UMURYANGO W'ABIBUMBYE

Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda

URUGEREKO RWA MBERE RW'IREMEZO III

Umwimerere: Icyongereza

Abacamanza:	Yakov Ostrovsky, Perezida Lloyd G. Williams, QC Pavel Dolenc
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Itariki:	15 Gicurasi 2003

POROKIRERI

Aburana na:

LAURENT SEMANZA

Urubanza Nº ICTR-97-20-T

INYANDIKO Y'URUBANZA

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Igitekerezo cyihariye cy'Umucamanza Yakov Ostrovsky ku birebana n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve hamwe n'Amasezerano y'Inyongera ya II
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UMUGEREKA WA I: INYANDIKO Y'IBIREGO
UMUGEREKA WA II: IBYEMEJWE N'URUGEREKO KO BITAGOMBA KUGIBWAHO IMPAKA N'ABABURANYI
UMUGEREKA WA III: URUTONDE RW'INYANDIKO Z'IMANZA ZIFASHISHIJWE

I. INTANGIRIRO

A. Urukiko n'ububasha bwarwo

1. Uru rubanza Porokireri aburana na Laurent Semanza ruciwe n'Urugereko rwa Mbere rw'iremezo III («Urugereko rwa Mbere rw'Iremezo» cyangwa «Urugereko») rw'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda («Urukiko»), rugizwe n'Abacamanza Yakov Ostrovsky, Perezida w'inteko ; Lloyd G. Williams, QC ; na Pavel Dolenc.

2. Urukiko rwashyizweho n'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye imaze gusuzuma raporo z'Umuryango w'Abibumbye zashyizwe ahagaragara, zerekana ko mu Rwanda hakozwe jenoside n'ibindi bikorwa rusange binyuranyije nta shiti n'amategeko arengera abantu mu gihe cy'intambara[1]. Inama Ishinzwe Amahoro ku Isi yasanze ibyo bikorwa bikomeza kubangamira amahoro n'umutekano mu rwego mpuzamahanga, maze yiyemeza guhagarika ikorwa ryabyo no gushyikiriza ubucamanza abantu bakekwaho ko babikoze, imaze kumva neza ko gukurikirana abo bantu byatanga umuganda mu nzira y'ubwiyunge bw'Abanyarwanda, no mu kugarura no kubungabunga amahoro. Kubera ibyo, ku itariki ya 8 Ugushyingo 1994, Inama Ishinzwe Amahoro ku Isi, ishingiye ku mutwe wa VII w'Itegeko Shingiro ry'Umuryango w'Abibumbye, yafashe Icyemezo 955 gishyiraho uru Rukiko[2022].

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[1] Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye yerekeranye n'uko ibintu byifashe mu Rwanda (Inyandiko y'Umuryango w'Abibumbye S/1994/924; Raporo y'ikubitiro ya Komisiyo y'impuguke yigenga yashyizweho hakurikijwe Icyemezo 935(1994) cy'Inama Ishinzwe Amahoro ku Isi, Inyandiko y'Umuryango w'Abibumbye S/1994/1125; na Raporo y'Intumwa yihariye ku Rwanda yashyizweho na Komisiyo y'Umuryango w'Abibumbye ishinzwe uburenganzira bwa muntu, (Inyandiko y'Umuryango w'Abibumbye S/1994/1157, Umugereka wa I n'uwa II).

[2] Inyandiko y'Umuryango w'Abibumbye S/RES/955 (1994).

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3. Urukiko rugengwa na Sitati yometse ku Cyemezo 955 (« Sitati »), hamwe n'Amategeko yarwo Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso («Amategeko»)[3].

4. Nk'uko biteganywa na Sitati, Urukiko rushinzwe gucira imanza abantu bakekwaho kuba barakoreye mu Rwanda ibikorwa binyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, n'Abanyarwanda bakekwaho kuba barakoze ibikorwa nk'ibyo mu bihugu bituranye n'u Rwanda. Hakurikijwe Ingingo ya 1 ya Sitati, ububasha bw'Urukiko ku birebana *n'igihe ibyaha byakorewe,* bugarukira ku byakozwe gusa hagati y'itariki ya 1 Mutarama 1994 n'iya 31 Ukuboza 1994. Ku birebana *n'ibyaha rushobora gukurikirana*, Urukiko rufite ububasha bwo gukurikirana jenoside, ibyaha byibasiye inyokomuntu n'ibindi bikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amazerano Mpuzamahanga y'i Jeneve («Ingingo ya 3 Ihuriweho») hamwe n'Amasezerano y'Inyongera yayo ya II, nk'uko biteganywa n'Ingingo ya 2, iya 3 n'iya 4 za Sitati. Mu mutwe wa IV w'iyi Nyandiko y'urubanza, hari ahantu iyo Ngingo ya 2, iya 3 n'iya 4 zandukuwe uko zakabaye.

B. Inyandiko y'ibirego

5. Inyandiko y'ibirego ya mbere yakorewe Laurent Semanza (« Uregwa »), yari igizwe n'ibirego birindwi, yatanzwe na Porokireri ku itariki ya 16 Ukwakira 1997 kandi yemejwe n'Umucamanza Lennart Aspegren ku itariki ya 23 Ukwakira 1997.

6. Ku itariki ya 31 Gicurasi 1999, Porokireri yasabye Urugereko uruhushya rwo guhindura inyandiko y'ibirego yongeramo ibirego 7 bishya. Ku itariki ya 18 Kamena 1999, Urugereko rwemeye mu magambo icyifuzo cya Porokireri, rumaze kubona ko Ubwunganizi butakirwanya. Icyakora, Urugereko rwategetse Porokireri gutanga ibisobanuro birambuye ku bikorwa bikubiye mu birego bishya, cyane cyane ibirebana n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Icyo gihe Urugereko rwavuze ko ruzatanga nyuma inyandiko y'icyo cyemezo isobanura impamvu rwashingiyeho. Porokireri yatanze Inyandiko y'ibirego yahinduwe bwa

[3] Amategeko yemejwe ku itariki ya 5 Nyakanga 1995 kandi yahinduwe ku matariki akurikira: 12 Mutarama 1996, 15 Gicurasi 1996, 4 Nyakanga 1996, 5 Kamena 1997, 8 Kamena 1998, 4 Kamena 1999, 1 Nyakanga 1999, 21 Gashyantare 2000, 26 Kamena 2000, 31 Gicurasi 2001, 5 na 6 Nyakanga 2002.

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mbere ku itariki ya 23 Kamena 1999. Ku itariki ya 24 Kamena 1999, Porokireri yasabye mu magambo uruhushya rwo gukosora amakosa yoroheje yari mu nyandiko y'ibirego yahinduwe bwa mbere yatumaga inyandiko y'icyongereza n'iy'igifaransa zidahura neza. Urugereko rwarabimwemereye mu magambo. Ku itariki ya 2 Nyakanga 1999, Porokireri yatanze Inyandiko y'ibirego yahinduwe bwa kabiri nk'uko Urugereko rwari rwabimwemereye ku itariki ya 24 Kamena 1999. Ku itariki ya 1 Nzeri 1999, Urugereko rwatanze mu nyandiko icyemezo rwari rwarafashe mu magambo ku itariki ya 18 Kamena 1999 kirebana n'icyifuzo cya Porokireri cyarusabaga uruhushya rwo guhindura Inyandiko y'ibirego. Mu rwego rwo kubahiriza icyo cyemezo, ku itariki ya 12 Ukwakira 1999 Porokireri yatanze inyandiko y'ibirego yahinduwe bwa gatatu («Inyandiko y'ibirego »), ikaba ari yo nyandiko ya nyuma ikubiyemo ibirego Porokireri ashinja Uregwa kandi ni yo Urugereko rwashingiyeho ruca uru rubanza. Inyandiko y'ibirego irambuye yometse ku Nyandiko y'uru rubanza, umugereka wa mbere.

7. Inyandiko y'ibirego ikubiyemo ibirego 14 birebana n'icyaha cya jenoside, ibyaha byibasiye inyokomuntu, n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera yayo ya II.

8. Inyandiko y'ibirego ivuga ko Uregwa yakoze ibyo ashinjwa agamije kurimbura ubwoko bw'Abatutsi mu Rwanda. Ivuga na none ko Uregwa yakoze ibyo byaha mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri ku mpamvu za politiki cyangwa iz'ubwoko, kandi ko byabaye mu gihe kimwe ndetse binafite aho bihuriye n'intambara itari iyo mu rwego mpuzamahanga yaberaga mu Rwanda hagati ya Leta y'u Rwanda na FPR.

9. Inyandiko y'ibirego ivuga ko muri Mata 1994, Uregwa yateguye ibitero, akabiyobora, ndetse na we ubwe akabijyamo. Ibyo bitero byabereye ahantu hane ho muri Bicumbi na Gikoro kandi byakorewemo ibikorwa by'ubwicanyi, ibyo gutera abantu ububabare bubazahaza umubiri cyangwa mu mutwe, hamwe n'iby'urugomo rushingiye ku gitsina. Inyandiko y'ibirego ishinja Uregwa ibyaha byakorewe aha hakurikira : ku kiriziya y'i Ruhanga muri Komini ya Gikoro ku itariki ya 10 Mata 1994 cyangwa hafi y'iyo tariki (igika cya 3.10) ; ku kiriziya y'i Musha muri Komini ya Gikoro hagati y'itariki ya 9 n'iya 13 Mata 1994 (igika cya 3.11) ; ku gasozi ka Mwulire muri

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Komini ya Bicumbi hagati y'itariki ya 7 n'iya 20 Mata 1994 (igika cya 3.12) ; no ku musigiti w'i Mabare muri Komini ya Bicumbi ahagana ku itariki ya 12 Mata 1994 (igika cya 3.13). Kubera ibivugwa ko Uregwa yagize uruhare mu bitero byagabwe ku kiriziya y'i Ruhanga, ku kiriziya y'i Musha, ku gasozi ka Mwulire no ku musigiti w'i Mabare, ashinjwa ibyaha bikurikira : jenoside (ikirego cya 1) ; kuba icyitso cy'abakoze jenoside (ikirego cya 2) ; ubuhotozi (ikirego cya 4), itsembatsemba (ikirego cya 5), gutoteza (ikirego cya 6) no gusambanya ku gahato (ikirego cya 8) nk'ibyaha byibasiye inyokomuntu ; gusambanya ku gahato n'ibindi bikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera yayo ya II bivugwa mu Ngingo ya 4 (a) ya Sitati (ikirego cya 7), hamwe no gusambanya ku gahato n'ibindi bikorwa by'iterasoni nk'ibinyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera yayo ya II (ikirego cya 9).

10. Inyandiko y'ibirego ivuga ko mu gitero cyagabwe ku kiriziya y'i Musha, Uregwa ubwo yari kumwe na Burgumesitiri wa Komini ya Gikoro ari we Paul Bisengimana, baciye umuntu wiswe C akaboko bikamuviramo gupfa (igika cya 3.18). Kubera icyo gikorwa, Semanza ashinjwa iyicarubozo (ikirego cya 11) n'ubuhotozi (ikirego cya 12) nk'ibyaha byibasiye inyokomuntu, n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera yayo ya II (ikirego cya 13).

11. Inyandiko y'ibirego ivuga kandi ko hagati ya 1991 na 1994, Uregwa yayoboye amanama yavugiragamo amagambo yo gukangisha Abatutsi kubagirira nabi. Muri ayo manama, Uregwa yahamagariye abantu kwica abasiviri b'Abatutsi, kandi yacuze umugambi w'ubwo bwicanyi, aranabutegura (igika cya 3.7 n'icya 3.8). Kubera ibyo, ashinjwa guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside (ikirego cya 2).

12. Inyandiko y'ibirego ivuga ko hagati y'itariki ya 7 n'iya 30 Mata 1994, Uregwa ari muri Komini ya Gikoro yahamagariye agatsiko k'abantu gusambanya Abatutsikazi ku gahato mbere yo kubica. Ibyo byatumye abagore 2 basambanywa ku gahato, kandi umwe muri bo aricwa (igika cya 3.17). Kubera ibyo, Uregwa ashinjwa gusambanya ku gahato (ikirego cya 10), iyicarubozo (ikirego cya 11) n'ubuhotozi (ikirego cya 12)

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nk'ibyaha byibasiye inyokomuntu, n'ibindi bikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve hamwe n'Amasezerano y'Inyongera yayo ya II (ikirego cya 13).

13. Hanyuma, Inyandiko y'ibirego ivuga ko ku itariki ya 8 Mata 1994, Uregwa yahamagariye agatsiko k'Interahamwe muri Bicumbi kwica abantu bo mu muryango umwe w'Abatutsi, kandi ko bane muri bo hamwe n'abaturanyi babo babiri bishwe koko (igika cya 3.19). Kubera ibyo, Uregwa ashinjwa ubuhotozi nk'icyaha cyibasiye inyokomuntu (ikirego cya 14).

14. Mu birego byose ukuyemo icyo guhamagarira abantu gukora jenoside (ikirego cya 2) n'icyo kuba icyitso cy'abakoze jenoside (ikirego cya 3), Uregwa ashinjwa nka gatozi watsotsobye icyaha hashingiwe ku buryo bwose bwo gukora icyaha buteganywa n'Ingingo ya 6 (1) ya Sitati, kandi ashinjwa hashingiwe ku Ngingo ya 6 (3) ya Sitati kubera ibyakozwe n'abo yari akuriye.

C. Uregwa

15. Inyandiko y'ibirego ivuga ko Uregwa yavukiye muri Komini ya Musasa, muri Perefegitura ya Kigali Ngari (mu Rwanda), mu wa 1944. Yabaye burugumesitiri wa Komini ya Bicumbi mu gihe kirenga imyaka 20 kugeza mu wa 1993 ubwo yasimburwaga kuri uwo mwanya na Juvénal Rugambarara. Uregwa amaze kuva ku mirimo ya burugumesitiri, yakomeje kuba umuyoboke w'ishyaka rya MRND (Muvoma Iharanira Repubulika, Demokarasi n'Amajyambere ya Rubanda), kandi kugeza mu wa 1994 iryo shyaka ryari irya Juvénal Habyarimana wari Perezida w'u Rwanda. Uregwa yari yaratoranyijwe kuba depite mu Nteko Ishinga Amategeko yagombaga kujyaho hashingiwe ku Masezerano y'Arusha, nk'uhagarariye ishyaka rya MRND muri iyo Nteko.

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II. IMIBURANISHIRIZE

A. Uko imiburanishirize yagenze

16. Ku itariki ya 26 Werurwe 1996 cyangwa hafi yayo, Uregwa yafatiwe muri Kameruni hakurikijwe urupapuro mpuzamahanga rwo kumufata rwatanzwe n'Ubushinjacyaha Bukuru bw'u Rwanda.

17. Ku itariki ya 15 Mata 1996, hashingiwe ku Ngingo ya 40 y'Amategeko, Porokireri w'Urugereko yashyikirije ubutegetsi bw'igihugu cya Kameruni icyifuzo cyo gufatira ibyemezo by'agateganyo Uregwa ndetse n'abandi bantu. Ku itariki ya 6 Gicurasi 1996, Porokireri yasabye ubutegetsi bwa Kameruni kongera ibyumweru bitatu ku gifungo cy'agateganyo cy'Uregwa.

18. Ku itariki ya 17 Gicurasi 1996, Porokireri yamenyesheje ubutegetsi bwa Kameruni ko yifuza gukurikirana abantu bane gusa mu bantu 12 yari yasabiye gufatira ibyemezo by'agateganyo. Uregwa ntiyari muri abo bantu bane.

19. Ku itariki ya 21 Gashyantare 1997, Urugereko rw'Ubujurire rw'Intara yo Hagati ruri mu mujyi wa Yaounde (muri Kameruni) rwanze icyifuzo cya Leta y'u Rwanda cyasabaga kohererezwa Uregwa, maze rutegeka ko arekurwa. Uwo munsi nyirizina, Porokireri yatanze indi nyandiko isaba ko ushinjwa afungwa by'agateganyo, hashingiwe ku Ngingo ya 40 y'Amategeko.

20. Ku itariki ya 3 Werurwe 1997, Urugereko rwafashe icyemezo, cyatanzwe bukeye, cyasabaga ubutegetsi bw'igihugu cya Kameruni kohereza Uregwa muri gereza y'Urukiko, hashingiwe ku Ngingo ya 40 *bis* y'Amategeko[4].

21. Ku itariki ya 29 Nzeri 1997, mu gihe Uregwa yari ategereje kwimurirwa muri gereza y'Urukiko, yarushyikirije inyandiko y'ingoboka yitwa mu rurimi rw'ikilatini *« habeas corpus ad subjiciendum »*, yinubira ko atagejejwe imbere y'Urugereko kandi yanengaga ko afungiye muri Kameruni mu buryo bunyuranyije n'amategeko. Ku

[4] Urubanza rwa Semanza, N° ICTR-97-20-DP, Itegeko ryo kwimura no gufunga by'agateganyo, Urugereko rwa Mbere rw'Iremezo, 3 Werurwe 1997.

itariki ya 6 Nyakanga 2000, Ubwunganizi bwaretse gukurikirana ikibazo bwari bwabyukije muri iyo nyandiko[5].

22. Ku itariki ya 23 Ukwakira 1997, Urugereko rwemeje inyandiko y'ibirego ishinja Uregwa[6], maze ku itariki ya 19 Ugushyingo 1997 ashyikirizwa gereza y'Urukiko.

23. Ku itariki ya 16 Gashyantare 1998, Uregwa yitabye Urukiko bwa mbere ahakana ibyaha ashinjwa mu birego 7 bikubiye mu Nyandiko y'ibirego ya mbere.

24. Ku itariki ya 18 Kamena 1999, Urugereko rwemereye Porokireri guhindura Inyandiko y'ibirego[7]. Ku itariki ya 23 Kamena 1999, Porokireri yatanze inyandiko y'ibirego yahinduwe bwa mbere. Ku itariki ya 24 Kamena 1999, Uregwa yongeye kwitaba Urugereko maze ahakana ibyaha yashinjwaga mu Nyandiko y'ibirego yahinduwe bwa mbere. Uregwa ntiyongeye kwitaba muri ndemeye ku birebana n'ibivugwa mu Nyandiko y'ibirego yahinduwe ubwa kabiri no mu yahinduwe ubwa gatatu, kubera ko izo Nyandiko z'ibirego zakosoraga gusa udukosa duto twabonekaga mu guhindura mu zindi ndimi cyangwa zikaba zarasobanuraga neza ibyabaye bivugwa mu Nyandiko y'ibirego yahinduwe bwa mbere, kandi zikaba nta birego bishya byari bizikubiyemo.

25. Ku itariki ya 24 Kanama 1999, Ubwunganizi bwasabye Urugereko rwa Mbere rw'Iremezo kuvanaho icyemezo cyarwo gitegeka ifatwa n'ifungwa by'Uregwa buvuga ko kinyuranyije n'amategeko. Ku itariki ya 6 Ukwakira 1999, Urugereko rwa Mbere rw'Iremezo rwanze icyo cyifuzo cy'Ubwunganizi[8]. Ku itariki ya 12 Ukwakira

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[5] Inyandikomvugo y'iburanisha, 6 Nyakanga 2000, urup. 30. Reba kandi Inyandiko imenyekanisha ko Ubwunganizi buretse ingoboka bwatanze mbere bwinubiragamo ko Uregwa atagejejwe imbere y'urukiko ngo rusuzume ibirebana n'ifungwa ry'agateganyo rye, yatanzwe ku wa 6 Nyakanga 2000.

[6] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo cyemeza Inyandiko y'ibirego, Urugereko rwa Mbere rw'Iremezo, 23 Ukwakira 1997.

[7] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo mu magambo ku cyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego, Urugereko rwa Mbere rw'Iremezo, inyandikomvugo y'iburanisha, 18 Kam ena 1999, imp. 55 - 56. Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo cyanditse ku cyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego, Urugereko rwa Mbere rw'Iremezo, 1 Nzeri 1999.

[8] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo gisaba Urugereko kuvanaho ifatwa n'ifungwa ry'agateganyo bya Laurent Semanza kubera ko bidakurikije amategeko, Urugereko rwa Mbere rw'Iremezo, 6 Ukwakira 1999.

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1999, Uregwa yajuririye icyo cyemezo cy'Urugereko rwa Mbere rw'Iremezo. Mu cyemezo cyarwo cyo ku ya 31 Gicurasi 2000, Urugereko rw'Ubujurire rwasanze bumwe mu burenganzira bw'Uregwa butarubahirijwe mu ifatwa n'ifungwa bye[9]. Urugereko rw'Ubujurire rwemeje ko Uregwa akwiye indihano, kandi ko iyo ndihano yaba ari amafaranga mu gihe yagirwa umwere, naho mu gihe yahamwa n'icyaha iyo ndihano ikaba kugabanyirizwa igihano.

26. Ku itariki ya 3 Ugushyingo 2000, Urugereko rwafashe icyemezo ku byabaye bimwe na bimwe no ku nyandiko bitagomba kugibwaho impaka n'ababuranyi, nk'uko bikubiye mu mugereka wa II w'iyi Nyandiko y'urubanza[10].

27. Ku itariki ya 9 Gashyantare 2001, Urugereko rwemereye Leta y'u Bubiligi gutanga imyanzuro nk'inshuti y'Urukiko *(amicus curiae)* no gutanga ibitekerezo ku birebana n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, hamwe n'Amasezerano y'Inyongera yayo ya II[11].

28. Ku itariki ya 6 Gashyantare 2002, Urugereko rwemeye bimwe mu byo Ubwunganizi bwasabye mu cyifuzo cyabwo cyo ku itariki ya 13 Ugushyingo 2001 kandi ruvuga ko inyandiko zikurikira zitagomba kugibwaho impaka n'ababuranyi: Itegeko-teka n° 10/75 ryerekeranye n'Imitegekere n'imikorere ya Perefegitura (mu Rwanda),

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[9] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo, Urugereko rw'Ubujurire, 31 Gicurasi 2000.

[10] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibyabaye bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Urugereko rwa Mbere rw'Iremezo, 3 Ugushyingo 2000.

[11] Urubanza rwa Semanza, N° ICTR-97-20-T, Icyemezo ku cyifuzo cya Leta y'u Bubirigi gisaba gutanga imyanzuro nk'inshuti y'Urukiko (« *amicus curiae* ») no ku cyifuzo cy'Ubwunganizi gisaba Urugereko rwa Mbere rw'Iremezo kutemera ibivugwa na Leta y'u Bubirigi ku gisubizo cyabwo cyo mu ikubitiro, 9 Gashyantare 2001. Imyanzuro yatanzwe ku wa 16 Ukwakira 2000. Mu ibaruwa yo ku itariki ya 29 Gicurasi 2002, Leta y'u Bubirigi yamenyesheje Urugereko ko itifuza gutanga imyanzuro yayo mu magambo. Leta y'u Bubirigi yavuze kandi ko yifuzaga gusobanura gusa ibitekerezo byayo byerekeranye n'isano iri hagati y'intambara n'ibikorwa bivugwa mu Ngingo ya 4 ya Sitati y'Urukiko.

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n'Itegeko-teka n° 18/75 ryo ku wa 14 Kanama 1978, nk'uko ryavuguruwe kandi ryahinduwe n'Itegeko-teka n°10/75[12].

B. Iburanisha

29. Urubanza rwatangiye kuburanishwa ku itariki ya 16 Ukwakira 2000 ubwo Porokireri yatangiraga gutanga ibimenyetso bishinja, ibyo akaba yarabikoze mu byiciro bitanu : ku itariki ya 16 n'iya 17 Ukwakira 2000 ; kuva ku itariki ya 6 kugeza ku ya 15 Ugushyingo 2000; kuva ku itariki ya 4 kugeza ku ya 7 Ukuboza 2000 ; kuva ku itariki ya 6 kugeza ku ya 20 Werurwe 2001 ; no kuva ku itariki ya 18 kugeza ku ya 25 Mata 2001. Mu minsi 29 y'iburanisha, Porokireri yahamagaje mu Rukiko abatangabuhamya 24 kandi yatanze ibimenyetso gihamya 18.

30. Ku itariki ya 20 Nyakanga 2001, Ubwunganizi bwatanze icyifuzo cy'ingoboka gisaba ko Semanza yahanagurwaho icyaha[13]. Urugereko rwanze icyo cyifuzo mu cyemezo rwafashe ku itariki ya 27 Nzeri 2001[14].

31. Ku itariki ya 1 Ukwakira 2001, Ubwunganizi bwatangiye gutanga ibimenyetso bishinjura, bukaba bwarabikoze mu byiciro bine : kuva ku itariki ya 1 kugeza ku ya 10 Ukwakira 2001 ; kuva ku itariki ya 22 Ukwakira 2001 kugeza ku ya 14 Ugushyingo 2001 ; kuva ku itariki ya 26 kugeza ku ya 28 Ugushyingo 2001 ; no kuva ku itariki ya 28 Mutarama 2002 kugeza ku ya 28 Gashyantare 2002. Mu minsi 44 y'iburanisha, Ubwunganizi bwahamagaje abatangabuhamya 27 kandi bwatanze ibimenyetso gihamya 45.

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[12] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibintu bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94(B) n'iya 54 z'Amategeko, Urugereko rwa Mbere rw'Iremezo, 6 Gashyantare 2002.

[13] Icyifuzo cy'Ubwunganizi gisaba Urugereko ko Laurent Semanza agirwa umwere rumaze kuvanaho ibirego bikubiye mu Nyandiko y'ibirego yahinduwe bwa gatatu.

[14] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cy'Ubwunganizi gisaba Urugereko ko Laurent Semanza agirwa umwere rumaze kuvanaho ibirego bikubiye mu Nyandiko y'ibirego yahinduwe bwa gatatu (Ingingo ya 98*bis* y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso), hamwe n'Icyemezo ku cyifuzo cyihutirwa cya Porokireri gisaba Urugereko guhagarika igihe ntaregwa cyo gutanga igisubizo ku cyifuzo cy'Ubwunganizi gisaba ko Uregwa agirwa umwere, Urugereko rwa Mbere rw'Iremezo, 27 Nzeri 2001.

