazo cyo kumenya igihe umuntu ukuriye abandi agomba kuryozwa icyaha kubera ko ataburijemo ikorwa ryacyo cyangwa ko atahanywe abagikoze.

¹²¹ Inyandiko y'urubanza rwa Celebici mu rw'iremezo, ibika 333-343, havugwamo ingingo ya Sitati ya TPIY irebana n'icyo kibazo.

Uburyozwacyaha bw'umuntu utari umuyobozi wa gisirikare

213. Porokireri avuga ko ihame ryerekeranye n'uburyozwacyaha bw'umuntu ukuriye abandi ritareba gusa abakuriye abandi mu gisirikare, ahubwo ko rireba n'abasiviri bari mu myanya y'ubutegetsu¹²². Urugereko rusanga kuba ihame ryerekeye uburyozwacyaha ryakoreshwa ku basiviri bafite ububasha bugenwa n'itegeko nta we ubijyaho impaka. Hari impamvu nyinshi zibitera.
214. Sitati ubwayo irasobanutse kuri iki kibazo. Sitati ntivuga ko uburyozwacyaha bureba abayobozi bo mu gisirikare bonyine¹²³, ahubwo ikoresha inyito yaguye y'« umuntu ukuriye abandi ». Urugereko rwemera ibivugwa mu Nyandiko y'urubanza rwa Celebici mu rw'iremezo ko ayo magambo, uyafatiye hamwe n'uburyozwacyaha nka gatozi bw'« Abakuru b'ibihugu cyangwa ba guverinoma » cyangwa bw'« Abakozi bakuru ba Leta » bukubiye mu ngingo ya 6(2) ya Sitati, agaragaza neza ko abanditse Sitati bifuzaga ko iyi ngingo yerekeye uburyozwacyaha bw'ukuriye abandi itareba gusa abayobozi bo mu gisirikare ahubwo ko « yareba n'abayobozi bo mu rwego rwa politiki hamwe n'abandi basiviri bari mu myanya y'ubuyobozi »¹²⁴.
215. Ubukemuramanza na bwo bushyigikira iyi myumvire. Imbere y'Urugereko rwa Mbrere rw'Iremezo I rw'uru Rukiko, uwari minisitiri w'intebe Jean Kambanda yaburanye yemera ibyaha byibasiye inyokomuntu n'icyaha cya jenocide hashingiwe ku ngingo zirimo n'ya 6(3) ya Sitati¹²⁵. Omar Serushago na we wari umusiviri uzwi mu karere k'iwabo akaba n'umukuru w'Interahamwe muri Perefegitura ya Gisenyi, yaburanye yemera ibyaha byibasiye inyokomuntu hamwe n'icyaha cya jenocide, kandi yemera uburyozwacyaha bwe hashingiwe ku ngingo ya 6(3)¹²⁶. Byongeye kandi, Inyandiko

¹²² Imyanzuro nsozarubanza, urup. 20.

¹²³ Reba ibisabwa kugira ngo « abayobozi bo mu gisirikare » baryozwe icyaha hashingiwe ku ngingo ya 87 y'Inyongera ya 1 y'Amasezerano y'i Jeneve yo mu wa 1949 (Jean Pictet).

¹²⁴ Inyandiko y'urubanza rwa Celebici mu rw'iremezo, igika 356.

¹²⁵ Inyandiko y'urubanza rwa Jean Kambanda mu rw'iremezo, n° ICTR 97-23-S (icyongereza).

¹²⁶ Urubanza Porokireri aburana na Omar Serushago, Inyandiko y'urubanza n'igenabihano N° ICTR 98-39-S (icyongereza).

y'urubanza rwa Celebici mu rw'iremezo isuzumwamo iyi ngingo mu buryo burambuye, yatsindagiye ibyemejwe n'Urukiko mpuzamahanga rwa gisirikare rwashyiriweho Aziya y'Iburasirazuba (Urukiko rw'i Tokyo), hamwe n'Urukiko Rukuru rwa Gisirikare rwa Leta rwo mu gice cy'Ubudage cyagenzurwaga n'Ubufaransa, aho abanyapolitiki bo mu rwego rwo hejuru hamwe ndetse n'abanyenganda bakomeye barezwe ibyaha by'intambara byakozwe n'abo bari bakuriye¹²⁷.

216. Muri izo manza, ikibazo cy'ingenzi nticyari icyo kuba abaregwa bari abasiviri, ahubwo cyari icy'ingano y'ububasha bari bafite ku bo bari bakuriye¹²⁸. Bityo rero, Urugereko rwemera ibivugwa na Porokireri ko umusiviri uri mu mwanya w'ubuyobozi ashobora kuryozwa icyaha hashingiwe ku ihame ryerekeye uburyozwacyaha bw'ukuriye abandi. Urugereko rugiyeye gusuzuma rero ikibazo cyo kumenya igihe umusiviri ashobora gufatwa nk'umuntu wari ukuriye abandi ukurikije ibivugwa mu ngingo ya 6(3) ya Sitati, n'icyo kumenya « ingano y'ububasha » ya ngombwa isabwa kugira ngo umuntu aryozwe icyaha nka gatozi hashingiwe kuri iri hame ryerekeye uburyozwacyaha bw'ukuriye abandi.

Inshoza y'ukuriye abandi: ububasha bwo kugenzura abandi bukomoka ku mategeko n'ubutayakomokaho

217. Iyi sano iri hagati y'ukuriye abandi n'uwo ayobora ni ryo pfundo ry'ihame ryerekeye uburyozwacyaha bw'ukuriye abandi. Icyo uburyozwacyaha bwe bushingiraho ni uko iyo yamenye cyangwa yagombye kuba yaramenye ko icyaha gishobora gukorwa cyangwa ko cyakozwe, icyo gihe agomba gufata ingamba zose za ngombwa kugira ngo aburizemo ikorwa ryacyo cyangwa ahane abagikoze. Iyo adakoze ibyo ububasha bwe bumwemerera, aryozwa ibyo byaha byakozwe. Urugereko rwa Mbere rw'Iremezo mu rubanza rwa Celebici rwasobanuye ihame ngenderwaho kuri iyi ngingo aho rugira ruti « Ihame ryerekeye uburyozwacyaha bw'ukuriye abandi rishingira mbere na mbere ku bushobozi

¹²⁷ Ni kimwe no haruguru, ibika 356-362.

¹²⁸ Reba igitekerezo cy'umucamanza Röling mu rubanza rwiswe urwa «Rape of Nanking », n'Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 491.

ukuriye abandi afite bwo kugenzura ibikorwa by'abo akuriye »¹²⁹. Urwo Rugereko rwakomeje rusobanura iri hame rwibutsa ko « Tugomba kuzirikana buri gihe imiterere iranga buri kibazo no kwitegura kvanaho igihu cyo mu migenzereze runaka gishobora gukingira ikibaba abagize uruhare ruruta urw'abandi mu bikorwa by'amarorerwa »¹³⁰.

218. Kugira ngo « havanweho icyo gihe » rero, Urugereko rugomba kuba maso rukareba kure, ntirugarukire gusa ku bubasha Uregwa yakomoraga ku mategeko, ahubwo rukanasuzuma ububasha yari afite muri Perefegitura ya Kibuye guhera muri Mata kugeza muri Nyakanga 1994, ariko atakomoraga ku mategeko. Igitekerezo cya *ILC* kivuga ko umuntu yagombye kuryozwa ibyaha yashoboraga kuburizamo akoresheje ububasha ahabwa n'amategeko¹³¹ ntigifasha Urugereko mu gusuzuma « imiterere nyakuri ya buri kibazo ». Bityo rero, kubera ko muri ariya mezi yo mu wa 1994 mu Rwanda hari akaduruvayo, Urugereko rugomba gusuzuma niba abakoraga amarorerwa Kayishema yari abafiteho ububasha nyabwo kugira ngo, hashingiwe ku ngingo ya 6(3) ya Sitati, abe yaryozwa nka gatozi ibyo bakoze kubera ububasha yari abafiteho nk'ubakuriye, bwaba ari ubwo yakomoraga ku mategeko cyangwa se ubwo atayakomoragaho.
219. Kwibanda ku bubasha perefere yemererwaga n'amategeko nta muburanyi byafasha ku mpande zombi. Nk'urugero, kwibanda ku bubasha bwa perefere buteganywa n'amategeko hashingiwe ku Itegeko Nshinga ryo mu wa 1991 byaba ari ukubuza Urugereko gusuzuma uko bikwiye ingingo z'Ubwunganizi zivuga ko uko ibintu byari byifashe mu Rwanda n'uko umwuka wari umeze mu by'ukuri byatumye perefere nta bubasha agira kuri bamwe mu bo yari akuriye mu buryo buteganywa n'amategeko, kandi ko nta n'ubushobozi yari afite bwo kuburizamo nyabyo amarorerwa yakorwaga. Na none, kuvuga ko ihame ry'ukuriye abandi ryareba gusa abantu bafite ububasha bakomora ku mategeko bwo kugenzura abo bakuriye, byatuma Urugereko rudasuzuma uko bikwiye ingingo za Porokireri. Porokireri yavuze ko abakoraga ubwicanyi Kayishema yari abafiteho

¹²⁹ Inyandiko y'urubanza rwa Celebici mu rw'iremezo, igika 376.

¹³⁰ Ni kimwe no haruguru, igika 377.

¹³¹ *ILC Draft of Code of Crimes* [Umushinga w'Amategeko ahana wateguwe na ILC].

ububasha yakomoraga ku mategeko, akanabagiraho ububasha atakomoraga ku mategeko nk'uko yari anabufite ku bandi bantu bagabaga ibitero, nk'Interahamwe.

220. Iyi myumvire ihuje kandi n'ibyemejwe mu rubanza rwa Celebici no mu bukemuramanza bwifashishijwe muri urwo rubanza¹³². Nk'urugero, nyuma yo gusuzuma urubanza rwiswe « *Hostage case* » [Abahohotewe bari barafashweho ingwate] n'urundi rwiswe « *High Command* » [Urw'abayobozi bakuru], Urugereko rwaburanishije urubanza rwa Celebici rwafashe umwanzuro wemeza ko rushimangira nta kuzuyaza ihame rivuga ko « ububasha bwo kuvuga rikijyana umuyobozi adakomora ku mategeko buhagije kugira ngo abe yaryozwa icyaha nk'ukuriye abandi ». Uru Rugereko rwemera iyo myumvire.
221. Byongeye kandi, nyuma yo kwerekana igihe umuyobozi wo mu gisirikare ashobora kuryozwa icyaha nk'ukuriye abandi, Sitati y'Urukiko Mpanabyaha Mpuzamahanga (ICC) yashyiriweho umukono i Roma ivuga mu ngingo yayo ya 28(2) ko abantu bose bakuriye abandi baryozwa « ibikorwa by'abo bakuriye bafiteho ububasha *nyabwo* » [ni twe tubishimangiye tubyandika mu nyuguti ziberamye].
222. Ingingo ya 6 ya Sitati y'Urukiko yanditse mu magambo ya rusange. Kuba hakubiyemo uburyozwacyaha bw'abakozi bakuru ba Leta bose, ubw'abayobozi bose n'ubw'abandi bayoborwa, bigaragaza ko icyo iyo ngingo igamije ari ugukora ku buryo abakoze ibyaha bivugwa guhera ku ngingo ya 2 kugeza ku ya 4 za Sitati, batakwihisha inyuma y'imihango y'amategeko gusa ngo bahakane uburyozwacyaha bwabo. Bityo rero, hashingiwe ku ngingo ya 6(3) ya Sitati, Urugereko rufite inshingano yo gusuzuma uburyozwacyaha bw'abantu bose bari bafite ububasha *nyabwo* bwaba bukomoka ku mategeko cyangwa se butayakomokaho.
223. Iyo bishoboye kugaragazwa ko uregwa yari akuriye abandi mu buryo buteganywa n'amategeko cyangwa ubudategenywa na yo, kandi amarorerwa akaba yarakozwe bikomotse ku mabwiriza ye, icyo gihe Urugereko rwemeza ko biba bihagije kugira ngo ariyozwe icyaha nk'uwari ukuriye abandi. Icyo Urugereko rukora ni ugusuzuma gusa niba

¹³² Inyandiko y'urubanza rwa Celebici mu rw'iremezo, ibika 364-378.

yari abizi cyangwa yagombye kuba yari abizi ariko ntabiburizemo cyangwa ngo ahane ababikoze, niba koko atarabategetse kubikora. Iyo Urugereko rusanze nta gushidikanya ko uregwa yategetse ko ayo marorerwa akorwa, ntibiba bikiri ngombwa gusuzuma niba yaragerageje kuyaburizamo, kandi nta n'impamvu yo gusuzuma niba yaragerageje guhana abayakoze.

224. Nyamara ariko, mu bindi bihe byose, Urugereko rugomba kwita ku buryo burambuye ku birebana no kumenya ko « yari abizi » ko kandi « nta cyo yakoze ngo abiburizemo cyangwa ahane ababikoze » nk'uko bivugwa mu ngingo ya 6(3) ya Sitati.

Kumenya ibikorwa by'abo akuriye

225. Mu ngingo ya 6(3) ya Sitati, igitekerezo cyo gukora icyaha gisaba ko kugira ngo ukuriye abandi aryozwe ibikorwa by'abo yari akuriye, agomba kuba yari azi cyangwa yaragombaga kuba azi ko bakora ibyaha. Iyo bigaragara nta gushidikanya ko ukuriye abandi yari azi cyangwa yagombaga kumenya ko abo afiteho ububasha bari gukora ibyaha, icyo gihe igitekerezo cya ngombwa gisabwa kiba kigaragajwe neza.
226. Nyamara ariko, iyo umuntu azirikanye ko uburyozwacyaha bwa gatozi bubaho iyo ukuriye abandi « yagombaga kuba yari azi » ko icyaha cyakozwe cyangwa kigiye gukorwa, igitekerezo cya ngombwa gisabwa ntikigaragara neza. Mu rubanza rwa Celebici, Urugereko rwa Mbere rw'Iremezo rwazirikanye ibirebana n'imiterere yaguye y'uburyozwacyaha bw'ukuriye abandi yagaragajwe mu manza zakurikiye intambara ya kabiri y'isi. Muri izo manza, hemejwe mbere na mbere ko umuyobozi afite inshingano yo kumenya ibintu byose bibera mu gace ashinzwe, hanyuma hemezwa ko uteshutse kuri iyo nshingano agomba kubiryoza¹³³. Mu rubanza rwa Celebici, Urugereko ntirwakurikije iyo mitekerereze. Ahubwo, rwahisemo ko hatangwa ibimenyetso bigaragaza ko uregwa yari azi amakuru amwe n'amwe amumenyesha ko habayeho icyaha, akaba yaragombaga kwikorera iperereza ry'inyongera.

¹³³ Reba Inyandiko y'urubanza rwa Celebici mu rw'iremezo, igika 389, hamwe n'imanza zivugwa muri urwo rubanza, by'umwihariko urwititiwe abantu bafashweho ingwate [*Hostage case*], urwa *Toyoda*, n'urwa *Pohl*.

227. Kuri iki kibazo, Urugereko rusanga itandukanyirizo hagati y'abayobozi bo mu gisirikare n'abandi bantu bafite abo bakuriye rigaragara muri Sitati y'i Roma ari ingirakamaro¹³⁴. Ku bayobozi bo mu gisirikare, Sitati y'i Roma iha ukuriye abandi inshingano ikomeye kurushaho yo gukurikirana ibyo abo akuriye bakora iyo « yamenye cyangwa, bitewe n'uko ibintu byifashe, yaragombaga kumenya ko abasirikare be barimo gukora ibyaha cyangwa ko bari hafi kubikora ». Ibi bibangikana n'igitekerezo kigize icyaha gisabwa ku bandi bantu bose bafite abo bakuriye, bagombaga kuba « bazi ko abo bakuriye barimo bakora ibyaha cyangwa ko bari hafi kubikora, cyangwa se birengagije nkana amakuru yabamenyeshaga iyo myitwarire y'abo bakuriye».
228. Urugereko rwa Mbere rw'Iremezo rwemera iyi myumvire kubera ko ku bayobozi batari abo mu gisirikare idasaba ko bamenya ibikorwa byose by'abo bayobora bose. Hakurikijwe ko icyo ingingo ya 6(3) ya Sitati igamije ari ukugira ngo hatagira abantu bigurutsa uburyozwacyaha bwabo nka ba gatozi ku birebana n'ibyaha bikomeye nka jenocide, ibyaha byibasiye inyokomuntu n'ibikorwa binyuranyije n'Ingingo ya 3 Ihuriweho n'Amasezerano y'i Jeneve hamwe n'Inyongera yayo ya II, Urugereko rusanga Porokireri agomba gutanga ibimenyetso bigaragaza nta gushidikanya ko muri uru rubanza Uregwa yari azi ko abo akuriye bakoze cyangwa bari hafi gukora ibikorwa binyuranyije n'ingingo ya 2, iya 3 n'iya 4 za Sitati y'Urukiko, cyangwa se ko yirengagije nkana amakuru yamugaragarizaga cyangwa yamumenyeshaga iyo myitwarire y'abo akuriye.

Ubushobozi bwo kugenzura nyabyo: Kutaburizamo ikorwa ry'icyaha cyangwa kudahana abagikoze

229. Ihame ryerekeye uburyozwacyaha bw'ukuriye abandi rigomba gukurikizwa gusa ku bayobozi bashobora kugenzura nyabyo abo bakuriye. Ubu bushobozi ukuriye abandi afite bwo kugenzura nyabyo ibikorwa by'abo akuriye ni cyo gipimo ngenderwaho cy'uburyozwacyaha nka gatozi bushingiye ku ngingo ya 6(3) ya Sitati. Mu mushinga w'amategeko wateguwe na Komisiyo y'amategeko mpuzamahanga, iyo Komisiyo

¹³⁴ Ingingo ya 28 (1) (a) na (2) (a).

yageze aho ivuga ko kugira ngo ukuriye abandi ariyozwe icyaha nka gatozi agomba « kuba afite ububasha ahabwa n'amategeko bwo gufata ingamba zo kuburizamo ikorwa ry'icyaha cyangwa zo guhana abagikoze, *hamwe* n'ubushobozi nyabwo bwo gufata izo ngamba »¹³⁵. [Ni twe twabishimangiye tubishyira mu nyuguti ziberamye].

230. Nyamara ariko, nk'uko Urugereko rwabitsindagiye haruguru, kwibanda ku bubasha umuntu yari afite bukomoka ku mategeko nta ruhande na rumwe bifasha. Ni ngombwa kurenga izi nzitizi zishingiye ku mihango y'amategeko gusa maze umuntu akibanda ku buryo ibintu byari byifashe mu gihe kivugwa. Kubera ibyo rero, Urugereko ruhitemo imyumvire iri mu Nyandiko y'urubanza rwa Celebici aho Urugereko rwasanze,

. . . umuyobozi aba azenzura nyabyo abantu bakora ibikorwa binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, iyo afite ubushobozi nyabwo bwo kuburizamo ikorwa ry'ibyo byaha cyangwa bwo guhana ababikoze. Bikaba byumvikana ariko ko ubwo bushobozi bushobora kuba ari ubwo akomora ku mategeko cyangwa ubwo atayakomoraho ...¹³⁶.

231. Bityo rero, ubushobozi bwo kuburizamo ikorwa ry'icyaha n'ubwo guhana abagikoze ni ikibazo kigendana n'uko ibintu biba byifashe. Bityo, kugira ngo Urugereko rushobore kumenya abantu Kayishema yari akuriye guhera muri Mata kugeza muri Nyakanga 1994 no kureba ko yari afite ubushobozi buhagije bwo kubagenzura mu rwego rwo gusuzuma niba yaryozwa nka gatozi amarorerwa bakoze, rugomba kugendera ku myanzuro ikurikira ishingiye ku byabaye kandi rugasuzuma uko ibintu byari byifashe muri rusange mu gihe Kayishema yakoraga imirimo ye nka perefefu.

¹³⁵ *ILC Draft Code of Crimes*, imp. 38-39.

¹³⁶ Inyandiko y'urubanza rwa Celebici mu rw'iremezo, igika 378.

V. IMYANZURO ISHINGIYE KU BYABAYE

5.1 Imyiregurire ya sinari mpari (*alibi*)

232. Kayishema na Ruzindana biyambaje imyiregurire ya sinari mpari ku byaha bashinjwa. Bombi bavuga ko batari ahantu ubwo bwicanyi bwakorewe igihe bwakorwaga. Urugereko rwa Mbere rw'Iremezo rugiyeye gusuzuma ingingo za Kayishema na Ruzindana. Cyakora, mbere yo gusuzuma ibyo bavuga byihariye ku myiregurire ya sinari mpari, rusanga ari ngombwa kubanza gusuzuma ibibazo by'imiburanishirize bijyanye n'iyi myiregurire.

5.1.1 Imyiregurire ya sinari mpari n'ingingo ya 67 y'Amategeko

Ku birebana n'iki kibazo, ingingo ya 67 y'Amategeko igira iti:

- (A) Bidatinze, ariko uko byagenda kose mbere y'uko urubanza rutangira:
 - (ii) Ubwunganizi bumenyeshya Porokireri ko buteganya kuziregura bushingiye kuri ibi bikurikira:
 - (a) Imyiregurire ya « sinari mpari » (*alibi*). Muri iryo menyesha, buvuga ahantu uregwa yemeza ko yari ari igihe ibyo bamurega byakorwaga, amazina y'abagabo babizi n'aho babarizwa, n'ibindi bimenyetso byose uregwa ateganya kuzashingiraho mu kwerekana ko imyiregurire ya « sinari mpari » ye ifite ishingiro;
- (B) Kuba Ubwunganizi butaramenyeshye Porokireri mu nyandiko ubwo buryo bwo kwiregura ntibibuza ariko uregwa uburenganzira bwo kubukoresha.

233. Inshingano Ubwunganizi bufite yo kumenyekanisha ko buteganya kwiyambaza imyiregurire ya sinari mpari ijyanye n'imikorere yashinze imizi mu nkiko zo ku isi yose zigendera

kuri *Common Law* [Umuryango w'amategeko akomoka ku y'Abongereza]¹³⁷. Mu nkiko zinyuranye ndetse no muri uru Rukiko, Ubwunganizi butegukwa kubahiriza iyo nshingano kugira ngo Porokireri ashobore gutegura uko bikwiye imiburanire ye. Iyo uregwa yiyambaje imyiregurire ya sinari mpari, ashobora kugira cyangwa kutagira inshingano yo gutanga ibimenyetso bishyigikira iyo myiregurire ye bitewe n'urukiko rumuburanisha. Mu nkiko zimwe na zimwe nk'izo mu Buhindi, abaregwa biyambaza imyiregurire ya sinari mpari ni bo bafite inshingano yo gutanga ibimenyetso¹³⁸. Mu zindi nkiko zinyuranye nk'izo muri Afurika y'Epfo, Porokireri ni we ufite inshingano yo gutanga ibimenyetso¹³⁹.

234. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rusanga Porokireri ari we ufite inshingano yo gutanga ibimenyetso bidashidikanywaho bigaragaza ibyo avuga, kabone n'ubwo Ubwunganizi bwiambaje imyiregurire ya sinari mpari. Ibyo ari byo byose, uregwa afatwa nk'umwere kugeza igihe Porokireri agaragarije ko yakoze icyaha koko, nk'uko biteganywa n'ingingo ya 20(3) ya Sitati. Uregwa asabwa gusa kumenyekanisha ko ateganya kwiyambaza imyiregurire ya sinari mpari no kubahiriza ingingo ya 67(A)(ii) y'Amategeko, yerekana amakuru ya ngombwa agomba kumenyekanishwa ku byerekeranye n'imyiregurire ya sinari mpari.
235. Nk'uko biteganywa n'ingingo ya 67 imaze kuvugwa, Ubwunganizi bugomba kumenyeshya Porokireri ko buteganya kwiyambaza imyiregurire ya sinari mpari. Nyamara ariko, Avoka wa Kayishema ntiyigeze na rimwe avuga mbere y'uko urubanza rutangira

¹³⁷Kuri iki kibazo, reba Ingingo ya 11 ya *Criminal Justice Act* [Amategeko ahana] (u Bwongereza) iteganya ko mbere y'uko iburanisha ritangira Uregwa agomba kumenyekanisha ko ateganya kwiyambaza imyiregurire ya sinari mpari. Amategeko yo muri Kanada no muri za Leta zimwe zigize Leta Zunze Ubumwe z'Amerika na Ositaraliya na yo ni ko abiteganyaye.

¹³⁸ *Section 103 of Indian Evidence Act. Refer to Sakar on Evidence, Vol. 2 (1993), 14th ED. p.1341* [Amategeko yerekeye ibimenyetso mu Buhindi] Havugwa kuri Sakar ku bimenyetso, Umutungu wa 2 (1993, Icapiro rya 14, p. 1341.

¹³⁹ Reba Urubanza R aburana na Biya, (1952) 4 SA 514 (*Appellate Division*); Urubanza Woolmington aburana na D.P.P (1935) A.C. 462 (H.L.) n'Urubanza R aburana na Wood, Cr. App. R. 74, urup. 78 (1968) (Amategeko y'u Bwongereza); Urubanza Sekitoleko aburana n'u Buganda [1967] E.A. 531 (U) (Amategeko y'u Buganda).

kuburanishwa ko ateganya kwiambaza imyiregurire ya sinari mpari. Avoka wa Ruzindana we yatanze amakuru make cyane ku batangabuhama yateganyaga guhamagaza. Porokireri yarwanyije ibyo bintu mu Cyifuzo yatanze mu buryo bwateganyijwe, asaba Urugereko rwa Mbere rw'Iremezo gutegeka Ubwunganizi kubahiriza ibiteganywa n'ingingo ya 67(A)(ii) y'Amategeko¹⁴⁰.

236. Mu iburanisha, Kayishema yabajijwe impamvu, ashingiye ku buhama bumushinje yari yarumvise, atari yaravuze mbere ko ateganya kwiambaza imyiregurire ya sinari mpari. Kayishema yasubije ko Porokireri atari yarigeze amubaza icyo kibazo. Yongeyeho ko yabyukije icyo kibazo ubwo yabonana bwa mbere na Avoka umwunganira ku itariki ya 31 Gicurasi 1996.

237. Urugereko rwa Mbere rw'Iremezo rwasuzumye ikibazo cyo kuba Abavoka bunganira Abaregwa bombi batarubahirije ibiteganywa n'ingingo ya 67(A)(ii). Mu Cyemezo rwafashe ku Cyifuzo cya Porokireri cyavuzwe haruguru, Urugereko rwemeje,

... ko iyo hatagarajwe ko hari impamvu zumvikana zatumye hakoreshe ingingo ya 67(B), Urugereko rwa Mbere rw'Iremezo rufite ububasha bwo kuzirikana ukutubahiriza ibisabwa mu gihe rusuzuma ukwizerwa kw'imyiregurire ya sinari mpari na/cyangwa ubundi buryo bwihariye bwo kwiregura¹⁴¹.

238. Urugereko rwa Mbere rw'Iremezo rusanga Abavoka bari bafite igihe gihagije cyo gutegura imyiregurire y'abo bunganira bityo rukaba rugomba kubishingiraho mu kureba niba Porokireri yaraherewe amakuru igihe cyangwa niba harabayeho gukererwa, nk'uko biteganywa n'ingingo ya 67(A)(ii) y'Amategeko. Iyi mikorere ihuye n'iy'izindi nkiko¹⁴²

¹⁴⁰ *Urubanza Porokireri aburana na Kayishema na Ruzindana*, icyemezo ku Cyifuzo cya Porokireri gisaba Urugereko gufata icyemezo cyerekeranye n'uko Ubwunganizi bukomeje kutubahiriza ingingo ya 67 (A) (ii) n'Ibyemezo byatanzwe mu nyandiko cyangwa mu magambo by'Urugereko rwa Mbere rw'Iremezo, 3 Nzeri 1998, Urubanza N° ICTR -95-1-T.

¹⁴¹ icyemezo ku kutubahiriza ibiteganyijwe, ni kimwe no haruguru.

¹⁴² Nk'urugero, reba urubanza R aburana na Dunbar na Logan, 68 CCC (2d) 13, imp. 62-3 (1982); Urubanza R aburana na Cleghom 3 S.C.R. 175 (1995), Australia, urubanza Petty na Maiden baburana na R, 173 CLR (1991) L1892(K)

zifite umurimo utoroshye wo guhuza ibyo Porokireri akeneye n'uburenganzira uregwa afite bwo gutanga ubuhamya no kwiregura¹⁴³.

239. Abavoka bunganira Abaregwa bakomeje kuvuga ko ibivugwa na Porokireri ko iyi ngingo yakomeje kutubahirizwa nta shingiro bifite kubera ko ari we wakerewe kumenyekanisha lisiti y'abatangabuhamya yateganyaga guhamagaza¹⁴⁴. Cyakora, ababuranyi bose muri uru rubanza babonye umwanya wo kugira icyo bavuga mu buryo buteganywa, igihe cyose undi muburanyi yabaga yateshutse kuri iyo nshingano yo kumenyakanisha amakuru. Bityo rero, kuba Ubwunganizi butarubahirije ibiteganywa n'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso nta wabyemera kandi nta nyungu bifitiye Abaregwa cyangwa ubutabera. Byongeye kandi, ibyo Ubwunganizi buvuga ko, hashingiwe ku ngingo ya 85 y'Amategeko, Porokireri ashobora gutanga ibimenyetso binyomoza imyiregurire ya sinari mpari, ntibigabanya inshingano bufite ivugwa mu ngingo ya 67 y'Amategeko¹⁴⁵. Na none, kuba gusa Porokireri atarifashishije ingingo ya 85 kugira ngo atange ibimenyetso binyomoza imyiregurire ya sinari mpari ntibyagira ingaruka ku buryo Urugereko rwa Mbere rw'Iremezo rusesengura ibimenyetso rwashyikirijwe. Kuba rero Porokireri atarahamagaje abatangabuhamya bo kunyomoza imyiregurire ya sinari mpari ntibyatumye Urugereko ruha iyo myiregurire agaciro karuta ako rwari kuyiha iyo Porokireri aza kubahamagaza. Rushingiye ku Cyemezo rwafashe ku Cyifuzo kimaze kuvugwa aho rwategetse ko ingingo ya 67(A)(ii) na (B) yubahirizwa, rushingiye kandi no ku isesengura rimaze gukorwa, n'ubwo Abavoka bunganira Abaregwa batubahirije icyemezo cyarwo, Urugereko rurasuzuma imyiregurire ya sinari mpari ya Kayishema na Ruzindana, bitabangamiye ariko Abaregwa.

ahavugwa ko n'ubwo hari ihame rivuga ko iyo uregwa yinumiye nta wabiharaho ngo afate umwanzuro uyu n'uyu, iyo hatanzwe ibisobanuro bivuguruzanya, uko kwinumira kwe kwa mbere bashobora kuguharaho bafata umwanzuro.

¹⁴³ Ingingo ya 20 ya Sitati.

¹⁴⁴ Byongeye gusubirwamo mu gisubizo cya Ferran ku byavuzwe na Porokireri asubiza imyanzuro ye; Inyandikomvugo y'iburanisha, 17 Ugushyirye 1998, imp. 133-139.

¹⁴⁵ Ingingo ya 85 (A) y'Amategeko.

5.1.1. Imyiregurire ya sinari mpari ya Kayishema

240. Mu myiregurire ya sinari mpari ya Kayishema, avuga ko yari yihishe kuva ku wa gatandatu mu gitondo ku itariki ya 16 Mata 1994 kugera ku wa gatatu mu gitondo ku itariki ya 20 Mata 1994. Ibyo bishaka kuvuga ko atashoboraga kuba ari kuri kiriziya y'abagatorika, kuri Home Saint-Jean no kuri sitade igihe ubwicanyi bwahakoregwaga ku itariki ya 16, iya 17, iya 18, n'iya 19 Mata. Iyo myiregurire inashaka kumvikanisha ko atashoboraga kuba ari ku kiriziya yo ku Mubuga ku itariki ya 16 Mata kandi kuri iyi tariki ni ho Urugereko rwa Mbere rw'Iremezo rwasanze aho hantu haragabwe igitero cya simusiga. Cyakora, iyo myiregurire ya sinari mpari ye ntivuga aho yari ari mu minsi yabanjirije icyo gitero. Kayishema anavuga ko nta hantu na hamwe habereye ubwicanyi mu Biseseho yigeze agera mu gihe ibivugwa mu Nyandiko y'ibirego byabaga, ariko nta myiregurire ya sinari mpari yihariye yigeze abitangira.
241. Mu buhamya yatanze imbere y'uru Rugereko, Kayishema yavuze ko mu gitondo cya kare cyo ku wa gatandatu ku itariki ya 16 Mata, ubwo Majoro Jabo wari komanda [wa Jandarumori ku Kibuye] yari amaze kugenda, abajandarume b'Abatutsi bigometse maze bagatangira kumushaka bagambiriye kumugirira nabi. Kayishema akimara kubimenya, we n'umugore n'abana bagiye kwihisha. Muri ubwo buhamya, Kayishema avuga ko hagati ya saa tatu na saa ine za mu gitondo bavuye mu nzu ya perefegitura bari bacumbitsemo, bakajya kwihisha. Bahungiyeye mu mazu y'abazungu ku Kibuye kubera ko ayo mazu yari yarasahuwe, bityo akaba yarumvaga ko nta muntu uzahagaruka. Inzu ya mbere yari iya Soufflet yari ku murongo umwe n'inzu yari acumbitsemo ya perefegitura, ku nkengero z'ikiyaga cya Kivu, nko mu birometero bitatu uvuye kuri Home Saint-Jean no kuri kiriziya y'abagatorika. Kayishema avuga ko baraye aho hantu mu ijoro ryo ku itariki ya 16 n'iryo ku ya 17 Mata. Nyuma yaho, Kayishema n'umuryango we bimukiye mu yindi nzu ikurikiyeho, yari iya nyuma kuri uwo murongo, maze bahamara amajoro abiri asigaye. Iyo nzu yari iy'Umusuwisi wari umufasha mu bya tekiniki wakoraga mu ishami rishinzwe amashyamba. Kayishema avuga ko igihe cyose yabaga ari kumwe n'umuryango we uretse gusa iyo yabaga yagiye gushaka amakuru ku rusaku rwavugiraga

hanze cyangwa igihe umuntu wamuhaga amakuru yabaga yaje kubareba aho bihishye. Asobanura ko igihe yabaga atari kumwe n'umuryango we kitarengaga iminota 30.

242. Mu buhamya bwanditse yatanze mbere, Kayishema yasobanuye ku buryo burambuye abyibwirije ibirebana n'igihe ibyo ashinjwa byabereyeho. Ibyo bikubiye mu nyandiko-mvugo y'ubuhamya yagejeje ku baperezi, yatanzwe mu Rukiko nk'ikimenyetso gihamya cyahawe n° 350C. Mu buhamya Kayishema yahaye abo baperezi ku itariki ya 6 Ugushyngi 1996, yavuze ko yari iwe mu rugo ubwo ubwicanyi bwari gukorerwa kuri Home Saint-Jean, kuri kiriziya y'abagatorika no kuri sitade. N'ubwo atibuka amatariki cyangwa iminsi yagumyeho mu rugo adasohoka, Kayishema avugaga abantu bari kumwe ari bo Emmanuel Dusabimana, Alphonse Kayiranga, umugore wa Liyetona Charles Twagirayezu n'Umututsikazi wari warashakanye n'Umuhutu witwa François. Cyakora, muri abo bantu nta n'umwe yigeze ahamagazamo ngo aze kumushinjura. Muri ubwo buhamya bwanditse anavugaga ko nijoro yararaga mu bihuru yihishye. Mu ibaza rinyomoza, Kayishema yatanze ibisobanuro ku kunyuranya kuboneka hagati y'ubuhamya bwe mu Rukiko n'ubwanditswe n'abaperezi. Asobanura ko muri ubwo buhamya bwombi yashakaga kuvuga ko yari yihishye igihe buriya bwicanyi bwari gukorerwa ahantu havuzwe, bityo akaba atarashobaga gukorera amarorerwa ashinjwa.
243. Mu buhamya yatanze mu Rukiko, Kayishema yavuze ibyo yakoze avuye mu bwihisho. Yasobanuye ko, hafi y'itariki ya 22 Mata, yazengurutse Perefegitura ahambisha imirambo ndetse anajyana mu bitaro abana bakomeretse cyangwa barwaye bwaki. Ku itariki ya 3 Gicurasi, yabonye na Jean Kambanda wari Minisitiri w'Intebe wa Guverinoma y'Agateganyo, kandi bombi bajyanye mu nama y'abaturage. Kayishema anavugaga ko ku itariki ya 9 Gicurasi yagiye i Gitarama kubonana na Guverinoma y'agateganyo yakoreragayo icyo gihe. Muri ajenda ye¹⁴⁶, ari yo ajenda bwite ya perefefe, harimo amakuru ku manama yakoranye n'abasuperefe be ku itariki ya 10, iya 11 n'ya 13 Gicurasi. Mu buhamya yatanze imbere y'uru Rugereko, Kayishema yagize icyo avugaga kuri izo nama, no ku nama yo ku itariki ya 14 Gicurasi yakoranye n'Inama ya Perefegitura, ndetse no ku yo ku itariki ya 16 Gicurasi yagiranye na Perezida

¹⁴⁶ Ikimenyetso gihamya no 58 cyatanzwe n'Ubwunganizi.

w'agateganyo. Yavuze kandi ko yagiye mu Bisesero mu kwezi kose kwa Gicurasi, ariko yongeyeho ko yagiyeyo mu rwego rw'imirimo ye nka perefefe no gukora iperereza kugira ngo agereranye amakuru yabaga yahawe n'ukuntu ibintu byari byifashe koko muri ako karere. Kayishema yavuze rero ko umutangabuhamya ushinjura wiswe DU yibeshye aho yavuze ko [Kayishema] atavuye ku biro bya perefegitura muri icyo gihe. Cyakora, Kayishema akomeza kuvuga ko muri Mata, Gicurasi na Kamena 1994, nta hantu na hamwe yigeze agera habereye ubwicanyi mu Bisesero nk'uko abishinjwa mu Nyandiko y'ibirego. Byongeye kandi, ubwo Kayishema yabazwaga mu ibaza rinyomoza icyo avuga ku buhamya bw'abatangabuhamya biboneye ibyabaye bemeje ko bamubonye mu Bisesero ahantu hakorewe ubwicanyi nko ku gasozi ka Muyira no ku buvumo, yasubije ko atazi n'aho aho hantu haherereye. Yavuze kandi ko abo batangabuhamya bibeshye aho bavuga ko bamubonye ahantu hanyuranye hakorewe ubwicanyi haba hagati y'itariki ya 16 n'ya 20 Mata, cyangwa mu Bisesero ubwo ubwicanyi bwahakororwaga muri Mata, Gicurasi na Kamena.

Abatangabuhamya bashinjura bahamagajwe na Kayishema

244. Kayishema yahamagaje abatangabuhamya banyuranye barimo n'umugore we kugira ngo bashyigikire imyiregurire ye ya sinari mpari. Mu buhamya bwanditse yatanze mbere abuha abapererezi, Madamu Kayishema yavuze ko we, umugabo we n'abana babo bagiye kwihisha hagati muri Mata. Yanavuze ko ku itariki ya 13 Gicurasi, umunsi igitero cya karundura kigabwa mu Bisesero, umugabo we yamujyanye ku kazi mu gitondo kandi ko amaze kumugezayo, na we [Kayishema] yahise ajya mu biro bye. Yasobanuye ko yageze ku kazi saa mbiri za mu gitondo kuri uwo wa gatanu kandi ko yatahanye n'umugabo we saa tanu z'amanywa.
245. Cyakora, mu buhamya yatanze mu Rukiko, Madamu Kayishema, ufite impamyabumenyi yo mu rwego rwa kaminuza mu by'uburezi akaba yaranabaye umugenzuzi w'amashuri, yasobanuye neza kandi mu magambo arambuye ibikubiye mu buhamya bwe bwanditse. Yavuze ko hagati y'itariki ya 16 n'ya 20 Mata 1994 bari bihishe nyuma y'aho komanda wa jandarumori y'igihugu muri Perefegitura ya Kibuye agendeye ku itariki ya 15 Mata,

hagasigara umukaporari wari ushyigikiye FPR. Yasobanuye ko bari baragejweho amakuru abamenyesha ko uwo mukaporari yari yaravuze amagambo anyuranye y'iterabwoba ryibasiye Perefef. N'ubwo mu buhamya yatanze mu Rukiko Madamu Kayishema avuga ko abajandarume b'igitsinagore n'ab'ibimuga ari bo bonyine bahasigaye nyuma y'inama yo ku itariki ya 15 Mata, yakomeje avuga ko we n'umugabo we bagiye kwihisha ku itariki ya 16 Mata kugira ngo bakize amagara yabo. Bihishe mu mazu y'abantu bakoraga imihanda, bagenda bimuka, bityo bakaba barihishe mu mazu anyuranye. Nta bindi bisobanuro yatanze kuri ayo mazu. Cyakora, ubwo yabazwaga ku buhamya bwanditse yagejeje mbere ku baperezi aho yavuze ko yamaze iminsi itatu yihishe mu bihuru, yasobanuriye Urugereko ko we n'abana be bihishe mu mazu, naho umugabo we akajya arara mu bihuru.

246. Mu buhamya bwe mu Rukiko, Madamu Kayishema yanatanze ibisobanuro birambuye ku byabaye ku wa gatanu ku itariki ya 13 Gicurasi 1994. Uretse ibyo yakozwe mu gitondo, yibuka ko yanagiye mu nama y'abaturage yari iyobowe n'umugabo we. Iyo nama, yatangiye saa munani z'amanywa, yari igamije kwereka abaturage superefe mushya. Madamu Kayishema nta bindi bisobanuro yatanze ku hantu umugabo we yari mu byumweru byakurikiyeho. Yavuze gusa ko umugabo we yakomeje imirimo ye y'ubuperefe kugeza bagiye muri Zayire ku itariki ya 16 Nyakanga 1994.
247. Abenshi mu batangabuhamya bashinjura Kayishema, barimo n'uwiswe DAC, ntibigeze na rimwe bamubona muri kiriya gihe kivugwa, cyangwa bamubonye akanya gato kandi buri wese akamubona ahantu hatandukanye n'ah'undi. Nk'urugero, uwiswe DN yamubonye mu nama yabaye mu mpera za Mata, uwiswe DK yamubonye mu nama yo gutaha ishuri hagati muri Gicurasi, naho uwiswe DM yamubonye rimwe igihe gito muri Gicurasi kuri rompuwe iri hagati mu muji wa Kibuye. Kubera izo mpamvu, n'ubwo abatangabuhamya bashinjura bavuze ko batigeze na rimwe bumva ko Perefef yagize uruhare mu bwicanyi, batanze amakuru make cyane ku hantu Kayishema yari mu gihe ubwo bwicanyi bwakorwaga. Abatangabuhamya bandi babiri ni bo bonyine batanze ibisobanuro birambuye ku byo Kayishema yakozwe kuva ku itariki ya 6 Mata 1994. Ku byerekeranye n'ubwicanyi bwabereye ku kiriziya yo ku Mubuga, Ubwunganizi

bwahamagaje umutangabuhamya umwe gusa ari we uwiswe DV. Uyu mutangabuhamya yari azi Uregwa ku isura kuko yari yaramubonye muri Gitesi aho yize. Mu by'ukuri, uyu mutangabuhamya ntiyari ku kiriziya igihe ubwo bwicanyi bwahakorwaga ndetse ntazi neza itariki bwabereyeho. Cyakora, yari atuye nko muri metero ziri hagati ya 600 na 700 gusa uvuye ku kiriziya yo ku Mubuga kandi avuga ko atabonye Uregwa aho hantu mu gihe ubwo bwicanyi bwakorwaga. Koko rero, DV yavuze ko atigeze na rimwe abona Kayishema muri Mata, Gicurasi, Kamena cyangwa Nyakanga.

248. Mu buhamya bwe mu Rukiko, umutangabuhamya wiswe DU yavuze ahantu Kayishema yari hagati y'itariki ya 4 Gicurasi n'ya 16 Nyakanga 1994. Ubwo buhamya bwe buvuga kuri icyo gihe hafi ya cyose. Yari azi neza Uregwa kandi ubwo yasubiraga ku Kibuye ku itariki ya 4 Gicurasi yabaye iwe [kwa Kayishema]. DU yanakoze muri kantine, yari nko muri metero 15 uvuye aho binjirira bajya ku biro bya Perefegitura. N'ubwo atashoboraga kubona ibiro bya Kayishema, yashoboraga kubona neza aho binjirira bajya ku nzu y'ibiro bya Perefegitura. Yavuze ko yabonaga Kayishema buri munsu muri ayo mezi abiri. Mu gitondo, saa sita na nimugoroba yasangiraga na Kayishema n'abantu bo mu muryango we [Uregwa] kandi akenshi yajyanaga na Kayishema ku kazi ndetse bakanatahana. DU yavuze ko nta na rimwe Kayishema ashobora kuba yaragiye mu Bisesero hagati y'itariki ya 4 Gicurasi n'ya 16 Nyakanga kubera ko atigeze agira aho ajya ngo arenze iminota 30 ataragaruka. Uyu mutangabuhamya yavuze ko ibyo avuga abyemeza nta shiti kuko kantine yari yegeranye n'ibiro bya Kayishema ndetse akaba yarumvaga urusaku rw'imodoka ya Kayishema iyo yabaga aje ku biro cyangwa ahavuye bityo bigatuma amenya ko agiye cyangwa agarutse. Cyakora, yibuka ko inshuro imwe rukumbi Kayishema yagiye agatinda ari igihe yayoboye inama akaba yaramaze amasaha atandatu ataragaruka. Madamu Kayishema ni we wabwiye DU ko umugabo we yari mu nama. Kimwe n'abandi batangabuhamya bashinjura banyuranye, DU ntiyigeze yumva hari umuntu uvuga ko Kayishema, wari pefe we, yagize uruhare mu bwicanyi.

Isuzuma ry'imyiregurire ya sinari mpari ya Kayishema

249. Rumaze gusuzuma imyiregurire ya Kayishema, Urugereko rwa Mbere rw'Iremezo rwanazirikanye ingingo zinyuranye Porokireri atanga ku myiregurire ya sinari mpari ya Kayishema. By'umwihariko, Urugereko rusanga Kayishema yivuguriza cyane mu myiregurire ye. Uko kwivuguriza ntikuboneka gusa mu buhamya yatanze mu Rukiko ahubwo hari ni ukuvuguruzanya hagati y'ubwo buhamya n'ubw'umugore we, ndetse n'ubw'abandi batangabuhamya bamushinjura yahamagaje mu Rukiko.
250. Urugereko rwa Mbere rw'Iremezo rusanga ubuhamya bunyuranye bwa Kayishema bukubiye mu nyandikomvugo zakozwe n'abapererezi budahura n'ubwo yatanze mu Rukiko. Nk'urugero, mu buhamya bukubiye mu nyandikomvugo yakozwe n'abapererezi Kayishema yatanze abyibwirije muri Nyakanga 1996, ntiyavuze ko yigeze yihisha cyangwa ngo avuge ibintu byaba byaratumye yihisha, ari byo « ukwigomeka » kw'abajandarume. Hari ibintu byinshi byavugwa kuri iki kibazo. Urugereko ntiruhita rufata umwanzuro ubangamiye Kayishema hashingiwe gusa ku mpamvu y'uko atavuze ko atari ahantu ibyaha byakorewe igihe byakorwaga mu buhamya bwanditse bwa mbere yahaye abapererezi. Cyakora, uretse no kuba Kayishema ataravuze ibyo bintu ubwo yabazwaga n'abapererezi, muri ajenda ye ntihanditsemo ko yigeze yihisha cyangwa ko abajandarume bigeze bigomeka. Nk'uko Kayishema abyemeza, muri iyo ajenda ni ho yandikaga ibijyanye n'imirimu ye y'ubuperefe. N'ubwo rwumva ko bidashoboka ko muri ajenda hakwandikwamo ikintu cyose kibaye, Urugereko rusanga bitangaje kuba nta hantu na hamwe avugamo ibintu by'ingenzi nk'ibyo byabaye, cyane cyane ibyamubujije gukora imirimu yari ashinzwe nka perefe.
251. Ubuhamya bwanditse bwa kabiiri Kayishema yahaye abapererezi ku itariki ya 6 Ugushyingo 1996, na bwo bugiye bunyurana n'ubwo yatanze imbere y'uru Rugereko. Muri ubwo buhamya bwanditse, Kayishema ntiyicecekeye ahubwo yatanze ibisobanuro ku hantu yari igihe ubwicanyi bwakorerwaga kuri Home Saint-Jean, ku kiriziya y'abagatorika no kuri Sitade Gatwaro. Yavuze ko yari iwe mu rugo, mu icumbi rya perefe. Ubwo yabazwaga niba icyo gihe cyose yaragumye iwe mu rugo, Kayishema

yarashubije ati « mu rugo, mu nzu yanjye ». Kayishema yanavuze amazina y’abantu bari bihishanye nk’uko byavuzwe haruguru kandi yasobanuye ko yararaga amajoro mu bihuru. Ubuhamya bwanditse bwa Kayishema buvuga ko yari mu rugo iwe buvuguruzanya n’ubwo yatanze mu Rukiko aho yavuze ko yari yihishe mu mazu y’abandi bantu. Mu buhamya yatanze mu Rukiko, ubwo yasubizaga ikibazo cy’umucamanza washakaga kumenya niba yari mu rugo iwe cyangwa niba yari yihishe, Kayishema yemeje ko nijoro yihishaga mu bihuru. Iki gisobanuro ntigikemura ikibazo cyo kwivuguruza. Mu buhamya yatanze mu Rukiko, Kayishema yasobanuye ko yihishe mu mazu abiri, ko yavuye muri imwe akimukira mu yindi kandi ko muri buri nzu yahamaze amajoro abiri. Byongeye kandi, bamubajije by’umwihariko impamvu yari yarabwiye abapererezi ko yari iwe mu rugo, Kayishema yasubije ko yangaga ko ba nyiramazu yihishemo bamenyekana. Asubiza ikindi kibazo cy’umucamanza washakaga kumenya impamvu atabwiye abapererezi ko yihishe mu mazu y’abantu adashaka ko bamenyekana, Kayishema yavuze gusa ko atabeshye. Kayishema yashatse kumvikanisha ko asubiza abapererezi ko yari iwe mu rugo yageze ku ntego ye yo kutamenyekanisha imyirondoro ya ba nyiramazu yihishemo.

252. Habyukijwe ikindi kibazo cya nyuma ku byerekeranye no kumenya niba Kayishema yari kuri Home Saint-Jean no kuri sitade. Mu buhamya bwanditse Kayishema yahaye abapererezi, yabajijwe by’umwihariko niba hari aho yageze muri aho hantu hagati y’itariki ya 7 Mata n’impera za Gicurasi. Yasubije atsemba ko ntaho yigeze ajya. Cyakora, mu ibaza rinyomoza imbere y’uru Rugereko, yavuze ko hari ubwo yigeze kujya kuri kiriziya y’abagatorika no kuri Home Saint-Jean hagati y’itariki ya 13 Mata n’igihe ubwicanyi bwabereye. Asabwe kwisobanura kuri uko kwivuguruza, yasubije ko yagize ngo umupererezi yashakaga kumenya niba yarajyaga aho hantu buri muni. Iki gisobanuro nticyakwemerwa na gato.

Ukuvuguruzanya hagati y’ubuhamya bwa Kayishema n’ubw’umugore we, ndetse n’ubw’abandi batangabuhamya

253. Ukuvuguruzanya kuboneka muri iyi myiregurire ntiguhagararira gusa ku buhamya bwa Kayishema bukubiye mu nyandikomvugo yakozwe n'abapererezi n'ubwo yatanze mu Rukiko. Nk'urugero, hari ukuvuguruzanya hagati y'ubuhamya bwe n'ubw'umugore we. Mu buhamya bwa Madamu Kayishema bukubiye mu nyandikomvugo yakozwe n'abapererezi ku itariki ya 28 Mata 1998, yavuze ko we n'umuryango we bamaze iminsi itatu bihishe mu bihuru ariko ntiyashoboye kwibuka iminsi cyangwa amatariki byabereyeho. Mu buhamya yatanze imbere y'uru Rugereko hashize amezi nk'abiri atanze ubwo bwanditse, yavuze ko yagiye kwihisha ku itariki ya 15 Mata, hanyuma mu ibaza rinyomoza avuga ko mu by'ukuri bagiye kwihisha ku itariki ya 16 Mata. Ntavuga niba mbere y'uko bajya kwihisha hari abandi bantu bari mu nzu yabo. N'ubwo Madamu Kayishema yemeje ko bihishe kugeza ku itariki ya 20 Mata, yanavuze ko « akenshi» bagiye bava mu nzu imwe bimukira mu yindi¹⁴⁷. Nyamara, umugabo we yavuze ko bihishe mu nzu ebyiri gusa. Mu gihe Madamu Kayishema yavuze ko umugabo we yararaga mu bihuru, Kayishema we yavuze ko muri ayo majoro yose uko ari ane atigeze arenza iminota 30 atari kumwe n'umugore we.
254. Ubuhamya bwa Madamu Kayishema mu Rukiko urebye ntibutanga andi makuru mashya asumbye ayatanzwe mbere ku byerekeranye n'ikindi gihe kitari hagati y'itariki ya 16 n'ya 20 Mata. Muri ubwo buhamya, ntavuga ahantu umugabo we yari ku itariki ya 15 Mata, ubwo ubwicanyi bwo ku kiriziya yo ku Mubuga bwabaga. Byongeye kandi, yatanze amakuru make ku hantu umugabo we yagiye bamaze kuva mu bwihisho. Yemeje ko Kayishema yakomeje imirimo ye nka perefere ndetse anagira icyo avuga ku byo yakozwe ku wa gatanu ku itariki ya 13 Gicurasi 1994. Kuri iyo tariki ni bwo mu Biseseho hagabwe ibitero bya karundura. Cyakora, mu buhamya yatanze mu Rukiko yavuze ko uwo muni Kayishema yamujiyane ku kazi mu masaa mbiri za mu gitondo bakaza gutahana mu masaa tanu z'amanywa, nyuma bakaguma mu rugo kugeza bagiye mu nama y'abaturage aho Kayishema yeretse abaturage superefere mushya saa munani z'amanywa uwo muni. Ku kibazo cyo kumenya impamvu atavuze iyo nama yabaye nyuma ya saa sita mu

¹⁴⁷ Inyandikomvugo y'iburanisha, 24 Kamena 1998, urup.121.

buhamya bwe bukubiye mu nyandikomvugo abapererezi bakoze hasigaye amezi abiri ngo aze gutanga ubuhamya mu Rukiko, Madamu Kayishema yavuze ko yabyibagiwe. Iyo nama yanditse muri ajenda ya Kayishema. Cyakora, n'ubwo inama ebyiri zabaye mbere zerekeranye n'umusuperefe mushya zanditse mu gifaransa, iyi nama yo yandikishije ikaramu y'irindi bara kandi yanditse mu kinyarwanda. Byongeye kandi, muri ajenda handitse ko yari inama y'abakozi yari igamije kubereka superefe mushya¹⁴⁸. Ntihavugwa ko yari inama y'abaturage nk'uko Madamu Kayishema abivuga. Urugereko rwa Mbere rw'Iremezo rurashidikanya ku byerekeranye no kumenya niba ibyanditswe muri ajenda kuri iyo nama byaranditswe koko mu gihe ibivugwa byabaga.

255. Uretse iyi minsi yihariye, n'indi minsi mike y'ingenzi ikwiriye kwitabwaho, nk'uwo Karidinari yaziyeho muri ako karere, Madamu Kayishema ntatanga ibisobanuro by'inyongera ku byo umugabo we yakozwe mu kindi gihe gisigaye ubwo mu Bisesero harimo kubera ubwicanyi. Cyakora, mu buhamya bwe mu Rukiko, uwiswe DU, wari inshuti ya Kayishema kandi uvuga ko yacumbitse kwa Kayishema kuva ku itariki ya 4 Gicurasi, yavuze ko Uregwa atageze mu Bisesero igihe ubwo bwicanyi bwakorwaga. Yavuze ko uretse umunsi umwe Kayishema yagiye mu nama akamarayo igitondo cyose, nta wundi munsi yigeze ava mu biro ngo arenze iminota 30 ataragaruka. Ubwo buhamya ntibwakwizerwa kubera ko DU avuga ibintu bisa n'ibidashoboka, cyane cyane ko Kayishema yari perefefu, bityo imirimo ye ikaba yarasabaga ko ajya hirya no hino muri perefefitura. Ubwo buhamya kandi ntibwakwizerwa kubera ko buvuguruzanya n'ubwo Madamu Kayishema n'umugabo we batanze imbere y'uru Rugereko. Mu buhamya bwe mu Rukiko, Kayishema yatanze ibisobanuro birambuye ku birebana n'uko yakomeje imirimo ye nka perefefu muri Mata, Gicurasi na Kamena. Yemeje by'umwihariko ko yagiye mu Bisesero, nyamara DU we yavuze ko [Uregwa] atagiye. Kubera iyo mpamvu, ubuhamya bwa DU mu Rukiko nta cyo bwongera cyane ku myiregurire ya sinari mpari ya Kayishema ku byerekeranye n'ubwicanyi bwabereye mu Bisesero.

¹⁴⁸ Ikimenyetso gihamya no 58 cyatanzwe n'Ubwunganizi.

Ibivugwa na Kayishema

256. Ikindi kintu kidasanze Porokireri asanga mu buhamya bwa Kayishema ni uburyo, mu buhamya bwe mu Rukiko, Kayishema yashoboye kwibuka amatariki nyayo, iminsi ndetse n'amasaha yari yihisheho. Urugereko rufite amakenga kuri ibyo bintu kubera ko bitandukanye cyane n'ibikubiye mu nyandikomvugo y'ubuhamya bwe yakozwe hasigaye imyaka nk'ibiri ngo atange ubuhamya mu Rukiko. Muri ubwo buhamya bwanditse yatanze mu kwezi ku Ugushyirahamya 1996, Kayishema ntiyashoboye kuvuga amatariki cyangwa iminsi yihisheho. Mu ibaza rinyomoza imbere y'uru Rugereko, Kayishema yabajijwe impamvu yari yasubije abapererezi ko atibukaga iminsi yihisheho, noneho amaze kubitekerezaho asubiza ko ku ruhande rumwe atari azi ingingo z'ingenzi z'imyiregurire ye, naho ku rundi ruhande yavuze ko yari afite uburenganzira bwo kwicecekerera. Cyakora, uru Rugereko rusanga aho kwicecekerera ahubwo yaravuze ko atabyibuka¹⁴⁹. Urugereko rusanga kandi Kayishema atarashoboye kuvuga icyamuteye kubyibuka, kubera ko kuva iyo nyandikomvugo y'ubuhamya bwe yakorwa nta kindi kintu cyanditswe muri ajenda ye. N'ubwo ibyo bivugwa na Kayishema ubwabyo atari kamara kugira ngo rufate umwanzuro, Urugereko rwa Mbere rw'Iremezo rwarabizirikanye¹⁵⁰.

Imyanzuro y'Urugereko

257. Rushingiye kuri uko kuvuguruzanya, Urugereko rusanga imyiregurire ya Kayishema nta shingiro ifite. Rusanga kandi, n'ubwo Porokireri ari we ufite inshingano yo gutanga ibimenyetso bigaragaza ibyo arega Kayishema, imyiregurire ya sinari mpari ya Kayishema idatuma habaho ugushidikanya ku bimenyetso bitangwa na Porokireri nk'uko biza kuvugwa kandi bigasuzumwa hano hasi.

¹⁴⁹ Ikimenyetso gihamya no 350CA cyatanze na Porokireri.

¹⁵⁰ Mu Nyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 502, Urugereko rwasanze ingingo zisa n'izo ari zo z'ingenzi uregwa yiyambaje mu myiregurire ye ya sinari mpari.

5.1.2 Imyiregurire ya sinari mpari ya Ruzindana

258. Abatangabuhamyanya 21 bose bashinjura bahamagajwe na Ruzindana wenyine batanze ubuhamyanya burebana n'imyiregurire ye ya sinari mpari. Abenshi muri abo batangabuhamyanya ntibavuze ahantu hose Ruzindana yari ari mu gihe bizwi neza ko mu Bisesero hakorerwaga ubwicanyi. Cyakora, bwifashishije ubwo buhamyanya, Ubwunganizi bushaka kumvikanisha ko Ruzindana yakomeje gukora imirimo ye y'ubucuruzi mu mujyi wa Mugonero.
259. Nyuma y'urupfu rwa Perezida Habyarimana ku itariki ya 6 Mata 1994, Ruzindana n'umuryango we bavuye aho babaga i Remera, mu nkengeri za Kigali, maze basubira ku Mugonero aho se wa Ruzindana yari afite butike yari yarakomeje gucururizamo. Ruzindana yari umucuruzi, akaba n'umuntu uzwi cyane muri ako karere. Abatangabuhamyanya bavuze ko babonye Ruzindana ibihe binyuranye hagati ya Mata na Nyakanga 1994. Bamwe muri abo batangabuhamyanya bavuze ko bamubonye arimo kwakira abakiriya mu iduka rya se, abandi bavuze ko bamubonye ku isoko ryo muri ako gace ryaremaga buri wa gatatu cyangwa ko bamubonye ku muhanda uhuza Kibuye na Cyangugu cyangwa ku uhuza Kibuye na Gisenyi.
260. By'umwihariko, abatangabuhamyanya barimo uwiswe DD bavuze ko bakundaga kujya ku iduka rya se wa Ruzindana hafi buri muni, akenshi bakakirwa na Ruzindana¹⁵¹. N'ubwo DD, wari inshuti ya Ruzindana, adatanga ibisobanuro bisumbyeho kuri ibyo bintu, ibyo avuga bisa n'ibishyigikirwa n'uwiswe DAA. Kimwe na DD, DAA yakoraga mu iduka rirebana n'iry'umuryango wa Ruzindana yacururizagamo kandi yemeza ko Ruzindana atigeze ava ku Mugonero ngo arenze icyumweru ataragaruka. Cyakora, kimwe n'abandi batangabuhamyanya bose baje gushinjura Uregwa, DAA ntiyigeze ajyana na Ruzindana muri izo ngendo z'ubucuruzi. Byongeye kandi, amatariki DAA ashobora kwemeza ko Ruzindana yari ku Mugonero ni kuva ku itariki ya 12 kugera ku ya 14 Mata gusa.

¹⁵¹ Inyandikomvugo y'iburanisha, 20 Gicurasi 1998, urup. 105.

261. Abantu bakunze kandi kubona Ruzindana ku isoko ryo ku Mugonero ryaremaga buri wa gatatu. Abatangabuhama biswe DB, DE, DF, DN, DQ, DS na DY babonye Ruzindana kuri iryo soko inshuro nyinshi muri Mata, Gicurasi na Kamena. Cyakora, aba batangabuhama ntibavuga amatariki nyayo bamubonyeho. Nk'urugero, DB yavuze ko yabonye Uregwa mu ntangiriro za Gicurasi; DF yibuka ko yamubonye inshuro enye muri ayo mezi uko ari atatu; DQ yamubonye inshuro imwe muri Mata n'inshuro ebyiri muri Gicurasi. Bityo, birashoboka ko kuba baramubonye, n'ubwo baba baramubonye mu gihe cy'iminota mike cyane, Ubwunganizi bubyitabaza mu kugaragaza ibyakoze n'umuntu wakomeje uko bisanzwe imirimo ye y'ubucuruzi. Cyakora, ibyo bintu ntibishobora gushyigikira, ku buryo bwuzuye, imyiregurire ya sinari mpari ku byerekeranye n'ahantu Uregwa yari ubwo ubwicanyi bwakorwaga mu Bisesero
262. Na none, Ubwunganizi bwatanze ingero z'ahantu abatangabuhama babonye Ruzindana ku mihanda ari mu bucuruzi bwe. Abandi batangabuhama bavuze ko Ruzindana yabaga atwaye imwe mu makamyo ye ane ari mu bucuruzi bwe, atwaye inzoga cyangwa ikawa abijyana cyangwa abivana ku Mugonero. Nk'urugero, mu buhama bwe mu Rukiko, DQ yavuze ko muri icyo gihe Ruzindana yanyuze ku muhanda werekeza ku Kibuye inshuro zitari muni y'icyenda; DS yamubonye yerekeza ku Kibuye atwaye amavide y'inzoga; DD, wakoreraga mu iduka rirebana n'irya Ruzindana, yavuze ko Uregwa yagendaga atwaye amavide y'inzoga maze hashira amasaha make akagarukana amakaziye yuzuye inzoga; naho uwiswe DR, wari ufite kiyosike hafi y'umuhanda, yavuze ko Ruzindana yakundaga kuhanyura ari mu ikamyoneti y'icyatsi kibisi yo mu bwoko bwa Toyota itwawe n'umushoferi we. Uregwa yagendaga mu masaa mbiri za mu gitondo atwaye amavide akagaruka mu masaa kumi z'umugoroba afite amakaziye yuzuye inzoga. N'ubwo nta n'umwe muri aba batangabuhama washoboye kubwira uru Rugereko amatariki nyayo yabonyeho Ruzindana akora izo ngendo, abo batangabuhama bashoboye gutanga ibisobanuro byatuma umuntu yumva ko Ruzindana yakomeje gukora imirimo ye ya buri muni y'ubucuruzi. Ni muri urwo rwego DB n'uwiswe DA na bo bavuga ko Ruzindana yageze mu karere ka Cyangugu n'aka Gisenyi mu rwego rw'ubucuruzi bwe. Aba batangabuhama na bo batanze amakuru adasobanutse kandi bavuze gusa ahantu babonye Uregwa mu gihe gito cyane. Nk'urugero, DB yavuze ukuntu

yahuye na Ruzindana ku Mugonero hashize hafi icyumweru kimwe Perezida apfuye, bakongera guhurira muri Perefegitura ya Cyangugu ari ku wa kabiri hashize ukwezi kumwe nyuma yaho, ndetse bagahurira no ku Mugonero ari ku wa gatatu w'icyumweru cyakurikiyeho.

263. Urugereko ruzirikana ingorane abatangabuhamya bakunda kugira mu kwibuka buri kantu kose kuri ibyo bintu byabaye. Ni yo mpamvu ruvuga icyo rubitekerezaho mu wundi mutwe w'iyi Nyandiko y'urubanza¹⁵². Cyakora, Urugereko rwa Mbere rw'Iremezo rusanga urebye ubuhamya batanze muri uru Rukiko, nta n'umwe muri aba batangabuhamya bashinjura washoboye kuvuga, ku buryo bufatika, ahantu Uregwa yari mu gihe cy'ibyabaye. Uretse amatariki yamaze kuvugwa, umutangabuhamya wiswe DH ni we wenyine wemeza itariki Ruzindana yari ku Mugonero. Yavuze ko mu gitondo cyo ku wa gatandatu ku itariki ya 16 Mata, yageze ku Mugonero akahasanga Uregwa. Uyu DH, akaba na mwenewabo w'Uregwa, yavuze ko yagumye aho hantu kugera saa cyenda z'amanywa kandi ko Ruzindana atigeze ahava igihe cyose we yari ahari. Uretse ibyo, kimwe n'abatangabuhamya bavugwa haruguru, DH yavuze gusa ko yahuye na Ruzindana umunsi umwe hagati muri Gicurasi ku muhanda ugana ku Kibuye, nko mu birometero 20 uvuye ku Mugonero, kandi ko icyo gihe Ruzindana yaravuye kurangura inzoga.
264. Umugore wa Ruzindana ni umwe mu batangabuhamya bake batanze ibisobanuro birushijeho kuba byuzuye ku birebana n'ahantu Ruzindana yagiye muri icyo gihe. Yavuze ko iyo Ruzindana yabaga yagiye ku kazi we yagumaga mu rugo. Cyakora, yavuze ko kubera ko buri munsu basangiraga saa sita, azi neza ko kenshi Ruzindana yabaga ari hafi ya Mugonero. Madamu Ruzindana yavuze ko inshuro umugabo we yamaze igihe kinini ataraza mu rugo zigeze kuri enye cyangwa eshanu gusa. Yavuze ko kuri izo nshuro yashoboraga kumara umunsi umwe cyangwa ibiri bitewe n'uko yagiye i Cyangugu cyangwa ku Gisenyi mu bucuruzi bwe. Abakozi bakoraga mu rugo kwa Ruzindana na bo bemeje ibivugwa na Madamu Ruzindana. Umuboyi wabo, wiswe DC, yavuze ko rimwe na rimwe Ruzindana yagendaga kare mu gitondo akagaruka hashize iminsi itarenze ibiri. N'ubwo atari izi impamvu Ruzindana yabaga yagiye, DC yavuze ko

¹⁵² umutwe wa 3.3.

iyo Ruzindana yajyaga kugenda yamutumaga kuza kubwira umuryango we ko yagiye kurangura. Uyu mutangabuhamyana ntavugaga iminsi cyangwa amatariki Uregwa yabaga atari mu rugo. Ibyo ni na ko bimeze ku bandi batangabuhamyana bavugwaga haruguru bemeje ko hari igihe Ruzindana yamaraga umunsi cyangwa urenga atari mu rugo, ariko na bo ntibashobore kuvugaga igihe byabereye. Kubera izo mpamvu, nk'uko bimeze ku buhamya bw'abatangabuhamyana bavugaga ko babonye Uregwa ku isoko no ku muhanda, Urugereko rwa Mbere rw'Iremezo ntirushobora kwemeza niba ubuhamyana buvugaga ko yari ahari n'ubuvugaga ko atari ahari bufite aho buhurira cyangwa ko nta sano bufitanye.

265. Buri mutangabuhamyana anavugaga ko nta na rimwe yigeze abona Ruzindana ari kumwe n'abantu bitwara gisirikare cyangwa n'ingabo, cyangwa ngo amubone yitwaje intwaro iyo ari yo yose muri kiriya gihe kivugwaga mu Nyandiko y'ibirego.