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32. Ubwunganizi bumaze gutanga ibimenyetso byabwo, Porokireri yasabye Urugereko uruhushya rwo guhamagaza abatangabuhamya bo kuvuguruza imyiregurire ya sinari mpari y'Uregwa. Urugereko rwahaye Porokireri urwo ruhushya maze ahamagaza abatangabuhamya batatu, batanze ubuhamya bwabo hagati y'itariki ya 15 n'iya 25 Mata 2002[15].

33. Porokireri amaze gutanga ibimenyetso bivuguruza imyiregurire ya sinari mpari y'Uregwa, Ubwunganizi bwatanze icyifuzo cy'ingoboka gisaba uruhushya rwo guhamagaza abatangabuhamya bo kunyomoza ibyavuzwe n'abatangabuhamya bashinja ku birebana n'imyiregurire ya sinari mpari, ariko Urugereko rwanze icyo cyifuzo[16].

34. Ababuranyi batanze imyanzuro nsozarubanza yanditse ku itariki ya 12 Kamena 2002. Ku itariki ya 17 Kamena 2002, Porokireri yatanze imyanzuro nsozarubanza ye mu magambo. Ku itariki ya 18 Kamena 2002, Ubwunganizi bwatanze imyanzuro nsozarubanza yabwo mu magambo. Ku itariki ya 19 Kamena 2002, buri muburanyi amaze kunyomoza imyanzuro y'undi, Perezida w'Urugereko yatangaje ko iburanisha ry'urubanza ripfundikiwe hashingiwe ku Ngingo ya 87(A).

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[15] Urubanza rwa Semanza, N° ICTR-97-20-T, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko uruhushya rwo guhamagaza abatangabuhamya bo kunyomoza abo Ubwunganizi bwatanze no ku cyifuzo cy'inyongera cya Porokireri gisaba Urugereko uruhushya rwo guhamagaza abandi batangabuhamya bo kunyomoza abo Ubwunganizi bwatanze, Urugereko rwa Mbere rw'Iremezo, 27 Werurwe 2002.

[16] Urubanza rwa Semanza, N° ICTR-97-20-T, Icyemezo ku cyifuzo cy'Ubwunganizi gisaba Urugereko uruhushya rwo guhamagaza abatangabuhamya bo kuvuguruza abo Porokireri yahamagarije kunyomoza abo bwatanze mbere, Urugereko rwa Mbere rw'Iremezo, 30 Mata 2002.

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C. Ibibazo birebana n'ibimenyetso

35. Ingingo ya 89 y'Amategeko ikubiyemo amahame rusange yerekeranye n'ibimenyetso imbere y'Urugereko. Iyo ngingo ivuga ko Urugereko rushobora kwakira ikimenyetso cyose gifitanye isano n'urubanza iyo rubona gifite agaciro. Ikindi kandi, iyo Amategeko y'Urugereko nta cyo ateganya ku kibazo runaka, Urugereko rukurikiza amahame agenga ibimenyetso yatuma urubanza rwashyikirijwe rucibwa mu buryo buboneye kandi bugendeye mu murongo umwe n'ibiteganywa na Sitati n'amahame rusange y'amategeko. Urugereko ntirutegetswe kugendera ku mategeko agenga ibimenyetso y'igihugu iki n'iki.

36. Kuri icyo kibazo, Urugereko rusanga rutaragiye rushyikirizwa buri gihe inyandikomvugo z'ubuhamya bwatanzwe mbere zuzuye uko zakabaye. Ahubwo, iyo izo nyandikomvugo zakoreshwaga n'ababuranyi mu ibazwa ry'abatangabuhamya, basomaga gusa ibice babonaga ko bakeneye gushyira muri dosiye y'urubanza. Inyandikomvugo y'ubuhamya bwatanzwe mbere n'uwiswe CBN ni yo yonyine Urugereko rwashyikirijwe nk'ikimenyetso yose uko yakabaye[17]. Iyo habyutswaga ikibazo cy'ivuguruzanya hagati y'ubuhamya bwatanzwe mbere n'umutangabuhamya n'ubwo yatangiye mu rukiko, Urugereko rwagiye ruha agaciro ubuhamya yatangiye mu iburanisha. Urugereko rusanga ivuguruzanya hagati y'ubuhamya bwanditse bwatanzwe mbere n'umutangabuhamya n'ubwo yatangiye mu iburanisha rishobora guterwa n'impamvu zinyuranye zikubiyemo: igihe gishize ibivugwa bibaye, ururimi rwakoreshejwe mu ibazwa, ibibazo umutangabuhamya yabajijwe, ubudakemwa bw'ubusemuzi n'ubw'inyandukuro z'ibyavuzwe, n'ingaruka z'ihahamuka ku mutangabuhamya. Nyamara ariko, iyo Urugereko rutanyuzwe n'impamvu zisobanura iryo vuguruzanya, agaciro k'ubuhamya bwatangiwe mu iburanisha gashobora gukemangwa.

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[17] Urugereko rwakiriye ubwo buhamya nk'ikimenyetso nyuma y'uko umutangabuhamya arahiriye ko ubuhamya bwe ari ukuri na Porokireri akemera kwivutsa uburenganzira bwe bwo kumunyomoza, Inyandikomvugo y'iburanisha, 31 Ukwakira 2001, urup 87.

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D. Ibibazo birebana no kurinda abatangabuhamya

37. Bumwe mu buhamya bwatangiwe mu iburanisha mu muhezo kubera impamvu zo kubungabunga umutekano w'abatangabuhamya. Mu isesengura ry'ubuhamya bwatanzwe mu muhezo muri uru rubanza, Urugereko rwazirikanye ko ari ngombwa gukora ku buryo abanyamakuru cyangwa rubanda batamenya ikintu cyose cyihariye kirebana n'umutangabuhamya urindiwe umutekano cyatuma amenyekana. Na none ariko, Urugereko rwatanze ibisobanuro birambuye ku buryo bwose bushoboka mu icibwa ry'urubanza kugira ngo byorohe gukurikira imitekerereze yarwo. Kubera ibyo bibazo, buri gihe Urugereko ruvuga ku birebana n'ubuhamya bwatangiwe mu muhezo, rugenda rukoresha imvugo igamije kudashyira ahagaragara amakuru agomba kugirirwa ibanga ariko isobanutse bihagije kugira ngo umuntu abashe gukurikira imitekerereze yarwo.

III. IMYIREGURIRE Y'UREGWA

38. Ubwunganizi bwatanze ingingo zinyuranye zivugwa hano hasi, zirimo n'imyiregurire ya sinari mpari y'Uregwa, bugamije kwerekana ko Urugereko nta bubasha rufite bwo kuburanisha uru rubanza, ko inyandiko y'ibirego nta gaciro ifite, kandi ko ibimenyetso Porokireri atanga bidahagije gushyigikira ibyo avuga.

A. Ibyerekeye ifungwa ry'Uregwa muri Kameruni

39. Ubwunganizi bwatanze ingingo Urugereko rw'Ubujurire rwigeze kwemeza ko idafite ishingiro, ivuga ko Urugereko nta bubasha rufite bwo kuburanisha Uregwa bitewe n'uko yafungiwe muri Kameruni mu buryo bunyuranyije n'Ingingo ya 40*bis* y'Amategeko[18]. Ubwunganizi bwavuze ko Porokireri yasobanuriye Urugereko rwa Mbere rw'Iremezo n'urw'Ubujurire ko icyo gihe kirekire cy'ifungwa ry'agateganyo cyakomotse ku mpamvu ntarengwa itunguranye y'uko ubutegetsi bwa Kameruni butashoboye kohereza Urukiko Uregwa bidatinze[19]. Ubwunganizi bwavuze ko icyo kibazo kigomba kongera gusuzumwa ngo bitewe n'uko nyuma y'aho Urugereko rw'Ubujurire rumariye kugifataho umwanzuro hari urukiko rwo muri Kameruni rwemeje ko inyandiko y'Umucamanza Mballe, Porokireri yashingiragaho, ari « inyandiko mpimbano mu nkiko zo muri Kameruni»[20]. Ubwunganizi bwavuze ko inyandiko y'Umucamanza Mballe «nta gaciro nta n'inkurikizi ifite», bityo bukaba busanga kuba Porokireri ayigenderaho bituma «ibyakozwe byose bigira inenge», bukaba buboneraho gusaba ko Uregwa yahita arekurwa[21].

40. Urugereko rw'Ubujurire rwakemuye ikibazo cyo kutubahiriza Ingingo ya 40*bis* y'Amategeko ku birebana n'ifungwa ry'agateganyo ry'Uregwa muri Kameruni mbere

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[18] Inyandikomvugo y'iburanisha, 18 Kamena 2002, imp. 94-96. Imyanzuro nsozarubanza yanditse y'Ubwunganizi hakurikijwe icyemezo cy'Urugereko III cyo ku itariki ya 2 Gicurasi 2000, yatanzwe ku wa 12 Kamena 2002 [«Imyanzuro nsozarubanza yanditse y'Ubwunganizi»], imp. 7-8.

[19] Inyandikomvugo y'iburanisha, 18 Kamena 2002, urup. 94; Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup 7.

[20] Inyandikomvugo y'iburanisha, 18 Kamena 2002, urup. 95; Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup 7.

[21] Inyandikomvugo y'iburanisha, 18 Kamena 2002, imp. 95-96; Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 8.

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yo kumwimurira muri gereza y'Urukiko[22]. Urugereko rw'Ubujurire rwemeje ko uburenganzira bw'ushinjwa bwo kuregerwa Urugereko bidatinze buteganywa n'Ingingo ya 40*bis* y'Amategeko butigeze buhungabanywa muri uru rubanza, kubera ko inyandiko y'ibirego ya mbere yakorewe ushinjwa yari yaremejwe n'Umucamanza igihe yimurirwaga muri gereza y'Urukiko[23]. N'ubwo Urugereko rw'Ubujurire rwigeze gukomoza ku mpamvu abategetsi bo muri Kameruni batashoboye kohererereza Urukiko Uregwa, muri zo bakavugamo inyandiko y'Umucamanza Mballe n'ibyatangajwe na David Scheffer wari Ambasaderi wa Leta Zunze Ubumwe z'Amerika ndetse n'ibindi bimenyetso, mu gufata icyemezo ntabwo Urugereko rwashingiye kuri izo mpamvu zonyine gusa dore ko atari na zo z'ingenzi. Urugereko rwemeje rero ko ingingo z'Ubwunganizi nta shingiro zifite kuko bushaka kugarura ikibazo cyakemuwe kera bwitwaje impamvu idafite shinge na rugero yerekeye agaciro k'inyandiko y'Umucamanza Mballe.

B. Ibivugwa ko Inyandiko y'ibirego igomba guteshwa agaciro kubera ko idasobanuye neza kandi ko hari aho ishinja Uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe

41. Ubwunganizi bwabyukije ibibazo binenga Inyandiko y'ibirego, buvuga ko idasobanutse neza kandi ko ibyo byahungabanyije uburenganzira bw'Uregwa bwo gutegura imyiregurire ye[24].

42. Kubera ko inyandiko y'ibirego ari cyo kintu cy'ibanze gishingirwaho mu ikurikiranacyaha, igomba kwerekana mu magambo avunaguye ibyabaye byerekana icyaha cyangwa ibyaha bishinjwa Uregwa[25]. Na none, Uregwa afite uburenganzira bwo kumenyeshwa «bidatinze […] kandi mu buryo burambuye» imiterere y'ibyaha ashinjwa[26]. Urugereko rutsindagira ko ubusanzwe ibibazo byerekeranye no

[22] Urubanza rwa Semanza, N° ICTR-97-20-A, Icyemezo, Urugereko rw'Ubujurire, 31 Gicurasi 2000, ibika 91-104.

[23] Urubanza rwa Semanza, Icyemezo, Urugereko rw'Ubujurire, 31 Gicurasi 2000, igika 100.

[24] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 16-19.

[25] Ingingo ya 17(4) y'Amategeko; Ingingo ya 47(C) y'Amategeko.

[26] Ingingo ya 19(2) n'iya 20(4)(a) [za Sitati].

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kudafutuka kw'inyandiko y'ibirego bibyutswa mu cyiciro kibanziriza iburanisha[27]. Ubwunganizi ntibusobanura impamvu bwazaririye kubyutsa ibyinshi bunenga mu Nyandiko y'ibirego kugeza ubwo bwatangagaga imyanzuro nsozarubanza yanditse yabwo. Nyamara ariko, Urugereko rusanga rufite inshingano zo gukora ku buryo imiburanishirize iba nta makemwa ndetse n'izo kurengera uburenganzira bw'Uregwa, bityo rukaba rubona ko ari ngombwa gusuzuma ingingo z'Ubwunganizi mu mizi yazo[28].

43. Ukurikije ko imiburanishirize y'urubanza igeze ku ndunduro, Urugereko ruributsa ko rushishikwaje gusa no gusuzuma inenge z'Inyandiko y'ibirego zaba zarabangamiye koko uburenganzira bw'Uregwa[29]. Urugereko rusanga Ubwunganizi nta rugero na rumwe bwatanze rwerekana icyo Uregwa yabangamiweho.

44. Ikibazo cy'ingenzi kigomba gukemurwa kugira ngo umuntu amenye niba inyandiko y'ibirego yanditse mu buryo busobanutse, ni icyo kumenya niba uregwa yarahawe amakuru arambuye yatuma ategura imyiregurire ye neza[30]. Inyandiko y'ibirego igomba kugaragaza ibikorwa ibirego bishingiyeho ariko si ngombwa ko yerekana ibimenyetso byabyo[31]. Urugereko ni rwo rwerekana niba igikorwa iki n'iki ari ingirakamaro hakurikijwe uko ibintu byari biteye mu gihe ibyaha uregwa ashinjwa byakorwaga[32].

45. Iyo Porokireri ashinja uregwa kuba yaratsotsobye icyaha, muri rusange inyandiko y'ibirego igomba kugaragaza mu buryo busobanuye neza umwirondoro w'abakorewe ibyaha, igihe n'aho byakorewe ndetse n'uko byakozwe[33]. Ibisobanuro bya ngombwa mu byaha nk'ibyo ntabwo bigomba kuba bihanitse cyane iyo uryozwa icyaha

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[27] Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 79. Reba kandi Ingingo ya 72(F) y'Amategeko.

[28] Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 79. Reba kandi Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, ibika 95 na 97; n'Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 52.

[29] Inyandiko y'urubanza rwa Kupreskic mu bujurire, ibika 115-125 (gusuzuma niba Uregwa yararenganyijwe n'Inyandiko y'ibirego idasobanutse iyo icyo kibazo kibyukijwe iburanisha ryararangiye).

[30] Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 88.

[31] Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 88.

[32] Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 89.

[33] Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 89.

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ashinjwa nk'icyitso cyangwa nk'uwari ukuriye abandi[34]. Urugereko ruzirikana kandi ko iyo uregwa ashinjwa ubwe gutsotsoba ibyaha ibi n'ibi, bishoboka ko imiterere yabyo n'intera byafashe bitatuma herekanwa neza imyirondoro y'abakorewe ibyaha cyangwa se amatariki ibyaha byakoreweho[35].

1. *Ibivugwa ko amatariki ibyaha byakoreweho aterekanwe neza*

46. Ubwunganizi buvuga ko Inyandiko y'ibirego iterekana neza amatariki ibyaha bivugwa byakoreweho, aho igenda ikoresha amagambo nka: i) ku itariki runaka cyangwa hafi y'iyo tariki » bivugwa mu bika bya 3.10, 3.13 na 3.18; ii) «hagati y'amatariki runaka » bivugwa mu bika bya 3.7, 3.11, 3.12, 3.15, 3.16 na 3.17; iii) « guhera mu ntangiriro z'umwaka wa 1994» bivugwa mu gika cya 3.8; na iv): «guhera mu wa 1991» bivugwa mu gika cya 3.9[36].

47. Kuba Porokireri yarakoresheje amagambo: «ku itariki runaka cyangwa hafi y'iyo tariki » mu bika bya 3.10, 3.11, 3.12, 3.13, 3.18 na 3.19 nta cyo byabangamiyeho Uregwa muri uru rubanza kubera ko ibikorwa bishyigikiye ibirego byabaye koko ku matariki avugwa muri buri gika mu bimaze kuvugwa.

48. Ku birebana n'igika cya 3.11 n'icya 3.12, Urugereko rusanga amagambo «hagati y'amatariki runaka » yarakoreshejwe neza kubera ko yerekana igihe kigufi kuva ku minsi 5 kugeza kuri 12, kiri hagati y'amatariki abiri atandukanye Uregwa ashinjwamo kuba «yarateguye» ubwicanyi bwakorewe ku kiriziya y'i Musha no ku gasozi ka Mwulire. N'ubwo kandi muri ibyo bika byombi havugwamo ko Uregwa « yatsotsobye» ubwicanyi muri icyo gihe nyirizina, ko we ubwe yabwitabiriye bityo bikaba bisaba ko hatangwa ibisobanuro birambuye kurushaho, buri gika muri ibyo byombi gikuraho urujijo urwo ari rwo rwose kubera ko kigaragaza neza amatariki yihariye Uregwa ubwe yitabiriyeho ubwicanyi.

[34] Reba Urubanza rwa Brdjanin na Taric, Nº IT-99-36, Icyemezo ku ngoboka yabyukijwe na Momir Taric avuga ko inyandiko y'ibirego yahinduwe ifite inenge mu miterere yayo, Urugereko rwa Mbere rw'Iremezo, 20 Gashyantare 2001, ibika 18-20.

[35] Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 89.

[36] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 16. N'ubwo Ubwunganizi bwanenze ikoreshwa ry'amagambo « ku itariki ya cyangwa ahagana kuri iyo tariki » ku birebana gusa n'ibika 3.10, 3, 13 na 3.18 [by'Inyandiko y'ibirego], Urugereko rusanga ayo magambo yaranakoreshejwe mu bika bya 3.11, 3.12 na 3.19.

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49. Igika cya 3.17 kirebana n'igikorwa runaka cyakozwe umunsi umwe, aho Uregwa yaba yarahamagariye agatsiko k'abagabo gusambanya ku gahato Abatutsikazi no kubica, ibyo bikaba « byarahise» bishyirwa mu bikorwa. Ubundi, ikirego nk'icyo kigomba kugaragaza itariki nyayo cyabereyeho. Urugereko rusanga ariko uko bimeze kose gukoresha amagambo «hagati y'itariki ya 7 n'iya 20 Mata » ahangaha nta cyo bitwaye kubera ko umutangabuhamya ushinja wiswe VV, akaba ari na we wenyine rukumbi kuri icyo kirego, atashoboye kwibuka itariki nyakuri byabereyeho, akaba ari yo mpamvu bitashobotse ko itariki isobanurwa kurushaho mu Nyandiko y'ibirego. Byongeye kandi, icyo gika gisobanura neza ibyabaye n'imyitwarire Uregwa avugwaho.

50. Urugereko rusanga intera iri hagati y'ibihe bivugwa mu bika bya 3.7, 3.8, na 3.9 iteye koko ikibazo. Ni gutyo havugwa mu gika cya 3.7 ngo «hagati y'umwaka wa 1991 n'uwa 1994», Uregwa yayoboye amanama yavugiyemo amagambo yakangishaga Abatutsi kuzabagirira nabi. Igika cya 3.8 kivuga ko «kuva mu ntangiriro z'umwaka wa 1994 », Uregwa yayoboye amanama yahamagariyemo abantu kwica abasiviri b'Abatutsi, ndetse yanacuriyemo umugambi w'ubwo bwicanyi. Igika cya 3.9 kivuga ko «guhera mu mwaka wa 1991 […] kugera mu wa 1994», Uregwa yahaye Interahamwe imyitozo n'imbunda. Ibyo bika bivuga muri rusange ibikorwa runaka, ku buryo biramutse bitangiwe gihamya byaba ari ibyaha bihanwa cyangwa se bikaba byashingirwaho mu kwerekana ko ushinjwa yagize igitekerezo cyo gukora icyaha bityo akaba yagihamywa. Kuba mu Nyandiko y'ibirego havugwa intera ndende hagati y'amatariki ibyaha byaba byarakorewemo bituma Uregwa atabona amakuru ahagije y'imyifatire yihariye yagize cyangwa se y'ibyabaye by'umwihariko, bityo bikamugora mu gutegura imyiregurire ye. N'ubwo Porokireri yemerewe gucishiriza iyo atazi amatariki nyayo, ariko na none intera iri kuva ku mwaka umwe kugeza ku myaka 4 nk'uko bivugwa mu bika 3.7, 3.8, n'icya 3.9 ntiyakwemerwa, cyane cyane iyo mu birego nta yandi amakuru arambuye arimo yafasha Uregwa kumenya ibyabaye bivugwa mu Nyandiko y'ibirego, nk'izina rya komini ibikorwa bivugwa byabereyemo.

51. Urugereko rusanga na none intera iri hagati y'amatariki avugwa mu gika cya 3.15 n'icya 3.16 idasobanutse na busa. Ibyo bika bivuga muri rusange uburyozwacyaha

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bw'Uregwa nk'umuntu wari ukuriye abandi kandi nk'icyitso cy'abatsotsobye ibyaha byo gusambanya ku gahato, bitasobanuwe neza, bivugwa ko byabereye muri Komini ya Bicumbi n'iya Gikoro «hagati y'itariki ya 6 n'iya 30 Mata». Iyo ntera iri hagati y'amatariki iteye ikibazo cyane cyane ko ibyo bika nta gikorwa cy'ubugizi bwa nabi runaka cyerekana, ntibyerekana ahantu nyirizina ibyo bikorwa byabereye, cyangwa ngo bisobanure imyitwarire runaka y'Uregwa cyangwa se aho yaba ahuriye na gatozi uwo ari we wese watsotsobye ibyo byaha.

52. Urugereko rusanga ibirego bivugwa mu buryo bwa rusange mu bika 3.7, 3.8, 3.9, 3.15, na 3.16, bisa nk'ibyerekana ko Porokireri atigeze abibonera amakuru arambuye cyangwa se ibimenyetso byo kubishyigikira. Bityo, ntawakwizera ko Uregwa yashobora gutegura nyabyo imyiregurire ye.

2. *Ibivugwa ko ahantu ibyaha byakorewe haterekanwe neza*

53. Ubwunganizi buvuga ko ibika 3.7, 3.8, 3.9, 3.15, 3.16 na 3.19 by'Inyandiko y'ibirego biterekana ahantu nyirizina ibyaha bimwe na bimwe bivugwa byakorewe[37].

54. Nk'uko Urugereko rwabivuze mbere, rusanga ibika 3.7, 3.8, 3.9, 3.15 na 3.16 bidasobanutse na busa kuko bitanerekana mu buryo bwa rusange ahantu ibyaha Uregwa ashinjwa byaba byarakorewe.

55. Kubera ko ari ngombwa kubungabunga umutekano w'abatangabuhamya n'uw'abakorewe ibyaha, Urugereko rusanga Inyandiko y'ibirego igaragaza ibisobanuro bihagije ku birebana n'ubwicanyi buvugwa mu gika cya 3.19[38]. Urugereko rusanga «inzu ivugwa y'ahantu muri Komini ya Bicumbi» yari iy'umuhungu w'umutangabuhamya ushinja wiswe VAM kandi urindiwe umutekano ku buryo gusobanura neza aho iherereye byatuma umwirondoro w'uwo mutangabuhamya umenyekana. Kubera ko Uregwa yagejejweho umwirondoro w'uwo mutangabuhamya hakurikijwe icyemezo cy'Urugereko gishyiraho ingamba zo

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[37] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup.18.

[38] Reba, muri rusange, Urubanza rwa Semanza, Nº ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri kirebana no kurinda umutekano w'abatangabuhamya, Urugereko rwa Mbere rw'Iremezo, 10 Ukuboza 1998.

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kubungabuga umutekano w'uwo mutangabuhamya, ibyo byagombye kuba byari bihagije mu kumenyesha Ubwunganizi uko bikwiye aho ibyaba bivugwa byakorewe.

3. *Ibivugwa ko umwirondoro w'abakorewe ibyaha utasobanuwe neza*

56. Ubwunganizi bunenga ko Porokireri atabuhishuriye umwirondoro w'abakorewe ibyaha biswe amazina ya A kugeza kuri H na J bavugwa kuva ku gika cya 3.17 kugeza ku cya 3.19 by'Inyandiko y'ibirego[39].

57. Hazirikanwe ibibazo birebana no kubungabunga umutekano w'abatangabuhamya, Urugereko rusanga Porokireri yarerekanye ku buryo buhagije umwirondoro w'abakorewe ibyaha biswe A na B bavugwa mu gika cya 3.17, n'abakorewe ibyaha biswe amazina ya D kugeza kuri H na J bavugwa mu gika cya 3.19. Urugereko rusanga uwakorewe ibyaba wiswe A ari umutangabuhamya ushinja kandi urindiwe umutekano wiswe VV, akaba na mubyara w'undi muntu wakorewe ibyaha wiswe B. Rusanga na none abakorewe ibyaha biswe amazina ya D kugeza kuri H na J ari bene wabo w'umutangabuhamya ushinja wiswe VAM kandi baturanye na we. Bityo, gushyira umwirondoro w'abo bantu bahohotewe mu Nyandiko y'ibirego byari gutuma bamenyekana kandi ari abatangabuhamya bagomba kurindirwa umutekano. Urugereko rusanga na none ibyamenyeshejwe Ubwunganizi ku birebana n'abatangabuhamya bashinja biswe VV na VAM, hakurikijwe icyemezo cyarwo gishyiraho ingamba zo kubungabunga umutekano w'abatangabuhaya, byaratumye Ubwunganizi bumenya bihagije abakorewe ibyaha bavugwa muri biriya bika, kandi mu gihe gikwiye ku buryo nta cyo bwabangamiweho mu itegurwa ry'imyiregurire yabwo.

58. Urugereko rusanga kuba Porokireri yarakoresheje izina ry'irihimbano «uwakorewe icyaha wiswe C» mu gika cya 3.18 bidahwitse cyane cyane ko ntaho bigaragara ko hari undi wakorewe ibyaha cyangwa umutangabuhamya wagira ikibazo cy'umutekano ku buryo byatuma hakoreshwa izina ry'irihimbano aho gukoresha amazina nyayo y'uwo wakorewe icyaha. Nyamara ariko, Urugereko ntirubona aho uko kuterekana neza izina ry'uwakorewe icyaha byabangamiye Uregwa. Urugereko rusanga muri iki gika, Porokireri ashinja ku buryo bwihariye Uregwa ko yaciye

[39] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 21-23.

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uwakorewe icyaha amaboko ubwo yamuhataga ibibazo bari muri Segiteri ya Musha ku itariki ya 13 Mata 1994. Bigaragara ko Ubwunganizi butigeze buvuga ko itariki n'ahantu icyo gikorwa cyabereye bidasobanutse neza. Hakurikijwe ibisobanuro birambuye byatanzwe kuri icyo gikorwa, Ubwunganizi bwamenye bitabugoye umwirondoro w'uwakorewe icyaha wiswe C ubwo umutangabuhamya ushinja wiswe VA, watanze ubuhamya kuri icyo gikorwa, yavugaga ku buryo bweruye umwirondoro w'uwakorewe ibyaha mu buhamya bwe bwanditse, no mu buhamya yatangiye mu iburanisha ku itariki ya 7 Werurwe 2001.

4. *Ibivugwa ko uburyo Uregwa yakozemo ibyaha butasobanuwe neza*

59. Ubwunganizi buvuga ko Inyandiko y'ibirego idasobanutse kuko iterekana uruhare rw'Uregwa mu ikorwa ry'ibyaha biteganywa na Sitati, ahubwo kuri buri kirego, Inyandiko y'ibirego ivuga ko Uregwa yaryozwa icyaha hashingiwe ku buryo bumwe cyangwa bwose ashobora kuba yarakozemo ibyaha[40]. Urugereko rusanga, kuri buri kirego, kuvuga ko Uregwa yakoze icyaha mu buryo bwose buteganywa ari ikintu kidasobanutse na gato, keretse rero niba Porokireri yaba agamije kuzatanga ibimenyetso kuri buri buryo bwose icyaha gikorwamo[41]. Urugereko rusanga urujijo ruterwa n'iyo miregere rushobora gukosorwa aho ibika birebana na buri kirego cyo mu Nyandiko y'ibirego gisobanura mu buryo burambuye uruhare rw'Uregwa. Kuri iki kibazo, buri gika cy'Inyandiko y'ibirego gitanga ibisobanuro bihagije ku bikorwa by'Uregwa herekanwa, nk'urugero, niba ushinjwa we ubwe yari mu gitero iki n'iki cyahitanye abantu. Ikindi kandi, Urugereko ntirubona aho Uregwa yaba yararenganyijwe. Kubera urujijo rushobora kuboneka, Urugereko rusanga Porokireri

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[40] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 19.

[41] Urubanza rwa Brdjanin na Taric, Nº IT-99-36, Icyemezo ku miterere y'indi Nyandiko y'ibirego yahinduwe no ku cyifuzo cya Porokireri gisaba Urugereko uruhushya rwo guhindura Inyandiko y'ibirego, Urugereko rwa Mbere rw'Iremezo, 26 Kamena 2001, igika 8; Urubanza rwa Brdjanin na Taric, Nº IT-99-36, Icyemezo ku bibazo by'ingoboka byabyukijwe na Momir Taric anenga imiterere y'inyandiko y'ibirego yahinduwe, Urugereko rwa Mbere rw'Iremezo, 20 Gashyantare 2001, igika 11.

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atagomba gushyira ibirego mu Nyandiko y'ibirego adateganya kubitangira ibimenyetso[42].

5. *Ibivugwa ko Uregwa yagiye ashinjwa ibyaha binyuranye bishingiye ku gikorwa kimwe*

60. Ubwunganizi buvuga ko kuba Inyandiko y'ibirego idasobanutse kandi ihuzagurika birushaho gutera inkeke iyo hiyongereyeho ko Uregwa yagiye ashinjwa ibyaha binyuranye hashingiwe ku gikorwa kimwe rukumbi[43]. Ubwunganizi buvuga kandi ko bitemewe mu rwego rw'amategeko ko, mu nyandiko y'ibirego imwe kandi hashingiwe ku bikorwa bimwe, umuntu aregwa icyaha cya jenoside, ibyaha byibasiye inyokomuntu n'ibikorwa binyuranyije n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera yayo ya II[44]. Byongeye kandi, Ubwunganizi buvuga ko bitemewe kurega umuntu icyarimwe icyaha cya Jenoside n'icyo kuba icyitso cy'abakoze jenoside[45]. Urugereko rusanga izo ngingo nta shingiro zifite kandi ruributsa ko Urugereko rw'Ubujurire rwemeje ko gushinja umuntu ibyaha binyuranye hashingiwe ku gikorwa kimwe byemewe[46].

6. Umwanzuro w'Urugereko

61. Urugereko rusanze ibika 3.7, 3.8, 3.9, 3.15 na 3.16 by'Inyandiko y'ibirego bidasobanutse na gato, bityo bikaba byarabangamiye Uregwa mu gutegura neza imyiregurire ye. Kubera iyo mpamvu, ntiruri busuzume ibyo bika mu myanzuro yarwo irebana n'ibyabaye cyangwa iyo mu rwego rw'amategeko. Bityo, Urugereko ntirushobora guhamya Uregwa icyaha cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside (Ikirego cya 2) ashinjwa gusa mu gika cya 3.7

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[42] Urubanza rwa Brdjanini na Taric, Nº IT-99-36, Icyemezo ku bibazo by'ingoboka byabyukijwe na Momir Taric anenga imiterere y'inyandiko y'ibirego yahinduwe, Urugereko rwa Mbere rw'Iremezo, 20 Gashyantare 2001, igika 11.

[43] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 19-21, 73-74.

[44] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 19.

[45] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup 73.

[46] Inyandiko y'urubanza rwa Musema mu bujurire, igika 369. Reba kandi Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 108 na 109; Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 167; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 400.

n'icya 3.8, cyangwa kumuhamya gusambanya ku gato nk'icyaha cyibasiye inyokomuntu (Ikirego cya 8) ashinjwa gusa mu gika cya 3.15 n'icya 3.16.

62. Izindi ngingo z'Ubwunganizi zivuga ko Inyandiko y'ibirego idasobanutse neza ku birebana n'amatariki ibyaha bivugwa byakoreweho, ahantu byakorewe, imyirondoro y'abakorewe ibyaha, n'uburyo Uregwa yakoze ibyaha ashinjwa, kimwe no ku birebana n'uko Uregwa yagiye ashinjwa ibyaha binyuranye bikomoka ku gikorwa kimwe, nta shingiro zifite nk'uko byavuzwe haruguru.

C. Ibivugwa ko Prokireri atabashije gutanga ibimenyetso bihamya ko hakozwe jenoside muri Komini ya Bicumbi n'iya Gikoro

63. Ubwunganizi buvuga ko Porokireri atabashije gutanga ibimenyetso bihamya ko hakozwe jenoside muri Komini ya Bicumbi n'iya Gikoro[47]. Buvuga ko Porokireri nta kimenyetso na kimwe yatanze gihamya ko Abatutsi bibasiwe bonyine hanyuma bakicwa nk'uko bivugwa mu gika cya 3.3 n'icya 3.42 by'Inyandiko y'ibirego[48]. Ubwunganizi buvuga ko ibimenyetso byatanzwe byerekana ahubwo ko hishwe Abahutu n'Abatutsi nta kuvangura[49]. Mu kwemeza ibyo, bushingira kuri raporo yakozwe na Bwana Degni Segui wari Intumwa yihariye y'Umuryango w'Abibumbye, ku buhamya bwatangiwe mu Rukiko n'abatangabuhamya biswe VD, VF, VAO, MTP, BP na BZ, ndetse no ku bwa Ndengejeho, kimwe no kuri raporo yakozwe na Lecompte na Vorhauer[50]. Ubwunganizi buvuga na none ko Porokireri atigeze na rimwe yerekana ku buryo busobanutse abakoze ibyaha, kandi bwemeza ko raporo yakozwe na Degni Segui wari Intumwa yihariye y'Umuryango w'Abibumbye ivuga ko FPR yishe Abahutu n'Abatutsi ku kiriziya yitiriwe Mutagatifu Pawulo[51].

64. Byongeye kandi, Ubwunganizi buvuga ko Porokireri aterekanye ikimenyetso kigaragaza ko ibyaha byakozwe hakurikijwe umugambi wateguwe mbere aho kuba

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[47] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 75, 77.

[48] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 8-9, 78.

[49] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 9.

[50] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 9

[51]Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 9, 11. Urugereko rusanga ibyabereye ku kiriziya yitiriwe Mutagatifu Paul i Kigali ntaho bihuriye n'uru rubanza.

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byarakozweho bihutiweho kubera urupfu rwa Perezida Habyarimana[52]. Buvuga na none ko Porokireri aterekana ibimenyetso bihamya ko Uregwa yari afite igitekerezo cyo gukora jenoside.

65. Mu myanzuro Urugereko ruri bufate ku birebana n'ibyabaye no ku birebana n'amategeko, ruri busuzume niba Porokireri yaratanze ibimenyetso bihamya ko jenoside yakorewe muri Komini ya Bicumbi n'iya Gikoro.

[52] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup.11

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D. Ibivugwa ko Porokireri atashoboye kwerekana isano iri hagati y'intambara itari mu rwego mpuzamahanga n'urupfu rw'abasiviri muri Komini ya Bicumbi n'iya Gikoro

66. Ubwunganizi buvuga ko Porokireri atigeze yerekana na rimwe ko mu Rwanda habayeho intambara itari iyo mu rwego mpuzamahanga[53]. Ahubwo, buvuga ko ibimenyetso «byinshi cyane» byerekanye ko habaye intambara yo mu rwego mpuzamahanga irimo igihugu cy'u Buganda[54].

67. Ubwunganizi buvuga na none ko Porokireri nta na rimwe yigeze atanga ikimenyetso gihamya ko hari isano hagati y'ibyaha bivugwa ko byakorewe muri Komini ya Bicumbi n'iya Gikoro n'intambara itari iyo mu rwego mpuzamahanga, cyangwa se ko Uregwa yaba yarashatse ko ibitero byagabwe aho hantu biba mu rwego rw'intambara itari iyo mu rwego mpuzamahanga[55].

68. Ubwunganizi buvuga ko kuba Porokireri atagaragaza isano iri hagati y'urupfu rw'abasiviri n'intambara itari mu rwego mpuzamahanga ari impamvu yashingirwaho mu kutakira ibirego bivugwa mu Ngingo ya 3 (ibyaha byibasiye inyokomuntu) no mu ya 4 ya Sitati (ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera yayo ya II) [56].

69. Ubwunganizi buvuga kandi ko ibirego birebana n'ibyaha byibasiye inyokomuntu bitagomba kwakirwa kubera ko Porokireri yivugira mu Nyandiko y'ibirego ko ibyo bikorwa byabaye hagamijwe gutanga umusanzu w'intambara. Ubwunganizi bunavuga ko Porokireri nta kimenyetso na kimwe yatanze gihamya ko haba haratanzwe umusanzu w'intambara muri ubwo buryo[57]. Ubwunganizi buvuga kandi ko Porokireri atigeze atanga ibimenyetso bihamya ko habayeho ibitero rusange cyangwa biri kuri

[53] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 12, 15.

[54] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 123, 124, 125.

[55] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 12.

[56] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 14, 16, 45.

[57] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 15-16, 116.

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gahunda, ko atanagaragaje ko Uregwa hari icyo yari azi kuri ibyo bitero rusange cyangwa biri kuri gahunda[58].

70. Mu myanzuro y'Urugereko irebana n'ibyabaye n'irebana n'amategeko ni bwo ruri busuzume ibyo bibazo.

E. Ibirebana n'ububasha bw'Urugereko bwo kuburanisha Uregwa, n'uburyozwacyaha bw'ukuriye abandi

71. Ubwunganizi buvuga ko Uregwa atagombaga kuryozwa ibyaha byakozwe n'Interahamwe cyangwa n'abandi bakozi ba Leta kuko, haba muri Leta y'u Rwanda cyangwa mu buyobozi bw'umutwe w'Interahamwe nta mirimo y'ubuyobozi cyangwa ya gisirikari yari ashinzwe ku buryo yari kuyishingiraho acura umugambi w'ibyaha bivugwa mu Nyandiko y'ibirego, cyangwa se ngo itume amenyeshwa itegurwa ry'ibyo byaha cyangwa se ngo ayishingireho ategeka ko bikorwa[59]. Ubwunganizi buvuga ko kubera izo mpamvu Urukiko nta bubasha bushingiye ku baburanyi rufite bwo kuburanisha Uregwa[60].

72. Urugereko rufite ububasha bushingiye ku baburanyi bwo kuburanisha Uregwa hakurikijwe Ingingo ya 1, iya 5 n'iya 8 za Sitati y'Urukiko kubera ko Uregwa ari umuntu ku giti cye ukekwaho kuba yarakoze ibyaha ari ku butaka bw'u Rwanda, bishobora kuburanishwa n'Urukiko hakurikijwe ububasha bwarwo bushingiye ku gihe ibyaha byakorewe no ku byaha ubwabyo. Uburyozwacyaha bw'Uregwa nk'ukuriye abandi bubyutsa ikibazo kivanzemo ibirebana n'ibyabaye n'ibirebana n'amategeko, kikaba kiterekeranye n'ububasha bw'Urukiko ahubwo cyerekeranye gusa n'uburyozwacyaha. Mu myanzuro Urugereko ruri bufate ni bwo ruza gusuzuma niba Uregwa hari abantu bavugwa yari akuriye.

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[58] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 124.

[59] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 23.

[60] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 32-33.

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F. Gukemanga ukwizerwa kw'abatangabuhamya no kunenga ibimenyetso bya Porokireri ko bidahagije gushyigikira ibyo avuga

73. Ubwunganizi bubyutsa ibibazo binyuranye bikemanga ukwizerwa kw'abatangabuhamya kandi binenga ibimenyetso bya Porokireri ko bidahagije gushyigikira ibyo avuga kuri buri kirego gikubiye mu Nyandiko y'ibirego. Ubwunganizi buvuga kandi ko ubuhamya bw'abatangabuhamya bashinja buvuguruzanya bikomeye ku birebana n'igihe cy'umunsi, amatariki n'ahantu ibyaha byakorewe ku buryo Urugereko rutabushingiraho ngo ruhamye Uregwa ibyaha[61]. Ubwunganizi buvuga ko ukurikije ibivugwa mu Nyandiko y'ibirego ndetse n'ibivugwa n'abatangabuhamya bashinja, usanga Uregwa yaba yaragiye mu bwicanyi mu gihe kimwe kandi ahantu henshi hatandukanye[62]. Butanga ingero zerekana ivuguruzanya rigaragara mu bimenyetso bishinja, n'izindi zerekana ko ibivugwa muri ubwo buhamya bidashobora kubangikanywa n'imyiregurire ya sinari mpari y'Uregwa.

74. Mu myanzuro Urugereko ruri bufate ni bwo ruza gusuzuma izo ngingo.

G. Imyiregurire ya sinari mpari (« *alibi* »)

75. Mu iburanisha, Ubwunganizi bwiyambaje imyiregurire ya sinari mpari bwerekana ko bitari gushoboka ko Uregwa akora ibyaha bivugwa mu Nyandiko y'ibirego. Urugereko rusanga imyiregurire ya sinari mpari y'Uregwa igizwe no kurondora inkuru y'aho yari aherereye mu gihe cyose ibyaha bikubiye mu Nyandiko y'ibirego byakorwaga. Kubera ibyo, hagamijwe gusuzumira hamwe iyo myiregurire ye ya sinari mpari yose uko yakabaye, Urugereko ruri busuzume hano hasi ubuhamya bw'ingenzi burebana na yo hakubiyemo n'ubwatanzwe n'abatangabuhamya bashinja mu rwego rwo kubunyomoza kandi icyo gihe ni na bwo ruri busuzume niba iyo myiregurire yakwizerwa kandi yakwemerwa.

[61] Reba Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 94.

[62] Reba Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp.34-35

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76. Urugereko rurita bihagije ku myiregurire ya sinari mpari y'Uregwa ubwo ruza kuba rusuzuma niba Porokireri yaratanze ibimenyetso bihamya ku buryo budashidikanywaho ko Uregwa ahamwa n'ibyaha ashinjwa.

1. Kumenyekanisha ko Uregwa aziyambaza imyiregurire ya sinari mpari

77. Urugereko ruributsa ko Ubwunganizi bwatanze ibimenyetso bishyigikira imyiregurire ya sinari mpari y'Uregwa butarabanje kumenyekanisha mbere ko buziyambaza iyo myiregurire nk'uko biteganywa n'Ingingo ya 67(A) y'Amategeko, nyamara bukaba bwemera ko bwateganyaga kuzayiyambaza kuva urubanza rutangira[63]. Ubwunganizi bwavuze ko kuba butarubahirije iyo nshingano byatewe n'uko Uregwa yagombaga kubanza kubaza umuryango we ngo ushakishe mu mpapuro ze bwite «impapuro ze zo kwa muganga, fagitire yafatiyeho lisansi, cyangwa se izindi mpapuro zerekana ingendo yakoze muri icyo gihe[64]. Ubwunganizi buvuga ko kuba bwari butarabona ibyo bimenyetso bishyigikira imvugo y'Uregwa, ntaho bwari guhera bumenyekanisha, « mu buryo buhuje n'amategeko », ko buziyambaza imyiregurire ya sinari mpari[65]. Ni yo mpamvu rero Ubwunganizi bwahisemo gukurikiza Ingingo ya 67(B) y'Amategeko, no guha «Porokireri urubuga rwo kunyomoza ibyo buvuga»[66]. Urugereko rwemereye Ubwunganizi kwiyambaza imyiregurire ya sinari mpari hakurikijwe Ingingo ya 67(B), hanyuma runemerera Porokireri gutanga ibimenyetso binyomoza ariko ku birebana n'iyo myiregurire gusa.

78. Mu myanzuro nsozarubanza mu magambo ya Porokireri, yatsindagiye ko Ubwunganizi bwabonye umwanya inshuro zigera kuri esheshatu mu iburanisha ry'urubanza wo kumumenyesha ko buziyambaza imyiregurire ya sinari mpari ariko ko butabikoze[67]. Porokireri avuga ko kuba Ubwunganizi bwarakomeje kwituramira ntibumumenyeshe mbere y'igihe ko buziyambaza imyiregurire ya sinari mpari,

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[63] Inyandikomvugo y'iburanisha, 18 Kamena 2002, imp. 59, 60.
[64] Inyandikomvugo y'iburanisha, 18 Kamena, 2002, urup. 62.
[65] Inyandikomvugo y'iburanisha, 18 Kamena, 2002, urup. 62.
[66] Inyandikomvugo y'iburanisha, 18 Kamena. 2002, imp. 62-63.
[67] Inyandikomvugo y'iburanisha, 17 Kamena 2002, urup. 105.

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Urugereko rugomba kubigenderaho rugafata imyanzuro icukumbuye ibangamiye Uregwa[68].

79. Ubwunganizi buvuga ariko ko hari ibyo Porokireri yamenye mbere ku buryo buziguye ko Uregwa aziyambaza imyiregurire ya sinari mpari, ibyo bikaba bigaragarira : (i) mu nyandikomvugo y'ibazwa ry'Uregwa yakorewe muri Kameruni, yasobanuyemo ko yavuye iwe ahunga ku itariki ya 8 Mata 1994[69]; (ii) no mu cyifuzo cy'Ubwunganzi cyasabaga Porokireri gushyira ahagaragara amazina y'abanyamuryango ba FPR babohoje urugo rw'Uregwa kuva ku itariki ya 9 Mata 1994[70].

80. Urugereko ruributsa ko rwarangije kwemeza ko Ubwunganizi butamenyekanishije mbere y'igihe ko buziyambaza imyiregurire ya sinari mpari nk'uko biteganywa n'Ingingo ya 67(A)(ii)(a)[71]. Na none kandi, Urugereko ruzirikana ibivugwa n'Ubwunganizi ko bwamenyekanishije iyo myiregurire mu buryo buziguye, hakurikijwe inyandikomvugo y'ibazwa ry'Uregwa yakorewe muri Kameruni nyuma yo gufatwa, n'icyifuzo cy'Ubwunganizi cyasabaga Porokireri gushyira ahagaragara ibirebana n'ibohozwa ry'urugo rwe i Gahengeri. Urugereko rusanga ubwo buryo bw'imenyekanisha butubahiriza ibisabwa bisobanutse biteganywa n'Ingingo ya 67(A)(ii)(a) y'Amategeko. Nta n'imwe muri izo nyandiko zombi igaragaza « ahantu hamwe cyangwa harenze hamwe Uregwa avuga ko *yari ari* mu gihe ibyaha ashinjwa byakorwaga»[72]. Izo nyandiko ahubwo zivuga mu buryo budasobanutse neza ko Uregwa atari iwe mu rugo, ariko ntizerekana ahantu nyirizina yari mu gihe iki ni ki.

81. Urugereko ntirwanyuzwe kandi n'ibisobanuro bitangwa n'Ubwunganizi, aho buvuga ko kutamenyekanisha mbere y'igihe ko buziyambaza imyiregurire ya sinari mpari

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[68] Inyandikomvugo y'iburanisha. 17 Kamena 2002, imp. 105-109.

[69] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, imp. 101-102.

[70] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 46- 47.

[71] Urubanza rwa Semanza, Nº ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko uruhushya rwo guhamagaza abatangabuhamya bo kunyomoza abo Ubwunganizi bwatanze no ku cyifuzo cy'inyongera cya Porokireri gisaba Urugereko uruhushya rwo guhamagaza abandi batangabuhamya bo kunyomoza abo Ubwunganizi bwatanze, Urugereko rwa Mbere rw'Iremezo, 27 Werurwe 2002, igika 10.

[72] Ingingo ya 67(A)(ii)(a) y'Amategeko (ni twe twabishimangiye tubyandika mu nyuguti ziberamye).

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byatewe n'uko butari bufite ibimenyetso gihamya bishyigikira iyo myiregurire, ko bwari bukibishakisha, uretse ko nta n'ikimenyetso gihamya na kimwe muri ibyo bwigeze butanga. Ingingo ya 67 y'Amategeko ntitegeka Uregwa gushyira ahagaragara, mbere y'uko iburanisha ritangira, agaciro n'imiterere y'ibimenyetso bishyigikira imyiregurire ya sinari mpari ye [73].

82. N'ubwo Ubwunganizi butubahirije ibiteganywa n'Ingingo ya 67(A)(ii)(a), Urugereko rushimangira ko rwasuzumye byimazeyo imyiregurire ya sinari mpari y'Uregwa rushingiye ku Ngingo ya 67(B) y'Amategeko. Nyamara ariko, nk'uko bimeze muri uru rubanza, aho Ubwunganizi butabashije gutanga impamvu zigaragara zabubujije kubahiriza Ingingo ya 67(A)(ii)(a), Urugereko rusanga rushobora kuzirikana iryo kosa mu gihe cyo gusuzuma niba imyiregurire ya sinari mpari yakwizerwa[74].

2. Gahengeri - Bicumbi (icyunamo) : kuva mu mpera za Werurwe 1994 kugeza ku itariki ya 8 Mata 1994.

83. Mu myanzuro nsozarubanza yanditse n'iyo mu magambo Ubwunganizi bwatanze, buvuga ko Uregwa yagumye iwe mu rugo i Gahengeri kuva ku itariki ya 28 Werurwe 1994 kugeza ku ya 8 Mata 1994 ari mu cyunamo, nk'uko bigenda mu muco nyarwanda, kubera urupfu rw'umukobwa we Nyinawumubyeyi Marie-Mère de Dieu (« Mubyeyi ») wari wishwe n'umugizi wa nabi utarabashije kumenyekana ku itariki ya 28 Werurwe 1994[75]. Ubwunganizi bwasobanuye ko Umubyeyi yashyinguwe bukeye kandi umunsi wo kurangiza icyunamo wari washyizwe ku itariki ya 9 Mata

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[73] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 112 (« N'iyo Ubwunganizi budashobora gutanga ikimenyetso cyerekana aho Uregwa yari ahereye, ntibibubuza ariko kuba bwamenyesha Porokireri ibimenyetso byose bishobora gutera ugushidikanya ku byo Uregwa ashinjwa no kubigeza nyuma imbere y'Urugereko rwa Mbere rw'Iremezo ».

[74] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 237, nk'uko rwemejwe mu bujurire, Inyandiko y'urubanza mu bujurire, igika 117. Reba n'Inyandiko y'urubanza rwa Rutanganda mu rw'iremezo, igika 298.

[75] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 33. Urugereko rusanga Porokireri, Ubwunganizi, n'abatangabuhamya bashinjura, mu kuvuga umukobwa w'Uregwa barakoresheje amazina anyuranye hamwe bamwita « Mubyeyi », ahandi « Umubyeyi », cyangwa se « Marie-Mère de Dieu ».

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1994[76]. Ubwunganizi bwemeza ko Uregwa ndetse n'abagize umuryango we bagumye iwabo mu rugo muri icyo gihe cyose cy'icyunamo, nk'uko byubahirizwa mu muco nyarwanda, kugeza ubwo byabaye ngombwa ko bahunga bakava muri ako karere ubwo urugo rwe rwagabwagaho igitero mu ijoro ryo ku itariki ya 8 Mata 1994[77].