Isuzuma ry'imyiregurire ya sinari mpari Ruzindana yiyambaje

266. Porokireri akemanga ukwizerwa n'ukwemerwa by'abatangabuhamyana bashinjura ndetse n'agaciro bakwiye guhabwa. Abyutsa ikibazo cyerekeranye n'ukwemerwa kw'abatangabuhamyana banyuranye bafitanye isano ya hafi na Ruzindana. Uretse umugore wa Ruzindana, hari n'abandi benewabo b'Uregwa babiri, inshuti ze za hafi, n'abakozi babiri ba Ruzindana, bose batanze ubuhamyana bushinjura. Porokireri anabyutsa ikibazo cy'ukwemerwa kwa bamwe mu batangabuhamyana. Nk'urugero, DB yavuze ko yabonye Ruzindana i Cyanguku ku itariki ya 26 Kamena ubwo yari [Ruzindana] agiye muri Zayire. Nyamara, Porokireri asanga, mu buhamya DC na we yatanze mu Rukiko, yaremeje ko kuri iyo tariki ya 26 Kamena, Ruzindana yiriwe mu rugo.
267. Ikibazo cya nyuma cyabyukijwe na Porokireri ni icyerekeranye no kumenya niba ubuhamyana bushinjura bufite ishingiro. Abenshi mu batangabuhamyana bashinjura bafitanye isano ya hafi n'Uregwa cyangwa bari abakozi be, bityo bakaba bashobora kuba bafite inyungu mu gukingira ikibaza Ruzindana ngo ataryozwa ibyo yakoze. Abantu banyuranye bavuze ko babonye Ruzindana ku munsi w'isoko mu gihe kiri hagati y'iminota itanu n'isaha imwe. Abandi bavuze ko bamubonye ku muhanda ujya ku Kibuye, yewe n'abatari bazi Ruzindana bibutse ingendo yakoze. Cyakora, n'ababaga bari

- kumwe na Ruzindana igihe kinini, ari bo umugore we, mushiki we na muramu we w'igitsinagabo, ndetse n'abakozi be bo mu rugo, bose bavuze ko batajyanaga na we mu ngendo nyinshi z'ubucuruzi bivugwa ko yakoraga. Nk'uko bimeze ku bandi batangabuhamya bose bashinjura, aba na bo ntibashobora kwemeza ahantu Ruzindana yabaga ari iyo yavaga mu rugo agiye mu « ngendo z'ubucuruzi ».
268. Uretse no kuba badashobora kuvuga ibyo yakoraga amasaha 24 kuri 24, aba batangabuhamya ntibashobora gutanga ibisobanuro ku bintu Ruzindana yakoraga umunsi ku wundi. Ibyo ari byo byose, umugore w'Uregwa yemeza ko hari igihe umugabo we yagendaga akagaruka hashize iminsi ibiri. Byongeye kandi, mu ibaza rinyomoza, uwo mugore we yemeye ko Uregwa yagiye ku Kibuye inshuro nyinshi kandi ko yirirwagayo, uretse ko ngo atararagayo¹⁵³. Abatangabuhamya bamubonye ku muhanda ujya ku Kibuye bemeza izo ngendo zivugwa. Cyakora mu ibaza rinyomoza, abo batangabuhamya banavuze ko kuri uwo muhanda uhuza Mugonero na Kibuye hashamikiyeho undi muhanda werekeza muri Gishyita no mu Bisesero.
269. Bisesero iri nko mu birometero 20 uvuye ku Mugonero. Kubera rero ko aho hantu hombi hari hegeranye, izo ngendo Uregwa yakoraga ku munsi zagombye kuba zari zihagije kugira ngo ashobore kugera ahantu ubwicanyi bwakorerwaga kandi agaruke mu rugo. Bityo rero, ibyo abatangabuhamya bavuze ko Ruzindana yari ku muhanda uva ku Mugonero cyangwa ibyo mushiki wa Ruzindana yavuze ko igihe cyose Uregwa yabaga atari mu ngendo z'ubucuruzi, ko yasangiraga n'abantu bo mu muryango we, ntibihagije mu gushyigikira imyiregurire ya sinari mpari y'Uregwa.
270. Byongeye kandi, Porokireri ntahakana ko Ruzindana yakomeje gukora imirimo ye y'ubucuruzi muri Mata, Gicurasi na Kamena, cyangwa ko yakoze izindi ngendo nyinshi ajya ahandi hantu nk'i Cyangugu. Ahubwo ibyo bishyigikira ibivugwa n'atangabuhamya bashinja biswe X, FF na II bumvise gusa abantu bavuga ko ababagabyeho igitero

¹⁵³ Ibyo bintu byemejwe n'umutangabuhamya ushinjura wiswe DAA, wari ufite iduka rirebana n'iry'umuryango wa Ruzindana. Reba inyangikomvugo y'iburanisha, 18 na 19 Kanama 1998.

bari baturutse ku Gisenyi, ku Gikongoro n'i Cyangugu, ariko banumvaga imivugire yabo ari nk'iy'abantu bo muri utwo turere.

Imyanzuro y'Urugereko

271. Urugereko ruzirikana ko kwiambaza iyi myiregurire ya sinari mpari bitoroshye, bitewe n'igihe cyose kivugwa mu Nyandiko y'ibirego. Urugereko rwamaze gusuzuma ibibazo byo mu rwego rw'amategeko ku birebana n'ibimaze kuvugwa¹⁵⁴. Aho bigeze rusanga, hashingiwe ku byabaye, abatangabuhamya bashinjura banyuranye batarashoboye kuvuga amatariki nyayo baboneyeho Ruzindana ku Mugonero.
272. Birumvikana ko Porokireri ari we ufite inshingano zo gutanga ibimenyetso bigaragaza ku buryo budashidikanywaho ibyo aregera. Cyakora, Urugereko rwa Mbere rw'Iremezo rusanga imyiregurire ya sinari mpari ya Ruzindana itanyomoza ku buryo bugaragara ibivugwa na Porokireri. N'ubwo Urugereko rwakiriye ibimenyetso byose bishyigikira iyo myiregurire ya sinari mpari, ntibihagije gutuma rushidikanya ko Ruzindana yari mu Bisesero igihe ubwicanyi bwahakorwaga. Kubera iyo mpamvu, Urugereko rusanze imyiregurire ya sinari mpari ya Ruzindana nta shingiro ifite, rukaba rero rugiyeye kwerekana hano hasi imyanzuro yarwo ishingiyeye ku byabaye.

5.2 Ese ku Kibuye no mu Rwanda hose habaye jenocide mu wa 1994 ?

273. Muri uru rubanza hari ikibazo rusange cyo kumenya niba mu wa 1994 mu Rwanda harabaye jenocide nk'uko Porokireri abivugaga. Hashingiwe kuri raporo zinyuranye z'inzeho zibifitiye ububasha, zirimo n'inyandiko z'Umuryango w'Abibumbye¹⁵⁵, zemeza ko mu Rwanda habaye jenocide, kandi n'Ubwunganizi bukaba butabivuguruza, umuntu ashobora kuvuga ko iki kibazo cyakemuwe burundu. Cyakora, iki kibazo ni ingenzi cyane muri uru rubanza ku buryo Urugereko rugomba kugifataho umwanzuro rushingiye ku byabaye. Urugereko rushimangira ko umwanzuro wemeza ko mu Rwanda habaye

¹⁵⁴ Reba umutwe wa 3.4.

¹⁵⁵ Reba ibimenyetso gihamya n° 328-331 byatanze na Porokireri.

- jenocide udakemura ikibazo cyo kumenya niba Abaregwa ari abere cyangwa niba barakoze ibyaha bashinjwa. Uru Rugereko rufite inshingano yo gufata imyanzuro ishingiye ku byabaye ruherereye ku Nyandiko y'ibirego yakorewe Abaregwa no gusuzuma ibimenyetso kugira ngo rurebe niba rushingiye ku mategeko gusa, buri muntu wese uregwa muri uru rubanza yaba ahamwa n'icyaha.
274. Nk'uko biteganywa n'ingingo ya 2 ya Sitati y'Urukiko, ijambo jenocide rivuga ibikorwa binyuranye birondorwa byakozwe hagamiye kurimbura abantu bose, cyangwa igice cyabo, bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini bazira icyo bari cyo. Mu bikorwa birondorwa harimo kwica abo bantu no kubateza ububabare bubazahaza umubiri cyangwa mu mutwe. Muri uyu Mutwe, Urugereko ntirugamiye kwemeza niba ibikorwa ibi n'ibi abantu bakoze ku giti cyabo ari ibikorwa bya jenocide ni ukuvuga ibikorwa bigamiye kurimbura Abatutsi bose cyangwa igice cyabo. Icyo Urugereko rugamiye muri uyu Mutwe ni ugusuzuma niba, muri rusange, mu byabaye mu Rwanda harimo ibikorwa bigize icyaha cya jenocide. Umwanzuro nk'uwo watuma umuntu yumva neza kurushaho urwego ibyaha bivugwa mu Nyandiko y'ibirego bishobora kuba byarakozwemo. Byongeye kandi, kubera ko Inyandiko y'ibirego yerekeranye n'ibintu byabereye muri Kibuye, muri uyu Mutwe w'iyi nyandiko y'urubanza, Urugereko rurasuzuma muri rusange ibintu byabereye muri iyo Perefegitura.
275. Urugereko rwa Mbere rw'Iremezo rwumvise ubuhamya bwa Dogiteri Dr. René Degni-Ségui, Intumwa yihariye ya Komisiyo y'Umuryango w'Abibumbye yita ku burenganzira bwa muntu, ufite ubumenyi butuma aba impuguke muri urwo rwego kandi watanze ubuhamya bufite ireme. Urugereko rwa Mbere rw'Iremezo rwanashyikirijwe raporo zagenewe Inama Ishinzwe Amahoro ku Isi ku miterere y'uburenganzira bw'ikiremwa-muntu mu Rwanda mu wa 1994. Degni-Ségui yatanze izo raporo nyuma y'iperereza yakoze muri Perefegitura za Cyangugu, Butare na Kibuye. Mu byo Degni-Ségui yahaye Urugereko rwa Mbere rw'Iremezo harimo ibimenyetso¹⁵⁶ bigaragaza ko mbere y'itariki

¹⁵⁶ Umutangabuhamya yakoreye Inama Ishinzwe Amahoro ku Isi raporo zigeze kuri indwi. Mu buhamya bwe imbere y'uru Rugereko, yashingiye cyane cyane kuri raporo imwe muri izo, ikimenyetso gihamya n° 331 cyatanze na Porokireri, (U.N. Doc. E/CN4/1995/71 1995).

ya 7 Mata 1994 abakoze ibyaha bari baracuze umugambi wo gukora jenocide yibasiye Abatutsi. Yanatanze raporo ku bwicanyi bwakozwe mu gihe cy'imirwano. Mu buhamya bwe, yavuze ko n'ubwo kugeza ubu nta muntu urabona inyandiko y'inzego zibishinzwe igaragaza ko hariho umugambi wo gukora jenocide, hari ibikorwa bihagije bigaragaza ko uwo mugambi wariho mbere y'ihanuka ry'indege ya Perezida ku itariki ya 7 Mata 1994. Muri ibyo bikorwa harimo (1) amalisiti y'abantu bagombaga kwicwa, yariho amazina y'Abatutsi bize, abaminisitiri, abacuruzi bakomeye, abarimu, n'Abahutu bakomeye bashobora kuba bari bashyigikiye ishyirwa mu bikorwa ry'Amasezerano ya Arusha; (2) ikwirakwizwa ry'ibitekerezo by'ubutagondwa hifashishijwe itangazamakuru ryo mu Rwanda ryatumye igikorwa cyo guhamagarira abantu gutsembatsemba Abatutsi cyoroha; (3) ikoreshwa rya gahunda y'ukwirwanaho kw'abaturage b'abasiviri; na (4) « ijonjorwa » ry'abantu ku mabariyeri menshi yashyizweho vuba na bwangu indege ya Perezida ikimara guhanuka¹⁵⁷. Ibyo byose bimaze kuvugwa ni byo byatumye ubwicanyi bukorwa mu gihugu cyose.

276. Urugereko rwa Mbere rw'Iremezo rusanga kuba uwo mugambi wariho bishobora kuba ikimenyetso simusiga kigaragaza ko hariho igitekerezo cyihariye gisabwa kugira ngo icyaha cya jenocide kibeho. Mu kureba niba uwo mugambi wariho koko, Urugereko rurasuzuma ibimenyetso byatanzwe ku bintu by'ingenzi biranga uwo mugambi.

Amavu n'amavuko y'ibiyabaye mu wa 1994

277. Abahutu bamwe bitwaga intagondwa bari ku butegetsi mu Rwanda kandi barwanyaga Amasezerano ya Arusha, babonaga mu ntangiriro y'umwaka wa 1994 cyari igihe cyiza cyo kugira ngo haburizwemo igabana ry'imyanya y'ubutegetsi ikomeye hagati yabo n'imitwe itaravugaga rumwe n'ubutegetsi. Ku itariki ya 6 Mata 1994, indege yari icyuye Perezida Juvénal Habyarimana avuye muri Tanzaniya mu nama yigaga ishyirwa mu bikorwa ry'Amasezerano y'Amahoro ya Arusha yarasiwe hejuru y'ikibuga cy'indege cy'i Kigali maze irahanuka. Mu buhamya bwe mu Rukiko, umutangabuhamya wiswe O yavuze ko ku itariki ya 8 Mata yumvise kuri *Radio France International (RFI)* bavuga ko

¹⁵⁷ Reba ibimenyetso gihamya n° 330B na 331B byatanzwe na Porokireri, urup. 5.

FPR yatangaje ko yiyemeje kubura imirwano. Abantu batangiye kugira ubwoba bitewe n'uko hariho ibihaha bivuga ko FPR yashakaga gutsembatsemba Abahutu. Bityo rero, icyoba n'umutekano muke byari mu Rwanda byabaye urwitwazo rwo gushyira mu bikorwa umugambi wa jenocide kugira ngo ubutegetsi bugume mu maboko y'intagondwa z'Abahutu. Ibimenyetso bigizwe n'ubuhamya bw'abatangabuhamya biboneye ibyabaye n'ubw'abatangabuhamya b'impuguke ndetse na za raporo zinyuranye, bigaragaza ko indege ikimara guhanuka ku itariki ya 7 Mata 1994, ubwicanyi bwahise butangira mu Rwanda hose.

278. Mu gitondo cyo ku itariki ya 7 Mata, kuri Radiyo hahise itangazo ku birebana n'urupfu rwa Perezida, kandi ryategekaga abantu ku guma mu ngo zabo. Iryo tangazo ryatanze kugira ngo byoroherewe abasirikare n'abajandarume kuzenguruka mu mago bafata kandi bica abanzi nyabo cyangwa abakekwaga kuba abanzi b'Abahutu b'intagondwa. Ibyo byemezwa n'abatangabuhamya barimo Degni-Segui n'umutangabuhamya ushinja wiswe RR.

Ingaruka z'ingengabiterezo y'intagondwa yasakajwe hifashishijwe itangazamakuru

279. Abategetsi ba gisirikare n'aba gisiviri bari baratangiye kwenyegereza ubushyamirane hagati y'amoko mbere y'umwaka wa 1994. Ikinyamakuru cyitwa Kangura cyashinzwe nyuma y'intambara yashojwe na FPR mu wa 1990, RTLM (*Radio Television Mille Colline*) n'ibindi binyamakuru byandikwaga, n'ibyasohokaga kuri interineti byagize uruhare runini mu guhamagarira Abahutu kwibasira Abatutsi. Mu wa 1991, Kangura yasohoye « Amategeko cumi » y'Abahutu, yavugaga ko Abatutsi ari abanzi. Byongeye kandi, abatangabuhamya bavuze ko mu wa 1991, hari abayobozi bo mu gisirikare 10 bakoze raporo yuzuye isubiza ikibazo cyari cyerekeranye no kumenya ukuntu batsinda umwanzi ku rugamba, mu itangazamakuru no muri politiki. Abo batangabuhamya banavugaga ko muri Nzeri 1992, igisirikare cyasohoye inyandiko yari ishingiye kuri raporo yasohotse mu wa 1991. Iyo nyandiko na yo yasobanuraga ko «umwanzi » ari Umututsi, bityo ikitirira Abatutsi bose imigambi ya gashozantambara ya FPR. Nk'uko raporo imwe ibigaragaza, mbere y'itariki ya 6 Mata, abategetsi b'igihugu ntibahamagariye Abahutu,

ku buryo bweruye, gukora ubwicanyi. Cyakora, ku itariki ya 19 Mata, Perezida wa Guverinoma y'Agateganyo yahamagariye abaturage b'i Butare « gutangira gukora », nk'uko byumvikana mu kinyarwanda, bakoresheje imipanga n'amashoka.

280. Abatangabuhamyanya banyuranye bavuze ko muri kiriya gihe cy'amarorerwa « Umunyarwanda yabaga afite radiyo mu kiganza kimwe mu kindi afite umupanga »¹⁵⁸. Ibyo bigaragaza ko radiyo yari intwari ikomeye yo gukwirakwiza urwango rushingiye ku moko. Radiyo y'igihugu na RTLM byahitishije kenshi, kandi ntacyo byishisha, ibiganiro byabibaga urwango rwibasiye Abatutsi. Nk'urugero, muri raporo ya UNICEF ku kiganiro cyahise kuri RTLM hari ahavugwa ngo « impinja zikiri ku ibere bagombaga [abagabye ibitero] kuzica amaguru kugira ngo zinanirwe kugenda »¹⁵⁹. Mu wa 1992, muri mitingi y'abaturage Léon Mugesera, umuporofeseri wakoraga poropagande ya MRND, yaragize ati « *Ntituzongera gukora ikosa nk'iryo twakoze muri 59 aho twaretse abana bagasohoka* »¹⁶⁰. Mugesera yanahamagariye Abahutu [kwica Abatutsi] avuga ngo « ... tugomba kwikiza ibimanuka ariko hari inzira y'ubusamo, tugomba kubijugunya mu mugezi maze bikatuvira mu gihugu »¹⁶¹. Aya madisikuru n'amaraporo byahise kenshi mu nama z'abaturage no mu itangazamakuru.
281. Kuba ibyo bitekerezo byarakwirakwijwe kandi bikemerwa byemezwa n'umupolisi w'Umuhutu mu kiganiro yagiranye na Patrick de Saint-Exupery, umunyamakuru w'ikinyamakuru cy'abafaransa cyitwa *Le Figaro* akaba n'umutangabuhamyanya ushinja muri uru rubanza. De Saint-Exupery yavuze ko uwo mupolisi yamubwiye ko bishe Abatutsi « kubera ko bari ibyitso bya FPR ». Yanamubwiye ko *nta Mututsi n'umwe wagombaga gusigara atishwe*¹⁶² (Ni twe twabitsindagiye tubyandika mu nyuguti ziberamye). Uyu mutangabuhamyanya wagiye mu Bisesero mu mpera za Kamena 1994, yavuze ukuntu

¹⁵⁸ Inyandikomvugo y'iburanisha, 9 Werurwe 1998, urup. 47.

¹⁵⁹ Inyandikomvugo y'iburanisha, 5 Werurwe 1998, urup. 112; ikimenyetso gihamya n° 331B cyatanzwe na Porokireri.

¹⁶⁰ Inyandikomvugo y'iburanisha, 5 Werurwe 1998, urup. 98.

¹⁶¹ Ni kimwe no haruguru, urup. 85.

¹⁶² Inyandikomvugo y'iburanisha, 18 Ugushyamba 1997, urup. 136.

« umusozi wose wari wuzuyeho imirambo: mu myobo mito, mu dukoki, mu byatsi n'iruhande rw'imikoki hari imirambo n'imirambo »¹⁶³.

282. Iyo poropagande yibasiye Abatutsi yatumye ubwicanyi « butangira kandi bugenda bukwirakwira hose vuba vuba »¹⁶⁴. Degni-Segui yavuze ko ubwicanyi bwahise butangira ahantu henshi mu gihugu. Cyakora muri Butare abantu ntibahise babwitabira kubera ko Perefefu waho yari Umututsi. Muri Butare ubwicanyi bwatangiyeye ku itariki ya 19 Mata nyuma y'uko Guverinoma y'Agateganyo ikuye Perefefu ku mirimo na nyuma y'urugendo Perezida w'Agateganyo yagiriye muri iyo Perefefitura akahavugira ijamba rya gashozamvururu. Iryo jambo ryahamagariraga abaturage bo muri Butare gutangira guhiga abantu no kubica, ababwira ngo « abanzi babarimo nimubikize »¹⁶⁵.

Gahunda y'ukwirengera kw'abaturage n'abantu bitwaraga gisirikare

283. Mu mwaka wa 1994, abategetsi b'u Rwanda bagenzuraga abantu bitwaraga gisirikare n'abari muri gahunda y'ukwirengera kw'abaturage. Abantu bitwaraga gisirikare bari baraherewe imyitozo mu bigo bya gisirikare. Mu bihe by'imidugararo cyangwa bidasanze, iyo mitwe yasabwaga gutera ingabo mu bitugu. Byongeye kandi, ibimenyetso byatanze imbere y'uru Rugereko bigaragaza ko mu wa 1994 abantu bitwaraga gisirikare n'abari muri gahunda y'ukwirengera kw'abaturage bose bitabiriye ishyirwa mu bikorwa ry'umugambi wa jenocide mu wa 1994.
284. Gahunda y'ukwirengera kw'abaturage ni bumwe mu buryo bwifashishijwe ngo Abanyarwanda basanzwe bitabire ubwicanyi. Bigatangira, iyo gahunda, yashyizweho n'abategetsi mu mwaka wa 1990 kugira ngo abaturage barindirwe umutekano, yari irimo Abahutu n'Abatutsi kandi hateganywaga ko abantu bahabwa intwari mu nzego zose z'ubutegetsi, kuva kuri serire ukagera kuri perefefitura. Degni Segui yamenye ibyo bintu mu biganiriro yagiranye n'Umukuru w'abapolisi, Umukuru wa jandarumori, na Bizimungu wari Umugaba mukuru w'igisirikare, muri rumwe mu ngendo yagiriye mu Rwanda.

¹⁶³ Inyandikomvugo y'iburanisha, 18 Ugushyirwa 1997, urup. 153.

¹⁶⁴ Inyandikomvugo y'iburanisha, 5 Werurwe 1998, urup. 110.

¹⁶⁵ Ikimenyetso gihamya n° 330B cyatanze na Porokireri, urup. 6.

Cyakora, mu wa 1994 iyo gahunda y'ukwirengera kw'abaturage yakoreshejwe mu gukwirakwiza intwari vuba maze iza guhinduka igikoresho cyifashishijwe mu gutsembatsemba Abatutsi. Ibyo bintu byemezwa n'abatangabuhamya banyuranye barimo abiswe C na F. Mu buhamya bwabo mu Rukiko, bavuze ko mu ntangiriro za Mata 1994 biboneye abayobozi ba perefegitura na komine baha abasiviri imipanga. Ibindi bimenyetso byashyikirijwe Urugereko na byo bigaragaraza ko mbere gato y'ubwicanyi bwo mu wa 1994 hatumijwe imipanga 50.000 maze igakwirakwizwa mu bantu bitwaraga gisirikare bo muri MRND (Interahamwe) no muri CDR (Impuzamugambi), no mu basiviri b'Abahutu, binyuze muri iyo gahunda y'ukwirengera kw'abaturage. Degni-Segui yanzura avuga ko iyo «gahunda y'ukwirengera kw'abaturage yaje gukoreshwa mu kwica abaturage b'inzirakarengane, ni ukuvuga Abatutsi »¹⁶⁶.

285. Ibimenyetso bishinje, birimo amabaruwa y'abategetsi bo mu Rwanda, byerekanye ko « abaturage basabwe gukomeza kuba maso kugira ngo batahure umwanzi n'ibytso bye maze bamushyikirize abategetsi »¹⁶⁷. Umutangabuhamya wiswe R, wari uzi imiterere y'inzeho z'ubutegetsi mu Rwanda mu mwaka wa 1994, yemeje ko abaturage basabwe « kwirinda ubwabo mu maserire n'amasegiteri batuyemo », bakora amarondo banashyiraho amabariyeri¹⁶⁸.
286. Abandi batangabuhamya biboneye ibyabaye na bo bavuze uko ibintu byagiye bigenda ahantu hakorewe ubwicanyi. Hafi ya bese bemeje ko aho hantu hari Interahamwe n'abasiriviri bitwaje intwari. Mu by'ukuri, abatangabuhamya banyuranye bavuze ko benshi mu bagabaga ibitero bari abantu bitwaraga gisirikare n'abandi basiviri baririmbaga indirimbo z'itsembatsemba iyo babaga bageze hafi y'abantu babaga bagabweho igitero. Abatangabuhamya banyuranye banavuze ko benshi mu bagabaga ibitero bari bitwaje imipanga n'ibindi bikoresho gakondo bikoreshwa mu buhinzi, ariko abajandarume cyangwa abapolisi bo bakaba bari bafite imbunda n'amagerenade.

¹⁶⁶ Inyandikomvugo y'iburanisha, 9 Werurwe 1998, imp. 101-102.

¹⁶⁷ Ikimenyetso gihamya n° 52 cyatanzwe na Porokireri, urup. 4.

¹⁶⁸ Inyandikomvugo y'iburanisha, 2 Ukwakira 1997, urup. 51.

Amabariyeri n'indangamuntu

287. Abajenosideri bifashishije kenshi amabariyeri kugira ngo bashobore gutahura abo bari bibasiye. Abatangabuhamyashinje n'abashinjura bese bemeza ibyo bintu. Degni-Segui yavuze ko mu masaha make yakurikiye urupfu rwa Perezida, abasirikare, Interahamwe n'abasiviri bitwaje intwari bashyizeho za bariyeri kandi bakazicunga. Koko rero, zimwe muri izo bariyeri zashyizweho hashize iminota iri hagati ya 30 na 45 indege ya Perezida ihanutse kandi zagumye mu Rwanda hose nibura mu gihe cy'amezi atatu yakurikiyeho. Uyu mutangabuhamyashyizeho ko « icyo bagombaga gukora kwari ukugenzura indangamuntu kugira ngo bavangure Abahutu n'Abatutsi. Abatutsi barafatwaga hanyuma bakaza kwicwa, ariko hari n'igihe bahitaga bicirwa aho »¹⁶⁹.
288. De Saint-Exupery yemeza ko muri kiriya gihe kivugwa, mu Rwanda hari amabariyeri. Avuga ko kuva i Goma kugera ku Kibuye ku itariki ya 25 Kamena 1994, « icyo wabaga ugiye kugera kuri buri musozo wahasangaga bariyeri »¹⁷⁰. Umutangabuhamyashyizeho w'umubikira witwaga Julianne Farrington yavuze ko muri Gicurasi mu wa 1994 ubwo yari avuye i Butare ajya ku Kibuye, yanyuze kuri bariyeri 45. Yasobanuye ko zimwe muri izo bariyeri zari zicunzwe n'abasirikare, naho izindi zicunzwe n'urubyiruko rw'Abahutu rwari rwambaye imyenda ya gisiviri. Abandi batangabuhamyashyizeho, barimo abiswe G, T, n'abatangabuhamyashinje biswe DA na DM, bagiye mu duce tunyuranye tw'u Rwanda mu gihe cya jenocide, bemeje ibyo bintu mu buhamya batanze imbere y'uru Rugereko. Urugereko rusanga rero abantu berekanaga indangamuntu zanditsemo ko ari Abahutu n'abandi bari bafite inzandiko z'inzira barashoboye kunyura kuri ayo mabariyeri nta bibazo bikomeye bagize. Ku rundi ruhande ariko, abantu batahurwaga ko ari Abatutsi barafatwaga cyangwa bakicwa. Urugereko rwemera ko gushyiraho amabariyeri ari ikintu gisanzwe mu bihe by'intambara. Cyakora, mu Rwanda, amabariyeri ntiyari yerekeranye n'ibikorwa bya gisirikare kuko yakoreshwaga kugira ngo hatahurwe Abatutsi bahohotewe muri jenocide.

¹⁶⁹ Inyandikomvugo y'iburanisha, 5 Werurwe 1998, urup. 105.

¹⁷⁰ Inyandikomvugo y'iburanisha, 18 Ugushyamba 1997, urup. 118.

Umwanzuro

289. Muri make, Urugereko rusanga ubwicanyi bwibasiye Abatutsi « bwarateguwe mu buryo bwitondewe kandi bwarahurizwaga hamwe mu buryo buri kuri gahunda » n'Abahutu b'intagondwa bari bafite imyanya yo hejuru muri Guverinoma y'u Rwanda yariho muri icyo gihe kivugwa¹⁷¹. Ibyo bigaragazwa n'uko ibitero byari rusange kandi bikaba byarahitanye imbaga y'abantu mu gihe cy'amezi atatu gusa. Uwo mugambi ntiwari gushyirwa mu bikorwa bitagizwemo uruhare n'abantu bitwaraga gisirikare n'abaturage b'Abahutu izo ntagondwa zari zarumvishije ko Abatutsi bari abanzi kandi ko ari bo bahanuye indege ya Perezida Habyarimana.
290. Ubugome bukabije abagabye igitero bakoreshaga mu kwica, gukomeretsa no gutera ubusembwa buhindura isura y'abo bakoreraga ibyaha bugaragaza ko poropagande yakwirakwijwe mu Rwanda yageze ku ntego yayo, ni ukuvuga kurimbura Abatutsi. Abaturage basanzwe bitabiriye ubwicanyi kubera ko bemeraga kandi bizera abategetsi babo, nyamara babibeshyaho¹⁷², ndetse bakaba baranumvaga ko kwica Abatutsi no gusa-hura ibintu byabo nta ngaruka bizabagiraho.
291. Raporo za burundu zatanzwe zivuga ko jenocide yahitanye abantu babarirwa hagati ya 800.000 na miliyoni imwe, ni ukuvuga hafi kimwe cya karindwi cy'Abanyarwanda bose¹⁷³. Ibyo bintu byose bigaragaza ko hariho igitekerezo cyihariye gisabwa kugira ngo icyaha cya jenocide kibeho. Byongeye kandi, hari ibimenyetso byinshi bigaragaza ko mu bantu bazize ayo mahano, benshi cyane muri bo ari abasiviri b'Abatutsi. Urugereko rusanga rero abibasiwe n'ubwo bwicanyi ari « abantu bari bagize itsinda runaka », hano ni ukuvuga ubwoko runaka. Rushingiye kuri ibyo bimenyetso, Urugereko rusanze mu Rwanda hariho umugambi wa jenocide waje gushyirwa mu bikorwa hagati ya Mata na Kamena 1994.

¹⁷¹ Inyandikomvugo y'iburanisha, 5 Werurwe 1998, urup. 84.

¹⁷² Reba igice cya II cy'iyi Nyandiko y'urubanza, ahasesengurwa amavu n'amavuko y'ibyabaye mu Rwanda mu wa 1994.

¹⁷³ Ikimenyetso gihamya n° 331B cyatanzwe na Porokireri, urup. 5.

5.2.1 Jenocide muri Kibuye

292. Kubera ko rwamaze kwemeza ko umugambi wa jenocide washyizwe mu bikorwa mu Rwanda mu mwaka wa 1994, Urugereko rugiyeye gusuzuma uko ibintu byari byifashe muri Perefegitura ya Kibuye. Muri Kibuye, Abahutu n'Abatutsi basaga n'ababanye neza ariko byaje guhinduka nyuma y'urupfu rwa Perezida ku itariki ya 6 Mata 1994. Porokireri yavuze ko Kibuye ari imwe mu maperefegitura yabimburiye ayandi mu « kwitabira ubwo bwicanyi »¹⁷⁴. Muri Kibuye, kwibasira abantu byatangiyeye ku itariki ya 8 n'ya 9 Mata 1994 mu makomine anyuranye. Urugereko rwumvise ubuhamya ndetse runashyikirizwa ibimenyetso bigizwe n'inyandiko, amashusho cyangwa amajwi bigaragaza ko abakoze jenocide muri Kibuye bari bafite umugambi wa ngombwa wo kurimbura Abatutsi bose cyangwa igice cyabo kandi ko bawugezeho. Muri uyu Mutwe, Urugereko rurasuzuma muri make ibintu byabereye muri Perefegitura ya Kibuye kuva muri Mata kugera muri Kamena 1994.

Uko ibintu byari byifashe

293. Urugereko rusanga muri Kibuye ibintu byarakurikiranye ku buryo bukurikira. Nyuma y'ihanuka ry'indege ya Perezida, ibintu byahise bitangira guhinduka. Abahutu batangiye gukoresha beruye amagambo ashyira mu majwi Abatutsi cyangwa abasesereza, nko kubita Inkotanyi (icyitso cya FPR cyangwa umwanzi mu kinyarwanda)¹⁷⁵ n'Inyenzi (agakoko kitwa gutyo mu kinyarwanda). Interahamwe n'abandi Bahutu bitwaje intwari batangiye gutoteza Abatutsi bashingiyeye ku mashuri abakorewe ibyaha bari barize cyangwa ku kuntu bari bakomeye mu baturage. Mu gihe ibyo byabaga ni na ko Abatutsi bose, nta kuvangura, bagabweho ibitero mu ngo zabo. Abari mu bitero batwitse amazu y'Abatutsi, basahura inka zabo kandi barazibaga. Umutangabuhamya wiswe A yavuze ko mu gitondo cyo ku itariki ya 7 Mata 1994, abaturanyi be b'Abahutu batangiye gusahura,

¹⁷⁴ Inyandikomvugo y'iburanisha, 11 Mata 1997, urup. 34.

¹⁷⁵ Reba ubuhamya bwa G, U na Z basobanura ko ijamba Inkotanyi ryavugaga « Abatutsi bose » cyangwa « umwanzi ».

kugaba ibitero ku ngo z'Abatutsi no kubaga amatungo yabo. Abatangabuhamyana biswe C, F, OO na E na bo barabyemeza.

294. Hari abatangabuhamyana benshi bavuze ko ubwo babaga bari mu mayira berekeza ahantu hanyuranye hakoraniraga abantu, babonye amabariyeri aho abakoze ibyaha bavanguraga Abatutsi n'Abahutu. Abatutsi bageraga aho hantu, bakomerekejwe, baciwe ingingo z'imibiri ndetse abagore bamwe basambanyijwe ku gahato. Byageze aho abo Batutsi bicwa n'Abahutu bagabaga ibitero baririmba indirimbo zirimo amagambo ashishikariza abantu gukora itsembatsemba. Abo bagabaga ibitero bari bitwaje intwari kandi bari bayobowe n'abategetsu bo muri ako karere ndetse n'abandi bantu bakomeye. Nta muburanyi uhakana ko ubwo bwicanyi bwabaye. Koko rero, Kayishema yavuze ko we n'abandi bantu bitabiriye igikorwa cy'isuku nyuma y'ubwo bwicanyi.
295. Mu kwerekana uko uwo mugambi wa jenoside washyizwe mu bikorwa, Urugereko rwa Mbere rw'Iremezo rugiyeye noneho gusuzuma ibintu byabaye mu makomine yari agize Kibuye, Perezida Habyarimana akimara gupfa. Ruranasuzuma ibindi bibazo bijyanye n'ibyoyi, nk'amanama, ibimenyetso bigizwe n'inyandiko, amashusho n'amajwi bigaragaza na byo ko muri Kibuye habaye jenoside.

Ibitero bya mbere byagabwe mu ngo z'Abatutsi

296. Hari ibimenyetso bihagije Urugereko rushingiraho rwemeza ko Perezida akimara gupfa, mu makomine nka Gishyita, Gitesi, Mabanza na Rutsiro, Abatutsi batangiye gutotezwa n'ingo za bamwe muri bo zikagabwaho ibitero. Kuba muri Kibuye hose harabaye ubwicanyi byemezwa n'umutangabuhamyana wiswe O wabyanditse muri ajenda yashyikirije Urugereko¹⁷⁶. Mu buhamya bwe mu Rukiko, uwo mutangabuhamyana yavuze ko, Perezida akimara gupfa, muri Komine ya Gitesi hakomeje kuba agahenge. Cyakora, yavuze ko ku itariki ya 7 Mata « yabonye inkomere ahantu hose, haba ku nkengero z'umuhanda, mu bihuru, no hafi cyane y'icyicaro cy'ibiro bya perefegitura »¹⁷⁷. Mu ibaza

¹⁷⁶ Ikimenyetso gihamya n° 76E cyatanze na Porokireri, nk'uko bigaragara mu nyandikomvugo y'iburanisha yo ku itariki ya 13 Ukwakira 1997.

¹⁷⁷ Inyandikomvugo y'iburanisha, 13 Ukwakira 1997, urup. 149.

rinyomoza, uwo mutangabuhamyanya wiswe O yabwiye Urugereko rwa Mbere rw'Iremezo ko abantu ba mbere bishwe ari abari i Kigali kandi byavugwaga ko bakoranaga na FPR. Uyu mutangabuhamyanya yavuze ko itangazo ryahise kuri radiyo ku itariki ya 8 Mata rivuga ko ngo intambara yongeye kubura ari ryo ryatumye abantu ba mbere bapfa mu Rwanda, by'umwihariko muri Perefegitura ya Kibuye.

297. Ubuhamyanya umutangabuhamyanya wiswe F yatanze mu Rukiko bwemeza ibyo abandi batangabuhamyanya banyuranye bavuze ndetse bukanagaragaza uko ibintu byose byari byifashe muri rusange. Muri ubwo buhamyanya, uyu mutangabuhamyanya utuye muri Komine ya Gitesi, yavuze ko ku itariki ya 7 Mata saa yine za mu gitondo ari bwo yumvise inkuru y'ihanuka ry'indege kandi ko iyo nkuru yatumye abantu batangira kugira ubwoba. Ku itariki ya 7 cyangwa iya 8 Mata, hari inama yabereye muri Bar Mutekano yari nko kuri metero ziri hagati ya 400 na 500 uvuye kuri gereza ya Kibuye, ku muhanda ujya ku biro bya Perefegitura ya Kibuye. Uyu mutangabuhamyanya yavuze ko muri icyo gihe, yaganiriye n'uwitwa Mathew wari wayigiyemo ariko yongeraho ko na we yakurikiranye iyo nama nko mu gihe cy'iminota 20 ari ku muhanda kandi ko iyo nama yigaga iby'umutekano, by'umwihariko « ikibazo cy'Abatutsi ». Yongeraho ko iyo nama yitabiriwe n'abategetsi banyuranye bo muri ako gace.
298. Uyu mutangabuhamyanya wiswe F yavuze ko nyuma y'inama yo ku itariki ya 8 Mata, yiboneye Ndinda wari umunyamabanga wa komine, atanga imihoro. Iyo mihoro yari yarazanywe muri komine n'amakamyanya ya perefegitura maze umunyamabanga wa Komine ya Gitesi agenzura igikorwa cyo kuyipakurura. Birangiye, bayijyanye kuri sitasiyo ya PETRORWANDA kandi mu bantu bageze kuri 20 buri wese yahawe umuhoro. Mu bayihawe harimo Eriel Ndida, Rusigera, Siriaki, Emmanuel, umuyobozi w'ikigo cy'amashuri, n'abandi benshi. Ku itariki ya 9 Mata, iyo mihoro imaze gutangwa, abategetsi bo muri ako gace bagiye mu yandi makomine. Kuri uwo mugoroba, umutangabuhamyanya wiswe F yabonye ibintu byahindutse mu gace yari atuyemo muri Gitesi, abona Abahutu bagabaga ibitero barimo kubigaba ku Batutsi ku mugaragaro. Kuba intworo zaratanzwe, hashira igihe gito hagahita haba ubwicanyi bwibasiye abasiviri, bigaragaza ko hariho umugambi wo gukora jenocide. Uwo mutangabuhamyanya

yabonye bamwe mu Bahutu bagabaga ibitero batangiye gutera Abatutsi amabuye no kuroha abantu bamwe mu mu kiyaga cya Kivu. Yanabonye ibikorwa nk'ibyo by'urugomo muri Komine ya Gishyita. Yavuze ko bamwe mu bantu bo muri iyo komine bambutse ikiyaga cya Kivu bagahungira mu ya Gitesi¹⁷⁸.

299. Ku itari ya 12 Mata ni bwo umuntu wa mbere yishwe mu gace umutangabuhamya wiswe F yari atuyemo. Uwitwa Munazi, abandi Bahutu bagabaga ibitero n'Interahamwe bishe umukecuru w'Umututsikazi witwaga Nyirakagando. Uwo mutangabuhamya n'abandi bantu babonye umurambo w'uwo mukecuru mu gitondo cyo ku itariki ya 13 Mata ubwo barimo guhunga bavuye mu ngo zabo. Uyu mutangabuhamya agira ati « Abahutu bamwishe bamuziza ko ari Umututsikazi»¹⁷⁹. Abahutu bagabaga ibitero babanje guhiga abagabo b'Abatutsi. Uyu mutangabuhamya yasobanuye ko « bamaze kubona ko Abahutu barimo kubahiga, Abatutsi batangiye guhunga banyuze mu bigunda »¹⁸⁰. Ku itariki ya 13 Mata, agatsiko k'Abahutu kasambanyije ku gahato umugore wa F bamukuranwaho mu maso y'abana be. Muri icyo gitero, nyina w'uyu mutangabuhamya «yishwe bamuteye icumu ku ijosi»¹⁸¹. F yarahavuye asiga umugore we utari ugishobora kugenda. Yabanje kwihisha mu bihuru aho yashoboraga kubona inzu ye, nyuma ku itariki ya 13 Mata ahungira ku rusengero rw'abapantekote i Bukataye.
300. Iryo joro uyu mutangabuhamya wiswe F yaraye kuri urwo rusengero rw'i Bukataye. Muri iryo joro, kuri urwo rusengero hagabwe igitero kiyobowe n'umuyobozi w'ikigo cy'ishuri ry'abapantekote ari kumwe n'abantu bitwaje amahiri n'amacumu. Uwo muyobozi w'ishuri yaravuze ngo « Abatutsi bari mu rusengero nibasohoke kugira ngo bicwe»¹⁸². Icyo gihe, abatarashoboye guhunga ngo bave kuri urwo rusengero baratandukanijwe; ni bwo rero abagore b'Abatutsikazi batandukanijwe n'ab'Abahutukazi. Abahutukazi

¹⁷⁸ Inyandikomvugo y'iburanisha, 22 Mata 1997, urup.36.

¹⁷⁹ Inyandikomvugo y'iburanisha, 22 Mata 1997, urup. 46.

¹⁸⁰ Inyandikomvugo y'iburanisha, 22 Mata 1997, urup. 47.

¹⁸¹ Inyandikomvugo y'iburanisha, 22 Mata 1997, urup. 49.

¹⁸² Inyandikomvugo y'iburanisha, 22 Mata 1997, urup. 51.

bagumye aho bareba uko abagabye igitero bica Abatutsikazi. F yavuze ko abagabo bahungiyeye mu bihuru kandi ko na we yari abarimo.

Ihunga ry'imbaga y'Abatutsi

301. Umutangabuhamya wiswe B yavuze ko ibitero bitangiye muri komine ye, we n'abandi bantu biyemeje guhunga. Abisobanura muri aya magambo « Ntitwashakaga ko batwicira mu ngo zacu, kandi abantu bavugaga ngo ugiye ku kiriziya aticirwayo»¹⁸³. Uyu mutangabuhamya yavuye muri Serire ye ya Kabongo, Segiteri ya Bishura, Komine ya Gitesi, ahungira ku kiriziya y'abagatorika, ku Kibuye, ari kumwe na nyina, murumuna we, musaza we n'abandi Batutsi bane. Bahunga, hafi y'inzu yabo hari Abahutu bitwaje intwari.
302. Kubera ko bahigwaga mu mago yabo, Abatutsi batangiye guhungira ahantu ubusanzwe abantu bajyaga bahungira ntibagire icyo baba. Umutangabuhamya wiswe T wakoraga ku kiriziya y'abagatorika no kuri Home Saint Jean (ikigo) yavuze ko mu minsi yakurikiye urupfu rwa Perezida, hashyizweho igihe cy'umukwabu babwira abantu ko bagomba kuguma mu ngo zabo. Cyakora, hashize igihe gito, Abatutsi batangiye kugera kuri icyo kigo cyubatswe ku gasozi kenda kumera nk'ikirwa. Bamwe muri abo Batutsi bahageze baturutse ku gasozi ka Burunga, abandi bari baturutse i Gitesi, Bishunda, Karongi na Kavi. Babanje guhungira ku biro bya komine ariko babangira kuhaguma. Umutangabuhamya wiswe T yavuze ko yafashije izo mpunzi, zabarirwaga mu bihumbi, kubona aho zicumbika muri icyo kigo kandi asobanura ko zari zigizwe n'abasaza, abakecuru, abagore n'abana. Abo bantu bari bafite umutima uhagaze kubera ko amazu yabo yari yatwitswe. Gutwika amazu byatangiye hagati y'itariki ya 7 n'ya 10 Mata ku gasozi ka Burunga kari ibumoso bwa Home Saint-Jean no ku tundi dusozi turi aho hafi. Uyu mutangabuhamya wiswe T yavuze ko yabonye inzu y'inshuti ye irimo kugurumana.
303. Ubwo umutangabuhamya wiswe O yasobanuriraga Urugereko rwa Mbere rw'Iremezo ibintu byanditse muri ajenda ye munsu y'itariki ya 14 Mata 1994, yavuze ko impunzi zari

¹⁸³ Inyandikomvugo y'iburanisha, 17 Mata 1997, urup. 8.

zaje ziturutse muri Komine ya Gitesi zerekeza kuri sitade zamubwiye ko zahungaga ubwicanyi bwari bwatangiye gukorwa mu gace bari batuyemo. Muri kiriya gihe, uyu mutangabuhamya yabonye abantu benshi bicwa kandi yafashije Abatutsi babaga barokotse kugera ku bitaro bya Kibuye.

304. Umutangabuhamya wiswe C yavuze ko, hashize iminsi ibiri Perezida apfuye, abantu b'i Burunga muri Komine ya Mabanza batangiye guhunga kandi ko abagabaga ibitero babigabaga ku Batutsi, bakanatwika amazu yabo babaziza gusa ko ari Abatutsi. Asobanura ko nta yindi mpamvu igaragara yatumaga babatera uretse kubaziza ubwoko bwabo. Ku birebana n'abo Bahutu bagabaga ibitero, uyu mutangabuhamya agira ati « Na bo ubwabo ntibari gushobora gusobanura impamvu yabateraga gukora ibyo bintu, kuko ubusanzwe bo n'Abatutsi basangiraga akabisi n'agahiye mu buzima bwabo bwa buri muni»¹⁸⁴. Uyu mutangabuhamya yabonye abantu baje bahunga baturutse i Mabanza, barimo n'umuntu bari bafatanye isano mu miryango ya kure, n'abantu bo mu muryango wa Nyaribirangwe. Uwo mwene wabo bari bamutemye mu mutwe n'umuhoro.
305. Mu buhamya bwe mu Rukiko, umutangabuhamya wiswe B avuga ko we n'abandi bantu bahungiyeye ku kiriziya y'abagatorika maze akabisobanura avuga ngo « kubera ko abantu, nka papa, bari baranyuze mu bindi bihe by'imidugararo nka biriya mu wa 59 ubwo Abatutsi bagabwagaho ibitero, icyo gihe bahungiyeye ku kiriziya»¹⁸⁵. Umutangabuhamya wiswe T na we avuga ko ari iyo mpamvu yamuteye gujya aho yahungiyeye. Mu buhamya bwe mu Rukiko, avuga ko kuva mu gihe cya revolisiyo yo mu wa 59, igihe cyose abantu bumvaga nta mutekano bafite bahungiraga ku nsengeru no kuri za paruwasi, bakarindirwayo kandi « bakubahwa»¹⁸⁶. Byongeye kandi, umutangabuhamya wiswe F avuga ko we n'abandi bantu bageze ku kiriziya y'abagatorika ku itariki ya 15 Mata mu saa kumi za mu gitondo, maze bakahasanga abandi Batutsi benshi baturutse mu yandi makomine nka Mabanza, Rutsiro, Kaivere (*Sic*) na Gishyita, ndetse n'abaturutse muri Perefegitura ya Gisenyi.

¹⁸⁴ Inyandikomvugo y'iburanisha, 17 Mata 1997, urup. 116.

¹⁸⁵ Inyandikomvugo y'iburanisha, 17 Mata 1997, urup.11

¹⁸⁶ Inyandikomvugo y'iburanisha, 6 Gicurasi 1997, urup.24

306. Umutangabuhamya wiswe A avuga ko, ku itariki ya 7 Mata, Abahutu b'impimbanyi batangiye kugaba ibitero ku mazu y'Abatutsi no kwica amatungo yabo, yongeraho ko Abakiga, ni ukuvuga Abahutu bo mu karere k'amajyaruguru y'u Rwanda, baje bakifatanya n'Abahutu bene wabo. Avuga ko, ku itariki ya 12 Mata 1994, abo Bahutu b'Abakiga bari mu bitero barobanuye Abatutsi barebeye ku ndangamuntu zabo, maze ku gasanteri k'ubucuruzi ka Gatunda hatangira gukorwa ubwicanyi. Ku itariki ya 13 Mata, umutangabuhamya wiswe A yagiye kuri kiriziya y'abagatorika agerayo hagati ya saa kumi n'ebiri na saa moya za mu gitondo, asanga hateraniye impunzi nyinshi.
307. Abatangabuhamya bashinja n'abashinjura hafi ya bese bazengurutse Perefegitura ya Kibuye, barimo n'umugore wa Kayishema, bavuze ko bagiye babona za bariyeri. Kuri izo bariyeri abagabaga ibitero bagenzuraga indangamuntu z'abahanyuraga kugira ngo bashobore kuvangura no gutandukanya Abahutu n'Abatutsi.

Ibindi bimenyetso bigaragaza ko hariho umugambi wo gukora jenocide

308. Dosiye y'uru rubanza yuzuyemo ibimenyetso bigaragaza ko mu mwaka wa 1994 hariho umugambi wo kurimbura Abatutsi bo mu Rwanda. Urugereko rwa Mbere rw'Iremezo rugiyeye gusuzuma, muri make, bimwe mu bimenyetso birusha ibindi kugira aho bihurira n'ibikorwa bigaragaza ko hariho umugambi wo gukora jenocide yabayeye muri Perefegitura ya Kibuye.
309. Ibimenyetso byashyikirijwe Urugereko bigaragaza ko ubwicanyi bwakorewe muri Perefegitura ya Kibuye bwari bwateguwe. Hasigaye amezi ane ngo ubwo bwicanyi butangire, abaturugumesitiri batangiye kujya baha perefefe urutonde rw'amazina y'abantu bo mu makomine yabo bakekwagaho kuba abayoboke ba FPR no kuyishyigikira¹⁸⁷. Byongeye kandi, Porokireri yatanze amabaruwa abayobozi bo mu butegetsi bwite bwa Leta¹⁸⁸, Kayishema n'abayobozi b'amakomine bagiye bandikirana. Ayo mabaruwa arimo amagambo yerekeranye no kumenya niba mu makomine amwe n'amwe «akazi

¹⁸⁷ Ibimenyetso gihamya n° 55-58 byatanzwe na Porokireri.

¹⁸⁸ Ibimenyetso gihamya n° 52, 54 na 296 byatanzwe na Porokireri.

karatangiye » no kumenya niba hakenewe abandi « bakozi»¹⁸⁹. Yatanze kandi indi baruwa Kayishema yandikiye Minisitiri w'Ingabo amusaba ibikoresho bya gisirikare n'abasirikare bo gufasha mu gikorwa cyo gukuraho umwanda mu Bisesero¹⁹⁰.

310. Bumwe mu bwicanyi bwakoranywe ubugome kurusha ubundi bwakozwe nyuma y'inama zakoreshejwe n'abategetsi ba perefegitura. Izo nama zitabirwaga n'abagize Guverinoma y'Agateganyo y'u Rwanda n'abaturage basanzwe bo muri icyo perefegitura, cyangwa zikitabirwa n'abo baturage basanzwe gusa, zigamije kwiga ku bibazo by' « umutekano»¹⁹¹. Muri imwe muri izo nama, abantu bumvise Kayishema asaba abategetsi bo mu butegetsi bwite bwa Leta kumuha abantu bo gufasha mu guhangana n'ikibazo cy'umutekano muke mu Bisesero. Umutangabuhamya wiswe O yavuze ko, ku itariki ya 3 Gicurasi 1994, Jean Kambanda wari Minisitiri w'Intebe wa Guverinoma y'Agateganyo yasuye Perefegitura ya Kibuye aherekejwe n'abandi bategetsi barimo Minisitiri w'Ubutegetsi bw'Igihugu, uw'Itangazamakuru, uw'Imari, Perefefe wa Perefegitura ya Kibuye n'Umunyamabanga Mukuru w'ishyamba rya MDR. Umutangabuhamya wiswe O yagiye mu nama yari irimo abo bategetsi n'abandi batavuzwe kuko yari umukozi uhagarariye ibitaro bya Kibuye. Muri icyo nama, yavuze ko ahangayikishijwe n'ikibazo cy'abana b'Abatutsi 72 bari bafite imyaka iri hagati ya 8 na 15 bari barokokeye kuri Home St Jean. Yavuze ko abo bana babagaho mu buzima bubiri kandi ko Interahamwe zari zabateye ubwoba. icyo gihe, Minisitiri w'Intebe si we ubwe wasubije icyo kibazo umutangabuhamya wiswe O yari amaze kuvuga, ahubwo yasabye Minisitiri w'Itangazamakuru kuba ari we ugisubiza. Uwo muminisitiri yutse inabi umutangabuhamya wiswe O, amubwira ko atagomba kurengera abantu kandi na bo ubwabo badashaka kurengerwa. Yongeyeho ko byagaragaraga neza ko umutangabuhamya wiswe O adashyigikiye gahunda za Guverinoma y'Agateganyo, akaba ariyo mpamvu atumvaga umwanzu uwo ari we. Minisitiri w'Itangazamakuru yabaye nk'uwerekana ko Guverinoma y'Agateganyo

¹⁸⁹ Ikimenyetso gihamya n° 53 cyatanzwe na Porokireri. (Ibaruwa Kayishema yandikiye ba burugumesitiri bose bo muri Kibuye.)

¹⁹⁰ Ikimenyetso gihamya n° 29 cyatanzwe na Porokireri.

¹⁹¹ Inama yo ku itariki ya 3 Gicurasi 1994 ni imwe mu zitabirwa na Minisitiri w'Intebe Kambanda n'abaminisitiri bagize Guverinoma ye cyangwa zikitabirwa n'abo baminisitiri gusa.

yafataga abo bana b'ibimuga nk'abanzi. Nyuma yaho, abo bana baje kuvanwa ku bitaro ku ngufu maze baricwa.

311. Mu buhamya bwe mu Rukiko, Umubikira witwa Farrington yavuze ko yiboneye ukuntu abayobozi banyuranye bo ku Kibuye barangwaga n'imyitwarire y'ivangura ryibasiraga Abatutsi bose. Mu gihe cy'ibyabaye, uyu mubikira yagiye ku biro bya Perefegitura ya Kibuye kubaza ukuntu yabonera bamwe mu babikira bo mu kigo cye urupapuro rw'inzira rwatuma bava mu Rwanda. Mu gihe cy'iminsi itatu yavuganye na Superefe Gashangore na Kayishema. Yavuze ko icyo gihe iyo Gashangore yajyaga kuvuga Abatutsi yakoreshaga imvugo ibibasira, ndetse agashinja abantu bazwi bo muri iyo perefegitura «kugira uruhare runini mu bikorwa by'Inkotanyi». Ubwo uyu mubikira yongeraga kugerageza kureba ko bamufasha muri icyo kibazo, yavuganye na Kayishema mu biro bye [bya Kayishema]. Yavuze ko Kayishema yamuvugishije adatuje kandi amwuka inabi. Kayishema yamubwiye ko hari intambara yateguwe n'Inkotanyi kandi ko Abatutsi bakoranaga n'umwanzi. Kugira ngo amuhe gihamya y'ibyo yari amaze kumubwira, yamweretse urutonde rw'amazina y'abantu, amakarita n'izindi nyandiko ngo byateguraga Abatutsi kwivumbagatanya.

Umwanzuro

312. Rushingiye kuri ibyo bimenyetso, Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko, muri Perefegitura ya Kibuye, abategetsi b'inzege za Leta ari bo bashyize mu bikorwa umugambi wa jenocide. Abantu bari bafite imyanya y'ubutegetsi bakoresheje imvugo zigisha urwango kandi babikangurira abantu bari bakuriye nk'abajandarume, abapolisi ba komine n'abantu bo mitwe yitwaraga gisirikare, na bo babafasha gukangurira abaturage b'Abahutu kujya ahantu hakorewe ubwicanyi. Abatutsi bishwe bazira ubwoko bwabo, kandi babanje kwicirwa mu ngo zabo, nuko bagerageje guhungira ahantu bumvaga hari umutekano batangirirwa kuri za bariyeri maze bamwe bicirwa aho. Abashoboye kugera kuri za kiriziya/insengero no kuri za sitade bagabweho ibitero byahitanye abagera ku bihumbi mirongo.

313. Nyuma yo gusuzuma impamvu zateye Abatutsi guteranira hariya hantu hane habereye ubwicanyi, Urugereko rwa Mbere rw'Iremezo rugiyeye noneho gusuzuma ibimenyetso byerekeranye n'aho hantu. Ruranasuzuma uruhare, niba ruhari, Kayishema n'abantu yari akuriye ndetse na Ruzindana baba baragize muri biriya byaha bivugwa.

5.3 Intangiriro: ubwicanyi bwabereye ku kiriziya y'abagatorika, kuri Home Saint-Jean, kuri sitade mu mugwi wa Kibuye no ku kiriziya yo ku Mubuga

314. Muri uyu Mutwe, havugwamo ibintu bisa byabereye ahantu hatatu ha mbere habereye ubwicanyi havugwa mu Nyandiko y'ibirego, ariho ku kiriziya y'abagatorika na Home Saint-Jean (ikigo), kuri sitade (sitade), mu mugwi wa Kibuye no ku kiriziya yo ku Mubuga, muri Komine ya Gishyita. Muri iyi ntangiriro ntihavugwamo ahantu ha kane habereye ubwicanyi havugwa mu Nyandiko y'ibirego, ariho mu Bisese, kubera ko ubwicanyi bwahabereye bwakozwe mu buryo butandukanye gato n'ubw'aho handi hatatu ndetse bukamara igihe kiruta cyane icy'ubwakorewe aho hantu handi. Byongeye kandi, mu Nyandiko y'ibirego Abaregwa bombi bashinjwa ibyaha byakorewe mu Bisese, mu gihe ibyabereye aho hantu hatatu handi bireba Kayishema wenyine. Dore incamake y'ubuhamya bwatanze mu Rukiko ku byabereye aho hantu hatatu ha mbere.
315. Hagati muri Mata, Abatutsi bakoraniye aho hantu hatatu havuzwe, bahungu amarorerwa Abahutu babakorerega. Muri Perefegitura ya Kibuye yose, Abatutsi baratewe, amazu yabo aratwikwa, amatungo yabo aribwa, cyangwa arabagwa. Mu muco wari usanzweho, ahantu rubanda bahurira, nk'amakiriziya/insengeru na za sitade, hafatwaga nk'ubuhungiro, bityo abaturage bakahahungira mu gihe cy'imidugararo. No mu mwaka wa 1994 ni ko byagenze: abatangabuhamya benshi bavuze ko bahungiyeye ahantu nk'aho, bibwira ko abategetsi bo muri iyo perefegitura bari kuhabarindira. Abatutsi bamwe bageze ku kiriziya basanze nta mwanya ugihari maze barakomeza bajya kuri kuri sitade, akenshi babitegetse n'abajandarume n'abategetsi bo muri ako karere. Biragaraga ko buri hose muri aho hantu hatatu hari hakoraniye Abatutsi benshi cyane. Ibigereranyo byagiye bitangwa bivugwa ko ku Mubuga hari abantu bari hagati ya 4.000 na 5.500 birenga, ku kigo hari abagera ku 8.000 naho kuri sitade hari ababwirwaga hagati ya 5.000 na 27.000.

316. Aho hantu hose uko ari hatatu, hari abajandarume barinze imiryango cyangwa bahagose hose. Bagenzuraga imbaga y'abantu yari ihari kandi bakabungabunga umutekano cyangwa bakabuza abantu kuhava. Abatangabuhamyababwiye Urugereko ko Abatutsi bageragezaga gusohoka bicwaga n'Abahutu bagabaga ibitero kandi bari bitwaje intwaro. Aho hantu habereye ubwicanyi, impunzi zari zifite imibereho mibi, cyane cyane ku bantu b'intege nke n'inkomere. Abategetsi ntibigeze batanga ibiribwa, amazi cyangwa ngo batabare abarwayi kandi niyo hatangwaga imfashanyo, abajandarume ntibatwaga igera kuri abo Batutsi.
317. Ukurikije uko ibintu byari bimeze, umuntu yavugaga ko abo bantu bavuye mu byabo (hasi bazajya bitwa impunzi)¹⁹², bari bafungirwe aho hantu hatatu mu mugwi wa Kibuye, kandi bishwe mu gihe cy'iminsi itanu nta guhagarara. Kuri kiriziya yo ku Mubuga, ubwicanyi bukomeye bwatangiye ku itariki ya 15 Mata, burakomeza no ku ya 16 Mata. Ku kigo (Home Saint-Jean na kiriziya y'abagatorika) hagabwe ibitero bya mbere ku itariki ya 15 n'ya 16 Mata maze ku ya 17 Mata hagabwa igitero cya karundura cyahitanye imbaga y'abantu. Naho kuri sitade, ubwicanyi bwatangiye ku itariki ya 18, maze ku ya 19 Mata abicanyi bagaruka kurangiza umurimo bari batangiye. Ibimenyetso byashyikirijwe Urugereko bigaragaza ko muri icyo minsi hishwe Abatutsi babarirwa mu bihumbi bari barahungiyeye aho hantu.
318. Ubuhamyabwatanzwe mu Rukiko bugaragaza ko uburyo abagabaga ibitero bakoresheye busa cyane, haba mu gikorwa cya mbere cyo gukoranyiriza hamwe Abatutsi no mu kubica. Bamwe muri abo bantu bahungiyeye aho hantu hatatu havuzwe babikoze bamaze kubishishikarizwa n'abategetsi b'Abahutu. Bigitangira, abajandarume basaga n'abakora gusa akazi ko kubungabunga umutekano kandi bemerera abantu kuva kuri izo kiriziya cyangwa kuri sitade ngo bajye gushaka ibyo kurya cyangwa amazi. Cyakora, ntibyatinze abategetsi babuza ibiribwa kwinjira aho hantu ndetse babuza n'impunzi gusohoka.

¹⁹² Kubera ko mu iburanisha ryose abaturanyi bakoresheje ijamba «impunzi» bashakaga kuvugaga abantu bavuye mu byabo bagahungira, Urugereko ruzajya rukoresheye iryo jambo « impunzi » n'ubwo ruzi neza ko ubusanzwe atari ryo ryagombye gukoreshwa ahangaha.

Abageragezaga gusohoka basubizwaga inyuma cyangwa bakicwa n'abagabaga ibitero bitwaje intwaro kandi bikaba abajandarume barebera. Abajandarume n'Interahamwe bagose za kiriziya, barinda n'imiryango ya Sitade. Kugota aho hantu byaje kuvamo ibitero bya karundura byagabwe n'abajandarume, abapolisi ba komine, abacungagereza, Interahamwe n'abandi basiviri bitwaje intwaro. Iyo bamaraga kugota aho hantu kenshi bategerezaga ko umutegetsi abaha itegeko ryo gutangira kugaba igitero. Ibitero byatangiraga batera amagerenade, ibyuka bihuma amaso, bakanatwikira amapine mu bigo imbere. Hari n'ubwo ibitero byatangizwaga gusa no kurasa muri yo mbaga y'abantu maze abagerageje guhunga bakicishishwa intwaro gakondo. Nyuma y'amasaha menshi bica abantu, abagabaga ibitero binjiraga imbere mu mazu cyangwa muri Sitade bitwaje intwaro gakondo maze bagahorahoza abo basangaga bataranogoka.

319. Nta muburanyi uhakana ibyinshi mu bimaze kuvugwa kandi Urugereko rusanga hari ibimenyetso byinshi bigaragaza ukuntu ibyo bintu byari biteye muri rusange. Urugereko ruvuga ko ikibazo gikomeye ari ukumenya uruhare, niba ruhari, Kayishema n'abantu yari akuriye cyangwa yagenzuraga baba baragize mu byabereye aho hantu uko ari hatatu. Porokireri avuga ko Kayishema yari aho hantu uko ari hatatu, akitabira ubwicanyi kandi akayobora abandi bantu mu bitero byagabwe aho hantu. Kayishema yemera ko yagiye aho hantu igihe Abatutsi bari bahakoraniye ariko mbere y'ubwicanyi kugira ngo arebe uko ibintu byifashe. Cyakora, ahakana ko yari ahari ku minsi y'ibitero kubera ko umugore we yashoboraga kwicwa. Avuga ko yari yihishe kuva mu gitondo cyo ku itariki ya 16 Mata kugera mu gitondo cyo ku ya 20 Mata¹⁹³.
320. Ibimenyetso byatanzwe biragaragaza ko abantu babonye Kayishema aho hantu uko ari hatatu hagati y'itariki ya 14 n'ya 18 Mata. Kayishema avuga ko ku itariki ya 14 Mata yagiye ku kiriziya yo ku Mubuga ajyanywe gusa no kureba uko ibintu byifashe. Cyakora, abatangabuhamya bavuze ko Kayishema yari ku Mubuga mu gitondo cyo ku itariki ya

¹⁹³ Ni ngombwa kuzirikana ko ubwicanyi bwabereye ku kiriziya yo ku Mubuga bwatangiye ku itariki ya 15 Mata kandi igihe Kayishema ashingiraho avuga ko atari aho ibyaha byakorewe igihe byakorwaga cyo kikaba gihera ku itariki ya 16 mu gitondo.

15 Mata, no ku kigo uwo muni saa cyenda z'amanywa. Ibimenyetso binagaragaza ko hagati y'izo kiriziya zombi hari nk'ibirometero bigeze kuri 40 umuntu anyuze iy'umuhanda. Byongeye kandi, abantu bongeye kumubona ku Mubuga mu gitondo cyo ku itariki ya 16 Mata ubwo igitero cyatangiraga, bongera na none kumubona ku kigo igihe haberega ibikorwa bya mbere by'urugomo. Abatangabuhamya banavuga ko bukeye ku itariki ya 17 Mata, Kayishema yari ku kigo kandi agira uruhare rw'ingenzi mu bwicanyi bwibasiye imbaga bwakozwe uwo muni. Mu gusoza kuri iyi ngingo, Kayishema aregwa kuba yaratangije ubwicanyi kuri sitade ku itariki ya 18 Mata. Urugereko rugiyeye noneho gusuzuma ibimenyetso byatanze kuri buri hantu hane hakorewe ubwicanyi nk'uko havugwa mu Nyandiko y'ibirego.

5.3.1. Ubwicanyi bwabereye ku kiriziya y'abagatorika no kuri Home Saint-Jean.

Uko ibintu byari bimeze muri rusange

321. Mu Nyandiko y'ibirego havugwamo ko ikigo kigizwe na Home Saint-Jean na kiriziya y'abagatorika cyakorewemo ubwicanyi kiri ku Kibuye muri Komine ya Gitesi, ku gasozi kameze nk'akarwa gakikijwe n'ikiyaga cya Kivu kandi hari umuhanda utambika imbere y'umuryango w'icyo kigo. Iyo umuntu ari kuri uwo muhanda ashobora kubona kiriziya y'abagatorika ariko ntashobora kubona Home Saint-Jean. Umutangabuhamya w'impuguke witwa Sjouke Eekma avuga ko umuntu yagerayo anyuze mu muhanda uca kuri rompuwe cyangwa anyuze mu wundi unyura ku biro bya Perefegitura. Kiriziya y'abagatorika ifite imiryango myinshi.
322. Mu gihe cy'imidugararo yabaye muri komine hashize igihe gito indege ya Perezida ihanutse, abantu babarirwaga mu bihumbi bahungiyeye mu nsengeru no muri za kiriziya nko ku kigo. Nk'urugero, umutangabuhamya wiswe F yavuze ko ageze ku kiriziya y'Abagatorika, ku itariki ya 15 Mata, yahasanze abandi Batutsi benshi baturutse mu yandi makomine nka Mabanza, Rutsiro, Kaivere[Sic] na Gishyita ndetse no muri Perefegitura ya Gisenyi. Umutangabuhamya wiswe B, asobanura impamvu yahungiyeye ku kiriziya y'abagatorika, yavuze ko ngo « kubera ko abantu nka papa bari baranyuze mu

bindi bihe by'imidugararo nka biriya nk'uko byagenze muri 59 ubwo Abatutsi bagabwagaho ibitero, icyo gihe bahungiyeye ku kiriziya (gatorika)»¹⁹⁴. Umutangabuhamya wiswe T na we yemeza impamvu zatanzwe n'abandi batangabuhamya ku cyatumye bahungira kuri za kiriziya/insengero. Avuga ko kuva mu gihe cya revolisiyo yo mu wa 59, igihe cyose abantu bumvaga nta mutekano bafite bahungiraga ku nsengero no kuri za paruwasi, bakarindirwayo kandi « bakubahwa»¹⁹⁵.

323. Imibereho yo muri ubwo buhungiro yaje kugenda irushaho kuba mibi. Ku kiriziya y'abagatorika hari abantu benshi cyane kuko nk'uko umutangabuhamya wiswe A abivugaga, ubwo hakorwaga ibarura kugira ngo hazatangwe imfashanyo y'ibiribwa, basanze hari impunzi 8.000 z'Abatutsi¹⁹⁶. Abatangabuhamya biswe T na F bemeza uwo mubare. Cyakora, Abategetsisi ba perefegitura ntibigeze bafasha izo mpunzi z'Abatutsi.
324. Igitero cya karundura cyagabwe ku kigo ku itariki ya 17 Mata. Cyakora mbere yaho, Interahamwe n'abategetsisi bo muri ako gace bari baragabye udutero twinshi maze Abatutsi bahungiyeye aho hantu bakadusubiza inyuma batera amabuye. Guhera ku itariki ya 15 Mata, abajandarume bagose aho hantu babuza Abatutsi gusohoka.
325. Abatangabuhamya b'impuguke ari bo Dogiteri Haglund, umuhanga mu bumenyi bw'imiterere y'abantu ukora isuzuma abisabwe n'Ubucamanza (*Forensic Anthropologist*) na Dogiteri Peerwani umuhanga mu bumenyi bw'indwara (*Pathologist*), batanze ubuhamya ku bantu baguye muri ubwo bwicanyi. Bombi basuzumye imirambo y'abantu yabarirwaga mu bihumbi maze basobanura ukuntu ba nyakwigendera bishwe. Dogiteri Haglund avuga ko yasuzumye icyobo rusange kinini kiri hafi ya kiriziya y'abagatorika asuzuma n'ahandi hantu hane naho harimo imibiri y'abantu. Naho Dogiteri Peerwani we yasuzumye imirambo y'abantu 122 muri Mutarama na Gashyantare 1996.

¹⁹⁴ Inyandikomvugo y'iburanisha, 17 Mata 1997, urup. 11.

¹⁹⁵ Inyandikomvugo y'iburanisha, 7 Gicurasi 1997, urup. 24.

¹⁹⁶ Inyandikomvugo y'iburanisha, 15 Mata 1997, urup. 31.

Mu bimenyetso byatanzwe harimo indangamuntu zabonetse ku bantu bishwe kandi zerekana ko bose bari Abatutsi.

326. Muri raporo ye yanditse, Dogiteri Haglund yemeza ko ku kigo hiciwe abantu benshi, bagizwe n’abagabo, abagore n’abana. Ku mirambo 493 Dogiteri Haglund yasuzumye umwe ni wo yasanze ufite igikomere cyatewe n’isasu. Avuga ko yasanze nka 36% by’imirambo yari mu cyobo, banyakwigendera barazize ibikomere biturutse ku gukubitwa, naho 33% bakicwa n’impamvu zitashoboye kumenyekana. Yatanze urugero rw’umuntu avuga ko yapfuye afite imyaka 50. Ku kuguru k’uwo nyakwigendera, igufa riri inyuma ya ruseke ryaciwemo kabiri n’ikintu gifite ubugi¹⁹⁷, gishobora kuba cyaracyiyemo kabiri igitsi ku buryo byari gutuma nyakwigendera agenda acumbagira¹⁹⁸. Ku ijosi « inyama zose zo ku ruhande rw’i buryo rw’ijosi hamwe n’izo mu gikanu [...] zishobora kuba zaratemaguwe »¹⁹⁹. Nyakwigendera yanatemwe kuri ruseke kandi « ku gice kigana hasi cy’urushyi rw’ukuboko hari ikindi gikomere yatewe n’ikintu gityaye »²⁰⁰. Dogiteri Haglund asoza avuga ko nyakwigendera yarimo kugerageza kwikingira yerekeza ibice binyuranye by’umubiri ku muntu ufite intwari warimo kumutema. Dogiteri Peerwani na we yasanze imirambo yasuzumye ifite ibikomere bigaragaza ko banyakwigendera bakubiswe ibintu bityaye kandi yemeza ko benshi mu bishwe bari abana bato n’abantu basheshe akanguhe.