84. Uregwa yavuze mu buhamya bwe ko umukobwa we Umubyeyi yishwe n'umuntu utarabashije kumenyekana, wamurashe isasu anyujije hejuru y'urukuta rw'igipangu yari atuyemo ari saa kumi n'imwe n'igice za nimugoroba[78]. Uregwa ntiyabashije kwibuka itariki ibyo byabereyeho, ariko avuga ko umukobwa we yishwe ku itariki ya 26 cyangwa iya 27 Werurwe 1994[79]. Nyuma yaje kuvuga ko umukobwa we yapfuye ku itariki ya 27 cyangwa iya 28 Werurwe maze bakamuhamba ku ya 4 Mata 1994[80]. Uregwa yasobanuye ko nyuma y'urupfu rw'umukobwa we, yagumye iwe mu rugo ari kumwe n'umuryango we i Gahengeri kugira ngo bubahirize iminsi y'icyunamo nk'uko umuco nyarwanda ubiteganya kandi yakiriye abashyitsi bazaga kubayagira[81]. Uregwa yasobanuye ko yari akiri mu cyunamo ku itariki ya 8 Mata 1994[82].

85. Umutangabuhamya ushinjura wiswe PFM yavuze ko yari mu rugo rw'Uregwa ubwo Mubyeyi yicwaga[83]. Yavuze ko atibuka itariki nyayo y'urupfu rwa Mubyeyi, ariko yasobanuriye Urugereko ko yishwe n'umuntu warashe isasu mu busitani anyujije hejuru y'urukuta rw'igipangu, kandi ko uwo mukobwa w'Uregwa yapfuye hagati ya saa moya na saa mbiri z'ijoro, hagati y'itariki ya 20 n'iya 30 Werurwe 1994[84]. PFM yatekereje ko Mubyeyi yishwe na FPR, ngo kubera ko ingabo za FPR zari

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[76] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 33. Urugereko rusanga nta mutangabuhamya n'umwe wigeze avuga ko Mubyeyi yashyinguwe ku wa 29 Werurwe nk'uko Ubwunganizi bubivuga. Ibyo buvuga binyuranye kandi n'ibyo Uregwa yivugiye mu buhamya bwe ko uwo mukobwa we yashyinguwe ku ya 4 Mata. Inyandiko y'iburanisha, 28 Gashyantare 2002, imp. 114-115.

[77] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 33.

[78] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup. 51.

[79] Inyandikomvugo y'iburanisha, 18 Gahyantare 2002, imp. 49-50.

[80] Inyandikomvugo y'iburanisha, 28 Gashyantare 2002, imp. 114-115.

[81] Inyandikomvugo y'iburanisha, 18 Gashyantare 2000, imp. 49-50.

[82]Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, urup.125; 18 Gashyantare 2002, urup. 141 (mu gifaransa).

[83] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 63, 75-76.

[84] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 75, 76, 77.

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zaracengeye muri ako karere[85]. PFM yavuze ko ubwo Prezida yapfaga, Uregwa ndetse n'umuryango we biteguraga gusoza icyunamo ku itariki ya 9 Mata 1994[86]

86. PFM yavuze ko yabonye Uregwa ku itariki ya 6 Mata 1994, ubwo Uregwa yamumenyeshaga ko Perezida w'u Rwanda yishwe[87]. PFM yanavuze ko yabonye Uregwa ku itariki ya 7 Mata 1994 mu gitondo, maze yongeraho ko yabonaga afite agahinda kubera urupfu rwa Perezida kandi ko icyo gihe yamubonye anywa isegereti[88]. PFM yamaze igice kinini cy'uwo munsi ari muri shaperi yubatse mu gice cyo haruguru cy'igipangu cy'Uregwa, asenga hamwe n'umugore w'Uregwa ndetse n'abana be bakuru[89]. Yavuze ko ku itariki ya 8 Mata 1994 yamaze igice kinini cy'uwo munsi yihishe munsi y'igitanda kubera urusaku rw'amasasu yarasirwaga inyuma y'igipangu cy'Uregwa[90]. PFM yavuze ko yabonye Uregwa ari iwe mu nzu mu cyumba cy'uruganiririro ku mugoroba w'itariki ya 8 Mata 1994 : (i) ubwa mbere hari hagati ya saa moya na saa mbiri z'ijoro, icyo gihe yaganiraga n'umugabo atazi ; (ii) «nyuma yaho » Uregwa yakomeje gusangira inzoga na wa mugabo n'undi witwa Bizuru wari umuturanyi we wari umaze kwinjira mu nzu ; (iii) ubwa gatatu nko mu masaa tanu z'ijoro, ari bwo icyo gihe yahunganaga n'Uregwa n'abandi bagize umuryango w'Uregwa[91].

87. PFM yavuze ko nyuma y'itariki ya 6 Mata 1994 Uregwa « atigeze » ajya hanze n'amaguru kandi ko n'imodoka ye « itigeze » isohoka mu igaraje[92]. Yasobanuye ko iyo aba yarasohotse, aba yaramubonye kuko amadirishya ya shaperi yo mu nzu nini y'urupangu rw'Uregwa n'amadirishya y'icyumba uyu mutangabuhamya yabagamo mu gipangu yarebanaga n'igaraji ; yongeyeho ko iyo Uregwa aba yarasohotse mu cyumba cye yari kunyura kuri shaperi yo mu nzu nini[93].

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[85] Inyandikomvugo z'iburanisha, 13 Ugushyingo 2001, urup. 77; 14 Ugushyingo 2001, urup.3

[86] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 43-44.

[87] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 43-44.

[88] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 45.

[89] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 45-46.

[90] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 47.

[91] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 47-78.

[92] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 62.

[93] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 62.

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88. Umutangabuhamya ushinjura wiswe KNU yavuze ko yabaye mu rugo rw'Uregwa i Gahengeri kuva ku itariki ya 2 kugeza ku ya 8 Mata 1994 ubwo yahunganaga n'Uregwa ndetse n'abo mu muryango w'Uregwa[94]. Yavuze ko yagiye mu rugo rw'Uregwa ku butumire bw'umwe mu bana be kugira ngo abafashe gukora imirimo yo gusoza icyunamo[95]. Yakomeje avuga ko atamenye itariki nyakuri Mubyeyi yapfiriyeho n'icyo yazize, ko icyo yibuka ari uko yapfuye mu kwezi kwa Werurwe mu gihe abanyeshuri baba bari mu bizamini bibanziriza ibiruhuko bya Pasika[96].

89. KNU yavuze ko Uregwa ndetse n'umuryango w'Uregwa bagumye mu rugo rwabo kuva ku itariki ya 6 Mata 1994 kugeza ku ya 8 Mata 1994 ninjoro, ari yo tariki bahungiyeho[97]. KNU yemera ariko ko atabonaga Uregwa buri gihe cyose muri ayo masaha 48, ko atamuhozagaho ijisho kandi ko atamucungaga aho yabaga aherereye hose[98]. KNU yavuze ko yabonye Uregwa arimo kunywa itabi mu gitondo ku itariki ya 7 Mata 1994 kandi ko yasaga n'ufite agahinda[99]. KNU yibuka na none ko yabonye Uregwa ari mu cyumba cy'uruganiriro ikindi gihe atasobanuye neza[100]. KNU yavuze ko yamaze igice cy'umunsi ku itariki ya 8 Mata 1994 asengera muri shaperi y'abana yari mu nzu yari ihereye mu ruhande rwo hepfo rw'igipangu, kandi ko nyuma yaho yagiye kuryama hagati ya saa mbiri na saa tatu z'ijoro[101]. KNU yasobanuye na none ko igihe yari mu rugo rw'Uregwa, yabaga mu nzu yari mu ruhande rwo hepfo rw'igipangu, naho Uregwa aba mu nzu yari mu ruhande rwa ruguru rw'icyo gipangu[102]. KNU yavuze ko yakundaga Uregwa cyane kandi ko mu biruhuko yakundaga kujya mu rugo rw'Uregwa[103].

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[94] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 22, 57-59, 65, 71.

[95]Inyandikomvugo z'iburanisha, 12 Ugushyingo 2001, urup 47; 12 Ugushyingo 2001, imp. 52- 53 (mu gifaransa).

[96] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, urup. 48.

[97] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp.22, 23, 26-27, 66-69, 71, 74.

[98] Inyandikomvugo z'iburanisha, 12 Ugushyingo 2001, urup. 68; 13 Ugushyingo 2001, urup. 6.

[99] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, urup.23.

[100] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, urup 67.

[101] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 27, 28, 29.

[102] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 26, 83, 85.

[103] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 50, 61.

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90. Umutangabuhamya ushinjura wiswe MLZ yavuze ko yari inshuti y'abana b'Uregwa kandi ko yakundaga kujya mu rugo rw'Uregwa[104]. Yavuze ko yamenye ko Uregwa yapfushije umukobwa we witwaga Umubyeyi kandi ko yasanze bari mu cyunamo ubwo yageraga mu rugo rw'Uregwa ku itariki ya 8 Mata 1994 mu masaa sita[105]. MlZ yavuze ko yabonye Uregwa inshuro imwe ku itariki ya 8 Mata 1994 mu masaa kumi z'igicamunsi[106].

91. Urugereko rusanze ubuhamya bw'abatangabuhamya biswe PFM, KNU na MLZ nta wabushira amakenga kubera ubucuti bwihariye bukomeye bari bafitanye n'Uregwa ndetse n'umuryango we. Kuri icyo kibazo, Urugereko rutsindagira ko hari aho ubuhamya bwabo burimo agakabyo aho bemeza ko Uregwa *atatirimutse iwe*, nyamara mu gihe kivugwa abo batangabuhamya baramubonye mu rugo rwe inshuro zabarirwa ku ntoki kandi na bwo by'akanyuzo.

92. Urugereko ruributsa rubitsindagira ko PFM, KNU na MLZ bavuze ko babonye Uregwa by'akanyuzo inshuro esheshatu gusa ari mu rugo iwe i Gahengeri hagati y'itariki ya 6 n'iya 8 Mata 1994, ni ukuvuga : (a) ku mugoroba wo ku itariki ya 6 Mata (PFM) ; (b) mu gitondo cyo ku itariki ya 7 Mata (KNU na PFM) ; c) saa kumi z'igicamunsi ku itariki ya 8 Mata (MLZ) ; (d) mu masaa moya cyangwa mu masaa mbiri z'ijoro ku itariki ya 8 Mata (PFM) ; (e) mu masaa tanu z'ijoro ku itariki ya 8 Mata (KNU na PFM) ; na (f) indi nshuro imwe ku gihe kitazwi (KNU). Uretse ku matariki n'amasaha bimaze kuvugwa abatangabuhamya bemeza ko babonyeho Uregwa, KNU, PFM, na MLZ wahageze ku itariki ya 8 Mata 1994, bavuze ko igihe kinini cyabo batabaga bari kumwe n'Uregwa, ko ahubwo babaga bari kumwe n'abana be mu nzu yabo yari iherereye mu ruhande rwo hepfo cyangwa muri imwe muri shaperi ebyiri, cyangwa ko babaga bihishe munsi y'igitanda. Byongeye kandi, n'ubwo PFM avuga ko aho yabaga ari muri shaperi cyangwa mu cyumba cye yashoboraga kuba yarabonye Uregwa asohoka, Urugereko ruributsa ko yivugiye ko ku itariki ya 7 Mata 1994 yarimo gusengera muri shaperi kandi ko ku itariki ya 8 Mata 1994 yari yihishe munsi y'igitanda. Urugereko rusanga rero ubuhamya bwa KNU, PFM na

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[104] Inyandikomvugo y'iburanisha, 26 Ukwakira 2001, urup. 55.

[105] Inyandikomvugo y'iburanisha, imp. 29-30, 32.

[106] Inyandikomvugo y'iburanisha, 26 Ukwakira 2001, imp. 21, 24.

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MLZ bemeza ko Uregwa atigeze atirimuka iwe hagati y'itariki ya 6 n'iya 8 Mata 1994 butakwizerwa.

93. Urugereko ntirubona ko icyunamo cya Mubyeyi cyaba ikimenyetso gikomeye kigaragaza ko Uregwa atigeze *atirimuka iwe* hagati y'itariki ya 6 Mata n'iya 8 Mata 1994. Urugereko ruratsindagira ko rukurikije ibyo rwashoboye kumenya, imiterere y'umuco nyarwanda irebana n'icyunamo hamwe n'ibiwuranga bidasobanutse bihagije.

3. Gahengeri-Bicumbi (igitero cy'ingabo za FPR) : ku itariki ya 8 Mata 1994

94. Ubwunganizi bwavuze ko inshuro zinyuranye ku itariki ya 7 n'iya 8 Mata 1994, urugo rw'Uregwa i Gahengeri rwibasiwe n'urufaya rw'amasasu[107]. Bwavuze ko ku mpamvu z'ibyo bitero, Uregwa ndetse n'umuryango we bavuye iwabo mu rugo mu masaa tanu z'ijoro ku itariki ya 8 Mata 1994 bagahungira i Nzige, babifashijwemo n'umuturanyi wabo witwa Bizuru wari umushoferi w'ikigo cy'APEGA[108].

95. Uregwa yavuze mu buhamya bwe ko ku itariki ya 7 Mata 1994 yumvise urusaku rw'amasasu rwamaze igihe kigera ku minota 40 hagati ya saa cyenda na saa kumi z'amanywa, kandi ko bukeye ku itariki ya 8 Mata 1994 urusaku rw'amasasu rwaje kwiyongera ndetse noneho rukamara igihe kigera ku masaha ane, rukaba rwaragejeje mu masaa kumi n'ebyiri za nimugoroba[109]. Uregwa yasobanuye ko abaturanyi be bamubwiye ko ayo masasu yaraswaga n'abazungu bari mu modoka zagendaga mu muhanda w'i Gihumuza zari zanditseho MINUAR[110].

96. Uregwa yavuze ko ku itariki ya 8 Mata 1994 mu masaa ine n'igice z'ijoro, ubwo yari iwe mu rugo arimo kuganira n'umuturanyi we Bizuru, umuzamu yaje kumubwira ko urugo rwe rwatewe[111]. Uregwa yavuze ko babyukije abana hanyuma mu masaa tanu z'ijoro we n'umuryango we bagahungira i Nzige bari mu ivatiri ye y'umweru yo mu

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[107] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 34.

[108] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 37-38.

[109] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, imp. 52, 54, 55, 56.

[110] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, imp. 55, 56.

[111] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup. 57.

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bwoko bwa *Audi* yari atwaye, no mu ikamyoneti y'umweru yari itwawe na Bizuru[112]. Uregwa yasobanuye ko abari bamuteye babarasheho amasasu mu gihe barimo basohoka bahunga bajimije amatara y'imodoka[113]. Yanavuze ko yumvise, amaze guhunga, ko umugore wari waratorotse jandarumori maze akajya muri FPR yari umwe muri abo bagabye igitero cyibasiye urugo rwe kandi ko FPR yari yamuhaye inshingano yo kumwica[114].

97. Umutangabuhamya ushinjura wiswe KNU yavuze ko ku itariki ya 8 Mata 1994 abakozi bo mu rugo b'Uregwa bamukanguye mu masaa tanu z'ijoro hamwe n'abandi bana, bababwira ko urugo rwari rwagoswe n'ingabo za FPR hamwe n'Abatutsi baturutse mu Kajevuba n'i Runyinya, bitwaje imbunda n'intwaro gakondo[115]. KNU yavuze ko we n'abandi bantu bo mu rugo bahise bahungira i Nzige bari mu modoka ya kamyoneti y'ibara ry'umweru itwawe na Bizuru, no mu ivatiri yo mu bwoko bwa Audi yari itwawe n'Uregwa[116]. KNU yakomeje avuga ko « hatabonaga neza » kubera ko hariho igihu hagwa n'imvura, ikindi ngo n'uko amatara y'imodoka yari ajimije, urumuri rwari rusigaye rukaba rwari gusa urw'amatara yari ku rukuta rukikije igipangu[117]. KNU yasobanuye ko aho yari inyuma muri kamyoneti yashoboye kubona agatsiko k'abantu bari inyuma y'urugo kandi bari bitwaje imbunda n'ibintu bimeze nk'amacumu[118].

98. Umutangabuhamya ushinjura wiswe PMF yavuze ko yumvise urusaku rw'amasasu igihe gito ku mugoroba wo ku itariki ya 7 Mata 1994, ariko ko ku itariki ya 8 Mata 1994, urusaku rw'amasasu yumvikanye rwari rutandukanye kuko rwari urufaya kurushaho kandi rwumvikanye umunsi wose[119]. PMF yavuze ko mu masaa ine n'igice cyangwa saa tanu z'ijoro, umukozi wo mu rugo yaje muri shaperi yari mu ruhande rwo hepfo rw'igipangu noneho akamubwira ko yarabutswe hafi ahongaho abagabo

[112] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, imp. 57, 58; I21 Gashyantare 2002, urup. 107.

[113] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup. 57.

[114] Inyandikomvugo y'iburanisha, 19 Gashyantare 2002, imp. 112-113.

[115] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 29, 30.

[116] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 33-34.

[117] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, urup. 33.

[118] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, urup. 34.

[119] Inyandikmvugo y'iburabnisha, 13 Ugushyingo 2001, imp. 46, 47.

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n'abasirikare baturutse i Runyinya bazaga biruka bagana ku rugo[120]. PFM yavuze ko we ubwe ari we wamenyesheje Uregwa ndetse n'umugore w'Uregwa ko urugo rwabo rwatewe kandi ko byari ngombwa guhunga[121]. Yasobanuye ko umugore w'Uregwa yakoranyije abana bari basinziriye, maze bagahunga bari mu modoka y'ikamyoneti y'umweru ya Bizuru no mu ivatiri yo mu bwoko bwa *Audi* y'Uregwa. PFM yavuze ko hashize nk'amasegonda atanu izo modoka zirenze urugi runini rw'irembo ariko zijimije amatara, yumvise urusaku rw'amasasu[122]. PMF yavuze ko iryo joro baraye i Nzige[123].

99. Umutangabuhamya ushinjura wiswe MLZ yavuze ko yageze mu rugo rw'Uregwa ku itariki ya 8 Mata 1994 mu masaa sita z'amanywa ahunga amasasu yumvikanaga hafi y'ahongaho[124]. Yavuze ko yinjiye mu rugo rw'Uregwa anyuze mu rugi ubusanzwe rutafungishwaga urufunguzo, icyo gihe yinjiraga amasasu akaba yaravuzaga ubuhuha anyuze hejuru y'urukuta rw'igipangu[125]. MLZ yavuze ko yamaze umugoroba wose aganira n'abandi bana kandi ko yagiye kuryama mu masaa moya z'ijoro[126]. Yavuze ko nta kintu yumvise muri iryo joro, ko ariko bukeye mu gitondo abakozi bo mu rugo bamubwiye ko Uregwa ndetse n'umuryango we baraye bahunze mu masaa tanu z'ijoro[127]. MLZ yavuze ko yavuye mu rugo rw'Uregwa mu gitondo ku itariki ya 10 Mata 1994 kandi ko hasaga nk'ahatekanye[128]. MLZ yavuze ko yabaye mu nzu yari hafi y'urugo rw'Uregwa kugeza ku itariki ya 13 Mata 1994, ari wo munsi yabonyeho ingabo za FPR zari zivuye muri Komini ya Gikoro hanyuma akabona n'inzu y'Uregwa itwikwa[129].

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[120] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 48-49.

[121] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 49.

[122] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 49-50.

[123] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 50.

[124] Inyandikomvugo y'iburanisha, 26 Ukwakira 2001, imp. 19-21, 22.

[125] Inyandikomvugo y'iburanisha, 26 Ukwakira 2001, imp. 20-21.

[126] Inyandikomvugo y'iburanisha, 26 Ukwakira, 2001, urup. 38.

[127] Inyandikomvugo y'iburanisha, 26 Ukwakira 2001, imp. 40, 41.

[128] Inyandikomvugo y'iburanisha, 26 Ukwakira 2001, imp. 44, 45.

[129] Inyandikomvugo y'iburanisha, 26 Ukwakira 2001, imp. 46, 47.

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100. Umutangabuhamya ushinjura wiswe DCN wari uturanye n'Uregwa i Gahengeri[130], yavuze ko ku itariki ya 7 Mata 1994 yumvise urufaya rw'amasasu rwaturukaga mu ishyamba rya Gihumuza riri hafi y'urugo rw'Uregwa. Yumvise abantu bavuga ko hari imirwano yari ishyamiranyije abaporisi ba komini n'ingabo za FPR zari zaracengeye muri ako gace[131]. DCN yavuze ko yavuye muri Bicumbi ahunze ku itariki ya 19 Mata 1994, kimwe n'abandi baturage, ubwo ingabo za FPR zari zimaze kwigarurira komini hagati y'itariki ya 18 n'iya 20 Mata 1994[132]. Yavuze ko ahunga yanyuze inzira ya Nzige, Karenge na Bugesera ; yongeyeho ko yumvise abantu bavuga ko Uregwa agomba kuba yarahunze ku itariki ya 8 cyangwa iya 9 Mata 1994 ubwo inzu ye yatwikwaga kandi ko batari bazi aho ari[133].

101. Umutangabuhamya ushinjura wiswe MV yavuze ko yumvise abaturanyi b'Uregwa bavuga ko yahunze ava muri Bicumbi ku itariki ya 9 Mata 1994, kandi yongeyeho ko Uregwa yari umuntu « wari ukunzwe cyane» n'abaturage bo muri iyo komini ku buryo akantu kose kamubagaho bahitaga bakamenya bose[134].

102. Umutangabuhamya ushinjura wiswe BGN2, ukomoka muri Bicumbi, yavuze ko yumvise izindi mpunzi zivuga ko Uregwa yahunze hashize iminsi ibiri Prezida apfuye, ubwo ingabo za FPR zagotaga urugo rw'Uregwa i Gahengeri zikarugabaho igitero, kandi ko mu bari bayoboye izo ngabo harimo umugore wari waratorotse jandarumori[135]. BGN2 yavuze ko FPR yashakaga kwica Uregwa kuko yari umuntu ukomeye kandi w'icyamamare wari waranze kuyiyoboka[136].

103. Umutangabuhamya ushinjura witwa Nyetera yavuze ko Uregwa ndetse n'abagize umuryango we bavuye muri Bicumbi bahunze ku itariki ya 8 Mata 1994. Yavuze ko

[130] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 31, 35.
[131] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 24, 25, 35, 36.
[132] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 25, 76.
[133] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 56, 57.
[134] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 132, 133, 134.
[135] Inyandikomvugo y'iburanisha, 27 Ugushyingo 2001, imp. 84, 85, 92-93.
[136] Inyandikomvugo y'iburanisha, 27 Ugushyingo 2001, urup.85.

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ubwo buhamya bwe yabukomoye ku iperereza yakoze ari mu Bubiligi no ku nkuru yumvanye abantu babonye umuryango w'Uregwa uhungira i Gitarama[137].

104. Umutangabuhamya ushinjura wiswe SAP yavuze, ariko atibuka amatariki, ko aho yari i Kabuga yashoboraga kubona inkongi y'umuriro muri Bicumbi kandi ko yumvise abantu bari bahavuye bavuga ko urugo rw'Uregwa rwatwitswe[138]. SAP yavuze ko bamwe bavugaga ko Uregwa yahunze n'aho abandi bakavuga ko yapfuye[139]. SAP yaje nyuma kwemeza ibikubiye mu buhamya bwe bwanditse yari yaratanze mbere, aho yavuze ko Uregwa yahunze nyuma y'urupfu rwa Prezida[140].

105. Umutangabuhamya ushinja wiswe XXK, wahamagajwe mu rwego rwo kunyomoza ibyavuzwe n'abashinjura mu iburanisha, yavuze ko abaturage bose b'i Gahengeri, Uregwa na we arimo bahunze ku itariki ya 18 cyangwa iya 19 Mata 1994[141]. XXK, wabashije kumenya Uregwa mu iburanisha, yasobanuye ko yari aturanye n'Uregwa kandi ko yari inshuti y'umuryango[142]. Yakomeje avuga ko, mu gitondo cya kare ku itariki ya 18 cyangwa iya 19 Mata 1994, umugabo witwa Bizuru, yari asanzwe azi neza, yahagaze ku rugo iwe maze akamubwira ko agiye kandi ari kumwe n'abagize umuryango w'Uregwa[143]. XXK yavuze ko atabonye n'amaso ye Uregwa icyo gihe yagendaga[144]. XXK yavuzeko na we ubwe yahunze nyuma kuri uwo munsi mu masaa kumi n'imwe n'igice za nimugoroba, ariko ko icyo gihe yari ataramenya ko Bizuru yapfuye[145]. Yasobanuye ko nyuma ubwo yari mu nkambi mu buhungiro yaje kumenya ko Bizuru yapfiriye muri Segiteri ya Nzige hagati y'itariki ya 19 n'iya 21 Mata 1994 ubwo yari agarutse gutwara umuryango we[146]. XXK yasobanuye ko aho ahungukiye yasanze ibisigazwa by'imodoka ya Bizuru muri Nzige aho iyo modoka

[137] Inyandikomvugo y'iburanisha, 11 Gashyantare 2002, imp. 53, 90, 119, 120.
[138] Inyandikomvugo y'iburanisha, 23 Ukwakira 2001, imp. 115, 116.
[139] Inyandikomvugo y'iburanisha, 23 Ukwakira 2001, imp. 115, 116.
[140] Inyandikomvugo y'iburanisha, 23 Ukwakira 2001, imp. 127, 128, 129.
[141] Inyandikomvugo y'iburanisha, 23 Mata 2002, imp. 18, 113.
[142] Inyandikomvugo y'iburanisha, 23 Mata 2002, imp. 16, 17, 19-20, 55, 57-58.
[143] Inyandikomvugo y'iburanisha, 23 Mata 2002, imp. 12, 18, 48, 49, 50, 51, 52.
[144] Inyandikomvugo y'iburanisha, 23 Mata 2002, imp. 51-52.
[145] Inyandikomvugo y'iburanisha, 23 Mata 2002, urup. 64.
[146] Inyandikomvugo y'iburanisha, 23 Mata 2002, imp. 36, 53-54, 76-77, 112.

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yari yaratwikiwe[147]. XXK yavuze ko yongeye guca hafi y'urugo rw'Uregwa bukeye bw'umunsi yahungiyeho, ubwo yari agiye mu nkambi y'impunzi i Rwamagana, ari na bwo yabonaga ko urwo rugo rwatwitswe[148].

106. Mu buhamya bwatanzwe n'umutangabuhamya w'impuguke witwa André Guichaoua, wahamagajwe na Porokireri mu rwego rwo kunyomoza ibimenyetso bishinjura, yavuze akurikije amakuru yashoboye kumenya, Uregwa yagumye muri Bicumbi nyuma y'itariki ya 9 Mata 1994, kandi ko umunsi yaviriyeho i Gahengeri ahunga ushobora kuba ari wo ingabo za FPR zagabyeho igitero muri ako gace ku itariki ya 19 cyangwa iya 20 Mata 1994[149].

107. Urugereko rusanga ubuhamya bwa KNU na PFM ku gitero cyagabwe ku rugo rw'Uregwa atari ubwo kwizerwa cyangwa kwemerwa. Uretse umubano wihariye kandi ukomeye bari bafitanye n'Uregwa, Urugereko rusanga mu buhamya bwabo ku byerekeranye n'igitero harimo ugukabiriza. Byongeye kandi, Urugereko rusanga umutangabuhamya wiswe MLZ, bivugwa ko yari mu nzu imwe na KNU na PFM icyo gihe, avuga ko nta cyo yumvise ku byerekeranye n'igitero kivugwa nyamara cyagombye kuba cyari gikomeye. Ibi bikaba bituma ibivugwa n'Ubwunganizi bitakwemerwaho ukuri cyane cyane ko birimo n'ukuvuguruzanya.

108. Urugereko rusanga na none ubuhamya bw'abatangabuhamya bashinjura biswe DCN, MV na BGN2 hamwe n'ubwa Nyetera budakwiye kwizerwa, kuko bugizwe gusa n'imvugo zidasobanutse z'ibyo batoraguye hirya no hino mu bandi bantu kandi nta cyemeza na gato muri ubwo buhamya ko abo babyumvanye, batanavugiwe umwirondoro, bari bazi ibyabaye mu buryo butaziguye. Urugereko rusanga kandi ubuhamya bwa DCN atari ubwo kwizerwa kubera ubucuti bwari hagati ye n'abana b'Uregwa, n'ubufatanye yagiranye n'Uregwa mu gihe cyo kwinjiza urubyiruko mu ishyaka rya MRND. Urugereko rusanga ariko ubuhamya butaziguye kandi busobanuye bwatanzwe na DCN avuga uko yahunze ibitero bya FPR byasatiraga Bicumbi ahagana ku itariki ya 19 Mata 1994 bwakwemerwa kandi bwakwizerwa. Urugereko rusanga na none ibyo DCN avuga ku byabaye bihuza n'ibyavuzwe

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[147] Inyandikomvugo y'iburanisha, 23 Mata 2002, imp. 35, 36, 41, 46-47, 53-54, 55, 56.

[148] Inyandikomvugo y'iburanisha, 23 Mata 2002, imp. 96-97.

[149] Inyandikomvugo y'iburanisha, 22 Mata 2002, urup.13.

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n'umutangabuhamya ushinja wiswe XXK wahamagajwe na Porokireri mu rwego rwo kunyomoza ibimenyetso bishinjura.

109. Urugereko rusanga ubuhamya bw'umutangabuhamya wiswe SAP buvuga ibyerekeye ihunga ry'Uregwa n'itwikwa ry'inzu ye bidashobora gufatwaho ukuri. Koko rero, rusanga ubwo buhamya bushingiye ahanini ku byo avuga ko ari i Kabuga yabonye inkongi y'umuriro muri za Bicumbi, no ku byo yaba yarumvanye abantu bahungaga bava muri Bicumbi, bataziwe umwirondoro, kandi imvugo zabo ntizisobanutse neza ndetse ziranavuguruzanya. Urugereko ruributsa kandi ko n'ubwo SAP avuga ko yari azi Uregwa kuva mu wa 1978, atashoboye kumumenya rugikubita mu iburanisha ko yamumenye gusa ari uko Avoka wunganira Uregwa avuze ko yagaruye itoto nyuma y'aho afungiwe[150].

110. Urugereko ruributsa ko umutangabuhamya w'impuguke ushinja witwa Guichaoua yagombaga kuvuga ku butegetsi Uregwa yigeze kugira i Bicumbi n'imiterere y'igitinyiro cyangwa icyubahiro yagirirwaga muri Bicumbi, ko atari yahamagariwe gutanga ubuhamya ku byabaye birebana n'ahantu hanyuranye Uregwa yabaga aherereye buri gihe cyangwa ku bitero bya FPR. Kubera ibyo, Urugereko rusanga ubuhamya bwe atari ubwo kwizerwa, cyane cyane ku birebana no kumenya niba Uregwa yari cyangwa atari muri Bicumbi mu gihe kivugwa.

111. Urugereko rusanga ubuhamya burambuye bwatanzwe n'umutangabuhamya ushinja wiswe XXK, wahamagajwe na Porokireri mu rwego rwo kunyomoza ibimenyetso bishinjura, burebana n'ibyakozwe na Bizuru ku itariki ya 18 cyangwa iya 19 Mata 1994 bwakwizerwa kandi bwakwemerwa kubera cyane cyane ko ibyo avuga ari ibyo yahagazeho. Urugereko rusanga na none ubuhamya bwa XXK buhura n'ubw'umutangabuhamya ushinjura wiswe DCN ku birebana n'amatariki abaturage bo muri Bicumbi bahungiyeho ubwo FPR yasatiraga ako karere. Urugereko rurazirikana kandi imvugo y'Ubwunganizi isobanura ko ukubogama kwa XXK gushobora kuba guterwa n'irangamimerere ye y'iki gihe ku birebana n'urushako. Ariko n'iyo byaba bimeze bityo, Urugereko rusanga ibyo uwo mutangabuhamya avuga bitabura guhabwa agaciro, kubera ko yubahaga cyane Uregwa. Ibyo bikaba

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byaragaragaye igihe yashakaga kuramutsa Uregwa mu rukiko ndetse no mu buryo yatanze ubuhamya bwe amuvuga mu mvugo yuje icyubahiro[151].

4. Nzige-Bicumbi : ku itariki ya 9 Mata 1994

112. Ubwunganizi bwavuze ko Uregwa yaraye ijoro rimwe i Nzige bugacya ajya ku biro bya komini guterefona mu kigo cya gisirikare cy'i Kanombe i Kigali asaba kurindirwa umutekano maze bakamusubiza bamusaba kuva muri ako karere[152]. Ubwunganizi bwavuze ko kuba Uregwa yaramaze amasaha nk'angahe ku biro bya komini byemezwa n'abatangabuhamya banyuranye, ko kandi bishyigikirwa n'ikiganiro Uregwa yagiranye kuri telefoni n'abo mu kigo cya gisirikare cy'i Kanombe. Kaseti ayo majwi yafatiweho ikaba yaratanzweho ikimenyetso gihamya cyahawe n° P11, kandi yashyizwe muri dosiye[153].

113. Uregwa yavuze mu buhamya bwe ko ku itariki ya 9 Mata 1994 mu gitondo yagiye ku biro bya komini i Nzige mu masaa moya kugira ngo atelefone abo yarakeneye kuvugisha, ndetse ko nyuma bamwe mu bo mu muryango we baje kuhamusanga[154]. Uregwa yavuze ko yaterefonnye mu kigo cya gisirikare cy'i Kanombe ari mu biro bya komini kugira ngo abamenyeshe ibyaraye bimubayeho, ariko ko umukuru w'icyo kigo atashoboye kumubona. Yavuze na none ko abo bavuganye bamugiriye inama ko yakizwa n'amaguru akava aho hantu, niba ashaka gukiza amagara ye[155]. Uregwa yasobanuye ku igihe yajyaga ku biro bya Komini, Bizuru yari yahagurutse i Nzige ajyanywe no gufata umuryango we ngo awuhungishe; icyo gihe yarimo atelefona ni bwo yamenye ko Bizuru yishwe ndetse ko n'imodoka yarimo yatwitswe[156]. Uregwa yavuze ko amaze kumenya iyo nkuru yavuye ku biro bya komini hagati ya saa tanu na saa sita z'amanywa, agafata umuhanda ugana i Bugesera agamije kujya mu rugo

[150] Inyandikomvugo y'iburanisha, 23 Ukwakira 2001, urup. 47.

[151] Inyandikomvugo y'iburanisha, 23 Mata 2002, urup 117.

[152] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 35, 36.

[153] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 37, 38.

[154] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, urup. 71; 21 Gashyantare 2002, imp. 77, 78, 81, 82, 83.

[155] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, imp. 71, 75; 21 Gashyantare 2002, imp. 79, 80, 81.

[156] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, imp. 71, 72; 21 Gashyantare 2002, imp. 79, 108, 109, 110

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rw'umwe mu nshuti ze mu Ruhango ho muri Perefegitura ya Gitarama, akaba yarahageze mu masaa tanu z'ijoro[157].

114. Inyandukuro y'ikiganiro cyo kuri telefoni Uregwa yagiranye n'ikigo cya gisirikare cy'i Kanombe igaragaza ko « yari amaze kubonana » na Burugumesitiri wa Komini ya Giti « wari wahungiye muri Komini ya Gikoro » kubera ko *Inkotanyi* zari muri Rutare[158].

115. Umutangabuhamya ushinjura wiswe PFM yavuze ko ku itariki ya 9 Mata 1994 mu gitondo, Bizuru yahagurutse i Nzige asubiye iwe mu rugo aho yari aturanye n'Uregwa. Nyamara, Uregwa yari yagerageje kumwumvisha ko atagira aho ajya akurikije ibyo abakozi bo mu rugo bari bamubwiye bemeza ko abagabye ibitero bari bigaruriye ako gace[159]. PFM yavuze ko Bizuru amaze kugenda, umuryango w'Uregwa wagiye ku biro bya komini, maze hashize nk'iminota 30 abantu bavuye i Kanzige bakaza biruka bavuga ko Bizuru amaze kwicwa kandi ko n'imodoka yarimo yatwitswe[160]. PFM yavuze ko Uregwa akimara kumva iyo nkuru yinjiye mu biro bya komini kugira ngo atelefone i Kigali asabe kurindirwa umutekano[161]. PFM yavuze ko nyuma y'iminota itanu Uregwa yasohotse mu biro maze akababwira ko bitagishobotse kubarinda kubera ko «abagabye ibitero bari basakaye mu mayira yose bagombaga kunyuramo[162]». PFM yavuze ko nyuma yaho bavuye i Nzige bagahungira ku nshuti y'Uregwa mu Ruhango, muri Perefegitura ya Gitarama, aho bageze mu ijoro ry'uwo munsi[163]. Yasobanuye ko bajya mu Ruhango bafashe icyerekezo cy'i Muhure, bakanyura i Karenge, bakambukira ku kiraro cya Nyankariro, bagakomeza urugendo noneho bagahagarara akanya gato ku isoko ry'i Bugesera kugira ngo abana babashe kurya[164]. PFM yanavuze ko bafashe umuhanda werekeza i Muhure kuko bumvaga ko

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[157] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, imp. 84, 88; 21 Gashyantare 2002, imp. 75, 79, 110.

[158] Ikimenyetso gihamya cyahawe n° P.11(c), urup. 16.

[159] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 50, 51.

[160] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 51.

[161] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 52.

[162] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 52.

[163] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 52-54.

[164] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 52-54.

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abateraga bavaga i Rwamagana n'i Gikoro hafi ya Byumba bari batarasakara muri ako gace[165].

116. Umutangabuhamya ushinjura wiswe KNU yavuze ko ku itariki ya 9 Mata 1994 mu gitondo, Uregwa yasabye Bizuru gusubira iwe mu rugo [rw'Uregwa] kumuzanira ibintu bimwe na bimwe[166]. KNU yavuze ko we n'abandi bantu bajyanye n'Uregwa ku biro bya komini, ariko ko basigaye hanze naho Uregwa akinjira wenyine mu biro kugira ngo atelefone[167]. KNU yavuze ko Uregwa yatelefonnye mu kigo cya gisirikare cy'i Kanombe muri Kigali kubera ko yari amaze kumenya ko Bizuru yari amaze gutwikirwa mu modoka yarimo[168]. KNU yasobanuye ko yari kumwe n'Uregwa ndetse n'umuryango we ubwo bavaga ku biro bya Komini bari mu ivatiri ya Audi y'Uregwa no muri kamyoneti[169]. KNU yavuze ko bageze mu rugo rw'inshuti y'Uregwa mu Ruhango, ho muri Perefegitura ya Gitarama, mu ijoro ry'uwo munsi hagati ya saa tanu na saa saba z'ijoro[170].

117. Umutangabuhamya ushinjura wiswe CBN, wamenye Uregwa mu iburanisha, mu nyandikomvugo y'ubuhamya yatanze mbere kandi yakiriwe nk'ikimenyetso yavuze ko yabonye Uregwa mu gihe cy'amasaha atatu ari ku biro bya Komini i Nzige ku itariki ya 9 Mata 1994 mu gitondo. CBN yavuze ko Uregwa yababwiye ko ahunganye n'umuryango we berekeza i Gitarama kandi ko atabashije kuvugana kuri telefoni n'abantu b'i Kigali kugira ngo abasabe kumwoherereza abasirikare bo kumurinda[171].

118. Urugereko rusanga ibyo Uregwa avuga mu buhamya bwe ntaho bihuriye n'ibikubiye mu nyandukuro y'ikiganiro cye kuri telefoni cyumvirijwe. Ubwunganizi bwemera ko icyo kiganiro cyo kuri telefoni cyabayeho koko, Uregwa avugana n'abo mu kigo cya gisirikare cy'i Kanombe. Nyamara, mu nyandukuro y'icyo kiganiro, nta hagaragara

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[165] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 52.

[166] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 38-39.

[167] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 36, 37, 116.

[168] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, imp. 116, 121.

[169] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, urup. 38.

[170] Inyandikomvugo y'iburanisha, 12 Ugushyingo 2001, urup. 40.

[171] Inyandikomvugo y'iburanisha, 31 Ukwakira 2001, imp. 76, 77, 82, 85, 86. Ikimenyetso gihamya n° D21, imp. 4-5, reba hejuru igisobanuro cyo hasi ku rupapuro 17.

ko FPR yari imaze kugaba igitero ku rugo rw'Uregwa cyangwa se ko Uregwa yagombye gukizwa n'amaguru ahunga ava iwe cyangwa se ko umuntu wo mu kigo cya gisirikare yamugiriye inama yo guhunga ava i Nzige. Ikigaragara ahubwo muri iyo nyandiko n'uko Uregwa yari amaze kuvugana na burugumesitiri wa Komini ya Giti wari warahungiye i Gikoro kubera ko Inkotanyi zari zasakaye muri Rutare[172]. Iyo nyandukuro ivuguruza rero ibyo Uregwa yavugiye mu rukiko, ari na cyo gituma ubuhamya bwe ku birebana n'igitero cyagabwe ku rugo rwe n'ihunga rye budakwiye kwemerwa no kwizerwa.

119. Ku birebana n'ukwizerwa n'ukwemerwa by'ubuhamya bwa CBN, Urugereko rusanga nta wabushira amakenga kubera ko yakoranye igihe kirekire n'Uregwa.

120. Urugereko ruributsa ko rwarangije kwemeza ko ubuhamya bw'umutangabuhamya ushinja wiswe XXK, wahamagajwe na Porokireri mu rwego rwo kunyomoza ibimenyetso bishinja, ari ubwo kwizerwa no kwemerwa, aho avuga ko Bizuru yari akiriho ku itariki ya 18 cyangwa iya 19 Mata 1994

5. Perefegitura ya Gitarama : kuva ku itariki ya 9 Mata kugeza muri Gicurasi 1994

121. Uregwa yavuze mu buhamya bwe ko yavuye mu Ruhango ku itariki ya 18 Mata 1994 akajya kuba mu kigo cy'i Murambi i Gitarama. Uko kwimuka ngo yagutewe n'uko yatangaga amafaranga menshi yo kugura lisansi yakoreshaga mu rugendo rungana na kilometero 60 buri munsi hagati ya Ruhango na Gitarama, agiye mu bucuruzi bwe bwo kugurisha ibirayi no kubitwara mu modoka hagati ya Gisenyi na Ruhengeri[173]. Uregwa yavuze ko igihe yari acumbitse i Murambi yakomeje gukora imirimo ye y'ubucuruzi[174]. Yavuze ko ku itariki ya 15 Gicurasi 1994, kubera ko Inkotanyi zari zimaze gusatira ako karere, byabaye ngombwa ko ava i Murambi agahungira ku Gisenyi aho yagumye kugera ku itariki ya 17 Nyakanga 1994, ari wo munsi yambutse umupaka yinjira i Goma muri Zayire[175].

[172] Ikimenyetso gihamya n° P11(c), urup. 16.

[173] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, imp. 90, 91, 92, 96; 27 Gashyantare 2002, imp. 62-63.

[174] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup. 96.

[175] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, imp. 95, 96.

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122. Umutangabuhamya ushinjura wiswe PFM yavuze ko ku itariki ya 10 Mata 1994 yaherekeje Uregwa bajya i Gitarama. Bagezeyo, Uregwa yatelefonnye ku Gisenyi mu masaa tatu cyangwa mu masaa ine za mu gitondo ashaka abashoferi b'amakamyo ye ngo bazane ibirayi i Gitarama[176]. PFM yavuze ko kuva ku itariki ya 10 Mata 1994 kugeza ku itariki ya 20 Gicurasi ari wo munsi bahungiyeho bajya ku Gisenyi, yajyanaga n'Uregwa buri munsi mu mujyi wa Gitarama, kandi ko buri munsi babaga bari kumwe mu isoko mu gihe amakamyo yabaga apakurura ibirayi bigurishwa[177]. PFM yavuze ko buri gihe yabaga ari kumwe n'Uregwa kandi ko « Uregwa atigeze amuva iruhande uretse gusa iyo yabaga agiye kwituma»[178]. PFM yongeyeho ko yahunganye n'Uregwa bajya ku Gisenyi, nk'uko bakomeje bagahungana bajya i Goma muri Zayire[179].

123. Umutangabuhamya ushinjura wiswe KNU yavuze ko yagumanye n'Uregwa ndetse n'umuryango we mu Ruhango ho muri Perefegitura ya Gitarama kuva ku itariki ya 9 kugeza ku ya 12 Mata 1994, ko ariko atongeye kumubona nyuma y'iyo tariki[180].

124. Umutangabuhamya ushinjura wiswe CYS yavuze ko yagumanye n'Uregwa ndetse n'umuryango we mu rugo rw'inshuti y'Uregwa mu Ruhango ho muri Perefegitura ya Gitarama kuva ku itariki ya 9 kugeza ku ya 18 Mata 1994[181]. CYS yasobanuye ko muri icyo gihe Uregwa yamaze aho akenshi yabaga ari mu cyumba cye, ko ariko rimwe na rimwe yajyanaga n'abana be i Gitarama agiye gucunga amakamyo ye[182]. CYS yavuze ko yajyanye n'Uregwa mu mujyi wa Gitarama ubwo Uregwa yavaga mu Ruhango ku itariki ya 18 Mata 1994[183] kandi ko yongeye kumubona ku Gisenyi ubwo yahungaga yerekeza muri Zayire[184]. CYS yavuze ku by'ubucuruzi bwe bwite, asobanura ko yabukoreraga mu mujyi wa Gitarama n'uwa Kigali, kandi ko no mu

[176] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 55, 56.
[177] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 56, 61.
[178] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 62.
[179] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 61-62.
[180] Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 8, 9.
[181] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 62, 63, 69.
[182] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, 63, 64.
[183] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, urup. 63.
[184] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 64-65.

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ntambara yabukomeje. Yavuze ko yatwaraga ibirayi hagati ya Gisenyi na Kibuye, ari yo mpamvu yakundaga kujya ku Gisenyi mu rwego rw'ubucuruzi bwe[185].

125. Umutangabuhamya ushinjura wiswe CYM3, wabashije kumenya Uregwa mu iburanisha, yavuze ko ku itariki ya 11 Mata 1994 yabonye Uregwa ahagaze iruhande rw'imodoka ye hafi y'isoko ry'i Gitarama[186]. CYM3 yasobanuye ko yashoboye kumenya Uregwa kubera ko mu Rwanda izina rya nyir'imodoka riba ryanditse ku muryango w'imodoka[187]. CYM3 yongeye kubona Uregwa ku itariki ya 13 Nyakanga 1994 ku Gisenyi no ku itariki ya 18 Nyakanga 1994 i Goma muri Zayire[188].

126. Umutangabuhamya ushinjura wiswe SAM yavuze ko yaganiriye n'Uregwa mu isoko ryo mu Ruhango ku itariki ya 12 Mata 1994 mu masaa tatu za mu gitondo[189]. SAM yavuze ko Uregwa yamubwiye uko yahunze ku itariki ya 8 Mata 1994 kandi ko yamenye ko yari acumbitse ku nshuti ye mu Ruhango[190]. SAM yanavuze ko yabonye Uregwa i Gitarama ku itariki ya 20 Mata 1994[191].

127. Umutangabumya ushinjura wiswe TDB yavuze ko yumvise bavuga ko urugo rw'Uregwa rwashenywe hashize iminsi mike Prezida apfuye[192]. TDB yasobanuye ko ku itariki ya 13 Mata 1994 ninjoro FPR yagabye igitero mu rugo rwe bwite rwari hafi ya paruwasi y'i Musha, ikamwicira umugore n'umwana we w'umukobwa, ko we yashoboye guhunga muri iryo joro yerekeza mu Ruhango ho muri Perefegitura ya Gitarama, ari na ho yabonye Uregwa ku itariki ya 14 Mata 1994[193]. Yavuze ko yigeze mbere kujya abonana n'Uregwa mu rwego rw'akazi, ariko ko atari nshuti ye[194].

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185 Inyandikomvugo y'iburanisha, 27 Ugushyingo 2001, imp. 15, 16, 49.

186 Inyandikomvugo y'iburanisha, 5 Ugushyingo 2001, imp. 17, 41, 42, 43, 130.

187 Inyandikomvugo y'iburanisha, 5 Ugushyingo 2001, urup. 41.

188 Inyandikomvugo y'iburanisha, 5 ugushyingo 2001, urup. 43.

189 Inyandikomvugo y'iburanisha, 8 Ukwakira 2001, imp. 61, 88.

190 Inyandikomvugo y'iburanisha, 8 Ukwakira 2001, urup. 62.

191 Inyandikomvugo y'iburanisha, 8 Ukwakira 2001, urup. 88.

192 Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, imp. 64-65.

193 Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, imp. 65-66.

194 Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, urup. 69.

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128. Byongeye kandi, hari abandi batangabuhamya bashinjura bavuze ko babonye Uregwa i Gitarama: uwiswe SAP yavuze ko yahamubonye ku itariki ya 25 Mata 1994[195], uwiswe SIDN1 yavuze ko yahamubonye mu ntangiriro za Gicurasi 1994[196], naho uwiswe BGN2 yavuze ko yahamubonye ku itariki ya 12 Gicurasi 1994[197].

129. Umutangabuhamya ushinja wiswe DCH, wahamagajwe na Porokireri mu rwego rwo kunyomoza ibimenyetso bishinjura, yavuze ko yahuye n'Uregwa hagati y'itariki ya 8 n'iya 12 Mata 1994 kuri bariyeri yari hafi y'umusigiti w'i Kabuga, hari nko muri kilometero 2 uvuye ku mbibi za Komini ya Bicumbi, ku muhanda uhuza Kigali na Kibungo cyangwa na Rwamagana[198]. DCH yavuze kandi ko ku itariki ya 14 Mata 1994, Uregwa yaje i Kabuga asaba ko bamutiza umurindi kugira ngo bagabe igitero ku mpunzi zari mu kiriziya y'i Ruhanga muri Gikoro[199]. DCH yemeje ko Uregwa yari mu bagabye igitero kuri kiriziya y'i Ruhanga ho muri Gikoro ku itariki ya 16 Mata 1994[200].

130. Urugereko rufite mbere na mbere ikibazo cyo kumenya niba ubuhamya bw'abatangabuhamya bashinjura ari bo abiswe PFM, KNU, CYS, SAM, CYM3 na TDB, bwakwizerwa kandi bwakwemerwa, kubera ko mu buhamya bwabo butaziguye bose bemeza ko Uregwa yari muri Perefegitura ya Gitarama mu gihe ibyaha aregwa byakorwaga, naho Porokireri we akemeza ko Uregwa yarimo akora ibyo byaha muri Bicumbi.

131. Urugereko rusanga ubuhamya bwa PFM, burimo amakabyankuru, buvuga ko Uregwa atigeze amuva iruhande ngo usibye iyo yabaga agiye kwituma butakwemerwa kandi bwerekana ko abogamye kubera umubano ukomeye yari afitanye n'Uregwa.

132. Urugereko rusanga ubuhamya bwa CYS butashingirwaho mu kwemeza ko Uregwa atigeze na rimwe ava muri muri Perefegitura ya Gitarama hagati y'itariki ya 9 n'iya

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[195] Inyandikomvugo y'iburanisha, 23 Ukwakira 2001, urup. 68.
[196] Inyandikomvugo y'iburanisha, 30 Ukwakira 2001, urup. 39.
[197] Inyandikomvugo y'iburanisha, 27 Ugushyingo 2001, urup. 87.
[198] Inyandikomvugo y'iburanisha, 15 Mata 2002, imp. 67, 86-89.
[199] Inyandikomvugo y'iburanisha, 15 Mata 2002, urup. 119.
[200] Inyandikomvugo y'iburanisha, 15 Mata 2002, imp. 138, 139.

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18 Mata 1994. Urugereko rusanga igihe cyose Uregwa yari acumbitse mu Ruhango CYS yarajyaga kenshi ku Gisenyi gucunga ubucuruzi bwe bwo kwikorera ibirayi. Ikindi na none, n'ubwo CYS yemeza ko Uregwa yakundaga kujya i Gitarama, Urugereko rusanga uyu mutangabuhamya nta gihamya abifitiye uretse gusa ibirebana no kujya i Gitarama ku itariki ya 18 Mata 1994, aho avuga ko bajyanyeyo. Urugereko rusanga na none rudashira amakenga ubuhamya bwa CYS kubera ubucuti we n'umuryango we bari bafitanye n'Uregwa. Byongeye kandi, Urugereko rusanga CYS yaravuze ko Uregwa yamaraga igihe cye kinini mu cyumba cye, nyamara mu buhamya bw'Uregwa ndetse no mu bwa PFM, hakaba havugwa ko igihe kinini buri munsi Uregwa yakimaraga mu mujyi wa Gitarama.