¹⁹⁷ Inyandikomvugo y’iburanisha, 26 Ugushyingo 1997, urup. 29.

¹⁹⁸ Inyandikomvugo y’iburanisha, 26 Ugushyingo 1997, urup. 30.

¹⁹⁹ Inyandikomvugo y’iburanisha, 26 Ugushyingo 1997, urup. 32.

²⁰⁰ Inyandikomvugo y’iburanisha, 26 Ugushyingo 1997, urup. 33.

Ibitero

Ibitero byo ku itariki ya 15 n'ya 16 Mata 1994.

327. Abatangabuhamya banyuranye bavuze ku dutero twagabwe ku itariki ya 15 n'ya 16 Mata. Abatangabuhamya biswe T na A bavuze ko, ku itariki ya 15 Mata, saa cyenda z'amanya, ku kigo hagabwe igitero. Muri icyo gitero, abatangabuhamya biswe A na D babonye Kayishema ashikuzi umwana umugore yari afite. Umutangabuhamya wiswe F avuye ko abategetsi bo muri ako gace bagiye mu gitero cyagabwe ku kigo ku itariki ya 16 Mata. Abajandarume barabereye gusa ariko impunzi zishobora gushyirwa inyuma icyo gitero. Nyuma yaho, uyu mutangabuhamya wiswe F yabonye Kayishema n'umucuruzi ukomeye wo ku Kibuye witwaga Mugambira batwaye intwari mu modoka zabo. Hanakoreshejwe ikamyoneti ya gisirikare mu kujyana intwari hafi ya sitasiyo ya PETRORWANDA. Uyu mutangabuhamya yanabonye Kayishema akoresha, hafi y'iyi sitasiyo, inama yitabirirwe n'abandi bantu bagabaga ibitero.

Igitero cyagabwe kuri kiriziya y'abagatorika ku itariki ya 17 Mata 1994.

328. Ku itariki ya 17 Mata, hagati ya saa tatu na saa yine za mu gitondo, igitero cya karundura cyagabwe ku kiriziya y'abagatorika hari harahungiyeho Abatutsi babariwaga mu bihumbi bagizwe n'abagabo, abagore n'abana. Abakigabye baturutse mu byerekezo bitatu, ari byo rompuwe, ibiro bya Perefegitura n'ikiyaga cya Kivu. Umutangabuhamya wiswe F, wari uhagaze imbere ya kiriziya y'abagatorika muri icyo gihe, asobanura neza uko abagabye igitero bari bameze. Uyu mutangabuhamya n'abandi bavuze ko abagabye ibitero bari abasiviri b'Abahutu, abasiviri b'Abatwa, abapolisi ba komine, abacungagereza, abategetsi bo muri ako gace barimo umubaruramari wa komine, Rusizera wari umufasha wa Burugumesitiri, Gahima wari umuyobozi w'Ishuri ry'abapentekote, Emmanuel Kayihura na Siriaka Bigisimana. Abandi batangabuhamya na bo babonye abo bategetsi kandi bemeza ko bari aho hantu. Umutangabuhamya wiswe E yabonye Konseye wa Segiteri ya Gishura, naho umutangabuhamya wiswe C yavuze ko yabonye abategetsi barimo Konseye Ndambizimana, Callixte wari umucungagereza, na Burugumesitiri wa Komine ya Gitesi. Abagabaga ibitero bari bitwaje intwari zinyuranye zirimo imihoro,

- inkota, amacumu, udushoka, amahiri akwikiyemo imisumari bitaga « impuzamugenzi » n'ibindi bikoresho by'ubuhinzi. Banaririmba bavuga ngo « Tubatsembatsembe ». Kayishema yageze aho hantu aturutse ku biro bya Perefegitura mu modoka ya Toyota y'umweru, kandi yari kumwe n'abantu bagabaga ibitero. Abatangabuhamyi biswe F, C, D, E na A babonye neza Kayishema ahagera. Nk'urugero, umutangabuhamyi wiswe F yari hafi ye bihagije ku buryo yashoboye kubona ko Uregwa yari yambaye ikabutura y'umweru, naho A, D na F bakemeza ko Kayishema yari afite inkota.
329. Umutangabuhamyi wiswe F yabonye Kayishema ahagera, aha mu modoka ye ari kumwe n'abajandarume, maze abantu bakamukomera amashyi ubwo yagendaga asanga itsinda ry'abagabye igitero. Uyu mutangabuhamyi wiswe F yavuze ko Kayishema yategetse abagabye igitero « gutangira gukora »²⁰¹, uwiswe D yavuze ko Kayishema yabategetse « kujya gukora », naho uwiswe E yavuze ko yabategetse « gutangira gukora ».
330. Aba batangabuhamyi bari ahantu buri wese yashoboraga kumva Kayishema avuga ariya magambo. Abatangabuhamyi biswe E na F bavuze ko, ukurikije uko ibintu byari bimeze mu Rwanda icyo gihe, « kujya gukora » byasobanuraga « kwica Abatutsi ». Aba batangabuhamyi bombi bavuze ko icyo gihe, amaze gutegeka abagabye igitero « kujya gukora », Kayishema yagiye hejuru y'agasozi anyuze mu kayira gaca hafi ya kiriziya, maze abwira ijambo abagabye igitero bari bahateraniye, akoresheje indangururamajwi. Muri iryo jambo yabamenyesheje ko yabonye amabwiriza aturutse i Kigali yo kwica Abatutsi. Arangije ijambo rye, yategetse abajandarume kurasa. Umutangabuhamyi wiswe E yavuze ko icyo gihe, Kayishema yarashe amasasu atatu.
331. Aba batangabuhamyi batatu babonye Kayishema avuga ijambo, anaha abagabye igitero amategeko yo kujya gukora. Cyakora, umutangabuhamyi wiswe E ni we wenyine wavuze ko yabonye Kayishema arasa amasasu atatu mu rwego rwo gutanga ikimenyetso. Umutangabuhamyi wiswe A we yavuze ko ayo masasu yarashwe n'abajandarume bari imbere ya kiriziya. Byageze aho, bamwe mu bagabye igitero batangira gutera impunzi amabuye hanyuma abajandarume bararasa. Abajandarume barashe Abatutsi bari imbere

²⁰¹ Ni kimwe no haruguru, urup. 89.

ya kiriziya, hanyuma bafatanya n'abandi Bahutu bari bagabye igitero maze batangira kwica Abatutsi bari imbere mu kiriziya. Bateye za gerenade n'ibisasu by'ibyuka bihuma amaso imbere mu kiriziya babinyujije mu muryango, bakomeza barasa n'imbunda zabo. Umutangabuhamya wiswe F, wakijijwe n'uko yuriye igiti cyari hafi aho, agira ati « Nabonaga neza imbuga cyangwa imbere ya Kiriziya. Naramwireberaga [Kayishema] n'amaso yanjye »²⁰². Umutangabuhamya wiswe F yabonye Kayishema agenda yegera umuryango wa kiriziya maze atuma umwe mu bagabye igitero kuzana ijerikani ya lisansi. Iyo lisansi yasutswe ku mapine no ku miryango ya kiriziya, hanyuma barabikongeza. Nk'uko umutangabuhamya wiswe A abivuga, umuryango munini wa kiriziya warahiye urakongoka. Umutangabuhamya wiswe C yabonye abagabye igitero bajugunya mu kiriziya ipine bari basutseho lisansi. Abatangabuhamya benshi barimo uwiswe F bavuze ko abantu bahiye.

332. Byageze aho Kayishema ayobora abagabye igitero, binjira mu kiriziya maze batangira kwica abantu bari barokotse. Umutangabuhamya wiswe A wari wihishe muni y'imirambo yanisize amaraso, yabonye Kayishema yinjira mu kiriziya ari kumwe n'umusore, maze akora ku buryo hatagira umuntu n'umwe urokoka. Umutangabuhamya wiswe A yavuze ko yarebaga Kayishema neza kuko icyo gihe, mu bagabye igitero, hinjiye mu kiriziya Kayishema n'uwo musore bonyine. Uyu mutangabuhamya yabonye Kayisherma akoresha inkota yari afite mu gutema umuntu witwaga Rutabana n'uruhinja rwari rumuryamye hejuru [umutangabuhamya A]. Kuri ibyo bintu, umutangabuhamya wiswe A yavuze ko yamenye ko ari umwana wari umuryamye hejuru kubera ko yumvaga amutera imigeri hafi yo mu gituzi²⁰³. Kayishema yatemesheje kandi iyo nkota ye uyu mutangabuhamya wiswe A ku rutugu n'ikiganza by'iburyo hamwe no ku nkokora y'ibumoso. Uyu mutangabuhamya yeretse Urugereko inkovu z'ibyo bikomere.
333. Bamwe mu batangabuhamya barimo A, B, C, D na E babashije gucika, abandi nka B, C, na D bahungira kuri Home Saint-Jean, naho umutangabuhamya wiswe F ahungira kuri sitade.

²⁰² Ni kimwe no haruguru, urup. 98.

²⁰³ Inyandikomvugo y'iburanisha, urup. 146.

Igitero cyagabwe kuri Home Saint-Jean ku itariki ya 17 Mata 1994

334. Mu masaa saba cyangwa saa munani z'amanywa, abagabye igitero bavuye ku kiriziya berekeza kuri Home Saint-Jean baririmba ngo « tubatsembatsembe ». Bateye amagerenade mu nzu maze abantu babura umwuka. Abajandarume bamaze kwica urugi, Abatutsi bahungaga bahise bahura n'Interahamwe zitwaje imihoro n'amacumu. Abatangabuhamya biswe B na C bakijijwe n'uko babwiye abagabye igitero ko atari Abatutsi maze bemererwa kujya mu itsinda ry'Abahutu babarirwaga hagati ya 15 na 20 abajandarume bari bakuye ku kiriziya babajyanye ahantu hari umutekano. Mu nzira, abo batangabuhamya n'abantu bari kumwe bahuye na Kayishema wabajije abajandarume babaherekeje ati « aba Batutsi mubajyanye hehe? »²⁰⁴. N'ubwo abo bantu bari muri iryo tsinda bashubije ko bose bari Abahutu, ntibyabujije Kayishema gukubita umutangabuhamya wiswe B umuhoro.

Abakorewe ibyaha

335. Abagabye igitero basize bishe abantu babarirwa mu bihumbi banakomeretsa abandi benshi. Umutangabuhamya wiswe D yaragereranyije avuga ko, mbere y'icyo gitero cya karundura, kuri icyo kigo hari harahungiyeye abantu bagera ku 8.000. Uwo ni wo mubare umutangabuhamya wiswe A yumvanye Leonard Surasi wari wafashe icyo kigereranyo kugira ngo azanire impunzi ibiribwa. Nyuma y'igitero, abatangabuhamya biswe A, B, C, D na F babonye umubare munini w'imirambo, naho umutangabuhamya wiswe O yavuze ko yagiye mu gikorwa cyo gushyingura imirambo. Uyu mutangabuhamya ni Umuhutu wo muri ako gace kandi yanditse iby'ubwo bwicanyi muri ajenda ye. Umutangabuhamya wiswe E we yavuze ko hashize icyumweru kimwe ubwicanyi bubaye, yabonye imfungwa ziza gutwara imirambo kugira ngo ziyihambe. Izo mfungwa zamaze iminsi itanu zishyingura abantu bapfuye. Umutangabuhamya wiswe G akaba ari Umuhutu wafashije abandi guhamba imirambo, yavuze ko yabonye imirambo ku kiriziya y'abagatorika, ku muhanda uva ku biro bya Perefegitura, imbere y'umuryango munini wa kiriziya, imbere mu kiriziya, imbere y'inzu y'abapadiri, no mu nzu y'abapadiri. Uyu mutangabuhamya

²⁰⁴ Inyandikomvugo y'iburanisha, 17 Mata 1997, urup.29.

anavuga ko abantu barimo Ruberanziza na Bisenyamana bashyiraga iterabwoba ku bantu bafashaga abandi guhamba imirambo y'Abatutsi²⁰⁵.

336. Kuri Home Saint-Jean by'umwihariko, umutangabuhamya wiswe T wahakoraga yavuze ko abakozi icyenda bo muri icyo kigo n'abana babo bapfuye. Umutangabuhamya wiswe G we yabonye imirambo y'Abatutsi iri hagati ya 200 na 300 kuri Home Saint-Jean ni ukuvuga mu mazu imbere, inyuma y'ayo, muri kave, kuri za etaje, n'iruhande rw'amazu y'icyo kigo. Byongeye kandi, benshi mu barokotse bari bakomeretse; umutangabuhamya wiswe F akaba yarabonye abantu bakomeretse bagera kuri 40. Abo bantu bari batemwe udutsinsino.

Ibimenyetso bishinjura

337. Mu kwiregura, Ubwunganizi bwa Kayishema buvuga ko kuri ayo matariki ubwicanyi bwakoreweho Uregwa atari aho bwakorewe. Iyo myiregurire ivugwa mu Mutwe wa 5.1 wiswe Imiregurire ya sinari mpari. Mu ibaza rinyomoza ry'umutangabuhamya wiswe A, Ubwunganizi bwarwanyije ibyo uyu mutangabuhamya yavuze ko yashoboye kubona Kayishema yinjira mu kiriziya. Ubwunganizi bunakemanga kuba uyu yarabonye igihe n'umwanya wo kwisiga amaraso. Uru Rugereko rusanga, n'ubwo ubuhamya A yatanze mu Rukiko bushobora kuba buburamo ibisobanuro bimwe na bimwe, ibyo avuga byerekeranye n'uko Kayishema yari ahari ndetse akagira uruhare mu gitero, muri rusange bwakwemerwa. Byongeye kandi, uburyo umutangabuhamya wiswe A yasobanuye uko Kayishema yari yambaye n'intwaro yari yitwaje bihura n'ubuhamya bw'abandi batangabuhamya barimo B, C na D. Na none, ibyo yavuze ko yabonye Kayishema bishyigikirwa n'uko yari asanzwe amuzi na mbere y'ibyabaye. Mu by'ukuri, uyu mutangabuhamya yabonye Kayishema bwa mbere mu mwaka wa 1993 ku bitaro bya Kibuye (icyo gihe inshuti ye yatunze Kayishema urutoki igira iti « dore perefefu »). Urugereko rusanga rwakwizera ubuhamya bwa A buvuga ko Kayishema yari ahari ndetse akajya mu bitero byagabwe ku itariki ya 17 Mata.

²⁰⁵ Inyandikomvugo y'iburanisha, 24 Mata 1997, urup.4.

338. Mu buhamya bwe mu Rukiko, umutangabuhamya wiswe B yavuze ukuntu yahuye na Kayishema ubwo we n'abandi bantu bari baherekejwe n'abajandarume kubera ko bafatwaga ko ari « Abahutu ». Uyu mutangabuhamya yemeza ko icyo gihe Kayishema yari yambaye ikabutura y'umweru kandi ko yabajije ngo « Aba Batutsi mubajyanye he? »²⁰⁶, maze abajandarume bakamusubiza ngo: « aba si Abatutsi, ahubwo ni Abahutu »²⁰⁷. Mu myanzuro nsozarubanza mu magambo, Ubwunganizi ntibwahakanye ko ibyo byabayeho, ahubwo bwavuze ko abagabye ibitero bakomerekeje uyu mutangabuhamya wiswe B batabigambiriye. Aha Ubwunganizi bwashakaga kuvuga ko basunika uyu mutangabuhamya bashakaga kumusubiza mu bandi. Urugereko rusanga rwakwizera uyu mutangabuhamya wiswe B kuko yabonye Kayishema muri biriya bitero ndetse akamwumva avuga. Uyu mutangabuhamya yari yarabonye Kayishema ku bitaro byo ku Kibuye mu mwaka wa 1989, nyuma yaho akajya amubona rimwe na rimwe. Ubuhamya bw'umutangabuhamya wiswe C bushyigikira ubwa B kuri icyo gitero, kandi Urugereko rusanga nta kwivuguruza gukomeye kugaragara mu buhamya bwa B.
339. Ku byerekeranye n'umutangabuhamya wiswe C, Urugereko rusanga uyu mutangabuhamya yari azi Kayishema mbere y'ibiyabaye. Uyu mutangabuhamya yavuze ko we n'Uregwa bakomoka muri Segiteri ya Bwishyura, kandi ko azi Uregwa ndetse na se. Uyu mutangabuhamya yavuze ko yabonye Kayishema atema intoki z'umutangabuhamya wiswe B akoresheje umuhoro. Uyu mutangabuhamya wiswe C yatanze, nk'ikimenyetso gihamya, lisiti iriho amazina y'abantu bakorewe ibyaha n'ay'abagabye igitero. Izina rya Kayishema n'amazina y'abategetsi bo muri ako karere ni amwe mu mazina y'abantu bagabaga ibitero bari kuri iyo lisiti.
340. Mu ibaza rinyomoza, Ubwunganizi bwabajije umutangabuhamya wiswe D ukuntu yashoboye kumva Kayishema avuga ngo « mujye gukora ». Uyu mutangabuhamya yavuze ko yumvise Kayishema ategeka abagabye igitero ngo « mujye gukora ». Asobanura ko icyo gihe yari mu ntera iri hagati ya metero 15 na 20, ahagaze hagati y'umuhanda ujya kuri rompuwe n'ujya ku biro bya Perefegitura. Ubwunganizi

²⁰⁶ Inyandikomvugo y'iburanisha, 17 Mata 1997, urup. 93.

²⁰⁷ Inyandikomvugo y'iburanisha, 17 Mata 1997, urup. 97.

- bwanarwanyije ibyo uyu mutangabuhamya yavuze ko yihishe mu idari rya Home Saint-Jean. Umutangabuhamya D asobanura ko yavuye ku kiriziya saa saba z'amanywa akihisha mu idari kuri Home Saint-Jean ari kumwe n'abandi bantu batanu bakahaguma kugeza saa kumi za mu gitondo. Ubuhamya bwa T bushyigikira ubwa D n'ubwo T we adasobanura by'umwihariko ko A ari mu bantu bari bihishe mu idari.
341. Umutangabuhamya wiswe D yabonye Kayishema mu bantu bagabye igitero. Mbere y'ibyabaye yari asanzwe azi Kayishema kubera ko, nka Perefefitura ya Kibuye, Kayishema yazaga mu nama zaberaga kuri Home Saint-. Jean. Ku itariki ya 15 Mata, uyu mutangabuhamya yabonye Kayishema hafi ya Home Saint-Jean mu modoka y'umweru. Ibivugwa n'uyu mutangabuhamya ku buryo Kayishema yahageze n'uburyo igitero cyagenze bishyigikirwa n'ubuhamya bw'abatangabuhamya banyuranye barimo A, B, C na F. Urugereko rusanga rwakwizera ibyo uyu mutangabuhamya wiswe D yavuze ko yabonye Kayishema, n'ibyo avuga ku ruhare Kayishema yagize muri icyo gitero.
342. Umutangabuhamya wiswe F yavuze ko yari imbere ya kiriziya ubwo Kayishema yahageraga. Yongeraho ko hagati ye n'abagabye igitero hari intera ntoya, bityo akemeza ko yabonye Kayishema. Nk'uko abisobanura, icyo gihe Kayishema yari yambaye « ikabutura y'umweru » kandi yitwaje inkota. Ibivugwa n'uyu mutangabuhamya ku buryo Kayishema yafashe ijamba akoresheje indangururamajwi bishyigikirwa n'ubuhamya bw'umutangabuhamya wiswe E. Umutangabuhamya wiswe F yari asanzwe azi Kayishema mbere y'ibyabaye, kandi atanga ibisobanuro birambuye ku ruhare rwa Kayishema muri icyo gitero. Urugereko rwasuzumye ubuhamya bwa F maze rusanga ibyo avuga ku byabaye ku itariki ya 17 Mata byakwizerwa, kandi bihuye n'ibivugwa n'abandi batangabuhamya.
343. Umutangabuhamya wiswe E yavuze ko yumvise Kayishema avugira mu ndangururamajwi nini maze agategeka abagabye igitero « kujya gukora »²⁰⁸. Nk'uko uyu mutangabuhamya abivuga, Kayishema yavugiye mu ndangururamajwi kugira ngo atange

²⁰⁸ Inyandikomvugo y'iburanisha, 16 Mata, urup. 156.

ubutumwa bwari buturutse i Kigali bwo gutsembatsemba Abatutsi, maze arangije anarashisha imbunda. Urugereko rusanga uyu mutangabuhamya asobanura uburyo Kayishema yageze ahantu hakorewe ubwicanyi. Rusanga kandi uyu mutangabuhamya yaramumenye, ndetse akaba yavuze uburyo Kayishema yagiye muri icyo gitero. Urugereko rusanga rwakwizera ubuhamya bwe kuri ibyo bintu byabaye. Byongeye kandi, uyu mutangabuhamya yari azi Kayishema nk'umuntu wigeze kuyobora ibitaro bya Kibuye mbere y'ibyabaye. Ubuhamya bwe ku byabaye bushyigikirwa n'ubw'abandi batangabuhamya. Cyakora, uyu mutangabuhamya wiswe E ni we wenyine uvuga ko Kayishema yarashe kugira ngo yereke abantu ko ubwicanyi butangiye. Kubera iyo mpamvu, Urugereko rushidikanya ko Kayishema ari we koko warashe amasasu yabaye imbarutso y'ubwicanyi. Urebye uko ibintu byari byifashe, uku gushidikanya ntigutangaje. Kubera ko abantu barasaga bashoboraga kwitiranywa bitewe n'ubwinshi bwabo ndetse n'abantu bakaba bari bafite icyoba, Urugereko ntirwafata umwanzuro uvuga ko ari Kayishema warashe. Cyakora, Urugereko rusanga kurasa byaratangiye nyuma y'itegeko Kayishema yari amaze gutanga. Urugereko rufashe umwanzuro uvuga, nta gushidikanya, ko Kayishema yategetse kandi ahamagarira abandi bantu kugaba igitero kuri kiriziya y'abagatorika.

Umwanzuro w'Urugereko

344. Urugereko rusanga ubuhamya bwatanzwe bugaragaza, nta gushidikanya, ko ku itariki ya 17 Mata 1994 Kayishema yari ku kigo kandi ko yitabiriye ubwicanyi bwahabereye uwo muni. Abatangabuhamya barimo T na G ni « abatangabuhamya bigenga » kubera ko nta wavuga ko barokotse bitewe n'uko batahigwaga mu bwicanyi. Ubuhamya bwabo bushyigikira ubwo abarokotse ubwicanyi batanze ku byabaye. Abatangabuhamya bose bavuze ko bari bazi Kayishema na mbere y'ibyabaye, kandi baramwerekanye mu iburanisha. Byongeye kandi, ibyabaye byakozwe ku manywa y'ihangu. Abahutu bagabaga ibitero bakoze ubwicanyi batikanga ko bazabihanirwa kubera ko abategetsi bo muri ako gace bari aho hantu banze kuburizamo ubwicanyi ahubwo bashishikariza abantu kubukora.

345. Ubwunganizi ntibwashoboye kwerekana ko abo batangabuhamya batakwemerwa cyangwa ko ubuhamya bwabo butakwizerwa ku ngingo z'ingenzi zibugize, cyane cyane aho bavuga ko babonye Kayishema mu gitero. Ukunyuranya kudakanganye kuboneka mu buhamya bwabo ntikwatuma Urugereko rushidikanya ko Kayishema yagiye muri ubwo bwicanyi.

Imyanzuro ishingiyeye ku byabaye

346. Ku byerekeranye no kuba Kayishema yaragiye mu bwicanyi bwabereye mu kigo, Urugereko rwemera ubuhamya bwa A, B, C, D, E, F, G na T.

347. Mu gika cya 25 cy'Inyandiko y'ibirego, havugwa ko ku itariki ya 17 Mata, muri kiriya kigo hari abantu babarirwaga mu bihumbi kandi badafite intwaro kandi benshi muri bo bari Abatutsi. Rushingiyeye ku bimenyetso byatanzwe, Urugereko rwa Mbere rw'Iremezo rwemera ko abantu babarirwaga mu bihumbi bari bagizwe n'abagabo, abagore n'abana, bari bahungiyeye kuri icyo kigo. Byongeye kandi, Urugereko rusanga abo bantu batari bafite intwaro kandi benshi muri bo bari Abatutsi.

348. Mu gika cya 26 cy'Inyandiko y'ibirego, havugwa ko bamwe muri abo Batutsi bagiye kuri icyo kigo babitegetswe na Kayishema. Kayishema akaba yarabikoze mu gihe yari azi ko aho hantu hagiye guterwa. Cyakora, Porokireri ntiyagaragaje ko Abatutsi bategetswe kujya ku kigo cyangwa ko Kayishema yabategetse kujyayo. Benshi mu batangabuhamya bagiyeyo ku bushake bwabo, abandi nk'uwiswe B bajyayo kubera ko kera ababyeyi babo bari barigeze guhungira ahantu nk'aho. Umutangabuhamya wiswe D ni we wenyine uvuga ko Kayishema yamutegetse kujya ku kiriziya²⁰⁹. N'ubwo ubwo buhamya bwakwizerwa, ntibuhagije kugira ngo Urugereko rube rwakwemerwa ibivugwa mu gika cya 26 cy'Inyandiko y'ibirego. Kubera izo mpamvu, Urugereko rusanze, nta gushidikanya, abagabo, abagore n'abana, bese bakaba bari Abatutsi, baragiye ku kigo ku bushake bwabo cyangwa kubera ko kera ababyeyi babo bari barigeze guhungira ahantu nk'aho.

²⁰⁹ Inyandikomvugo y'iburanisha, 14 Mata 1997, urup. 11.

349. Mu gika cya 27 cy'Inyandiko y'ibirego, havugwa ko abantu bagenzurwaga na Kayishema bagose ikigo bakabuza abantu kuhava mu gihe Kayishema yari azi ko hari igitero kigiye kuhagabwa. Urugereko rwa Mbere rw'Iremezo rusanga ubuhamya bwa A, B, C, E, na F bugaragaza ko impunzi zimaze guteranira mu kigo, aho hantu hagoswe n'abantu bategekwe cyangwa bagenzurwaga na Kayishema barimo abajandarume n'Interahamwe. Umutangabuhamya wiswe D asobanura uburyo abagabye igitero, bari mu mato, bagose agasozi kameze nk'akarwa icyo kigo cyubatseho. Umutangabuhamya wiswe B asobanura uburyo Interahamwe zitwaje imihoro n'amacumu zagose icyo kigo, naho umutangabuhamya wiswe C akavuga ko ku itariki ya 17 Mata 1994, abajandarume babujije abantu kuva mu kigo.
350. Urugereko rusanga nta gushidikanya ko Kayishema yari azi cyangwa ko yagombaga kumenya ko aho hantu hari hariyige guterwa. Mu by'ukuri, Kayishema yavuze ko yabonye amategeko aturutse i Kigali yo kwica Abatutsi kandi atangiza igitero ku itariki ya 17 Mata. Byongeye kandi, yanatanze amategeko kugira ngo icyo gitero gitangire. Ibyo bigaragaza rero ko Kayishema yabikoze abizi. Mbere y'ibitero byo ku itariki ya 17 Mata, abantu babonye Kayishema kuri kiriya kigo inshuro ebyiri, kandi akurikije ubwinshi bw'abagabye ibitero bitwaje intwari, yari azi cyangwa yagombaga kumenya ko hashoboraga kuba ubwicanyi ukurikije uko ibintu byari byifashe muri Perefegitura ya Kibuye muri kiriya gihe. Mu by'ukuri, kubera ko ku itariki ya 15 n'ya 16 Mata hari habaye udutero duto, Kayishema yagombaga kumenya ko aho hantu hashoboraga kugabwa ibindi bitero. Byongeye kandi, nk'uko bivugwa haruguru ku byerekeranye n'igika cya 28 cy'Inyandiko y'ibirego, ubwicanyi bwo ku kigo bwakurikiye ubwo ku Kiriziya yo ku Mubuga, aho Kayishema yari yagize uruhare rukomeye atangiza gahunda y'itsembatsemba muri Kibuye. Kubera izi mpamvu, Porokireri yagaragaje ibyo avugaga mu gika cya 27 cy'Inyandiko y'ibirego.
351. Mu gika cya 28 cy'Inyandiko y'ibirego, Porokireri avugaga ko ku itariki ya 17 Mata Kayishema yagiye ku kigo agategeka abagabye igitero gutera kandi na we ubwe akakitabira. Abatangabuhamya biswe A, B, C, D, E na F bavuze ko babonye neza Kayishema n'ubwo muri icyo kigo hari imbaga y'abantu bari bahahungiyeye. Urugereko

rwemera ko babonye Kayishema. Mu gufata uyu mwanzuro, Urugereko rwa Mbere rw'Iremezo ruzirikana ko abatangabuhamyanya bavugwa haruguru bose bari basanzwe bazi Kayishema mbere y'ibyabaye, kandi baranamwerekanye mu iburanisha. Byongeye kandi, ibivugwa byabaye ku manywa y'ihangu. Urugereko rwa Mbere rw'Iremezo rusanga, nta gushidikanya, ko ku matariki ya 15, 16 na 17 Mata Kayishema yagiye ku kigo, kandi ko mu gihe cy'ibitero impunzi zitashoboye kuva aho hantu kubera ko abageragezaga gucika bicwaga.

352. Urugereko rwa Mbere rw'Iremezo rusanga kandi nta gushidikanya ko Kayishema yagiye mu bwicanyi bwabereye muri icyo kigo ndetse akabugiramo uruhare rw'ingenzi. Kayishema yayoboye abagabye igitero abakura ku biro bya Perefegitura abajyana ku kigo cyabereyemo ubwicanyi. Yahamagariye kandi ashishikariza abagabye igitero bose gukora ubwicanyi. Ibyo yabikoze mu butumwa bwo kwica Abatutsi bwari buturutse i Kigali yabagejeje akoresheje indangururamajwi. Kayishema yayoboye kandi igikorwa cyo gutwika kiriziya, hanyuma igitero simusiga kigenjeje amaguru make, atema umuntu witwa Rutabana wari imbere mu kiriziya.
353. Mu gika cya 29 cy'Inyandiko y'ibirego, havugwa ko ibitero bayagabwe ku kigo byahitanye cyangwa bigakomeretsa abantu babarirwa mu bihumbi. Urugereko rusanga haragaragajwe, nta gushidikanya, ko ku munsu umwe igitero cya karundura cyagabweho no mu dutero duto twagendaga tugabwa kuri kiriya kigo, hishwe Abatutsi babarirwa mu bihumbi abandi benshi bagakomereka. Mu gufata uyu mwanzuro, Urugereko rwa Mbere rw'Iremezo rushingira ahanini ku buhamya bwa Dogiteri Haglund na Dogiteri Nizam Peerwani bahamagajwe na Porokireri nk'abatangabuhamyanya b'impuguke. Urugereko rusanga rero Porokireri yaragaragaje ibivugwa mu gika cya 29 cy'Inyandiko y'ibirego.
354. Ibivugwa mu gika cya 30 cy'Inyandiko y'ibirego bisuzumwa mu mutwe wa 6.1 hasi.

5.3.2 Ubwicanyi bwo kuri sitade ku Kibuye

Uko ibintu byari byifashe

355. Abatangabuhamya bavuze ibintu bibabaje cyane byerekeranye n'ubwicanyi bwabereye kuri Sitade ya Kibuye hagati muri Mata 1994. Abasirikare, abapolisi n'Interahamwe, bose b'Abahutu, bishe abasiviri b'Abatutsi babarirwaga mu bihumbi. Ubwo bwicanyi bwari kuri gahunda kandi bwibasiye imbaga bwamaze iminsi ibiri. Mu batangabuhamya harimo bane barokotse ubwo bwicanyi. Dogiteri Haglund wagiye kuri Sitade ya Kibuye muri Nzeri 1995 yarekanye amafoto y'aho hantu agaragaza sitade igizwe n'ikibuga kiriho ibyatsi biri ahantu hajya kungana n'ikibuga cy'umupira w'amaguru, hamwe na tiribine abantu bicaramo. Ku mpande eshatu, sitade izitije inkuta z'amatafari zifite uburebure bwa metero zigera kuri ebyiri, naho ku ruhande rwa kane hari agasozi ka Gatwaro. Amadarajya abantu bicaraho baje kureba ibibera muri sitade ari ku ruhande rumwe. Hari n'umuhanda uteganye n'uruhande rwa sitade rurebana n'agasozi ka Gatwaro.
356. Ku wa mbere tariki ya 18 Mata 1994, mu masaa saba cyangwa saa munani z'amanywa, abajandarume, abapolisi ba komine, abacungagereza n'Interahamwe baje baturutse mu cyerekezo cya rompuwe yo mu muji wa Kibuye, bagota sitade, maze batangira kwica Abatutsi bakoresheje ibyuka bihuma amaso, imbunda, n'amagerenade. Igitero cya mbere cyarangiyeye mu masaa kumi n'ebiri z'umugoroba. Bukeye, nyuma y'igikorwa cyo kwiyakira, abagabye igitero basubiyeyo kwica abarokotse. Urebye nta muburanyi uhakana ko buriya bwicanyi bwo kuri sitade bwabayeho. Mu buhamya bwe mu Rukiko, Kayishema ubwe yavuze ko ku itariki ya 18 Mata 1994 kuri sitade hagabwe igitero cya karundura²¹⁰, naho umutangabuhamya wiswe DO yavuze ko, agerereranyije mu bantu bari bahungiyeye kuri sitade, abagera ku 4.000 bahiciwe. Umutangabuhamya wiswe G, Umuhutu wo muri kariya gace kandi wafashije abandi mu gikorwa cyo guhamba imirambo basanze kuri sitade no mu nkengeri zayo, yavuze ko ku kibuga cya sitade hari huzuye imirambo, kandi ko bamaze iminsi itanu bayihamba, hakoreshejwe imashini. Bityo rero, Urugereko rwa Mbere rw'Iremezo rugomba gusa kureba niba Kayishema yari

²¹⁰ Inyandikomvugo y'iburanisha, 10 Nzeri 1998, urup. 32.

kuri sitade ku itariki ya 18 Mata 1994. Nirusanga yari ahari, rurareba niba hari uruhare yagize mu byahabereye. Rurasuzuma kandi niba undi muntu wese wari ukuriwe cyangwa wagenzurwaga na Kayishema hari uruhare yabigizemo.

Uruhare rwa Kayishema n'urw'abantu yari akuriye

357. Urugereko rugiyeye noneho gusuzuma ibimenyetso byerekeranye n'uruhare rwa Kayishema mu bwicanyi bwabereye kuri sitade. Muri make, abatangabuhamya bavuze ko Kayishema yaje mu modoka y'umweru ari ku isonga ry'itsinda ry'abantu bagabye igitero, maze abategeka gutangira ubwicanyi kandi abaha ikimenyetso arasa mu mbaga y'abantu. Kuba abatangabuhamya barabonye Kayishema bakamumenya bishimangirwa n'uko bari basanzwe bamuzi na mbere y'ibyabaye mu mwaka wa 1994. Umutangabuhamya wiswe I azi Kayishema kuva Uregwa akiri umwana, kandi uyu mutangabuhamya yari aturanye n'ababyeyi ba Kayishema. Mu by'ukuri, mu buhamya bwe mu Rukiko, Kayishema yivugira ko umutangabuhamya wiswe I yari inshuti y'umuryango we. Umutangabuhamya wiswe K yari azi Kayishema mbere y'uko Uregwa aba Perefefu, kandi yakundaga kumubona iyo yabaga yagiye kwivuzwa. Umutangabuhamya wiswe M yavuze ko kuva akiri umwana azi Kayishema, ariko yemera ko Kayishema we atamuzi neza. Umutangabuhamya wiswe L we ntiyari azi Kayishema mbere. Yavuze ko yamumenyeye kuri sitade kubera ko abandi bantu bamubwiye ko ari we. N'ubwo hari aho bagenda banyuranya mu buhamya bwabo, abatangabuhamya biswe I, K, L na M bavuze ibintu bimwe ku byabaye no ku ruhare rwa Kayishema by'umwihariko. Ubuhamya bwa I ari na bwo bwuzuye kandi busobanutse kurusha ubundi, bugiye gusuzumwa birambuye hasi, nibirangira hakurikireho ubwa K, L, M, F, na NN.

Abatangabuhamya

Umutangabuhamya wiswe I

358. Umutangabuhamya wiswe I ni umusaza w'umubaji. Hagati muri Mata 1994, ku munsu uri hagati y'itariki ya 15 n'ya 20, uyu mutangabuhamya n'abandi bantu 17 bo mu muryango we bavuye mu rugo rwabo bagiyeye gushaka aho bahungira ubwicanyi bwariho gukorerwa

muri Perefegitura ya Kibuye yose. Uyu mutangabuhamyi yavuze ko uwari konseye wa Segiteri ye yamubwiye kujya kuri sitade aho Abatutsi bari kuba bafite umutekano. Uyu mutangabuhamyi asobanura ko bagiye kuri sitade bakahamara iminsi itatu cyangwa ine. Yongeraho ko ahagera, yasanze nta muntu urinze imiryango, ko ariko nyuma yaho gato abajandarume batangiyeye kugenzura abashoboraga gusohoka, ndetse bakanambura intwari abinjira. Uyu mutangabuhamyi yavuze ko yiboneye Interahamwe zica abantu bageragezaga gusohoka. Muri Sitade nta nkwi zari zihari, ndetse n'amazi bari barayafunze, bityo Abatutsi bahahungiraga bakaba bari batunzwe n'inyama mbisi z'inka. Mu mpunzi harimo abarwayi n'inkomere, ariko abageragezaga kujya kwivuza ku bitaro byari muri metero nkeya uvuye kuri sitade, bagarurwaga muri Sitade bakubitwa cyangwa bakicwa. Impunzi zashoboraga gusa kubona ahantu zicara ariko ntizari zifite aho zikinga izuba cyangwa imvura, kandi ubutegetsi ntacyo bwazifashaga. Amaze igihe gito ahageze, uyu Mututsi yumvise abandi bantu bavuga ko kuri kiriziya yo ku Mubuga no kuri Home Saint-Jean hari habaye ubwicanyi.

359. Mu buhamya yatanze mu Rukiko, umutangabuhamyi wiswe I yavuze uko yumvaga ameze muri aya magambo « Numvaga nta muntu washobora kwica abantu 15.000, nkumva kandi umutegetsi uhagarariye abantu benshi nk'abo atatinuka kubica kubera ko abo bantu bakoreraga ubutegetsi, batanga imisoro, imfashanyo bakanasana n'imihanda ... Numvaga rero nta muntu wari gufata imbunda cyangwa umuhoro ngo atwice atumare. Nibwiraga ko nta mutegetsi wakora ibintu nk'ibyo »²¹¹.
360. Uyu mutangabuhamyi wiswe I yavuze ko ku itariki ya 18 Mata mu masaa munani z'anywe, abasiviri bitwaje intwari, abasirikare, abantu bigeze kuba abasirikare n'abacungagereza bitwaje imbunda, amahiri n'imihoro baje baturuka mu cyerekezo cya rompuwe yo ku Kibuye. Abo bantu bigabanyijemo amatsinda maze bagota Sitade, bafata ibirindiro ku dusozi. Uyu mutangabuhamyi wiswe I yavuze ko aho yari ku madarajya abantu bicaraho, yarebaga Kayishema neza aho yari ahagaze iruhande rw'umuryango munini wa Sitade, hafi y'inzu ya MRND. Aho yari ahagaze, Kayishema na we yarebaga neza imbere muri Sitade. Uyu mutangabuhamyi yabonye Kayishema yaka umuntu

²¹¹ Inyandikomvugo y'iburanisha, 28 Mata 1997, urup. 49.

imbunda maze arasa imbere muri Sitade mu mbaga y'abantu nk'utanga ikimenyetso gitangiza igitero, maze asubiza imbunda umujandarume. Amasasu abiri Kayishema yarashe yahamije abantu babiri, n'uko ubwicanyi buratangira. Abagabye igitero bateye muri Sitade ibyuka bihuma amaso n'amagerenade, banarasamo amasasu. Asobanura uko ibintu byari byifashe, uyu mutangabuhamya yagize ati «bamwe barapfuye, abandi barakomereka ku buryo batabashaga guhaguruka. Hari abana bariraga kubera ko bari bakubiswe, abandi bavirirana cyangwa bashaka amazi». Ubwicanyi bwahagaze mu masaa kumi n'ebyiri cyangwa saa kumi n'ebyiri n'igice z'umugoroba. Igitero kimaze kurangira, umutangabuhamya wiswe I yumvise abagabye igitero bari bateraniye mu kabari kari iruhande rwa Sitade banywa kandi babyina. Kuri uwo muni wa mbere, uyu mutangabuhamya ntiyabonye abagabye igitero binjira muri Sitade. Abantu bageragezaga guhunga bicishwaga ibisongo by'imigano. Umutangabuhamya wiswe I yamenye ko abagore be babiri n'abana be 15 bari bazanye na we muri Sitade bishwe uwo muni. Mu ijoro ryo ku itariki ya 18 Mata, uyu mutangabuhamya yabashije gucika, ahunga yerekeza iya Karongi.

361. Ubwunganizi buvuga ko mu buhamya bwanditse yatanze mbere abuha abapererezi, mbere y'uko atanga ubuhamya mu Rukiko, umutangabuhamya wiswe I atavuga ko yabonye ba bantu babiri bishwe n'amasasu Kayishema yarashe atangiza ubwicanyi. Uyu mutangabuhamya yemera ko n'ubwo yabonye Kayishema arasa amasasu agahamya bariya bantu babiri, atazi niba abo bantu barapfuye. Urugereko rwa Mbere rw'Iremezo rwemera ubuhamya buvuga ko amasasu yarashwe na Kayishema yafashe abantu babiri bari bahungiye muri Sitade kandi ibyo uyu mutangabuhamya yavuze bishyigikirwa n'ibivugwa n'uwiswe M.

Abatangabuhamya biswe K, L, na M

362. Abatangabuhamya biswe K, L na M na bo ni Abatutsi bahungiye kuri sitade kandi barokotse ubwicanyi bwo ku itariki ya 18 Mata. Ubuhamya bwabo bwerekeranye n'uburyo bubabaje abantu babagamo muri Sitade n'ukuntu abajandarume babuzaga abantu gusohoka, buhuye n'ubw'umutangabuhamya wiswe I. Byongeye kandi, aba

batangabuhamya bavuze ku kintu cyabaye mu gitondo cyo ku itariki ya 18 Mata. icyo gihe, umugabo w'umuzungu yatangiye kubara abantu bari muri Sitade kugira ngo abazanire imfashanyo, ariko Kayishema yahagera ari kumwe n'abajandarume akamushyiraho iterabwoba ko yamugirira nabi aramutse afashije impunzi. Abatangabuhamya bose uko ari batatu bavuze ko n'ubwo batumvaga ibyo Kayishema yavuganaga n'uwo muzungu mu gifaransa, abandi bantu babasemuriye muri make mu kinyarwanda.

363. Kimwe n'umutangabuhamya wiswe I, abatangabuhamya biswe K, L na M bavuze ko ku itariki ya 18 Mata mu masaa saba cyangwa saa munani z'amanywa, Kayishema yaje aturuka mu cyerekezo cya rompuwe yo ku Kibuye ari kumwe n'Interahamwe, abajandarume, abapolisi ba koline n'abacungagereza. Aba batangabuhamya babonye Kayishema ajya guhagarara imbere y'umuryango munini ahantu hateganye n'inzu ya MRND, maze ateguka ko ubwicanyi butangira. Abatangabuhamya biswe K na L bongeraho ko icyo gihe Kayishema yari afite inkota, kandi ko abagabye igitero baririmbaga indirimbo y'ikinyarwanda irimo amagambo avuga ngo « mubatsembatsembe, mubatsembatsembe ». Aba batangabuhamya banavugaga ko abagabye igitero bagose Sitade, bagakoresha ibyuka bihuma amaso, amagerenade n'amasasu mu kwica abantu bari muri Sitade ariko ntibinjiremo imbere.
364. Umutangabuhamya wiswe M yavuze inkuru ijya gusa n'uy'uwiswe I ku byerekeranye no kuba Kayishema yararashe amasasu muri Sitade. Uwo mutangabuhamya wiswe M yavuze ko Kayishema yatse umujandarume imbunda akarasa amasasu abiri muri Sitade agahamya abantu babiri, maze akarasa no mu kirere rimwe, nuko ubwicanyi bugatangira. Cyakora, abatangabuhamya biswe K na L bavuze ko batabonye Kayishema arasa muri Sitade, ko ahubwo bumvise ateguka abajandarume ngo « murase kuri izi mbwa z'Abatutsi ». Uku kunyuranya mu buhamya kurumvikana iyo umuntu azirikanye ko I na M barebaga ibiba bari hagati ku madarajya muri tiribine, mu gihe K na L bo bari imbere muri Sitade ariko hafi y'umuryango munini. Iyo bufatiwe hamwe, ubuhamya bw'aba batangabuhamya bugaragaza ko Kayishema yabanje gutegeka abajandarume kurasa ku Batutsi, hanyuma agashikuza imbunda y'umwe muri bo maze akarasa ubwe amasasu abiri muri Sitade bisa n'aho yashakaga gutanga urugero no gutangiza ubwicanyi. Kuba

abatangabuhamya biswe K na L batarabonye Kayishema arasa birumvikana kubera ko barimo bahunga, nyuma yo kumva Kayishema atanga amategeko yo kurasa. Mu by'ukuri, umutangabuhamya wiswe K yavuze ko amaze kumva Kayishema atanga itegeko ryo kurasa, yahise ava hafi y'umuryango yirukira inyuma muri Sitade; umutangabuhamya wiswe L we yavuze ko amaze kumva Kayishema atanga itegeko, yirutse ajya aho abantu bo mu muryango we bari, bityo ntiyongera kubona Kayishema. Abatangabuhamya biswe K, L, na M bavuze ko ubwicanyi bwakomeje kugeza saa kumi n'ebiyiri cyangwa saa kumi n'ebiyiri n'igice z'umugoroba. Umutangabuhamya wiswe O, akaba ari umudogiteri w'Umuhutu, avuga ko yumvise ubwicanyi butangira havuga amasasu n'amagerenade mu masaa saa cyenda z'amanywa, maze bugakomeza kugeza bwije.

365. Hari ibimenyetso bike byerekeye ubwicanyi bwo mu gitondo cyo ku itariki ya 19 Mata. Umutangabuhamya wiswe K yavuze ko saa kumi n'ebiyiri za mu gitondo, we n'abandi bantu bavuye kuri sitade bagahungira ku gasozi ka Gatwaro. Bahavuye kubera ko bari babonye abagabye igitero bagarutse basa n'abaje guhora hoza, bakoresheje intwaro gakondo, abantu bashoboraga kuba barokotse. Ubwo yarimo guhunga, uyu mutangabuhamya yabonye abagabye igitero binjira muri Sitade, maze yumva urusaku n'imiborogo. Mu buhamya bwabo, K, L na M ntibavuze ko Kayishema yari kuri sitade kuri iyo tariki ya 19 Mata.

Abatangabuhamya biswe F na NN

366. Abatangabuhamya biswe F na NN barebaga ibyabaye bari ahantu bari bihishe hanze ya Sitade. Muri rusange, ubuhamya bwabo buhura n'ubwa I, K, L na M, ariko bukagira n'ibyo butandukaniraho. Umutangabuhamya wiswe F yavuze ko yarokotse ubwicanyi bwo ku kiriziya y'abagatorika no kuri Home Saint-Jean, maze ku itariki ya 17 Mata, agahungira ku gasozi ka Gatwaro aho yarebaga Sitade neza. Uyu mutangabuhamya yabonaga ibyabereye kuri sitade ku itariki ya 18 Mata hamwe n'ibyo Kayishema yahakoze birimo kurasa ya masasu yo gutangiza ubwicanyi. Cyakora, uyu mutangabuhamya yavuze ko Kayishema yahageze hagati ya saa tatu n'igice na saa yine za mu

gitondo, kandi F yavuze ko agereranyije bahamaze amasaha nk'abiri mbere y'uko ubwicanyi butangira. F avuguruza abandi batangabuhamya akavuga ko ku itariki ya 18 Mata abicanyi binjiye muri Sitade, bagatangira gutemagura Abatutsi. Uku kwitiranya ibintu kugaragara mu buhamya bwa F gushobora kuba guterwa n'uko ibintu byari byifashe hamwe n'uko yari ameze mu mutwe we igihe yarebaga ibyabaga. Ku kibazo cyo kumenya icyo yakoze ubwicanyi butangiye, F agira ati «Narumiwe. Nataye umutwe burundu. Sinababwira ibyo nabonye byerekeranye n'ubwicanyi kubera ko benshi mu bantu bo mu muryango wanjye bari muri Sitade, barimo kwicwa »²¹².

367. Umutangabuhamya wiswe NN yavuze ko ku itariki ya 18 Mata yari yihishe hagati y'amazu abiri, nko muri metero zigera kuri 40 uvuye aho Kayishema yahagaze iruhande rw'umuryango munini wa Sitade. NN yavuze ko mbere yo kurasa muri Sitade, Kayishema yabanje kwica umwana w'Umututsi na nyina. Uyu mutangabuhamya yavuze ko icyo gihe, Kayishema yashikuje uwo mwana amwambura nyina, maze afata uwo mwana akaguru kamwe amucuritse, ahereza akandi kaguru umusirikare, maze asatura uwo mwana mo ibice bibiri akoresheje inkota ahereye hejuru agana hasi. Nk'uko NN abivuga, Kayishema yarashe nyina w'uwo mwana ubwo yirukaga agana ku muryango wa Sitade. Urugereko rwa Mbere rw'Iremezo rusanga NN yarakurikiranye ibyabaga ari ahantu hatandukanye n'aho abandi batangabuhamya bari bari, ibyo bikaba byasobanura impamvu inkuru ye inyuranye n'iz'abandi batangabuhamya. Byongeye kandi, ibimenyetso bigaragaza ko Kayishema yageze ku muryango munini akikijwe n'abajandarume n'Interahamwe, akaba ari yo mpamvu igihe Kayishema yicaga uwo mwana, abandi batangabuhamya batamubonye kubera ko yari akingirijwe n'abamukikije. Cyakora, abatangabuhamya bari kuri sitade bavuze bose ko barebaga Kayishema neza ubwo yahageraga, bityo bikaba bitumvikana ukuntu batavugaga ishyano nka ririya mu buhamya bwabo. Byongeye kandi, iyo Kayishema abanza kurasa nyina w'umwana mbere y'uko ajya ku muryango munini aho yari ahagaze arasa amasasu abiri muri Sitade, abandi batangabuhamya bari kubibona. Nyamara ubuhamya bwabo bugaragaza ko batabibonye. Kubera izo mpamvu zose, Urugereko rwa Mbere rw'Iremezo ntirushingira ku buhamya

²¹² Inyandikomvugo y'iburanisha, 24 Mata 1997, urup. 133.

bwa F na NN ku byerekeranye n'ubwicanyi bwabereye kuri sitade ku itariki ya 18 Mata 1994.

Ibimenyetso bishinjura

368. Mu myiregurire ye, Kayishema avuga ko yari yihishe, bityo akaba ataragiye kuri sitade igihe buriya bwicanyi bwahakorerwaga. Cyakora, Kayishema avuga ko rimwe nyuma y'itariki ya 13 Mata yasuye abantu bari bahungiye kuri sitade mbere y'uko bicwa. Agira ati « Yego nagiyeyo, ariko amateka y'ubuzima bwanjye mu kazi arasobanutse. Menyereye ibibazo nk'ibi. Iyo hari abantu benshi nka bariya, nzi kubashyira hamwe, gushakira umuti ibibazo byabo, kubaganyamo amatsinda bitewe n'ibyo bakeneye . . . ». Mu yandi magambo, Kayishema avuga ko yagiye kuri sitade kugira ngo arebe uko ibintu byifashe. Cyakora, ibyo Kayishema avuga aha bivuguruza ibikubiye mu nyandikomvugo yakozwe n'abapererezi bo mu Biro bya Porokireri. Abo bapererezi bamubajije niba kuva ku itariki ya 7 Mata 1994 kugera intambara irangira yarigeze na rimwe ajya kuri sitade, Home Saint-Jean cyangwa ku kiriziya yo ku Mubuga, maze asubiza atsemba ngo « oya ». Mu ibaza rinyomoza bamubajije ibibazo kuri uku kwivuguruza, maze Kayishema asubiza ko yahakanye kubera ko yakekaga ko umupererezi yamubazaga niba yarajyaga aho hantu buri muni²¹³. Ku byerekeranye n'abajandarume barindaga imiryango ya sitade bakanagenzura abantu basohokaga n'abinjiraga, Kayishema avuga ko ibyo « ari ukuri kandi ko bisanzwe ».
369. Ubwunganizi bwabyukije ibindi bibazo byoroheje. Bwabajije impamvu abo Batutsi bari aho ari benshi cyane batarwanyije abajandarume bageraga kuri bane bari barinze imiryango, ngo bacike mbere y'itariki ya 18 Mata. Abatangabuhamya bashubije, batavuguruzanya, ko abajandarume bari bafite intwari, mu gihe impunzi zo nta zo zari zifite, bityo rero, abari kugerageza guhunga bakaba bari kwicwa. Ubwo bwoba busa n'ubwumvikana cyane cyane iyo umuntu azirikanye ibimenyetso bigaragaza ko na mbere yaho, Abatutsi bari bahungiye muri sitade kubera amahano yaberaga muri Perefegitura ya Kibuye yose, kandi ko hari abari bishwe bagerageza kuva muri sitade.

²¹³ Reba Ikimenyetso gihamya n° 350C (b) cyatanzwe na Porokireri.

370. Ubwunganizi bunavuga ko nta bimenyetso bitaziguye biriho bigaragaza ko Kayishema yategetse ko bafunga amazi yajyaga muri Sitade nk'uko abatangabuhamya bashinja bashaka kubyumvikanisha. Urugereko rwa Mbere rw'Iremezo rwemeranya n'Ubwunganizi kuko, n'ubwo bigaragara ko nta mazi yari muri robine zo muri Sitade, nta bimenyetso bitaziguye bigaragaza ko Kayishema ari we wategetse ko bafunga ayo mazi.

Imyanzuro y'Urugereko ishingiyeye ku byabaye

371. Ku byerekeranye n'uruhare Kayishema yagize mu bwicanyi bwakorewe muri Sitade, Urugereko rwa Mbere rw'Iremezo rwemeye ubuhamya bwa I, K, L na M. Mu ibaza rinyomoza, urebye aba batangabuhamya bose uko ari bane bashimangira ibyo bavuze mu ibaza ry'ibanze.

372. Mu gika cya 32 cy'Inyandiko y'ibirego, havugwa ko kugeza ku itariki ya 18 Mata muri Sitade hari hateraniye abantu babarirwaga mu bihumbi badafite intwaro, benshi muri bo ari Abatutsi. Ubwunganizi buvuga ko abatangabuhamya bashinja batagiye bahuriza ku mubare w'Abatutsi bari muri Sitade. Ibigereranyo abo batangabuhamya bagiye batanga biri hagati y'abantu 5.000 na 27.000. Urugereko rwa Mbere rw'Iremezo rusanga kuba badahuriza ku mubare umwe bitabuza ubuhamya bwabo kwizerwa. Ruzirikana ko mu Nyandiko y'ibirego havugwa gusa ngo « abantu babarirwaga mu bihumbi bagizwe n'abagabo, abagore, n'abana bari bahungiyeye muri Sitade yo mu muji wa Kibuye ». Urugereko rwemeranya ibyo bariya batangabuhamya bavuze ko muri Sitade hari hahungiyeye abantu babarirwaga mu bihumbi bagizwe n'abagabo, abagore n'abana. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rusanze ize mpunzi zari zigizwe ahanini n'Abatutsi kandi ko nta ntwaro zari zifite uretse gusa abantu bake muri zo bari bafite imihoro babagishaga inka kugira ngo babone ikibatunga.

373. Mu gika cya 33 cy'Inyandiko y'ibirego, havugwa ko zimwe mu mpunzi zahungiyeye kuri sitade kubera ko Kayishema yazitegetse kujyayo, amaze kumenya ko hariye kugabwa igitero. Cyakora, Porokireri ntiyagaragaje ibyo bintu, ahubwo abatangabuhamya hafi ya bose barabivuguruza.

374. Mu gika cya 34 cy'Inyandiko y'ibirego, havugwa ko Kayishema amaze kumenya ko kuri sitade hagiye kugabwa igitero, abantu yagenzuraga bagose iyo Sitade babuza impunzi kuhava. Ubuhamya bwa I, K, L na M buvugwa haruguru bugaragaza bihagije ko impunzi zimaze kugera muri Sitade, iyi Sitade yagoswe n' abantu bagenzurwaga na Kayishema barimo n'abajandarume. Abatangabuhamya biswe I, K, L, M na O bavuze ko nko kuva ku itariki ya 16 Mata 1994 abajandarume batangiye kubuza abantu gusohoka muri iyo Sitade. Kayishema na we yemera ko abajandarume bagenzuraga abinjira n'abasohoka muri Sitade. Byongeye kandi, ubwacanyi bwakorewe kuri sitade bwaje bukurikira ubwabereye kuri kiriziya yo ku Mbuga no ku kigo kigizwe na kiriziya y'abagatorika na Home Saint-Jean. Mu by'ukuri, hariho gahunda yateguwe yo gutsemba abantu, kandi ibyo bigaragaza neza ko hariho igitekerezo cyihariye cyo kurimbura Abatutsi bose cyangwa igice cyabo, muri Perefegitura ya Kibuye. Ibimenyetso byatanzwe bigaragaza ko Kayishema yagize uruhare rukomeye muri iyo gahunda. Kubera izo mpamvu, Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko ubwo Abatutsi babuzwaga kuva kuri sitade, Kayishema yari azi cyangwa yari afite impamvu zo kumenya ko igitero cyari kigiye kugabwa kuri iyo Sitade.
375. Mu gika cya 35 cy'Inyandiko y'ibirego havugwa ko ku itariki ya Mata 18 Kayishema yagiye kuri sitade agatangiza igitero, agategeka abantu kukigaba ndetse na we ubwe akacyitabira. Hanavugwa ko mu ijoro ryo ku itariki ya 18 Mata, abagabaga ibitero bishe Abatutsi bageragezaga kuva aho hantu. N'ubwo hari imbaga y'abantu, abatangabuhamya biswe I, K, L, na M bavuze ko biboneye Kayishema neza, K na L bo banongeraho ko bamwiyumviye. Urugereko rwa Mbere rw'Iremezo rusanze ubuhamya bw'aba batanga-buhamya ku birebana no kuba barabonye Kayishema no kuba yaragize uruhare muri kiriya gitero bukwiye kwemerwa. Mu bintu nka biriya byabereye kuri sitade, ntibitangaje kumva ko abantu bari imbere muri Sitade bakoraga uko bashoboye kose ngo babone kandi bumve ibyaberaga hanze mu gihe ku muryango munini wayo hari hamaze kwisuka imbaga y'abagabaga ibitero. Amafoto yatanzwe nk'ibimenyetso gihamya agaragaza ko abatangabuhamya biswe I na M aho bari muri Sitade ku madarajya yo muri tiribine bashoboraga kubona ku muryango munini wa Sitade banyujije amaso hejuru y'inkuta zayo. Abatangabuhamya biswe K na L, bari muri Sitade, hafi y'umuryango munini wayo

basobanura ukuntu n'ubwo hagati yabo na Kayishema hari abantu benshi, bashatse kumenya uwo muntu wari umaze kuza uwo ari we kandi bakabigeraho. Abatangabuhamya bose babonye Kayishema, bamubonye ari ku manywa y'ihangu. Mu kwemeza ibi bintu, Urugereko rwa Mbere rw'Iremezo rurashingira ku kuba mbere y'ibyabaye, I, K na M bari basanzwe bazi Kayishema, bakaba baranamwerekanye mu iburanisha. N'ubwo mbere ya buriya bwicanyi bwo kuri sitade, umutangabuhamya wiswe L atari azi Kayishema, mu gihe biriya bintu byabaga abantu bamubwiye ko ari Perefeyi Kayishema. Bityo rero, ibyo L avuga ko yabonye Kayishema akamumenya ni ibintu Urugereko rwa Mbere rw'Iremezo rugomba gusuzumana ubushishozi bwinshi. Ubuhamya bwa L buhuye cyane n'ubw'abandi batangabuhamya bashinja, cyane cyane ubw'uwiswe K ku buryo Urugereko rwa Mbere rw'Iremezo rwemeye ko uwo muntu umutangabuhamya L avuga ari umwe n'uwo abandi bavugaga. Kubera icyo mpamvu, Urugereko rusanga ubuhamya bwa L bushyigikira ubwa I, L, K na M ku byerekeranye no kuba Kayishema yaragize uruhare muri buriya bwicanyi bwakorewe kuri sitade.

376. Urugereko rwa Mbere rw'Iremezo rufashe umwanzuro uvuga, nta gushidikanya, ko ku itariki ya 18 Mata 1994 Kayishema yagiye kuri sitade agategeka abajandarume, abapolisi ba Komine n'Interahamwe kugaba igitero ku bantu bari bahahungiyeye. Byongeye kandi, mu gutangiza icyo gitero Kayishema yafashe imbunda arasa kuri abo Batutsi bari muri Sitade maze ahanyamo babiri. Ibimenyetso byatanzwe bigaragaza ko abagabye icyo gitero cyo ku itariki ya 18 Mata bakoresheje ibyuka bihuma amaso, imbunda n'amagerenade, kandi ko ku itariki ya 19 Mata ubwo bwicanyi bwakomeje. Cyakora, ibimenyetso byatanzwe ku byabaye ku itariki ya 19 Mata ntibihagije kugira ngo bibe byakwerekana abateye kuri sitade uwo munsu abo ari bo cyangwa ngo byerekane ko Kayishema yari ahari. Urugereko rwa Mbere rw'Iremezo rusanga kandi mu gihe ibyo bitero byabaga, bamwe mu Batutsi bageragezaga guhunga, baricwaga.
377. Hari ibimenyetso bivuguruzanya ku byerekeranye no kumenya niba Abatutsi barabujijwe kuva muri Sitade mu ijoro ryo ku itariki ya 18 Mata no mu gitondo cyo ku ya 19 Mata. Urugereko rwa Mbere rw'Iremezo rusanga Porokireri ataragaragaje ibyo avugaga kuri iyi ngingo.

378. Mu gika cya 36 cy'Inyandiko y'ibirego havugwa ko biriya bitero byagabwe kuri sitade byahitanye abantu babarirwa mu bihumbi abandi bagakomereka. Rushingiye ku bimenyetso rwashyikirijwe, Urugereko rwa Mbere rw'Iremezo rwemera ko ibitero byagabywe kuri sitade muri iyo minsi ibiri byahitanye Abatutsi babarirwa mu bihumbi bagizwe n'abagabo, abagore n'abana, abandi bagakomereka. Rwemera kandi ko benshi mu bakoze ibyo bikorwa bari Abahutu.
379. Ibirego bivugwa mu gika cya 37 cy'Inyandiko y'ibirego birasuzumwa hasi mu gice VI.

5.3.3 Ubwicanyi bwo ku kiriziya yo ku Mubuga

Uko ibintu byari byifashe

380. Nk'uko amateka abigaragaza, mu bihe by'imidugararo, kiriziya yo ku Mubuga, kimwe n'ahandi hantu hose hasengerwaga mu Rwanda, yafatwaga nk'ahantu h'ubuhungiro abantu bajyaga bakahagirira umutekano. No mu mwaka wa 1994 rero ni ko byagenze. Porokireri avuga ko hafi y'itariki ya 14 Mata 1994, abantu babarirwa mu bihumbi, badafite intwara, biganjemo Abatutsi kandi bagizwe n'abagabo, abagore, n'abana, bahungiye kuri Kiriziya ya Mubuga kubera ibitero rusange bya kinyamaswa byarimo kugabwa muri Perefegitura ya Kibuye yose. Porokireri avuga ko ku itariki ya 14 Mata, abategetsi bo muri iyo perefegitura barimo Kayishema na Burugumesitiri Sikubwabo baje kuri iyo kiriziya iri muri Komine ya Gishyita bari kumwe n'abajandarume. Umutangabuhamya wabyiboneye²¹⁴ avuga ko Sikubwabo yavuze ko agiye gutsemba Abatutsi. Mu minsi mike yakurikiyeho, abagabye ibitero bishe abantu babarirwaga mu bihumbi. Abantu mbarwa ni bo barokotse ubwo bwicanyi bwakorewe kuri iyo kiriziya kandi ubwo bwicanyi ni bumwe muri bwinshi bwakozwe muri Perefegitura ya Kibuye.
381. Nta muburanyi uhakana ko ku kiriziya yo ku Mubuga habereye ayo marorerwa. Mu by'ukuri, abatangabuhamya banyuranye barimo n'abiboneye ibyabaye, nk'umubikira witwa Julie Ann Farrington, umutangabuhamya ushinjura wiswe DP, na Kayishema ubwe, bemeza ko nyuma y'ubwo bwicanyi bwabereye ku kiriziya yo ku Mubuga

²¹⁴ Inyandikomvugo y'iburanisha, 3 Werurwe 1998, urup. 46.

n'iruhande rwayo cyangwa hamwe muri aho hantu hombi hari imirambo n'ibisigazwa by'imibiri y'abantu cyangwa kimwe muri byo. Abatangabuhamyaga bagiyeyo hashize igihe gito ubwo bwicanyi bukozwe bavuga ko muri ako gace hari umunuko ukabije kubera imirambo yari itangiye kubora. Byongeye kandi, Dogiteri Haglund na we avuga ko ku itariki ya 20 Nzeri 1995 yagiye kuri iyo kiriziya gukora iperereza ku hantu habiri havugwaga ko hari ibyobo byahambwemo abantu. Mu buhamya bwe mu Rukiko, avuga ko yasanze ibisigazwa by'imibiri y'abantu bari barajugunywe muri kimwe muri ibyo byobo yarataburuwe igashyingurwa hafi aho, naho aho icyobo cya kabiri cyari kiri asanga ubutaka bwaho bwariye, ibyo bikaba byaragarazaga ko ubutaka bwaburagurwe hejuru. Yagerageje gusuzuma uko byifashe muri icyo cyobo cya kabiri ariko asanga ubutaka bwaho bukomeye cyane ahitamo kutirirwa akomeza iryo perereza yahakorera. Kubera ko ibimenyetso bigaragaza ko hafi ya kiriziya yo ku Mubuga habereye ubwicanyi bitigeze bivuguruzwa, ikibazo gisigaye ni ukumenya niba Kayishema n'abantu yagenzuraga bari aho hantu igihe ubwo bwicanyi bwabaga ndetse bakanabugiramo uruhare²¹⁵. Urugereko rwa Mbere rw'Iremezo rugiyeye gusuzuma birambuye uruhare Kayishema n'abantu yari akuriye bagize mu bwicanyi bwabereye kuri iyo kiriziya yo ku Mubuga.

Ibimenyetso bishinja

382. Abatangabuhamyaga batanu bashinja biboneye ibyabaye ari bo V, W, OO, PP na UU batanze ubuhamyaga mu Rukiko ku bintu byabaye mbere y'ubwicanyi bwo ku kiriziya yo ku Mubuga n'igihe bwariye kuba, hagati muri Mata 1994²¹⁶. N'ubwo bagenda banyuranya ku tuntu duta, aba batangabuhamyaga batanu biboneye ibyabaye babivugaga mu buryo bukurikira : Bavuze ko hagati y'itariki ya 9 n'ya 14 Mata 1994, ubwo Abatutsi

²¹⁵ Porokireri yahamagaje abatangabuhamyaga bavugaga ko Ruzindana yari ku kiriziya yo ku Mubuga akanitabira ubwicanyi bwabereye. Cyakora, Urugereko rwa Mbere rw'Iremezo ntirusuzuma ubuhamyaga bwabo kuko mu Nyandiko y'ibirego Clment Kayishema ari we wenyine ushinjwa ibyaha byakorewe aho hantu.

²¹⁶ Mu buhamya yatanze mu Rukiko, OO avugaga ko ku itariki ya 17 Mata 1994 ubwicanyi bwakomeje. Hasi mu mutwe wahariwe Isesengura n'Imyanzuro ku bwicanyi bwabereye ku Kiriziya ya Mubuga, Urugereko rurasuzuma itandukanirizo rishobora kuba riri hagati y'ubuhamyaga bwe n'ubw'abandi batangabuhamyaga.

- babarirwaga mu bihumbi bagendaga baza bagateranira hariya hantu, aba batangabuhamya bumvise ko Perefe yakoranye inama n’umupadiri w’Umuhutu maze bagategeka ko izo mpunzi zitagomba guhabwa ibiribwa. Uwo mupadiri w’Umuhutu wari warasimbuye uw’Umututsi wari aho ku kiriziya yo ku Mbuga yanimye izo mpunzi amazi, azibwira ngo « Nimupfe kuko igihe cyanyu cyageze»²¹⁷.
383. Mu gika cya 40 cy’Inyandiko y’ibirego havugwa ko « Abagabo, abagore n’abana batangiye gukoranira mu kiriziya, Clément Kayishema yahaje inshuro zinyuranye», nuko ku itariki ya 10 Mata cyangwa hafi yayo ahazana abajandarume maze bakajya babuza impunzi zari mu kiriziya kuhava. Abatangabuhamya bashinja bose bavuze ko abajandarume bari ku mbuga ya kiriziya bazengurukaga ikigo cyayo kugira ngo abahahungiyeye batahava. Umutangabuhamya wiswe V yavuze ko mbere y’ibyo bitero no mu gihe byabaga, Kayishema yari kumwe n’abajandarume, naho PP we yavuze ko ku itariki ya 13 Mata yabonye abajandarume hafi ya kiriziya. Umutangabuhamya wiswe UU yavuze ko ku itariki ya 15 Mata, Kayishema yazanye n’ « abasirikare ». Abandi batangabuhamya batatu biboneye ibyabaye bavuze ko muri kiriya gihe cyose impunzi zazaga zikirundanya aho hantu kandi ko no mu gihe ubwicanyi bwabaga hari abajandarume. Nk’urugero, umutangabuhamya wiswe V yavuze ko abajandarume bahageze ku itariki ya 9 cyangwa iya 10 Mata.
384. Abatangabuhamya biswe V, OO na PP bose bemeza ibivugwa ko mbere y’ibyo bitero, Abatutsi batashoboraga kuva ku kiriziya kubera ko batinyaga abajandarume n’abandi bantu bitwaje intwaro bazengurukaga ikigo cya kiriziya, bagenzura. Hari umutangabuhamya uvuga ko impunzi zagize ubwoba kubera ko hari abantu bari bagerageje gusohoka mu kiriziya ngo bajye gushaka ibyo kurya maze bakicwa.
385. Mu gika cya 41 cy’Inyandiko y’ibirego havugwa ko abantu Clément Kayishema yagenzuraga, «bategetse abajandarume, abapolisi ba Komine ya Gishyita, Interahamwe n’abasiviri bari bafite intwaro kugaba igitero ku kiriziya», kandi ko abo bantu na bo

²¹⁷ Inyandikomvugo y’iburanisha, 20 Ugushyingo 1997, urup.16

bitabiriye mu buryo butaziguye ibintu byahabereye. Dore uko ibintu byagenze nk'uko bivugwa mu Rukiko n'abatangabuhamya bashinja babyiboneye.

Ibyabaye ku itariki ya 15 Mata 1994

386. Abatangabuhamya bashinja biboneye ibyabaye bavuze ko Abatutsi bamaze gukoranira mu kiriziya bafungiyeye imbere imiryango kugira ngo abagabaga ibitero bari bagerageje kubatera mbere yaho batinjiramo. Kubera iyo mpamvu, ubwo ibitero byatangiraga mu gitondo cyo ku itariki ya 15 Mata, ababigabye babanje gutera mu kiriziya amagerenade arimo ibyuka bihuma amaso no kurasamo amasasu banyujije mu madirishya yayo. Abatangabuhamya biswe V, W na UU bavuze ko uwo muni, Kayishema n'abategetsi bo muri ako gace bari aho ku kiriziya. Abatangabuhamya biswe OO na W bavuze ko icyo gitero cyari cyiyobowe na Burugumesitiri Sikubwabo, Mika Muhimana na Vincent Rutaganira bari abakonseye. Umutangabuhamya wiswe V yavuze ko ku itariki ya 15 Mata yabonye Kayishema agera aho ku kiriziya ari kumwe n'abajandarume, naho umutangabuhamya wiswe UU yavuze ko uwo muni yamubonye ari kumwe n'« abasirikare ». Umutangabuhamya wiswe V ni we mutangabuhamya wenyine uvuga ko icyo gihe Kayishema yari afite imbunda kandi ko yarashe.
387. Umutangabuhamya wiswe UU yavuze ko uwo muni Kayishema yaje aho ku kiriziya akajya ku icumbi ry'umupadiri w'Umuhutu ryari inyuma yayo. Mu buhamya bwe mu Rukiko, OO yemeza ko uwo mupadiri yakoranaga na Kayishema, aho avuga ko yamuhaye [ayaha OO] amabwiriza yo kugenda abarura Abatutsi bari mu kiriziya umwe umwe kuko ngo Perefe yari akeneye kumenya umubare wabo. Byongeye kandi, abatangabuhamya bashinja biboneye ibyabaye bemeza ko kuri iyo tariki abapolisi ba komine n'abasiviri, nk'umucuruzi witwa Rundikayo, bari aho hantu cyangwa babigezemo uruhare cyangwa bari bahari bakanabigiramo uruhare. Abatangabuhamya bavuze ko n'ubwo hari abantu bapfuye kubera ibyuka bihuma amaso, urebye uwo muni hapfuye Abatutsi bake. Abatangabuhamya bose bavuze ko abagabye igitero bavuye ku kiriziya ku itariki ya 15 Mata nyuma ya saa sita.

Ibyabaye ku itariki ya 16 Mata 1994

388. Mu gitondo cyo ku itariki ya 16 Mata 1994, abagabye igitero bashoboye noneho gufungura inzugi za kiriziya ku ngufu maze binjiramo. Umutangabuhamya wiswe PP agira ati « Twizeraga ko bari butwicishe amasasu aho kutwicisha imihoro»²¹⁸. Abagabye ibitero bongeye gukoresha amagerenade arimo ibyuka bihuma amaso n'intwaro gakondo, maze kubera ubwoba bamwe mu Batutsi bapfa bazize kunyukwanyukwa n'abandi».
389. Umutangabuhamya wiswe OO yavuze ko mu gitondo cyo ku itariki ya 16 Mata, Kayishema yaje ari kumwe n'abasirikare bo mu ngabo za Leta y'icyo gihe. Undi mutangabuhamya wiboneye ibyabaye na we uvuga ko kuri iyo tariki Kayishema yari aho ku kiriziya ni uwiswe W. Havugwa kandi ko uretse Kayishema, abategetsu bo muri ako gace barimo Burugumesitiri Sikubwabo n'abakonseye banyuranye na bo bari aho ku kiriziya kuri iyo tariki. Icyo gihe, abasirikare bateye amagerenade, naho abandi bagabye igitero bitwaje intwaro barasa ku Batutsi bari mu kiriziya banabatemaguza imihoro. Umutangabuhamya wiswe OO, wari wihishe muni y'imirambo y'Abatutsi, yavuze ko, abenshi mu bantu bari mu kiriziya bamaze kwicwa, yumvise Perefe abwira abayobozi bo muri ako gace ngo « bajye kuzana tingatinga zo guhamba imirambo»²¹⁹.

Ibivugwa n'Ubwunganizi

390. Ubwunganizi bwemera ko ku itariki ya 14 Mata Kayishema yagiye koko ku kiriziya yo ku Mubuga, ariko bukavuga ko yagenzwaga gusa no kureba uko ibintu byifashe. Mu by'ukuri, mu myanzuro nsozarubanza yabwo mu magambo, Ubwunganizi bwibukije Urugereko rwa Mbere rw'Iremezo ko urwo rugendo Kayishema yakoze ku kiriziya

²¹⁸ Inyandikomvugo y'iburanisha, 3 Werurwe 1998, urup. 30

²¹⁹ Inyandikomvugo y'iburanisha, 20 Ugushyingo 1997, urup. 39. Urugereko rwa Mbere rw'Iremezo rusanga uyu mutangabuhamya yavuze ko Perefe yabivuze nyuma y'ubwicanyi bwo ku itariki ya 17 Mata. Cyakora, nta wundi mutangabuhamya uvuga ko ari kuri iyo tariki koko.

rwanditse muri ajenda ye²²⁰. Cyakora, biragaragara ko Ubwunganizi bwibeshye kubera ko muri iyo ajenda, nta kintu na kimwe cyanditse muni y'iyi tariki.

391. Ubwunganizi bunagerageza kumvisha Urugereko kutemera ibivugwa n'abatangabuhama bashinje ngo kuko bamwe muri bo bivuguruza cyangwa bakavuguruzanya ku bijyanye n'isaha nyayo ibitero byatangiriyeho cyangwa amatariki anyuranye byarangiye. Nk'urugero, Ubwunganizi busaba Urugereko kwibuka ko umutangabuhama wiswe OO yavuze ko kugera ku itariki ya 17 Mata biriya bitero byari bitararangira, mu gihe abandi batangabuhama bo bavuze ko ubwicanyi bwakorewe hariya hantu bwarangiye ku itariki ya 16 Mata. Avoka wa Kayishema avuga ko atari byo kuvuga ngo «umutangabuhama yabonye Clément Kayishema aramumenya kubera ko yari asanzwe amuzi»²²¹. Mu ibaza rinyomoza, Ubwunganizi bwabyukije ibibazo bijyanye no kuba abatangabuhama barashoboye kubona neza Uregwa, ibyo bibazo bikaba biri busuzumwe hepfo.

Imyanzuro ishingiye ku byabaye

392. Nta muburanyi uhakana ko ibivugwa mu gika cya 39 cy'Inyandiko y'ibirego ko hafi y'itariki ya 14 Mata 1994, Abatutsi babarirwa mu bihumbi bateraniye mu kiriziya yo ku Mubuga, bahunga ibitero byagabwaga muri Perefegitura yose ya Kibuye. Byongeye kandi, abatangabuhama bashinje batanu n'umutangabuhama ushinjura nibura umwe bemeza ko Abatutsi benshi baje kuri iyo kiriziya kugira ngo barebe ko bahagirira umutekano. Mu buhama bwabo, abatangabuhama bagenda banyuranya gato ku mubare w'abantu bahungiyeye kuri iyo kiriziya. Umutangabuhama wiswe V yavuze ko agereranije, ku itariki ya 12 Mata hari hamaze kugera abantu bagera ku 4.000, bagizwe ahanini n'abagore n'abana, mu gihe umutangabuhama wiswe W we yavuze ko ubwo hagabwaga igitero, kuri iyo kiriziya hari abantu bari hagati ya 4.000 na 5.000. Umutangabuhama wiswe OO yavuze ko hari abantu 5.565. Yemeje ibyo ashingiyeye ku mubare yabonye amaze kubara buri muntu wari uhari ashingiyeye ku mabwiriza

²²⁰ Ikimenyetso gihama n° 58 cyatanzwe n'Ubwunganizi.

²²¹ Inyandikomvugo y'iburanisha, 4 Ugushyingo 1998, urup. 148.

y'umupadiri w'Umuhutu wamubwiye ko Perefe yari akeneye ayo makuru kugira ngo bashobore kugoboka izo mpunzi. Urugereko rwa Mbere rw'Iremezo rwemeye ko ku kiriziya yo ku Mubuga hari impunzi zibarirwa hagati ya 4.000 na 5.000.

393. Mu gika cya 40 cy'Inyandiko y'ibirego, Kayishema aregwa kuba yaragiye hariya ku kiriziya inshuro zinyuranye mbere ya biriya bitero no kuba ku itariki ya 10 Mata cyangwa hafi yayo yarajyanyeyo abajandarume. Havugwa ko abo bajandarume babujije Abatutsi bari kuri iyo kiriziya kuhava. Nk'uko bivugwa haruguru, abatangabuhamya bashinja biboneye ibyabaye bose bemeza ko babonye abajandarume ku kiriziya mbere y'igitero no mu gihe cyarimo kugabwa. Ku byerekeranye no kuba Kayishema arahazanye abajandarume, abatangabuhamya babiri bavuze ko mbere ya kiriziya gitero bamubonye agera ku kiriziya azanye n'abajandarume cyangwa bakamubona ari kumwe na bo. Kubera iyo mpamvu, Urugereko rusanze kuba bariya bajandarume baba barazanye na Kayishema cyangwa batarazanye na we ntacyo bivuze, kuko Kayishema yari azi cyangwa yagombaga kumenya ibikorwa byabo, cyane cyane ukurikije uko umutekano wari wifashe muri perefegitura ye. Ikibazo cy'ingenzi ni ukumenya niba abajandarume bari aho hantu hakorewe ibyaha aho kumenya niba barahazanywe na Kayishema.
394. Ikibazo cya kabiri cyerekeranye n'igika cya 40 cy'Inyandiko y'ibirego ni icyo kumenya niba abajandarume babujije Abatutsi kuva ku kiriziya. N'ubwo Ubwunganizi buvuga ko abo bajandarume bari bazanywe no kurinda Abatutsi, abatangabuhamya bashinja bo bavuze ibintu bibivuguruza. Abo batangabuhamya bavuze ko mbere y'ibitero, ababigabye barimo Interahamwe bagose kiriziya bakagaba igitero ku Batutsi bageragezaga gusohoka, ariko abajandarume bahari ntibagire uwo bahana muri bo. Abatangabuhamya biswe W na OO bemeje ko Abatutsi bageragezaga kuva ku kiriziya ngo bajye gushaka ibiribwa cyangwa amazi basubizwaga inyuma n'abagabaga ibitero bitwaje intwaro bari hanze yayo, cyangwa bagakubitwa kugeza bapfuye. Umutangabuhamya wiswe OO yavuze ko impunzi zitashoboraga no kuba zava mu kiriziya ngo zijye kwituma. Umwe mu batangabuhamya bashinja wiboneye ibyabaye yavuze ko agereranije ku kiriziya hari abajandarume bari hagati ya 12 na 15. Niba koko uyu mubare ari wo, bigakubitiraho n'uko ubusanzwe abajandarume baba bafite intwaro, birumvikana ko bari

gushobora gukumira impunzi z'Abatutsi bakazibuza kuva ku kiriziya. Byongeye kandi, igihe ibyo bitero byarimo kugabwa, abantu babonye abo bajandarume batara amagerenade bakanarasa muri iyo mbaga y'abasiviri batitwaje intwari bari imbere mu kiriziya. Ibyo byose bigaragaza, nta gushidikanya, ko abajandarume bagiye mu gikorwa cyo kugira imfungwa Abatutsi bari muri kiriziya yo ku Mubuga no mu gikorwa cyo kubica cyakurikiyeho kugeza mu gitondo cyo ku itariki ya 15 Mata ubwo hatangiraga ibitero by'imbere mu kiriziya.

395. Cyakora biratangaje kubona mu gika cya 41 cy'Inyandiko y'ibirego, Kayishema adashinjwa kuba yari ari ku kiriziya ubwo ibyo bitero byagabwaga. Muri icyo gika, Porokireri agira ati «ku itariki ya 14 Mata 1994 cyangwa hafi yayo, abantu barimo abo Clément Kayishema yagenzuraga, bategetse abajandarume, abapolisi ba Komine ya Gishyita, Interahamwe n'abasiviri bari bafite intwari kugaba igitero kuri kiriziya». Inyandiko y'ibirego ikomeza ivuga ko ibitero byakomeje bikamara iminsi myinshi kubera ko abantu bose bari ku kiriziya batari kwicirwa icyarimwe. Nk'uko bivugwa, abatangabuhamya bashinja batanu biboneye ibyabereye ku Kiriziya ya Mubuga bose bari aho hantu ku itariki ya 14 n'ya 15 Mata. Hari abandi batangabuhamya babiri bavuze ko bariyo ku itariki ya 16 Mata, n'undi umwe uvuga ko yari yo ku ya 17 Mata 1994. Aba batangabuhamya bavuze ko bakinze imiryango ya kiriziya kugira ngo abagabye ibitero batabatera. Urugereko rwa Mbere rw'Iremezo rusanze, ku byerekeranye n'amatariki, bariya batangabuhamya batanu batavuguruzanya cyane mu buhamya batanze mu Rukiko, n'ubwo Ubwunganizi bwo atariko bubibona. Urugereko rusanze kandi abagabye kiriya gitero, bagose kiriziya, baratangiye kugerageza kwica Abatutsi mbere y'itariki ya 15 Mata. Cyakora, rusanga ubwicanyi bwakorewe imbere mu kiriziya bwarabaye mu by'ukuri ku itariki ya 15 n'ya 16 Mata, bugakorwa abayobozi bo muri ako gace bahari ndetse ari na bo batanze amabwiriza yo kubukora.
396. Kubera ko abatangabuhamya banyuranye biboneye ibyabaye bavuze ko igihe biriya bitero byarimo kuba Kayishema yari kuri kiriziya yo ku Mubuga, ni ngombwa gusuzuma ukuntu mbere ya biriya bitero no mu gihe byarimo kuba, abatangabuhamya babonye Uregwa hariya hantu bagashobora kumumenya. Mbere na mbere, kubera ko Urugereko

ruzirikana ko biriya bintu byabaye ku manywa, rusanga nta kibazo kinini gihari cyerekeranye no kuba abatangabuhamyanya bashobora kuba bataramubonye. icya kabiri, ni ngombwa kuzirikana ko kubera ko abantu bari bahahungiyeye bari bazi ko bashobora guterwa, bagomba kuba barahoraga buri gihe bashakira kumenya uko ibintu byari byifashe hafi ya kiriziya, bityo, nk'uko bamwe mu batangabuhamyanya nk'uwiswe W babivuga, bakaba barahengerezaga hanze banyujije amaso mu madirishya no mu myenge y'inzugi.

397. Kubera ko rwabonye imyitwarire y'abatangabuhamyanya rukanumva rwitonze ubuhamyanya bwabo mu Rukiko, Urugereko rwa Mbere rw'Iremezo rwemeye ko ubuhamyanya bwa bariya batangabuhamyanya bibonye ibyabaye bukwiye kwemerwa kandi ko mu byo bavuze nta cyo bagarageje guhimba. Kuba ubuhamyanya bwabo bukwiye kwemerwa bifasha Urugereko gusuzuma niba ibyo bavuze ko babonye Uregwa hariya buriya bwicanyi bwabereye bikwiye gufatwaho ukuri. Kiriziya yo ku Mubuga ifite imiryango itatu n'amadirishya menshi²²². Abatangabuhamyanya bibonye ibyabaye bavuze ko rimwe muri icyo gihe, abagabye ibitero barimo Kayishema n'abantu yari akuriye baje bakegera kiriziya. Mu ibaza rinyomoza, Ubwunganizi bwanagaragaje impungenge ku byerekeranye no kuba umutangabuhamyanya wiswe OO yarashoboye kubona neza Uregwa kuko uyu mutangabuhamyanya yavuze ko yari aryamye munsu y'imirambo y'Abatutsi ubwo yumvaga Kayishema avugana n'abategesi bo muri ako gace. Aha rero ikibazo gihari ni ikijyanye no kumenya niba uyu mutangabuhamyanya yarumvise ijwi ry'Uregwa akarimenya aho kuba icyo kuba yarashoboye kumubona nk'uko Ubwunganizi bwo bubivuga. Urugereko rwa Mbere rw'Iremezo rusanga nta washidikanya ko umutangabuhamyanya wiswe OO yumvise ijwi ry'Uregwa akamenya uwo ari we kubera ko yari asanzwe amuzi neza (yari yarabonye Perefe mu mihango yo kwimika Sikubwabo ku mwanya wa burugumesitiri, no muri za mitingi zaberaga muri ako karere), kandi yari yaranamwumvise avuga mu zindi nama zabaye mbere y'ubwo bwicanyi.

398. Ubwunganizi burwanya ibyo umutangabuhamyanya wiswe W avuga ko yashoboye kubona Uregwa kubera ko, nk'uko bubivuga, ibyuka bihuma amaso byari byatewe mu kiriziya bitari gutuma uwo mutangabuhamyanya abona neza. Bitewe n'uko kuba amagerenade

²²² Ibimenyetso gihamya n° 37, 39 na 40 byatanze na Porokireri.

yarakoreshejwe byagaragajwe hifashishijwe ubuhamya mu Rukiko n'amashusho²²³, Urugereko rusanga ibyo bintu bishobora kuba byaratumye abantu batabona neza. Cyakora, kiriziya yo ku Mubuga ni nini cyane ku buryo ishobora gukwirwamo abantu bari hagati ya 4.000 na 5.000. Umutangabuhamya wiswe W yavuze ko atari hafi y'igice cya kiriziya bateyemo amagerenade, bityo akaba yarashoboye kubona abantu bari hanze. Ibyo ari byo byose, kubera ko hatasobanuwe neza niba umutangabuhamya wiswe W yarabonye Kayishema mbere y'uko batera ayo magerenade arimo ibyuka bihuma amaso cyangwa nyuma yaho, Urugereko rwa Mbere rw'Iremezo rwemeye ubuhamya bwe²²⁴.

399. Ubwunganizi bwanabyukije ibibazo byerekeranye n'ukwizerwa k'umutangabuhamya wiswe UU aho avuga ko yabonye Uregwa. Mu buhamya yatanze mu Rukiko, UU avuga ko yari hafi y'umuryango munini wa kiriziya yo ku Mubuga ubwo Kayishema yahageraga ari mu modoka ye. Cyakora mu ibaza rinyomoza, UU yavuze ko yamenye Kayishema ari uko yumvise abandi bavuga ko Perefe yaje. Urugereko rwa Mbere rw'Iremezo rusanga mbere ya Mata 1994, uyu mutangabuhamya wiswe UU yari yarahuye na Kayishema inshuro imwe kwa sekuru wa Kayishema. Ashobora ariko kuba atarahise amumenya ubwo Kayishema yageraga ku kiriziya yo ku Mubuga ku itariki ya 15 Mata. Cyakora, umutangabuhamya yavuze ko abandi bantu bamaze kuvuga ko perefe yaje, yibutse ko yari asanzwe azi Kayishema. Urugereko rwa Mbere rw'Iremezo rusanga, mu by'ukuri, ari uko byagenze.
400. Uretse umutangabuhamya wiswe PP wenyine, buri wese muri aba batangabuhamya bandi biboneye ibyabaye yavuze ko nibura hari umunsi umwe Kayishema yari ku kiriziya mbere gato y'uko biriya bitero byo ku itariki ya 15 n'ya 16 Mata bigabwa cyangwa mu gihe byarimo bigabwa. Ubuhamya bwa PP bushingiye ku nkuru mbarirano na bwo bushyigikira ubw'abo batangabuhamya biboneye ibyabaye. Byongeye kandi, abatangabuhamya biboneye ibyabaye Porokireri yahamagaje ngo bavuge ku byabereye hariya hantu bemeza bese ko muri kiriya gihe, muri aba bantu bakurikira babonyemo nibura umwe

²²³ Ikimenyetso gihamya n° 47 cyatanzwe na Porokoreri.

²²⁴ Ni ngombwa kuzirikana ko mu buhamya bwe mu Rukiko, W yavuze ko na mbere y'ibitero yari azi neza Kayishema.

cyangwa abarenze umwe hanze ya kiriziya : abayobozi bo muri ako gace nka Burugumesitiri Sikubwabo, abakonseye Muhimana na Rutagenera, na Niyitegeka wari Minisitiri w'Itangazamakuru, abajandarume, Interahamwe, abapolisi ba komine n'abandi basiviri bitwaje intwaro. Igitangaje ni uko mu ibaza rinyomoza rya Kayishema, ari bwo Ubwunganizi bwavuze ko nta bategetsi bo muri ako gace bari hariya hantu, kandi mbere y'aho butari bwabihakanye²²⁵.

401. Mu gika cya 42 cy'Inyandiko y'ibirego havugwa ko buriya bitero byahitanye abantu babarirwa mu bihumbi bagizwe n'abagabo, abagore n'abana, bikanakomeretsa abandi benshi.
402. Urugereko rwa Mbere rw'Iremezo rwamaze gufata umwanzuro ku mubare w'Abatutsi bari ku kiriziya. Kubera rero ko mu buhamya bwabo mu Rukiko, abatangabuhamya bavuze ko benshi mu bantu bari bahari bishwe, Urugereko rusanga atari ngombwa gutinda ku kibazo cyo kumenya umubare nyawo w'abo bantu. Birahagije gusa ko rwemeza ko hariya hantu hiciwe abantu babarirwaga mu bihumbi, kandi ko, kubera iyo mpamvu, Porokireri yagaragaje, nta gushidikanya, ibyo avuga.
403. Mu gika cya 43 cy'Inyandiko y'ibirego, havugwa ko Kayishema atigeze agerageza kuburizamo buriya bwicanyi kandi ko atahannye ababukoze. Ibivugwa muri icyo gika bisuzumwa mu Mutwe wa 6.1.

Umwanzuro

404. Ibimenyetso byashyikirijwe Urugereko rwa Mbere rw'Iremezo bigaragaza neza ko mu Batutsi babarirwaga mu bihumbi bari bateraniye ku kiriziya yo ku Mubuga, bake gusa ari bo barokotse buriya bwicanyi bwabaye mu mpera z'icyumweru. Urugereko rwa Mbere rw'Iremezo rusanga, nta gushidikanya, Kayishema n'abantu yari akuriye barimo abategetsi bo muri kariya gace, abajandarume, abapolisi ba komine n'Interahamwe bari

²²⁵ Madamu Thornton amubajije umuntu wayoboye ubwicanyi muri Perefegitura ya Kibuye, Kayishema yashubije ko mu bayobozi bo muri kariya gace nta n'umwe wabugiyemo. Yongeyeho ko amaze guhunga igihugu muri Nyakanga 1994, habaye imanza zo kumenya abakoze ubwo bwicanyi.

kuri iyo kiriziya kandi bakagira uruhare mu bitero byahagabwe hagati y'itariki ya 14 n'ya 16 Mata. Nk'uko bivugwa haruguru, mu gika cya 41 cy'Inyandiko y'ibirego, Kayishema ntashinjwa kuba yari ku kiriziya mu gihe biriya bitero byarimo kuba. Cyakora, rushingiye ku buhanya bw'abatangabuhanya batanu bavuzwe, Urugereko rusanze icyo gihe Kayishema yari aho hantu. Rusanze kandi kuba we n'abandi bategetsi bo muri ako gace bari bahari, no kuba abo bategetsi baragize uruhare muri biriya bitero, byarashishikarije abagabye ibitero kwica Abatutsi bari bahahungiyeye.

5.4 Ubwicanyi bwo mu Bisesero

5.4.1 Intangiriro

405. Ibimenyetso byashyikirijwe Urugereko rwa Mbere rw'Iremezo bigaragaza ko intagondwa z'Abahutu zigizwe n'abasirikare, abapolisi ba komine, Interahamwe n'abasiviri bitwaje intwari zagabye igitero cya karundura kandi giteye ubwoba cyane ku Batutsi bari bateraniye mu Bisesero. Ibyo bitero byarakomeje muri Mata, Gicurasi na Kamena 1994. Mu Bisesero hari hatuye Abatutsi benshi, hanahungira abandi benshi muri kiriya gihe cya jenocide. Hari n'Abatutsi benshi bo mu tundi turere bihishe mu buvumo, abandi banyanyagira mu mashyamba no mu bihuru byo muri ako karere cyangwa bakoranira ku dusozi dutumburitse two muri ako karere. Bamwe mu Batutsi bagiye mu Bisesero kubera ko bari bumvise ko nta kintu cyababaho aho hantu. Cyakora, si ko byagenze, ahubwo Abahutu bari bitabiriye gukora jenocide bahize bukwere Abatutsi, abo babonye bose bakabarasa cyangwa bakabatemagura.

406. Mu Bisesero, ibitero bikaze kurusha ibindi byagabwe ku itariki ya 13 n'ya 14 Gicurasi 1994 ubwo hari hamaze ibyumweru bibiri hari ikintu kimeze nk'agahenge nta bitero bigabwa. Hari ibimenyetso bigaragaza ko kariya gahenge k'ibyumweru bibiri byashize nta bitero bigabwa katewe n'uko Abatutsi bari bateraniye mu Bisesero bari bihagazeho maze Abahutu bagabaga ibitero bagakoresha ako gahenge mu kongera kwisuganya. Umutangabuhamya wiswe G yagiye mu nama yabereye mu biro bya Kayishema ku itariki ya 3 Gicurasi iyobowe na Jean Kambanda wari Minisitiri w'Intebe icyo gihe. Muri

iyo nama Kayishema yabwiye Minisitiri w'Intebe ko hari umutekano muke cyane ukururwa n'abantu bari mu Bisesero, maze amusaba kumuha abandi bantu bo gutera inkunga kugira ngo icyo kibazo gikemuke²²⁶. Nyuma y'aho gato, hagati muri Gicurasi, abagabaga ibitero bongeye guhiga izo mpunzi aho zari ziri hose. Rimwe na rimwe, ibyo bitero byagabwaga n'Abahutu byabaga byateguwe kandi ari karundura, byitabiriwe n'abantu benshi cyane babarirwaga mu magana, maze bakagenda muri za bisi baja mu duce abasiviri b'Abatutsi bari bateraniyemo. Hari n'igihe udutsiko tw'abasirikare cyangwa Interahamwe twabaga tuzenguruka ako karere mu igenzura twagabaga ibitero ku Batutsi igihe cyose twababonaga. Ibyo bitero byasaga n'ibigamije gutsemba burundu Abatutsi bose. Kugira ngo bagere kuri iyo ntego, abagabaga ibitero bishe abasiviri b'Abatutsi babarirwa mu bihumbi.

Ibirego muri rusange

407. Mu gika cya 45 cy'Inyandiko y'ibirego havugwa ko Bisesero igizwe n'amakomine abiri ari yo Gishyita na Gisovu, muri Perefegitura ya Kibuye. Havugwamo kandi ko kuva hafi y'itariki ya 9 Mata kugera ku ya 30 Kamena 1994, abagabo, abagore n'abana babarirwaga mu bihumbi bahungiyeye muri ako gace ka Bisesero kandi abenshi muri bo bari Abatutsi bahungaga ibitero byaberaga muri Perefegitura ya Kibuye yose.
408. Nta muburanyi uhakana ko agace ka Bisesero gaherereye aho hantu hamaze kuvugwa. Urugereko rwa Mbere rw'Iremezo rwashyikirijwe ibimenyetso gihamya bya Porokireri byerekana imiterere y'ako gace. Muri ibyo bimenyetso harimo amakarita n'amafoto afashe ku buryo yakwerekanywe nka videwo.
409. Byongeye kandi, Ubwunganizi ntibwigeze burwanya ibivugwa ko kuva hafi y'itariki ya 9 Mata kugera ku ya 30 Kamena 1994, Abatutsi bagiye mu Bisesero bahunga ibitero Abahutu bari bagabye mu tundi turere tw'u Rwanda, by'umwihariko mu tundi duce twa Perefegitura ya Kibuye. Abatangabuhamya benshi biboneye ibyabaye bemeza ko bari mu Batutsi babarirwa mu bihumbi bagiyeyo bahunga ibitero byari byagabwe mu tundi duce

²²⁶ Umutangabuhamya wiswe G anavuga ko mu minsi yakurikiyeho yabonye Interahamwe zo muri Perefegitura ya Gisenyi zijya mu Bisesero zitwaje imbunda.

twa Perefegitura ya Kibuye²²⁷. Hari n'abandi batangabuhama bavuze ko babonye Abatutsi benshi bahunga bava mu duce tunyuranye twa Perefegitura ya Kibuye bajya mu Bisesero. Mu buhama bwe, Kayishema agira ati « Icyo nababwira ni uko abagabaga ibyo bitero bari Abahutu naho abaterwaga bakaba Abatutsi. Bamwe muri abo Batutsi bari batuye mu Bisesero, abandi baturutse mu tundi duce maze bakoranira ku dusozi tw'aho mu Bisesero. Hapfuye abantu ku mpande zombi»²²⁸. Abatangabuhama benshi bemeza ko mu Bisesero hiciwe imbaga y'Abatutsi. Nk'urugero, mu buhama bwe, umunyamakuru witwa Chris McGreal ukorera ikinyamakuru cyandikirwa i Londres cyitwa *The Guardian* avuga ko muri Kamena 1994 yavuganye n'Abatutsi bari bahungiyeye ku gasozi kari mu Bisesero. Ubwo yari muri ako gace, yabonye ibimenyetso, birimo n'imirambo y'abantu, bigaragaza ko hakorewe ubwicanyi bwahitanye imbaga. Abatutsi yabajije bamubwiye ko icyatumaga iyo mirambo idahambwa ari uko Abatutsi batinyaga Abahutu bitwaje intwari bari aho hafi y'amazi. Umunyamakuru witwa Patrick de Saint Exupery ukorera ikinyamakuru cyitwa *Le Figaro* cyandikirwa i Paris, yagiye mu Bisesero muri Kamena 1994. Yemeza ko yabonye « umusozi wose wari wuzuyeho imirambo: mu myobo mito, mu dukoki, mu byatsi n'iruhande rw'imikoki hari imirambo myinshi»²²⁹.

410. Mu gika cya 46 cy'Inyandiko y'ibirego havugwa ko «Mu Bisesero hagiye hagabwa ibitero hafi buri muni, guhera hafi y'itariki ya 9 Mata 1994 kugeza ku ya 30 Kamena 1994. Abagabye ibitero bishe Abatutsi mu Bisesero bakoresheje imbunda, amagerenade, imipanga, amacumu, ibibando n'izindi ntware. Abagabo, abagore n'abana bari bahungiyeye mu Bisesero bagerageje kwirwanaho inshuro zinyuranye bakumira ibyo bitero bitabaje ibyo bashyikiriye byose birimo amabuye n'inkoni».
411. Ubwunganizi ntibwigeze buhakana ibyo bintu bivugwa haruguru. Benshi mu batangabuhama bashinja, barimo n'abarokotse ibyo bitero, bemeza ko muri kiriya gihe

²²⁷ Nk'urugero, OO, PP na W barokotse ubwicanyi bwabereye kuri kiriziya yo ku Mubuga maze bahungira mu Bisesero.

²²⁸ Inyandikomvugo y'iburanisha, 4 Nzeri 1998, urup. 59.

²²⁹ Inyandikomvugo y'iburanisha, 18 Ugushyamba 1997, urup. 137.

ibitero byabaga buri muni. Umutangabuhamya wiswe OO agira ati « Buri muni mu Bisesero hagabwaga ibitero, ariko cyane cyane ku gasozi ka Muyira n'aka Gitwa. Byatangiraga mu masaa kumi n'ebiri za mu gitondo bigakomeza kugera nko hagati ya mu masaa kumi na cyangwa mu masaa kumi n'imwe z'umugoroba». Mu buhamya bwe mu Rukiko, Kayishema avuga ko « mu Bisesero hagabwe « ibitero bikomeye»²³⁰ hanabera « ubwicanyi bukomeye»²³¹. Hari ibimenyetso bihagije byerekana ko mu Bisesero hari ahantu nka 12 hagabwe ibitero²³². Nyuma y'ubwo bwicanyi, muri Nzeri 1995 Dogiteri Haglund yabonye ingaruka z'ubwo bwicanyi ahantu hatandukanye bwabereye mu Bisesero. Mu buhamya bwe ubwo yavugaga ku byo yabonye ku gasozi kari ku rubibi rwa Komine ya Gishyita n'ya Gisovu, agira ati « Kandi iyo umuntu yarebaga kuri uriya musozi, arebeye muri jimeri cyangwa ikindi gikoresho gitubura amashusho, yabonaga ahantu henshi hagiye hari ibintu by'umweru, ukaba wagira ngo ni nk'ibihumyo bidasanzwe birimo kuhamera. Ibyo bintu byari ibikanka n'uduhanga byari byuzuye kuri uwo musozi...»²³³, nuko «genze gato hirya no hino mbona nibura ibikanka by'abantu bari hagati ya 40 na 50 byari byanamye kuri ako gasozi». Yari amagufwa y'abagabo, abagore, abana, n'abandi bantu bakuru»²³⁴.

412. Abagabaga ibyo bitero bakoreshaga intwari z'amoko yose. Umutangabuhamya wiswe JJ yemeza ko ababigabaga bari bitwaje « amahiri, imihoro, n'amagerenade». Umutangabuhamya wiswe HH na we yavuze ko abagabaga ibyo bitero babaga bitwaje imbunda, imihoro, inkota n'amacumu. Isuzuma ryakozwe na Dogiteri Haglund abisabwe n'Urukiko ryemeza ibivugwa ko izo ntware ari zo zakoreshejwe mu kwica abantu baguye muri ubwo bwicanyi. Abatutsi bari bakoraniye mu Bisesero na bo bagerageje kwirwanaho bakoresheje intwari zidafashije. Umutangabuhamya wiswe X n'abandi

²³⁰ Inyandikomvugo y'iburanisha, 9 Nzeri 1998, urup. 47.

²³¹ Inyandikomvugo y'iburanisha, 8 Nzeri 1998, urup. 117.

²³² Urugereko rwa Mbere rw'Iremezo rusanga mu buhamya batanze mu Rukiko ku bitero runaka, bamwe mu batangabuhamya bavugaga amazina y'ahantu ibitero byagabwe. Cyakora, kugira ngo birusheho gusobanuka, twahurije hamwe ahantu hegeranye maze tukagenda tuvugaga ku bitero dukurikije amatariki byabereyeho.

²³³ Inyandikomvugo y'iburanisha, 25 Ugushyingo 1997, urup. 65.

²³⁴ Inyandikomvugo y'iburanisha, 24 Ugushyingo 1997, urup. 82.

batangabuhamya na bo barabyemeza. Umutangabuhamya wiswe EE yavuze ko Abatutsi bateraga amabuye ababaga bagabye ibitero kugira ngo babasubize inyuma maze bashobore guhunga.

5.4.2 Ubwicanyi Kayishema na Ruzindana bagizemo uruhare bafatanyije.

413. Porokireri avuga ko Kayishema na Ruzandana bakunze gufatanya mu kuzana amatsinda y'abagabye ibitero bitwaje intwaro ahantu hanyuranye habereye ubwicanyi mu Bisesero, no mu kubaha amabwiriza. Byongeye kandi Porokireri ashinja Abaregwa bombi kuba ubwabo baragabye ibitero ku mpunzi zari mu Bisesero bakazica. Ibimenyetso byatanzwe bigaragaza ko abagabye ibitero bateye impunzi z'Abatutsi mu gace kanini zari zakoranyemo. Kugira ngo byumvikane neza, Urugereko rurasuzuma ibimenyetso rwashyikirijwe rukurikije ukuntu ibintu byagiye bikurikirana, kuri buri hantu habereye ubwicanyi. Ruribanda cyane cyane ku bitero byari bikaze kurusha ibindi.

Agasozi ka Bisesero

414. Umutangabuhamya wiswe FF yavuze ko ku itariki ya 11 Gicurasi yabonye Kayishema, Ruzindana na Mika Muhimana wari Konseye wa Segiteri ya Gishyita bagera mu Bisesero bari mu modoka y'umweru. icyo gihe, Kayishema yari yambaye ishata y'icyatsi kibisi afite indangururamajwi. Ruzindana yari yambaye ishata y'umweru yitwaje n'intwaro. Akoresheje indangururamajwi, Mika yavuze ko bari abakozi b'Umuryango Utabara Imbabare kandi ko amahoro yari yagarutse. Yahamagariye rero abantu kuzana inkomere n'ibimuga ku kiriziya yo ku Mubuga kugira ngo babahe ibiringiti n'ibishyimbo. Impunzi zisohotse mu bwihisho bwazo, Ruzindana yasohotse mu modoka ye arasa umugore n'abakobwa babiri. Uyu mutangabuhamya yavuze ko yarebaga ibyo bintu ari nko ku ntera ya metero icumi. Urugereko rusanze ubu buhamya butarigeze buvuguruzwa.

Ibitero byagabwe ku Gasozi ka Muyira muri Gicurasi

415. Agasozi ka Muyira kari mu Bisesero ku rugabano rwa Komine ya Gishyita n'iya Gisovu, ku gice cy'umuhanda kiri muri Komine ya Gishyita, aho uwo muhanda ugabanyiriza izo

komine zombi. Mu buhamya bwe mu Rukiko, Saint Exupery avuga ko icyo gihe, Abatutsi bahigwaga bunyamaswa. Abatangabuhamya benshi, barimo abiswe PP, OO, II, JJ, NN, HH, UU, FF na KK, babonye Kayishema na Ruzindana aho hantu habereye ubwicanyi, cyangwa babonyeyo umwe muri bo. Icyo gihe, PP na OO bari barokotse ubwicanyi bwo ku kiriziya yo ku Mubuga maze bahungira mu Bisesero. PP yavuze ko ku itariki ya 13 Gicurasi, Kayishema na Ruzindana bari mu ntangiriro y'agasozi ka Muyira bitabiriye ibitero. Uyu mutangabuhamya yiboneye neza abagabye icyo gitero batera amagerenade banirukankana impunzi mbere y'uko ijoro rigwa. Yanabonye Kayishema na Ruzindana barasa ku Batutsi bahungaga. Ku itariki ya 14 Gicurasi, ku Gasozi ka Muyira, PP yumvise Kayishema abwira ijambo agatsiko k'abagabye ibitero bari baturutse mu yandi maperefegitura.

416. Umutangabuhamya wiswe OO yavuze ko ibitero byagabwe ku gasozi ka Muyira byari biyobowe na burugumesitiri, perefye, abakonseye na Ruzindana. Abagabye ibyo bitero biciyemo amatsinda abiri maze bagota impunzi z'Abatutsi. OO yavuze ko mbere y'ibyo bitero, Ruzindana yari yahaye ababigabye intwaro gakondo. Anavuga ko ku itariki ya 13 Gicurasi, Kayishema na Ruzindana baje ku gasozi ka Muyira bari ku isonga ry'imodoka, zirimo n'amabisi, zishoreranye zitwaye abasirikare. Yongeraho ko Kayishema yarashe isasu nk'ikimenyetso cyo gutangiza icyo gitero. OO anavuga ko yiboneye Kayishema neza, agasobanura ko uwo munsu Kayishema yari yambaye ikositimu y'icyatsi kibisi. Yavuze ko yabonye Ruzindana afite intwaro, ayoboye rimwe mu itsinda ry'abagabye igitero, maze Ruzindana akamurasaho akamuhamya ku kirenge. Ubwunganizi bwibukije Urugereko ko mbere yaho, uyu mutangabuhamya yari yarabwiye abapererezi bo mu Biro bya Porokireri ko icyo gihe bamurashe ku kuguru aho kuba ku kirenge. Umutangabuhamya yisobanuye avuga ko ijambo ry'ikinyarwanda yakoresheje haba mu buhamya bwanditse cyangwa mu bwo mu Rukiko ari « ikirenge ». Urugereko rwa Mbere rw'Iremezo rusanga ikintu icyo ari cyo cyose cyaba kidahuye kuri ako kantu kitafatwa nko kwivuguruzwa gukomeye.

417. Ku byerekeranye n'ibyabaye ku itariki ya 14 Gicurasi, OO yavuze ko yabonye Ruzindana na Kayishema bazanye n'Interahamwe. Ubwo yari ahantu yari yihishe muri icyo gitondo,

yumvise Kayishema abwira ijambo abagabaga ibitero bari baje baturutse mu yandi maperefegitura. Uyu mutangabuhamya yibuka ko icyo gihe Kayishema yavuze ngo «uwo muni bagomba gukuraho umwanda kandi ako kazi kakarara karangiye...». OO yongeraho ko icyo gihe Kayishema yavuze ko ibisigaye we n'abandi bantu bari bubyimenyere²³⁵.

418. Umutangabuhamya wiswe II yavuze ko ku itariki ya 13 Gicurasi yabonye amabisi ya ONATRACOM aza ashoreranye n'izindi modoka nyinshi, maze muri izo modoka hakavamo abasirikare. Igitero gitangiye, Abatutsi babanje kugerageza kwirwanaho bakoresheje amabuye ariko nyuma baza guhunga. Uyu mutangabuhamya yavuze ko yabonye Ruzindana azanye n'abasirikare kandi yasaga nk'aho ari we ubayoboye. N'ubwo mu ibaza ry'ibanze, uwo mutangabuhamya wiswe II yavuze ko yabonye Ruzindana arasa ku Batutsi akoresheje imbunda, mu ibaza rinyomoza byaje kugaragara ko atabyiboneye ahubwo ari ibyo yibwiye. Byongeye kandi, yavuze ko ku mugoroba wo ku itariki ya 13 Gicurasi ubwo yari yihishe muri Serire y'Uwingabo yabonye abagabaga ibitero bisuganya. Ari aho hantu yari yihishe, yabonye kandi yumva Kayishema ashimira abari bitabiriye ibyo bitero baturutse mu yandi makomine n'amaperefegitura akikije ako karere barimo Ruzindana, maze abashimira ko bakoze akazi kabo bashishikaye.
419. Ku itariki ya 14 Gicurasi, uyu mutangabuhamya wiswe II yongeye kubona abagabaga ibitero bahagera mu mabisi n'andi mamodoka. Yabonye Kayishema na Ruzindana bayoboye abo bantu, anababona bombi barasa ku Batutsi. Icyo gihe hagati ye n'aho bari hari intera ireshya n'iyi wateramo ibuye. Uwo mutangabuhamya wiswe II yahunze yerekeza ku gasozi ka Karongi. Yongeraho ko yabonye Ruzindana inshuro nyinshi aha amafaranga abantu benshi mu bagabaga ibitero.
420. Umutangabuhamya wiswe JJ yatanze ubuhamya ku bintu byabereye ku gasozi ka Muyira ku itariki ya 13 Gicurasi. Yemeza ko Kayishema yahaje yambaye ikositimu ya gisiviri y'icyatsi kibisi ari mu modoka y'umweru, aherekejwe n'abasirikare. Yongeraho ko yanabonye Ruzindana atwaye abagabye igitero mu modoka. Icyo gihe, Kayishema yari

²³⁵ Inyandikomvugo y'iburanisha, 20 Ugushyingo 1997, urup. 84.

yitwaje imbunda y'umukara ifite umunwa mugufi, n'indangururamajwi bafata mu ntoki. Yashyize abagabaga ibitero mu matsinda, abaha amabwiriza arangije arasa isasu rya mbere. JJ yavuze ko yibuka ko icyo gitero kirangiye, Kayishema yabwiye ijambo abakigabye bari bongeye guteranira hamwe. Mu ibaza ry'ibanze, JJ yabanje kuvuga ko icyo gihe hagati ye na Kayishema hari intera ya metero 300, ariko nyuma aza kuvuga ko agereranije iyo ntera yari nka metero 120.

421. Ku itariki ya 14 Gicurasi, uyu mutangabuhamya wiswe JJ yongeye kubona Kayishema hagati y'agasozi ka Gishyita na Komine ya Gisovu aho abagabaga ibitero bari baparitse imodoka zabo. Icyo gitero cya karundura kirangiye, Kayishema yakoranije abari bakitabiriye baturutse mu tundi turere maze arabashima. Mu gitero cyagabwe ku gasozi ka Muyira, abakigabye barashe umutangabuhamya wiswe JJ ku kiganza.
422. Umutangabuhamya wiswe NN yavuze ko ku itariki ya 13 Gicurasi 1994 yabonye Kayishema, Ruzindana, na Burugumesitiri Ndimbati mu bagabaga ibitero. Icyo gihe, Kayishema yari ku muhanda ategaye impunzi ku muhanda, maze arasa mu cyerekezo cy'Abatutsi batatu, ari bo Mbunduye, Munyandamutsa na Hakizimana. Cyakora, muri dosiye y'urubanza ntihasobanurwa niba hari n'umwe muri abo bantu batatu uyu mutangabuhamya yabonye apfa. NN anavugaga ko ku itariki ya 13 Gicurasi, Ruzindana yatwaye Interahamwe mu modoka akazijyana aho ubwicanyi bwabereye. Yongeraho ko aho hantu, Ruzindana yarashishije imbunda Abatutsi babiri ari bo Ragasana na Birara, akanarasa OO ariko ntagire uwo ahamya muri abo bantu. NN, wavuyemo ijisho kubera ibimanyu bya gerenade yaturikiye aho hantu, yavuze ko yibuka ukuntu kiriya gitero kirangiye, kariya gasozi kari kuzuyeho imirambo.
423. Mu buhamya yatanze mu Rukiko, HH yavuze ko mu bantu bagabye igitero cyo ku itariki ya 13 Gicurasi harimo Kayishema, Ruzindana, Musema, Ndimbati na Sikubwabo. Kubera ko OO yari yihishe mu ishyamba, Kayishema na Ruzindana ntibari kure ye ubwo yababonaga barasa ku itsinda ry'Abatutsi bari bihishe mu mpinga y'agasozi. HH yibuka ko abagabye igitero baririmbaga ngo « Abatutsi bagomba kwicwa bose, imirambo yabo ikajugunywa mu ishyamba ... ntimusige impinja, abakecuru n'abasaza. Kagame yavuye

mu gihugu ari uruhinja »²³⁶. Mu ibaza rinyomoza, HH yasobanuye ko mu buhamya bwe bwanditse atari yavuze izina rya Ruzindana kubera ko umupererezi wo mu Biro bya Porokireri yamubajije gusa ku bategetsi bari aho hantu. Nyuma yo gusuzuma ubuhamya bwanditse bwa HH, Urugereko rusanga igisobanuro yatanze cyakwemerwa.

424. Ku itariki ya 14 Gicurasi, umutangabuhamya wiswe UU yabonye Kayishema ku gasozi ka Mpura, ahantu umuntu yagenda iminota 30 n'amaguru avuye ku gasozi ka Muyira. icyo gihe, yamubonye hafi y'impinga ya Mpura, arimo gusangira inzoga n'abandi bagabaga ibitero mbere y'uko ibitero bitangira. Yanamubonye ajyana abandi bayobozi ahantu hegereye aho Abatutsi bari bari. Nyuma yaho, abagabaga ibitero batangiyeye kwirukankana Abatutsi ku gasozi ka Mpura babahiga. UU yavuze ko ku itariki ya 15 Gicurasi, yabonye Ruzindana aha amafaranga abagabye igitero, ku gasozi ka Gitwa ku Mubuga. Yemeza kandi yumvise ikiganiro Ruzindana yagiranye n'abagabaga ibitero ku byerekeranye n'andi mafaranga bari guhabwa. Mu buhamya bwe mu Rukiko, UU yaje gusobanura ko yabonye ayo mafaranga atangwa ariko akongeraho ko yumvise gusa ibyo abagabaga ibitero bavuganaga, ko atumvise ikiganiro Ruzindana yaba yaragiranye n'abo bantu bagabaga ibitero bemeje ko mu minsi yari gukurikiraho, Ruzindana yari kubaha andi mafaranga. Niba ibyo UU yavuze mu buhamya bwe mu Rukiko ku byerekeranye n'andi mafaranga yari gutangwa bihuye n'uko ibintu byagenze, icyo gihe ubuhamya bwe bwaba bushingiye ku nkuru mbarirano. Cyakora, kubera ko abandi batangamuhamya barimo uwiswe II bemeza ko Ruzindana yatanze amafaranga ahantu hatandukanye ayaha abagabaga ibitero, Urugereko rusanga uko kunyuranya kudakanganye.
425. Abatangabuhamya bamaze kuvugwa basobanura mu buryo bwuzuye uruhare Kayishema na Ruzindana bagize mu bitero byagabwe ku gasozi ka Muyira ku itariki ya 13 n'ya 14 Gicurasi 1994. Urugereko rwa Mbere rw'Iremezo rusanga atari ngombwa gutinda ku bindi bimenyetso bishyigikira ibivugwa na Porokireri. Kubera iyo mpamvu, rusanga bihagije kuvuga ko ubuhamya bwa Z na AA bugaragaza ko Ruzindana yari mu bitero byagabwe ku gasozi ka Muyira.

²³⁶ Ikimenyetso gihamya n° 297 cyatanzwe na Porokireri.

Abatangabuhamya biswe FF na KK

426. Muri rusange, ubuhamya bwa FF na KK buhura n'ubw'abandi batangabuhamya bamaze kuvugwa. Cyakora, Urugereko rusanga rugomba kwitondera imiterere y'ubwo buhamya ndetse n'ibibuvugwamo. Koko rero, FF yavuze ko yabonye ibyabaga ari ku mpinga y'agasozi ka Gitwa. Nyamara Ubwunganizi bwatanze ibimenyetso bigaragaza ko agasozi ka Gitwa kari nko mu birometero bitatu uvuye ku gasozi ka Muyira, bityo bukavuga ko FF avuga ku bintu byabereye nko muri kirometero n'igice uvuye aho yari ari. Kubera ko Porokireri atashoboye kuvuguruzwa ibivugwa n'Ubwunganizi kuri iyo ngingo, Urugereko rurashidikanya ko FF yashoboraga kubona ibyo bintu neza, bityo rugasanga ubuhamya bwe butakwizerwa.
427. Umutangabuhamya wiswe KK, wahoze ari umukozi wa Leta mu Rwanda mu mwaka wa 1994, yavuze ko ku itariki ya 13 Gicurasi yumvise abagabaga ibitero baririmba ngo : « Tubatsembatsembe, tubatsembatsembe, tugomba kumaraho abo bantu bihishe mu bihuru. Dushakishye abagabo ahantu hose ku buryo nta n'umwe usigara »²³⁷. Anavuga ko ku itariki ya 14 Gicurasi, ubwo yari ku isonga ry'abagabye igitero, Kayishema yarashe ku mpunzi zarimo guhunga, ubwo barimo kumanuka agasozi ka Muyira, maze akabwira ijambo imbaga y'abagabye igitero akoresheje indangururamajwi. Cyakora, uyu mutangabuhamya ntavugaga Kayishema mu buhamya bwe bwanditse, uretse aho avuga ku ijambo rya Minisitiri w'Intebe ryahise kuri radiyo aho yashimiraga Kayishema kubera ubutwari bwe. KK yasobanuye ko kuba ataramuvuze byatewe n'uko umupererezi wo mu Biro bya Porokireri yamubajije gusa ku bantu baturutse muri komine ye. Cyakora, iyo umuntu asuzumye neza ubuhamya bwanditse bwa KK, asanga ibyo avuga atari ukuri. Muri ubwo buhamya bubiri KK yahaye abapererezi, biragaragara ko abo bapererezi bamubajije, muri rusange, ku bantu bayoboraga ibitero aho kumubaza ibibazo byihariye ku hantu abateraga bakomakaga. Kubera izo mpamvu, Urugereko ruha agaciro gake ubwo buhamya bwa KK.

²³⁷ Inyandikomvugo, 26 Gashyantare 1998, imp.33-34.

Ibitero byagabwe ku gasozi ka Muyira no mu nkengeri zako muri Kamena

428. Ibitero byagabwe mu Bisesero byarakomeje kugera muri Kamena 1994. Ibaruwa yo ku itariki ya 12 Kamena 1994 igaragaza ko Kayishema yakomeje kugira uruhare muri ubwo bwicanyi. Muri icyo baruwa, Kayishema asaba Minisitiri w'Ingabo ibikoresho byinshi birimo « gerenade zirashishwa imbunda na gerenade batera n'intoki, amasasu y'imbunda zo mu bwoko bwa R4 na sharijeri enye z'imbunda zo mu bwoko bwa mitarayezi » kugira ngo bikoreshwe mu gikorwa cyo «guhumbahumba» mu Bisesero²³⁸.
429. Umutangabuhamya wiswe PP, wari wabonye Kayishema na Ruzindana mu bitero byo ku gasozi ka Muyira kuri 13 n'ya 14 Gicurasi, yongeye kubabona Kucyapa muri Kamena. Ubwo yanyuraga Kucyapa yiruka, PP yabonye Kayishema na Ruzindana maze bamurasaho, banarasa no ku bantu bari kumwe bahunga. Nyuma yaho muri Kamena, uyu mutangabuhamya yabonye Kayishema na Ruzindana bwa nyuma hafi yo kwa Kabanda. icyo gihe, PP yari kumwe n'itsinda ry'Abatutsi badafite intwari kandi yabonye Abaregwa bombi n'abandi bantu barasa amasasu bakica abantu. Uyu mutangabuhamya anavuye ko Kabanda, wari umucuruzi ukomeye, yashakishwaga cyane na Ruzindana na Kayishema. Yavuye kandi ko Kabanda yaje kwicishwa isasu ryarashwe na Burugumesitiri Sikubwabo maze agacibwa umutwe waje kwerekwa Kayishema kugira ngo atange igihembo. Abona Sikubwabo arasa Kabanda, PP yari yihishe mu gihuru cyari aho hafi. Cyakora ntiyabonye nyakwigendera acibwa umutwe ahubwo yarabyumvise. Urugereko rusanga ubuhamya bwa PP ku byerekeranye no kuba Kabanda yaraciwe umutwe budahagije ngo bube bwagaragaza uruhare rutaziguye Uregwa yagize muri icyo gikorwa. Cyakora, ku byerekeranye n'ibikorwa by'abantu yagenzuraga nk'urugero, Burugumesitiri Sikubwabo, Urugereko rusanga ubuhamya bwa PP bwakwizerwa.
430. Rushingiye ku bimenyetso bimaze kuvugwa, Urugereko rusanga Kayishema na Ruzindana bari bahari igihe ubwicanyi bwakorerwaga ku gasozi ka Muyira no mu

²³⁸ Ikimenyetso gihamya n° 296 cyatanze na Porokireri.

nkengero zako. Ubwo bwicanyi bwatangiyeye ku itariki ya 13 Gicurasi cyangwa hafi y'iyi tariki. Rusanga kandi Kayishema na Ruzindana baratwaye mu mamodoka abandi bantu bagabaga ibitero bakabajyana ku gasozi ka Muyira no mu nkengero zako. Babahamagariye kwica Abatutsi bari bahateraniye, bategeka uko ibitero byari kugenda, bayobora ibitero ndetse na bo ubwabo barabyitabira. Byongeye kandi, ku byerekeranye na Kayishema, Urugereko rusanga Porokireri yaragaragaje uruhare abantu yari akuriye bagize muri ubwo bwicanyi. Muri abo havugwa abajandarume, abapolisi ba komine, Interahamwe n'abategetsi bo muri ako karere nka Burugumesitiri Sikubwabo.

Ubuvumo

431. Bumwe mu bwicanyi buteye ubwoba bwibasiye imbaga mu Bisesero ni ubwakorewe ahantu hitwa ku « buvumo », muri Komine ya Gishyita, Segiteri ya Bisesero, Serire ya Kigarama. Abahutu bagabaga ibitero bateye kuri ubwo buvumo bwari bwahungiyemo Abatutsi. Abagabye igitero bahageze mu gitondo maze barasa amasasu banatera amagerenade mu mbaga y'Abatutsi bari bahahungiyeye. Abagabye igitero bageze aho bashaka ibiti babirunda ku muryango w'ubwo buvumo, barabitwika maze umwotsi wica abantu babarirwa mu magana. Ubuhamya bwatanzwe bwerekana ko hashobora kuba hararokotse umuntu umwe gusa. Porokireri avuga ko Kayishema na Ruzindana bari mu bantu bari bayoboze icyo gitero.
432. Dogiteri Haglund wagiye kuri ubwo buvumo muri Nzeri 1995 abuvuga muri aya magambo « Ninjiye muri uwo mwobo kugera nko muri metero 10. Uko wigira imbere niko ubwo buvumo bugenda burushaho gufungana kandi bugira amakorosi agenda agira inguni ntoya... ». Dogiteri Haglund yafashe amafoto imbere n'inyuma y'ubwo buvumo kandi Porokireri yayatanze nk'ibimenyetso gihamya²³⁹. Dogiteri Haglund anagira ati « Ngeze kure, imbere muri ubwo buvumo ... nabonye imibiri y'abantu benshi bagizwe n'abagabo, abagore n'abana. Iyo mibiri yari mu cyondo cyari cyarayirunze hejuru mu gihe cy'imvura. Navuga ko nabonye aho hantu nibura imibiri y'abantu 40 ». Umutangabuhamya wiswe QQ, ufite mushiki we wapfiriye muri ubwo buvumo, yavuze

²³⁹ Ibimenyetso gihamya n° 152-55 byatanzwe na Porokireri.

ko ubwo yahungaga ava kuri ako gasozi, yabonye umwotsi uzamuka mu buvumo umunsi icyo gitero kigabwa. Nyuma yaho, yasubiye ku buvumo maze asanga abahagabye igitero bari batwitse umunwa w'ubwo buvumo.

433. Umutangabuhamya wiswe CC ni we muntu wenyine warokotse ubwicanyi bwabereye muri ubwo buvumo. Umunsi igitero kigabwa, muri Kamena 1994, CC yari imbere mu buvumo. Nk'uko abivuga, icyo gitero cyagabwe saa tatu za mu gitondo ubwo abakigabye bateye amagerenade muri ubwo buvumo ariko ntaturike. Icyo gihe ni bwo rero Interahamwe zagiye gushaka ibiti n'ibyatsi byumye, inkwi n'igitaka, babirundanya mu munwa w'ubwo buvumo maze baratwika. Muri icyo gitero, umutangabuhamya yumvise inshuro zinyuranye Interahamwe zivuga Kayishema na Ruzindana mu magambo yasaga n'ayumvikanisha ko ari bo bari bateguye icyo gitero. Cyakora, kubera ko yari imbere muri ubwo buvumo, CC ntiyigeze mu by'ukuri abona Kayishema na Ruzindana. Yavuze ko yarakowe n'uko yisize icyondo ku mubiri kandi akajya amira utuzi duke duke twamanukaga. Byageze aho ata ubwenge ariko aza kuzanzamuka mu buvumo haje umwuka mwiza, ubwo abandi Batutsi bari hanze bari bamaze gukuraho ibintu byazibaga umunwa w'ubwo buvumo.
434. Abatangabuhamya babiri biswe W na HH, bari bihishye hanze y'ubuvumo, bemeza ko Kayishema na Ruzindana bari ku buvumo kandi ko bitabiriye ubwicanyi bwahakorewe. Umutangabuhamya wiswe W wari wihishye mu gihuru cy'amahwa ahantu umuntu yagenda iminota itageze kuri itanu avuye ku buvumo, yavuze ko muri Gicurasi cyangwa Kamena 1994, abantu barenga 100, bagizwe ahanini n'abasaza n'abakecuru, abagore n'abana bahungiyeye muri ubwo buvumo. Abagabye igitero bahageze, uyu mutangabuhamya yabumvise baririmba ngo « Tugiye kubatsembatsemba tubajugunye mu mwobo ». Mu bantu bagabye icyo gitero, harimo Kayishema, Ruzindana, Burugumesitiri Sikubwabo n'abandi bategetsu bo muri ako gace. Uyu mutangabuhamya wiswe W yemeza ko igitero cyatangiye mu gitondo ubwo abakigabye barasaga imbere mu buvumo. Nyuma yaho, barunze ibiti ku munwa w'ubwo buvumo maze barabitwika. Yongeraho ko Kayishema yasaga nk'uyoboye itsinda rimwe ry'abagabye igitero naho Ruzindana ayoboye irindi tsinda ry'abakigabye baturutse mu Ruhengeri. Abagabye icyo gitero

bamaze kugenda saa kumi n'imwe cyangwa saa kumi n'ebiri z'umugoroba, umutangabuhamya wiswe W n'abandi bantu bakuyeho ibintu abagabye igitero bari bazibishije umunwa w'ubwo buvumo kugira ngo batabare abantu bashoboraga kuba barokotse.

435. Umutangabuhamya wiswe HH yavuze ko yahunze yerekeza ku buvumo, umugore we n'abana be bamaze kwicirwa mu kindi gice cya Kigarama. Yavuze ariko ko atinjiye muri ubwo buvumo ko ahubwo yarebaga abagabye igitero ari mu ishyamba ryari hafi aho. Mu bagabye icyo gitero yashoboye kumenyamo Kayishema, Ruzindana, Sikubwabo, Ndimbati n'abandi bategetsu ba gisiviri. Nk'uko abivugaga, abagabye igitero barashe imbere mu buvumo maze bafunga umunwa wabwo. Barunzeho ibiti maze baratwika bitegetswe na Kayishema na Ruzindana. HH yemeza ibivugwa na W ko Kayishema na Ruzindana bari bayoboye amatsinda y'abantu bagabye icyo gitero kandi yabonye abo bagabo bombi batanga amabwiriza. Yavuze ko bakoraga « nk'umukapita wereka abakozi uko akazi kagomba gukorwa ». Nyuma y'icyo gitero, HH n'abandi bantu bakuyeho igitaka cyari kizibye igice kimwe cy'umunwa w'ubwo buvumo. N'ubwo ubuhamya bwa HH budasobanutse neza kuri iyo ngingo, birasa nk'aho yinjiye mu buvumo ariko ntasangemo umuntu n'umwe warokotse ariko nyuma yaho hakaza gusohokamo umuntu ukiri muzima. Mu bantu baguye muri ubwo buvumo harimo abana b'uyu mutangabuhamya, nyina, mushiki we ndetse na muramu we w'igitsinagore.
436. Ku byerekeranye n'igihe CC yakuriye mu buvumo, Ubwunganizi buvuga ko ubuhamya bwa CC, W na HH buvuguruzanya. Ubwunganizi buvuga ko CC yemeza ko, nyuma y'igitero, yamaze iminsi itatu n'amajoro atatu mu buvumo, mu gihe HH na W bo bemeza ko abagabye igitero bamaze kugenda, kuri uwo mugoroba bakuyeho igitaka cyari kizibye umunwa w'ubwo buvumo maze bagakuramo CC. Urugereko rusanga nta kuvuguruzanya guhari. Ni byo ko CC avugaga ko, nyuma y'igitero, yamaze iminsi itatu n'amajoro atatu mu buvumo, ariko iyo usuzumanye ubushishozi inyandikomvugo y'ubuhamya bwe mu Rukiko, usanga HH avugaga ko n'ubwo abaje gutabara bakuye igitaka ku munwa w'ubuvumo kuri uwo mugoroba igitero cyarangiriyeho, uwo munsu atabonye umuntu n'umwe warokotse. HH yemeza ko nyuma mu buvumo haje kuvamo umuntu umwe ari

muzima kandi ibyo bihura n'ibivugwa na CC. Umutangabuhamyanya wiswe W ashyigikira ubuhamyanya bwa HH buvuga ko uwo munsu igitero kirangiye, abatabaye bakuye igitaka ku munwa w'ubuvumo maze bagashobora gutabara umuntu umwe ari we warokotse. Cyakora, uyu mutangabuhamyanya ntavuga umunsu uwo mucikacumu yaviriyeho muri ubwo buvumo. Ari HH cyangwa W bombi bavuze ko uwo mucikacumu ari CC. Biranashoboka ko CC atari akimenya igihe kubera ko yamaze igihe kitazwi yarataye ubwenge. Hatitawe ku kumenya umunsu nyakuri CC yaviriyeho mu buvumo, ubuhamyanya bw'abo batangabuhamyanya uko ari batatu ku byerekeranye n'uko Kayishema n'abantu yari akuriye, na Ruzindana bari ku buvumo burahuye kandi bwakwizerwa.

437. Urugereko rusanga hataragarajwe itariki nyakuri ibyo bintu byabereyeho. Umutangabuhamyanya wiswe CC yavuze ko hari muri Kamena. Uwiswe W akavuga ko ibyo bintu byabaye mu mpera za Gicurasi cyangwa muri Kamena, ariko akongeraho ko yari yarataye umutwe kubera inzara n'ibindi bibazo. HH we yavuze ko ubwicanyi bwo ku buvumo bwakozwe abasirikare b'Abafaransa bamaze kugera muri ako gace, akumva ko hari ku itariki ya 30 Kamena. Urugereko rwarangije gusuzuma haruguru ikibazo abatangabuhamyanya bafite cyo kwibuka amatariki nyakuri ibintu byabereyeho, ari na cyo gituma umuntu atamenya igihe nyacyo ibintu byabereyeho. Ibyo ari byo byose, ibintu by'ingenzi bigize ibyaha ni ukuvuga aho byakorewe n'imiterere y'amarorerwa yakozwe birahura, bityo bikerekana neza ko abatangabuhamyanya bavuga ku bwicanyi bumwe.
438. Urugereko rusanga ku buvumo haragabwe igitero cyahitanye Abatutsi babarirwa muri za mirongo. Byongeye kandi, Kayishema na Ruzindana bari aho hantu igihe icyo gitero cyagabwaga kandi bakigizemo uruhare rw'ubuyobozi babwira abakoze ubwicanyi ibyo bagomba gukora. Hagarajwe ko Ruzindana yari ayoboye rimwe mu matsinda y'abagabye igitero naho Kayishema ayoboye icyo gitero cyose. Urugereko rusanga abajandarume, Interahamwe n'abategetsu banyuranye bo muri ako gace bari aho hantu kandi bakitabira icyo gitero.

5.4.3 Ubwicanyi Kayishema na Ruzindana bagizemo uruhare, buri wese ukwe

439. Ubuhamya bw'abatangabuhamya bugaragaza ko buri wese mu bashinjwa yagiye agaragaraga ukwe ahantu hanyuranye mu Bisesero. Urugereko rugiye kubanza gusuzuma ibimenyetso byerekeranye n'ahantu abantu babonye Kayishema, nirurangiza rubone gusuzuma ibyerekeranye n'aho babonye Ruzindana. Nk'uko byakozwe mbere, rurasuzuma ibimenyetso rukurikije uko bikurikirana mu gihe kuri buri hantu hakorewe ubwicanyi.

Ibitero Kayishema aregwa kuba yaragiyemo ukwe

Umusozi wa Karongi

440. Ubuhamya abagabo batanze mu Rukiko bugaragaza ko nyuma y'igitero cyo kuri sitade, abasiviri b'Abatutsi benshi bahungiyeye i Karongi. Umutangabuhamya wiswe U yavuze ko umunsi umwe hagati muri Mata, Kayishema yageze aho hantu ari kumwe na konseye wa Komine ya Gitesi, abasirikare, abajandarume n'abasiviri b'Abahutu. Uyu mutangabuhamya ntiyari kure y'ahantu bahagaritse imodoka zabo. Yabonye Kayishema yambaye ishata y'umukara y'amaboko magufi n'ipantaro y'umukara. Ubwo rero bahise batangira kugaba igitero ku Batutsi bari bahungiyeye ku musozi wa Karongi. icyo gihe, abajandarume n'abasirikare barashe ku mbaga y'Abatutsi yari kuri uwo musozi naho abasiviri b'Abahutu barahagota kugira ngo babuze abo Batutsi guhunga. Umutangabuhamya wiswe U yumvise Kayishema avugira mu ndangururamajwi asaba abandi bantu kuza kubatera inkunga kugira ngo bagabe icyo gitero. Abatangabuhamya bavuze ko igitero cyatangiyeye mu masaa yine za mu gitondo kikarangira mu masaa cyenda z'amanya.

441. Nyuma y'icyo gitero cyagabwe i Karongi, umutangabuhamya wiswe U yahungiyeye ku musozi wa Kigarama (mu nyandikomvugo handitse Muchigarama). Aho ni ho mu mpera za Mata, uyu mutangabuhamya yabonye ikindi gitero cyari kiyobowe na Kayishema.

Yavuze ko icyo gihe Kayishema atari yitwaje intwari, ngo « ni nkaho yari umujenerari w'ingabo »²⁴⁰, kandi ibyo bitero byahitanye Abatutsi babarirwa mu bihumbi.

442. Umutangabuhamya wiswe DD yemeje ko ku musozi wa Karongi hagabwe igitero cya karundura mu mpera za Mata. Ubwo yari aho yari yihishe, yabonye Kayishema muri metero ziri hagati ya 30 na 35 z'aho hantu. Kayishema yahageze mu masaa tatu n'igice za mu gitondo, mu modoka y'umweru ari kumwe n'abandi bategetsi ba gisiviri, abasirikare, abajandarume, abapolisi ba komine, Interahamwe n'abaturage b'abasiviri. Yasobanuye ko icyo gihe, Kayishema yari yambaye ishata y'umweru, ikoti ry'umukara n'ipantaro yijimye kandi afite imbunda ndende. Amaze guha amabwiriza abagabye igitero, Kayishema yagiye mu mpinga y'umusozo ari kumwe n'abandi bantu bari bagabye icyo gitero. Kayishema agezeyo, yarashe Umututsi wari urimo kugerageza guhunga witwaga Rutazimana nuko ahita apfa. Igitero cyarakomeje kugeza ku mugoroba. DD yasobanuye ko imirambo y'abantu biciwe kuri ako gasozi yari imeze nk'« udusimba twicishijwe umuti wica udukoko »²⁴¹. Uwo munsi, DD yapfushije abantu benshi bo mu muryango we barimo nyina, umugore we, abana be icyenda, bashiki be bane n'abana babo, abana batanu b'umwe mu bavandimwe be, abavandimwe be babiri n'abagore babo.
443. Mu ibaza rinyomoza, Ubwunganizi bwavuze ko hari ukuvuguruzanya hagati y'ubuhamya bwanditse bwa DD n'ubwo yatanze mu Rukiko. Mu buhamya yahaye abapererezi, DD yavuze ukuntu inshuti ye yitwaga Rutazimana yishwe n'isasu ryarashwe n'umusirikare ariko mu Rukiko yavuze ko ari Kayishema warashe Rutazimana. Kubera ko uyu mutangabuhamya atatanze ibisobanuro byatuma Urugereko rudashidikanya ku byo avuga kuri icyo kintu cyabaye, ibi birengera Kayishema. Ku byerekeranye n'uguhuzagurika kuboneka mu buhamya bukubiye mu nyandikomvugo yatanze mbere, Urugereko rwa Mbere rw'Iremezo rusanga ubuhamya yatanze mu Rukiko ari bwo bugomba kugenderwaho kurusha ubwo bundi bwanditse yatanze mbere butanyomojwe. N'ubwo muri rusange ubuhamya DD yatanze mu Rukiko ari ukuri kandi Uregwa akaba agomba kuryozwa ibikorwa abantu yari akuriye bakoreye aho hantu kubera ko ari umwe mu

²⁴⁰ Inyandikomvugo y'iburanisha, 6 Gicurasi 1997, urup. 141.

²⁴¹ Inyandikomvugo y'iburanisha, 25 Gashyantare 1998, imp. 28.

bantu bari bayoboye icyo gitero, Urugereko rusanga, mu buryo bushyize mu gaciro, hari ugushidikanya ku byerekeranye n'umuntu warashe Rutazimana.