133. Urugereko rusanga ubuhamya bwa TDB buvuga ko yabonye Uregwa i Gitarama ku itariki ya 14 Mata 1994 bwakwizerwa kandi bukemerwa kubera ko butaziguye kandi butagaragaramo kubogama. Nyamara ariko, Urugereko rusanga ubwo buhamya budashobora gushingirwaho mu kwemeza ko igitero cyagabwe ku rugo rwe ku itariki ya 13 Mata 1994 cyari icya FPR.

134. Urugereko rusanga ubuhamya bwatanzwe na CYM3 avuga ko yabonye Uregwa ari mu isoko ry'i Gitarama ku itariki ya 11 Mata 1994 budafite gihamya kandi butafatwaho ukuri, kuko yavuze ko ahanini icyatumye amenya Uregwa ari uko yabonye imodoka yari yanditseho izina rye mu rubavu rwayo.

135. Urugereko rusanga kubera impamvu z'umubano umutangabuhamya bise SAM yari afitanye n'Uregwa nk'umuturanyi wakundaga kugenda mu rugo iwe, ubuhamya bwe ku birebana n'ikiganiro yagiranye n'Uregwa ku itariki ya 12 n'iya 20 Mata 1994 butakwizerwa.

136. Urugereko rusanze mu buhamya bwe KNU nta gisobanuro kirambuye na kimwe atanga ku birebana no kuba Uregwa yari i Gitarama.

137. Urugereko rusanze ubuhamya bwa DCH, wahamagajwe na Prokireri mu rwego rwo kunyomoza ibimenyetso bishinjura, butakwizerwa cyangwa ngo bwemerwe ku birebana n'ibyo Uregwa yakoze mu gihe kivugwa. By'umwihariko, mu gihe DCH avuga ko Uregwa yari mu bwicanyi bwakorewe ku kiriziya y'i Ruhanga ho muri Gikomero hagati y'itariki ya 14 n'iya 17 Mata 1994, Uregereko ruributsa ko iyo

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mvugo ihabanye n'ubuhamya bw'abatangabuhamya bashinja ubwo babazwaga ibibazo by'ibanze bakavuga ko ubwo bwicanyi bwabaye ku itariki ya 10 Mata 1994. Byongeye kandi, n'ubwo DCH avuga ko yari asanzwe azi neza Uregwa ndetse akamwita « shebuja », Urugereko rusanga ubwo yaburanaga yemera icyaha mu nkiko zo mu Rwanda yarashinje abo bafatanyije kugikora ariko nta na hamwe yahingukije izina ry'Uregwa.

6. *Ibintu bidashoboka*

138. Muri bimwe Ubwunganizi buvuga mu myiregurire ya sinari mpari, harimo ko bidashoboka ko Uregwa yaba yarakoze ubwe ibyaha ashinjwa cyangwa ko yaba yari ahantu byakorewe nk'uko bivugwa mu Nyandiko y'ibirego. Ubwunganizi buvuga ko nyuma y'ihanurwa ry'indege ya Perezida, byari bigoye kugendagenda hirya no hino mu Rwanda[201]. Ubwunganizi bwagerageje gushyigikira ibyo buvuga bushingiye ku buhamya bw'abatangabuhamya banyuranye bemeje ko batigeze babona Uregwa ahantu hakorewe ubwicanyi[202].

139. Umutangabuhamya w'impuguke witwa Pascal Ndengejeho, wahamagajwe n'Ubwunganizi, yavuze ko bidashoboka ko Uregwa yari kuva i Gahengeri ngo agere i Gikoro kuko na mbere y'uko indege ya Prezida Habyarimana iraswa, akarere kose kari karigaruriwe na FPR[203]. Uregwa na we yavuze ko FPR yagenzuraga ako karere kose ku buryo bitari gushoboka kukagendagendamo[204]. Na none, umutangabuhamya ushinjura wiswe ZC yavuze ko Uregwa atashoboraga gukandagiza ikirenge i Ruhanga muri Komini ya Gikoro muri Mata 1994 kubera ko icyo gihe kuhagera byasabaga guca muri Rugende, kandi aho hantu yari ahafite abanzi « bari biteguye kuba bamusagarira bakoresheje ibikoresho bityaye»[205].

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[201] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 34.

[202] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 110-114.

[203] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 110-114.

[204] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup.95.

[205] Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 41, 55; Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 34.

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140. Umutangabuhamya w'impuguke witwa André Guichaoua, wahamagajwe na Porokireri mu rwego rwo kunyomoza ibivugwa n'Ubwunganizi, yavuze ko muri Mata na Gicurasi 1994 abanyacyubahiro benshi n'abategetsi b'abanyapolitiki n'aba gisirikare bakoraga ingendo buri munsi hagati y'ikigo cy'i Murambi muri Gitarama n'i Kigali, ku buryo rero Uregwa byashoboraga kumworohera kurara i Murambi akajya i Bicumbi ku manywa muri icyo gihe[206].

141. Umutangabuhamya wiswe DCH, wahamagajwe na Porokireri mu rwego rwo kunyomoza ibimenyetso bishinjura, akaba ari umushoferi watwaraga otobisi za Leta, yavuze ko kuva ku itariki ya 20 Mata 1994 yatwaraga abantu inshuro esheshatu ku munsi hagati y'umujyi wa Kigali n'uwa Gitarama, kandi ko buri rugendo rwamaraga isaha imwe[207].

142. Urugereko rusanga ubuhamya bwa Ndengejeho buvuga ko FPR yari yarigaruriye Komini ya Gikoro atari ubwo kwizerwa kubera ko amakuru atanga usanga ahanini aterekana inkomoko yayo, ubundi agashingira ku byo yabwiwe n'umuporofeseri ngo wamubwiye ko yirinze kujya muri Gikoro kubera ngo umuntu wari wamumenyesheje ko FPR yagenzuraga ako karere.

143. Urugereko rusanga ubuhamya bw'umutangabuhamya ushinjura wiswe ZC buvuga ko Uregwa yari afite abanzi muri Rugende ari ubwo kwemerwa, ariko ntirunyuzwe n'ibyo avuga ko abo banzi bashoboraga kumubuza kunyura aho hantu mu modoka.

144. Urugereko rusanga ubuhamya bwa André Guichaoua buvuga muri rusange ko abategetsi bashoboraga gukora ingendo mu modoka hagati y'umujyi wa Kigali n'uwa Gitarama ari ubwo kwizerwa, ariko rubona nta wabuheraho ngo yemeze ko Uregwa yari afite ubushobozi bwo kuva mu mujyi wa Kigali mu modoka ajya muri Bicumbi no muri Gikoro.

145. Urugereko rusanga ubuhamya bwa DCH buvuga ko yatwaraga abantu hagati y'umujyi wa Gitarama n'uwa Kigali bwakwizerwa kandi bukemerwa, ariko nta

[206] Inyandikomvugo y'iburanisha, 22 Mata 2002, imp. 20-22.

[207] Inyandikomvugo y'iburanisha, 16 Mata 2002, imp. 23-26, 27, 29.

wabuheraho ngo yemeze ko Uregwa yari afite ubushobozi bwo kuva mu mujyi wa Kigali mu modoka ajya muri Bicumbi no muri Gikoro.

146. Mu myanzuro y'Urugereko irebana n'ibyabaye, n ibwo ruza gusuzuma niba byari gushobokera Uregwa kugendagenda hirya no hino mu gace yabagamo.

7. Umwanzuro rusange

147. Urugereko rwasuzumye rubyitondeye ibimenyetso byatanzwe byo gushyigikira imyiregurire ya sinari mpari y'Uregwa kandi ruributsa ko igice kinini cy'iyo myiregurire atari icyo kwemerwa cyangwa kwizerwa. Byongeye kandi, Urugereko rubona ko kuba Ubwunganizi bwarazirikanaga kuva mu ntangiriro y'urubanza ko Uregwa azerekana ko atari ahantu ibyaha bivugwa byakorewe mu gihe byakorwaga, ariko bukirinda kumenyekanisha ko buziyambaza iyo myiregurire kandi nta mpamvu yumvikana iriho, bituma umuntu abona ko iyo myiregurire yatekerejweho nyuma.

148. Urugereko rutsindagira ko n'iyo Ubwunganizi butashoboye gutanga ibimenyetso byakwizerwa kandi byakwemerwa byerekana ko uregwa atari aho ibyaha ashinjwa byakorewe igihe byakorwaga, nta cyo bihungabanyaho na gato uburenganzira bw'uregwa bwo gufatwa nk'umwere igihe cyose ataracirwa urubanza burundu. Porokireri wenyine ni we ufite inshingano yo gutanga ibimenyetso bihamya nta gushidikanya ko Uregwa ahamwa n'icyaha, hatitawe ku myiregurire ya sinari mpari. Bityo rero, Urugereko ruri bwite ku myiregurire ya sinari mpari yose uko yakabaye ubwo ruza gufata imyanzuro irebana no kumenya niba Porokireri yaratanze ibimenyetso byerekana nta gushidikanya ko Uregwa yagize uruhare mu byaha ashinjwa.

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IV. IBIVUGWA NA POROKIRERI

A. Igika cya 3.10 cy'Inyandiko y'ibirego

149. Igika cya 3.10 cy'Inyandiko y'ibirego kigira kiti:

> Ku itariki ya 10 Mata 1994 cyangwa hafi y'iyo tariki, Laurent Semanza yakoranye bya hafi na Burugumesitiri wa Komini ya Gikoro ari we Paul Bisengimana mu gutegura no gushyira mu bikorwa ubwicanyi bwabereye i Ruhanga muri Komini ya Gikoro, aho abantu babarirwa mu bihumbi bari bahungiye ubwicanyi bwaberaga mu duce bari batuyemo.

1. Ibivugwa

150. Umutangabuhamya wiswe VF yavuze ko ku itariki ya 10 Mata 1994 mu gitondo, ubwo Paul Bisengimana n'abaporisi ba komini bari bamaze kugaba igitero ku gasozi yari atuyeho, yahungiye i Ruhanga aho yumvise ko impunzi zariho zisubizayo ibitero byazigabwagaho[208]. Ubwo yari mu nzira ajyayo, yanyuze ku gasantere k'ubucuruzi ka Rugende[209]. Mu masaa ine za mu gitondo, yihishe mu gisambu kuko Interahamwe zarimo zihiga abantu[210]. Muri ubwo bwihisho, bwari muri metero eshanu uvuye ku muhanda, yabonye Uregwa, kandi yaramwerekanye mu iburanisha, ari muri kamyoneti y'umweru hamwe n'abasirikare bari bafite intwaro kandi bari bambaye iniforume y'abajepe[211]. Icyo gihe Uregwa nta ntwaro yari yitwaje[212]. VF yavuze ko abo basirikare boretse imbaga y'abantu babarasiye aho muri Rugende, kandi ko ubwo batangiraga kurasa ari bwo yahungiye i Ruhanga[213]. Mu iburanisha, VF yahakanye ko

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[208] Inyandikomvugo y'iburanisha, 6 Ukuboza 200o, imp. 26-27, 99, 111.

[209] Inyandikomvugo y'iburanisha, 6 Ukuboza 2000, imp. 27, 96, 98, 101.

[210] Inyandikomvugo y'iburanisha, 6 Ukuboza 2000, imp. 27, 58-59, 100.

[211] Inyandikomvugo y'iburanisha, 6 Ukuboza 2000, imp. 23-24, 27-28, 100-104.

[212] Inyandikomvugo y'iburanisha, 6 Ukuboza 2000, urup. 28.

[213] Inyandikomvugo y'iburanisha, 6 Ukuboza 2000, imp. 28-29.

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icyo gihe Bisengimana yari mu modoka imwe n'Uregwa, nyamara mu buhamya bwanditse yatanze mbere akaba yari yaravuze ko bari kumwe[214].

151. Nyuma kuri wo munsi, VF yasanze abandi bantu barimo na bene wabo aho bari bahungiye ku kigo cy'amashuri no ku rusengero rw'abaporo by'i Ruhanga, babarirwaga hagati ya 15.000 na 20.000 kandi abenshi muri bo bari Abatutsi[215]. Hashize akanya gato, abajepe n'Interahamwe bagose ikigo, maze barasa impunzi zimwe na zimwe kandi nta ntwaro zari zitwaje, zakoreshaga amabuye n'ibiti ngo zikumire ibitero[216]. VF yavuze ko abajepe bategetse abagore n'abana bari bihishe mu mazu gusohoka, kugira ngo Interahamwe zibice[217]. Yavuze ko we n'abandi bantu Interahamwe zabambuye imwe mu myenda bari bambaye, zibasukaho peterori maze zirabatwika[218]. Impunzi zirimo na we ubwe, zakubiswe impiri ziinatemaguzwa imipanga[219]. VF yavuze ko impunzi hafi ya zose ziciwe muri icyo gitero kandi ko na we ubwe yahakomerekeye cyane[220]. VF yavuze ko kubera ko yari yakomeretse bikabije icyo gihe, atabashaga kumenya neza abantu bari aho, ko rero adashobora kwemeza niba Uregwa yari muri icyo gitero, nyamara ariko ahamya ko cyagabwe n'abasirikare b'abajepe bayobowe n'Uregwa kubera ko abo basirikare ari bo yari yabonye mbere y'icyo gihe muri Rugende bari kumwe n'Uregwa[221].

152. Umutangabuhamya ushinja wiswe VAO yavuze ko ibyabereye i Ruhanga yabibwiwe n'umugore bahuriye mu nkambi y'impunzi muri Gicurasi 1994, ko ariko uwo mugore ubu yapfuye[222]. Uwo mugore yabwiye VAO ko hari bantu benshi basambanyijwe ku gahato kandi bakicirwa ku rusengero rw'abaporo i Ruhanga, urwo rusengero nyuma yaho rukaba rwaratwitswe[223]. Uwo mugore yabwiye VAO ko impunzi zari zabanje

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[214] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, urup. 107.

[215] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, imp. 28-29, 49-50, 113, 114.

[216] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, imp. 30, 114.

[217] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, imp. 30-31.

[218] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, imp. 33, 46, 117.

[219] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, imp. 33, 46.

[220] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, urup. 47.

[221] Inyandikomvugo y'iburanisha, 6 Ukuboza 2002, imp. 31-32, 49, 117.

[222] Inyandikomvugo y'iburanisha, 20 Werurwe 2001, imp. 55, 58.

[223] Inyandikomvugo y'iburanisha, 20 Werurwe 2001, imp. 56, 58.

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kunanira Interahamwe, hanyuma izo Nterahamwe zikajya gushaka abandi bantu bo kuzitiza umurindi maze zikagaruka ziri kumwe n'Uregwa[224]. VAO yabwiwe ko Uregwa yategetse Interahamwe gusambanya ku gahato abari barokotse ubwicanyi maze abagore n'abakobwa bagasambanywa koko[225]. VAO yibuka kandi ko yumvise bavuga ko aho hantu hari abajepe n'abandi bantu bitwaje imbunda bari baturutse muri Bicumbi, ariko nta bisobanuro birambuye yatanze kuri ibyo[226].

153. Pierre Duclos, umupererezi wo mu Biro bya Porokireri, yavuze ko ubwo yajyaga i Ruhanga yasanze urusengero rwaho rwarasenyutse burundu[227].

154. Uregwa yavuze mu buhamya bwe ko atashoboraga kujya i Ruhanga kubera ko yari ahafite abanzi bashoboraga kumwica[228]. Yibukije ko ku itariki ya 10 Mata 1994 yari mu Ruhango ho muri Perefegitura ya Gitarama[229.]

155. Umutangabuhamya ushinjura wiswe ZC yavuze ko atigeze yumva hari uvuga ko Uregwa yagabye ibitero i Ruhanga mu wa 1994[230]. Yavuze ko Uregwa yari afite abanzi muri Rugende bashoboraga kumugirira nabi, bityo rero ko atashoboraga kujya i Ruhanga[231]. ZC yasobanuye ko umuntu atashobora kuva i Gahengeri mu modoka ajya i Ruhanga atanyuze muri Rugende[232]. ZC yavuze ko atigeze yumva hari uvuga ko Uregwa yanyuze muri Rugende mu wa 1994 agaragiwe n'abantu bitwaje intwaro bamurinda kubera ko iyo biza kubaho nta kuntu abaturage baho batari kubibona[233]. ZC yavuze kandi ko bitari gushoboka ko Uregwa yari kuba afite abasirikare bitwaje intwaro bamurinda kubera ko abasirikare bose bari ku rugamba[234]. Nyuma, ZC yaje

[224] Inyandikomvugo y'iburanisha, 20 Werurwe 2001, urup. 56.
[225] Inyandikomvugo y'iburanisha, 20 Werurwe 2001, urup. 58.
[226] Inyandikomvugo y'iburanisha, 20 Werurwe 2001, urup. 97.
[227] Inyandikomvugo y'iburanisha, 16 Ukwakira 2000, urup. 79.
[228] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup. 127.
[229] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup. 127.
[230] Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 54, 55.
[231] Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 55, 113.
[232] Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 42, 82, 83.
[233] Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 87, 110, 111.
[234] Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 87, 110, 111.

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kwemera ko hari undi muhanda unyura i Musha umuntu yashoboraga gucamo ajya i Ruhanga[235].

156. Umutangabuhamya ushinjura wiswe BZ yavuze ko yakoze iperereza ku byabereye i Ruhanga kandi ko amakuru y'ibyahabereye yayabwiwe na Konseye wa Segiteri ya Mfumbwe[236]. BZ yavuze ko abaturage bamwe bari baturutse muri Gikomero bahungiye ku rusengero rw'i Ruhanga ubwo bari bamaze kwica umuresiponsabure wa selire[237]. BZ yavuze ko abaturage bamaze kumva ko uwo muserire yishwe, bagiye gutabaza abajandarume b'i Kabuga[238]. BZ yavuze ko abo bajandarume barashe ku mpunzi i Ruhanga, bakahatsinda abantu benshi[239]. BZ yavuze ko nta muntu wigeze amubwira ko Uregwa yari i Ruhanga igihe ibivugwa byahaberaga[240].

157. Umutangabuhamya ushinjura wiswe MV yavuze ko yumvise abantu bavuga ko hashize iminsi itanu Perezida apfuye, abashyigikiye FPR batangiye kugaba ibitero ku Bahutu muri Ruhanga, kandi ko ako gace kari kiganjemo Abatutsi[241]. MV yavuze ko Abahutu bamwe bahungiye i Kabuga naho abandi bagahungira muri Rugende[242]. MV yavuze ko abaturage bo muri Rugende baherekeje Abahutu bagaruka mu ngo zabo i Ruhanga[243]. Bageze mu nzira, bagabweho igitero n'abaturage b'i Ruhanga hamwe n'abasirikare ba FPR[244]. Abahutu barahunze bajya gutabaza abajandarume b'i Kabuga[245]. MV yabonye abajandarume bajya i Ruhanga n'amaguru[246]. Yumvise bavuga ko ubwo abajandarume bagera hafi y'ikigo cy'amashuri n'urusengero by'i

[235] Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 88-99.

[236] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 34.

[237] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 33, 34. Urugereko rusanga ku murongo wa 23 w'urupapuro rwa 33 rw'inyandikomvugo y'iburanisha handitse paruwasi « muri Gikomero » aho kuba muri Gikoro. Ibi bikaba binyuranye n'ubuhamya bw'uyu mutangabuhamya mu Kinyarwanda.

[238] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 33, 34.

[239] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 34.

[240] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 35.

[241] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, urup. 114.

[242] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, urup. 115.

[243] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, urup. 118.

[244] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, urup. 119.

[245] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, urup. 119.

[246] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 134-135.

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Ruhanga, bagabweho igitero bigatuma haba imirwano hagati y'abajandarume n'abasirikare ba FPR, iyo mirwano ikaba yarahitanye abantu barimo Abahutu n'Abatutsi[247]. MV yavuze ko nta muntu wigeze amubwira ko Uregwa yageze i Ruhanga igihe ibivugwa byahaberaga, kandi ko atigeze abona imodoka ye y'umweru inyura muri Rugende[248].

158. Umutangabuhamya ushinjura wiswe SWT yavuze ko atiboneye ubwe ubwicanyi bwakorewe i Ruhanga muri Mata 1994, ko ariko yumvise impunzi zari zarahahungiye zivuga ko zagabweho ibitero n'abantu bari bitwaje imbunda n'ibyuma kandi ari ninjoro[249]. SWT yavuze ko konseye wa segiteri yasabye abasore makumyabiri, ariko bari imbokoboko[250], guherekeza impunzi zigasubira ahari hagabwe igitero[251]. Ubwo iryo tsinda ry'abantu ryahageraga, ryarongeye rigabwaho igitero maze ba basore bari barangajwe imbere n'Interahamwe[252], basubira inyuma bajya gutabaza abajandarume[253]. Abo basore bavuze ko mu bagabye igitero harimo bamwe bari abaturanyi b'uyu mutangabuhamya[254]. SWT yavuze ko baba abantu batabaye abaturage bagabwagaho ibitero cyangwa baba abajandarume nta n'umwe wari wakomotse muri komini y'Uregwa[255]. SWT yavuze ko atigeze yumva hari uvuga izina ry'Uregwa mu birebana n'iyo mirwano yamaze iminsi icumi cyangwa cumi n'umwe, kandi yumva Uregwa ntaho yari ahuriye n'ibyo byabaye kubera ko yari atuye kure cyane y'aho byabereye[256].

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[247] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 119, 123, 126.

[248] Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, imp. 128, 129, 134.

[249] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, imp. 70-72.

[250] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, urup. 89.

[251] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, urup. 72.

[252] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, urup. 88.

[253] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, urup. 72.

[254] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, urup. 72.

[255] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, urup. 74.

[256] Inyandikomvugo y'iburanisha, 25 Ukwakira 2001, urup. 74.

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2. *Umwanzuro w'Urugereko*

159. Urugereko rwasuzumanye ubwitonzi buhagije ubuhamya bwatanzwe n'abatangabuhamya bashinja biswe VF na VAO. VF yatanze ubuhamya bukubiyemo amakuru arambuye y'ibyabereye ku rusengero rw'i Ruhanga ku itariki ya 10 Mata 1994 kandi yiboneye n'amaso ye. Nyamara ariko, kubera ko VF yari yakomeretse, ntiyashoboye guhamya ko Uregwa yari aho hantu ariko yibwira ko yari ahari kubera ko yabonye abajepe yari yabonanye na we mbere uwo munsi. Urugereko ntirubona ko ibyo uyu mutangabuhamya yibwiye byafatwaho ukuri, cyane cyane ko na we yiyemereye ko byamugoraga kumenya abantu kubera ko yari yakomeretse. Undi mutangabuhamya ushinja waje gutanga ubuhamya ku byabereye ku rusengero rw'i Ruhanga ni uwiswe VAO, ariko ubuhamya bwe bushingiye gusa ku nkuru mbarirano. N'ubwo yabwiwe ko Uregwa yari aho ibivugwa byabereye, Urugereko ntirushobora kwizera ko ibyo yavuze bihuye neza n'ibyabaye n'igihe byabereye. VAO ni we kandi mutangabuhamya wenyine watanze ubuhamya ku birebana n'ibikorwa byo gusambanya ku gahato byaba byarabereye ku rusengero rw'i Ruhanga igihe hagabwaga ibitero, na none ashingiye ku nkuru mbarirano.

160. Urugereko ruributsa ko Umutangabuhamya ushinja wiswe DCH, watanze ubuhamya burambuye ku birebana n'ibyabereye ku rusengero rw'i Ruhanga, yahamagajwe nyuma mu rwego rwo kuvuguruza ibimenyetso bishinjura ku birebana gusa n'imyiregurire ya sinari mpari y'Uregwa. Ubwo Urugereko rwangaga icyifuzo cy'Ubwunganizi cyo guhamagaza abatangabuhamya bo kunyomoza abahamagajwe nyuma na Porokireri, rwongeye kwemeza ko « ubuhamya bwose butanzwe mu rwego rwo kunyomoza ibimenyetso bishinjura butandukira ntibuvuge kuri ibyo bimenyetso gusa butitabwaho n'Urugereko mu gihe cyo guca urubanza »[257]. Bityo rero, Urugereko ruratsindagira ko ubuhamya bwa DCH bugomba gukoreshwa gusa mu kunyomoza imyiregurire ya sinari mpari y'Uregwa kandi ko budashobora gukoreshwa mu gushyigikira ibirego Porokireri ashinja Uregwa. Byongeye kandi, Urugereko

[257] Urubanza rwa Semanza, N° ICTR-97-20-T, Icyemezo ku cyifuzo cy'Ubwunganizi gisaba Urugereko uruhushya rwo guhamagaza abatangabuhamya bo kuvuguruza abashinja bahamagariwe kunyomoza abashinjura, Urugereko rwa Mbere rw'Iremezo, 30 Mata 2002, igika 13.

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rusanga gushingira ku buhamya bwa DCH mu guhamya Uregwa ubwicanyi bwakorewe i Ruhanga byaba bibangamiye uburenganzira bw'Uregwa bwo gucirwa urubanza mu buryo buboneye, kubera ko atigeze ahabwa urubuga rwo kwiregura ku birego bishya byabyukijwe gusa igihe Porokireri yanyomozaga ibimenyetso bishinjura. Urugereko rusanga ubuhamya bwa DCH, butandukanye cyane n'ibivugwa na Porokireri mu birego by'ibanze, buvuga ko Uregwa ubwe yari mu bitero binyuranye byagabwe i Ruhanga kuva ku itariki ya 14 kugeza ku ya 17 Mata 1994, aho kuvuga ku gitero kimwe gusa cyabaye ku rusengero rw'i Ruhanga ku itariki ya 10 Mata 1994, nk'uko biri mu Nyandikoy'ibirego.