Serire ya Gitwa n'agasozi ka Gitwa

444. Kayishema ashinjwa no kuba yarayoboye kandi akitabira ibitero byagabwe muri Serire ya Gitwa no ku Gasozi ka Gitwa. Umutangabuhamya wiswe MM wapfushije umugore we, abana bane, abavandimwe b'abahungu babiri na mushiki we muri ibyo bitero, yavuze ko ubwo yari yiyihishe, yabonye Kayishema mu Kazirandimbwe. Yasobanuye ko icyo gihe, Kayishema yageze aho hantu ari mu ikamyoneti ya *double cabin* y'umweru ari kumwe n'abasirikare n'Interahamwe zari zifite imbunda, amahiri, imihoro n'amacumu. Kayishema yategetse kandi ahamagarira abagabye icyo gitero gutsembatsembe Abatutsi bari bahungiyeye aho hantu. Uyu mutangabuhamya yavuze ko, muri Gicurasi, yabonye Kayishema i Gitwa inshuro eshatu mu buryo bumwe n'ubwo yari yaramubonye mbere. Yongeyeho ko n'ubwo atigeze abona Kayishema afite intwaro cyangwa ngo abone ubwicanyi na bumwe bukorwa, « aho umuntu yajyaga hose nta kindi yabonaga kitari imirambo ».²⁴²

Ibitero Ruzindana ashinjwa kuba yaragiyemo ukwe

Ikirombe cyo ku gasozi ka Nyiramurego

445. Agasozi ka Nyiramurego kariho ikirombe kari muri Segiteri ya Bisesero. Umutangabuhamya wiswe RR yavuze ko hafi y'itariki ya 15 Mata, yabonye Ruzindana aza mu modoka ari kumwe n'Interahamwe. Uregwa yahagaritse iyo imodoka ye muni y'ako gasozi maze atanga imihoro n'imbunda. Uyu mutangabuhamya yavuze ko Ruzindana yabwiye abagabye igitero ngo « mugire vuba, ngiye kuzana abandi bantu bo kubafasha, ariko uko muzajya munzanira indangamuntu cyangwa umutwe w'umuntu nzajya mbahemba ». N'ubwo ibaza rinyomoza ryarinze rirangira nta muntu uramenya neza intera nyakuri yari hagati ya RR na Ruzindana, uyu mutangabuhamya akomeza kuvuga

²⁴² Inyandikomvugo y'iburanisha, 24 Gashyantare 1998, urup. 27.

ko icyo gihe yari yegereye Ruzindana bihagije ku buryo yabashaga kumubona [Ruzindana] no kumva ibyo avuga.

446. Abatangabuhamya babiri batanze ubuhamya busobanutse ku kindi kintu cyabereye ku gasozi ka Nyiramurego Ruzindana yagizemo uruhare. Abatangabuhamya biswe II na EE bavuze ko Ruzindana, Interahamwe n’abasirikare bishe itsinda ry’Abatutsi bari bahungiye kuri icyo kirombe. Aba batangabuhamya bombi bemeza ko abagabaga ibitero bageze aho abo Batutsi bari bihishe bahazanywe n’umusore w’Umuhutu wari uzi ahantu abo ba nyakwigendera bari bihishe. Mu buryo busobanutse, umutangabuhamya wiswe II yavuze ko umunsi umwe mu gitondo, nyuma y’igitero cyo ku gasozi ka Muyira cyabaye ku itariki ya 14 Gicurasi (muri Gicurasi cyangwa muri Kamena), ubwo yari yihishe kuri ako gasozi hafi y’umuhanda, yabonye Ruzindana aza ari mu modoka kandi ari kumwe n’Interahamwe. Ruzindana yasigaye kuri uwo muhanda mu gihe abandi bantu bagabye igitero bakuragaho ibintu byari ku bwinjiriro bw’ikirombe maze bakica abantu bihishemo. Interahamwe zavumbuye abagore babiri b’Abatutsikazi bakiri bato maze Ruzindana ateguka ko babamuzanira. Umwe muri abo bagore babiri bakiri bato witwaga Béatrice yari yariganye na II kandi ugereranyije yari afite imyaka 16. Ruzindana yaciye agashati uwo mukobwa yari yari yambaye maze amuca ibere gahoro gahoro akoresheje umuhoro aharejwe n’imwe mu Nterahamwe. Yarakomeje amuca irindi bere ari nako amunnya, amubwira kureba ibere rya mbere aho ryari riri hasi. Arangije yamusatuye inda. Béatrice yahitanywe n’icyo gitero. Igendeye ku rugero rwa Ruzindana, Interahamwe yahise yica wa mugore wa kabiri kandi ibikora Ruzindana areba. Uretse utuntu duto agenda anyuranyaho na II, umutangabuhamya wiswe EE na we yemeza ibyo bintu. Aba batangabuhamya bombi bakurikiye ibyo bintu bari ahantu bari bihishe iruhande rw’umuhanda, hafi y’aho Ruzindana n’abagabye igitero bari bahagaze ngo batangire gutera. EE yongeraho ko yiboneye iyicwa ry’abantu bo mu muryango we n’iry’abandi Batutsi ubwo Interahamwe n’abasirikare bamaraga gukuraho ibintu byari bitwikiriye imyobo Abatutsi bari bihishemo maze bagatangira kubica bakoresheje imbunda n’imihoro.

447. Urugereko rwa Mbere rw'Iremezo rusanga aba batangabuhamya bombi barashoboye kwirebera neza ibyo bintu kubera ko byabayeye ku manywa kandi bombi bakaba bari bihishe ahantu bashoboraga kubibona. Byongeye kandi, mbere y'ibyabayeye abo batangabuhamya bombi bari basanzwe bazi Ruzindana. Kubera iyo mpamvu, Urugereko rusanga abo batangabuhamya barashoboye kubona Ruzindana, bakamumenya.

Agasozi ka Bisesero

448. Mu gice cya kabiri cy'ukwezi kwa Mata 1994, umutangabuhamya wiswe Z yabonye ibitero byakunze kugabwa birimo Ruzindana, abajepe n'Interahamwe. Muri ibyo bitero, Ruzindana yakundaga muri rusange guha amabwiriza ababaga babigabye maze we agategereza iruhande rw'imodoka ye. Ku itariki ya 14 Mata 1994, ubwo kimwe muri ibyo bitero cyagabwaga, uyu mutangabuhamya wiswe Z yari yihishe hafi y'aho Ruzindana yari maze yumva Uregwa ateguka abakigabye kugota ako gasozi no gutangira gutera. Uyu mutangabuhamya yongeraho ko icyo gihe Ruzindana yari yitwaje intwari kandi ko yarashe ku Batutsi. Cyakora, uyu mutangabuhamya yavuze ko « icyo gihe hatapfuye abantu benshi » ko ahubwo habayeho ibikorwa byo gusahura maze abagabye igitero bakigabagabanya ibyo basahuye. Urugereko rusanga Ruzindana yari aho hantu akanagira uruhare rukomeye mu bwicanyi bwahakorewe, cyane cyane ateguka abagabye icyo gitero kugota agasozi no kwica Abatutsi bari bahihishe.

Agasozi ka Gitwa

449. Ahandi hantu habereye ubwicanyi Ruzindana yari ni muri Serire ya Gitwa. Ku itariki ya 15 Mata 1994, umutangabuhamya wiswe KK yabonye Ruzindana atwaye abagabye igitero mu modoka bagiye aho hantu kandi KK yari azi ko iyo modoka ari iya Ruzindana. Byongeye kandi, uyu mutangabuhamya yari nko muri metero 50 z'ahantu yaboneye Ruzindana arasa Umututsi witwa Ruzibiza ku kaguru maze Ruzibiza akikubita hasi.

450. Nyuma yaho, mu ntangiriro za Gicurasi, umutangabuhamya wiswe MM yabonye Ruzindana ayoboye Interahamwe mu bwicanyi bwakorewe aho hantu. Icyo gihe, abagabye igitero batangiye kwirukankana uyu mutangabuhamya n'abandi Batutsi. Umugore wa MM, wari uhutse umwana, yarashwe ubwo yari arimo kwiruka ari inyuma ya MM. Ubwo

yirukankaga ahunga, MM yarahindukiye ngo arebe abagabye igitero maze, nk'uko abivuga, abona Ruzindana arasa ku mugore we. Nyuma y'igitero, MM yasubiye ahantu umugore we yari yaguye maze asanga yakomerekejwe n'isasa ndetse yanatemagujwe intwari gakondo. icyo gihe, yasanze uwo mugore we n'umwa we bapfuye. Ubwunganizi bumubajije ukuntu yabonye Ruzindana arashisha imbunda, MM yemeye ko yamurebye akanya gato gusa kandi ko atazi ukuntu imbunda ikora.

451. Urugereko rwemera ko Ruzindana yari mu bantu bagabye igitero aho hantu bakirukankana Abatutsi bari bahahungiyeye, kugira ngo babice. Rwemera kandi ko umugore n'umwana ba MM baguye muri icyo gitero. Urugereko runasanga Ruzindana yaragerageje kwica umugore wa MM kuko uyu mutangabuhamya yavuze ko yabonye Ruzindana apimanya kuri uwo mugore maze akarasa. Cyakora, Urugereko rurashidikanya ko isasa Ruzindana yarashe ari ryo ryishe umugore wa MM cyangwa ko uwo nyakwigendera yishwe koko n'isasa yarashwe. Porokireri ntiyagaragaje ko mu bagabye icyo gitero Ruzindana ari we wenyine warasaga ku Batusi barimo guhunga. Byongeye kandi ikintu nyakuri kishye umugore wa MM ntikizwi neza. Ubwunganizi bwarwanyije ukwizerwa kwa MM buvuga ko mu ibaza rinyomoza, uyu mutangabuhamya yavuze ko nta bandi Banyarwanda yahuye na bo ubwo yari Arusha. Mu ibaza ry'inyongera, bamubajije impamvu yanze kwemera ko hari abantu bahuye, MM yasubije ko yibwiraga ko bashakaga kumubaza abantu bararanaga ku gitanda kimwe. N'ubwo icyo gisubizo kidasobanutse, Urugereko rusanga mu buhamya bwe, MM asobanura neza uko ibintu byabereye mu Bisesero byagenze koko.

Ibitero byagabwe mu nkengeri z'agasozi ka Muyira

452. Ibitero byagabwe mu nkengeri z'agasozi ka Muyira byarakomeje kugera muri Kamena 1994. Umutangabuhamya wiswe II yavuze ku bintu byabereye ku mwobo wacukuwe n'amazi mu nsi y'umuhanda, ahantu hitwa Gahora muri Serire ya Gitwa. Nk'uko uyu mutangabuhamya abivuga, mu ntangiriro za Kamena, muri uwo mwobo hari hihishe abana benshi b'Abatutsi n'abantu barimo murumuna we na mushiki we. Ubwo yari yihishe mu bihuru byari muri metero eshanu uvuye aho hantu, II yabonye Interahamwe zijya mu kabande kunywa amazi kuri robine hafi y'uwo mwobo. Zimaze kuvumbura

Abatutsi bari bahihishe, izo Nterahamwe zabwiye Ruzindana ko zavumbuye « Inyenzi ». Ruzindana yohereje abasirikare kujya kurinda uwo mwobo, maze II yumva Ruzindana avuga ko agiye i Gishyita kuzana ibikoresho. Ruzindana yagarutse saa saba z'amanywa afite ibitiyo n'itiyo y'amazi maze abasirikare n'Interahamwe batangira gucukura kugira ngo basohore Abatutsi muri uwo mwobo. Ubwicanyi bwatangiye ari uko Ruzindana n'abandi basirikare barashe ku mpunzi. Abatutsi benshi bapfiriye mu mwobo abandi bicishwa amasasu cyangwa batemagurirwa hafi y'umuhanda kugeza bapfuye ubwo barimo kugerageza guhunga. Nyuma y'igitero, II yabonye imirambo ya murumuna we na mushiki we bari biciwe mu bihuru byari hafi aho. Mu ibaza rinyomoza, uyu mutangabuhamya yakomeje kwemeza ibyo yavuze mbere. Urugereko rwemera, nta gushidikanya, ko Ruzindana yari aho hantu akitabira kandi akayobora icyo gitero cyagabwe kuri uwo mwobo wiciweho Abatutsi batazwi umubare barimo murumuna na mushiki wa II.

5.4.4 Isesengura n'imyanzuro ku bintu byabereye mu Bisesero

453. Ibivugwa mu gika cya 45 n'icya 46 by'Inyandiko y'ibirego byamaze gusesengurwa uretse ko n'Ubwunganizi butabirwanya.
454. Mu gika cya 47 cy'Inyandiko y'ibirego, Abaregwa bombi bashinjwa, ku buryo butaziguye, ibitero byagabwe mu Bisesero. Ikimenyetso gikomeye kuruta ibindi ni ukuba abatangabuhamya bashinja barabonye Abaregwa ahantu ubwicanyi bwakorewe. Kuri Kayishema, kuba abantu yategekaga baragiye muri ubwo bwicanyi na byo ni ikindi kintu gikomeye. Urugereko ruzirikana inshingano rufite yo gusuzumana ubushishozi ibimenyetso byatanzwe. Ubuhamya bw'abatangabuhamya bari bazi Abaregwa mbere y'ibyabaye bwitabwaho kurusha ubundi kuko kuba umuntu yarabonye uregwa birushaho kwizerwa iyo yari asanzwe amuzi mbere y'ibyabaye. Uburyo abatangabuhamya babashije kumenya Abaregwa²⁴³ na bwo bufite akamaro. Ibyo bibazo bigiye gusuzumwa hano hasi.

²⁴³ Reba igice cya 3 haruguru, ku byerekeranye n'ibimenyetso.

455. Porokireri yahamagaje abatagabuhamya bavuga ko babonye Kayishema ahantu hanyuranye hakorewe ubwicanyi mu Bisesero. Benshi mu batangabuhamya bashinja bemeza ko bari bazi Kayishema mbere y'ibyabaye. Muri rusange, abatagabuhamya bavuze ko bamenye Kayishema cyangwa ko bari bamuzi kubera ko yari umutegetsi mukuru ku Kibuye. Nk'urugero, abatagabuhamya biswe OO na HH bavuze ko « bari bazi » Kayishema kuko yari Perefefe wa Kibuye ndetse OO we yongeyeho ko yari yarabonye Kayishema mu muhango w'iyimikwa rya Burugumesitiri Sikubwabo ku mirimo ye. OO yavuze ko abaturage bose ba Komine ya Gishyita bari bazi Kayishema kuko bamubonaga muri za mitingi no mu nama. Ni muri urwo rwego II yabonye Kayishema mu muhango wo kwimika Sikubwabo. DD yari yarabonye Kayishema mu nama maze akibuka imwe muri zo yabereye kuri sitade. HH yavuze ko yakundaga kubona Kayishema mu nama naho NN yavuze ko yagiye mu manama yakoreshejwe na Kayishema. KK yakoranaga na Kayishema buri gihe iyo habaga hari inama itegurwa. PP yamenye Kayishema ubwo Uregwa yari umuganga ku bitaro byo ku Kibuye. Hari n'abatagabuhamya bari bazi n'umuryango wa Kayishema. Nk'urugero, OO yari azi sekuru na Nyina ba Kayishema; JJ yari azi se wa Kayishema; UU yasuhuje Kayishema mu mwaka wa 1992 cyangwa 1993 ubwo Uregwa yazaga gusura sekuru. PP yahuye na Kayishema ku kiriziya ya Kibuye ubwo Kayishema yari yagiye gusura umupadiri wahabaga. Abatangabuhamya bashinja barokotse bose berekanye Kayishema mu Rukiko. Kuba bari basanzwe bazi Kayishema mbere y'ibyabaye bituma Urugereko rurushaho kwemera ko bamubonye bakamumenya²⁴⁴.
456. Byongeye kandi, benshi mu batangabuhamya bavuze ko bari basanzwe bazi Ruzindana mbere y'ubwicanyi. Ibimenyetso byatanze bigaragaza ko Ruzindana yari umwe mu bacuruzi bakomeye muri Kibuye, kandi ko umuryango we wari uzwi cyane, bitewe ahanini ni uko ise yari yarigeze kuba Burugumesitiri wa Gisovu. Bamwe muri abo

²⁴⁴ Ibisobanuro birambuye ku byerekeranye n'ibisabwa kugira ngo umutangabuhamya abe yaramenye Uregwa murabisanga mu mutwe wa 3.2 haruguru.

batangabuhamyana bari barahuye na we mbere cyangwa bazi umuryango we. Nk'urugero, FF yari yariganye na Ruzindana ; Ruzindana yitabiraga imihango yabaga yateguwe n'ubutegetsi OO na we yabaga yatumiwemo kandi bakoranaga n'ubucuruzi; NN yavuze ko yari inshuti ya Ruzindana kandi ko yari azi bamwe mu bagize umuryango we ; RR yemeza ko kuva yamenya ubwenge azi Ruzindana kandi ko we na Ruzindana batashye ubukwe bw'umugabo wo mu gace k'iwabo witwa Antoine ; umutangabuhamyana wiswe Z yemeza ko azi Ruzindana kuva nibura mu mwaka wa 1986 naho HH akavuga ko yamenye Ruzindana mbere cyane ya 1994. Uyu mutangabuhamyana asobanura ko yamumenye bwa mbere bahuriye ku isoko kuko yahahiraga mu iduka ry'umuryango wa Ruzindana. Ruzindana kandi yari aturanye n'ababyeyi ba BB kandi uyu mutangabuhamyana na Ruzindana bakinanye umupira w'amaguru.

457. Abandi batangabuhamyana barimo II, KK, MM na PP bari bazi Ruzindana ku isura kuko Uregwa yari umucuruzi ukomeye uzwi muri ako karere ndetse na se akaba yari umuntu ukomeye aho hantu cyangwa bari bamuzi kubera kimwe muri byo²⁴⁵. Abatangabuhamyana bashinja barokotse bese berekanye Ruzindana mu cyumba cy'iburanisha. Kuba abatangabuhamyana bari basanzwe bazi Ruzindana mbere y'ibyabaye bituma ubuhamyana bwabo mu Rukiko buvuga ko bamubonye bakamumenya burushaho kwizerwa²⁴⁶.
458. Biragaragara ko iyo abatangabuhamyana bavugaga ko « bari bazi » uregwa, bitaba bivugaga ko bari baziranye cyangwa ko bari inshuti. Ahubwo rimwe na rimwe abo batangabuhamyana baba bashakaga kuvugaga « kumenya uwo uregwa yari we » kubera ukuntu yari akomeye mu gace k'iwabo. Urugereko rwemera ko abatangabuhamyana batakoreshye ayo magambo bashakaga kuyobya Abacamanza. Mu by'ukuri, ibyo bihuye n'ibisanzwe bikoreshwa nk'uko umuntu yavugaga ko « yari azi » Perezida Nelson Mandela, n'ubwo yaba atarigeze ahura na we ahubwo yaramumenyeye mu itangazamakuru. Ibyo ari byo byose, ku byerekeranye no kumenya uregwa, icy'ingenzi si kuba bari baziranye ahubwo ni ukuba barashoboye kumumenya. Ubuhamya buvugaga haruguru bushakaga kumvikanisha ko

²⁴⁵ Murakaza, se wa Ruzindana, na we yari umucuruzi kandi yigeze no kuba burugumesitiri.

²⁴⁶ Ni kimwe no haruguru.
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benshi mu batangabuhamya babonye Kayishema na Ruzindana cyangwa umwe muri bo, bari barababonye mbere y'uko bababona ahantu hakorewe ubwicanyi.

459. Ubwunganizi bwabajije ibibazo binonosoye birebana n'ukuntu abatangabuhamya babonye Abaregwa. Urugereko rusanga abatangabuhamya bose babonye Abaregwa ahantu hakorewe ubwicanyi bavuga ko bababonye ku manywa y'ihangu. Muri rusange, abatangabuhamya babajijwe ibibazo birebana n'intera yari hagati y'abo n'Abaregwa icyo gihe. Ibimenyetso byatanzwe bigaragaza ko hafi y'abo batangabuhamya bose bari hafi bihagije ku buryo bashoboraga kubona neza Abaregwa mu gihe cy'ibitero, kandi ibisobanuro bagenda batanga bishimangira ibyo bavuze kuri iyo ngingo. Nk'urugero, ku byerekeranye n'igitero cyagabwe ku gasozi ka Muyira, abatangabuhamya batanga ibisobanuro byumvikana ku ruhare Abaregwa bakigizemo. Igihe icyo gitero cyagabwaga, abatangabuhamya bari mu mpinga y'agasozi bareba Abaregwa ku ntangiriro y'ako gasozi ku manywa y'ihangu. Icyo gihe, PP yabonye Abaregwa bombi barasa ku Batutsi; OO yari hafi bihagije ya Kayishema ku buryo yabonye Uregwa yambaye imyenda y'icyatsi kibisi, kandi yibutse ko bukeye yamwumvise abwira ijamba abagabaga ibitero; JJ na we yibuka ko ku itariki ya 13 Gicurasi, Kayishema yari yambaye ikositimu y'icyatsi kibisi kandi yongeraho ko Ruzindana yari yitwaje imbunda; II yavuze ko ku itariki ya 13 Gicurasi, yabonye Kayishema ashimira abagabye igitero anabona Abaregwa bombi barasa ku Batutsi ku itariki ya 14 Gicurasi ; NN yavuze ko Ruzindana yamwirukankanye akamurasaho; naho HH akavuga ko, ubwo yari yihishe mu ishyamba, yabonye Abaregwa bombi barasa ku mpunzi zageragezaga kujya kwihisha mu mpinga y'agasozi.
460. Urundi rugero umuntu yatanga ni ubwicanyi bwakorewe ku buvumo. Abatangabuhamya biswe W na HH bemeza ko aho bari bihishe babonaga neza Abaregwa. Umutangabuhamya wiswe W yavuze ko yari mu bihuru kandi ko hagati ye n'Abaregwa hari intera « umuntu yagenda n'amaguru iminota itageze kuri itanu », naho HH we yari yihishe mu gashyamba kari hafi aho. Ikimenyetso gihamya cyahawe n° 310 kigizwe n'ifoto cyekera ko HH yashoboraga kureba ku buvumo ari ahantu yihishe. Icyo nyuma kuri iyi ngingo, EE na II bavuze ko ubwo bari ahantu bari bihishe iruhande rw'umuhanda, babonye Ruzindana yicira Béatrice ku kirombe. Aba batangabuhamya bombi bavuze ko

- bari bahegereye bihagije ku buryo bumvaga ibyo Ruzindana yavugaga. Ibimenyetso gihamya bigizwe n'amafoto byatanzwe na Porokireri kuri aho hantu EE na II bari bihishe bigaragaza ko abo batangabuhamya bashoboraga kubona neza Ruzindana bari mu bwihisho.
461. Rumaze gusesengura ubuhamya bw'abatangabuhamya n'ibimenyetso gihamya byatanzwe na Porokireri, Urugereko rwemera, nta gushidikanya, ko abatangabuhamya bashinja biswe FF, PP, OO, II, JJ, NN, HH, UU, W, U, DD na MM, babonye neza Kayishema yitabira igitero kimwe cyangwa byinshi byagabwe ku Batutsi. Urugereko rwemera kandi, nta gushidikanya, ko abatangabuhamya bashinja biswe FF, PP, OO, II, JJ, NN, HH, UU, W, EE, Z, KK, RR na MM, babonye neza Ruzindana yitabira igitero kimwe cyangwa byinshi.
462. Mu gika cya 47 cy'Inyandiko y'ibirego havugwa by'umwihariko ko muri Mata, Gicurasi na Kamena 1994, Clément Kayishema na Obed Ruzindana bafatanyije bajyanye kenshi mu Bisesero, abajandarume, abapolisi ba komine, Interahamwe ndetse n'abasiviri bitwaje intwaro maze bakabategeka kwica abantu bari bahahungiyeye. Urugereko rusanga Abaregwa barijyanyeye ubwabo abagabye ibitero mu Bisesero babatwaye mu modoka imwe cyangwa bari imbere y'amamodoka yari abatwaye. Byongeye kandi, hatanzwe ibimenyetso bihagije bigaragaza ko Abaregwa batwaye abagabye ibitero mu modoka babajyana mu Bisesero cyangwa bakabayobora bava ahantu hamwe bajya ahandi muri ako gace ku buryo Urugereko rusanga ibivugwa mu gika 47 cy'Inyandiko y'ibirego byaragaragajwe. Urugereko rusanga Porokireri adategetswe kugaragaza ahantu abagabye ibitero baturutse.
463. Ku byerekeranye n'ibitero byagabwe ku itariki ya 13 n'ya 14 Gicurasi ku gasozi ka Muyira, abatangabuhamya biswe OO, II, JJ na NN bavuze ko babonye Kayishema na Ruzindana baza bari imbere y'amamodoka ashoreranye yari azanye abagabye ibitero ahantu habereye ubwicanyi. Ubuhamya bwatanzwe bugaragaza ko Ruzindana ubwe yatwaraga abagabaga ibitero mu modoka. Abatangabuhamya bemeza ko mu bagabaga ibitero harimo abasirikare, Interahamwe, abapolisi ba komine n'abasiviri bitwaje intwaro.

Ubuhamya bwa OO, JJ na UU bugaragaza ukuntu Kayishema yayoboye ibitero, ashyira abateraga mu matsinda, akayobora rimwe muri yo, ubwo iryo tsinda ryajyaga mu mpinga y'agasozi kandi yagendaga abereka aho Abatutsi bashoboraga kuba bari. PP, OO, II na JJ bavuze ko bumvise Kayishema abwira ijambo mu matsinda y'abagabye ibitero abashishikariza « gukorana umurava » cyangwa abashima ko « bakoze ». Ibimenyetso byatanzwe bigaragaza ko Kayishema yakoresheje indangururamajwi mu kubwira ijambo abagabye ibitero. OO na JJ bavuze kandi ko Kayishema yarashe mu kirere atanga ikimenyetso cyo gutangiza ibitero. II na OO bavuze ko Ruzindana na we yagize uruhare rw'ubuyobozi kuko yayoboye itsinda rimwe ry'abagabye igitero mu mpinga y'agasozi akanarasa ku mpunzi. OO we yanabonye Ruzindana atanga intwaro gakondo mbere y'ibitero.

464. Ibimenyetso byatanzwe ku byerekeranye n'ahandi hantu habereye ubwicanyi byemeza uruhare rw'ubuyobozi Abaregwa bagize mu byabereye aho hantu. Umutangabuhamya wiswe W yavuze ko, muri rusange, ibitero byari biyobowe na Kayishema naho Ruzindana ayoboye abagabye ibitero baturutse mu Ruhengeri. HH yongeraho ko Abaregwa bagaragaraga nk'aho ari bo batanga amabwiriza, nk'urugero berekana ukuntu umunwa w'ubuvumo ugomba gufungwa, kubwira abantu kujya gushaka ibiti no kuhatwika. Ku gasozi ka Karongi, umutangabuhamya wiswe U yabonye Kayishema ahagera ari kumwe n'abasirikare, abajandarume n'abasiviri b'Abahutu kandi agakoresha indangururamajwi mu kubwira ijambo abagabye ibitero. Kuri ako gasozi, DD na we yabonye Kayishema aha amabwiriza abasirikare, abajandarume, abapolisi ba komine n'Interahamwe. Abantu babonye na Ruzindana atwaye Interahamwe mu modoka azijyana ku kirombe cyo ku gasozi ka Nyiramurego maze akabwira abagabye ibitero ibyo bagomba gukora. Ku gasozi ka Bisesero, umutangabuhamya wiswe Z yumvise Ruzindana ateguka abagabye ibitero kugota ako gasozi bagatangira igitero. KK yavuze ko Ruzindana yatwaye mu modoka abagabaga ibitero abajyana ku gasozi ka Bisesero naho mu kwezi kwakurikiyeho, MM yabonye Ruzindana aho hantu ayoboye Interahamwe. Umutangabuhamya wiswe II we yavuze ko Ruzindana yayoboye ubwicanyi bwakorewe ku mwobo wari hafi y'agasozi ka Muyira, ko ari na we wategetse ko ubwicanyi butangira.

465. Mu iburanisha, Ubwunganizi nibwarwanyije ku buryo bufatika agaciro n'ukwizerwa by'ibyo bimenyetso. Kubera iyo mpamvu, Urugereko rwemera ko Kayishema na Ruzindana bajyanye mu Bisesero abajandarume, abapolisi ba komine, Interahamwe n'abasiviri bitwaje intwari maze bakabategeka kugaba ibitero ku Batutsi bari bahahungiyeye.
466. Mu gika cya 47 cy'Inyandiko y'ibirego hanavugwa ko Kayishema na Ruzindana na bo ubwabo bateye kandi bakica abantu bari bahungiyeye mu Bisesero. Hari ibimenyetso byinshi byerekana ukuntu Kayishema na Ruzindana bitabiriye ibyo bitero. Uretse ibimenyetso bikubiye mu bika bimaze kuvugwa, abatangabuhamya benshi bavuze ko babonye Kayishema na Ruzindana cyangwa umwe muri bo barasa ku mpunzi z'Abatutsi. Ku gasozi ka Bisesero, muri Mata, umutangabuhamya wiswe Z yabonye Ruzindana arasa ku mpunzi z'Abatutsi. Nyuma yaho, muri Gicurasi, ahantu hasa nk'aho, FF wari mu ntera ya metero nke z'ahantu Ruzindana yari, yamubonye arasa ku bagore no ku bakobwa babiri. Ku gasozi ka Muyira, muri Gicurasi, PP, II, NN na HH babonye Abaregwa bombi barasa ku Batutsi barimo guhunga. Muri Kamena, Kayishema na Ruzindana barasiye PP ahantu hitwa Kucyapa. Abatangabuhamya babiri bibonye ibyabaye bemeza ko babonye Ruzindana yica umwana w'umukobwa witwaga Béatrice. Muri Serire ya Gitwa, muri Mata, KK wari nko muri metero 50 uvuye aho Ruzindana yari, yamubonye arasa kuri Ruzibiza maze amuhamya ku kuguru. MM we yavuze ko Ruzindana yishe umugore we amurashe isasu.
467. Ingingo z'ingenzi Ubwunganizi butanga mu kurwanya ukwizerwa kw'abatangabuhamya zasuzumwe mu isesengura ry'ibimenyetso byerekeranye n'aho hantu hihariye hakorewe ubwicanyi. Ubwunganizi ntiburwanya ireme n'agaciro by'ibyo bimenyetso. Urugereko rwa Mbere rw'Iremezo rwemera, nta gushidikanya, ko Ruzindana na Kayishema na bo ubwabo bateye impunzi z'Abatutsi mu bitero byagabwe mu Bisesero.
468. Hari kandi n'ibimenyetso bikomeye bigaragaza ko Abaregwa bombi bitabiriye ubwicanyi. Urugereko ntirushidikanya ko Kayishema na Ruzindana bashyigikiye

ubwicanyi kubera ko babuteguye ndetse bakanabuyobora²⁴⁷. Byongeye kandi, Kayishema yafashije abandi bantu gukora ubwo bwicanyi kubera amagambo abubahamagarira yabwiye abagabaga ibitero. Ruzindana we yagize uruhare mu bwicanyi kubera ko yatanze intwari, n'imodoka zo gutwara abagabaga ibitero. Ibimenyetso byatanze bigaragaza ko Kayishema na Ruzindana bitabiriye ubwabo ibitero byahitanye abasiviri b'Abatutsi.

469. Hari ugushidikanya ku bivugwa ko Kayishema na Ruzindana na bo uwabo bishe abantu. Hari ibimenyetso byinshi bigaragaza ko Kayishema na Ruzindana bagerageje kwica cyangwa gukomeretsa impunzi, ahanini bazirasaho. Cyakora, nk'uko byasuzumwe haruguru, ku hantu henshi umutangabuhamya yagiye avuga ko Abaregwa bombi cyangwa umwe muri bo barashe umuntu runaka, Porokireri ntiyagaragaje ko barashe uwo muntu bikamuviramo gupfa²⁴⁸ Ibyo ntibitangaje uzirikanye ukuntu abo batangabuhamya babonaga ibyabaga. Nta watekereza ko impunzi yugarijwe n'urupfu yakwigerezaho igashaka kumenya niba koko uwarashwe yapfuye. Cyakora, mu gihe rudafite ibimenyetso rushingiraho, Urugereko ntirugomba kwemeza niba Abatutsi barapfuye barashwe n'Uregwa cyangwa niba barazize ibindi bikorwa bye.
470. Cyakora, ku rupfu rwa Béatrice ni ho honyine hatanzwe ibimenyetso bihagije bigaragaza ko Ruzindana yiyiciye uwo nyakwigendera. Ii na EE batanga ubuhamya bubabaje cyane ku kuntu Ruzindana yaciye Béatrice amabere mbere yo kumwica amusatuye inda akoresheje umuhoro. Abo batangabuhamya biboneye neza Ruzindana atemagura uwo nyakwigendera maze akamwica. Bombi bumvise Ruzindana anyyega nyakwigendera igihe yarimo kumwica. Byongeye kandi, abo batangabuhamya bamenye Béatrice kuko umwe avuga ko bari bariganye undi akavuga ko nyakwigendera yari azwi cyane muri aho gace kandi bombi bavuze ko nyakwigendera yitwaga Béatrice, bakanemeza ko uyu

²⁴⁷ Nk'urugero, reba ibimenyetso byerekeranye n'ubwicanyi bwo ku musozi wa Muyira, ku buvumo no ku kirombe kiri ku musozi wa Nyiramurego.

²⁴⁸ Reba isesengura ry'ibimenyetso kuri aho hantu havugwa mu mutwe uri haruguru.

nyakwigendera yahitanywe n'ibikorwa bya Ruzindana. Kubera izo mpamvu, Urugereko rwa Mbere rw'Iremezo rwemera, nta gushidikanya, ko Ruzindana ubwe yatemaguye kandi akiyicira Béatrice.

471. Mu gika cya 48 cy'Inyandiko y'ibirego, Porokireri avuga ko ibyo bitero byahitanye abantu babarirwaga mu bihumbi bagizwe n'abagabo, abagore n'abana. Abatangabuhamya barokotse bavuze bose ko kuva muri Mata kugera muri Kamena 1994, mu Bisesesero hiciwe abantu babarirwaga mu bihumbi. Ibyo binemezwa n'atangabuhamya barimo Dogiteri Haglund n'abanyamakuru banyuranye. Mu buhamya bwe mu Rukiko, Kayishema yavuze ko hagombye ingufu nyinshi kugira ngo bahambe imirambo yari muri ako karere.
472. Mu gusoza kuri iyi ngingo, mu gika cya 49 cy'Inyandiko y'ibirego havugwa ko Kayishema atafashe ingamba zo kuburizamo ibyo bitero cyangwa zo guhana ababigabye. Iki kibazo kirasuzumwa hasi mu Mutwe wa 6.1 w'iyi Nyandiko y'urubanza.

VI. IMYANZURO YO MU RWEGO RW'AMATEGEKO

6.1 Uburyozwacyaha bwa Kayishema nk'umuntu wari ukuriye abandi

473. Urugereko rwafashe imyanzuro ku byabaye kandi nta gushidikanya ko Kayishema na Ruzindana bateguye, bagahamagarira abandi gukora, bagategeka, bagakora cyangwa, mu bundi buryo ubwo ari bwo bwose, bagashyigikira abandi bantu mu gucura umugambi, gutegura cyangwa gukora ibikorwa bibisha biteganywa kuva ku ngingo ya 2 kugera ku ya 4 ya Sitati, ku byerekeranye na buri hantu hakorewe ubwicanyi. Uburyozwacyaha bwabo nka gatozi buteganywa n'ingingo ya 6 1) bwaragaragajwe, nta gushidikanya, nk'uko Urugereko rubisobanura mu myanzuro yarwo yo mu rwego rw'amategeko ku byaha binyuranye bashinjwa. Imyanzuro ishingiyeye ku byabaye igaragaza uburyozwacyaha bwa buri muntu nka gatozi kandi ijyanye n'uburyozwacyaha bwa Kayishema nk'umuntu wari ukuriye abandi, kubera ko, by'umwihariko, yari azi ko ibitero bigiye kugabwa ariko ntagire icyo akora ngo abiburizemo.
474. Ingano y'uburyozwacyaha bwa Kayishema, hashingiye ku ihame ry'uburyozwacyaha bw'umuntu ukuriye abandi buteganywa n'ingingo ya 6 3) ya Sitati, isaba ko hakorwa isesengura rirambuye. Ku byerekeranye n'ibyaha byakorewe ku kigo, kuri sitade no kuri kiriziya yo ku Mubuga, mu Nyandiko y'ibirego havugwa ngo « mbere y'ibitero byagabwe aho hantu, Clément Kayishema atafashe ingamba zo kubiburizamo kandi na nyuma yabyo ntiyahana ababigabye » (Reba ibika 30, 37 na 43). Ku byerekeranye na Bisesero, Inyandiko y'ibirego igira iti « muri icyo gihe cyose, Clément Kayishema ntiyafashe ingamba zo kuburizamo ibitero kandi na nyuma yabyo ntiyahana ababigabye » (Reba igika cya 49).
475. Ku byerekeranye n'ingano y'uburyozwacyaha bwa Kayishema, hashingiye kuri iryo hame ry'uburyozwacyaha bw'umuntu ukuriye abandi, mu gika cya 22 cy'Inyandiko y'ibirego havugwa muri rusange ko nk'umuntu wari ukuriye abandi, Kayishema aryoza ibikorwa bibisha byakozwe n'abantu yari akuriye mu kazi, abajandarume n'abapolisi ba

komine. Ku byerekeranye n'ahantu hihariye hakorewe ibyaha, havugwa ko Kayishema yategetse abagabye ibitero n'abandi bantu barimo Interahamwe n'abasiviri b'Abahutu bitwaje intwari, kugaba ibitero ku Batutsi. Kubera izo mpamvu, kandi hashingiwe ku byabaye byagaragajwe, Urugereko rugomba gusuzuma ingano y'ububasha Kayishema yari afite ku bandi bantu bagabaga ibitero n'uburyozwacyaha bwe ku bikorwa bibisha abo bantu bakoze. Aho biba ngombwa, Urugereko rurasuzuma²⁴⁹, kuri buri hantu hakorewe ibyaha, niba Kayishema yarafashe ingamba zo kuburizamo ibitero cyangwa zo guhana ababigabye.

Abantu bagabaga ibitero

476. Ababurugumesitiri n'abandi bakozi bo mu nzego z'ubutegetsi, abajandarume, abasirikare, abapolisi ba komine, abacungagereza, Interahamwe n'abasiviri bitwaje intwari bagaragaye ahantu hakorewe ubwicanyi kandi Urugereko rusanga baritabiriye amarorerwa yahakorewe. Ikibazo Urugereko rugomba gusuzuma cyerekeranye no kumenya niba Kayishema yari afite cyangwa atari afite ububasha yakomoraga ku mategeko cyangwa atayakomorigaho, kuri abo bantu bagabye ibitero.
477. Ari Porokireri ari n'Ubwunganizi buri wese yibanze ku kibazo cyo kumenya niba Kayishema yari afite ububasha bushingiye ku mategeko ku nzego z'ubutegetsi no ku nzego zishinzwe umutekano. Mu mvugo zabo, ababuranyi bombi bavugaga ku kaduruvayo kariho hagati ya Mata na Nyakanga 1994. Nk'urugero, Ubwunganizi buvugaga ko « abantu batari bacyubaha umutegetsi cyangwa amategeko²⁵⁰ maze, mu gutanga incamake y'ubuhamba bwa Porofeseri Guibal, buvugaga ko « indege ya Perezida imaze guhanuka, ibintu byarakomeye ku buryo byabaye ngombwa gushyiraho guverinoma ihutiyeho »²⁵¹.

²⁴⁹ Amategeko akurikizwa ahangaha avugwa mu mutwe wa 4.4.

²⁵⁰ Imyanzuro nsozarubanza ya Ferran mu magambo, inyandikomvugo y'iburanisha, 3 Ugushyingo 1998, urup. 112.

²⁵¹ Ni kimwe no haruguru, 4 Ugushyingo 1998, urup. 90.

478. Urugereko rusanga ari ngombwa gusuzuma ububasha Kayishema yari afite bukomoka ku mategeko. Cyakora, kubera ko icyo gihe mu Rwanda hari akaduruvayo, mu gusuzuma ububasha Kayishema yari afite bukomoka ku mategeko, Urugereko rugomba no kureba niba ku byerekeranye n'abantu bagabaga ibitero, Uregwa yari abafiteho cyangwa atari abafiteho ububasha atakomoraga ku mategeko.

Ububasha bukomoka ku mategeko

479. Mu Nyandiko y'ibirego havugwa ko, nk'umutegetsi uhagariye Leta muri Perefegitura, Perefefe ayobora Perefegitura akaba anafite ububasha ku zindi nzego z'ubutegetsi muri iyo Perefegitura. Nk'urugero, Urugereko rusanga Burugumesitiri Sikubwabo, abapolisi ba komine batari bake n'abajandarume barishe kandi bagakomeretsa Abatutsi benshi b'inzirakarengane.

480. Urugereko rusanga, nta gushidikanya, Perefefe yari afite ububasha bukomoka ku mategeko ku bagabaga ibitero kandi n'amategeko y'u Rwanda arasobanutse cyane kuri iyi ngingo.

481. Birumvikana ko burugumesitiri akuriwe na perefefe nk'uko biteganywa n'amategeko abiri yo mu Rwanda. Itegeko rya mbere muri ayo, ryo mu mwaka wa 1963 ryerekeye imitegekere ya komine, riteganywa mu buryo buziguze mu ngingo ya 59 ko mu kazi, burugumesitiri akuriwe mbere na mbere na perefefe²⁵². Mu ngingo yaryo ya 85, iryo tegeko rinateganywa ko iyo abategetsi ba komine batubahirije ibiteganywa n'amategeko, perefefe ashobora kwikorera mu mwanya wabo, ibisabwa n'ayo mategeko²⁵³. Byongeye kandi, ingingo ya 46 n'ya 48 z'itegeko ryo mu wa 1963 ryerekeranye n'imitegekere ya komine zihabanye ububasha bwo gufatira ibihano burugumesitiri ndetse akaba yanasaba Minisitiri w'Ubutegetsi bw'Igihugu kumukura ku mirimo ye. Ingingo ziri mu itegeko rindi ryashyikirijwe Urugereko, ari ryo Tegeko-teka ryo ku itariki ya 11 Werurwe 1975

²⁵² Ingingo ya 59: kubera ko ari mu mwanya w'abategetsi bubahiriza amategeko, burugumesitiri akuriwe mbere na mbere na Perefefe.

²⁵³ Ingingo ya 85: iyo Perefefe amaze kwibutsa kabiri yandika, abategetsi ba komine ntibatunganye ibyanditswe byubahiriza amategeko, ashobora kubwirangiriza mu mwanya wabo. Akora uko ashoboye kose ngo ayo mategeko atunganywe

ryerekeye imitunganyirize n'imikorere ya perefegitura na zo zivuga kimwe. Ingingo ya 15 y'iryoye tegeko iteganya ko, uretse kuba akuriye abaturugumesitiri n'abantu bakoresha mu mirimo yabo y'ubutegetsi, perefefe anafite ububasha rusange bwo kugenzura ibikorwa by'abategetsi ba komine bose. Kubera izo mpamvu, uretse rero inshingano rusange afite yo kubugabunga umudendezo wa rubanda, ayo mategeko aha perefefe ububasha bwo kugenzura ba burugumesitiri mu kazi²⁵⁴.

482. Abapolisi ba komine bagenzurwaga mbere na mbere na burugumesitiri. Ibyo bintu ntawe ubihakana kandi binavugwa mu myanzuro y'Urugereko rwa Mbere rw'Iremezo mu rubanza rw'Akayesu. N'ubwo bitanditse ko perefefe afite ububasha bukomoka ku mategeko ku bapolisi ba komine, amategeko ateganya ko mu bintu nk'ibyaberaga mu Rwanda no muri Perefegitura ya Kibuye mu mwaka wa 1994, perefefe ari we ufite ububasha bwa nyuma bwo kubagenzura. Bityo rero, itegeko ryerekeye imitegekere ya komine ryo mu mwaka wa 1963 riha perefefe ububasha bwo gukoresha abapolisi ba komine, akabaha amategeko mu buryo butaziguye mu gihe cy'amakuba cyangwa igihe imvururu zavutse cyangwa zenda kuvuka²⁵⁵.
483. Byongeye kandi, perefefe afite ububasha nk'ubwo ku bajandarume. Nk'uko biteganywa n'Itegeko-teka rishyiraho jandarumori y'igihugu ryo mu mwaka wa 1974, umutegetsi wese ubifitiye ububasha ashobora gusaba gukoresha abanjandarume. Abayobozi ba jandarumori ntibashobora kumwangira kubakoresha igihe cyose bitanyuranyije n'irindi tegeko kandi kubakoresha birakomeza kugeza umutegetsi wabisabye amenyeshereje jandarumori ko atakibakenye²⁵⁶. Na none, jandarumori y'igihugu ishobora gusa gukora

²⁵⁴ Ingingo ya 15: Perefefe, uretse ko ba burugumesitiri n'abo bakoresha mu mirimo yerekeye ubutegetsi ari we ubategeka mbere na mbere, afite n'ububasha bwo kugenzura ibikorwa by'abategetsi ba Komini byose, buteganywa n'ingingo z'itegeko ryerekeye komini.

²⁵⁵ Ingingo y'i 104 (igika cya 20): Ariko igihe cy'amakuba, cyangwa iyo ahari imvururu zishaka kubyuka, cyangwa zabyutse, Perefefe ashobora guhamagaza abapolisi ba komini akabihera amategeko.

²⁵⁶ Ingingo ya 29: Abategetsi babifitiye ububasha bashobora kugenga abajandarume mu gihe babasabye kugira ngo abe ari bo babihera amategeko; Ingingo ya 33: umuyobozi wa jandarumori ntashobora kujya impaka ku bubasha bwo gusaba abajandarume mu gihe butanyuranyije n'itegeko runaka; Ingingo ya 36: Inkurikizi zo gusaba L1892(K)

imirimo, nko kugarura no kubungabunga umudendezo wa rubanda, iyo umutegetsi runaka abisabye mu buryo bwemewe n'amategeko²⁵⁷. Urugereko ruributsa ko Kayishema yasabye abajandarume bo kumufasha kandi akabikora kuri telefone no mu nyandiko, kubera akaduruvayo kari mu Rwanda guhera muri Mata kugera muri Nyakanga 1994.

484. Ubwo bubasha bukomoka ku mategeko perefere yari afite bwemezwa na Porofeseri Guibal, umutangabuhamya w'impuguke wahamagajwe n'Ubwunganizi. Mu buhamya bwe mu Rukiko, uyu mutangabuhamya yavuze ko Itegekonshinga ryo mu mwaka wa 1991 rimaze kwemezwa, n'amashyamba menshi amaze kujyaho,

Perefere yari afite ububasha bwinshi ku Nama ya perefegitura. Nk'uko biteganywa n'itegeko ryo mu mwaka wa 1975... perefere yanashoboraga kwifashisha abasirikare. Yashoboraga gushyiraho amategeko yo mu rwego rwa disipulini kandi akaba yanahita abahana...²⁵⁸.

485. Byongeye kandi, Avoka wa Kayishema abajije niba mu gihe cy'amashyamba menshi « perefere yari gusa umuhuzabikorwa aho kuba umuntu ukuriye abandi mu kazi », Porofeseri Guibal yarasubije ngo « ubusanzwe, yari umuntu ukuriye abandi mu kazi kurusha uko yaba umuhuzabikorwa »²⁵⁹.

486. Porofeseri Guibal arakomeza agasobanura ukuntu ibintu byari kugenda ukundi muri kiriya gihe cy'akaduruvayo u Rwanda rwarimo mu mwaka wa 1994. Ibintu byaberega mu gihugu n'imiterere yihariye y'Itegeko Nshinga ryashyizweho riteganywa amashyamba menshi byari gutuma mu Rwanda haba icyo uyu mutangabuhamya yita « amashyamba

abajandarume bo guha amategeko zirangirana n'uko umuyobozi wari wabasabye amenyesheje, mu nyandiko cyangwa mu magambo, umuyobozi wa jandarumori ushinze kubatanga ko atakibakoresha.

²⁵⁷ Itegeko-teka rishyiraho jandarumori y'igihugu, gusomera hamwe ingingo ya 4 n'ya 24 hashingiwe ingingo 4 (igika cya 3): Inshingano zidasanzwe ni izo jandarumori y'igihugu ishobora kuzuzwa gusa ariko ibisabwe n'umuyobozi ubishinze, ingingo ya 24 (igika cya 23, inshingano zidasanzwe): Jandarumori y'igihugu ibungabunga kandi ikagarura umudendezo wa rubanda iyo ibisabwe mu buryo bukurikije amategeko.

²⁵⁸ Inyandikomvugo y'iburanisha, 27 Gicurasi 1998, urup. 125.

²⁵⁹ Ni kimwe no haruguru.

yashyizweho mu gihe cy'amahina ». N'ubwo atasuzumye ibintu byihariye byaranze ibibazo by'u Rwanda, Porofeseri Guibal asobanura ko ibyo bintu byari kubaho kuko buri shyaka ryari kumva ko ibibazo bigomba gukemurwa n'amashyaka aho gukemurwa binyuze mu Itegekonshinga. Hari kubaho rero ukutumvikana hagati y'inzego za politiki n'ubutegetsu. Ibyo ni byo Porofeseri Guibal yemeza ko, n'ubwo mu mwaka wa 1994 perefere yari afite ububasha bukomoka ku mategeko ku bantu bashinzwe umutekano, mu by'ukuri ubwo bubasha ntacyo bwabaga buvuye iyo abaminisitiri bari bakuriye bwa nyuma abapolisi, abajandarume n'ingabo babaga baturuka mu ishyamba ritandukanye n'irya perefere.

487. Urugereko rusanga igitekerezo cy'uyu mutangabuhamya kigaragaza neza ko ari ngombwa gusuzuma ububasha budakomoka ku mategeko perefere yari afite hagati ya Mata na Nyakanga 1994. Urugereko rurasuzuma ibyo bintu hasi. Cyakora, n'ubwo gusuzuma ububasha nk'ubwo ushingiyeye ku mashyamba menshi bishobora kuba bifite ishingiro, bigomba gukorwa hazirikanwa imyanzuro y'Urugereko rwa Mbere rw'Iremezo ivuga ko abantu bo nzego z'ubutegetsu, abo mu nzego zishinzwe umutekano ndetse n'abasiviri bafite intwari bese bitabiriye umugambi uhuriweho wo gukora jenocide. Muri ayo mezi, abo bantu bese bari bahuje igitekerezo cyo kurimbura Abatutsi. Kubera izo mpamvu, ikibazo cy'ihangana ry'amashyamba niba cyari gikomeye, nticyari gifite uburemere cyane nk'icyo kindi cyariho.
488. Ibikorwa bya Kayishema mu byabaye muri 1994 bigaragaza ko yakomeje kugira ku baburugesitiri ububasha bukomoka ku mategeko cyangwa nibura ko yumvaga bagomba kumwumvira kubera ubwo bubasha. Nk'urugero, ikimenyetso gihamya No 51 cyatanze na Porokireri kigizwe n'ibaruwa Kayishema yoherereje ba burugesitiri abasaba gushaka abantu bo « guha imyitozo » mu rwego rwa gahunda yo kwirengera kw'abaturage. Byongeye kandi, ikimenyetso gihamya No 53 ni indi baruwa Kayishema yandikiye ba burugesitiri ku itariki ya 5 Gicurasi 1994, abasaba kumugezaho byihutirwa raporo ku birebana n'umutekano mu makomine yabo no kumumenyeshaho ahantu « akazi » kari katangiye. Byongeye kandi, mu buhamya bwe mu Rukiko, Kayishema avugaga ko mu mpera za Gicurasi 1994, yagiye kureba ba burugesitiri bo

muri perefegitura ye akabatega kutubahiriza ibyavugwaga mu ibaruwa yanditswe na Minisitiri w'Ubutegesi bw'Igihugu yerekeranye na gahunda y'ukwirengera kw'abaturage. Biragaragara rero ko icyo gikorwa cyari kigamije kubuza ba burugumesitiri gushyira mu bikorwa amabwiriza yatanze na minisitiri²⁶⁰.

489. Biragaragara rero ko no muri icyo gihe, Kayishema yumvaga neza ko agifite ububasha ku bantu yari akuriye kandi yumvaga ko « ibyo yasabaga » byagombaga kubahirzwa. Kubera izo mpamvu, Urugereko rusanga, nta gushidikanya, Kayishema yari afite ububasha bukomoka ku mategeko ku ba burugumesitiri, ku bapolisi ba komine, ku bajandarume no ku bandi bantu bo mu nzego zari zishinzwe umutekano bagaragaye ahantu ubwicanyi bwabereye.

Ububasha budakomoka ku mategeko

490. Ubukemuramanza kuri iki kibazo bwerekana neza ko, uretse ububasha bushingiye ku mategeko aba afite mu gihe iki n'iki, ari na ngombwa gusuzuma ububasha uregwa yari afite budakomoka ku mategeko. Mu rubanza rwa Celebici, Urugereko rwa Mbere rw'Iremezo ruvuga ko uko ibintu byari bimeze mu cyahoze ari Yugosilaviya, aho inzego z'ubutegezi zabaga kenshi zidasobanutse kandi zitazwi neza,

...abantu bafite ubutegezi nyakuri kuri izo nzego zitazwi mu mategeko n'ubushobozi bwo kubuza abantu batega gukora ibyaha no kubahana igihe babikoze, bashobora, mu bihe bimwe na bimwe, kuryozwa kuba nta cyo babikozeho. Bityo rero, Urugereko rwemera.....igitekerezo kivuga ko abantu bari mu myanya y'ubutegezi, baba abo mu nzego za gisiviri cyangwa iza gisirikare, bashobora kuryozwa ibyaha hakurikijwe ihame ry'uburyozwacyaha bw'umuntu ukuriye abandi kubera ububasha bari bafite bukomoka ku mategeko cyangwa butayakomokaho. *Kuba rero umuntu atari afite ububasha bukomoka ku mategeko bwo kugenzura ibikorwa by'abantu*

²⁶⁰ Inyandikomvugo y'iburanisha, 14 Nzeri 1998, imp.244-246. 113. Urugereko ntirwahawe ibisobanuro birambuye kuri ayo mabwiriza. Cyakora ibivugwa muri ayo mabwiriza ntibifite agaciro kanini cyane muri uru rubanza.

*akuriye ntibyamubuza kuryozwa ibyo abo bantu bakoze*²⁶¹ [mu nyandiko byavuyemo, aya magambo ntiyanditse mu mberame].

491. Hashobora rero kubaho uburyozwacyaha bw'umuntu ukuriye abandi kabone niyo nta bubasha busobanutse bukomoka ku mategeko buhari. Byongeye kandi, nk'uko bisuzumwa hasi, kuba umuntu afite ububasha bukomoka ku mategeko ntibivuga, byanze bikunze, ko agomba buri gihe kuryozwa icyaha nk'umuntu ukuriye abandi. Guhamya umuntu icyaha hashingiwe kuri iri hame bigomba gushingira ku bubasha umuntu ukuriye abandi yari afite ku bantu akuriye mu bintu runaka.
492. Urugereko rwa Mbere rw'Iremezo rusanga ibikorwa by'umuntu ukuriye abandi ukurikije uko ibintu bimeze, cyangwa se ibyo yirengagije gukora, bishobora gutuma uwo muntu abiryozwa nka gatozi hashingiwe ku ngingo ya 6 3) ya Sitati. Si ngombwa rero ko uregwa aba afite ububasha bukomoka ku mategeko ku bantu batsotsobye ibyaha. Koko kandi, ububasha umuntu agira ku bantu batsotsobye ibyaha bushobora kuba buhagije kugira ngo aryozwe icyaha nk'umuntu wari ukuriye abandi iyo hashobora kugaragazwa ko ubwo bubasha bwakoreshejwe mu gukora icyaha cyangwa ko uregwa ataburijemo icyaha kandi yari afite ububasha kabone n'ubwo butakomokaga ku mategeko. Urubanza rwa Celebici rurimo icyemezo cyahindutse ubukemuramanza kuri iyi ngingo²⁶². By'umwihariko, kuri iki kibazo umuntu yatanga urugero ku rubanza rwa Roechling ruvugwa muri make n'Urugereko rwa Mbere rw'Iremezo mu rubanza rwa *Celebi* ko

.... ari urugero rw'iyubahirizwa ry'ihame ry'uburyozwacyaha bw'umuntu ukuriye abandi hashingiwe ku bubasha budakomoka ku mategeko abayobozi ba gisiviri bari bafite. Muri urwo rubanza, n'ubwo Abaregwa bahamwe n'ibyaha birimo kuba batarafashe ingamba zo guhagarika ibikorwa by'ubugizi bwa nabi abagize Gestapo bakoreraga abakozi ba nyakabyizi, nta na hamwe

²⁶¹ Inyandiko y'urubanza rwa Celebici mu rw'iremezo, igika cya 354.

²⁶² Ni kimwe no haruguru, ibika 375-376.

havugwa ko Abaregwa bari bafite ububasha bakomoraga ku mategeko bwo guha amategeko abakozi bagengwa na Gestapo²⁶³.

493. Ibimaze kuvugwa byakuwe muri urwo rubanza ni ingenzi mu gusuzuma ububasha Kayishema yari afite ku nzego z'ubutegetsi zitari zisobanutse zariho mu Rwanda mu mwaka wa 1994, nk'Interahamwe n'abasiviri bari bafite intwari bari muri gahunda y'« ukwirengera kw'abaturage ». Ibyo bintu bifite kandi n'akamaro mu gusuzuma ukuntu, mu bikorwa, Kayishema yakoranaga n'ababurugumesitiri, abapolisi ba komine n'abajandarume.
494. Abatangabuhamya bashinjura barimo DN na DK bavuze ko Perefe atari afite uburyo bwo guhagarika imvururu zavutse nyuma y'urupfu rwa Perezida. Cyakora, Urugereko rusanga mu by'ukuri, abo batangabuhamya badahakana ko Perefe yagenzuraga inzego zishinzwe umutekano n'iz'ubutegetsi.
495. Ubwunganizi buvuga ko Perefe atari afite uburyo buhagije bwo kubuza abagabaga ibitero gukora ubwicanyi bwo mu wa 1994 kandi muri abo harimo abasirikare n'abajandarume bake bari barataye urugamba. Mu buhamya bwe mu Rukiko, Kayishema ubwe yivugira ko yohereje abajandarume yari afite mu Biseseho ariko ko nta kintu kinini cyashoboraga gukorwa.
496. Porofeseri Guibal, umutangabuhamya w'impuguke watumijwe n'Ubwunganizi, avuga ko mu mwaka wa 1994, nyuma y'urupfu rwa Perezida, mu Rwanda ububasha perefe yari asanzwe afite busa n'ubwagabanutse cyane. Nk'uko abivuga, mu gihe cy'« amashyamba menshi yashwizweho mu gihe cy'amahina », ububasha bukomoka ku mategeko cyangwa butayakomokaho, perefe yari afite nk'umuyoboze w'ishyamba rya polikiti runaka bwaragabanutse.

²⁶³ Ni kimwe no haruguru, igika 376

497. Kuri iyi ngingo, Porofeseri Guibal avuga ko Perefefu yabangamiwe n'uko « ubutegetsi butari bugikora ». Ubwunganizi buvuga ko kubera icyo mpamvu, akaduruvayo kariho, mu rwego rwa politiki n'ubutegetsi, hagati ya Mata na Nyakanga 1994, kagabanuye ububasha perefefu yari afite bwo gukoresha abasirikare n'abajandarume no guha amategeko inzego z'ubutegetsi. Ubwunganizi buvuga ko ako kaduruvayo kanagize ingaruka ku baturage muri rusange. Porofeseri Guibal asobanura ko mu gihe nk'icyo cy'akaduruvayo bitoroshye kugira ngo abaturage bumvire amabwiza n'amategeko bahabwa.
498. Muri make, Ubwunganizi buvuga ko muri ariya mezi ibyombu byabaye mu mwaka wa 1994, ushingiyeho ku kuntu ibintu byari bimeze, Kayishema atari afite ububasha bwo kugenzura abagabaga ibitero. Bwongeraho ko atari anafite ubushobozi bwo kuburizamo ubwicanyi cyangwa guhana ababukoze muri perefefitura ye.
499. Cyakora na none, Urugereko rusanga ibyo Porofeseri Guibal avuga bidahuye n'uko Uregereko rwasanze ibintu byari byifashe mu Rwanda. Perefefu yari umuntu uzwi cyane ndetse wubashywe n'abaturage²⁶⁴ kandi ubuhamya bwa Kayishema mu Rukiko bugaragaza neza ububasha perefefu yari afite. Koko rero, Uregwa yabwiye Urugereko rwa Mbere rw'Iremezo ikintu cyabaye mu mwaka wa 1992 ubwo, akimara gutangira imirimo ye, Burugumesitiri wa Komine ya Gishyita yamuhamagaye kuri telefone. Avuga ko icyo gihe uwo muburugumesitiri yamumenyesheje ko muri komine ye amaze yarimo gushya, ko abantu barimo guhunga kandi ko ibintu byari byadogereye muri komine ye. Kayishema yabwiye Urugereko ko uwo muburugumesitiri yamusabye guhita ajya aho hantu gutabara avuga ngo: « icyo nshaka gusa ni uko mwakwigerera hano mukareba »²⁶⁵.
500. Urugereko rufata imyanzuro itatu y'ingenzi kuri ibyo bintu. icya mbere, biragaragaza ingaruka urugendo rwa Kayishema aho hantu rwashoboraga kugira kandi ibyo byerekeranye n'uburyozwacyaha bwe mu gushyigikira ikorwa ry'ibyaha nk'uko biteganywa n'ingingo ya 6 1). icya kabiri ni uko mu bihe by'amahina, perefefu ari we

²⁶⁴ Reba igice cya kabiri cy'iyi Nyandiko y'urubanza, cyiswe amavu n'amavuko y'urubanza.

²⁶⁵ Inyandikomvugo y'iburanisha, 8 Nzeri 1998, urup. 46.

mutegetsu wo hejuru watabazwaga muri perefegitura, kubera ubutegetsu n'ububasha yabaga afite. icya nyuma, ibyo bintu bigaragaza ijamba n'ububasha bwinshi bidakomoka ku mategeko perefere yabaga afite mu bihe nk'ibyo. Ibyo bintu bisa rwose n'uko ibintu byari bimeze mu Rwanda mu mwaka wa 1994.

501. Ibyabaye bivugwa muru uru rubanza binagaragaza ko Kayishema yari afite ububasha budakomoka ku mategeko ku bantu bose bagabaga ibitero bitabiriye ubwicanyi. Abantu babonye kenshi Kayishema atwaye benshi mu bagabaga ibitero, abajyana ahantu hakorewe ubwicanyi cyangwa bamubona abayoboye. Nk'urugero, abantu bakunze kumubona ari kumwe n'Interahamwe, azitwaye mu modoka, aziha amabwiriza n'ibihembo, ategura kandi ayobora ibitero. Kubera izo mpamvu, Urugereko rwemera ko, kuri buri hantu hakorewe ubwicanyi, Kayishema yari afite rwose aho ahuriye n'abagabaga ibitero kandi abategeka, ndetse anategeka abandi bantu bagabaga ibitero nk'uko byagaragajwe neza n'ubuhamya bwatanze mu Rukiko.
502. Nk'urugero, ku byerekeranye n'ibyabereye mu Bisesero, umutangabuhamya wiswe F yavuze ko Kayishema yayoboye ubwicanyi bwakorewe Abatutsi bari bahungiyeye mu buvumo. Umutangabuhamya wiswe U we yatekerereje Urugereko ukuntu Kayishema yageze ku musizi wa Karongi ayoboye abasirikare, abajandarume n'abasiviri bitwaje intwari, akababwira ijamba akoresheje indangururamajwi, yangiza akabategeka kugaba igitero. Ubwicanyi bwatangiye kubera ayo mategeko yatanze. Porokireri yagaragaje ibyo bintu mu buryo budashidikanywaho.
503. Ubwicanyi bwabereye kuri sitade na bwo ni urugero rukomeye rugaragaza ububasha Kayishema yari afite. Urugereko rusanga Kayishema yaratwaye abajandarume mu modoka akabajyana kuri sitade aho bamaze iminsi ibiri barinze aho hantu kandi bagenzura abinjiraga n'abasohokaga muri icyo Sitade. Kayishema yagarutse aho hantu ku itariki ya 18 Mata ayoboye umubare munini kurushaho w'abajandarume, Interahamwe, n'abandi basiviri bitwaje intwari n'abacungagereza. Abajandarume bari barinze aho hantu batangiye kwica abantu ari uko Kayishema arashe kabiri ku mbaga y'impunzi maze akabategeka gutangira kugaba igitero. N'ubwo cyasaga nk'igitunguranye kandi kitari

cyitezwe, icyo gitero gikaze, cyagabwe n'abantu bari barinze sitade ndetse n'abandi bantu baje kubafasha, cyari mu rwego rw'igitero cyateguwe kandi kikayoborwa, nk'uko byagaragaraga, n'abantu barimo Kayishema.

504. Aha si ngombwa kwibutsa imyanzuro yose ishingiyeye ku byabaye yafashwe n'Urugereko. Izo ngero zerekana uruhare rukomeye Kayishema yagize mu kuyobora ubwicanyi bwakozwe. Nta gushidikanya ko, ku byerekeranye n'ibyaha bivugwa mu Nyandiko y'ibirego, Kayishema yari afite ububasha bukomoka ku mategeko n'ubutayakomokaho kuri benshi mu bantu bagabaga ibitero. Hanagaragajwe, nta gushidikanya, ko ari Kayishema wategetse ko ibitero bitangira (uretse icyagabwe ku kiriziya yo ku Mubuga). Biragaraga ko ibyo bitero byateguwe na we kandi bikagabwa amaze kubitangira amabwiza.
505. Byongeye kandi, aho byagaragaye ko Kayishema yari afite ububasha bukomoka ku mategeko cyangwa butayakomokaho ku bantu bakoze ubwicanyi kandi ko abo bantu bakoze ibyaha babitegetswe na we, Urugereko rusanga bigaragara ko Uregwa yari azi neza cyangwa yari afite impamvu zo kumenya ko ibitero byari hafi kugabwa ariko ntafate ingamba ziciye mu gaciro zo kubiburizamo. Kubera iyo mpamvu, Urugereko rusanga nta cyo bimaze gusuzuma niba Uregwa atarahannyeye abakoze ibyo byaha kuko iryo suzuma ntacyo ryakongeraho.
506. Urugereko rusanga rero hashingiye ku ngingo ya 6 (3) ya Sitati, Kayishema agomba kuryozwa nka gatozi ibyaha byakorewe ku kigo kigizwe na *Home Saint-Jean* na kiriziya y'Abagatolika, kuri sitade no mu Bisesero kubera ko yari afite, ku bantu babikoze, ububasha bukomoka ku mategeko no ku butayakomokaho.
507. Bityo rero, Urugereko rushigaje gusa gusuzuma niba Kayishema yari azi cyangwa yari afite impamvu zo kumenya ko ibyo bitero byagabwe adahari byari kuba. Nirusanga yari abizi cyangwa yaragombaga kumenya ko byari kugabwa, Urugereko rugomba kureba niba Uregwa yaragerageje kuburizamo ibyo byaha cyangwa guhana ababikoze.

Kuba Kayishema yari azi ko ibitero bigiye kugabwa, kubiburizamo no guhana ababigabye

508. Urugereko rusanga hataragaragajwe ko Kayishema yategetse, ku buryo bugaragara, ko ubwicanyi bukorwa, n'ubwo yari ku kiriziya yo ku Mubuga mbere y'ibitero n'igihe byarimo kugabwa. Bityo rero, ni ngombwa gusuzuma izindi ngingo za ngombwa mu kugaragaza uburyozwacyaha bwe nk'umuntu wari ukuriye abandi, nk'uko biteganywa n'ingingo ya 6 3) ya Sitati.
509. Rumaze gusuzuma ibyabaye bivugwa, Urugereko rufashe umwanzuro uvuga ko Kayishema yari azi cyangwa afite impamvu zo kumenya ko ubwicanyi bwibasiye imbaga bwari hafi gukorwa. Urugereko rufashe uwo mwanzuro rushingiye ku mpamvu nyinshi. Iya mbere ni uko ibyabereye ku kiriziya yo ku Mubuga byarimo gukorwa, Abatutsi bari bibasiwe n'ibitero mu Rwanda hose kandi Kayishema yari abizi. Iya kabiri ni uko, nk'uko Abatutsi benshi bari kuri iyo kiriziya babyiboneye, nyuma yo kuvugana na Kayishema, ni bwo umupadiri w'Umuhutu yafungiyeye Abatutsi amazi akababwira ko bagiye gupfa. Impamvu ya nyuma ni uko Kayishema yari afite ububasha bukomoka ku mategeko cyangwa butayakomokaho ku bantu bose bagabaga ibitero barimo abasirikare, abajandarume n'Interahamwe.
510. Kubera ko Uregwa yari ashinzwe kubungabunga umudendezo wa rubanda ndetse akaba yari azi ko ubwicanyi bwari gukorwa mu bindi bice by'u Rwanda, Urugereko rusanga Kayishema yari afite inshingano yo gukora ku buryo abo bantu yari akuriye batagaba ibitero ku Batutsi bari bahungiyeye kuri kiriziya yo ku Mubuga. Byongeye kandi, Kayishema yari azi ko abantu yari akuriye barimo gukora ibyaha kuri iyo kiriziya kubera ko abantu bamubonye aho hantu haba mbere y'ibitero cyangwa mu gihe byarimo kugabwa.
511. Kugira ngo hagaragazwe uburyozwacyaha bw'umuntu ukuriye abandi hashingiye ku ngingo ya 6 (3), ni ngombwa kwekerana ko uregwa yashoboraga kubuza ibyo ibyaha gukorwa cyangwa guhana ababikoze. Kubera ko, nk'uko bigaragara, Urugereko

rudashobora gusaba ibintu bidashoboka, uregwa agomba kuryozwa icyaha hashingiwe gusa ku buryo yari afite bwo kuburizamo ibyo byaha cyangwa guhana ababikoze.

512. Nk'urugero, mu buhamya bwe mu Rukiko, Uregwa avuga ko atagenzuye uko bikwiye ibikorwa by'abajandarume kubera ko bari bigometse. Cyakora, hari udutero twagabwe ku kiriziya yo ku Mubuga mbere y'uko kwigomeka kw'abajandarume (ku mugoroba wo ku itariki ya 15 Mata) ndetse n'Urugereko rusanga iyo myiregurire itakwemerwa kubera ko Porokireri yatanze ibimenyetso simusiga bigaragaza ko Kayishema yari ahantu hakorewe ubwicanyi buvugwa mu Nyandiko y'ibirego, akabugiramo uruhare rukomeye kandi akanabwitabira. Kayishema yari afite ububasha bukomoka ku mategeko cyangwa butayakomokaho ku bantu bagabaga ibitero no ku bandi bantu nka Burugumesitiri Sikubwabo, uvugwa ko yayoboye ibitero byagabwe kuri kiriziya yo ku Mubuga.
513. Rushingiye kuri ubwo bubasha budashobora guhakanwa Kayishema yari afite kuri abo bantu no ku nshingano ye nka perefye yo kubungabunga umudendezo wa rubanda, Urugereko rusanga Uregwa yari afite rwose inshingano yo kubuza ibyaha gukorwa. Iyo ngingo yasobanuwe mu magambo make n'Urukiko rwa gisirikare rwa Leta zunze ubumwe z'Amerika i Nuremberg [*United States Military Tribunal*] mu rubanza rw'abantu bafashweho ingwate [*Hostage case*] aho ruvuga ko

Hashingiwe kuri ayo mahame y'uburyozwacyaha bw'umuntu ukuriye abandi, umwofisiye wituramiye mu gihe abantu akuriye barimo kubahiriza itegeko ryo gukora icyaha bahawe n'ababategeka kandi azi ko iryo tegeko ari ryo gukora icyaha, icyo gihe aba ateshutse ku nshingano mbonezabupfura nk'uko biteganywa mu mategeko mpuzamahanga. *Iyo rero yituramiye ntagire icyo akora, ntashobora kwivanaho inshingano afite mu rwego mpuzamahanga*²⁶⁶ (mu nyandiko byavanywemo aya magambo ntiyanditse mu mberame).

²⁶⁶ Hasubirwamo ibivugwa mu Nyandiko y'urubanza rwa Celebici mu rw'iremezo, igika 338

Nta kimenyetso cyatanzwe kigaragaza ko Uregwa yagerageje kuburizamo amarorerwa yari azi ko ari hafi gukorwa kandi yari abifitiye ububasha.

514. Ku byerekeranye no kuba Kayishema atarahanye abakoze ibyaha aregwa, Ubwunganizi buvuga ko kuri icyo kibazo, Perefefu yari afite gusa ububasha bwo gufunga abo bantu mu gihe kitarenze iminsi 30. Urugereko rwemeranya n'Ubwunganizi ko icyo gihano kitari kuba gihagije ku bantu bakoze ibyo byaha bivugwa (n'ubwo icyo gihano cyari kuba gihagije nk'ingamba y'agateganyo yo kubuza andi marorerwa gukorwa). Cyakora, Urugereko runazirikana ko hatatanzwe ikimenyetso na kimwe kigaragaza ko mu mezi atatu, kuva ibitero bitangiye, kugera Kayishema avuye mu Rwanda, hari ingamba iyo ari yo yose yari yatangiye ngo abantu bakoze ibyo byaha bya kinyamaswa bakurikiranwe mu nkiko.
515. Si ngombwa gusuzuma birambuye ikibazo cyo kumenya niba Kayishema yarahanye cyangwa atarahanye abantu bakoze ibyo byaha. Mu by'ukuri, ibyo nta kamaro byagira urebye imyanzuro y'Urugereko ivuga ko kuri buri hantu hakorewe ubwicanyi havugwa mu Nyandiko y'ibirego, Kayishema yari afite, ku bantu bagabaga ibitero, ububasha budashidikanywaho bukomoka ku mategeko n'ubutayakomokaho. Hanagaragajwe, ku buryo budashidikanywaho, ko Kayishema yategetse ko ibitero bigabwa cyangwa ntabiburizemo kandi yari azi ko byari hafi kugabwa.

Umwanzuro

516. Ingingo ya 6 (3) igamije mbere na mbere gukora ku buryo umuntu uhamwa n'icyaha kubera ko yari akuriye abandi aryoze amarorerwa yose yakozwe igihe ari we wategekaga. Uretse no kuba yari azi ko abantu yari akuriye barimo kwica abasiviri b'inzirikarengane babarirwaga mu bihumbi ariko ntabuze ubwo bwicanyi gukorwa, Kayishema yanateguye ubwo bwicanyi kandi arabuyobora. Urugereko rusanga kugira ngo Kayishema ahamwe n'icyaha uko bikwiye kuri ubwo bwicanyi, Kayishema agomba kuryozwa ibyo bikorwa n'ayo marorerwa yakozwe igihe yategekaga.

6.2 Jenocide

517. Kayishema na Ruzindana baregwa icyaha cya jenocide hashingiwe ku ngingo ya 2 (3) ya Sitati. Ku kirego cya 1, icya 7 n'icya 13 mu Nyandiko y'ibirego, Kayishema aregwa icyaha cya jenocide kubera uruhare yagize mu byaha byakorewe ku kiriziya y'Abagatolika na Home Saint-Jean (ikigo) ku itariki ya 17 Mata 1994, kuri Sitade Gatwaro ku itariki ya 18 Mata 1994 no ku kiriziya yo ku Mubuga ku itariki ya 14 n'ya 15 Mata 1994. Kayishema anashinjwa jenocide mu kirego cya 19 kubera ibyaha byakorewe mu Bisesero muri Mata, Gicurasi na Kamena 1994 kandi uburyozwacyaha bwe bushingiye ku ngingo ya 6 (1) na 6 (3) za Sitati.
518. Ruzindana ashinjwa jenocide mu kirego cya 19 kubera uruhare yagize mu bwicanyi bwakorewe mu Bisesero. Uburyozwacyaha bwe bushingiye ku bikorwa yakoze cyangwa ibyo yateshutse gukora, nk'uko biteganywa n'ingingo ya 6 (1) ya Sitati.
519. Nk'uko biteganywa n'ingingo ya 2 (2) ya Sitati, jenocide ni kimwe mu bikorwa bivugwa mu ngingo ya 2 (2)(a) kugeza kuri (e) ya Sitati, « kigamije kurimbura abantu bose cyangwa igice cyabo bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini, bazira icyo bari cyo ». Ibintu bigize icyo cyaha cya jenocide bisuzumwa mu Mutwe wahariwe amategeko yerekeranye na jenocide.
520. Muri uyu Mutwe, Urugereko rurasuzuma mbere na mbere igitekerezo Abaregwa bari bafite kugira ngo rurebe niba barakoze ibyo bikorwa bafite igitekerezo cyihariye cyo kurimbura Abatutsi bose cyangwa igice cyabo. Rushingiye ku myanzuro ruri bugereho, Urugereko rurasuzuma ibikorwa bya jenocide Abaregwa bashinjwa maze rufate umwanzuro ku buryozwacyaha bwabo hashingiwe ku ngingo ya 6 (1) n'ya 6 (3) za Sitati.

6.2.1 Ibintu bigize igitekerezo cyihariye

521. Kugira ngo yerekane ko icyaha cya jenocide cyakozwe koko, Porokireri agomba kugaragaza, ku buryo budashidikanywaho, ko ibikorwa bibisha bivugwa byakozwe hagamijwe kurimbura abantu bose cyangwa igice cyabo bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini, bazira icyo bari cyo.

Itsinda ryibasiwe

521. Porokireri avuga ko abantu bibasiwe ari Abatutsi bo muri Kibuye kandi ko abo bantu bagabweho ibitero bazira ubwoko bwabo. Urugereko rusuzuma umwirongoro w'abantu bakorewe ibyaha mu gice cy'imyanzuro ishingiye ku byabaye. Muri icyo gice ni ho rusuzuma jenocide yakorewe muri Kibuye muri rusange, n'ubwicanyi bwakorewe aho hantu hane by'umwihariko. Ibimenyetso byatanze bigaragaza, ku buryo budashidikanywaho, ko abantu bakorewe ibikorwa bishinjwa Kayishema na Ruzindana ari Abatutsi.

523. Urugereko rwemera kandi ko Abatutsi bari bagize ubwoko bwihariye. Mu gushyigikira ibyo avuga kuri iyo ngingo, Porokireri yatanze ibimenyetso bigaragaza ko guhera mu mwaka wa 1931, buri Munyarwanda yagombaga kwitwaza indangamuntu yerekana ko nyirayo ari Umuhutu, Umututsi cyangwa Umutwa²⁶⁷. Izo ndangamuntu zatangwaga na Guverinoma zerekanaga ubwoko bwa ba nyirazo. Ni ngombwa kuvuga ko mu mucu nyarwanda umwana afata ubwoko bwa se.

524. Abatangabuhamya b'impuguke bahamagajwe na Porokireri, ari bo Porofeseri Guichaoua na Nsanuwera, na bo batanze ubuhamya kuri iki kibazo. Byongeye kandi, Porokireri yifashishije Nsanuwera maze atanga kopi y'indangamuntu nk'ikimenyetso gihamya. Uyu mutangabuhamya yemeza ko byari itegeko ko ubwoko bwandikwa mu nyandiko buri Munyarwanda ahawe n'ubutegetsi. Yongeraho ko kumenya abantu ushingiyeye ku

²⁶⁷ Imyanzuro nsozarubanza yanditse ya Porokireri, 9 Ukwakira 1998, urup. 28. Reba haruguru mu gice cya kabiri cyiswe Amavu n'amavuko y'urubanza.

bwoko bwabo byatumaga haba ubwumvikane buke mu Rwanda. Ni yo mpamvu icyo kibazo cyasuzumwe mu Masezerano y'Amahoro y'Arusha yarangiye hemejwe ku mugaragaro ko kuva icyo gihe ubwoko bugomba kuvanwa mu ndangamuntu z'Abanyarwanda. Cyakora, ku mirambo yataburawe mu byobo rusange ku Kibuye habonetse indangamuntu zanditseho ko abishwe bari Abatutsi.

525. Byongeye kandi, abacikacumu babarirwa muri za mirongo, batanze ubuhamya imbere y'uru Rugereko, bavuze ko ari Abatutsi kandi ko n'abantu babonye bicwa muri kiriya gihe na bo bari Abatutsi.
526. Mu rubanza rw'Akayesu, Urugereko rwa Mbere rw'Iremezo I rwafashe umwanzuro uvuga ko Abatutsi bagize ubwoko bwihariye. Rushingiye ku bimenyetso byatanze muri uru rubanza, Urugereko na rwo rwemeranya n'uwo mwanzuro. Urugereko rusanga haragarajwe, ku buryo budashidikanywaho, ko Abatutsi bishwe bari bagize ubwoko bwihariye, nk'uko biteganywa n'ingingo ya 2 (2) ya Sitati. Rusanga kandi haragarajwe ko bazize ubwoko bwabo.

Uburyo ubwicanyi bwakozwemo

527. Mu gice cy'iyi Nyandiko y'urubanza cyerekeranye n'amategeko akurikizwa, Urugereko rwemera ko bitoroshye kubona ibimenyetso byerekana igitekerezo cy'umuntu wakoze icyaha. Cyakora, Urugereko ruvuga ko igitekerezo cyihariye gishobora kugaragarira mu magambo n'ibikorwa by'uwo muntu ndetse no mu murongo w'imyitwarire ye asanganywe. Muri uru rubanza, ibyo bintu birazirikanwa mu gusuzuma ibyo ibimenyetso.

Jenoside yakorewe mu Rwanda no ku Kibuye muri rusange

528. Mu gice cya V cy'iyi Nyandiko y'urubanza, Urugereko rusuzuma amakuba yagwiriyeye u Rwanda muri rusange no muri Perefegitura ya Kibuye by'umwihariko mu mwaka wa 1994. Iryo suzuma rifite akamaro hano kuko ryibutsa ukuntu ibyaha byakozwe aho hantu uko ari hane. Iryo suzuma rigaragaza ko hariho koko umugambi wo gukora jenoside mbere y'uko indege ya Perezida ihanurwa muri Mata 1994. Uwo mugambi wo gukora jenoside ku rwego rw'igihugu washyizwe mu bikorwa mu maperefegitura. Nk'urugero,

Kayishema, nka Perefefe, yagezaga amakuru ku bategetsi bamukuriye n'abo yari akuriye akoresheje uburyo bwemewe muri Leta akurikije uko inzego z'ubutegetsi zagendaga zisumbana²⁶⁸.

529. Porokireri avuga ko ubwicanyi bwateguwe bukanatunganywa hakurikijwe umugambi usobanutse washyizwe mu bikorwa na Kayishema na Ruzindana muri Kibuye. Muri icyo Perefegitura ya Kibuye, uwo mugambi washyizwe mu bikorwa kandi ugera ku ntego yawo ku buryo bwuzuye. Abarokotse ubwicanyi bwakorewe mu mugwi wa Kibuye no mu nkengero zawo muri Mata bahungiyeye mu Bisesero aho bahizwe bakicwa ubudahwema. Umwe mu batangabuhamya avuga ko agasozi ka Bisesero kari kuzuyeho imirambo «ku buryo wagira ngo ni udusimba twicishijwe imiti yica udukoko²⁶⁹. Hariho kandi n'ibimenyetso by'inyandiko bigaragaza ko Kayishema yasabye abategetsi bo ku rwego rw'igihugu kumuha abantu bo gufasha mu kugaba ibitero ku Batutsi batari bafite intwari yitwaje ko ngo hari « ikibazo cy'umutekano » mu Bisesero²⁷⁰.
530. Mu ibaruwa yo ku itariki ya 26 Kamena 1994 yandikiye Kayishema wari Perefefe wa Kibuye, Bagilishema wari Burugumesitiri wa Mabanza icyo gihe, avuga ko bitari bikiri ngombwa kohereza abandi bantu bagabaga ibitero muri Mabanza kubera ko nta Batutsi bari basigaye muri komine ye²⁷¹. Iyo baruwa yerekana neza ko abategetsi ba gisiviri bari bazi ko itsembatsemba ryarimo kuba kandi ko barigizemo uruhare.

Igiterekerezo Kayishema yari afite cyo kurimbura Abatutsi bose cyangwa igice cyabo abaziza ubwoko bwabo

Umubare w'abakorewe icyaha

²⁶⁸ Nk'urugero, reba ibimenyetso gihamya n° 51 na 53 byatanzwe na Porokireri.

²⁶⁹ Reba umutwe wa 5.4, haruguru (Imyanzuro ishingiye ku byabaye yerekeranye na Bisesero).

²⁷⁰ Ikimenyetso gihamya n° 296 cyatanzwe na Porokireri.

²⁷¹ Ikimenyetso gihamya n° 59 cyatanzwe na Porokireri.

531. Umubare w'Abatutsi bishwe mu bwicanyi Kayishema ariyozwa nka gatozi cyangwa nk'umuntu wari ukuriye abandi ni ikimenyetso kigaragaza igitekerezo Kayishema yari afite. Urugereko rwa Mbere rw'Iremezo rusanga buri hantu muri aho hane hakorewe ubwicanyi hariciwe abantu batagira ingano. Mu kigo, Abatutsi bishwe babarirwaga mu 8.000 naho kuri sitade hicirwa ababarirwaga hagati ya 8.000 na 27.000. N'ubwo bigoye cyane kumenya ikigezanyo cy'umubare w'Abatutsi biciwe mu Bisesero, ibimenyetso bigaragaza ko aho hantu hiciwe Abatutsi babarirwaga mu bihumbi mirongo.
532. Usibye no kuba harishwe Abatutsi batagira ingano, ikindi kigaragara ni uko ubwicanyi bwakozwe nta kuvangura igitsina cyangwa imyaka. Abagabo, abagore, abasaza n'abakecuru n'abakiri bato bishwe nta kubabarira. Abana biciwe mu maso y'ababyeyi babo n'abagore basambanywa ku gahato mu maso y'abantu bo mu miryango yabo. Abicanyi ntibasize Umututsi n'umwe mu bo babonye, yaba umunyanteye nke cyangwa umugore utwite.
533. Umubare munini w'Abatutsi bishwe ni ikimenyetso simusiga kigaragaza ko hariho igitekerezo cyo kurimbura abantu bose bagize ubwo bwoko cyangwa igice cyabo. Abicanyi bari basangiye umugambi wo gutsemba ubwoko bw'Abatutsi kandi Kayishema yagize uruhare rukomeye mu gushyira mu bikorwa uwo mugambi.

Uburyo ubwicanyi bwakozwe- imyitwarire idahinduka

534. Urugereko rwa Mbere rw'Iremezo rusanga haratanzwe ibimenyetso simusiga bigaragaza ko ibitero byagabwe mu buryo buri kuri gahunda. Porokireri avuga ko ikimenyetso cyerekana ko hariho igitekerezo cyihariye (*dolus specialis*) kigaragarira mu kuntu ubwicanyi bwateguwe bwagiye bushyirwa mu bikorwa nta guhagarara kandi bukibasira Abatutsi. Abakoze ibyaha ntibakoze ubwicanyi rimwe gusa ahubwo bakomeje kwica Abatutsi kuva muri Mata kugera muri Kamena 1994.²⁷²
535. Iyo myitwarire idahinduka yo gukora ubwicanyi kuri gahunda nayo yerekana ko hariho igitekerezo cyihariye cyo kubukora. Kayishema yagize uruhare rukomeye mu gushyira

²⁷² Inyandikomvugo y'iburanisha, 21 Ukwakira 1998, imp. 125, 141.

mu bikorwa ubwo bwicanyi. Abatutsi bahungiyeye ahantu hari hazwi mu mateka ko abantu bahajya ntibagire icyo baba kandi muri aho hantu twavugaga ku kigo, kuri sitade no kuri kiriziya yo ku Mubuga. Abahutu bagabaga ibitero bagose aho hantu maze babuza abantu bari bahari gusohoka, bityo abo bantu ntibabona ibiryo, imiti cyangwa imisarane n'ahantu ho kwisukurira²⁷³. Iyo habaga hari Abatutsi benshi cyane ku buryo bitashobokaga kubica mu muni umwe ngo barangire, abagabaga ibitero bagarukaga bukeye mu gitondo kurangiza « akazi » kabo. Urugereko rusanga Kayishema yarahamagariye abantu kugaba ibitero ku kigo no kuri sitade.

536. Mu Bisesero, ibitero byamaze amezi ni ukuvugaga muri Mata, Gicurasi na Kamena 1994. Ibimenyetso bigaragaza ko Kayishema yayoboye ibitero byagabwe mu Bisesero ndetse agatanga amabwiriza yo kubigaba. Abagabaga ibyerekeranye bitarwaga n'amabisi ya Leta n'andi mamodoka. Urugereko rusanga Ruzindana yarajyanagaye Abahutu bagabaga ibitero abatwaye mu modoka ze naho Kayishema akabatwara mu ma kamyo ya Perefegitura. Mu bagabye ibyerekeranye harimo abategetsu bo muri ako gace nk'aba burugumesitiri n'abakonseye. Harimo kandi abapolisi ba komine, abajandarume, Interahamwe, abasirikare, n'Abaregwa ubwabo.
537. Ubuhamya bwatanzwe ku ntwari zakoreshejwe ndetse n'uburyo Abatutsi bishwe na bwo burahuzwa ku byerekeranye n'aho hantu hane hakorewe ibyaha. Muri rusange, abatanga-buhamya bavuye ko Kayishema n'abajandarume bari bafite imbunda n'amagerenade n'aho abandi bantu bagabaga ibitero bagakoresha ibikoresho gakondo ubusanzwe byifashishwa mu buhinzi, nk'imihoro ndetse n'intwari za kera zidakozwe mu cyuma nk'ibisongo by'imigano. Mu gutangiza igitero aho hantu ibyaha byakorewe, hakoreshejwe amagerenade n'imbunda iyo Abatutsi babaga bahungiyeye ahantu hafunze. Nyuma yaho, abantu bakorewe ibyaha baratemagurwaga n'imihoro kugera bapfuye. Abantu babonye Kayishema na Ruzindana bafite imbunda aho hantu hakorerwaga ibyaha.

²⁷³ Reba haruguru, umutwe wa 5.3 (Isesengura ku hantu bahungiraga bizera ko bahagirira umutekano).

Amagambo ya Kayishema

538. Amagambo yavuzwe na Kayishema ndetse n'abandi bantu bakoreraga ku mategeko ye, mbere y'ubwicanyi, igihe bwari kuba ndetse na nyuma yabwo, na yo yerekana ko Uregwa yari afite igitekerezo cyihariye cyo gukora icyaha. Bavugaga ko Abatutsi ari Inkotanyi, ni ukuvuga abarwanyi ba FPR cyangwa abanzi b'u Rwanda, ndetse bakabita Inyenzi. Banavugaga ko Abatutsi ari umwanda. Umutangabuhamyi wiswe WW yavuze ko yumvise Abatutsi bitwa umwanda ubwo Kayishema yabwiraga Burugumesitiri Bagilishema ko « umwanda wose ugomba kuvaho »²⁷⁴ ashaka kuvuga Abatutsi bari bahungiyeye ku biro bya komine. Mu bitero byagabwe kuri sitade, Kayishema yise Abatutsi « imbwa z'Abatutsi » ndetse n'« inyanazimbwa » ubwo yarimo guhamagarira abagabye ibitero kwica Abatutsi bari bahateraniye.
539. Urugereko rusanga kandi Kayishema yarakoresheje indangururamajwi kugira ngo atange ubutumwa bwari buturutse i Kigali, bwashishikarizaga abantu gutsemba Abatutsi mu gitero cyagabwe ku kigo. Abatangabuhamyi banyuranye barokotse ubwicanyi bwakorewe kuri icyo kigo bumvise Kayishema avuga ngo « mujye gukora » cyangwa ngo « mutangire mukore »²⁷⁵ kandi abatangabuhamyi benshi bemeza ko byashakaga kuvuga gutangira kwica Abatutsi. Abandi batangabuhamyi bavuze ko bumvise abagabaga ibitero, barimo n'Interahamwe, baririmba indirimbo zerekanyeye no gutsemba Abatutsi. Ukurikije uko ibintu byari bimeze abo bantu bagenzurwaga na Kayishema²⁷⁶. Urugereko rwa Mbere rw'Iremezo rwemeye ikimenyetso gihamya N° 297 cyatanze na Porokireri yifashishije umutangabuhamyi wiswe HH. Icyo kimenyetso ni inyandiko ikubiyemo amagambo yandukwe y'imwe muri izi ndirimbo zivugaga itsembatsemba. Ahanini, iyo ndirimbo yahamagariraga abagabaga ibitero kutagira umuntu basiga yaba umusaza/umukecuru n'uruhinja kubera ko na Kagame (wayoboraga FPR icyo gihe)

²⁷⁴ Inyandikomvugo y'iburanisha, 19 Gashyantare 1998, urup. 16, n'umutwe wahariwe jenoside muri Kibuye.

²⁷⁵ Reba haruguru (Hasuzumwa imyanzuro ishingiyeye ku byabaye).

²⁷⁶ Reba ubuhamyi F, W, B, PP na NN batanze mu Rukiko.

yavuye mu Rwanda ari umwana²⁷⁷. Urugereko rusanga Kayishema yari asangiye igitekerezo n'abantu bagabaga ibitero.

540. Muri make, kubera impamvu zose zimaze kuvugwa, Urugereko rusanga Porokireri yaragaragaje, mu buryo budashidikanywaho, ko Kayishema yari afite igitekerezo cyo kurimbura Abatutsi bose cyangwa igice cyabo ndetse akora ibikorwa bivugwa hasi mu rwego rwo gushyira mu bikorwa icyo gitekerezo.

Igitekerezo Ruzindana yari afite cyo kurimbura Abatutsi bose cyangwa igice cyabo abaziza ubwoko bwabo

541. Mu magambo no mu bikorwa bye ndetse no mu myitwarire ye mu karere kose ka Bisesero, Ruzindana yagaragaje ko afite igitekerezo cyo kurimbura Abatutsi muri ako karere.

Amagambo ya Ruzindana

542. Abatangabuhamya bumvise Ruzindana aha amabwiriza Abahutu bagabaga ibitero mu Bisesero. By'umwihariko, mu buhamya bwabo mu Rukiko bamwe muri bo bavuze ko Ruzindana yavuze ko batagomba kureka impinja zasigaye zo nyine ba nyina bamaze kwicwa, kubera ko abarimo gutera igihugu bagiye ari abana²⁷⁸. Urugereko kandi rwumvise ubuhamya bwerekeranye n'amagambo arwanyaga Abatutsi Ruzindana yabwiye abagabaga ibitero ko impunzi z'Abatutsi ari « abanzi ».

Uburyo ubwicanyi bwakozwe – Imyitwarire idahinduka Uregwa yari asanganywe

543. Ruzindana yagize uruhare rw'ubuyobozi mu itsembatsemba ryari kuri gahunda ryakorewe Abatutsi bari bahungiyeye mu Bisesero. Ibimenyetso byatanzwe bigaragaza ko abenshi mu Batutsi, bari barokotse ubwicanyi bwakorewe mu mujyi wa Kibuye no mu nkengero zawo, bahungiyeye mu Bisesero. Ruzindana yagize uruhare rukomeye mu guhiga

²⁷⁷ Reba umutwe wa 5.4, haruguru (Imyanzuro ishingiye ku byabereye mu Bisesero).

²⁷⁸ Inyandikomvugo y'iburanisha, 14 Ukwakira 1997, urup. 17.

abo Batutsi, kubera ko yatwaye abagabaga ibitero mu modoka, akabashishikariza kugaba ibitero ndetse akanabiyobora.

544. Urugereko rwa Mbere rw'Iremezo rusanga Ruzindana yaratwaye mu modoka ze Abahutu bagabaga ibitero abajyana ahantu henshi hakorewe ibyaha mu Bisesero. Iyo yageraga ahakorewe ibyaha, Ruzindana yategekaga abagabaga ibitero gukora ubwicanyi kandi akizeza igihembo cy'amafaranga abazajya bamuzanira imitwe y'Abatutsi bazwi cyane, cyangwa indangamuntu z'Abatutsi bishwe. Abantu babonye Ruzindana afite imbunda ahantu henshi hakorewe ubwicanyi. Urugereko rwemeye ubuhamya bw'abatangabuhamya bavuze ko bumvise ibyo Abahutu bagabaga ibitero bavugaga ko bakoreraga Ruzindana. Abandi batangabuhamya bemeza ko bumvise abajandarume baganira, bavuga ko nta kibazo bafite cyo gukoresha amasasu menshi, kubera ko Ruzindana yari kubagurira andi menshi. Kubera imyitwarire ya Ruzindana itarahindutse, Abatutsi babarirwaga mu bihumbi bagizwe n'abagabo, abagore n'abana barishwe cyangwa barakomereka bikomeye.
545. Rushingiye ku bimenyetso byose rwemeye, Urugereko rusanga abakoze ibyaha muri Perefegitura ya Kibuye mu gihe kivugwa, bari basangiye umugambi wo kurimbura ubwoko bw'Abatutsi muri Kibuye. Kayishema na Ruzindana bagize uruhare runini mu gushyira mu bikorwa uwo mugambi uhuriweho.

6.2.2 Ibikorwa bya jenocide bya Kayishema na Ruzindana

546. Porokireri avuga ko Abaregwa bakoze ibikorwa biteganywa n'ingingo ya 2(2). N'ubwo ingingo ya 2(2) iteganya ibikorwa binyuranye, mu myanzuro nsozarubanza ye mu magambo, Porokireri avuga gusa ku bwicanyi (ingingo ya 2(2)(a)), guteza Abatutsi ububabare buzahaza umubiri no mu mutwe (ingingo ya 2(2)(b)), no gushyira ku bushake Abatutsi mu nzitane z'ubuzima zigomba gutuma bose cyangwa igice cyabo barimbuka (ingingo ya 2(2)(c)).

547. Mbere na mbere, Urugereko rusanga, mu rwego rwo gushyira mu bikorwa umugambi wa jenocide, Kayishema n'abantu yagenzuraga ndetse na Ruzindana bari bafite igitekerezo cyo kwica Abatutsi hariya hantu hane hakorewe ubwicanyi. Muri icyo gikorwa cyo kwica imbaga, hagaragara ko bashakaga guteza abo bantu ububare buzahaza umubiri no mu mutwe. Nk'urugero, Urugereko rwa Mbere rw'Iremezo rwashoboye kwibonera inkovu nyinshi abantu batejwe n'amasasu n'imihoro. Byongeye kandi, Urugereko rwumvise ubuhamya bw'abatangabuhamya benshi bavuga ukuntu babonye abantu bo mu miryango yabo batemagurwa, basambanywa ku gahato cyangwa bicwa nabi. Ibimenyetso byatanzwe bigaragaza ko igikorwa cya jenocide Abaregwa bakoze ari ukwica. Urugereko rwa Mbere rw'Iremezo rusanga Kayishema na Ruzindana bagomba kuryozwa ingaruka z'ubwo bwicanyi bwibasiye Abatutsi bo ku Kibuye n'ibikorwa byo kubateza ububare buzahaza umubiri no mu mutwe.
548. Porokireri ntiyatanze ikimenyetso na kimwe kigaragaza ko Abaregwa bombi cyangwa abantu Kayishema ari afiteho ububasha bukomoka ku mategeko no ku butayakomokaho, bashyize ku bushake Abatutsi bo muri Kibuye mu nzitane z'ubuzima zigomba gutuma barimbuka bose cyangwa igice cyabo. Urugereko rwemera ingingo ya Porokireri ivuga ko Abatutsi bari bahungiyeye hariya hantu hane hakorewe ubwicanyi, bimwe ibiribwa, amazi, imisarani n'aho kwisukurira ndetse n'uburyo bwo kuvurwa. Cyakora, kubima ibyo bintu byari mu rwego rwo gutoteza Abatutsi, hagamijwe kubatsemba mu gihe gito. Kubima ibyo bintu ntibyari mu rwego rwo kubashyira mu nzitane z'ubuzima, zisobanurwa mu Mutwe wa 4.1 w'iyi Nyandiko y'urubanza, kugira ngo barimbuke. Byongeye kandi, Urugereko rusanga abo bantu batarimwe ibyo bintu igihe kirekire bihagije ku buryo byatuma barimbuka. Kubera izo mpamvu, Urugereko rwa Mbere rw'Iremezo rurasuzuma gusa ibikorwa by'ubwicanyi.
549. Nk'uko bivugwa haruguru, Urugereko rwasanze imyitwarire mibisha ya Kayishema na Ruzindana yari mu rwego rw'igitekerezo cyo gutsemba Abatutsi bose cyangwa igice cyabo. Kuri Kayishema, iki gitekerezo kigaragara kuri hariya hantu hose uko ari hane hakorewe ubwicanyi. Ruzindana we icyo gitekerezo kigaragara ku byerekeranye n'ibyabereye mu Bisesero gusa.

550. Urugereko rugiye gusuzuma ibimenyetso byerekeranye n'ibikorwa bya jenocide byakozwe na Kayishema na Ruzindana.

IKIREGO CYA 1:

Muri iki kirego, Kayishema ashinjwa icyaha cya jenocide giteganywa n'ingingo ya 2(3)(a) ya Sitati, kubera ubwicanyi bwakorewe ku kigo.

551. Ku byerekeranye n'icyo kigo, Urugereko rwa Mbere rw'Iremezo rusanga hafi y'itariki ya 17 Mata 1994, aho hantu hari hateraniye Abatutsi babarirwaga mu bihumbi. Abantu bagenzurwaga na Kayishema barimo abajandarume n'Interahamwe bagose icyo kigo. Hari kandi n'abantu bari mu mato bagose ako gasozi kameze nk'akarwa icyo kigo cyubatsheho. Abagabye ibitero bagose icyo kigo, bari bafite imihoro, amacumu n'izindi ntwaro gakondo maze babuza abantu kuva muri icyo kigo. Urugereko rusanga abagerageje guhunga barishwe.

552. Kayishema yayoboye abagabye igitero kuva ku biro bya Perefegitura kugera ku kigo. Bagezeyo, yakoresheje indangururamajwi abagezaho ubutumwa bwo kwica Abatutsi bwari buturutse i Kigali maze abategeka gutangira kugaba igitero kuri abo Batutsi. Bityo rero, Kayishema yayoboye kandi yitabira icyo gitero cyamaze amasaha kandi kigahitana Abatutsi babarirwa mu bihumbi.

553. Urugereko rusanga mbere y'icyo gitero, Kayishema yari azi ko cyari kigiye kugabwa. Koko rero, uretse no kuba yaragitangije, abantu bamubonye ku kigo inshuro ebyiri mbere y'ibitero byo ku itariki ya 17 Mata.

Uburyozwacyaha bwa Kayishema

554. Kubera impamvu zimaze kuvugwa, nk'uko biteganywa n'ingingo ya 6(1) ya Sitati, Kayishema agomba kuryozwa icyaha kubera ko yahamagariye, agategeka, agakora cyangwa, mu bundi buryo ubwo ari bwo bwose, agashyigikira abandi mu gucura

umugambi, gutegura no gukora jenocide kubera ibikorwa byo kwica no guteza ububare bukomeye buzahaza umubiri no mu mutwe Abatutsi bari muri icyo kigo ku itariki ya 17 Mata 1994.

555. Byongeye kandi, nk'uko biteganywa n'ingingo ya 6(3) ya Sitati, Kayishema aryoze jenocide nk'umuntu wari ukuriye abandi, kubera ko abantu yari akuriye bakoze ubwicanyi bwahitanye imbaga y'Abatutsi bakanabakomeretsa ku kigo ku itariki ya 17 Mata 1994. Mu bagabye igitero kuri icyo kigo harimo abajandarume, Interahamwe, abakozi ba Leta bo muri ako gace barimo abacungagereza, abakonseye n'ababurugumesitiri. Urugereko rwa Mbere rw'Iremezo rusanga Kayishema yari afite ububasha bukomoka ku mategeko bwo kugenzura abenshi mu bagabye ibitero, kandi anafite, kuri abo bantu bose, ububasha atakomoraga ku mategeko. Ibimenyetso byatanzwe bigaragaza ko Kayishema yayoboye ubwo bwicanyi akanabutangamo amategeko. Nk'uko bivugwa mu myanzuro yo mu rwego rw'amategeko ku buryozwacyaha, kubera ko Kayishema yitabiriye ubwe ubwicanyi, biragaragaza ko yari azi ko abantu yari akuriye bari hafi kugaba igitero, nyamara ntiyafata ingamba za ngombwa kandi zishyize mu gaciro kugira ngo ababuze kandi yari afite rwose ubushobozi bwo kububurizamo.

IKIREGO CYA 7:

Muri iki kirego, Kayishema ashinjwa jenocide, hashingiwe ku ngingo ya 2(3)(a) ya Sitati, kubera ubwicanyi bwakorewe kuri sitade, mu muji wa Kibuye

556. Urugereko rwa Mbere rw'Iremezo rusanga ku itariki ya 18 Mata 1994, Abatutsi babarirwa mu bihumbi, badafite intwari kandi bagizwe n'abagabo, abagore n'abana, barahungiyeye muri Sitade, mu muji wa Kibuye. Impunzi zimaze gukoranira aho hantu, abantu bagenzurwaga na Kayishema, barimo abajandarume, bazibujije gusohoka muri Sitade maze barayigota. Urugereko rusanga mu gihe cy'ibitero, bamwe mu Batutsi bagerageje guhunga barishwe. Kayishema yahamagariye abantu kugaba ibyo bitero, ateguka abari babirimo « kurasa izo mbwa z'Abatutsi » kandi ni na we warashe isasu rya

mbere muri Sitade. icyo gitero cyahitanye abantu babarirwa mu bihumbi abandi benshi bagikomerekeramo bikomeye.

557. Urugereko rusanga haragaragajwe, mu buryo budashidikanywaho, ko mu gihe Abatutsi babuzwaga kuva muri Sitade, Kayishema yari azi cyangwa afite impamvu zo kumenya, ko igitero cyari hafi kugabwa aho hantu.

Uburyozwacyaha bwa Kayishema

558. Kubera impamvu zimaze kuvugwa, nk'uko biteganywa mu gingo ya 6 (1) ya Sitati, Kayishema agomba kuryozwa guhamagarira, gutegeka, gukora cyangwa, mu bundi buryo ubwo ari bwo bwose, gushyigikira abandi bantu mu gucura umugambi, gutegura no gukora jenocide, kubera ibikorwa byo kwica no gukomeretsa Abatutsi muri Sitade.
559. Nk'uko biteganywa mu ngingo ya 6(3) ya Sitati, Kayishema agomba kuryozwa jenocide nk'umuntu wari ukuriye abandi, kubera ibikorwa abantu yari akuriye bakoze mu bwicanyi bwabereye kuri sitade ku itariki ya 18 Mata 1994. Mu bantu bagabye ibitero kuri iyo Sitade harimo abajandarume, abasirikare, Interahamwe, abacungagereza n'abasiviri bitwaje intwari. Urugereko rwa Mbere rw'Iremezo rusanga Kayishema yari afite ububasha bukomoka ku mategeko bwo kugenzura abenshi mu bagabye ibyobitero, anafite kuri abo bantu bose babigabye ububasha atakomoraga ku mategeko. Ibimenyetso byatanze bigaragaza ko Kayishema yategetse ko ubwicanyi bukorwa, akayobora kandi agaha amabwiriza ababukoze. Kubera iyo mpamvu, biragaragara ko Kayishema yari azi ko abantu yari akuriye bari hafi gukora ubwicanyi nyamara ntafate ingamba za ngombwa kandi zishyize mu gaciro kugira ngo ababuze n'ubwo yari abifitiye ubushobozi bufatika.

IKIREGO CYA 13:

Muri iki kirego, Kayishema ashinjwa jenocide, hashingiwe ku ngingo ya 2(3)(a) ya Sitati, kubera ubwicanyi bwakorewe ku kiriziya yo ku Mubuga

560. Mu byo Urugereko rwa Mbere rw'Iremezo rwabonye harimo ko Abatutsi babarirwaga mu bihumbi bakoraniye ku kiriziya yo ku Mubuga bahunga ibitero byagabwaga muri Perefegitura ya Kibuye yose. Muri abo bantu bari bahahungiyeye, bake gusa nibwo barokotse ubwicanyi bwabaye ku itariki ya 15 n'ya 16 Mata. Kayishema n'abantu yari akuriye barimo abakozi ba Leta bo muri ako karere, abajandarume, abapolisi ba komine n'Interahamwe bari aho hantu kandi bitabiriye icyo gitero. Urugereko rusanga mbere y'icyo gitero, abantu bageragezaga kuva ku kiriziya ngo bajye gushaka ibyo kurya cyangwa amazi, barasubizwaga inyuma ku ngufu cyangwa bagakubitwa kugeza bapfuye n'abagabaga ibitero bafite intwari bari inyuma ya kiriziya. Kuba Kayishema yari aho hantu mbere y'igitero cya karundura no mu gihe cyarimo kugabwa, no kuba abantu yagenzuraga baracyitabiriye, byashishikariye abantu kwica impunzi z'Abatutsi zari zihateraniye. Icyo gitero cyahitanye abantu babarirwa mu bihumbi, abandi benshi bagikomerekeramo bikomeye.
561. Urugereko rusanze haragaragajwe, mu buryo budashidikanywaho, ko mu gihe Abatutsi babuzwaga kuva ku kiriziya yo ku Mubuga, Kayishema yari azi cyangwa afite impamvu zo kumenya, ko aho hantu hari hariyeho kugabwa igitero.

Uburyozwacyaha bwa Kayishema

562. Hashingiwe ku ngingo ya 6(1) ya Sitati, Kayishema agomba kuryozwa nka gatozi icyaha cya jenocide kubera ibikorwa byo kwica no gukomeretsa bikomeye Abatutsi byakorewe ku kiriziya yo ku Mubuga ku itariki ya 15 n'ya 16 Mata 1994. Kayishema yagiye kuri icyo kiriziya mbere y'ibitero kandi ajyanayo abajandarume. Umupadiri w'Umuhutu w'iyi Paruwasi wakoranye na Kayishema, yabwiye impunzi mu buryo butaziguye ko zigiyeye gupfa maze asaba ko babara buri muntu wari wahahungiyeye kuko Perefere yari akomeye kumenya umubare wabo. Nyuma yaho, abajandarume bateye izo mpunzi kandi Kayishema yari muri ibyo bitero. Iyi myanzuro igaragaza, ku buryo budashidikanywaho, ko Kayishema yashyigikiye abantu mu gutegura ubwicanyi no kubukora.

563. Byongeye kandi, hashingiwe ku ngingo ya 6(3) ya Sitati, Kayishema aryoze icyaha cya jenocide nk'umuntu wari ukuriye abandi, kubera ibikorwa abantu yari akuriye bakoreye ku kiriziya yo ku Mubuga ku itariki ya 15 n'ya 16 Mata 1994. Abagabye igitero ku kiriziya yo ku Mubuga barimo abaturugumesitiri n'abakonseye ba komine, abajandarume, abasirikare, Interahamwe, abapolisi ba komine, abandi bakozi ba Leta bo muri ako gace n'abasiviri bitwaje intwari. Urugereko rwa Mbere rw'Iremezo rusanga Kayishema yari afite ububasha bukomoka ku mategeko bwo kugenzura abenshi mu bagabaga ibitero, anafite n'ubutayakomokaho bwo kugenzura abantu bose bari mu bitero. Biragaragara ko Kayishema yari azi ko igitero cyari kigiye kugabwa aho hantu kubera ko yari ahari mbere y'ubwicanyi no mu gihe bwari gukorwa. Kubera izo mpamvu, Urugereko rwa Mbere rw'Iremezo rusanga haragarajwe, ku buryo budashidikanywaho, ko Kayishema yari azi ko abantu yari akuriye bari hafi kugaba igitero ku mpunzi zari ku kiriziya, nyamara ntiyafata ingamba za ngombwa kandi zishyize mu gaciro kugira ngo ababuze kandi yari abifitiye ubushobozi bufatika.

IKIREGO CYA 19:

Muri iki kirego, Kayishema na Ruzindana bashinjwa icyaha cya jenocide, hashingiwe ku ngingo ya 2(3)(a)ya Sitati, kubera ubwicanyi bwakorewe mu karere ka Bisese

564. Urugereko rwa Mbere rw'Iremezo rusanga Kayishema na Ruzindana barajyanye mu karere ka Bisese abajandarume, abapolisi ba komine, Interahamwe n'abasiviri bitwaje intwari, maze babategeka kugaba igitero ku Batutsi. Abaregwa bombi banitabiriye ubwabo ibyo bitero. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rwasanze Ruzindana yaratemaguye akanica umukobwa w'imyaka 16 witwaga Béatrice, ku kirombe cyo ku gasozi ka Nyiramurego. Kubera izo mpamvu, Kayishema na Ruzindana bagomba kuryozwa ubwicanyi bwakorewe ahantu hatandukanye muri Kamena 1994. Muri ibyo bitero, Abahutu bari babirimo bishe kandi bakomeretsa Abatutsi babarirwaga mu bihumbi.

565. Ku byerekeranye n'igitero cyagabwe ku gasozi ka Muyira ku itariki ya 13 n'ya 14 Gicurasi, Kayishema na Ruzindana bageze aho hantu bari imbere y'imodoka zishoreranye zitwaye abasirikare, Interahamwe, abapolisi ba komine n'abasiviri bitwaje intwari. Zimwe mu modoka zazanye abagabye icyo gitero zari iza Leta y'u Rwanda. Kayishema yatangije igitero arasa mu kirere, maze aha amabwiriza abagabye igitero abashyira mu matsinda kandi ayobora itsinda rimwe ryagendaga risatira ako gasozi ka Muyira. Ubwo kandi ni nako yashishikazaga mu magambo abagabye ibitero akoresheje indangururamajwi. Ruzindana na we yagize uruhare rw'ubuyobozi kuko yatanze intwari gakondo, akayobora itsinda ry'abagabye igitero bagiye kuri kamwe mu dusozi twari aho ndetse arasa no ku mpunzi.
566. Urugereko rwa Mbere rw'Iremezo rusanga Abaregwa bombi baranitabiriye ubundi bwicanyi. Koko rero, mu buvumo, Kayishema yayoboye muri rusange igitero cyagabwe aho hantu mu gihe Ruzindana we yari ayoboye abagabye igitero baturutse mu Ruhengeri. Abaregwa bombi bahaga amabwiriza abagabye igitero kandi bayobora icyo gitero. Ku gasozi ka Karongi, Kayishema yageze aho hantu ari kumwe n'abasirikare, abajandarume n'abasiviri b'Abahutu maze akoresha indangururamajwi mu kubwira ijamba abagabye igitero ubwo yarimo kubaha amabwiriza. Abantu babonye Ruzindana atwaye Interahamwe mu modoka azijyanye ku kirombe cyo ku gasozi ka Nyiramurego, banamubona abwira abagabye igitero icyo bagomba gukora. Ku gasozi ka Bisesero, abantu babonye Ruzindana atwaye mu modoka abagabye ibitero, anabaha amabwiriza yo kugota ako gasozi, bagatangira gutera. Ruzindana yayoboye ubwicanyi bwakorewe ku mwobo wari hafi y'agasozi ka Muyira, kandi ni we watanze amabwiriza yo gutangira gutera.

Uburyozwacyaha bwa Kayishema

567. Rushingiye ku myanzuro ishingiyeye ku byabaye imaze kuvugwa, Urugereko rwa Mbere rw'Iremezo rusanga ubwicanyi bwabereye mu Bisesero muri Mata, Gicurasi na Kamena 1994 bwari bugambiriye kurimbura Abatutsi bose cyangwa igice cyabo. Byongeye kandi, Urugereko rusanga haragaragajwe, nta gushidikanya, ko Kayishema yatumye Abatutsi

bicwa, akanabateza ububabare buzahaza bikomeye umubiri no mu mutwe, ahantu henshi mu Bisesero, harimo agasozi ka Karongi mu mpera za Mata, agasozi ka Bisesero ku itariki ya 11 Gicurasi, agasozi ka Muyira ku itariki ya 13 n'ya 14 Gicurasi n'ubuvumo bwo muri Serire ya Gitwa, Komine ya Gishyita muri Gicurasi no Kucyapa muri Kamena.

568. Hashingiwe ku ngingo ya 6(1) ya Sitati, Kayishema agomba kuryozwa nka gatozi icyaha cya jenocide kubera ibikorwa byo kwica no gukomeretsa Abatutsi mu bitero byagabwe mu Bisesero muri Mata, Gicurasi na Kamena 1994, hagamijwe kurimbura ubwoko bw'Abatutsi. Uruhare rwa Kayishema rwagiye rutandukana bitewe n'ahantu hakorewe ibyaha mu Bisesero. Ku hantu hakorewe ibyaha Urugereko rwasanze yaragizemo uruhare, Kayishema yakoze kimwe cyangwa byinshi mu bikorwa bikurikira: kuza imbere y'imodoka zishoreranye zitwaye abagabye ibitero; gutwara mu modoka ye abagabye ibitero; kwereka abagabye ibitero aho bagombaga guhagarara ngo batangire gutera; kubashishikaza mu magambo; gutangiza ibitero ategutse ko bitangira cyangwa arashe amasasu; kuyobora amatsinda y'abagabye ibitero; kurasa ku Batutsi bahungaga; no gushimira Abahutu bagabaga ibitero kubera « akazi » bakoze. Ibyo bikorwa bigaragaza, ku buryo budashidikanywaho, ko Kayishema yahamagariye, agategeka, agakora cyangwa, mu bundi buryo ubwo ari bwo bwose, agashyigikira abandi mu gutegura no gukora ubwicanyi bwahitanye abantu babarirwaga mu bihumbi, abandi benshi bakabikomerekeramo bikabije hagamijwe kurimbura abantu bose bo mu bwoko bw'Abatutsi.
569. Byongeye kandi, hashingiwe ku ngingo ya 6(3) ya Sitati, Kayishema agomba kuryozwa icyaha cya jenocide nk'umuntu wari ukuriye abandi, kubera ibikorwa by'ubwicanyi no gukomeretsa abantu yari akuriye bakoreye mu karere ka Bisesero muri Mata, Gicurasi na Kamena 1994. Abagabye ibitero mu Bisesero bari abajandarume, abasirikare, Interahamwe n'abasiviri bitwaje intwari. Urugereko rusanga Kayishema yari afite ububasha bukomoka ku mategeko bwo kugenzura abenshi mu bagabaga ibitero akanagira n'ubutayakomokaho ku bantu bose bagabaga ibyoko bitero. Ibimenyetso byatanze

bigaragaza ko muri icyo gihe, Kayishema yayoboye ubwicanyi bwakorewe ahantu hanyuranye kandi akabutangamo amabwiriza.

Uburyozwacyaha bwa Ruzindana

570. Rushingiye ku myanzuro ishingiyeye ku byabaye ivugwa haruguru, Urugereko rwa Mbere rw'Iremezo rusanga ubwicanyi bwabereye mu Bisesero muri Mata, Gicurasi na Kamena 1994 bwari bugamije kurimbura Abatutsi bose cyangwa igice cyabo. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rusanga haragaragajwe, ku buryo budashidikanywaho, ko Ruzindana yicishije Abatutsi benshi ahantu hanyuranye mu Bisesero harimo ku kirombe cyo ku gasozi ka Nyiramurego ku itariki ya 15 Mata, muri Serire ya Gitwa mu ntangiriro za Gicurasi, agasozi ka Bisesero ku itariki ya 11 Gicurasi, agasozi ka Muyira ku itariki ya 13 n'ya 14 Gicurasi, ku buvumo, Kucyapa muri Kamena, ku mwobo hafi ya Muyira mu ntangiriro za Kamena. Ruzindana yicishije abo bantu kubera ibikorwa yakoze yabigambiriye n'ibyo yateshutse gukora ashaka ko abo bantu bapfa.
571. By'umwihariko, hashingiwe ku ngingo ya 6(1) ya Sitati, Ruzindana agomba kuryozwa ubwicanyi bwakozwe mu bitero Urugereko rwa Mbere rw'Iremezo rwasanze yaritabiriye mu Bisesero muri Mata, Gicurasi na Kamena 1994. Uruhare rwa Ruzindana rwagiye rutandukana bitewe n'ahantu hakorewe ubwicanyi ndetse n'umunsi bwakoreweho. Ku hantu hakorewe ibyaha Urugereko rwasanze yaragizemo uruhare, Ruzindana yakoze kimwe cyangwa byinshi mu bikorwa bikurikira: kugenda imbere y'imodoka zishoreranye zitwaye abagabye ibitero; gutwara abagabye ibitero mu modoka ye; gutanga intwari; gutegura ibitero; kuyobora amatsinda y'abagabye ibitero; kurasa ku mpunzi z'Abatutsi; no gusezeranya abagabye ibitero kubahemba amafaranga cyangwa inzoga. Urugereko rwa Mbere rw'Iremezo rwasanze kandi Ruzindana ubwe yaratemaguye kandi akica abantu mu gitero cyagabwe ku kirombe cyo ku gasozi ka Nyiramurego. Iyi myanzuro igaragaza, ku buryo budashidikanywaho, ko Ruzindana yahamagariye, agategeka, agakora cyangwa, mu bundi buryo ubwo ari bwo bwose, agashyigikira abantu mu gutegura no gukora ubwicanyi bwahitanye abantu babarirwaga mu bihumbi, hagamijwe kurimbuha Abantu bo mu bwoko bw'Abatutsi.

6.3 Ibyaha byibasiye inyokomuntu

572. Mu birego bya 2, 8 na 14 byo mu Nyandiko y'ibirego, Kayishema ashinjwa ibyaha byibasiye inyokomuntu kubera ubuhotozi, naho mu birego bya 3, 9 na 15 agashinjwa ibyaha byibasiye inyokomuntu kubera itsembatsemba. Byongeye kandi, mu birego bya 4, 10 na 16, Kayishema ashinjwa ibyaha byibasiye inyokomuntu kubera ibindi bikorwa bibi birenze kameremuntu.
573. Mu kirego cya 20, Kayishema na Ruzindana bashinjwa ibyaha byibasiye inyokomuntu kubera ubuhotozi; mu kirego cya 21 bashinjwa ibyaha byibasiye inyokomuntu kubera itsembatsemba naho mu kirego cya 22 bagashinjwa bombi ibyaha byibasiye inyokomuntu kubera ibindi bikorwa bibi birenze kameremuntu.
574. Rushingiye ku ngingo ya 3 ya Sitati, Urugereko rwa Mbere rw'Iremezo rufite ububasha bwo kuburanisha abantu ku byaha binyuranye byakozwe mu rwego rw'igitero rusange, cyangwa kiri kuri gahunda, cyibasiye abaturage b'abasiviri, abo ari bo bose, kubera ubwenegihugu bwabo, umutwe wa politiki barimo, ubwoko bwabo cyangwa idini ryabo. Iyo bikoze muri urwo rwego, ibyaha bigize ibyaha byibasiye inyokomuntu biba birimo ubuhotozi, itsembatsemba, kumenesha abantu, kwica urubozo, gusambanya ku gahato n'ibindi bikorwa bibi birenze kameremuntu.
575. Ashingiye kuri iyo ngingo, Porokireri ashinja Abaregwa ibyaha bitatu gusa: ubuhotozi, itsembatsemba n'ibindi bikorwa bibi birenze kameremuntu byakozwe mu rwego rw'ibitero bya rusange, cyangwa biri kuri gahunda, byibasiye abaturage b'abasiviri hashingiwe ku mpamvu z'ivangura.

Ubuhotozi n'Itsembatsemba

576. Birazwi ko muri Perefegitura ya Kibuye, ubuhotozi n'itsembatsemba byakozwe mu rwego rw'igitero rusange kandi kiri kuri gahunda. Ibimenyetso byatanzwe bigaragaza ko ibitero byari byibasiye abasiviri b'Abatutsi nk'abagize ubwoko bwihariye. Ibyo bimenyetso binagaragaza ko muri rusange, Abatutsi bakorewe ibyaha bari abaturage b'abahinzi, impunzi cyangwa abantu bafatwa nkazo barimo abasaza, abakecuru, abagore n'abana. Rushingiye ku buhanya bwinshi bwatanzwe, Urugereko rusanga haragaragajwe, mu buryo budashidikanywaho, ko ubwicanyi bwibasiye abo bantu kubera ubwoko bwabo.
577. Bityo rero, hari ibintu byose bya ngombwa kugira ngo hafatwe umwanzuro wemeza ko Abaregwa bashobora guhamwa n'ibyaha byibasiye inyokomuntu (ubuhotozi) n'ibyaha byibasiye inyokomuntu (itsembatsemba). Cyakora, muri uru rubanza by'umwihariko, ibyo byaha byibasiye inyokomuntu biri mu bigize icyaha cya jenocide. Kuri ibi byaha, ibirego byose bishingiye ku bintu bimwe byabaye no ku myitwarire mibisha imwe. Ibi byaha byakorewe ahantu hamwe hiciwe abantu, byibasira abantu bamwe bo mu bwoko bw'Abatutsi, hagamijwe kurimbura abantu bose bagize ubwo bwoko cyangwa igice cyabo.
578. Rushingiye ku bimaze kuvugwa no ku byabaye bivugwa muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rusanga bitaba bikwiye guhamya Abaregwa jenocide ngo rwongere rubahamye n'ibyaha byibasiye inyokomuntu hashingiwe ku buhotozi n'itsembatsemba, kuko ibi byaha byombi biri mu bigize icyaha cya jenocide nk'uko bivugwa mu gice cy'iyi Nyandiko y'urubanza kiswe, urukomatanye rw'ibirego.
579. Kubera iyo mpamvu, uburyozwacyaha bw'Abaregwa kubera imyitwarire mibisha yabo buzirikanwa bwose mu cyaha jenocide.

Ibindi bikorwa bibi birenze kameremuntu

580. Ku byerekeranye n'ibirego bijyanye n'ibindi bikorwa bibi birenze kameremuntu, Abaregwa bashobora guhamwa n'ibyaha byibasiye inyokomuntu hashingiwe ku bindi bikorwa bibi birenze kameremuntu.
581. Ibyaha bigomba kuba byakozwe mu rwego rw'igitero rusange cyangwa kiri kuri gahunda, cyibasiye abaturage b'abasiviri abo ari bo bose kubera ubwengihugu bwabo, umutwe wa politiki barimo, ubwoko bwabo cyangwa idini ryabo. Abaregwa bagomba kuba bari bazi ko ibyaha baregwa byakozwe mu rwego rw'igitero nk'icyo. Byongeye kandi, kugira ngo ibyo byaha bibe byarakozwe mu rwego rwa politiki yariho ni ngombwa kugaragaza ko Guverinoma cyangwa umuryango cyangwa itsinda runaka byahamagariye abantu gukora ibyo byaha. Gusuzuma birambuye ibintu bigize ibyaha byibasiye inyokomuntu bikorwa mu gice cy'iyi Nyandiko y'urubanza cyahariwe amategeko akurikizwa²⁷⁹.
582. Nk'uko bimaze kuvugwa haruguru, Urugereko rwa Mbere rw'Iremezo rusanga haragaragajwe, mu buryo budashidikanywaho, ko hariho ibisabwa bigize igitero kugira ngo hemezwe ko hakozwe ibyaha byibasiye inyokomuntu. Ibikorwa Abaregwa bombi bashinjwa byakozwe mu rwego rw'igitero rusange kandi kiri kuri gahunda. N'ubwo Porokireri agomba kugaragaza gusa kimwe muri ibyo bintu bibiri bisabwa, Urugereko rwa Mbere rw'Iremezo rusanga ibyo bintu byombi biriho. Ibimenyetso byashyikijwe uru Rugereko bigaragaza ko ibitero byagabwe mu Rwanda muri rusange, no muri Perefegitura ya Kibuye by'umwihariko, byakozwe mu buryo buri kuri gahunda, ni ukuvuga hakurikijwe politiki cyangwa umugambi wateguwe mbere²⁸⁰. Ibimenyetso byatanze kuri politiki cyangwa umugambi bivugwa ku kirego cya jenocide binajyanye n'ibivugwa ahangaha. Ibimenyetso bigaragaza ko ibitero byagabwe mu Rwanda muri

²⁷⁹ Reba ibyaha byibasiye inyokomuntu, umutwe wa 4.2

²⁸⁰ Ni kimwe no haruguru.

rusange, no muri Perefegitura ya Kibuye by'umwihariko, byibasiye abaturage b'abasiviri. Mu by'ukuri, ibimenyetso bigaragaza ko, muri rusange, abakorewe ibyaha muri Kibuye bari abaturage b'abahinzi, impunzi cyangwa abantu bafatwa nkazo, barimo abasaza, abakecuru, abagore n'abana. Ubuhamya bwinshi bw'abatangabuhamya, impuguke na Kayishema ubwe, bugaragaza ko ibitero byagabwe muri Perefegitura ya Kibuye, byibasiye Abatutsi kubera ubwoko bwabo. Ni ngombwa kwibutsa ko iki kibazo gisuzumwa birambuye ku byerekeranye n'ikirego cya jenocide. Mu gusoza kuri iyi ngingo, Urugereko rwa Mbere rw'Iremezo rusanze icyo gitero kigomba kuba cyari mu rwego rwa politiki cyangwa umugambi byaguye byateguwe cyangwa bigategekwa n'umuryango cyangwa itsinda ry'abantu. Rusanze kandi Abaregwa bombi bari bazi ko imyitwarire yabo yari mu rwego rw'icyo gitero.

583. Kugira ngo bahamwe n'ibyaha byibasiye inyokomuntu kubera ibindi bikorwa bibi birenze kameremuntu, abaregwa bagomba kuba, nk'urugero, barakoze igikorwa gihuje ububi n'uburemere n'ibindi byaha byavuzwe, bagamije gutuma habaho ibindi bikorwa bibi birenze kameremuntu. Iki cyiciro gikomeye cy'ibyaha kirimo uburyo bwo gukorera umuntu, wabigambiriye, ibikorwa (nabyo bikomeye) bifite ingaruka zihuje ububi n'iz'ibikorwa bibi birenze kameremuntu, zari zigamijwe cyangwa zitezwe ko zizaba kandi bigakorwa hatitawe ku ngaruka zabyo. Bityo rero, icyiciro cy'ibindi bikorwa bibi birenze kameremuntu gisaba ko icyaha kiba gitandukanye n'ibindi byaha byibasiye inyokomuntu, kandi ugikora akaba afite imyitwarire mibisha n'igitekerezo cyo kugikora. Icyaha cy'ibindi bikorwa bibi birenze kameremuntu si icyaha cyoroheje kiri mu bindi byaha bivugwa. Urugereko rwa Mbere rw'Iremezo rusanga Porokireri atagomba gusa gukoresha iki cyiciro cy'ibyaha nk'aho « gikubiyemo ibindi byaha byose ».
584. Ku byerekeranye n'aho hantu hose uko ari hane hakorewe ubwicanyi, Inyandiko y'ibirego ntivuga by'umwihariko imiterere y'ibikorwa Porokireri ashingiraho ku kirego « cy'ibindi bikorwa bibi birenze kameremuntu ». Byongeye kandi, n' Inyandiko y'ibirego ntivuga by'umwihariko imiterere n'ingano y'uburyozwacyaha bw'Abaregwa ku bindi bikorwa bibi birenze kameremuntu. Ibyo kandi ni ko bimeze kuri Kayishema no kuri

Ruzindana. Ku byerekeranye n'ibikorwa bihanirwa, kuri buri hantu hakorewe ibyaha, Inyandiko y'ibirego ivuga gusa ko: abagabye ibitero bakoresheje intwari (zizwi) mu kwica abantu bari aho hantu, Abaregwa barabyitabiriye kandi ibitero byahitanye ibihumbi by'abantu, binakomerekeramo abandi benshi. Nta gikorwa na kimwe cyaba cyarakozwe na Ruzindana, Kayishema, cyangwa abandi bagabye ibitero, kivugwa ko ari « ikindi gikorwa kibi kirenze kameremuntu ». Kubera iyo mpamvu, Porokireri yagombaga gukosora iyo nenge iri mu birego ubwo yatangaga ibimenyetso. Mu by'ukuri, mu iburanisha ni bwo hari kugaragara niba ibivugwa mu Nyandiko y'ibirego bidasobanutse cyangwa bisobanutse²⁸¹.

585. Mu iburanisha, Porokireri yatanze ibimenyetso bigaragaza ko Abahutu bagabaga ibitero, bagenzurwaga kandi bagahabwa amabwiriza na Kayishema cyangwa Ruzindana, bagerageje babigambiriye kwica Abatutsi b'abasiviri ahantu hakorewe ibyaha Abaregwa bombi bashinjwa, buri wese kubimureba. Kubera icyo gitekerezo cyo gukora ubwicanyi, benshi mu Batutsi barishwe abandi barakomereka. Porokireri yaburanye ashingiye kuri ibyo bintu. Muri uru rwego, ntibyari bigikomeye kugaragaza imyitwarire y'Abaregwa no gutanga ibimenyetso bishyigikira ibirego ku byaha byibasiye inyokomuntu byerekeranye n'itsembatsemba n'ubuhotozi. Cyakora, byari bikomeye kugaragaza imyitwarire ishigikira ibyaha by'ibindi bikorwa bibi birenze kameremuntu.
586. Urugereko rwumvise ubuhamya bubabaje cyane bwerekeranye no kuba Abahutu bagabye ibitero baraciye ingingo z'abantu bakoreye ibyaha ndetse bakagira n'indi myitwarire ishobora gufatwa nk'ibindi bikorwa bibi birenze kameremuntu. Cyakora, mu gihe cyose iburanisha ryamaze, Porokireri ntiyashoboye gutanga, uko bikwiye, ikimenyetso runaka gishyigikira ikirego cy'ibindi bikorwa bibi birenze kameremuntu. Ubwo Porokireri yasubizaga ingoboka z'Ubwunganizi ni bwo ibyo bintu byabaye nk'ibisobanuka gake. Ubwunganizi bwagiye burwanya ibimenyetso bishinja byatanzwe ku bikomere bimwe, buvuga ko ibyo bimenyetso bidafite aho bihuriye n'ibirego. Mu gusubiza, Porokireri

²⁸¹ *Urubanza Porokireri aburana na Tihomir Blaskic*, N° IT.95-14-PT icyemezo ku Cyifuzo cy'Ubwunganizi gishingiye ku nenge ziri mu myandikire y'Inyandiko y'ibirego, 4.4.97, urup. 12.

yavuze ko ibyo bikomere ari ibimenyetso ku kirego cy'ibindi bikorwa bibi birenze kameremuntu. Ubwo buryo bwo gukoresha iki cyaha nk'ikintu gikubiyemo ibindi byose – ni ukuvuga gufata ibindi bikorwa byashingiweho mu kirego nk'aho, mu by'ukuri, ari ikintu cyongewemo- ntibutuma ibirego ku bindi byaha byibasiye inyokomuntu birushaho gusobanuka. Byongeye kandi, kuba bamwe mu barokotse bareretse Urugereko rwa Mbere rw'Iremezo ibikomere bafite, ntibigabanya inshingano Porokireri afitse yo kuvuga ibikorwa byihariye, n'ibikomere byabaturutseho, bishyigikira ibirego ku bindi bikorwa bibi birenze kameremuntu. Mu myanzuro nsozarubanza yanditse ni ho honyine Porokireri avuye ko ibikomere by'abarokotse bigaragaza ibindi bikorwa bibi birenze kameremuntu, kandi abakorewe ibyaha batejwe ububare bukomeye bubazahaza mu mutwe kubera ubwoba n'ukwiheba babayemo bitewe no guhatirwa kureba uko inshuti zabo, abantu bo mu miryango yabo n'abandi Batutsi bicwaga cyangwa bakomeretswaga bikomeye²⁸². Ibimaze kuvugwa bigaragaza ko kugera iburanisha rirangira, Ubwunganzi bw'Abaregwa bombi butari bwakamenyeshwa uko bikwiye ibikorwa bivugwa ko biri mu rwego rw'ibindi bikorwa bibi birenze kameremuntu.

587. Kubera inyungu z'ubutabera no kugira ngo urubanza ruburanishwe mu buryo buboneye, Ubwunganzi bugomba kumenyeshwa bidatinze kandi mu gihe cyose urubanza ruburanishwa, imyitwarire mibisha ivugwa kuri buri kirego cy'ibyaha byibasiye inyokomuntu ku byerekeranye n'ibindi bikorwa bibi birenze kameremuntu. Inyandiko y'ibirego ntivugwamo imyitwarire mibisha cyangwa imiterere n'ingano by'uburyo-zwacya bw'Uregwa. Mu iburanisha, Porokireri ntiyashoboye gukosora iyo nenge. Kubera izo mpamvu, ku birego byose by'ibyaha byibasiye inyokomuntu byerekeranye n'ibindi bikorwa bibi birenze kameremuntu, Porokireri ntiyubahirije uburenganzira bw'ibanze Abaregwa bafite bwo kumenyeshwa ibyaha bashinjwa kugira ngo bashobore gutegura imyiregurire yabo badakerewe, bazi neza ibyo baregwa. Nyamara ubwo burenganzira ni ingenzi cyane iyo urebye uburemere bw'ibyaha Abaregwa bashinjwa.

²⁸² Nk'urugero, reba Imyanzuro nsozarubanza yanditse ya Porokireri, urup.80.

588. Kubera izo mpamvu zose zimaze kuvugwa, Urugereko rwa Mbere rw'Iremezo rusanga Porokireri ataragaragaje ibyo ashinja Kayishema mu birego bya 4, 10, 16, na 22 byerekeranye n'ibyaha byibasiye inyokomuntu ku bindi bikorwa bibi birenze kamere-muntu.
589. Na none, kubera izo mpamvu zose zimaze kuvugwa, Urugereko rwa Mbere rw'Iremezo rusanga Porokireri ataragaragaje ibyo ashinja Ruzindana mu kirego cya 22 cyerekeranye n'ibyaha byibasiye inyokomuntu ku bindi bikorwa bibi birenze kameremuntu.

6.4 Ingingo ya 3 Ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II

Ibirego bya 5, 11, 17 na 23 – ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve (kunyuranya n'ingingo ya 4(a) ya Sitati ya TPIR) n'ibirego bya 6, 12, 18 na 24 – ibikorwa binyuranyije n'ibiteganywa n'Inyongera ya II y'ayo Masezerano (kunyuranya n'ingingo ya 4(a) ya Sitati ya TPIR).

590. Mu birego bya 5, 11 na 17 by'Inyandiko y'ibirego, Kayishema ashinjwa ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve naho mu birego bya 6, 12 na 18 agashinjwa ibikorwa binyuranyije n'ibiteganywa n'Inyongera ya II y'ayo Masezerano.
591. Mu kirego cya 23, Kayishema na Ruzindana bashinjwa ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve, naho mu kirego cya 24 bagashinjwa ibikorwa byo kunyuranya n'ibiteganywa mu Nyongera ya II y'ayo Masezerano. Ibyo birego byose biteganywa n'ingingo ya 4 ya Sitati ya TPIR.
592. Mu iburanisha, hatanzwe ibimenyetso bigaragaza ko hafi yo hagati y'itariki ya 10 Mata n'ya 30 Kamena 1994, abantu babarirwa mu bihumbi bagizwe n'abagabo, abagore n'abana bishwe abandi benshi bagakomereka mu bwicanyi bwakorewe ku kigo kigizwe

na kiriziya y'Abagatorika na Home Saint-Jean, kuri sitade mu muji wa Kibuye, ku kiriziya yo ku Mubuga no mu Bisesero, muri Perefegitura ya Kibuye, Repubulika y'u Rwanda.

593. Abo bagabo, abagore n'abana ntibari bafite intwari kandi bari bagizwe ahanini n'Abatutsi bahungaga ibitero byagabwaga mu turere tunyuranye tw'u Rwanda no muri Perefegitura ya Kibuye. Porokireri avuga ko abo bantu bishwe mu rwego rw'intambara maze akarega Kayishema na Ruzindana ibikorwa byo kunyuranya bikomeye n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II.
594. Porokireri avuga ko, nk'uko biteganywa mu mategeko mpuzamahanga, kugira ngo umuntu aryozwe ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera ya II y'ayo Masezerano cyangwa ibikorwa binyuranyije na rimwe muri ayo mategeko yombi, ibintu bitanu bikurikira bigomba kuba byujujwe:

Icyamba mbere, icyaha cyangwa ibyaha bivugwa bigomba kuba byarakozwe mu rwego rw'intambara itari mpuzamahanga.

Icyamba kabiri, icyaha kigomba kuba cyarakozwe mu gihe giteganywa muri ayo mategeko yombi.

Icyamba gatatu, icyaha kigomba kuba cyarakorewe ahantu hateganywa muri aya mategeko yombi.

Icyamba kane, abaregwa bagomba kuba hari aho bahuriye na kimwe mu bice bihanganye biteganywa na rimwe muri ayo mategeko yombi;

Icyamba gatanu, abakorewe ibyo byaha bivugwa bagomba bari abantu, cyangwa umuntu, barengerwa n'ayo mategeko yombi²⁸³.

²⁸³ Imyanzuro nsozarubanza yanditse ya Porokireri, urup. 45, ibika 149-154 (Imyanzuro nsozarubanza yanditse).

595. Ikintu cya mbere kigomba guhabwa agaciro kanini kugira ngo uko ibintu byari biteye bisobanuke, bityo herekanwe niba ibirego bivugwa mu Nyandiko y'ibirego, byafatwa nk'ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera ya II y'ayo Masezerano.
596. Porokireri avuga ko, kugira ngo Kayishema na Ruzindana baryozwe ibyaha ku birego bivugwa haruguru, ni ngombwa kugaragaza ko ibyabaye mu Rwanda mu mwaka wa 1994 bijyanye n'ibiteganywa n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II²⁸⁴.
597. Urugereko rwa Mbere rw'Iremezo rusanga atari ngombwa gusuzuma icyo kibazo. Mu by'ukuri, hagaragajwe, ku buryo budashidikanywaho, ko mu Rwanda hari intambara itari mpuzamahanga. Mu gihe ibivugwa mu Nyandiko y'ibirego byabaga, ni ukuvuga guhera muri Mata kugera muri Nyakanga 1994, iyo ntambara yari ishyamiranyije ingabo za Leta n'ingabo zari zigometse ku butegetsi zitwaga FPR. Hanagaragajwe, ku buryo budashidikanywaho, ko u Rwanda rwarebwaga n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II, ayo mategeko yombi akaba yarakoreshwaga ku « byaberega mu Rwanda mu mwaka wa 1994 ». Impande zari zihanganye muri iyo ntambara itari mpuzamahanga, zemeje ko zari ziteguye kubahiriza ibiteganywa n'ayo Mategeko mpuzamahanga arengera abantu mu gihe cy'intambara. Ku byerekeranye n'ikintu cya kabiri kigomba kuba cyujijwe cyerekeranye n'igihe n'icya gatatu cyerekeranye n'ahantu ibyaha byakorewe, ni ngombwa kongeraho ko ayo mategeko mpuzamahanga, nk'uko byagaragajwe haruguru, yakoreshwaga ku butaka bwose bw'u Rwanda, hazirikanwa ko ibyaha bivugwa bigomba gufatwa nk'ibyakozwe mu rwego rw'intambara, kandi bikumvikana ko ahantu byakorewe n'igihe byakorewe bigomba gufatwa mu rwego rwaguye.

²⁸⁴ Ni kimwe no haruguru, urup. 81, igika 306; urup. 82, ibika 312-33; urup. 93, igika 370; urup. 94, igika 377; urup. 106, igika 436; urup. 107, igika 442; urup. 135, ibika 559, 565; urup. 150, ibika 75, 82.