161. Hashingiwe ku bimenyetso byatanzwe, Urugereko rusanga impunzi z'Abatutsi zari ku rusengero rw'i Ruhanga zaragabweho igitero ku itariki ya 10 Mata 1994. Nyamara ariko, nta kimenyetso na kimwe rubona gihamya ko Uregwa yafatanyije bya hafi na Bisengimana mu gutegura ubwo bwicanyi cyangwa mu kubutsotsoba. Byongeye kandi, Porokireri nta kimenyetso yashoboye gutanga gihamya ko Uregwa yari ku rusengero rw'i Ruhanga igihe ubwicanyi bwahakorerwaga. Bityo rero, Urugereko, rusanze ibikubiye mu gika cya 3.10 cy' Inyandiko y'ibirego bitaratangiwe ibimenyetso bidashidikanywaho.

B. Igika cya 3.11 n'icya 3.18 by'Inyandiko y'ibirego

162. Urugereko rurasuzumira hamwe ibirego bivugwa mu gika cya 3.11 n'icya 3.18 by'Inyandiko y'ibirego kubera ko ibikorwa bivugwa by'iyicarubozo n'ubwicanyi (igika cya 3.18) byakozwe mu gihe cy'ibyabereye ku kiriziya y'i Musha (igika cya 3.11).

163. Igika cya 3.11 cy'Inyandiko y'ibirego kigira kiti:

> Hagati y'itariki ya 9 n'iya 13 Mata 1994, Laurent Semanza yakoranye bya hafi na Burugumesitiri wa Komini ya Gikoro ari we Paul Bisengimana mu gutegura no gushyira mu bikorwa ubwicanyi bwabereye ku kiriziya y'i Musha muri Komini ya Gikoro, aho abantu babarirwa mu magana bari bahungiye ubwicanyi bwaberaga mu duce bari batuyemo. Ku itariki ya 13 Mata 1994 cyangwa hafi y'iyo tariki, Laurent Semanza yayoboye igitero

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> cyagabwe ku bantu bahungiye ku kiriziya y'i Musha, kandi icyo gihe na we ubwe yakoze ubwicanyi.

164. Igika cya 3.18 cy'Inyandiko y'ibirego kigira kiti:

> Ku itariki ya 13 Mata 1994 cyangwa hafi y'iyo tariki, muri Segiteri ya Musha muri Komini ya Gikoro, Laurent Semanza na Paul Bisengimana bahase ibibazo umugabo w'Umututsi wiswe C, bashaka ko ngo yabaha amakuru yerekeranye n'ibikorwa bya gisirikare by'Inkotanyi, cyangwa FPR. Muri icyo gihe bamuhataga ibibazo, FPR yasatiraga Komini ya Gikoro n'iya Bicumbi. Ubwo Laurent Semanza na Paul Bisengimana bahataga uwo muntu ibibazo, buri wese yamuciye ukuboko maze aza gupfa azize ibyo bikomere. Laurent Semanza yari agamije ko ibikorwa bivugwa muri iki gika bifatwa nk'iby'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR nk'uko bivugwa mu duka 3.4.2 na 3.4.3.

1. Ibivugwa

165. Umutangabuhamya ushinja wiswe VA yavuze ko yahungiye ku kiriziya y'i Musha kuva ku itariki ya 7 kugeza ku ya 13 Mata 1994[258]. VA yasobanuye ko impunzi zari mu mazu atandatu yose yari agize ikigo cy'iyo paruwasi[259].

166. VA yavuze ko yabonye Uregwa, kandi yaramwerekanye mu cyumba cy'iburanisha[260], hamwe na Bisengimana, Rugambarara, Rwabukumba, na Rwakayigamba baza kuri paruwasi ku itariki ya 9 Mata 1994 hagati ya saa tanu na saa sita z'amanywa[261]. VA yavuze ko Uregwa ari we wari uyoboye iryo tsinda ry'abantu[262]. VA ntibyamugoye na gato kumenya Uregwa kubera ko yibukaga neza ko yari yaramubonye ayoboye mitingi ya MRND mu wa 1992, icyo gihe Abatutsi bakaba barafashwe bagakururwa hasi mu byondo[263]. VA yavuze ko Uregwa, hamwe n'abantu bari bazanye kuri

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[258] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 52, 104.

[259] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 57.

[260] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 92.

[261] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 57-58, 105.

[262] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 58.

[263] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 97, 98.

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paruwasi, bakoranye inama na padiri mukuru na zimwe mu mpunzi[264]. VA yavuze ko nyuma y'iyo nama yumvise Uregwa abwira Bisengimana ko kiriziya igomba gutwikwa kugira ngo impunzi zirimo zitikiriremo[265]. VA yavuze ko Bisengimana atakiriye neza icyo gitekerezo cyo gutwika kiriziya, ko ahubwo yatanze icyo kuzicisha inzara[266]. VA yavuze ko yabonye Interahamwe zicunga impunzi ku itariki ya 11 n'iya 12 Mata 1994 kugira ngo zitava aho zibacika[267].

167. VA yavuze ko ku itariki ya 13 Mata 1994 saa kumi n'imwe za mu gitondo, Interahamwe, zari zaraye inyuma ya kiriziya, zarashe ku Batutsi bari bahungiye mu kiriziya[268]. VA yavuze ko yashoboraga kubona abagabye igitero arebeye mu idirishya rya kiriziya[269]. Yavuze ko Interahamwe zakomeje kurasa kugeza saa ine za mu gitondo, ko ariko zitabashije gufungura kiriziya, ari yo mpamvu zagiye i Bicumbi kureba Uregwa[270].

168. VA yavuze ko Uregwa ari kumwe n'Interahamwe zari zitwaje intwaro gakondo zageze aho hantu nyuma ya saa ine za mu gitondo bari mu modoka yo mu bwoko bwa Toyota yari iya Komini ya Bicumbi, ko kandi bari baherekejwe n'imodoka eshatu zari zitwaye abaporisi ba komini n'abasirikare bari bitwaje imbunda n'amagerenade[271]. Nyuma, VA yaje gusobanura ko mu by'ukuri yabonye imodoka eshatu zose hamwe : imodoka yo mu bwoko bwa Toyota yari iya Komini ya Komini ya Bicumbi, ari na yo Uregwa yajemo; imodoka yari yavuye muri Komini ya Gikoro yari itwawe na Manda, ikaba yari itwaye lisansi n'Interahamwe; n'imodoka yo mu bwoko bwa Toyota yari itwawe na Rugambarara, ikaba yarimo abasirikare n'abaporisi ba komini[272].

169. VA yavuze ko Interahamwe, abaporisi ba komini, n'abasirikare bari hagati ya 30 na 40 bagabye igitero mu kiriziya bakarasamo amasasu bagateramo n'amagerenade,

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[264] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 60.

[265] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 60, 118-119.

[266] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 61.

[267] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 69, 70.

[268] Inyandikomvugo z'iburanisha, 7 Werurwe 2001, imp. 72, 73; 8 Werurwe 2001, imp. 18, 19.

[269] Inyandikomvugo y'iburanisha, 8 Werurwe 2001, urup. 18.

[270] Inyandikomvugo z'iburanisha, 7 Werurwe 2001, imp. 72, 73; 8 Werurwe 2001, urup. 19.

[271] Inyandikomvugo z'iburanisha, 7 Werurwe 2001, imp. 73, 74, 75, 124; 8 Werurwe 2001, urup. 20.

[272] Inyandikomvugo y'iburanisha, 8 Werurwe 2001, urup. 19.

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maze akahakomerekera hamwe n'abandi bantu barimo[273]. VA yavuze igitero cyagabwe ku kiriziya cyari kiyobowe n'Uregwa[274]. VA yavuze kandi ko Manda na Twagerayezu buriye ku gisenge cya kiriziya maze bakamenaho lisansi, ari na yo yatwitse umusore ku gice cyo hasi cy'umubiri[275]. VA yavuze ko abasirikare n'Interahamwe barashe igisasu cyacukuye umwenge mu rukuta, maze Interahamwe zikinjira mu kiriziya zigakingura umuryango wayo[276]. VA yavuze ko Uregwa, Bisengimana, na Rugambarara bahise binjira mu kiriziya, maze Uregwa agasaba impunzi kwerekana Rusanganwa, wari umwarimu wo mu bwoko bw'Abatutsi akaba yari n'« umuntu ukomeye » muri Komini ya Gikoro[277]. VA yavuze ko Rusanganwa yahise asohoka aho yari yihishe kubera ko nta handi yari kujya[278].

170. VA yavuze ko Rusanganwa yasabwe guhagaraga ku muryango wa kiriziya, maze Uregwa aramubaza ngo Inkotanyi zizagera hano ryari[279]. Rusanganwa yarasubije ati « Sindi Imana, sinzi umunsi n'isaha »[280]. VA yavuze ko Uregwa yahise afata umupanga, awatse Interahamwe yitwa Hategeka yari kumwe na we, maze agatema Rusanganwa akaguru n'akaboko[281]. Nyuma, Bisengimana na we yafashe umupanga

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[273] Inyandikomvugo z'iburanisha, 7 Werurwe 2001, imp. 75, 84; 8 Werurwe 2001, imp. 17-20, 23, 31, 43, 56-57.

[274] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 81-82.

[275] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 75-76.

[276] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 76.

[277] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 76, 80-81. Mu nyandikomvugo y'iburanisha iri mu cyongereza, handitse Lusanganwa bishaka kuvuga Rusanganwa muri icyo kiganiro. Urugereko rumaze gusuzuma inyandiko yahinduwe mu gifaransa ivanywe mu kinyarwanda, inyandikomvugo y'ubuhamya bwatanzwe mbere n'umutangabuhmaya iri mu gifaransa, n'ibyo abandi batangabuhamya bemeje ko uwo muntu yitwaga Rusanganwa kandi ibyo hakaba ntawabivuguruje, rusanze kuba iryo zina mu nyandiko y'icyongereza ryanditse ko ari Lusanganwa ari ikosa ridakomeye haba mu rwego rwo guhindura mu rundi rurimi cyangwa se mu rwo kwandukura.

[278] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 77.

[279] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 77.

[280] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 77.

[281] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 77, 78, 79. Urugereko rusanga mu nyandikomvugo iri mu cyongereza handitse ko Porokireri yakoresheje inshinga y'icyongereza *« to cut off »* bishaka kuvuga ko Uregwa « yaciye » Rusanganwa amaguru n'amaboko. Hakurikijwe iyo nyandikomvugo, VA na we yaba yarakoresheje ijambo « guca » (« *to cut off* » mu cyongereza) kandi yari yabanje gukoresha « gutema » (*« couper»* mu gifaransa*)*. Nyamara, mu nyandikomvugo y'iburanisha iri mu gifaransa ho handitse muri

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maze atema Rusanganwa ukuboko n'ukuguru byari byasigaye[282]. Interahamwe zashyize umurambo wa Rusanganwa mu modoka zijya kuwujugunya ahantu zajugunyaga indi mirambo[283]. VA yavuze ko atigeze yongera kubona Rusanganwa[284].

171. Mu gihe cy'ibaza rinyomoza, Ubwunganizi bwavuze ko VA yabwiye abapererezi ko Uregwa hamwe na Bisengimana baje ku kiriziya ku itariki ya 10 Mata 1994 babaririza Rusanganwa[285]. VA yasubije ko yari yitiranyije amatariki, maze asobanura neza ko atigeze abona abo bagabo bombi ku itariki ya 10 Mata 1994[286]. Ubwunganizi bwavuze kandi ko muri iyo nyandikomvugo y'ubuhamya VA yatanze mbere, yavuze ko Uregwa yaciye Rusanganwa amaboko gusa[287]. VA yasobanuye ko yabwiye abapererezi ko Rusanganwa yaciwe n'amaguru, ko rero niba ayo makuru atari mu nyandikomvugo byaba bikomoka ku makosa y'abapererezi cyangwa ku mpamvu y'uko batumvise neza ibyo yababwiye[288].

172. VA yavuze ko Rusanganwa amaze gutemwa, Uregwa yategetse abana gusohoka mu kiriziya[289]. VA yasobanuye ko abo bana bamaze kugera hanze ya kiriziya, ab'Abahutu batandukanyijwe n'ab'Abatutsi, maze abana b'Abatutsi bakicishwa amasasu n'amagerenade[290].

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rusange inshinga « *couper*» bishaka kuvuga « gutema »; inshuro imwe gusa niho hakoreshejwe inshinga « *amputer* » mu gifaransa bishaka kuvuga « guca ». Hagamijwe gusobanura neza inyuranya iryo ari ryo ryose, Urugereko rwasuzumye ibikubiye kuri kaseti yafatiweho amajwi mu gihe cy'iburanisha. Iryo fatwa ry'amajwi rigaragaza neza ko byaba ibyavuzwe n'umutangabuhamya mu kinyarwanda, byaba n'ibyavuzwe n'umusemuzi w'ikinyarwanda, bose bagiye bakoresha inshinga y'ikinyarwanda « gutema », ikaba ari yo ihuje n'inshinga y'icyongereza *« to cut »* cyangwa n'iy'igifaransa *« couper »*.

[282] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 79.

[283] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 80-81.

[284] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 80-81.

[285] Inyandikomvugo y'iburanisha, 8 Werurwe 2001, urup. 11.

[286] Inyandikomvugo y'iburanisha, 8 Werurwe 2001, imp. 11, 12.

[287] Inyandikomvugo y'iburanisha, 8 Werurwe 2001, urup. 45.

[288] Inyandikomvugo y'iburanisha, 8 Werurwe 2001, imp. 48-49.

[289] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 81-82.

[290] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 82.

173. VA yavuze ko yabonye « ibintu byose » kubera ko yari atwikiriwe n'imirambo[291]. VA yavuze ko ubwo abagabye ibitero bazaga gupakira imirambo mu modoka, babonye atarapfa maze bakamukubita inyundo mu mutwe kandi bakamwambika ubusa[292]. Nyuma yaho bamujugunye mu mwobo wari wuzuyemo imirambo maze aza kuwuvamo aracika[293].

174. Umutangabuhamya ushinja wiswe VM, akaba ari Umuhutu, yavuze ko ku itariki ya 7 Mata 1994 yahungiye ku kiriziya y'i Musha ubwo ubwicanyi bwatangiraga muri Komini ya Bicumbi[294]. VM yavuze ko hari n'abandi Bahutu bahungiye kuri iyo kiriziya[295]. VM yavuze ko ku munsi ukurikira uwo yagereyeho ku kiriziya, Uregwa, yerekanye mu cyumba cy'iburanisha, yahaje ari kumwe na Bisengimana, Rugambarara, n'abaporisi ba komini[296]. VM yahamije ko yiboneye Uregwa ku kiriziya y'i Musha, kutamumenya akaba ari ikintu « kitashobokaga» bitewe n'uko igihe Uregwa yari burugumesitiri bamwerekaga abanyeshuri bose muri komini[297]. VM yavuze ko Uregwa yasaga nk'aho ari we uyoboye iryo tsinda bari kumwe kubera ko yarimo atanga amabwiriza[298] . VM yavuze ko Uregwa yarimo yandika, akaba yaraketse ko yandikaga amazina y'impunzi bashakaga by'umwihariko[299].

175. VM yavuze ko hashize igihe kiri hagati y'iminsi ine n'itandatu ageze ku kiriziya, haje imodoka rimwe mu gitondo zari zuzuyemo Interahamwe, abasirikare n'abaporisi ba komini[300]. VM yavuze ko anyujije amaso mu mwenge wari mu rukuta rwa kiriziya, yabonye Uregwa atwaye Interahamwe mu modoka ye y'ikigina, yajyaga amubonamo na mbere[301]. Nyuma, VM yasobanuye ko mu by'ukuri Interahamwe zitaje mu modoka

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[291] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 85.

[292] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 85.

[293] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 85.

[294] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 80, 81.

[295] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 83.

[296] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 88-90, 101.

[297] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 46-47.

[298] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 91.

[299] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 90.

[300] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 92, 137-138.

[301] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 134.

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y'Uregwa, ko ahubwo zaje zimukurikiye ziri mu zindi modoka[302]. VM yavuze kandi ko n'abasirikare bari bitwaje intwaro baje bakurikiye Uregwa[303]. VM yavuze ko mu Nterahamwe zari aho hantu yashoboye kumenyamo ebyiri, ari zo Mugabo na Manda[304]. VM yavuze kandi ko yabonye na Bisengimana[305], kandi ko igitero cyari kiyobowe n'Uregwa[306]. Yavuze ko yamenye Uregwa nk'umuntu wabaye burugumesitiri kandi ko yamubonye atanga amabwiriza, harimo n'ayo kurasa abaturage[307].

176. VM yasobanuye ko Uregwa, Interahamwe, abaporisi ba komini, n'abasirikare bagiye ku kigo cya paruwasi maze bagasaba impunzi gufungura umuryango wa kiriziya[308], ariko zikanga[309]. VM yavuze ko abagabye igitero babanje kurasa amasasu no gutera amagerenade banyujie mu mwenge bari babomoye mu rukuta rwa kiriziya, hanyuma bakarasa mu rugi rwa kiriziya bakinjira[310].

177. VM yavuze ko abagabye igitero bamaze kwinjira mu kiriziya, butse abarimo inabi bababwira ko udasohokamo wese bamurasa[311]. VM yavuze ko we n'abandi basohotse mu kiriziya, ko ariko hari abandi bantu basigayemo[312]. VM yavuze ko amaze gusohoka mu kiziya yumvise induru ivugiramo kimwe n'urusaku rw'ibintu byaturikaga n'urw'amasasu[313]. VM yavuze ko atibuka neza niba Uregwa ari mu bagabye igitero binjiye mu kiriziya kubera ko iyo kiriziya yari nini cyane kandi akaba ari mu basohowemo[314].

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[302] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 137.
[303] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 138.
[304] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 98.
[305] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 99.
[306] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 92.
[307] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 99, 144.
[308] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 92-93.
[309] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 93.
[310] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 93, 142.
[311] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 93.
[312] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 93.
[313] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 97.
[314] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 144.

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178. VM yavuze ko ubwo bari hanze ya kiriziya, Uregwa yasabye Abahutu kwivangura n'izindi mpunzi ko kandi yababwiye ko nta cyo bazaba[315]. VM yasobanuye ko yavuze ko ari Umuhutu maze umusirikare akamuhata ibibazo[316]. VM yavuze ko impunzi zavuze ako zari Abahutu zashyizwe ku murongo, maze Uregwa agategeka abagabye igitero kwirara mu mpunzi z'Abatutsi bakazica[317]. VM yavuze ko Uregwa yategetse kandi ko impunzi z'Abatutsi yavumbuye mu itsinda ry'Abahutu zicwa[318]. Hakurikijwe amabwiriza y'Uregwa, abasirikare n'Interahamwe bishe impunzi z'Abatutsi bakoresheje imipanga n'imbunda[319]. VM yavuze ko icyo gitero cyahitanye abantu benshi[320]. VM yavuze ko atigeze abona Uregwa arasa cyangwa atema umuntu uwo ari we wese[321].

179. Ubwo umutangabuhamya ushinja wiswe VD yari amaze gusomerwa inyandikomvugo y'ubuhamya yatanze mbere, yavuze ko yabonye Uregwa, na Bisengimana ku itariki ya 13 Mata 1994 hagati ya saa moya n'igice na saa mbiri za mu gitondo ku biro bya Segiteri ya Musha, bari kumwe n'abaturage bo mu maserire anyuranye y'iyo segiteri[322]. VD yavuze ko Uregwa, yerekanye mu cyumba cy'iburansiha, hamwe na Bisengimana bari bazengurutse Segiteri ya Musha mu modoka y'umweru yo mu bwoko bwa Hilux bashaka abantu bari barahaye intwaro, kugira ngo bajye ku kiriziya y'i Musha[323]. VD yavuze kandi ko nyuma umuntu witwa Micoyabgagabo, wari mu bagabye igitero ku kiriziya y'i Musha, yamubwiye ubwo bari mu kabari ko igitero cyagabwe ku Batutsi cyagize icyo kigeraho kubera Interahamwe zazanywe n'Uregwa[324].

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[315] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 93.

[316] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 93.

[317] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 94-95.

[318] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, urup. 95.

[319] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 95-96; Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 15, 46.

[320] Inyandikomvugo y'iburanisha, 7 Werurwe 2001, urup. 18.

[321] Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 144-145.

[322] Inyandikomvugo y'iburanisha, 14 Werurwe 2001, imp. 46-49.

[323] Inyandikomvugo y'iburanisha, 14 Werurwe 2001, imp. 17, 48, 49.

[324] Inyandikomvugo y'iburanisha, 14 Werurwe 2001, imp. 11, 12.

180. Umutangabuhamya ushinja wiswe VV yavuze ko umunsi umwe muri Mata 1994 mu masaa ine za mu gitondo, yabonye Uregwa, Bisengimana, na Rugambage bari imbere y'inzu yari yihishemo muri Segiteri ya Nzige[325]. VV yavuze ko yabonye Uregwa, hamwe na Bisengimana bari mu ivatiri y'ikijuju[326]. VV yavuze ko Major Rugambage yaje kubonana n'abo bagabo bombi ari kumwe n'abasirikare[327]. VV yavuze ko muri abo basirikare bazanye na Majoro Rugamabage mu modoka ye, yamenyemo batatu bari abajepe, kubera iniforume zabo[328]. VV yavuze ko igihe abo bagabo barimo kuganira hari abantu benshi babakikije kandi ko yumvise Uregwa abwira iyo mbaga y'abantu ibirebana no kwica no gusambanya ku gahato[329]. VV yasobanuye ko ubwo Uregwa yari amaze kuvuga ijambo, Bisengimana na Rugambage bagiye ku kiriziya y'i Musha, ko kandi yashoboraga kubona umwotsi wahaturukaga no kumva urusaku rw'ibintu byahaturikiraga[330].

181. Umupererezi wo mu Biro bya Porokireri witwa Pierre Duclos yavuze ko ubwo yajyaga ku kiriziya y'i Musha mu wa 1997, yabonye imyenge mu nzugi za kiriziya, no ku gisenge aho ibyuma by'imishoro byari byarapindamishijwe n'ibintu byatewe n'abantu bari hanze ya kiriziya kandi ko yahabonye n'ibyasha abantu bamubwiye ko byari iby'amaraso yumye[331].

182. Uregwa yahakanye ibivugwa ko yageze ku kiriziya y'i Musha hagati y'itariki ya 7 n'iya 13 Mata 1994[332]. Yavuze ko kujya aho hantu ari ikintu kitashobokaga, ko kandi icyo gihe kivugwa yari ari iwe mu rugo i Gahengeri cyangwa se yari yaravuye muri ako karere[333].

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[325] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 7, 14, 19, 53-54.

[326] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 16, 20-21.

[327] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, urup. 21.

[328] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, urup. 18.

[329] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 8-9. Reba kandi mu Cyiciro cya IV.F cy'iyi Nyandiko y'urubanza.

[330] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, urup. 9.

[331] Inyandikomvugo y'iburanisha, 16 Ukwakira 2000, imp. 78, 79.

[332] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, urup. 130; 28 Gashyantare 2002, imp. 74-77.

[333] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, urup. 130; 28 Gashyantare 2002, imp. 74-77. Reba kandi mu Cyiciro III.G.2-6 cy'iyi Nyandiko y'urubanza.

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183. Umutangabuhamya ushinjura wiswe BZ, wari kaporari muri jandarumori, yavuze ko yari muri konje muri Gikoro igihe ibivugwa byabaga i Musha hagati y'itariki ya 10 n'iya 14 Mata 1994[334]. BZ yavuze ko umusore witwa Rugamba yarashe ku bantu bari ku irondo rya ninjoro maze agahungira ku kiriziya y'i Musha[335]. BZ avuga ko abari kuri iryo rondo bagiye ku kiriziya maze bakahasanga abantu benshi, barimo n'abayobozi ba FPR muri Gikoro[336]. BZ yavuze ko abo bantu bari ku irondo bagiye gutabaza abajandarume bari ku biro bya komini, n'abasirikare bari baravuye ku rugamba i Byumba aho barwanaga n'Inkotanyi[337].

184. BZ yavuze ko yari ku biro bya komini igihe abajandarume ba mbere bagarukaga bavuye ku kiriziya y'I Musha[338]. BZ yavuze ko ku kiriziya hari hagiye agace kamwe k'abasirikare n'ak'abajandarume, kandi ko impunzi zabateye gerenade imwe[339]. BZ yavuze ko abasirikare n'abajandarume bagarutse ku biro bya komini gushaka abantu bo kubatiza umurindi, we akaba yaragiye ku kiriziya y'i Musha muri iryo tsinda rya kabiri[340].

185. BZ yavuze ko ku biro bya komini hari abajandarume nka cumi n'umwe, naho ko abasirikare bari baravuye i Byumba babarirwaga hagati ya mirongo ine na mirongo itanu[341]. BZ yavuze ko abasirikare n'abajandarume bagiye ku kiriziya n'amaguru, kandi ko yahabonye imodoka imwe gusa yari iy'ababikira[342]. Bz yavuze ko nta bategetsi ba gisiviri yigeze abona hanze ya kiriziya[343]. Yavuze ko yibuka ko aho hanze ya kiriziya yahabonye Interahamwe, zari hamwe n'umuyobozi wazo Jean Claude Mukwiye[344].

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[334] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 13, 43, 55.
[335] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 12, 29.
[336] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 12-14.
[337] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 15-16.
[338] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 46.
[339] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 46.
[340] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 46-47.
[341] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 27.
[342] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 26.
[343] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 22.
[344] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 22.

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186. BZ yavuze ko ubwo abajandarume n'abasirikare bageraga ku kiriziya, basabye abantu barimo imbere gukingura ariko bakanga[345]. BZ yavuze ko uwitwa Muteyinkingi, wahoze ari umusirikare kandi akaba yari umuyoboke wa FPR yateye gerenade hanze ari imbere mu kiriziya, maze abajandarume n'abasirikare na bo bagatera amagerenade bakarasa n'ibisasu biremereye kugira ngo urugi rubashe gufunguka[346]. BZ yavuze ko abantu bakomeretse basohotse mu kiriziya maze bakivanga n'abasirikare[347]. BZ yavuze ko abasirikare bari bafite ubwoba kubera ko Inkotanyi zari muri ako gace, kandi ko barashe amasasu agahitana impunzi nyinshi[348].