598. Bityo rero, ikibazo kigomba gusuzumwa si icyo kumenya niba Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II ijyanye n' « n'ibyaberaga mu Rwanda mu mwaka wa 1994 ». Ahubwo ikibazo ni ukumenya niba ayo mategeko yararebaga ibyaha bivugwa ko byakorewe aho hantu hane havugwa mu Nyandiko y'ibirego. Porokireri ni we rero ugomba kugaragaza ko ayo mategeko mpuzamahanga agomba gukoreshwa kuri ibyo byaha bivugwa haruguru.
599. Cyakora, Porokireri avuga gusa ibintu bikurikira « kugira ngo Clément Kayishema na Obed Ruzindana baryozwe ibyaha ku birego bivugwa haruguru, Porokireri agomba kugaragaza ko ibyo byaha byakozwe, byanze bikunze, mu rwego rw'intambara itari mpuzamahanga »²⁸⁵.
600. Porokireri ntiyasobanuye icyo amagambo « mu rwego rwa » avuga. Niba yarashakaga kuvuga « mu » ntambara y'imbere mu gihugu, ntagomba kubigaragaza kuko ibyo bintu byemewe kandi nta muburanyi ujya impaka ko muri icyo gihe mu Rwanda hari intambara itari mpuzamahanga. Kubera iyo mpamvu, ahangaha, amagambo « mu rwego » akabije kuba rusange kandi ntasobanura neza ibintu uko bikwiye. Iyo igihugu kiri mu ntambara, ibyaha bikozwe muri icyo gihe bishobora gufatwa nk'ibyakoze mu rwego rw'iyi ntambara. Cyakora, ibyo ntibivuga ko ibyo byaha byose bifitanye isano itaziguye n'intambara, kandi ko abakorewe ibyo byaha bise bibasiwe kubera iyo ntambara.
601. Cyakora, mu myanzuro nsozarubanza yanditse, Porokireri yemera ko « Porokireri agomba kugaragaza isano iri hagati y'intambara n'ibyaha bivugwa »²⁸⁶. Igika gikurikira cyo muri iyo myanzuro kigamije kugaragaza iyo sano:

Muri uru rubanza, Porokireri avuga ko ibimenyetso bigaragaza, mu buryo budashidikanywaho, ko buri cyaha kivugwa gifitanye isano n'intambara yaberaga mu

²⁸⁵ Ni kimwe no haruguru, urup. 81, igika 306; urup. 93, igika 370; urup. 106, igika 436; urup. 135, igika 559; urup. 150, igika 75.

²⁸⁶ Ni kimwe no haruguru, urup. 48, igika 163.

Rwanda. Abatutsi biciwe ku Kibuye bagiye hariya hantu hane hakorewe ubwicanyi bahunga ibitero byagabwaga ku Batutsi muri Kibuye no mu Rwanda hose. Ibyo bitero byagabwaga kubera imirwano yari yubuye hagati y'ingabo za FPR n'ingabo z'u Rwanda kandi Abatutsi barahizwe hitwajwe ko ari ibyitso bya FPR, ko ari « abanzi » ndetse bakaba ngo ari bo bishe Perezida cyangwa bahigwa kubera imwe muri izo mpamvu²⁸⁷.

602. N'ubwo « Abatutsi bagiye hariya hantu hane habereye ubwicanyi bahunga ibitero byagabwaga ku Batutsi muri Kibuye no mu Rwanda hose », abo Batutsi ntibagabweho ibitero n'ingabo za FPR cyangwa iza Leta (FAR), ahantu hanyuranye bari bahungiyeye muri Kibuye. Ubuhamya bwatanzwe mu Rukiko bugaragaza ko ibyo bitero byateguwe n'abategetsi ba gisiviri, mu rwego rwo gutsemba abasiviri b'Abatutsi mu gihugu. Kubera iyo mpamvu, kuvuga ko ibyaha byakozwe bifitanye isano n'intambara nta shingiro bifite, kubera ko « Abatutsi bagiye hariya hantu hane hakorewe ibyaha, bahunga ibitero... ». Porokireri anavuga ko « ibyo bitero byabaga kubera imirwano yari hagati y'ingabo za FPR n'iza Leta, maze Abatutsi bagahigwa hitwajwe ko ngo ari ibyitso bya FPR, ko ari « abanzi » kandi ko bishe Perezida cyangwa kimwe muri ibyo ».
603. N'ubwo « muri kiriya gihe hari imirwano hagati y'ingabo za FPR n'iza Leta », ntihatanzwe ibimenyetso bigaragaza ko igihe biriya byaha byakorwaga muri Perefegitura ya Kibuye hari ibikorwa bya gisirikare. Byongeye kandi, ntihagaragajwe ko ibyaha byakorewe abo bantu bifitanye isano itaziguye n'imirwano Porokireri avuga. Ntihanagaragajwe ko abakorewe ibyaha bari ibyitso bya FPR kandi ko ari bo bishe Perezida cyangwa ngo hagaragazwe kimwe muri ibyo. Porokireri ubwe yiyemerera ko Abatutsi bahigwaga « hitwajwe » ko ari ibyitso n'ibindi... Ibyo avuga bigaragaza gusa ko imirwano yabaye urwitwazo rwo gushyira mu bikorwa politiki ya Leta yo gukora jenocide. Kubera iyo mpamvu, ibyo bintu bivugwa ntibyafatwa nk'ikimenyetso kigaragaza ko ibyaha bivugwa bifitanye isano itaziguye n'imirwano.
604. Ijambo « isano » ntirigomba kumvikana nk'ikintu kidasobanutse. Ni ngombwa kugaragaza, hifashishijwe ibyabaye, isano itaziguye ibirego bivugwa mu Nyandiko

²⁸⁷ Ni kimwe no haruguru, urup. 48, igika 165.

y'ibirego bifitanye n'intambara. Porokireri agomba kugaragaza ko habayeho ibikorwa byo kunyuranya n'ibintu by'ingenzi biteganywa mu Ngingo ya 3 ihuriweho y'Amasezerano y'i Jeneve n'Inyongera yayo ya II kandi agomba gutanga ibimenyetso bya ngombwa bigaragaza ko ibyo bikorwa byabayeho koko.

Kuri iyi ngingo, Porokireri agira ati:

Ikintu cya nyuma kigomba kuba cyujujwe kugira ngo hakoreshwe Ingingo ya 3 ihuriweho y'Amasezerano y'i Jeneve n'Inyongera yayo ya II, ni uko uwakorewe icyaha aba ari umuntu wangerwaga n'Ingingo ya 3 ihuriweho y'Amasezerano y'i Jeneve n'Inyongera yayo ya II.

Ingingo ya 3 ihuriweho ikoreshwa ku bantu badafite uruhare mu mirwano, harimo n'abasirikare bashyize intwara hasi, n'abatagishobora kurwana.

Inyongera II y'ayo Masezerano ikoreshwa ku bantu bose badafite uruhare rutaziguye mu mirwano, cyangwa batakirwana (Ingingo ya 4), abantu batagifite uburenganzira busesuye (Ingingo ya 5), inkomere, abarwayi, abarohamye (Ingingo ya 7), abakozi bo mu buganga n'abanyamadini (Ingingo ya 9) n'abasiviri (Ingingo ya 13).²⁸⁸

605. Porokireri ntasobanura niba asanga ingingo zose z'Inyongera ya II zivugwa, cyangwa zimwe muri zo, zitarubahirijwe. Ibyo ari byo byose, ingingo ya 5 y'Inyongera ya II ntikoreshwa ku byaha bivugwa kubera ko nta kimenyetso kigaragaza ko abakorewe ibyo byaha bari bafungwiye ahantu cyangwa bari imfungwa, bavukijwe uburenganzira bwabo kubera impamvu zerekeranye n'imirwano. Birahagije gusa gusoma ibika byose uko ari bine by'iyi ngingo kugira ngo umuntu abone ko itakoreshwa ku byaha bivugwa.

²⁸⁸ Imyanzuro nsozarubanza, urup. 55, ibika 188-190.

606. Byongeye kandi, ntihatanzwe ibimenyetso bigaragaza ko ingingo ya 7 y'Inyongera ya II, irengera inkomere, abarwayi n'abantu barohamyeye yakorehwa ku byaha bivugwa. Ntihagaragajwe ko abantu bakorewe ibyaha bivugwa babarirwa muri iki cyiciro.
607. Porokireri anavuga ikibazo cy'ikorehwa ry'ingingo ya 9 y'Inyongera ya II y'Amasezerano yerekeranye no kurengera abanyamadini n'abakozi bo mu buganga. Muri uru rubanza, ibimenyetso byatanzwe bigaragaza ko abakorewe ibyaha batari abanyamadini cyangwa abakozi bo mu buganga. Kubera iyo mpamvu, ingingo ya 9 ntishobora gukoreshwa ku byaha bivugwa hano.
608. Ingingo ya 13 y'Inyongera ya II, ni yo ijyanye cyane n'uru rubanza rwaburanishijwe n'Urugereko rwa Mbere rw'Iremezo kubera ko yerekeranye no kurengera abasiviri mu gihe cy'intambara. Iyi ngingo yiswe « Kurengera abasiviri » iteganya ko:
1. Abaturage b'abasiviri, n'abasiviri ku giti cyabo bagomba kurengerwa ku buryo busesuye, barindwa amakuba atewe n'ibikorwa bya gisirikare. Kugira ngo barengerwe nyabyo, ibintu bikurikira bizajya byubahirizwa igihe cyose.
 2. Abaturage b'abasiviri, n'abasiviri ku giti cyabo, ntibagomba kugabwaho igitero. Ibikorwa cyangwa ibikangisho by'urugomo, bigamije, mbere na mbere, gutera icyoba mu baturage b'abasiviri birabujijwe.
609. Ibi bika bibiri by'ingingo ya 13 byumvikanisha ko ibikorwa bya gisirikare bigomba buri gihe gukorwa mu buryo budateza amakuba abaturage b'abasiviri, n'abasiviri ku giti cyabo. Uko byagenda kose, iki cyiciro cy'abantu ntikigomba kugabwaho ibitero mu gihe cy'ibikorwa bya gisirikare.
610. Porokireri ashimangira ko ibitero byagabwe ku Batutsi aho hantu hane hakorewe ibyaha havugwa mu Nyandiko y'ibirego « byagabwe kubera imirwano yari ishyamiranyije FPR

n'ingabo za Leta»²⁸⁹. Birazwi ko iyo mirwano yari yubuye mu duce tunyuranye tw'igihugu. Byongeye kandi, nk'uko biteganywa n'ingingo za 13, 14 kugera ku ya 18 z'Inyongera ya II, buri ruhande rurwana rufite inshingano yo kurwana rutabangamira abaturage b'abasiviri n'abasiviri ku giti cyabo, cyangwa ngo rubashyire mu makuba. Nk'uko Porokireri abivuga, bikanemezwa n'abatangabuhamya, nta bikorwa bya gisirikare byaberaga mu mujyi wa Kibuye²⁹⁰ cyangwa mu Bisesero muri kiriya gihe kivugwa. Ntihanatanzwe ibimenyetso bigaragaza ko abaturage b'abasiviri bari hariya hantu hane havugwa babangamiwe n'ibikorwa bya gisirikare byaberaga mu tundi turere tw'u Rwanda.

611. Hashingiwe ku bimaze kuvugwa, nta wavuga atibeshya ko ingingo za 5, 7, 9 cyangwa iya 13 kugera ku ya 18 z'Inyongera ya II zitubahirijwe ku byaha bivugwa.
612. Mu kurega Kayishema na Ruzindana ibikorwa binyuranyije bikomeye n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II, Porokireri ashingira, by'umwihariko, ku ngingo ya 4(a) ya Sitati ya TPIR. Si ngombwa gusesengura byihariye ingingo ya 4(a) ya Sitati kuko iyo ngingo, Ingingo ya 3 ihuriweho n'iya 4 z'Inyongera ya II zifite ibyo zihuriyeho cyane. Ingingo ya 4(a) ya Sitati ivuga ibiteganywa n'ingingo ya 4(2)(a) y'Inyongera ya II, isubiramo, nta bintu byinshi bihindutse, ibiteganywa n'Ingingo ya 3 ihuriweho. Izi ngingo, uko ari eshatu, zirimo urutonde rw'ibikorwa bibujijwe. Ingingo ya 4(2) y'Inyongera ya II ivuga ko ibyo bikorwa bibujijwe ku bantu bavugwa mu gika cya mbere²⁹¹. icyo cyiciro cy'abantu gisobanurwa muri icyo gika mu buryo bukurikira, « Abantu bose badafite uruhare rutaziguye mu mirwano cyangwa batakiri mu mirwano ».
613. Mu gika 192 cy'Imyanzuro nsozarubanza yanditse ye, Porokireri aravuga ngo « muri uru rubanza, abakorewe ibyaha, ntibari mu mirwano . . . ntibari bafite intwaro ndetse ntaho

²⁸⁹ Imyanzuro nsozarubanza, urup. 48, igika 165.

²⁹⁰ Ni kimwe no haruguru, urup. 56, igika 195

²⁹¹ Ibivugwa hano binateganywa mu Ngingo ya 3 ihuriweho.

bari bahuriye n'ingabo izo ari zo zose ». Mu gika cya 193 n'icya 194, Porokireri avuga ko ashimishijwe no kuba « Ubwunganizi butarigeze buhakana ko abakorewe ibyaha bari abasiviri, kubera ko butigeze butanga ingingo cyangwa ibimenyetso byerekana ko hari umuntu n'umwe mu bakorewe ibyaha wari ufite aho ahuriye na FPR cyangwa n'imirwano yariho mu mwaka wa 1994 ». Cyakora, mu gika gikurikiraho, Porokireri atanga igitekerezo gitandukanye n'icyo avuga ko « abakorewe ibyaha bavugwa muri iyi Nyandiko y'ibirego, bari abasiviri kandi *ntibari bafite uruhare rugaragara* mu mirwano » [mu nyandiko byakuwemo ntibyanditse mu mberame]²⁹².

614. Kubera iyo mpamvu, Porokireri ntavuga ku buryo bwumvikana igitekerezo cye. Kuvuga ko abakorewe ibyaha « batari bafite uruhare mu mirwano » bitandukanye no kuvuga ko « batari bafite uruhare rugaragara mu mirwano ». Ahangaha ni ngombwa kugaragaza ko abo bagabo, abagore n'abana, bagize uruhare ruziguye mu mirwano, cyangwa ko hari nibura ibikorwa bibi bakoreye rumwe mu mpande zari zihanganye. Niba hatari ibimenyetso bigaragaza iyo sano, kuvuga ibyo byaba ari nko gupfa kuvuga ibintu gusa kandi nta kintu umuntu yashingiraho mu rwego rw'amategeko afata umwanzuro uvuga ko hariho ikintu cya gatanu kigomba kuba cyujujwe kugira ngo, nk'uko Porokireri abivugaga, umuntu aryozwe ibikorwa binyuranyije n'ayo Masezerano²⁹³.
615. Kubera ko Porokireri atatanze ibimenyetso bigaragaza aho ibyaha bivugwa bihuriye n'intambara, Urugereko rwa Mbere rw'Iremezo rusanga, muri uru rubanza, nta mpamvu yatuma rusuzuma niba hakoreshwa ingingo ya 4(a) ya Sitati isubiramo ibiteganywa n'Ingingo ya 3 ihuriweho, n'ingingo ya 4(2)(a) y'Inyongera ya II.

²⁹² Ni kimwe no haruguru, urup. 56, igika 196.

²⁹³ Muri iri sesengura, Porokireri avuga ko bisa naho umutangabuhamya w'impuguke ari we Porofeseri Degni Segui, yaba avuga ko abakorewe ibyaha batari abantu barengerwaga n'ayo Mategako. Cyakora, Porokireri avuga ko asanga Urugereko rwa Mbere rw'Iremezo rufite ububasha bwo kwemera cyangwa kutemera ubuhamya impuguke itanze mu Rukiko. Reba imyanzuro nsozarubanza, urup. 56.

616. Herekanywe ko mu gihe kivugwa, ingabo za Leta n'iza FPR zari zihanganye mu ntambara y'imbere mu gihugu. Hashingiwe ku kintu cya kane Porokireri agomba kubahiriza nk'uko bivugwa, Kayishema na Ruzindana bagomba kuba bafite aho bahuriye na rumwe mu mpande zihanganye kandi buri wese agomba kubahiriza ibiteganywa n'Amategeko yavuzwe. Mu yandi magambo, kugira ngo Abaregwa bombi baryozwe icyaha ku bikorwa bikomeye binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II, ni ngombwa kugaragaza ko hari aho bari bahuriye n'intambara.
617. Hagaragajwe ko Abaregwa bombi batari abasirikare. Cyakora, hejuru muri iyi Nyandiko y'ibirego havugwa ko abasiviri bashobora kugira aho bahuriye n'ingabo iyo, ku buryo butaziguye, bafite uruhare mu mirwano, cyangwa iyo abo basiviri bavugwa bafite inshingano yo mu rwego rw'akazi cyangwa bategerejweho yo gushyigikira intambara cyangwa kuyigiramo uruhare, nk'abantu bahagarariye Guverinoma, bafite ubutegetsi bukomoka ku mategeko cyangwa butayakomokaho.
618. Cyakora, Porokireri ntiyatanze ikimenyetso na kimwe kigaragaza ukuntu Kayishema, by'umwihariko Ruzindana, utari umukozi wa Leta, bashyigikiye Guverinoma mu kurwanya FPR, n'urwego babikozemo.
619. Mu kuburana, Porokireri yerekanye ko Kayishema na Ruzindana bari bafite imbunda ndetse bakitabira n'ubwicanyi buvugwa mu Nyandiko y'ibirego. Cyakora, Porokireri yiyemerera ubwe ko ingabo za Leta y'icyo gihe cyangwa iza FPR zitagize uruhare muri ubwo bwicanyi, bwateguwe bukanayoborwa n'abategetsi ba gisiviri b'igihugu. Porokireri yemera kandi ko abagabaga ibitero bari bagizwe ahanini n'abasiviri bitwaje intwari gakondo. Ibyo byagaragariye mu buhamya bwatanzwe mu Rukiko kandi na Porokireri arabyemerera mu myanzuro nsozarubanza yanditse ye aho agira ati « abaturage b'abasiviri b'Abahutu bakanguriwe kugaba ibitero ku baturage b'Abatutsi no kubica, bitwaje gahunda y'ukwirengera kw'abaturage »²⁹⁴. Kubera iyo mpamvu, abo bagabo, abagore

²⁹⁴ Ni kimwe no haruguru, urup. 49, igika 165.

- n'abana ntibishwe kubera intambara yari ishyamiranyije ingabo za Leta n'iza FPR, ahubwo bishwe kubera politiki yo gutsembatsemba Abatutsi yari yarashyizweho mbere n'abategetsi b'u Rwanda icyo gihe. Bityo rero, kuba Abaregwa baritabiriye ubwo bwicanyi ntibyatewe n'uko hari aho bari bahuriye n'ingabo za Leta cyangwa iza FPR.
620. Intambara y'ubutegetsi yari ishyamiranyije ingabo za Leta n'iza FPR mu mwaka wa 1994 yasabaga buri ruhanda rurwana gufata buri gihe kimuntu abantu bose bo mu gice bahanganye. Muri icyo gihe, u Rwanda rwari rwaratewe n'ingabo za FPR kandi, nk'uko amategeko mpuzamahanga abiteganyaga, Guverinoma y'icyo gihugu yagombaga nta shiti gutafu ingamba zose za ngombwa zo kurwanya ibyo bitere. Cyakora, ibyo ntibivugaga ko hari ibyaha byari gukorerwa abantu bo muri FPR barengerwaga n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II.
621. Cyakora, ibyaha byakorewe ahantu hane havugwa mu Nyandiko y'ibirego ntibyari ibyaha byibasiye FPR n'abayigize. Byakozwe n'abategetsi ba gisiviri b'icyo gihugu, byibasiye abaturage b'abasiviri bacyo b'ubwoko runaka, kandi ibyo byaragaragajwe, ku buryo budashidikanywaho, mu iburanisha. N'ubwo ayo marorerwa yakozwe mu ntambara, yari mu rwego rwa politiki yihariye yo gukora jenocide kandi agakorwa intambara irimo kuba aho kuba ingaruka zayo. Nta gushidikanya ko ibyo ari byaha birusha ibindi uburemere byashoboraga gukorwa mu ntambara cyangwa igihe nta ntambara ihari. Cyakora, ibyo ari byo byose, ibyo byaha ntibiri mu rwego rw'ibiteganywa n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II bigamije kurengera abantu bakorewe ibyaha mu gihe cy'intambara.
622. Kuri iyi ngingo, Urugereko rusanga ari ngombwa kwibutsa ibyo *CICR* iherutse gutangaza igira iti « Ni ngombwa gushimangira ko mu gihe cy'intambara, amategeko mpuzamahanga arengera abantu mu gihe cy'intambara yubahirizwa hamwe n'amategeko arengera uburenganzira bwa muntu, arimo ingingo zimwe zidashobora kwirengagizwa. Kurengera umuntu umurinda umwanzu, (binyuranye no kurengera umuntu umurinda abategetsi b'igihugu cyeye) ni kimwe mu biranga amategeko yubahirizwa mu gihe

cy'intambara. Igihugu kiri mu ntambara ntigishobora kwitwaza iyo ntambara ngo kirengagize ibiteganywa n'amategeko arengera uburenganzira bwa muntu ... »²⁹⁵. Ibyo rero ni byo byabaye mu Rwanda, kandi byatangirwa igisobanuro kimwe rukumbi. Intambara yabereye muri icyo gihugu yabaye urwitwazo rwo kwirengagiza ibiteganywa n'amategeko arengera uburenganzira bwa muntu ndetse iba n'urwitwazo rwo gukora ibyaha bikomeye cyane.

623. Rushingiye ku bimaze kuvugwa no ku bimenyetso byose byatanzwe muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rusanze hataragaragajwe, ku buryo budashidikanywaho, ko ibyaha bivugwa mu Nyandiko y'ibirego bifatanye isano itaziguye n'intambara. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rusanga ibikorwa Kayishema na Ruzindana bakoze muri kiriya gihe kivugwa bidafatanye isano itaziguye n'ibikorwa bya gisirikare cyangwa ngo bigirane isano no kuba abantu barakorewe ibyaha mu ntambara. Porokireri ntiyerekanye ko Abaregwa bari bafite aho bahuriye, ku buryo butaziguye, n'intambara. Byongeye kandi, nta wafata umwanzuro atibeshya uvuga ko ibiteganywa mu Ngingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II, bitubahirijwe muri uru rubanza. Bityo rero, haba mu rwego rw'ibyabaye cyangwa urw'amategeko Abaregwa bombi ntibashobora kuryozwa nka gatozi ibikorwa binyuranije n'ayo mategeko mpuzamahanga.
624. Urugereko rwa Mbere rw'Iremezo rufashe rero umwanzuro uvuga ko Kayishema ataryozwa icyaha nka gatozi ku bikorwa binyuranije n'ingingo ya 4 ya Sitati bivugwa mu birego bya 5, 6, 11, 12, 17 na 18. Byongeye kandi, Kayishema cyangwa Ruzindana ntibashobora kuryozwa ibyaha bivugwa mu kirego cya 23 n'icya 24.

²⁹⁵ *CICR*, Raporo y'inama y'Impuguke, Ukwakira 1998.

VII. GUKOMATANYA IBYAHA

Intangiriro

625. Mu Nyandiko y'ibirego, Abaregwa bombi bashinjwa, mu buryo bukomatanyije, ibyaha birimo jenocide, ibyaha byibasiye inyokomuntu by'itsembatsemba (itsembatsemba) n'ibyaha byibasiye inyokomuntu by'ubuhotozi (ubuhotozi). Kubera ko kuri buri hantu hakorewe ibyaha, ubwoko bw'ibyaha uko ari butatu ²⁹⁶ bushingiye ku myitwarire imwe, Ubwunganizi buvuga ko ibyo byaha bigize icyaha kimwe. Urugereko rugomba rero gusuzuma ibyabaye bivugwa muri uru rubanza rukurikije uko bigenda bivugwa ku birego. Mu isuzuma rikurikira, Urugereko rurareba niba ibyaha bivugwa mu Nyandiko y'ibirego bisobanurwa mu buryo bukwiye, runarebe niba byakwemerwa mu rwego rw'amategeko. Ikibazo rero hano si icyo gukomatanyiriza hamwe ibihano.

Ingingo z'abaturanyi

626. Ubwunganizi buvuga ko Urugereko rwa Mbere rw'Iremezo rutagomba guhamya Abaregwa icyaha cya jenocide ngo rwongere rubahamye icy'ibyaha byibasiye inyokomuntu kubera ko hari impurirane y'ibyaha. Ubwunganizi bwa Ruzindana buvuga ko « ibyaha byibasiye inyokomuntu biteganywa bihagije n'Amasezerano yerekeranye na jenocide »²⁹⁷. Byongeye kandi, buvuga ko inyungu z'umuryango mugari w'abantu zirengerwa zifite aho zihurira n'izo ngingo ebyiri za Sitati²⁹⁸. Ubwunganizi bwa Kayishema busobanura ko « ikigenderwaho gituma abantu batandukanya mu mategeko ibyo byaha byombi (jenocide n'itsembatsemba) ari uko impamvu zituma jenocide ikorwa zitandukanye n'izituma itsembatsemba rikorwa. Muri uru rubanza, Urugereko rusanga

²⁹⁶ Urugereko rwa Mbere rw'Iremezo ntirugira icyo ruvuga ku bindi byaha bitatu biri muri iyi Nyandiko y'ibirego kubera ko, ku mpamvu zinyuranye zivugwa mu gice cyahariwe Imyanzuro yo mu rwego rw'amategeko, Abaregwa batahamwe na kimwe muri ibyo byaha.

²⁹⁷ Imyanzuro nsozarubanza yanditse y'Ubwunganizi (Ruzindana), 29 Ukwakira 1998, urup. 6.

²⁹⁸ Ni kimwe no haruguru.

ibyaho byaha byombi byarakozwe ku mpamvu zimwe kandi ntihagaragajwe ko atari uko bimeze²⁹⁹. Urugereko rusanga Porokireri atajya impaka ku bibazo by'ingenzi byerekeranye n'uko bishoboka ko hari impurirane y'ibyaha cyangwa ko ibintu bigize icyaha bishobora kuba ari bimwe.

Kureba niba hari impurirane y'ibyaha

627. Uregwa ashobora gusa guhamwa n'ibyaha bibiri bishingiye ku bikorwa bimwe iyo (1) ibintu bigize ibyo byaha bitandukanye, cyangwa (2) iyo inyungu z'umuryango mugari w'abantu ayo mategeko ashaka kurengera zitandukanye. Kugira ngo ikibazo cy'impurirane y'ibyaha gikemurwe, ni ukuvuga kugira ngo umuntu amenye niba ibyaha bibiri cyangwa birenze bivugwa mu Nyandiko y'ibirego bishobora gufatwa nk'icyaha kimwe, Urugereko rusuzuma ibintu bibiri: icya mbere, rusuzuma niba ibyaha bivugwa bigizwe n'ibintu bimwe; icya kabiri rukareba niba amategeko arengera inyungu zimwe z'umuryango mugari w'abantu³⁰⁰. Urugereko rugiyeye kubanza gusuzuma ikibazo cy'impurirane y'ibyaha nk'uko kirebana, muri rusange, n'amategeko yerekeranye na jenocide n'ibyaha byibasiye inyokomuntu kugira ngo rumenye niba ibikorwa binyuranyije n'ayo mategeko bishobora kuba bimwe. Nirurangiza, Urugereko rurasuzuma uko ibintu bimeze muri uru rubanza rurebe niba ibyaha bihurirana, hashingiwe ku byabaye bivugwa.

Isesengura rusange ry'impurirane y'ibyaha ku cyaha cya jenocide n'ibyaha byibasiye inyokomuntu. Ese ibikorwa binyuranyije n'ayo mategeko ni bimwe?

628. Urugereko rwa Mbere rw'Iremezo rurabanza gusuzuma impurirane y'ibyaha mu mategeko yerekeranye na jenocide n'ibyaha byibasiye inyokomuntu. Mu kubikora, rurasuzuma ibintu bishobora gukoreshwa mu gihe ayo mategeko akoreshejwe mu bintu

²⁹⁹ Imyanzuro yanditse y'Ubwunganizi bwa Clément Kayishema, urup. 7.

³⁰⁰ Inkinko nyinshi z'ibihugu bitandukanye zakoresheje ubwo buryo mu manza mpanabyaha. Reba urubanza rwa Blockburger aburana na Leta Zunze Ubumwe z'Amerika, 284 U.S. 299 (1932).

bitandukanye byabaye. Ibyo biratuma Urugereko rwa Mbere rw'Iremezo rumenya niba hashobora kubaho impurirane y'ibyaha igihe uregwa ashinjwa jenocide na kimwe cyangwa byinshi mu byaha bivugwa mu byaha byibasiye inyokomuntu, hashingiwe ku bikorwa bimwe.

629. Ku byerekeranye n'ibintu bigize ibyo byaha, Urugereko ntiruzakuvugira ibintu byose bigize icyaha cya jenocide cyangwa ibyaha byibasiye inyokomuntu kuri buri cyaha ruraba rusuzuma. Ibyo byaha byombi birangwa n'ibintu bitatu bishobora, iyo bisuzumwe mu gikorwa runaka, gushingirwaho mu kugaragaza icyaha runaka cyakozwe, ariko ikindi ntigikorwe. Icyo gihe, ibyo byaha ntibishobora kuba bigizwe n'ibintu bisa. Cyakora, hari igihe ibintu byashingiweho mu kugaragaza icyaha bishobora kuba bimwe.
630. Icyamba mbere kandi cy'ingenzi kuruta ibindi ni uko bimwe mu byaha bivugwa mu byaha byibasiye inyokomuntu bishobora kuba byarakozwe hatagamijwe kurimbura abantu bose bagize ubwoko cyangwa igice cyabo, kandi iki kintu ni cyo gishingirwaho kugira ngo hemezwe ko habayeho jenocide. Nk'urugero, ibyaha byibasiye inyokomuntu byo kwimura abantu no gufunga si ibyaha muri rusange byarimbura itsinda ry'abantu barengerwa n'amategeko. Cyakora, mu byaha byibasiye inyokomuntu, ibyaha bivugwa by'ubuhotozi (iyo byakorewe imbaga) cyangwa by'itsembatsemba bishobora, mu miterere yabyo, gukorwa hagamijwe kurimbura igice kimwe cy'abaturage kubera impamvu z'ivangura. Mu by'ukuri, amagambo itsembatsemba no kurimbura ashobora gusimburana mu mikoreshereze yayo kuri ibyo byaha byombi. Bityo rero, ibintu bigize icyo byaha bishobora kuba bimwe, bitewe n'ibyabaye bishingirwaho.
631. Icyamba kabiri, kugira ngo habeho ibyaha byibasiye inyokomuntu, ibyaha byose byavuzwe bigomba kuba byarakozwe byibasiye by'umwihariko «abaturage b'abasiviri»³⁰¹, mu gihe kugira ngo habeho icyaha jenocide, umuntu agomba kuba yarakoze ibikorwa bigamije kurimbura «abantu bagize itsinda runaka». Kuba abakorewe ibyaha ari abasiviri cyangwa

³⁰¹ Ku byerekeranye n'isesengura rirambuye ku gisobanuro cy'abaturage b'abasiviri, ku birebana n'ibyaha byibasiye inyokomuntu, reba haruguru mu mutwe wa 4.2 w'iyi Nyandiko y'urubanza.

abasirikare ntacyo bihindura mu kugaragaza ko habayeho jenoside. Cyakora, iyo abakorewe ibyaha ari abaturage b'abasiviri gusa, hari igihe ibintu bigize ibyo byaha byombi biba bimwe.

632. icya gatatu, mu mpamvu z'ivangura zigize icyaha cyibasiye inyokomuntu harimo ubwoko bw'ivangura budasabwa ku cyaha cya jenoside, ari bwo umutwe wa politiki umuntu yarimo. Cyakora, iyo Porokireri aburana ashingira ku mpamvu z'imvungura, icyo gihe, ibintu bigize icyaha bishobora kuba ari bimwe kuri ibyo byaha byombi.
633. icya kane, kugira ngo icyaha cy'itsembatsemba kigaragazwe ni ngombwa kwerekana ko nibura hari umuntu wahotowe mu rwego rw'ubwicanyi bwibasiye imbaga. Kwica imbaga y'abantu si ikintu cya ngombwa gisabwa ku cyaha cy'ubuhotozi. Byongeye kandi, nk'uko biteganywa na Sitati, kugira ngo habeho icyaha cy'ubuhotozi ni uko uwishe umuntu aba yari yabigambiriye ariko ibyo si ngombwa ku cyaha cy'ubwicanyi bukozwe mu rwego rw'itsembatsemba. Cyakora, nk'uko bimeze muri uru rubanza, aho ubuhotozi bwose bwari bwagambiriwe kandi bugakorwa mu rwego rw'ubwicanyi bwibasiye imbaga, ibintu bigize ibyaha ni bimwe.
634. Muri make, Urugereko rusanga umuntu ashobora kuba yaritswemo n'igitekerezo cyihariye cya ngombwa cyo gukora jenoside no gushyira mu bikorwa politiki ituruka kuri icyo gitekerezo gisabwa ku byaha bimwe byibasiye inyokomuntu, akanakora ibikorwa bigize ibyo byaha byombi.
635. Byongeye kandi, ku byerekeranye no kurengera « inyungu z'umuryango mugari w'abantu » zitandukanye, ibintu bisabwa kuri ibyo byaha byombi bishobora kuba bimwe ku bintu bimwe byabaye ariko bigatandukana ku bindi. Ku byaha bya jenoside n'ibyaha byibasiye inyokomuntu, inyungu y'umuryango mugari w'abantu irengerwa ni ukubuza ko abantu barengerwa n'amategeko bicwa. Ku byaha byibasiye inyokomuntu, abo bantu bagarukira ku baturage b'abasiviri naho ku cyaha cya jenoside ntibagarukira gusa ku bitero byibasira abaturage b'abasiviri. Cyakora, iyo icyiciro cy'abantu bakorewe ibyaha

n'ibintu bigize icyaha ari bimwe, icyo gihe umuntu ashobora kuvuga ko amategeko arengera inyungu zimwe z'umuryango mugari w'abantu.

636. Nyuma yo gusuzuma igitekerezo n'ibintu bifatika bigize icyaha no kureba inyungu z'umuryango mugari w'abantu zirengerwa n'amategeko, Urugereko rwa Mbere rw'iremezo rusanga hari igihe jenoside n'ibyaha byibasiye inyokomuntu bishobora kuba bigizwe n'ibintu bimwe ariko bikaba byagira n'ibindi bitandukaniraho. Ibyo ntibitangaje kubera ko ibyo byaha byombi binyuranyije n'amategeko mpuzamahanga, ari ibyaha bihitana imbaga y'abantu, kandi bigakorwa kubera imyitwarire mibisha itandukanye, no mu bintu byinshi bitandukanye byabaye. Kubera iyo mpamvu, kugira ngo habeho impurirane y'ibyo byaha byombi biterwa n'ibyabye byihariye bivugwa mu rubanza n'ibimenyetso byihariye Porokireri ashingiraho mu kugaragaza ibyo byaha.

Ese muri uru rubanza hari impurirane y'ibyaha?

637. Hashingiwe ku myitwarire ye ku kigo, Kayishema aregwa mu buryo bukomatanyijwe jenoside (Ikirego cya 1), ubuhotozi (Ikirego cya 2) n'itsembatsemba (Ikirego cya 3); hashingiwe ku myitwarire ye kuri sitade, aregwa mu buryo bukomatanyijwe jenoside (Ikirego cya 7), ubuhotozi (Ikirego cya 8) n'itsembatsemba (Ikirego cya 9); kubera imyitwarire ye ku kiriziya ya Mubuga, aregwa mu buryo bukomatanyijwe jenoside (Ikirego cya 13), ubuhotozi (Ikirego cya 14) n'itsembatsemba (Ikirego cya 15); naho kubera imyitwarire ye mu Bisesero aregwa mu buryo bukomatanyijwe jenoside (Ikirego cya 19), ubuhotozi (Ikirego cya 20) n'itsembatsemba (Ikirego cya 21). Kubera ibikorwa bye mu Bisesero, Ruzindana aregwa, mu buryo bukomatanyijwe, jenoside (Ikirego cya 19), ubuhotozi (Ikirego cya 20) n'itsembatsemba (Ikirego cya 21).
638. Muri uru rubanza, Abaregwa bombi bashinjwa kuba baritabiriye ubwicanyi bwamaze amezi atatu buyogoza u Rwanda kubera ibyaha bakoreye muri Perefegitura ya Kibuye. Muri make, Porokireri avuga ko Kayishema na Ruzindana bari bagambiriye kwica umubare munini w'Abatutsi muri Perefegitura ya Kibuye kandi bakoze ibikorwa binyuranye, birimo gushyigikira abandi bantu kugira ngo bagere ku mugambi wabo.

Urugereko rwa Mbere rw'Iremezo narwo rurabyemera. Ibimenyetso byatanzwe bigaragaza ko ubwicanyi Abaregwa bagizemo uruhare bwibasiye abaturage b'abasiviri. Urugereko rwa Mbere rw'Iremezo rusanga ubwo bwicanyi bwari bushingiye gusa ku bwoko. Byongeye kandi, muri uru rubanza, ibimenyetso byatanzwe bigaragaza ko ubuhotozi bwakozwe bwari mu rwego rw'ubwo bwicanyi bwibasiye imbaga. Buri kimwe muri ibyo bibazo kirasuzumwa mu buryo burambuye mu bika bikurikira.

Imyitwarire yashingiweho mu kugaragaza ibyo byaha bitatu byose ni imwe -Igitekerezo n'igikorwa bigize icyaha

639. Mu kuburana, Porokireri ashingira ku ntango ababuranyi bari bafite yo kwica Abatutsi muri Perefegitura ya Kibuye, cyangwa agashingira ku bikorwa byabo byo gushyigikira, mu gihe cy'amezi atatu, abandi Bahutu kugira ngo bakore ubwo bwicanyi. Porokireri yifashishije kandi politike ya jenocide yariho muri Kibuye, mu kugaragaza ko hariho politiki yo gukora ibyaha byibasiye inyokomuntu. Ku byerekeranye n'igikorwa kigize icyaha Abaregwa bombi bakoze, Urugereko rwa Mbere rw'Iremezo rusanga ibitero bagiyemo bakanabiyobora cyangwa bagakora kimwe muri byo byarahitanye abantu babarirwa mu bihumbi, abandi benshi bakabikomerekeramo. Porokireri ashingira ku byo bakoze cyangwa ku byo bateshutse gukora kugira ngo agaragaze ibyo byaha uko ari bitatu. Nk'urugero, Porokireri ashingira ku bisabwa ko kugira ngo hagaragazwe ko habayeho igitero rusange cyangwa kiri kuri gahunda kugira ngo agaragaze ko ibikorwa Abaregwa bakoze byari ibya jenocide, ari byo ubwicanyi bwakozwe hagamijwe kurimbura Abatutsi bose cyangwa igice cyabo.
640. Ku byerekeranye n'igitekerezo cyo gukora icyaha, Urugereko rwa Mbere rw'Iremezo rusanga ahangaha icyo giterekerezo ari ugutsembamba cyangwa kurimbura byagambiriwe Abatutsi; ubwicanyi bwose n'ibikorwa byo gukomeretsa abantu bikomeye byakozwe mu rwego rwo gushyira mu bikorwa iyo ntango. Icyo giterekerezo ni na cyo Porokireri ashingiraho mu kugaragaza ibyo byaha byose uko ari bitatu.

641. Bityo rero, muri uru rubanza Porokireri yakoresheje ibintu bimwe bigize ibyaha n'ibimenyetso bimwe mu kugaragaza ibyaha bya jenocide, itsembatsemba n'ubuhotozi.

Inyungu z'umuryango mugari w'abantu zirengerwa: Abakorewe ibyo byaha ni bamwe

642. Urugereko rwa Mbere rw'Iremezo rusanga abahitanywe n'ubwicanyi ari Abatutsi³⁰² kandi n'ibitero byari bishingiye gusa ku ivangura bwoko. Kubera iyo mpamvu, ikintu cy'ivangura gisabwa ku cyaha cya jenocide no ku byaha byibasiye inyokomuntu, ni kimwe. Byongeye kandi, Abatutsi bakorewe ibyaha muri ibyo bitero byagabwe muri Perefegitura ya Kibuye bari abasiviri. Haba mu bikorwa bya jenocide cyangwa mu byaha by'itsembatsemba n'ubuhotozi, abo bantu bakorewe ibyaha bose bari abasiviri b'Abatutsi. Bityo rero, muri uru rubanza, hakoreshejwe ibimenyetso bimwe mu kugaragaza ko ku cyaha cya jenocide, ibikorwa by'Abaregwa byari bigamije kurimbura Abatutsi, kandi ko ku byaha by'itsembatsemba n'ubuhotozi, bitabiriye igitero rusange cyangwa kiri kuri gahunda cyibasiye abasiviri bazira ko ari Abatutsi.

643. Muri uru rubanza rero, inyungu y'umuryango mugari w'abantu irengerwa, ni ukuvuga ubuzima bw'abasiviri b'Abatutsi, ni imwe ku cyaha cya jenocide n'icy'itsembatsemba n'ubuhotozi nk'ibyaha byibasiye inyokomuntu.

Ubuhotozi bwose bwakozwe mu rwego rw'ubwicanyi bwibasiye imbaga

644. Urugereko rwa Mbere rw'Iremezo rusanga, kuri buri hantu hakorewe ibyaha, ubuhotozi bwarakozwe mu rwego rwa politiki ya jenocide n'itsembatsemba muri Perefegitura ya Kibuye. Ubwo bwicanyi bwose bwari bwagambiriwe kandi bwakozwe mu rwego rw'umugambi rusange wo gutsembatsemba cyangwa kurimbura abaturage b'Abatutsi. Ubwo bwicanyi bugaragaza ibivugwa ku birego byerekeranye n'icyaha cya jenocide n'ibyaha by'ubuhotozi n'itsembatsemba bigize icyaha cyibasiye inyokomuntu. Nta bwicanyi bwavuzwe mu Rukiko nk'ikintu cyabaye ukwacyo, gitandukanye n'ubwicanyi bwakorewe ahantu hane havugwa habereye ubwicanyi. Kubera iyo mpamvu, Urugereko rwa Mbere rw'Iremezo rusanga ibintu bigize ibyaha ari bimwe kuri ubwo bwoko butatu

³⁰² Reba Imyanzuro yo mu rwego rw'amategeko ku byaha byibasiye inyokomuntu.

bw'ibyaha. Rusanga kandi ibimenyetso byakoreshejwe mu kugaragaza icyaha kimwe ari nabyo byakoreshejwe mu kugaragaza ibindi byaha bibiri bisigaye.

Imyanzuro

Ese ibyo byaha biratandukanye?

645. Mu kugaragaza icyaha cya jenocide, itsembatsemba n'ubuhotozi, Porokireri akoresha ibintu bimwe kandi agashingira ku bimenyetso bimwe kugira ngo agaragaze ibyo bintu bigize ibyaha. Ibimenyetso byatanze mu kugaragaza icyaha kimwe, ni na byo, byanze bikunze, byakoreshejwe mu kugaragaza ibindi byaha. Imyitwarire mibisha, ni ukuvuga ubwicanyi bwagambiriwe, yashingiweho mu kugaragaza icyaha cya jenocide ihuye neza n'igikorwa kigize ibyaha by'itsembatsemba n'ubuhotozi. Byongeye kandi, ubuhotozi bwose bwakozwe mu rwego rw'itsembatsemba (ubwicanyi bwibasiye imbaga) na bwo bwagaragajwe hifashishijwe ibimenyetso bimwe. Mu by'ukuri, itsembatsemba rishobora kugaragazwa gusa ni uko herekanywe ko ubwicanyi bwahitanye imbaga³⁰³.
646. Imiterere rusange cyangwa iri kuri gahunda y'ibitero byagabwe muri Kibuye yujuje ibisabwa kugira ngo habe harabayeho ibyaha byibasiye inyokomuntu. Inakoreshwa mu kugaragaza ko hariho ibikorwa n'igitekerezo bya ngombwa byo gukora jenocide. Igitekerezo cyo gukora icyaha kuri ibyo byaha bitatu cyari kimwe, ari cyo cyo kurimbura cyangwa gutsembatsemba abaturage b'Abatutsi. Kubera iyo mpamvu, igitekerezo cyihariye cya ngombwa ku cyaha cya jenocide gihuye n'igitekerezo cyo gukora itsembatsemba n'ubuhotozi. Ntagushidikanya ko inyungu y'umuryango mugari w'abantu irengerwa muri uru rubanza ari imwe. Abantu barengerwa, ni ukuvuga abantu bakorewe ibyaha mu bitero byahamye Kayishema na Ruzindana bari abasiviri b'Abatutsi. Abo bantu bakorewe ibyaha kubera umugambi wariho wo gukora jenocide na politiki yariho y'itsembatsemba ririmo ubuhotozi bwibasiye imbaga y'abantu. Mu gusoza kuri iyi

³⁰³ Ni ngombwa kumenya ko uregwa ashobora guhamwa n'icyaha cy'itsembatsemba, kigize ibyaha byibasiye inyokomuntu, iyo hatanzwe ibimenyetso bihagije bigaragaza ko hari umuntu yishe mu rwego rw'ubwicanyi bwibasiye imbaga.

ngingo, Urugereko rusanga Porokireri ataragaragaje ko, kuri buri hantu hakorewe ibyaha, hari ubuhotozi na bumwe muri ubwo buvugwa butari mu rwego rw'ubwicanyi bwibasiye imbaga. Ubwo buhotozi bwose bwahitanye imbaga y'abantu bwari mu rwego rw'ibindi bintu rusange byaberaga muri Perefegitura ya Kibuye muri icyo gihe.

647. Kubera iyo mpamvu, Urugereko rwa Mbere rw'Iremezo rusanga, hakurikijwe ibintu byabaye bivugwa muri uru rubanza, ibyaha bya jenocide, itsembatsemba n'ubuhotozi bigizwe n'ibintu bimwe. Bityo rero, hari impurirane y'ibyaha yihariye ku byerekeranye n'ibyo byaha bitatu byakorewe ahantu hane havugwa, kandi ibyo bivuga ko ibyo byaha byose bidatandukanye muri uru rubanza.

Ingaruka z'impurirane y'ibyaha

648. Mu iburanisha, Porokireri yifashishije ibintu bimwe mu kugaragaza ibyo byaha uko ari bitatu byakorewe aho hantu hane. Muri uru rubanza, amategeko atatu avugwa yarengeranga inyungu zimwe z'umuryango mugari w'abantu. Bityo rero, ibirego by'itsembatsemba n'ubuhotozi bikubiye mu kirego cya jenocide. Ni ukuvuga ko muri uru rubanza ibyo byaha bidatandukanye.
649. Urugereko rwa Mbere rw'Iremezo rusanga rero ibyabaye bigize uru rubanza nk'uko bivugwa haruguru bidatuma umuntu avuga ko hakozwe icyaha kirenze kimwe. Ibyo bintu bituma umuntu yavugaga ko habayeho jenocide cyangwa itsembatsemba n'ubuhotozi, cyangwa ubuhotozi gusa. Kubera rero ko hagaragajwe ko Abaregwa bakoze jenocide, Kayishema na Ruzindana ntibashobora no guhamirizwa icyarimwe icyaha cy'ubuhotozi n'icy'itsembatsemba cyangwa ngo bahamwe n'icy'itsembatsemba gusa. Urugereko rusanga ibyo bintu bitaba bikwiye kuko byaba ari uguhamya Abaregwa icyaha kimwe inshuro ebyiri. Kubera imiterere y'uru rubanza, Urugereko rwa Mbere rw'Iremezo rusanga byaba ari ukurenganya bikomeye Abaregwa kandi ntibyemewe mu mategeko. Niba Porokireri yarashakaga gushingira ku bintu n'ibimenyetso bimwe kugira ngo agaragaze ibyo byaha byose uko ari bitatu, yari kuvugaga ko Abaregwa baramutse badahamwe na jenocide, baryozwa ubuhotozi n'itsembatsemba. Uburyo rero akomatanya ibirego ntibukwiye kandi ntibwemewe mu mategeko.

650. Byongeye kandi, n'ubwo Urugereko rwa Mbere rw'Iremezo rwafata umwanzuro uvuga ko ikirego cy'itsembatsemba n'icy'ubuhotozi bishobora kwakirwa, muri uru rubanza Abaregwa ntibashobora guhamwa n'icyaha cy'ubuhotozi bwahitanye imbaga, hashingiwe ku ngingo ya 3(a) n'icy'itsembatsemba hashingiwe ku ngingo ya 3(b) za Sitati, nk'uko babishinjwa. Ibyo biterwa n'uko, nk'uko bivugwa haruguru, Porokireri atagaragaje ko mu bwicanyi buvugwa harimo ubutari mu rwego rw'ubwicanyi bwahitanye imbaga kuri buri hantu hakorewe ibyaha. Aha naho, aho kubashinja ibyaha bikomatanyije, Porokireri aba yaravuze ko icyaha kimwe kitabahamye baryozwa ikindi.

VIII. ICYEMEZO CY'URUGEREKO

KUBERA IZO MPAMVU,

RUMAZE gusuzuma ibimenyetso byose n'ingingo z'ababuranyi, URUGEREKO RWA MBERE RW'IREMEZO rwemeje ibikurikira:

- (1) Ku bwiganze bw'amajwi, kubera ko Umucamanza Khan afite igitekerezo gitandukanye n'icya bagenzi be,

RWEMEJE ko ibirego byatanzwe muri uru rubanza hashingiwe ku ngingo ya 3(a) na (b) ya Sitati, (Ibyaha byibasiye inyokomuntu (Ubuhotozi) n'Ibyaha byibasiye inyokomuntu (Itsembatsemba), bikubiye byose mu birego byatanzwe hashingiwe ku ngingo ya 2 ya Sitati (Jenoside), kandi ko kubera iyo mpamvu rusanze Clément Kayishema **ADAHAMWA** n'icyaha ku birego bya 2, 3, 8, 9, 14 na 15, kandi ko Clément Kayishema na Obed Ruzindana, **BADAHAMWA** n'icyaha ku birego bya 20 na 21.

- (2) Ku bwumvikane bw'abacamanza bose bagize inteko **rufashe imyanzuro** ikurikira ku birego bisigaye:

Clément Kayishema:

- Ikirego cya 1: Ahamwa n'icyaha cya jenoside.
- Ikirego cya 4: Ntahamwa n'ibyaha byibasiye inyokomuntu/Ibindi bikorwa bibi birenze kameremuntu.
- Ikirego cya 5: Ntahamwa n'icyaha cyo kunyuranya n'Ingingo ya 3 Ihuriweho n'Amasezerano y'i Jeneve.
- Ikirego cya 6: Ntahamwa n'icyaha cyo kunyuranya n'Inyongera ya II y'Amasezerano y'i Jeneve.
- Ikirego cya 7: Ahamwa n'icyaha cya jenoside.

- Ikirego cya 10: Ntahamwa n'ibyaha byibasiye inyokomuntu/Ibindi bikorwa bibi birenze kameremuntu.
- Ikirego cya 11: Ntahamwa n'icyaha cyo kunyuranya n'Ingingo ya 3 Ihuriweho n'Amasezerano y'i Jeneve.
- Ikirego cya 12: Ntahamwa n'icyaha cyo kunyuranya n'Inyongera ya II y'Amasezerano y'i Jeneve.
- Ikirego cya 13: Ahamwa n'icyaha cya Jenocide.
- Ikirego cya 16: Ntahamwa n'ibyaha byibasiye inyokomuntu/ Ibindi bikorwa bibi birenze kameremuntu.
- Ikirego cya 17: Ntahamwa n'icyaha cyo kunyuranya n'Ingingo ya 3 Ihuriweho n'Amasezerano y'i Jeneve.
- Ikirego cya 18: Ntahamwa n'icyaha cyo kunyuranya n'Inyongera ya II y'Amasezerano y'i Jeneve.
- Ikirego cya 19: Ahamwa n'icyaha cya jenocide.
- Ikirego cya 22: Ntahamwa n'ibyaha byibasiye inyokomuntu/ Ibindi bikorwa bibi birenze kameremuntu.
- Ikirego cya 23: Ntahamwa n'icyaha cyo kunyuranya n'Ingingo ya 3 Ihuriweho n'Amasezerano y'i Jeneve.
- Ikirego cya 24: Ntahamwa n'icyaha cyo kunyuranya n'Inyongera ya II y'Amasezerano y'i Jeneve.

Obed Ruzindana:

- Ikirego cya 19: Ahamwa n'icyaha cya jenocide.
- Ikirego cya 22: Ntahamwa n'ibyaha byibasiye inyokomuntu/ Ibindi bikorwa bibi birenze kameremuntu.
- Ikirego cya 23: Ntahamwa n'icyaha cyo kunyuranya n'Ingingo ya 3 Ihuriweho n'Amasezerano y'i Jeneve.
- Ikirego cya 24: Ntahamwa n'icyaha cyo kunyuranya n'Inyongera ya II y'Amasezerano y'i Jeneve.

IGENAGIHANO

Intandaro

651. Mu kugena ibihano, Urugereko ruzirikana ko Inama Ishinzwe Amahoro ku Isi, hashingiwe ku Ngingo ya 39 y'Itegeko Shingiro ry'Umuryango w'Abibumbye no ku Mutwe wa VII w'iryo Tegeko Shingiro, yashyizeho Urukiko kugira ngo ibyaha binyuranyije bikomeye n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara bishobore kubonerwa umuti nyawo. Intego yari iyo gukurikirana no guhana abantu bakoreye amarorerwa mu Rwanda, hagamijwe guca burundu umuco wo kudahana, gutera inkunga mu bwiyunge bw'Abanyarwanda no kugarura amahoro.
652. Urugereko rugomba guhana abahamwe n'ibyaha rugamije gutanga impongano y'icyaha³⁰⁴, guca intege abashaka gukora ibyaha³⁰⁵, kugorora abahamwe n'ibyaha³⁰⁶ no kurinda umuryango mugari w'abantu³⁰⁷. Ku birebana no guca intege abashaka gukora ibyaha, Urugereko rushaka kuburira byimazeyo abagerageza gukora amarorerwa nk'ayo, kugira ngo bamenye ko umuryano mpuzamahanga udashobora kwihanganira ibyaha binyuranyije bikomeye n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara n'uburenganzira bwa muntu.

³⁰⁴ Inyandiko y'urubanza rwa Serushago, ICTR-98-39-S, igika 20 (Igenagihano, 5 Gashyantare 1999); Inyandiko y'urubanza rwa Kambanda, ICTR-97-23-S, igika 28 (urubanza n'igenagihano, 4 Nzeri 1998); Inyandiko y'urubanza rwa Akayesu, ICTR-96-4-T, igika 19 (igenagihano, 2 Ukwakira 1998); Inyandiko y'urubanza rwa Furundzija, IT-95-17/1-T-10, igika 288 (10 Ukuboza 1998); Inyandiko y'urubanza rwa Delalic, IT-96-21-T, igika 1231 (16 Ugushyngiro 1998).

³⁰⁵ Inyandiko y'urubanza rwa Serushago, igika 20; Inyandiko y'urubanza rwa Kambanda, igika 28; Inyandiko y'urubanza rwa Akayesu, igika 19; Inyandiko y'urubanza rwa Furundzija, igika 288; Inyandiko y'urubanza rwa Delalic, igika 1234.

³⁰⁶ Inyandiko y'urubanza rwa Serushago, igika 39; Inyandiko y'urubanza rwa Furundzija, igika 291; Inyandiko y'urubanza rwa Delalic, igika 1233; Inyandiko y'urubanza rwa Erdemovic, IT-96-22, igika 16.i (Urubanza ngenagihano, 5 Werurwe 1998).

³⁰⁷ Inyandiko y'urubanza rwa Delalic, igika 1232.

Amahame rusange y'igenagihano n'amategeko akurikizwa

653. Ingingo ya 23(2) ya Sitati n'ingingo ya 101(B) y'Amategeko zisaba Urugereko, mu kugena ibihano, kuzirikana ibintu binyuranye. Ibyo bintu birimo: urutonde rusange rw'ibihano by'igifungo rukurikizwa mu Rwanda; uburemere bw'ibyaha; ibyihariye birebana n'abahamwe n'ibyaha; impamvu nyongeragihano n'impamvu nyoroshyagihano. Ibi bintu bimaze kuvugwa si byo byonyine byitabwaho kandi si ngombwa ko bikurikizwa byose uko byakabaye. icya ngombwa ni ukugenera uwahamwe n'icyaha wese igihano kimukwiriye hakurikijwe ibirebana n'urubanza byose.
654. Ingingo za 22, 23, 26 na 27 za Sitati n'ingingo za 86(C), 99, 100, 101, 102, 103 na 104 z'Amategeko, ni zo muri rusange zishingirwaho mu igenagihano. Ingingo ya 22(1) ya Sitati iha by'umwihariko Urugereko rwa Mbere rw'Iremezo ububasha bwo guhana abantu bahamwe n'ibyaha biteganywa na Sitati. Uru Rugereko rusanga kandi rufite ubwisanzure busesuye³⁰⁸ bwo gusuzuma n'ibindi bintu bitavuzwe muri Sitati cyangwa mu Mategeko, hagamijwe kubahiriza ubutabera mu igenagihano. Urugereko rugiyeye rero gusuzuma uko ayo mategeko yakurikizwa muri uru rubanza, kugena ibihano no gusesengura ibirebana n'uko ibyo bihano bizarangizwa.

Urutonde rusange rw'ibihano bikurikizwa mu Rwanda

Isesengura ry'ibintu byitabwaho mu kugena igihano

655. Ingingo ya 23(1) ya Sitati n'ingingo ya 101(B)(iii) y'Amategeko ziteganyaga ko, mu kugena igihano, Urugereko rwa Mbere rw'Iremezo rugomba kwifashisha urutonde rw'ibihano by'igifungo rukurikizwa mu Rwanda.
656. Amategeko y'u Rwanda aha inkiko ububasha bwo guhanisha igihano cyo kwicwa abantu bahamijwe icyaha cyo kuba « mu bacuze umugambi wa jenocide, abawuteguye, abawushishikariye abandi, abagenzuye n'abayoboye jenocide . . . [cyangwa] abantu bari

³⁰⁸ Inyandiko y'urubanza rwa Serushago, igika 22; Inyandiko y'urubanza rwa Kambanda, igika 30; Inyandiko y'urubanza rwa Akayesu, igika 17.

mu nzego z'ubuyobozi mu rwego rw'igihugu, urwa perefegitura, urwa komini, urwa segiteri, cyangwa urwa serire . . . [cyangwa] abicanyi ruharwa . . . bamamaye kubera umwete bagize mu bwicanyi cyangwa ubugome bukabije babukoranye»³⁰⁹. Urugereko rusanga kandi ayo mategeko yo mu Rwanda akurikizwa ku byaha byakozwe nyuma y'itariki ya 1 Ukwakira 1990. Ayo mategeko aha kandi inkiko ububasha bwo guhanisha igifungo cya burundu « abantu ibyaha cyangwa ibikorwa by'ubufatanyacyaha bishyira mu mubare w'abishe, w'abagambanyi cyangwa ibyitso by'abakoze ibikorwa by'ubwicanyi bwakozwe ku bushake cyangwa ibikorwa bikomeye byagiriwe abantu bikabaviramo gupfa »³¹⁰.

657. Hashingiwe ku myanzuro yamaze gufatwa muri uru rubanza, Urugereko rusanze urutonde rw'ibihano by'igifungo bikurikizwa mu Rwanda ari kimwe mu bishyigikira igitekerezo cyarwo cyo gukatira Kayishema igihano gisumba ibindi n'icyo gukatira Ruzindana igihano kiremereye cyane.

Uburemere bw'ibyaha

658. Ingingo ya 23(2) ya Sitati iteganya ko mu kugena igihano, Urugereko rwa Mbere rw'Iremezo rugomba kuzirikana uburemere bw'ibyaha.
659. Urugereko rusanga Kayishema na Ruzindana barakoze jenocide, icyaha kiremereye kurusha ibindi byose, kandi gihungabanya umutimanama w'abatuye isi bose. Urugereko rwa Mbere rw'Iremezo I rw'uru Rukiko rwemeje ko jenocide ari « icyaha gisumba ibindi »³¹¹. Ingingo ya 2 ya Sitati isobanura icyaha cya jenocide hamwe n'igitekerezo cyihariye kikigize « cyo kurimbura abantu bose cyangwa igice cyabo bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini, bazira icyo bari cyo ». Mu kugena ibihano,

³⁰⁹ Ingingo ya 2, Itegeko Ngenga N° 08/96 ryo ku wa 30 Kanama 1996 ryerekeye imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu byakozwe kuva ku itariki ya 1 Ukwakira 1990 (Itegeko Ngenga N°08/96).

³¹⁰ Ni kimwe no haruguru.

³¹¹ Inyandiko y'urubanza rwa Serushago, igika 4; Inyandiko y'urubanza rwa Kambanda, igika 16; Inyandiko y'urubanza rwa Akayesu, igika 8.

Urugereko rurazirikana ko ibyaha bine bya jenocide bihama Kayishema na kimwe cya jenocide gihama Ruzindana, ari ibyaha birenze kameremuntu kandi bikomeye cyane gusumba ibindi.

Ibintu byihariye birebana n'abaregwa

660. Ingingo ya 23(2) ya Sitati iteganya ko mu kugena igihano, Urugereko rwa Mbere rw'Iremezo rugomba kuzirikana ibintu byihariye bya buri muntu wahamwe n'icyaha. Urugereko rurabanza rusuzume ibintu byihariye birebana na Kayishema hanyuma rukurikizeho ibirebana na Ruzindana.

Ibintu byihariye birebana na Kayishema

661. Kayishema yavukiye muri Segiteri ya Bwishyura, Perefegitura ya Kibuye mu Rwanda, mu wa 1954. Afite umugore n'abana babiri. Yize ubuvuzi muri Kaminuza y'u Rwanda kandi yakoze nka dogiteri uvura indwara rusange, anabaga abarwayi. Mu wa 1992 yagizwe Perefefe wa Perefegitura ya Kibuye, kandi yagumishijwe muri uwo mwanya nyuma y'urupfu rwa Perezida mu wa 1994. Porokireri nta kimenyetso yatanze gihamya ko Kayishema yaba yarigeze akatirwa n'inkiko³¹².

Ibintu byihariye birebana na Ruzindana

662. Ruzindana yavukiye muri Komine ya Gisovu, Perefegitura ya Kibuye, mu Rwanda, mu wa 1962. Afite umugore n'abana babiri. Yari umucuruzi ukomeye mu bwikorezi bw'ibicuruzwa no mu gutumiza ibintu mu mahanga. Porokireri nta kimenyetso yatanze gihamya ko Ruzindana yaba yarigeze akatirwa n'inkiko. Urugereko rurazirikana ko Ruzindana yari akiri muto (yari afite imyaka 32 mu wa 1994) ko kandi ashobora gusubizwa mu buzima busanzwe.

³¹² Inyandiko y'urubanza rwa Kambanda, igika 45; Inyandiko y'urubanza rwa Akayesu, igika 35.iii; Inyandiko y'urubanza rwa Tadic, IT-94-1, igika 63 (Urubanza n'igenagihano, 14 Nyakanga 1997).

Impamvu nyongeragihano

663. Ingingo ya 101(B)(i) y'Amategeko isaba ko mu kugena igihano, Urugereko rwa Mbere rw'Iremezo ruzirikana impamvu nyongeragihano izo ari zo zose. Kayishema na Ruzindana ku bwende bwabo bakoze ibyaha ku giti cyabo kandi bafatanyije n'abandi kubikora³¹³, ibyo bikaba ari impamvu nyongeragihano. Urugereko rugiyeye noneho gusuzuma impamvu nyongeragihano ku birebana na buri wese, ni ukuvuga Kayishema na Ruzindana.

Impamvu nyongeragihano ku birebana na Kayishema

664. Porokireri avuga impamvu nyongeragihano enye ku birebana na Kayishema. icya mbere, Porokireri avuga ko nka perefefu, Kayishema yateshutse ku nshingano ze zo kurengera abaturage b'Abanyarwanda no kubungabunga amahoro n'umutekano, ko kandi yakoresheje uwo umwanya yarimo kugira ngo akore ibyaha muri Kibuye. icya kabiri, Porokireri avuga ko Kayishema yakoranye ibyo byaha umurava. icya gatatu, Porokireri avuga ko Kayishema yakoze ibyaha yarabiteguye ku buryo bwitondewe kandi buri kuri gahunda. icya kane, Porokireri avuga ku birebana n'imyitwarire ya Kayishema nyuma yo gukora ibyaha, by'umwihariko ko nta cyo yakoze ngo ahane abakoze ibyaha.

665. Urugereko rusanze izi mpamvu nyongeragihano uko ari enye ziriho koko. Rusanze, nka perefefu, Kayishema yari afite umwanya w'ubutegetsi, bityo bikaba ari impamvu nyongeragihano³¹⁴. Kuba Kayishema yarayoboye jenoside yakorewe muri Perefegitura ya Kibuye, kuba yarakoresheje nabi ububasha bwe no kuba yaratatiye umwanya we nk'umuyobozi mukuru, ni impamvu nyongeragihano z'ingenzi.

666. Nk'urugero rumwe rugaragaza umurava Kayishema yakoranye ibyaha, Urugereko ruributsa ko Kayishema yagabye ibitero ahantu ubundi hasanzwe hafatwa nk'ubuhungiro

³¹³ Inyandiko y'urubanza rwa Serushago, igika 30.

³¹⁴ Inyandiko y'urubanza rwa Serushago, igika 28; Inyandiko y'urubanza rwa Kambanda ibika 44, 60.viii; Inyandiko y'urubanza rwa Akayesu, igika 36.ii; Inyandiko y'urubanza rwa Delalic, igika 1220; Reba Inyandiko y'urubanza rwa Tadic, igika 60 (hemejwe ko kuba nta « butegetsi bugaragara cyangwa uruhare mu gutegura ibyabaye » uregwa yari afite ari impamvu nyoroshyagihano).

butavogerwa, nk'ikigo na Kiliziya byo ku Mubuga. Akababaro yateye abahohotewe n'imiryango yabo ni impamvu nyongeragihano³¹⁵, kandi Urugereko ruributsa ububabare budashobora kubona indihano Kayishema yateye abahohotewe n'imiryango yabo. Kayishema yiyambaje imyiregurire ya sinari mpari, kandi igihe cyose yakomeje kwemeza ko ari umwere³¹⁶. Urugereko rusanga ibi na byo, hashingiwe ku byaha byamuhanye, ari impamvu nyongeragihano

Impamvu nyongeragihano ku birebana na Ruzindana

667. Porokireri avuga impamvu nyongeragihano imwe, ni ukuvuga imyitwarire ya Ruzindana nyuma yo gukora icyaha, kandi avuga by'umwihariko ko Ruzindana yasekaga cyangwa yatwengaga igihe abacitse ku icumu babaga barimo batanga ubuhama mu Rukiko.
668. Urugereko rusanga kuba Ruzindana yarakoranye ubwicanyi ubugome bukabije ari impamvu nyongeragihano. Nk'urugero rumwe gusa, Urugereko ruributsa uburyo umwana w'umukobwa w'imyaka 16 witwaga Béatrice yishwe. Ruzindana yamushishimuriyeho imyenda yari yambaye, hanyuma amukata ibere rimwe akoresheje umupanga buhoro buhoro. Arangije, yamutemye irindi bere amushinyagurira ngo narebe irya mbere ryari hasi, nyuma amusatura inda.

Impamvu nyoroshyagihano

669. Ingingo ya 101(B)(ii) y'Amategeko iteganya ko mu kugena igihano, Urugereko rwa Mbere rw'Iremezo ruzirikana impamvu nyoroshyagihano izo ari zo zose. Urugereko rurabanza rusuzume impamvu nyoroshyagihano ku birebana na Kayishema hanyuma rukurikizeho ibirebana na Ruzindana.
670. Mbere yo gusuzuma ibyihariye birebana n'uru rubanza, Urugereko rurifuza gutanga umusanzu warwo mu gusobanura amagambo « impamvu nyoroshyagihano » rwibutsa zimwe muri izo mpamvu zemewe mu zindi manza zaciwe n'uru Rukiko. Urugereko

³¹⁵ Inyandiko y'urubanza rwa Delalic, igika 1225; Inyandiko y'urubanza rwa Tadic, igika 70.

³¹⁶ Inyandiko y'urubanza rwa Tadic, igika 58.

rusanga impamvu nyoroshyagihano zishobora kuba zikubiyemo: ubufatanye na Porokireri³¹⁷, kwishyira mu maboko y'ubutegetsi³¹⁸, kwemera icyaha³¹⁹, no kugaragariza abakorewe ibyaha ko ibyabaye bigushengura umutima³²⁰.

Impamvu nyoroshyagihano ku birebana na Kayishema

671. Mu gice cy'imyanzuro nsozarubanza ye mu magambo kigenewe igenagihano hakurikijwe ingingo ya 86(C), Avoka wunganira Kayishema yerekanye impamvu nyoroshyagihano. Icyamba mbere, yasabye Urugereko kuzirikana ko mu wa 1994 mu Rwanda nta butegetsi buhamye bwariho (hifashishijwe ubuhamya bwa Porofeseri Guibal). Icyamba kabiri, yavuze ko ibyabaye mu wa 1994 mu Rwanda byarenze Kayishema kimwe n'imyitwarire y'imbaga y'abantu cyangwa « imyitwarire y'abantu mu kivunge » (hifashishijwe ubuhamya bwa Porofeseri Pouget). Avoka wunganira Kayishema yasabye na none Urugereko kuzirikana ko Kayishema ari umuntu w'inyangamugayo kandi w'indahemuka. Porokireri nta mpamvu nyoroshyagihano n'imwe yatanze ku birebana na Kayishema. Urugereko rusanga Kayishema yaremeye nta gahato kubazwa n'abapererezi bo mu biro bya Porokireri.
672. Urugereko nta gaciro kanini ruha impamvu nyoroshyagihano zatanzwe ku birebana na Kayishema. Impamvu nyoroshyagihano ebyiri zatanzwe zishingiye ku buhamya Urugereko rusanga budafite ishingiro. Rukurikije ibyaha byahamye Kayishema muri uru rubanza, Urugereko ntiwemera ko ari umuntu w'inyangamugayo kandi w'indahemuka. Rusanze Kayishema afite impamvu nyoroshyagihano zimwe na zimwe, ariko nta n'imwe muri zo yahabwa agaciro mu rubanza rwerekeranye n'ibyaha biremereye aka kageni. Ku

³¹⁷ Inyandiko y'urubanza rwa Serushago, ibika 31-33; Inyandiko y'urubanza rwa Kambanda, ibika 47, 60.i; Inyandiko y'urubanza rwa Erdemovic, igika 16.iv; Inyandiko y'urubanza rwa Tadic, igika 58.

³¹⁸ Inyandiko y'urubanza rwa Serushago, igika 34.

³¹⁹ Inyandiko y'urubanza rwa Serushago, igika 35; Inyandiko y'urubanza rwa Kambanda, igika 60.iii; Inyandiko y'urubanza rwa Erdemovic, igika 16.ii; Inyandiko y'urubanza rwa Tadic, igika 58.

³²⁰ Inyandiko y'urubanza rwa Serushago, igika 40; Inyandiko y'urubanza rwa Kambanda, ibika 50-52; Inyandiko y'urubanza rwa Akayesu, igika 35; Inyandiko y'urubanza rwa Erdemovic, igika 16.iii.

birebana na Kayishema, impamvu nyongeragihano zifite uburemere buruta ubw'impamvu nyoroshyagihano.

Impamvu nyoroshyagihano ku birebana na Ruzindana

673. Mu gice cy'imyanzuro nsozarubanza ye mu magambo kigenewe igenagihano hakurikijwe ingingo ya 86(C) y'Amategeko, Avoka wunganira Ruzindana yasabye Urugereko kwita ku mpamvu nyoroshyagihano, ariko nta n'imwe yatanze. Porokireri nta mpamvu nyoroshyagihano n'imwe yatanze ku birebana na Ruzindana. Urugereko rusanze kuba Ruzindana atari umutegetsi mu buryo buzwi n'amategeko (*de jure*) ari impamvu nyoroshyagihano. Rusanze kandi Ruzindana afite impamvu nyoroshyagihano zimwe na zimwe, ariko nta n'imwe muri zo yahabwa agaciro mu rubanza rwerekeranye n'ibyaha biremereye aka kageni. Ku birebana na Ruzindana, impamvu nyongeragihano zifite uburemere buruta ubw'impamvu nyoroshyagihano.

Ibyifuzo by'ababuranyi ku birebana n'ibihano

674. Avoka wa Kayishema asaba ko uwo yunganira aramutse atagizwe umwere, Urugereko rwamugenera igihano « cy'umugenzo » gusa. Urugereko ruribwira ko iki cyifuzo rugisaba gukatira Kayishema igihano cy'igifungo kingana n'igihe amaze afunzwe by'agateganyo, cyangwa igifungo cy'igihe gito nk'icyo. Avoka wa Ruzindana nta cyifuzo kirebana n'igihano yatanze, uwo yunganira aramutse atagizwe umwere.

675. Ku birebana n'ibyaha Urugereko rwahamije Kayishema na Ruzindana, Porokireri yasabye ibihano bikurikira. Kuri Kayishema, Porokireri yasabye ibihano bikomatanyirije hamwe « by'igifungo cya burundu » ku birego bya 1, 7, 13 na 19. Kuri Ruzindana, Porokireri yasabye igihano « cy'igifungo cya burundu » ku kirego cya 19.

676. Mu rwego rwo kugena ibihano, Urugereko rurazirikana ibintu bitandukanya urwego rw'uburyozwacyaha bwa Kayishema n'urw'ubwa Ruzindana, hakubiyemo n'ibirebana n'ikirego cya 19. Rushingiye ku birebana n'urubanza byose, Urugereko rusanga Kayishema akwiriye guhabwa igihano kiremereye kurusha Ruzindana. Mbere na mbere, Kayishema yari afite umwanya w'ubutegetsi wo mu rwego rwo hejuru, naho Ruzindana

nta mwanya nk'uwo yari afite. icya kabiri, Kayishema ahamwa n'ibyaha bine bya jenocide, naho Ruzindana ahamwa n'icyaha kimwe. icya gatatu, Urugereko rusanga Ruzindana ajya kuba muto kandi ruzirikana ko intego yo kumusubiza mu buzima busanzwe yagerwaho. icya kane, ibimenyetso bigaragaza ko ku birebana nibura n'icyaha kimwe, Kayishema yahaye amabwiriza Ruzindana kandi akamushimagiza, bigaragaza inzego zitandukanye z'uburyozwacyaha bwabo. icya gatanu, Kayishema yarize kandi ni dogiteri mu buvuzi bw'abantu, akaba yarateshutse ku nshingano z'umurimo yasabwaga gukorera umuryango nyarwanda. icya gatandatu, mu by'ukuri, Urugereko rusanga igihano cy'igifungo cy'imyaka 25 kidatandukanye cyane n'igifungo cya burundu. icya karindwi, Urugereko rusanga ibi bitekerezo n'izindi nyungu z'ubutabera bituma Kayishema na Ruzindana bagomba guhabwa ibihano bitandukanye ku birebana n'ikirego cya 19.

Ibihano

Ibihano bikatiwe Kayishema

677. Urugereko rukatiye Clément Kayishema igifungo cya burundu ku kirego cya 1 (Jenoside); Igifungo cya burundu ku kirego cya 7 (Jenoside); Igifungo cya burundu ku kirego cya 13 (Jenoside); Igifungo cya burundu ku kirego cya 19 (Jenoside).

Igihano gikatiwe Ruzindana

678. Urugereko rukatiye Obed Ruzindana igifungo cy'imyaka 25 ku kirego cya 19 (Jenoside).

Irangizwa ry'ibihano

Ikomatanya ry'ibihano

679. Ingingo ya 101(C) y'Amategeko iteganya ko iyo Urugereko rwa Mbere rw'Iremezo rukatiye uwahamwe n'ibyaha ibihano byinshi, rugomba kuvuga niba arangiza kimwe

nyuma y'ikindi cyangwa niba abirangiza icyarimwe³²¹. Muri uru rubanza, Urugereko rwakatiye Kayishema ibihano byinshi, ni ukuvuga ibihano bine by'igifungo cya burundu. Bityo rero, Urugereko rutegetse ko ibyo bihano bine by'igifungo cya burundu bikomatanywa, Kayishema akabirangiriza icyarimwe.

Gukura mu gihano igihe uregwa amaze afunze, hashingiwe ku ngingo ya 101(D)

680. Ingingo ya 101(D) y'Amategeko isaba Urukiko gukura mu gihano igihe uregwa wahamwe n'icyaha amaze afunze by'agateganyo³²². Urugereko rusanze kubera igihe Ruzindana amaze afunze by'agateganyo, agomba gukurirwa icyo gihe mu gihano yagenewe. Urugereko rutegetse Gerefiye gufata ingamba za ngombwa kugira ngo amenyeshe igihugu Ruzindana azarangirizamo igihano ko igihe yamaze afunze by'agateganyo kigomba kuvanwa mu gihe yakatiwe, kandi rumutegetse no kuzenzura ko byakozwe koko.

Igihano cy'igifungo cya burundu

681. Ingingo ya 101(A) yemerera Urugereko rwa Mbere rw'Iremezo gukatira uwahamwe n'icyaha « igihano cy'igifungo kimara igihe runaka cyangwa igifungo cya burundu ». Mu kugenera Kayishema ibihano by'igifungo cya burundu bine bikomatanyirije hamwe, Urugereko rusanga « igihano cy'igifungo cya burundu » gitandukanye, mu mategeko y'inkiko z'ibihugu byinshi, n'igihano « cy'igifungo cy'igihe asigaje kubaho ». Urugereko rufata amagambo « igifungo cya burundu » nk'uko ateye mu ngingo ya 101(A) y'Amategeko.

³²¹ Inyandiko y'urubanza rwa Akayesu, igika 41; Inyandiko y'urubanza rwa Furundzija, ibika 292-96; Inyandiko y'urubanza rwa Delalic, igika 1286; Inyandiko y'urubanza rwa Tadic, igika 75.

³²² Inyandiko y'urubanza rwa Serushago, igice cya V; Furundzija, igice cya IX.A; Inyandiko y'urubanza rwa Delalic, ibika 1287-89; Inyandiko y'urubanza rwa Erdemovic, igice cya VIII; Inyandiko y'urubanza rwa Tadic, igika 77.

ICYEMEZO CY'URUKIKO

682. URUGEREKO RWA MBERE RW'IREMEZO II

KUBERA IMPAMVU ZIMAZE KUVUGWA;

RUSOMERA uru rubanza n'igenagihano mu ruhame;

HASHINGIWE ku ngingo za Sitati n'iz'Amategeko;

RUMAZE KUBONA ibimenyetso byose rwagejejweho;

RUMAZE KUBONA amahame rusange y'igenagihano n'amategeko akurikizwa;

RUMAZE KUBONA ubukemuramanza muri rusange ku birebana n'ibihano by'igifungo bitangwa n'inkiko zo mu Rwanda;

RUMAZE KUBONA uburemere bw'ibyaha;

RUMAZE KUBONA ibintu byihariye birebana na Kayishema n'ibirebana na Ruzindana;

RUMAZE KUBONA impamvu nyongeragihano n'impamvu nyoroshyagihano;

RUMAZE KUBONA imyanzuro ya Porokireri ku igenagihano;

RUMAZE KUMVA ibyifuzo bya Kayishema na Ruzindana ku birebana n'ibihano;

RUMAZE KUMVA Porokireri, Kayishema na Ruzindana;

KU BIREBANA N'IBYAHA BYAVUZWE HARUGURU,

RUKATIYE Clément Kayishema ibihano bikurikira:

KU KIREGO cya 1 (jenocide): Igifungo cya burundu.

KU KIREGO cya 7 (jenocide): Igifungo cya burundu.

KU KIREGO cya 13 (jenocide): Igifungo cya burundu.

KU KIREGO cya 19 (jenocide): Igifungo cya burundu.

RUKATIYE Obed Ruzindana igihano gikurikira:

KU KIREGO cya 19 (jenocide): Igifungo cy'imyaka makumyabiri n'itanu (25).

RWEMEJE ko ibyo bihano bitangira gukurikizwa uyu muni kandi ko bazarangizwa hakurikijwe Ingingo ya 102(A) y'Amategeko.

RWEMEJE ko Kayishema azarangiriza icyarimwe ibihano binyuranye yakatiwe.

RWEMEJE ko Kayishema na Ruzindana bazarangiriza ibihano byabo mu gihugu kizagenwa na Perezida w'Urukiko, abigiyemo inama n'Urugereko.

RUTEGETSE Gerefiye kwandikira ibaruwa igihugu kizaba cyagenwe kurangirizwamo igihano, na Guverinoma y'u Rwanda, ibimenyesha icyo cyemezo cya Perezida w'Urugereko.

RUTEGETSE Gerefiye guha igihugu cyagenwe kurangirizwamo igihano amakuru ajyanye n'itariki Ruzindana yafatiweho n'arebana n'igihe amaze afunzwe by'agateganyo kigomba kuvanwa mu gihe yakatiwe, hashingiwe ku ngingo ya 101(D) y'Amategeko.

RUTEGETSE Gerefiye guhita ashyira mu bikorwa ibirebana n'ibi bihano, kandi

RUTEGETSE Gerefiye kugumisha Kayishema na Ruzindana muri gereza y'Urukiko nibaramuka bajuriye, kugeza igihe Urugereko rw'Ubujurire ruzafatira icyemezo ku bujurire.

Arusha, 21 Gicurasi 1999

[umukono]

William H. Sekule

Perezida w'Inteko

[umukono]

Yakov Ostrovsky

Umucamanza

[Kashe y'Urukiko]

[umukono]

Tafazzal Hossain Khan

Umucamanza

Byanditswe mu cyongereza no mu gifaransa ariko inyandiko yo mu cyongereza ni yo izajya igenderwaho.

[umukono]

William H. Sekule

Perezida

[umukono]

Yakov A. Ostrovsky

[umukono]

Tafazzal Hossain Khan

Kuri iyi Nyandiko y'urubanza, Umucamanza Khan yometseho Igiterekerezo cyihariye kandi kinyuranye n'icya bagenzi be.

Bikozwe ku itariki ya 21 Gicurasi 1999

Arusha

Tanzania



Umuryango w'Abibumbye

Ururukiko Mpanabyaha Mpuzamahanga
Rwashyiriweho u Rwanda

23/ter

Umwimerere: **Icyongereza**

URUGEREKO RWA MBERE RW'IREMEZO II

Abacamanza: William H. Sekule, Perezida
Yakov A. Ostrovsky
Tafazzal Hossain Khan

Gerefiye: Agwu U. Okali

Itariki: 21 Gicurasi 1999

POROKIRERI

aburana na

CLEMENT KAYISHEMA

na

OBED RUZINDANA

Urubanza N° ICTR-95-1-T

**IGITEKEREZO CYIHARIYE KANDI KINYURANYE N'ICY'ABANDI
CY'UMUCAMANZA TFAZZAL HOSSAIN KHAN KU BYEMEZO
BY'URUGEREKO BIREBANA N'UBUHOTOZI N'ITSEMBATSEMBA NK'IBYAHA
BYIBASIYE INYOKOMUNTU**

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Byahinduwe mu kinyarwanda kandi byemezwa na SSL/ TPIR

1. Ndemera rwose imikirize y'urubanza uretse umwanzuro wafashwe n'Urugereko, ku bwiganze bw'amajwi, uvuga ko ubuhotozi n'itsembatsemba nk'ibyaha byibasiye inyokomuntu bidakwiye kandi ko nta ho bishingiye. Ku bwiganze bw'amajwi, abacamanza basanze nta mpamvu yatuma Abaregwa bahamwa n'ibyo byaha. Jye si ko mbibona.
2. Abacamanza bagenzi banjye, ku bwiganze bw'amajwi, bafashe uwo mwanzuro bashingiye ku mpamvu y'uko ibyaha bitatu bivugwa ari byo jenocide, ubuhotozi n'itsembatsemba, byakozwe mu buryo bw'impurirane mbonezamugambi (muri iyi nyandiko turakoresha amagambo « impurirane y'ibyaha ») buri hantu uko ari hane habereye ubwicanyi. Bityo, bemeje ko ibyo byaha bitatu bidatandukanye maze bahanaguraho Abaregwa bombi ibyaha byose bashinjwa by'ubuhotozi n'itsembatsemba. Mu yandi magambo, bemeje ko Clément Kayishema adahamwa n'ibyaha ashinjwa mu kirego cya 2, icya 3, icya 8, icya 9, icya 14, icya 15, icya 20 n'icya 21, banemeza ko Obed Ruzindana adahamwa n'ibyaha ashinjwa mu kirego cya 20 n'icya 21.
3. Jye uko mbibona, n'ubwo hariho mpurirane y'ibyaha, ibirego byatanze byari bifite aho bishingiye kandi byari bikwiye kwitabwaho ku buryo bwuzuye. Maze gusuzuma ku buryo burambuye uburyozwacyaha bw'Abaregwa ku birebana n'ibyaha bivugwa, nasanze Kayishema na Ruzindana bahamwa n'ibyaha byose bashinjwa by'ubuhotozi n'itsembatsemba.

Impamvu

4. Mu by'ukuri, ikibazo ntemeranywaho na bagenzi banjye ni ingaruka yo mu rwego rw'amategeko y'umwanzuro wemeza ko ibyaha byaregwe mu Nyandiko y'ibirego imwe byakozwe mu buryo bw'impurirane. Aha ndashaka kuvuga ingaruka z'impurirane y'ibyaha mu gusesengura niba abaregwa bahamwa n'icyaha cyangwa ari abere, mu gufata icyemezo mpamyacyaha no mu kugena igihano. Muri uru rubanza, kuba hariho impurirane y'ibyaha biterwa n'uko ibyaha bitatu bivugwa bishingiye ku bikorwa bimwe by'Abaregwa, n'uko kandi ibyo byaha, nk'uko ibimenyetso byabigaragaje, birangwa n'ibintu bimwe bibigize, ndetse n'inyungu z'umuryango mugari w'abantu zirengerwa zikaba ari zimwe. Nta bwo mpakana umwanzuro

wemeza ko ibirego, nk'uko byagaragajwe, bishingiye ku bimenyetso bimwe no ku myitwarire mibisha imwe.

5. Nyamara ariko, sinemera igitekerezo cya bagenzi banjye ku birebana n'ingaruka y'iyi mpurirane y'ibyaha. Bavuga ko ibirego by'ubwicanyi n'itsembatsemba « bidakwiye kandi ko nta ho bishingiye », bityo bigatuma Abaregwa ibyo byaha batabiryoza ku buryo bwuzuye. Abacamanza bagenzi banjye baragira bati :

Bityo rero, ibirego by'itsembatsemba n'ubuhotozi bikubiye mu kirego cya jenocide. Ni ukuvuga ko muri uru rubanza ibyo byaha bidatandukamye.

Urugereko rwa Mbere rw'Iremezo rusanga rero ibyabaye bigize uru rubanza nk'uko bivugwa haruguru bidatuma umuntu avuga ko hakoze icyaha kirenze kimwe. Ibyo bintu bituma umuntu yavugaga ko habayeho jenocide cyangwa itsembatsemba n'ubuhotozi, cyangwa ubuhotozi gusa. Kubera rero ko hagaragajwe ko Abaregwa bakoze jenocide, Kayishema na Ruzindana ntibashobora no guhamirizwa icyarimwe icyaha cy'ubuhotozi n'icy'itsembatsemba cyangwa ngo bahamwe n'icy'itsembatsemba gusa. Urugereko rusanga ibyo bintu bitaba bikwiye kuko byaba ari uguhamya Abaregwa icyaha kimwe inshuro ebyiri. Kubera imiterere y'uru rubanza, Urugereko rwa Mbere rw'Iremezo rusanga byaba ari ukurenganya bikomeye Abaregwa kandi ntibyemewe mu mategeko. Niba Porokireri yarashakaga gushingira ku bintu n'ibimenyetso bimwe kugira ngo agaragaze ibyo byaha byose uko ari bitatu, yari kuvugaga ko Abaregwa baramutse badahamwe na jenocide, baryozwa ubuhotozi n'itsembatsemba. Uburyo rero akomatanya ibirego ntibukwiye kandi ntibwemewe mu mategeko¹.

6. Mu by'ukuri, Abacamanza bagenzi banjye bemeza ko Abaregwa bombi bahamwa n'icyaha cya jenocide gusa, ko ariko badahamwa n'icyaha cy'ubuhotozi n'icy'itsembatsemba bashinjwa kuri buri hantu hakorewe ibyaha. Sinemera icyo gitekerezo cyabo. Uko mbibona, nta bwo mpurirane y'ibyaha igomba kugira ingaruka mu byemezo mpamyacyaha, ahubwo igomba kuzigira mu igenagihano, aho abaregwa bagenerwa ibihano bikomatanyije ku byaha byose byakozwe mu buryo bw'impurirane.

¹ Inyandiko y' urubanza rwa Kayishema na Ruzindana, igice cya 7.

7. Mu gice cya mbere cy'iyi Nyandiko ikubiyemo igitekerezo cyanjye kinyuranye n'icya bagenzi banjye, ndabanza gusuzuma ibivugwa n'ababuranyi hanyuma nkurikizeho ubukemuramanza ku birebana n'icyo kibazo n'uburyo bwakurikizwa muri uru rubanza. Mu gice cya kabiri, ndavuga ku buryozwacyaha bw'Abaregwa ku birebana n'ibirego by'ubuhotozi n'itsembatsemba.

IGICE CYA 1

Ibivugwa n'ababuranyi

8. Ubwunganizi buvuga ko Urugereko rwa Mbere rw'Iremezo rutagomba guhamya Abaregwa icyaha cya jenocide n'ibyaha byibasiye inyokomuntu icyarimwe kubera ko byakozwe mu buryo bw'impurirane mbonezamugambi. Ubwunganizi bwa Ruzindana buvuga ko « ibyaha byibasiye inyokomuntu bikubiye uko byakabaye mu Masezerano yerekeye jenocide »², kandi ko inyungu z'umuryango mugari w'abantu zirengerwa n'izo ngingo ebyiri za Sitati, zifite aho zihurira³.
9. Porokireri we avuga ko byemewe guhamya Abaregwa ibyaha byose byagaragarijwe ibimenyetso, no kubakatira ibihano kuri buri cyaha kibahama. Porokireri avuga ko gukatira abaregwa ibihano kuri buri cyaha ari ikintu cyagaragaza ko hitaweho uburemere bwa buri cyaha, uruhare rw'Abaregwa, hamwe n'imyitwarire mibisha yabo yose uko yakabaye. Porokireri yongeraho ko « kugena ibihano kuri buri cyaha nta cyo birenganyaho abaregwa, ko kandi ku byaha bikomoka ku bikorwa bimwe, Urugereko rushobora kubagera ibihano bikomatanyije mu gihe rwaramuka rubonye ko ibihano kuri buri cyaha hari icyo byabarenganyaho »⁴.
10. Nsanga ibivugwa na Porokireri bihujwe n'ubukemuramanza bukurikizwa mu Nkiko Mpanabyaha Mpuzamahanga.

² Imyanzuro nsozarubanza y' Ubwunganizi (Ruzindana), urup.6, 29 Ukwakira 1998.

³ Ni kimwe no haruguru.

⁴ Imyanzuro isaba igihano ya Porokireri, igika 102.

Ubukemuramanza

11. Ukurikije ibikubiye mu bukemuramanza bw'inkiko zo mu bihugu n'ibitekerezo by'abahanga mu mategeko, usanga icyo kibazo cy'impurirane y'ibyaha abantu bataktivugaho rumwe. Bamwe bavuga ko ari amakosa guhamya umuntu ibyaha bibiri cyangwa birenze bibiri iyo byakozwe mu buryo bw'impurirane mbonezamugambi, naho abandi bakavuga ko uregwa ashobora guhamywa ibyaha byose byagaragarijwe ibimenyetso, ariko ko kugira ngo atarengana akaba yagenerwa igihano gikomatanyije ku byaha byose byamuhanye (ubusanzwe yahabwa igihano cy'icyaha kiremereye kurusha ibindi).
12. N'ubwo bwose muri rusange icyo kibazo abantu bataktivugaho rumwe, ubukemuramanza mpanabyaha mpuzamahanga bwagendeweho muri uru Rukiko ntibwigeze buhindagurika kuva urubanza rwa mbere na mbere rwacibwa n'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze cyitwa Yugosilaviya [TPIY], ari rwo Urubanza Porokireri aburana na Dusko Tadic. Izo nkiko zombi, ari zo TPIY na TPIR, zakomeje kugaragaza ko ikibazo cy'impurirane y'ibyaha kigomba gusuzumwa mu gihe cyo kugena ibihano - uregwa agahabwa igihano gikomatanyije ku byaha bimuhama ariko byakomotse ku bikorwa bimwe.
13. Ku byerekeye icyo kibazo cy'impurirane y'ibyaha, biragaragara ko Ingereko za TPIY zibanze ku isesengura ry'ibikorwa by'impurirane uregwa ashinjwa, aho gutsindagira aho ibintu bigize ibyo byaha bihurira. Nemera iyo mitekerereze. Iki gomba guhanwa ni imyitwarire mibisha runaka; iri hame rigenderwaho iyo ibyaha bibiri cyangwa birenze bibiri byakomotse ku gikorwa kimwe cy'uregwa byagaragarijwe ibimenyetso, kabone n'iyi ibintu bigize buri cyaha byaba bidahura.

Mu rubanza Porokireri abarana na Dusko Tadic, Ubwunganizi bwavuze ko,

Mu Nyandiko y'ibirego yahinduwe, buri kintu cyabaye gisobanurwa mu buryo bwa rusange ku birebana n'imyitwarire idafututse y'uregwa, kandi iyo Nyandiko yerekana ibirego runaka bikubiyemo inyito zinyuranye z'ibyaha byakomotse kuri iyo myitwarire.

Kubera ko ibyo bisobanuro bidafututse ku byabaye bitavugaga ku buryo bwihariye ibyo umuntu yakoze ku giti cye n'inyito y'icyaha aregwa, kandi

kubera ibirego byarondowe, bikubiyemo ibyaha byinshi bikomoka kuri buri gikorwa, biterekana buri muntu wakorewe icyaha cyangwa uregwa, kandi hakaba hatagaragazwa ko umuntu abiregwa byose, cyangwa se ko yaryozwa ibi n'ibi ari uko ibindi bitamuhanye cyangwa se ari uko bimwe ari umugereka w'ibindi iyo bikomoka ku gikorwa kimwe, hashobora kuba impurirane y'ibirego bishingiye ku gikorwa kimwe, ariko bikubiyemo ibyaha bitandukanye.

Iyi Nyandiko y'ibirego inyuranyije n'uburenganzira bwo gucirwa urubanza mu buryo buboneye kubera ko yatuma uregwa ahanwa kabiri ku cyaha kimwe⁵.

14. Igisubizo cy'Urugereko rwa Mbere rw'Iremezo ku bimaze kuvugwa gikubiye mu Cyemezo cyarwo cyo ku itariki ya 14 Ugushyingo 1995, aho rwemeje ibi bikurikira :

Uko byagenda kose, kubera ko iki ari ikibazo kigira ishingiro gusa iyo gifite ingaruka ku gihano, cyasuzumwa neza kurushaho haramutse havutse ibibazo bijyanye n'igenagihano. Gusa, icyo umuntu yavugaga nta kuzuyaza ni uko mu kugena igihano hatitabwaho ibyo kureba niba ibyaha binyuranye bikomoka ku myitwarire imwe byararegwe mu buryo bukomatanyije cyangwa se ko bimwe muri byo uregwa yabiryoze ari uko ibindi runaka bitamuhanye. *Igihano kigenwa hakurikijwe ko myitwarire mibisha igize icyaha yatangiye ibimenyetso biyihamya*, nta bwo kigenwa hakurikijwe uburyo abaturanyi batanzemo ingingo zabo⁶ [Ni twe twabitsindagiye tubyandika mu nyuguti ziberamye].

Urwo Rugereko rwakemuye ku buryo bwuzuye ibibazo byose byerekeye ibirego bikomatanyije. Nyuma muri Nyakanga 1994, rwakatiye Tadic ibihano rumaze gusanga ahamwa n'ibyaha byinshi bituruka ku myitwarire mibisha imwe. Rwavuze ko « buri gihano kigomba kurangizwa ku buryo bukomatanyije »⁷.

⁵ *Urubanza Porokireri aburana na Dusko Tadic*, icyifuzo cy'Ubwunganizi ku miterere y'Inyandiko y'ibirego, (4 Nzeri 1995), IT-94-I-T.

⁶ *Urubanza Porokireri aburana na Dusko Tadic*, icyemezo ku Cyifuzo cy'Ubwunganizi ku miterere y'Inyandiko y'ibirego (14 Ugushyingo 1995), IT-94-I-T, urup. 6.

⁷ *Urubanza Porokireri aburana na Dusko Tadic*, Urubanza rw'igenagihano, igika 76.

15. Hagati aho, ku itariki ya 6 Ukuboza 1996, Urugereko rw'Ubujurire rwa TPIY rwakemuye icyo kibazo mu rubanza Porokireri aburana na Zejnil Delalic na bagenzi be, (hano hasi tuvuga urubanza rwa Celebici), aho rugira ruti :

Uregwa yinubira kandi ko inshuro nyinshi mu Nyandiko y'ibirego yagiye ashinjwa ibyaha bibiri binyuranye bituruka ku gikorwa kimwe cyangwa se bikomoka ku guteshuka kumwe ku nshingano z'ibyo yagombaga gukora ... Kuri iki kibazo, Urugereko rwa Mbere rw'Iremezo rwongeye gushimangira icyemezo rwafashe mu rubanza rwa Tadic ku birebana n'ikibazo gisa nk'icyo: [Rwasubiyemo ibyanditse mu Cyemezo cyatanzwe mu rubanza rwa Tadic, nk'uko biboneka mu gika cya 14, hano hejuru].

Urugereko rw'Ubujurire rusanga nta kosa ryakozwe mu gukurikiza iyo myumvire; uretse ko nta n'ikosa rikomeye ririho ryatuma hatangwa uruhusa rwo kujurira⁸.

16. Urugereko rwa Mbere rw'Iremezo, rugendeye ku Cyemezo cy'Urugereko rw'Ubujurire kiri mu Nyandiko y'urubanza rwa *Celebici* cyo ku itariki ya 16 Ugushyingo 1998, rwaragize ruti :

Urugereko rwa Mbere rw'Iremezo ... rero ntirwafashe umwanzuro kuri iyi ngingo kubera ko gukemura ikibazo byagira akamaro gusa mu gihe cyo kugena igihano, *bimaze kwemezwa ko uregwa ahamwa n'ibyaha ashinjwa ...* Ni gutyo Urugereko rwa Mbere rw'Iremezo rutegetse ko buri gihano kigomba kurangizwa mu buryo bukomatanyije. Ibihano byagenwe nta bwo bizarangizwa kimwe nyuma y'ikindi⁹. [Ni twe twabitsindagiye tubyandika mu nyuguti ziberanye]

17. Ku bw'ibyo, Urugereko rw'Ubujurire rwemeye nta shiti icyemezo cyafashwe mbere n'Urugereko rwa Mbere rw'Iremezo mu rubanza rwa Tadic, kandi cyagiye kigenderwaho mu zindi manza nyinshi zaciwe n'Urukiko. Mu yandi magambo, ikibazo cy'impurirane y'ibyaha ntikigomba gukemurwa mu gihe cyo guhamya

⁸ *Urubanza Porokireri aburana na Zejnil Delalic na bagenzi be*, icyemezo ku Cyifuzo cya Hazim Delic gisaba uruhusa rwo kujurira (Inenge ziboneka mu miterere y'Inyandiko y'ibirego), IT-96-21-AR, icyemezo cy'ubujurire, igika cya IV.

⁹ Inyandiko y' urubanza rwa Celebici mu rw'iremezo, IT-96-21-T, igika 1286.

uregwa icyaha, ahubwo kigomba gukemurwa mu gihe cyo kumugenera igihano – no gusuzuma niba icyo gihano nta cyo kimurenganyaho.

18. Twakwibutsa ko Ingerereko za Mbere z'Iremezo za TPIR zagiye zanga kwemera ingoboka mbanzirizarubanza z'Ubwunganizi aho bwavugaga ko bitemewe gukomatanya ibirego bikomoka ku gikorwa kimwe. Urugero: mu rubanza Porokireri aburana na Nahimana, Urugereko rwa Mbere rw'Iremezo I rwa TPIR ntirwemeye ibyavugwaga n'Ubwunganizi, aho rwagize ruti:

Uko byamera kose, ku birebana n'ikomatanya ry'ibyaha, hatangwa igihano cy'icyaha kiremereye kurusha ibindi. Kandi biragaragara ko urwo rwego rwo kugena igihano tutararugeraho.

Mu gusozza iyo ngingo, ni ngombwa kwibutsa ko mu rubanza rwa *Delalic*, Urugereko rwa Mbere rw'Iremezo I rwa TPIY rutemeye ingoboka yabyukijwe n'Ubwunganizi ku ikomatanya ry'ibirego, aho rwasobanuye ko gukemura icyo kibazo byagira akamaro gusa ku birebana n'igihano, bimaze kwemezwa ko uregwa ahamwa n'icyaha¹⁰.

19. Icyo kibazo na none cyarabyukijwe mu rubanza Porokireri aburana na Ntagerura. Ku itariki ya 28 Ugushyingo 1997, hashize iminsi ine gusa, Urugereko rwa Mbere rw'Iremezo II rwa TPIR rwashyigikiye icyemezo cy'Urugereko rwa Mbere rw'Iremezo I kimaze kuvugwa, maze rwanga kwemera ingingo z'Ubwunganizi¹¹.
20. Mu rubanza Porokireri aburana na Akayesu, Urugereko rwa Mbere rw'iremezo I rwa TPIR rwongeye gushimangira ihame ryavuzwe mu rubanza rwa Tadic, maze rwemeza ibi bikurikira :

Muri urwo rubanza, ubwo igihe cyo kugena igihano cyageraga, Urugereko rwa Mbere rw'Iremezo rwakemuye ikibazo cy'impurirane y'ibyaha rugena igihano kuri buri cyaha. Bityo, nk'urugero, ku cyaha cyo gukubita no gukomeretsa, Uregwa yakatiwe igihano cyo gufungwa imyaka irindwi kuri

¹⁰ *Urubanza Porokireri aburana na Nahimana*, icyemezo ku ngoboka mbanzirizarubanza yatanze n'Ubwunganizi bushingiye ku nenge ziboneka mu miterere y'Inyandiko y'ibirego, 24 Ugushyingo 1997, igika 37.

¹¹ *Urubanza Porokireri aburana na Ntagerura*, icyemezo ku ngoboka mbanzirizarubanza yatanze n'Ubwunganizi bushingiye ku nenge ziboneka mu miterere y'Inyandiko y'ibirego, 28 Ugushyingo 1997, igika 26.

icyo cyaha nk'ikigize ibyaha byibasiye inyokomuntu, hanyuma akatirwa n'imyaka itandatu y'igifungo kuri icyo cyaha nk'ikinyuranyije n'amategeko y'intambara.

Urugereko rwasanze ubwo bukemuramanza bwa TPIY ari na bwo bwakurikijwe mu rubanza rwa Barbie aho Urukiko Rusesa Imanza rw'u Bufaransa rwemeje ko umuntu ashobora gukurikiranwaho icyaha cyibasiye inyokomuntu n'icyaha cy'intambara hashingiwe ku gikorwa kimwe rukumbi¹².

21. Vuba aha, ku itariki ya 24 Gashyantare 1999, mu rubanza Porokireri aburana na Milorad Krnojelac, Urugereko rwa Mbere rw'Iremezo II rwa TPIY rwagize ruti:

Iki kibazo kirebana n'imiburanire cyamaze gukemurwa n'Urukiko Mpuzamahaga rwemeje ko ibivugwa na Porokireri bifite ishingiro : Ingereko za Mbere z'Iremezo ntizigeze zemera ibyifuzo by'Ubwunganizi byavugaga ko gushinja icyarimwe uregwa ibyaha binyuranye kandi bikomoka ku gikorwa kimwe, nk'uko bimeze muri uru rubanza, bitemewe. Izo Ngereko zisobanura ko icyo kibazo cyo gukomatanya ibyaha kigira agaciro ku birebana gusa n'igenabihano. Igikomeme kurushaho ni uko n'Urugereko rw'Ubujurire rutigeze rwemera bene ibyo byifuzo by'Ubwunganizi.

22. Muri icyo Cyemezo, Urugereko kandi rwavuze ko:

Porokireri agomba kwemererwa gusobanura ibirego byose bikubiye mu Nyandiko y'ibirego kubera ko umucamanza usuzuma urubanza mu mizi ashobora kutemera ikintu kigize icyaha runaka, nyamara icyo kintu kidakenewe kugaragarizwa ibimenyetso ku bindi byaha, kandi ibyo ari byo byose ni ngombwa ko agaragaza ku buryo bwuzuye imyitwarire mibisha yose y'Uregwa kugira ngo n'igihano kizagenwe hakurikijwe iyo myitwarire. Birumvikana ko, igihe cy'igenagihano kigomba kwitonderwa cyane, kugira ngo uwahamwe n'ibyaha binyuranye biturutse ku gikorwa kimwe adahanwa inshuro zirenze imwe kubera igikorwa kimwe cyangwa ibikorwa bijya gusa (cyangwa uguteshuka kumwe ku nshingano y'ibyo yagombaga gukora). Ariko kandi, gukubira mu nyandiko y'ibirego imwe ibirego bitandukanye byakomotse ku gikorwa kimwe cyangwa ku bikorwa bijya gusa nta bwo ari

¹² Nyandiko y'urubanza rwa Jean-Paul Akayesu, ICTR-96-4-T (2 Nzeri 1998), ibika 464- 465.

ukurenga ku ihame ryo kudakwirwa kabiri ku cyaha kimwe¹³ (Ni twe twabitsindagiye tubyandika mu nyuguti ziberamye).

23. Bityo rero, habayeho iterambere mu bukemuramanza mpuzamahanga aho hemejwe ko iyo Porokireri ashinja uregwa ibyaha binyuranye bikomoka ku bikorwa bimwe, icyo kibazo kitabwaho gusa iyo uregwa ahamwe n'ibyaha. Ingaruka zo gukomatanya ibyaha zisuzumwa mu buryo bubonye iyo igihe cyo kugena ibihano kigeze, nta bwo ari mu gihe cyo kwemeza niba ibyaha bihama cyangwa bidahama uregwa. Uko mbibona, iyi myumvire yanakurikizwa iyo ibintu bigize ibyaha bimwe bigenda bihurirana n'ibigize ibindi, ariko byagaragarijwe ibimenyetso.
24. Biragaragara ko ubukemuramanza muri uru rwego rw'amategako mpuzamahanga bugitaguza - uru rubanza ni urwa kabiri mu mateka aho uregwa ashinjwa icyarimwe ibyaha mpuzamahanga bya jenocide n'ibyaha byibasiye inyokomuntu. N'ubwo hashobora kubaho imyumvire itandukanye kuri icyo kibazo, nsanga ari ngombwa ko Ingereko zinyuranye zakora ibishoboka byose kugira ngo ubwo bukemuramanza bufate intera ihamye kandi itayegayezwa.
25. Kubera izo impamvu zimaze kuvugwa n'izindi ziri hano hasi, simbona impamvu yatuma hatubahirizwa imyanzuro yafashwe n'Ingereko mu manza zavuzwe.

Ese kwemeza ko gukurikirana uregwa ku byaha by'ubuhotozi n'itsembatsemba icyarimwe bidakwiye kandi bidafite ishingiro ni byo?

26. Kuri jye, nasubiza icyo kibazo mvuga ko atari byo.
27. Abacamanza bagenzi banjye bemeza ko iyo Porokireri aza gushaka gushingira ku ngingo zimwe no ku bimenyetso bimwe kugira ngo agaragaze ko hakozwe ibyaha bitatu binyuranye, aba yarerekanye ibyaha Abaregwa baryozwa gusa mu gihe ibindi byaha runaka bitabahama, ko kandi gukomatanya ibirego « bidakwiye kandi nta ho bishingiye»¹⁴. Bityo, abo bacamanza ntibasuzumye mu buryo bwuzuye uburyozwa-cyaha bw'Abaregwa ku birebana n'ibyaha by'ubuhotozi n'itsembatsemba. Sinemera iyo myumvire yabo.

¹³Urubanza Porokireri aburana na Milorad Krnojelac, icyemezo ku ngoboka mbanzizarubanza y'Ubwunganizi ku miterere y'Inyandiko y'ibirego, igika 10.

¹⁴ Inyandiko y'urubanza rwa Kayishema na Ruzindana, igice cya VII.

28. Ntibyari byo gusuzuma ikibazo cy'impurirane y'ibyaha mu ntangiriro z'iburanisha kuko igihe cyari kitaragera. Kumenya niba ibyaha byatangiwe ibimenyetso bibihamya byarakozwe mu buryo bw'impurirane mbonezamugambi ni ikibazo gikemurwa Urugereko rwa Mbere rw'Iremezo rumaze kwemera cyangwa kwanga ibimenyetso byatanzwe. Icyo gihe ni bwo Urugereko rushobora gusuzuma mu buryo bwuzuye imyitwarire mibisha y'abaregwa hamwe n'ibintu bigize ibyaha baregwa¹⁵. Mu mwanzuro wabo, Abacamanza bagenzi banjye nibura bemeye ibi bikurikira:

Nyuma yo gusuzuma igitekerezo n'ibintu bifatika bigize icyaha no kureba inyungu z'umuryango mugari w'abantu zirengerwa n'amategeko, Urugereko rwa Mbere rw'Iremezo rusanga hari igihe jenoside n'ibyaha byibasiye inyokomuntu bishobora kuba bigizwe n'ibintu bimwe ariko bikaba byagira n'ibindi bitandukaniraho. Ibyo ntibitangaje kubera ko ibyo byaha byombi binyuranyije n'amategeko mpuzamahanga, ari ibyaha bihitana imbaga y'abantu, kandi bigakorwa kubera imyitwarire mibisha itandukanye, no mu bintu byinshi bitandukanye byabaye. Kubera iyo mpamvu, kugira ngo habeho impurirane y'ibyo byaha byombi biterwa n'ibyabaye byihariye bivugwa mu rubanza n'ibimenyetso byihariye Porokireri ashingiraho mu kugaragaza ibyo byaha¹⁶.

29. Nta bwo bitangaje ko mu rubanza Porokireri aburana na Milorad Krnojelac, Urugereko rwa Mbere rw'Iremezo II rwa TPIY rwafashe umwanzuro wemeza ko Porokireri agomba kwemererwa gusobanura ibirego bikubiye mu Nyandiko y'ibirego imwe kubera ko Urukiko rushobora kutemera ikintu kimwe kigize icyaha runaka, kugira ngo imyitwarire y'Uregwa igaragazwe ku buryo bwuzuye¹⁷.
30. Muri uri rubanza, n'ubwo Ruzindana yatanze icyifuzo cy'ingoboka mbanziriza-rubanza gishingiye ku ngingo ya 72 (B)(ii) y'Amategeko kubera inenge ziboneka mu

¹⁵Nk'urugero, muri uru rubanza, iyo Urugereko ruza kwemera ibimenyetso byari bigamiye kugaragaza ko ibitero byari bishingiye ku mpamvu za politiki (imwe mu mpamvu z'ivangura zishingirwaho mu guhamya umuntu ibyaha byibasiye inyokomuntu), icyo gihe, ibyaha by'itsembatsembe n'ubuhotozi byaba bigizwe n'ikintu kitaboneka mu cyaha cya jenoside. Muri uru rugero, ibintu bigize ibyaha ntabwo byaba bigenda bihurirana byose uko byakabaye.

¹⁶ Inyandiko y'urubanza rwa Kayishema na Ruzindana, igice cya VII.

¹⁷ *Urubanza Porokireri aburana na Milorad Krnojelac*, ni kimwe no haruguru.

miterere y'Inyandiko y'ibirego,¹⁸ nta bwo yarwanyije ikomatanya ry'ibyaha. Kayishema na we yatanze ibyifuzo by'ingoboka mbanzirizarubanza ariko nta kintu na kimwe yavuze ku mpurirane y'ibyaha. Bityo rero, umuntu yabona ko amakipi y'Ubwunganizi atigeze abyutsa icyo kibazo kubera ko yazirikanaga ko Urukiko rutazigera rwemera bene izo ngoboka. Ndetse no mu gihe cy'itangwa ry'ibimenyetso, Ubwunganizi ntibwigeze bubyutsa icyo kibazo. Bityo rero, Urugereko rwa Mbere rw'Iremezo ntirwigeze rubona aho rwahera rutegeka Porokireri guhindura ibirego bikomatanyije kandi na we nta mpamvu n'imwe yari gutuma abona ko ibyo birego bidakwiye kandi ko nta ho bishingiye.

31. Gutegereza ko urubanza rugera aho rugeze ubu kugira ngo umenyeshe Porokireri ko yagombaga gutanga ibirego yerekana ko ibyaha bimwe abaregwa babiryoza mu gihe ibindi runaka bitabahamye, kwaba ari ukumurenganya kandi nta n'ubwo biri mu nyungu z'ubutabera. Nkurikije ubukemuramanza bwavuzwe haruguru, nsanga ibyo birego bikwiye kandi bifite ishingiro.

Icyemezo gihamya uregwa icyaha cyangwa kimugira umwere gifatwa hashingiwe ku myanzuro y'Urugereko yo mu rwego rw'ibyabaye hitawe ku bikorwa byatangiywe ibimenyetso

32. Iyo Porokireri yemerewe gukomeza urubanza ashingiye ku birego, Urugereko rwa Mbere rw'Iremezo rushobora gusanga nyuma bigizwe n'impurirane y'ibyaha, kandi icyo gihe rufite inshingano yo gusuzuma uburyozwacyaha bw'abaregwa kuri buri kirego. Mbona ko icyemezo cy'Urukiko kigomba gushingira ku byabaye byatangiywe ibimenyetso, aho gushingira ku « buryo abaturanyi batanzemo ingingo zabo ». Iki ni ikintu gikomeye cyane muri uru rubanza kubera ko ibikorwa bibi bihanwa hakurikijwe ingingo zerekeranye na jenocide binyuranye n'ibihanwa hakurikijwe ingingo zerekeranye n'ibyaha byibasiye inyokomuntu, kandi n'inyungu z'umuryango mugari w'abantu izo ngingo zigomba kurengera ziranyuranye. Mu by'ukuri, gufata umwanzuro wemeza ko ubuhotozi n'itsembatsemba bikubiye mu cyaha cya jenocide kandi ko ibyo byaha bidatandukanye, nk'uko abacamanza bagenzi banjye babigenje, ni ukuburizamo ibyo amategeko agamije.

¹⁸ Ingoboka mbanzirizarubanza zatanze na Ruzindana, (8 Gashyantare 1997).

33. Ikindi kandi, gusuzuma ibirego byose uko byakabaye no gufata ibyemezo mpamyacyaha ni ikintu gikomeye mu kugaragaza imyitwarire mibisha yose y'uregwa. Kugira ngo habeho ibyaha byibasiye inyokomuntu, Urugereko rugomba kuba rwemera ko habayeho igitero rusange cyangwa kiri kuri gahunda kandi cyibasiye abaturage b'abasiviri. Ibyo bintu bigize ibyo byaha ntibisabwa ku cyaha cya jenocide. icyaha cya jenocide gisaba ko habaho igitekerezo cyihariye kigamije kurimbura itsinda runaka rirengerwa n'Amategeko, ryaba ryose uko ryakabaye cyangwa se igice cyaryo, kandi icyo gikorwa si ngombwa ko kiba mu rwego rw'igitero rusange cyangwa kiri kuri gahunda, cyangwa ko kiba cyibasiye abaturage b'abasiviri. Bityo rero, nk'uko bimeze muri uru rubanza aho imyitwarire mibisha y'Abaregwa yari mu rwego rw'igitero rusange kandi kiri kuri gahunda cyibasiye abasiviri, kubahamya icyaha cya jenocide cyonyine ntibigaragaza imyitwarire mibisha y'Abaregwa yose uko yakabaye. Na none, iyo abacamanza bagenzi banjye baza guhitamo guhamya Abaregwa icyaha cy'itsembatsemba cyonyine aho kuba icya jenocide, na bwo icyo cyemezo nticyari kuba cyerekana imyitwarire mibisha y'Abaregwa yose uko yakabaye.

Kuba umwanzuro wafashwe nta cyo urenganyaho Uregwa

34. Inshoza y'impurirane y'ibyaha ituma uregwa atarenganywa iyo ahamwe n'ibyaha bibiri cyangwa birenzeho bikomoka ku bikorwa bimwe. Iri hame ndaryemera rwose. Mu by'ukuri, nta bwo byaba ari byo ko uregwa ahanirwa ibyaha inshuro zirenze imwe kandi ibikorwa ari bimwe ndetse n'abahohotewe ari bamwe. Nyamara ariko, haramutse habayeho akarengane muri uru rubanza, kaba gaturutse ku gihano cyatanzwe, nta bwo kaba gaturutse ku cyemezo mpamyacyaha.
35. Hari abavuga ko guhamya uregwa ibyaha byinshi bimwanduriza idosiye n'isura ku maherere. Ku birebana n'uru rubanza, iyo myumvire sinyemera. Ibyabaye byatangiwe ibimenyetso ni ibintu bikomeye kandi by'urusobe ku buryo hagomba gukurikizwa ingingo z'amategeko zirebana na jenocide n'izirebana n'ibyaha byibasiye inyokomuntu. Iyo uregwa ahamwe n'icyaha cy'agahomamunwa cya jenocide, kumuhamya ibindi byaha bibiri, ari byo ubuhotozi n'itsembatsemba, biragoye kubona ko isura ye yaba yandujwe kurushaho cyangwa ko yaba arenganyijwe birenzeho, mu gihe haba hategetswe ko ibihano bye birangirizwa icyarimwe.

36. Ikindi kandi, abacamanza bagenzi banjye bemera ko Porokireri yifashishije ibintu bimwe bigize ibyaha kugira ngo yerekane ko biriya byaha bitatu byakozwe kandi ko « yashingiye ku bimenyetso bimwe kugira ngo abigaragaze ... ibimenyetso byatanze mu kugaragaza icyaha kimwe, ni na byo byakoreshewe mu kugaragaza ko n'icyaha runaka kindi cyakozwe ». Bityo rero, mu gihe cy'iburanisha nta cyo Abaregwa baba bararenganyijweho kuko nta bindi bimenyetso by'inyongera basabwe kuvuguriza bitewe n'ikomatanya ry'ibirego. Ku rundi ruhande, iyo haba harabayeho ibyo guhanwa kabiri ku cyaha kimwe (ibyo biba iyo umuntu ashinjwa mu manza zikurikiranye icyaha yagizweho umwere cyangwa yahaniwe), icyo gihe birumvikana ko hashobora kubaho akarengane. Hano rero siko biri kuko nta manza nk'izo zikurikiranye Abaregwa baciriwe.
37. Kayishema na Ruzindana bombi bazakatirwa hashingiwe ku myitwarire yabo mibisha, muri uru rubanza, ni ukubera uruhare bagize nk'abayobozi mu bikorwa byahitanye abagabo, abagore n'abana bose babarirwaga mu bihumbi, bazira gusa ubwoko bwabo. N'ubwo icyaha kimwe gusa cyangwa se byose uko ari bitatu byaba byarakomotse kuri ibyo bikorwa byabo bimwe, igihano bagomba kugenerwa ni kimwe rukumbi. Uko mbibona, icyemezo cyahamya Abaregwa icyaha cy'ubuhotozi, icy'itsembatsemba, n'icya jenoside nta kintu na gito cyaba kibarenganyijeho. Bityo, kugenera Abaregwa igihano kimwe hashingiwe ku myitwarire mibisha yatangiwe ibimenyetso ni uburyo bwiza bwo kurinda Abaregwa akarengane.

IGICE CYA 2

Uburyozwacyaha ku birego by'ubuhotozi n'itsembatsemba

38. Abacamanza bagenzi bafashe umwanzuro ukwiye aho bemeje ibi bikurikira :

Mu kugaragaza icyaha cya jenoside, itsembatsemba n'ubuhotozi, Porokireri akoresha ibintu bimwe kandi agashingira ku bimenyetso bimwe kugira ngo agaragaze ibyo bintu bigize ibyaha. Ibimenyetso byatanze mu kugaragaza icyaha kimwe, ni na byo, byanze bikunze, byakoreshejwe mu kugaragaza ibindi byaha. Imyitwarire mibisha, ni ukuvuga ubwicanyi bwagambiriwe, yashingiweho mu kugaragaza icyaha cya jenoside ihuye neza n'igikorwa kigize ibyaha by'itsembatsemba n'ubuhotozi. Byongeye kandi, ubuhotozi bwose bwakozwe mu rwego rw'itsembatsemba (ubwicanyi bwibasiye

imbaga) na bwo bwagaragajwe hifashishijwe ibimenyetso bimwe. Mu by'ukuri, itsembatsemba rishobora kugaragazwa gusa ni uko herekanywe ko ubwicanyi bwahitanye imbaga.

Imiterere rusange cyangwa iri kuri gahunda y'ibitero byagabwe muri Kibuye yujuje ibisabwa kugira ngo habe harabayeho ibyaha byibasiye inyokomuntu. Inakoreshwa mu kugaragaza ko hariho ibikorwa n'igitekerezo bya ngombwa byo gukora jenocide. Igitekerezo cyo gukora icyaha kuri ibyo byaha bitatu cyari kimwe, ari cyo cyo kurimbura cyangwa gutsembatsemba abaturage b'Abatutsi. Kubera iyo mpamvu, igitekerezo cyihariye cya ngombwa ku cyaha cya jenocide gihuye n'igitekerezo cyo gukora itsembatsemba n'ubuhotozi. Ntagushidikanya ko inyungu y'umuryango mugari w'abantu irengerwa muri uru rubanza ari imwe. Abantu barengerwa, ni ukuvuga abantu bakorewe ibyaha mu bitero byahamye Kayishema na Ruzindana bari abasiviri b'Abatutsi. Abo bantu bakorewe ibyaha kubera umugambi wariho wo gukora jenocide na politiki yariho y'itsembatsemba ririmo ubuhotozi bwibasiye imbaga y'abantu. Mu gusoza kuri iyi ngingo, Urugereko rusanga Porokireri ataragaragaje ko, kuri buri hantu hakorewe ibyaha, hari ubuhotozi na bumwe muri ubwo buvugwa butari mu rwego rw'ubwicanyi bwibasiye imbaga. Ubwo buhotozi bwose bwahitanye imbaga y'abantu bwari mu rwego rw'ibindi bintu rusange byaberaga muri Perefegitura ya Kibuye muri icyo gihe¹⁹.

39. Bityo, nk'uko bigaragara neza hano hejuru, abacamanza bagenzi banjye bemera ko Kayishema na Ruzindana bagize uruhare mu byaha by'ubuhotozi n'itsembatsemba. Imyanzuro y'Urugereko rwa Mbere rw'Iremezo ku birebana n'ibimenyetso n'uburyozwacyaha bw'Abaregwa ku birego bya jenocide ni na yo yashingirwaho ku cyaha cy'ubuhotozi n'icy'itsembatsemba kuri buri hantu habereye ubwicanyi. Ariko kandi, kugira ngo ibintu bisobanuke ku buryo bwuzuye, ni ngombwa ko nsesengura muri make ibintu bimwe na bimwe bikubiye muri ibyo birego.

¹⁹ Inyandiko y' urubanza rwa Kayishema na Ruzindana, igice cya VII L1892(K)

Igitero

40. Urugereko rwa Mbere rw'Iremezo rwasesenguye ibintu by'ingenzi bigize igitero ubwo rwasuzumaga ibirebana n'ibyaha byibasiye inyokomuntu²⁰. Iryo sesengura ryagaragaje ko imyitwarire mibisha ya Kayishema ahantu ubwicanyi bwabereye, ni ukuvuga kuri kiriziya yo ku Mbuga, kuri sitade, ku kigo [kigizwe na kiriziya gatorika na Home St Jean] no mu karere ka Bisesero, yari mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira ubwoko bwabo. Iryo sesengura ryanagaragaje ko Kayishema yari azi ko ibikorwa bye byari mu rwego rw'ibyo bitero. Ryanagaragaje ko imyitwarire mibisha ya Ruzindana mu karere ka Bisesero yari mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira ubwoko bwabo, kandi na we yari azi ko ibikorwa bye biri mu rwego rw'ibyo bitero. Ibyo Abaregwa bombi bakoze babihamagariwe cyangwa babitegetswe na Guverinoma cyangwa undi mutwe cyangwa irindi tsinda ry'abantu. Ndemera iri sensengura kandi sindi burigarukeho ukundi.

Ibyaha

41. Abacamanza bagenzi banjye ntibasobanuye by'umwihariko niba ibimenyetso byatanzwe byujuje ibyangombwa bisabwa kugira ngo habeho icyaha cy'ubuhotozi n'icy'itsembatsemba ku hantu hane hanyuranye ibyaha byakorewe. Bavuga ahubwo ko iryo sesengura atari ngombwa kuko ibyo byaha byakozwe ku buryo bw'impurirane n'icya jenocide. Birumvikana ko umwanzuro mpamyacyaha ufatwa gusa iyo Porokireri atanze ibimenyetso bidashidikanywaho bigaragaza ko ibisabwa kugira ngo ibyo byaha bibeho byuzuye. Ni yo mpamvu hano hasi nza kwerekana ibimenyetso ku birebana n'ibisabwa binyuranye kugira ngo habeho icyaha cy'ubuhotozi n'icy'itsembatsemba, ntirengagije ariko ko ibyinshi muri ibyo bimenyetso byasesenguwe mu buryo burambuye ku birebana n'ibirego bya jenocide. Uburyozwacyaha bw'Abaregwa ku birebana na buri kirego buraba bumwe n'ubwavuzwe ku cyaha cya jenocide kuri buri hantu ibyaha byakorewe.

Ubwicanyi bwo ku kigo cya kiriziya gatorika na Home Saint-Jean***Ikirego cya 2***

²⁰ Inyandiko y'urubanza rwa Kayishema na Ruzindana, igice cya VI umutwe wa 3 n'igice cya VII L1892(K)

42. Mu kirego cya 2, Kayishema ashinjwa ibyaha byibasiye inyokomuntu hakurikijwe ingingo ya 3(a) (ubuhotozi) ya Sitati y’Urukiko. Ubwicanyi bwose bwabereye muri icyo kigo ku itariki ya 17 Mata 1994 ni ubuhotozi, ni ukuvuga ko ubwo bwicanyi bwagambiriwe kandi ko bwakozwe ku bushake. Ikindi, Kayishema yicishije Abatutsi mu bwicanyi bwabereye muri icyo kigo kubera ibyo yakoze yabigambiriye cyangwa ibyo yateshutse gukora na byo yabigambiriye. Uburyozwacyaha bwa Kayishema hashingiwe ku ngingo ya 6(1) n’iya 6(3) ku birebana n’ubwicanyi bwabereye muri icyo kigo bwatangiwe ibimenyetso bidashikanywaho, kandi byemewe n’uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 1 (jenoside) byakurikizwa no muri iki kirego cya 2 (ubuhotozi).

Ikirego cya 3

43. Mu kirego cya 3, Kayishema ashinjwa ibyaha byibasiye inyokomuntu biteganywa n’ingingo ya 3(b) (itsembatsemba) ya Sitati y’Urukiko. Ku itariki ya 17 Mata 1994 ku kigo cyavuzwe habereye itsembatsemba, ni ukuvuga ubwicanyi butsemba imbaga. Kayishema yagize uruhare muri iryo tsembatsemba, yaritswemo n’umugambi w’ubwicanyi. Ubwo bwicanyi bwahitanye Abatutsi babarirwaga mu bihumbi. Uburyozwacyaha bwa Kayishema hashingiwe ku ngingo ya 6(1) n’iya 6(3) ku birebana n’ubwicanyi bwakorewe mu kigo, bwatangiwe ibimenyetso bidashidikanywaho na gato, kandi byemewe n’uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 1 (jenoside) byakurikizwa no muri iki kirego cya 3 (itsembatsemba).

Ubwicanyi bwo kuri sitade yo mu mujyi wa Kibuye

Ikirego cya 8

44. Mu kirego cya 8, Kayishema ashinjwa ibyaha byibasiye inyokomuntu biteganywa n’ingingo ya 3(a) (ubuhotozi) ya Sitati y’Urukiko. Ubwicanyi bwose bwabereye kuri sitade ku itariki ya 18 Mata 1994 ni ubuhotozi, ni ukuvuga ubwicanyi bwagambiriwe kandi bwakozwe ku bushake. Kayishema yicishije Abatutsi mu bwicanyi bwabereye kuri sitade kubera ibyo yakoze yabigambiriye cyangwa ibyo yateshutse gukora na byo yabigambiriye. Uburyozwacyaha bwa Kayishema hashingiwe ku ngingo ya 6(1) n’iya 6(3) ku birebana n’ubwicanyi bwabereye kuri iyo Sitade bwatangiwe ibimenyetso

bidashikanywaho na gato, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 7 (jenoside) byakurikizwa no muri iki kirego cya 8 (ubuhotozi).

Ikirego cya 9

45. Mu kirego cya 9, Kayishema ashinjwa ibyaha byibasiye inyokomuntu biteganywa n'ingingo ya 3(b) (itsembatsemba) ya Sitati y' Urukiko. Ku itariki ya 18 Mata 1994 kuri sitade habereye itsembatsemba, ni ukuvuga ubwicanyi butsemba imbaga. Kayishema yagize uruhare muri iryo tsembatsemba, yaritswemo n'umugambi w'ubwicanyi. Ubwo bwicanyi bwahitanye Abatutsi babarirwaga mu bihumbi. Uburyozwacyaha bwa Kayishema hashingiwe ku ngingo ya 6(1) n'ya 6(3) ku birebana n'ubwicanyi bwakorewe kuri sitade bwatangiwe ibimenyetso bidashidikanywaho, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 7 (jenoside) byakurikizwa no muri iki kirego cya 9 (itsembatsemba).

Ubwicanyi bwo kuri kiriziya yo ku Mubuga

Ikirego cya 14

46. Mu kirego cya 14, Kayishema ashinjwa ibyaha byibasiye inyokomuntu biteganywa n'ingingo ya 3(a) (ubuhotozi) ya Sitati y'Urukiko. Ubwicanyi bwose bwabereye kuri kiriziya yo ku Mubuga ku itariki ya 15 n'ya 16 Mata 1994 ni ubuhotozi, ni ukuvuga ubwicanyi bwagambiriwe kandi bwakozwe ku bushake. Kayishema yicishije Abatutsi mu bwicanyi bwabereye kuri kiriziya yo ku Mubuga kubera ibyo yakoze yabigambiriye cyangwa ibyo yateshutse gukora na byo yabigambiriye. Uburyozwacyaha rya Kayishema hashingiwe ku ngingo ya 6(1) n'ya 6(3) ku birebana n'ubwicanyi bwabereye kuri kiriziya yo ku Mubuga bwatangiwe ibimenyetso bidashidikanywaho na gato, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 13 (jenoside) byakurikizwa no muri iki kirego cya 14 (ubuhotozi).

Ikirego cya 15

47. Mu kirego cya 15, Kayishema ashinjwa ibyaha byibasiye inyokomuntu biteganywa n'ingingo ya 3(b) (itsembatsemba) ya Sitati y' Urukiko. Ku itariki ya 15 n'ya 16 Mata 1994 kuri kiriziya yo ku Mubuga habereye itsembatsemba, ni ukuvuga ubwicanyi butsemba imbaga. Kayishema yagize uruhare muri iryo tsembatsemba, yaritswemo n'umugambi w'ubwicanyi. Ubwo bwicanyi bwahitanye Abatutsi babarirwaga mu bihumbi. Uburyozwacyaha bwa Kayishema hashingiwe ku ngingo ya 6(1) n'ya 6(3) ku birebana n'ubwicanyi bwakorewe kuri kiriziya yo ku Mubuga bwatangiwe ibimenyetso bidashidikanywaho, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 13 (jenoside) byakurikizwa no muri iki kirego cya 15 (itsembatsemba).

Ubwicanyi bwabereye mu karere ka Bisesero – Kayishema***Ikirego cya 20***

48. Mu kirego cya 20, Kayishema ashinjwa ibyaha byibasiye inyokomuntu biteganywa n'ingingo ya 3(a) (ubuhotozi) ya Sitati y' Urukiko. Ubwicanyi bwabereye mu karere ka Bisesero muri Mata, Gicurasi na Kamena 1994 kandi Kayishema yagizemo uruhare ni ubuhotozi, ni ukuvuga ubwicanyi bwagambiriwe kandi bwakozwe ku bushake. Kayishema yicishije Abatutsi ahantu henshi mu karere ka Bisesero, harimo agasozi ka Karongi mu mpera z'ukwezi kwa Mata, agasozi ka Bisesero ku itariki ya 11 Gicurasi, agasozi ka Muyira ku itariki ya 13 n'ya 14 Gicurasi, ku buvumo, muri Serire ya Gitwa mu kwezi kwa Gicurasi, no Kucyapa mu kwezi kwa Kamena, kubera ibyo yakoze yabigambiriye cyangwa ibyo yateshutse gukora na byo yabigambiriye. Uburyozwacyaha rya Kayishema hashingiwe ku ngingo ya 6(1) n'ya 6(3) ku birebana n'ubwicanyi bwabereye mu karere ka Bisesero bwatangiwe ibimenyetso bidashidikanywaho, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 19 (jenoside) byakurikizwa no muri iki kirego cya 20 (ubuhotozi).

Ikirego cya 21

49. Mu kirego cya 21, Kayishema ashinjwa ibyaha byibasiye inyokomuntu, nk'uko biteganywa n'ingingo ya 3(b) (itsembatsemba) ya Sitati y' Urukiko. Ubwicanyi bwabereye mu karere ka Bisesero muri Mata, Gicurasi na Kamena ni itsembatsemba, ni ukuvuga ubwicanyi buhitana imbaga. Byongeye kandi, Kayishema yagize uruhare muri iryo tsembatsemba, yaritswemo n'umugambi w'ubwicanyi. Ubwo bwicanyi bwahitanye Abatutsi babarirwaga mu bihumbi. Uburyozwacyaha bwa Kayishema hashingiwe ku ngingo ya 6(1) n'ya 6(3) ku birebana n'ubwicanyi bwakorewe mu karere ka Bisesero bwatangiwe ibimenyetso bidashidikanywaho, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Kayishema mu kirego cya 19 (jenoside) byakurikizwa no muri iki kirego cya 21 (itsembatsemba).

Ubwicanyi bwabereye mu karere ka Bisesero – Ruzindana***Ikirego cya 20***

50. Mu kirego cya 20, Ruzindana ashinjwa ibyaha byibasiye inyokomuntu biteganywa n'ingingo ya 3(a) (ubuhotozi) ya Sitati y' Urukiko. Ubwicanyi bwabereye mu karere ka Bisesero muri Mata, Gicurasi na Kamena 1994 kandi Ruzindana yagizemo uruhare ni ubuhotozi, ni ukuvuga ubwicanyi bwagambiriwe kandi bwakozwe ku bushake. Byongeye kandi, Ruzindana yicishije Abatutsi ahantu henshi mu karere ka Bisesero, harimo mu kirombe ku itariki ya 15 Mata, muri Serire ya Gitwa mu ntangiriro za Gicurasi, agasozi ka Bisesero ku itariki ya 11 Gicurasi, agasozi ka Muyira ku itariki ya 13 n'ya 14 Gicurasi, mu buvumo, Kucyapa muri Kamena, no ku cyobo cyari hafi ya Muyira mu ntangiriro za Kamena. Ruzindana yicishije abo bantu kubera ibyo yakoze yabigambiriye cyangwa ibyo yateshutse gukora na byo yabigambiriye. Uburyozwacyaha bwa Ruzindana hashingiwe ku ngingo ya 6(1) n'ya 6(3) ku birebana n'ubwicanyi bwabereye mu karere ka Bisesero bwatangiwe ibimenyetso bidashidikanywaho, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Ruzindana mu kirego cya 19 (jenoside) byakurikizwa no muri iki kirego cya 20 (ubuhotozi).

Ikirego cya 21

51. Mu kirego cya 21, Ruzindana ashinjwa ibyaha byibasiye inyokomuntu, nk'uko biteganywa n'ingingo ya 3(b) (itsembatsemba) ya Sitati y'Urukiko. Ubwicanyi bwabereye mu karere ka Bisesero muri Mata, Gicurasi na Kamena ni itsembatsemba, ni ukuvuga ubwicanyi buhitana imbaga. Byongeye kandi, Ruzindana yagize uruhare muri iryo tsembatsemba, yaritswemo n'umugambi w'ubwicanyi. Ubwo bwicanyi bwahitanye Abatutsi babarirwaga mu bihumbi. Uburyozwacyaha bwa Ruzindana hashingiwe ku ngingo ya 6(1) n'ya 6(3) ku birebana n'ubwicanyi bwakorewe mu karere ka Bisesero bwatangiwe ibimenyetso bidashidikanywaho, kandi byemewe n'uru Rugereko. Ibyashingiweho mu kugaragaza uburyozwacyaha bwa Ruzindana mu kirego cya 19 (jenoside) byakurikizwa no muri iki kirego cya 21 (itsembatsemba).

Umwanzuro

52. Ubukemuramanza bw'Inkiko Mpuzamahanga ku kibazo cyavuzwe bwashinze imizi kandi bwakurikizwa muri uru rubanza. Ubwo bukemuramanza butuma Urugereko rutivuruguta mu nzitane z'amategoko yerekeranye n'impurirane z'ibikorwa, iz'ibintu bigize ibyaha n'iz'inyungu z'umuryango mugari w'abantu zigomba kurengerwa iyo ruriho rusuzuma niba uregwa ahamwa n'icyaha cyangwa kitamuhama. Ahubwo rwibanda ku myitwarire mibisha y'uregwa iyo igihe cyo kumugenera ibihano kigeze. Gukora gutyo bituma imyitwarire y'uregwa yose uko yakabaye igaragazwa kandi bituma uregwa atarengana kubera ko agenerwa igihano gikomatanijije.
53. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rusanga icyaha cya jenoside, icy'ubuhotozi n'icy'itsembatsemba byarakomotse ku bikorwa bimwe by'Abaregwa bakoreye buri hantu hakorewe ibyaha, kandi n'ibimenyetso bishingirwaho mu kubigaragaza ni bimwe. Nsanga rero Abaregwa bombi bagombye guhamwa na buri cyaha bashinjwa, ni ukuvuga jenoside, ubuhotozi n'itsembatsemba, hatitawe ku mwanzuro wafashwe uvuga ko ibyo byaha byose, nk'uko byatangiwe ibimenyetso bibigaragaza, byakozwe mu buryo bw'impurirane mbonezamugambi.

Icyemezo kinyuranye n'icy'abandi

Jenoside

54. Bityo rero, ndemeranya kuri byose na bagenzi banjye ku mwanzuro wemeza ko Clément Kayishema ahamwa n'icyaha cya jenocide kivugwa mu kirego cya 1, icya 7, icya 13 n'icya 19, ko kandi Obed Ruzindana ahamwa n'icyaha cya jenocide kivugwa mu kirego cya 19.

Ibyaha byibasiye inyokomuntu/ibindi bikorwa bibi birenze kameremuntu

55. Byongeye kandi, ndemeranya kuri byose na bagenzi banjye ku mwanzuro wemeza ko Clément Kayishema adahamwa n'ibyaha byibasiye inyokomuntu/ibindi bikorwa bibi birenze kameremuntu bivugwa mu kirego cya 4, icya 10, icya 16 n'icya 22, ko kandi na Obed Ruzindana adahamwa n'ibyaha byibasiye inyokomuntu /ibindi bikorwa bibi birenze kamere muntu bivugwa mu kirego cya 22.

Ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve hamwe n'Inyongera yayo ya II

56. Byongeye kandi, ndemeranya kuri byose na bagenzi banjye ku mwanzuro wemeza ko Clément Kayishema adahamwa n'ibikorwa binyuranye n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve hamwe n'Inyongera yayo ya II bivugwa mu kirego cya 5, icya 6, icya 11, icya 12, icya 17, icya 18, icya 23, n'icya 24, ko kandi na Obed Ruzindana adahamwa n'ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'I Jeneve hamwe n'Inyongera yayo ya II bivugwa mu kirego cya 23 n'icya 24.

*Ubuhotozi n'itsembatsemba nk'ibyaha byibasiye inyokomuntu - **Kayishema***

57. Kubera ibimaze kuvugwa, uretse icyaha cya jenocide Kayishema yahamijwe n'Urugereko ku bwumvikane bw'abacamanza bose bagize inteko, nakongeraho ko ku bwanjye Clément Kayishema ahamwa na none n'ubuhotozi nk'icyaha cyibasiye inyokomuntu gikubiye mu kirego cya 2, icya 8, icya 14, n'icya 20 hamwe n'itsembatsemba nk'icyaha cyibasiye inyokomuntu gikubiye mu kirego cya 3, icya 9, icya 15 n'icya 21. Ariko kugira ngo Kayishema atarengana azira impurirane y'ibyaha

ashinjwa, nakwemeza ko ibihano byagenwa ku byaha byavuzwe by'ubuhotozi n'itsembatsemba byaba bingana n'ibyatanzwe ku cyaha cya jenocide kuri buri hantu uko ari hane hakorewe ibyaha, kandi ko ibyo bihano byose byarangirizwa icyarimwe. Nta bwo rero nagera ibihano birangizwa kimwe nyuma y'ikindi.

Ubuhotozi n'itsembatsemba nk'ibyaha byibasiye inyokomuntu - Ruzindana

58. Kubera ibimaze kuvugwa, uretse icyaha jenocide Obed Ruzindana yahamijwe n'Urugereko ku bwumvikane bw'abacamanza bose bagize inteko, nakongeraho ko ku bwanyje Obed Ruzindana ahamwa na none n'ubuhotozi nk'icyaha cyibasiye inyokomuntu gikubiye mu kirego cya 20 hamwe n'itsembatsemba nk'icyaha cyibasiye inyokomuntu gikubiye mu kirego cya 21. Ariko kugira ngo Ruzindana atarengana azira impurirane y'ibyaha ashinjwa, nakwemeza ko ibihano byagenwa ku byaha byavuzwe by'ubuhotozi n'itsembatsemba byaba bingana n'ibyatanzwe ku cyaha cya jenocide kuri buri hantu uko ari hane hakorewe ibyaha, kandi ko ibyo bihano byose byarangirizwa icyarimwe. Nta bwo rero nagera ibihano birangizwa kimwe nyuma y'ikindi.
59. Kubera izo mpamvu zose, ntanze iki gitekerezo cyihariye kandi kinyuranye n'icya bagenzi banjye.

Bikozwe mu cyongereza no mu gifaransa, ariko inyandiko y'icyongereza ni yo izagenderwaho.

[umukono]

Umucamanza Tafazzal Hossain Khan

Bikorewe Arusha, Tanzaniya, ku itariki ya 21 Gicurasi 1999.