187. BZ yavuze ko bamaze gufungura urugi ku ngufu, abajandarume basabye abasirikare kurobanura mu mpunzi abantu bari barashe amasasu ku bajandarume no ku basirikare cyangwa abari bafite amagerenade[349]. BZ yavuze ko abasirikare babwiye abajandarume bati nimutureke dukore « akazi » twenyine, kubera ko bari bamenyereye Inkotanyi kurushaho[350]. BZ yavuze ko « akazi» abo basirikare bavugaga kari « ukurasa abo bantu, kubera ko bavugaga ngo ni Inkotanyi»[351].

188. BZ yavuze ko ku kiriziya y'i Musha habaye ubwicanyi bworetse imbaga kandi ko bwaguyemo abasiviri b'Abatutsi[352]. Nyuma, BZ yongeyeho ko mu bahitanywe n'ubwo bwicanyi harimo Abatutsi n'Abahutu[353]. BZ yavuze ko nta muntu n'umwe yigeze abona aca amaboko cyangwa amaguru impunzi iyo ari yo yose[354]. BZ yavuze ko atari umwe mu bagabye igitero ku kiriziya y'i Musha, ngo kuko atari muri jandarumori ya Rwamagana[355]. BZ yavuze ko nyuma y'igitero, yagiye kureba Bisengimana wari Burugumesitiri rwa Komini ya Gikoro, wari iwe mu rugo arwaye,

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[345] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 15.
[346] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 12-13, 15.
[347] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 15.
[348] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 15.
[349] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 17.
[350] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 17.
[351] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 17.
[352] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 79-80.
[353] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 92.
[354] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 26.
[355] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 56, 58.

maze akamumenyesha ibyabaye[356]. BZ yavuze ko atigeze abona Uregwa muri icyo gihe ibivugwa byababaga[357].

189. Umutangabuhamya ushinjura wiswe MBZ yavuze ko amakuru afite ku byabereye ku kiriziya y'i Musha ari ayo « yumvanye abandi bantu »[358]. Yavuze ko yabonye abantu bahungira ku kiriziya y'i Musha baturuka mu majyaruguru yayo maze agakeka ko bahungaga imirwano hagati y'ingabo za Leta n'iza FPR yaberaga mu gace baturukagamo[359]. MBZ yavuze ko abantu bamwe mu mpunzi bari bitwaje intwaro kandi ko abaporisi ba komini bagiye ku kiriziya kuzibambura, ariko ntiyasobanuye umunsi ibyo byabereyeho[360]. MBZ yavuze ko impunzi zarashe amasasu ku baporisi ba komini, maze bakajya gutabaza abashinzwe umutekano[361]. MBZ yavuze ko abashinzwe umutekano bakinguye imiryango ya kiriziya bakagerageza kwambura intwaro impunzi, bikaba byaratumye haba imirwano yakomerekeyemo abantu abandi bakayigwamo[362]. N'ubwo MBZ yavuze ko atamenye ubwoko bw'impunzi zari aho ku kiriziya y'i Musha, yumva ariko abahaguye n'abahakomerekeye barimo abo mu bwoko bwombi, Abahutu n'Abatutsi[363]. MBZ yavuze ko atigeze yumva hari uvuga ko Uregwa yari ku kiriziya muri icyo gihe cy'igitero; yumvise abantu bavuga ko nta mutegetsi n'umwe wari uhari[364].

190. Umutangabuhamya ushinjura wiswe BP yavuze ko yari nko muri metero mirongo inani uvuye ku kiriziya y'i Musha ubwo yabonaga abasirikare n'abasiviri ku kiriziya bica impunzi, byabonekaga ko zakomokaga « mu moko yose »[365]. BP yavuze kandi ko abasiviri nta ntwaro bari bitwaje kandi ko nta muntu n'umwe bigeze bica[366]. BP

[356] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 24, 25.
[357] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, imp. 8-9.
[358] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 12.
[359] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, imp. 12-15.
[360] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 13.
[361] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 13.
[362] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, imp. 13, 14.
[363] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, imp. 14, 15.
[364] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 16.
[365] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, imp. 110, 111, 112, 130.
[366] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 111.

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yavuze ko atigeze abona Uregwa muri icyo gitero, kandi yashoboye kumwerekana mu cyumba cy'iburanisha[367], cyangwa imodoka iyo ari yo yose aho ku kiriziya[368].

191. Umutangabuhamya ushinjura wiswe TDB yavuze ko ku itariki ya 13 Mata 1994 mu masaa ine cyangwa mu masaa tanu za mu gitondo, yumvise urusaku rw'amasasu rwakomokaga ku kiriziya y'i Musha kandi ko yabonye n'ibintu bihaturikira, byamaze nk'amasaha abiri[369]. TDB yavuze ko yagerageje kujya ku kiriziya kureba ibirimo kuhabera ariko abajandarume bakamutangira asigaje nka metero makumyabiri ngo ahagere[370]. Yavuze ko yabonye abajandarume, abaporisi ba komini, abantu bari bambariye «intambara», n'imirambo igera ku ijana, harimo n'iy'abajandarume babiri[371]. TDB yavuze ko nta Nterahamwe n'imwe yigeze abona aho hafi, ariko yemeye ko yabwiye abapererezi ko Interahamwe zari zaturutse i Kabuga zagabye igitero ku mpunzi zari ku kiriziya ngo kuko ariko byavugwaga n'abandi bantu[372].

192. Umutangabuhamya ushinjura wiswe MTP yavuze ko hashize nk'icyumweru Perezida apfuye, yumvise amagerenade aturika maze akava aho yakoreraga, ko ariko ageze mu nzira ataha yahagaze ku kiriziya kugira ngo areba ibyarimo kuba[373]. MTP yavuze ko abaporisi ba komini bari bagiye ku kiriziya y'i Musha kugenzura niba impunzi zari mu kiriziya zari zitwaje intwaro maze izo mpunzi zikabatera gerenade imwe[374]. MTP yavuze ko abaporisi bikubuye bakagenda maze bakagaruka ku maguru hamwe n'abaturage bo muri Gikoro n'abasirikare bari bavuye ku rugamba mu Mutara[375]. MTP yasobanuye neza ko mu gitero cya mbere atari ahari, ko yahageze nyuma abaporisi ba komini bamaze kubona abantu babatiza umurindi[376]. MTP yavuze ko yabonye impunzi zitangira kurasa no gutera amagerenade, n'abasirikare bihimura

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[367] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 105.

[368] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, imp. 112, 117.

[369] Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, urup. 58.

[370] Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, urup. 58.

[371] Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, imp. 58, 59, 63.

[372] Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, imp. 86-87, 89-90.

[373] Inyandikomvugo z'iburanisha, 24 Ukwakira 2001, imp. 24, 41; 25 Ukwakira 2001, imp. 11-12, 23.

[374] Inyandikomvugo y'iburanisha, 24 Ukwakira 2001, urup. 18.

[375] Inyandikomvugo y'iburanisha, 24 Ukwakira 2001, imp. 18, 28.

[376] Inyandikomvugo z'iburanisha, 24 Ukwakira 2001, urup. 23; 25 Ukwakira 2001, urup. 25.

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bazirasaho[377]. Imirwano itangiye yarahunze[378]. MTP yavuze ko atazi umubare w'abantu bapfuye, ko ariko yabonye imirambo y'abasirikare babiri n'iy'abaporisi ba komini babiri mbere yo guhunga ava ku kiriziya[379]. MTP yavuze ko aho ku kiriziya atigeze ahabona Uregwa, Bisengimana, na Rugambarara, kandi ko yari asanzwe abazi[380]. Yavuze ko Umututsi witwa Mukwiye, wari umuyobozi w'Interahamwe muri Komini ya Gikoro, ari we muntu ukomeye wenyine yabonye aho hantu[381].

193. Umutangabuhamya w'impuguke witwa Ndengejeho, wahamagajwe n'Ubwunganizi, yavuze ko azi neza ibyabereye ku kiriziya y'i Musha, ariko wabonaga abitangaho ubuhamya atifitiye icyizere kubera ko atari ahari[382]. Ndengejeho yavuze ko Rusanganwa yari umuyoboke wa MDR akaba yari n'umuyobozi w'ikigo cy'amashuri muri Gikoro[383]. Ndengejeho yavuze ko atazi neza irengero rya Rusanganwa, ariko ko akurikije ibyo azi Uregwa atari i Musha icyo gihe, bityo bikaba bidashoboka ko yaba yarakoreye Rusanganwa ibikorwa by'ubugizi bwa nabi[384]. Na none, Ndengejeho yavuze ko Uregwa atashoboraga kuva i Gahengeri muri Bicumbi ngo ajye i Gikoro nyuma y'itariki ya 7 Mata 1994 kubera ko FPR yafashe Komini ya Gikoro mu mugoroba wo ku itariki ya 6 Mata 1994[385]. Ndengejeho yavuze kandi ko yumva Uregwa ntaho yari kuba ahuriye n'ibyabereye muri Komini ya Gikoro kubera ko yari komini itandukanye n'iya Bicumbi[386].

2. *Umwanzuro w'Urugereko*

a. Ubwicanyi bwo ku kiriziya y'i Musha

[377] Inyandikomvugo y'iburanisha, 24 Ukwakira 2001, imp. 18-19.
[378] Inyandikomvugo z'iburanisha, 24 Ukwakira 2001, urup. 23; 25 Ukwakira 2001, urup. 25.
[379] Inyandikomvugo y'iburanisha, 24 Ukwakira 2001, urup. 20.
[380] Inyandikomvugo y'iburanisha, 24 Ukwakira 2001, imp. 23, 24.
[381] Inyandikomvugo y'iburanisha, 24 Ukwakira 2001, imp. 23, 24.
[382] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, urup. 130.
[383] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 107, 108.
[384] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 107-110.
[385] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 110-113.
[386] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 80, 81.

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194. Ubuhamya bwatanzwe bugaragaza ko ku kiriziya y'i Musha hahungiye abasiviri benshi cyane kuva ku itariki 7 Mata 1994 kandi ko izo mpunzi ziciwe aho ku kiriziya ku itariki ya 13 Mata 1994.

195. Urugereko rusanga abatangabuhamya biswe VA na VM baratanze amakuru y'ibyo bahagazeho avuga ko babonye Uregwa mu bantu bakoze ubwicanyi ku kiriziya y'i Musha. Abo batangabuhamya bombi batanze amakuru ahuye kandi atavuguruzanya ku birebana n'ukuntu igitero cyatangiye. Urugereko rumaze gusuzumana ubwitonzi ubuhamya bwabo, rusanga abo batangabuhamya bombi ari abo kwizerwa kandi rwemeye amakuru arambuye atagira amakemwa batanga. Urugereko ruzirikana utuntu tunyuranye mu makuru batanga, ariko rusanga ari utuntu tutari ingenzi kandi byumvikana ko twatewe n'igihe gishize ibivugwa bibaye, akaduruvayo kari mu gitero cyagabwe n'abantu bitwaje intwaro, n'ahantu hanyuranye abatangabuhamya babaga bari ubwo babonaga ibikorwa by'ubugizi bwa nabi.

196. Urugereko rushingiye ku makuru yatanzwe na VA na VM, rusanga Uregwa, Paul Bisengimana, n'abandi bantu baragiye ku kiriziya y'i Musha ku itariki ya 8 cyangwa iya 9 Mata 1994 kugira ngo barebe uko ibintu byifashe nyuma gato impunzi zitangiye kuhagera. Icyo gihe, Uregwa yagaragaje umugambi yari afite wo kwica impunzi. Uregwa, Bisengimana, n'abandi bantu basubiye ku kiriziya bari kumwe n'Interahamwe, abasirikare, n'abajandarume ku itariki ya 13 Mata 1994 ku gasusuruko. Abo bagabye igitero bahise barasa n'imbunda banatera amagerenade ku mpuzi zari mu kiriziya. Abagabye igitero bamaze gushobora kwinjira mu kiriziya, bategetse impunzi gusohokamo kandi hari nyinshi zabumviye. Impunzi zimaze gusohoka mu kiriziya, Uregwa yategetse iz'Abahutu kwitandukanya n'iz'Abatutsi. Abatutsi bahise bicwa hakurikijwe amabwiriza y'Uregwa, kandi ubwo bwicanyi VM yabubonye yegereye aho bwakorewe. Mu gihe Abatutsi bari hanze ya kiriziya barimo bavangurwa, banicwa, abagabye igitero bakomeje kwivuna abari basigaye mu kiriziya.

197. Ubuhamya bwatanzwe n'abatangabuhamya bashinja biswe VD na VV, hamwe n'ubwatanzwe na Duclos bushyigikira kuri byinshi ubwa VA na VM biboneye ibyabaye. VD yabonye Uregwa hamwe na Bisengimana bakoranya Interahamwe muri Segiteri ya Musha ku itariki ya 13 Mata 1994 mu gitondo. VV yabonye Uregwa ari

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kumwe na Bisengimana, Interahamwe, n'abasirikare berekeza ku kiriziya y'i Musha maze nyuma abona umwotsi uhakomoka kandi yumva urusaku rw'ibintu byahaturikiraga. Duclos yavuze ko yabonye ibyuma by'inzugi n'ibyari bigize igisenge bya kiriziya byaratobaguritse, bikaba byarabonekaga ko byatobowe n'amasasu yarashwe mu kiriziya n'abantu bari hanze yayo. Urugereko rusanga ibyo bice by'ubuhamya bwa VD, VV na Duclos byakwizerwa, bityo rukaba rubwemeye.

198. Hari ibintu by'ingenzi Uregwa atavugaho rumwe n'abatangabuhamya bashinjura biswe BZ, MBZ, BP, TDB, na MTP, ibyo bikaba ari ukumenya niba Uregwa cyangwa Interahamwe yari ayoboye baragiye mu gitero no kumenya niba impunzi zari zitwaje intwaro cyangwa niba abacengezi ba FPR ari bo bakoze ibikorwa byo gusembura.

199. Urugereko rusanga BZ atari umutangabuhamya wo kwizerwa, bityo rukaba rutemera amakuru yatanze avuga ko abagabye igitero basembuwe cyangwa arebana n'abantu bari aho ku kiriziya y'i Musha. Urugereko ruributsa ko BZ yavuze ko nta wundi mutangabuhamya ushinjura azi waje mu Rukiko gutanga ubuhamya muri uru rubanza[387]. Nyamara ariko, umutangabuhamya wiswe MBZ, ari na we wakurikiyeho mu gutanga ubuhamya, yavuze ko ari umugore wa BZ kandi ko kuza gutanga ubuhamya mu Rukiko bombi bari babiziranyeho[388]. Urugereko rusanga kandi bitumvikana ukuntu BZ wari umujandarume yashoboraga kuguma muri konje mu gihe cy'imvururu zo muri Mata 1994, hanyuma kandi agaherekeza abandi bajandarume n'abasirikare ku kiriziya y'i Musha nta cyo abafashaho mu gitero.

200. Urugereko ruributsa ko MBZ yavuze ko amakuru yari afite ku birebana n'igitero cyagabwe ku kiriziya y'i Musha ari ayo «yumvanye abandi bantu ». Urugereko ruratsindagira ko MBZ hari aho yavuze ko nta na rimwe yigeze avugana n'umugabo we, ari we BZ, ibyabereye ku kiriziya y'i Musha[389], wari wamubanjirijeho umunsi umwe gutanga ubuhamya kandi avuga ko ibyabaye yabihagazeho[390]. Urugereko ntirushobora kugendera ku buhamya bwe buvuga ko bamwe mu mpunzi bari bitwaje

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[387] Inyandikomvugo y'iburanisha, 2 Ukwakira 2001, urup. 105.

[388] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 37.

[389] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 71.

[390] Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 71.

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intwaro cyangwa ko Uregwa atari aho hantu, kubera ko aho yakomoye amakuru atanga hadasobanutse neza kandi ukwizerwa kwayo kukaba gukemangwa.

201. Urugereko ruributsa ko ubwicanyi bwakorewe ku kiriziya y'i Musha BP yabubonye igice kandi ari muri metero mirongo inani z'aho hantu. Urugereko ntirwemera ibyo BP avuga ko Uregwa atari aho hantu mu gihe cy'igitero kubera ko aterekana ko yashoboraga kumenya abantu ari mu ntera ingana kuriya no kubera ko atakurikiranye ibyabaye muri icyo gitero byose.

202. Urugereko rwemera ubuhamya bwa TDB buvuga ko yumvise urusaku rw'amasasu n'amagerenade aturika mu gihe cy'amasaha abiri ku itariki 13 Mata 1994 mu gitondo, kubera ko rusanga buhura n'ubwatanzwe na VA na VM bahagaze ku byabaye. Ariko rero, Urugereko ntirushobora kwemera ibivugwa na TDB apapira gusa ko Interahamwe zitari muri icyo gitero, nyamara yiyemerera ko yageze aho hantu igitero cyarangiye.

203. MTP yatanze ubuhamya burambuye ku birebana n'imvo n'imvano y'igitero cyagabwe ku kiriziya y'i Musha. Urugereko ruributsa ko MTP yiyemereye ko atari aho hantu igitero gitangira, kandi ko atigeze yerekana aho yakomoye amakuru atanga. Bityo rero, Urugereko rusanga amakuru atanga y'ukuntu igitero cyatangiye atari ayo kwizerwa. MTP yavuze kandi ko igihe yari ku kiriziya yabonye impunzi zirasa amasasu ku basirikare, maze na bo bakazirasaho bihimura. Urugereko rusanga MTP, wari kumwe n'«imbaga y'abantu benshi»[391] yaramaze ku kiriziya akanya gato. Bityo, ubuhamya bwe ku birebana n'ukuntu abantu bamwe barashe n'imbunda maze abarashweho bakabishyura cyangwa ku birebana n'uko abantu runaka bari mu gitero atari ubwo kwizerwa.

204. Urugereko rwasuzumanye kandi ubwitonzi imyiregurire ya sinari mpari y'Uregwa, yasesenguwe hano hejuru mu Mutwe wa III, mu rwego rw'ibimenyetso byose byatanzwe birebana n'ibyabereye ku kiriziya y'i Musha. By'umwihariko, Urugereko ruributsa ko Uregwa yavuze ko yari mu mujyi wa Gitarama ku itariki ya 13 Mata 1994 igihe ubwicanyi bwatangiraga, ibyo bikaba byarashyigikiwe n'imutangabuhamya umwe gusa wiswe PFM, ariko ubuhamya bwe Urugereko rukaba

[391] Inyandikomvugo y'iburanisha, 24 Ukwakira 2001, urup. 20.

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rwarasanze bubogamye kubera umubano wa hafi hagati ye n'Uregwa. Urugereko ruratsindagira kandi ko n'iyo Uregwa haba hari ubwo yagiye i Gitarama nk'uko ibimenyetso bibyerekana, ubuhamya bwa TDB, wakoze urugendo ava muri Gikoro ajya mu Ruhango ho muri Gitarama ku itariki ya 13 Mata 1994, bushyigikira ko Uregwa yashobora gukora urugendo hagati y'aho hantu hombi muri icyo gihe.

205. Urugereko rusanga imyiregurire ya sinari mpari y'Uregwa nta cyo ivuguruzaho ubuhamya bwakwizerwa kandi bwakwemerwa bw'abantu bamubonye ku kiriziya y'i Musha ku itariki ya 8 cyangwa iya 9 Mata 1994 mu masaa sita z'amanywa. Urugereko ruributsa ko Uregwa, wavuze ko yari iwe mu rugo ku itariki ya 8 Mata 1994, mu by'ukuri ntawahamubonye kuva ku itariki ya 7 Mata 1994 mu gitondo cya kare kugeza ku ya 8 Mata 1994 saa kumi z'igicamunsi. Ubuhamya bwo kwizerwa kandi bwo kwemerwa bw'abatangabuhamya bavuga ko babonye Uregwa ku kiriziya y'i Musha ntibwakemangwa kubera gusa ibyo abatangabuhamya bashinjura biswe KNU na PFM bibwira ko Uregwa atigeze ava iwe mu rugo ku itariki ya 8 Mata 1994. Urugereko ruributsa kandi ko Uregwa yavuze ko yari ku biro bya komini i Nzige kugeza saa sita z'amanywa ku itariki ya 9 Mata 1994 ubwo yahavaga ajya mu Ruhango ho muri Gitarama, kandi urwo rugendo rukaba rwaramutwaye amasaha cumi n'abiri. Imyiregurire ya sinari mpari y'Uregwa ku birebana n'itariki ya 9 Mata 1994 na yo ntiyerekana ko atari ku kiriziya y'i Musha ku itariki ya 9 Mata 1994, kubera ko ibimenyetso byatanzwe byerekanye gusa ko yagumye ku biro bya komini kugeza mu masaa sita z'amanywa.

206. Urugereko rusanze rero nta gushidikanya abasirikare, abajandarume, n'Interahamwe bariciye abasiviri b'Abatutsi ku kiriziya y'i Musha ku itariki ya 13 Mata 1994, nk'uko bivugwa mu gika cya 3.11 cy'Inyandiko y'ibirego. Rumaze gusuzuma ibimenyetso byose birebana n'icyo kibazo, hakubiyemo n'imyiregurire ya sinari mpari, Urugereko rusanze nta gushidikanya Uregwa yaragize uruhare muri icyo gitero kubera ko yakoranyije Interahamwe ngo zikijyemo kandi akaba yarayoboye abagabye igitero kujya kwica impunzi z'Abatutsi, nk'uko bivugwa mu gika cya 3.11 cy'Inyandiko y'ibirego.

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207. Urugereko rusanze kandi Porokireri ataratanze ibimenyetso bihagije bihamya ko Uregwa yakoranye bya hafi na Bisengimana mu itegurwa ry'ubwicanyi bwakorewe ku kiriziya y'i Musha.

208. Urugereko rusanze kandi nta bimenyetso byakwizerwa byatanzwe bihamya ko mu kiriziya y'i Musha harimo impunzi zitwaje intwaro cyangwa abacengezi ba FPR cyangwa ko izo mpunzi ari zo zakomye imbarutso yatumye igitero cyo ku kiriziya y'i Musha kibaho kandi zikagihanganamo n'abakigabye.

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b. Gukorera uwiswe C ibikorwa by'iyicarubozo ku kiriziya y'i Musha no kumwica

209. Urugereko rusanze uwakorewe icyaha wiswe C ari umuntu witwa Rusanganwa kandi rubona ibikorwa by'iyicarubozo yakorewe akanicwa, nk'uko bivugwa mu gika cya 3.18 cy'Inyandiko y'ibirego, byarabereye ku kiriziya y'i Musha ku itariki ya 13 Mata 1994.

210. Nk'uko byasobanuwe haruguru, Urugereko rwamaze kwemeza ko Uregwa yari mu bwicanyi bwakorewe ku kiriziya y'i Musha ku itariki ya 13 Mata 1994. Ikibazo kiri aha ni icyo kumenya niba Porokireri yaratanze ibimenyetso bidashidikanywaho ko Uregwa yakoreye Rusanganwa ibikorwa by'iyicarubozo akanamwica mu gihe cy'ubwo bwicanyi.

211. Urugereko ruributsa ko umutangabuhamya ushinja wiswe VA ari we wenyine watanze ubuhamya kuri icyo gikorwa. VA yabanje kuvuga ko Uregwa yaciye Rusanganwa amaboko naho Bisengimana akamuca amaguru. Nyuma, Porokireri yabajije niba Uregwa yaraciye Rusanganwa akaboko kamwe cyangwa niba yaramuciya amaboko yombi. VA yasubije ko Uregwa yamuciye akaguru kamwe n'akaboka kamwe. Mu ibaza rinyomoza, Ubwunganizi bwavuze ko mu buhamya bwanditse VA yatanze mbere, yavuze ko Rusanganwa yaciwe amaboko gusa. Urugereko ruributsa ko uyu mutangabuhamya yavuze ko icyo cyuho cyatewe n'uko abapererezi bakiriye ubuhamya bwe bumvise nabi, ngo kubera ko yababwiye ko Rusanganwa yaciwe n'amaguru.

212. Urugereko rwemera ko ukwitiranya ibintu cyangwa ukuvuguruzanya bigaragara mu buhamya bwa VA atari ikintu cy'ingenzi kandi umuntu yakumva ko byaba byaratewe n'ihahamuka rikomoka kuri ibyo byabaye, uburyo yabajijwe, ni ukutumvikana hagati y'umutangabuhamya n'abapererezi. Ubuhamya bwe kuri icyo gikorwa burarambuye kandi burasobanutse neza, Urugereko rukaba rwemera ko uyu mutangabuhamya yumvise Uregwa abaza Rusanganwa aho FPR igeze ko kandi yabonye Uregwa amukubita umupanga.

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213. Bityo rero, Urugereko rusanze nta gushidikanya Uregwa yarakomerekeje bikomeye Rusanganwa kandi ku bushake, amaze kumuhata ibibazo ubwo bari ku kiriziya y'i Musha kandi rusanze Rusanganwa yarapfuye azize ibyo bikomere.

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C. Igika cya 3.12 cy'Inyandiko y'ibirego

214. Igika cya 3.12 cy'Inyandiko y'ibirego kigira kiti:

> Hagati y'itariki ya 7 n'iya 20 Mata 1994, Laurent Semanza yateguye kandi ashyira mu bikorwa ubwicanyi bwabereye ku gasozi ka Mwulire, muri Komini ya Bicumbi, aho abantu babarirwa mu bihumbi bari bahungiye ubwicanyi. Ku itariki ya 16 no ku ya 18 Mata 1994 cyangwa hafi y'ayo matariki, Laurent Semanza yayoboye igitero cyagabwe ku bantu bari bahungiye ku gasozi ka Mwulire, kandi icyo gihe na we ubwe yakoze ubwicanyi.

1. *Ibivugwa*

215. Umutangabuhamya ushinja wiswe VN yavuze ko ku itariki ya 7 Mata 1994 yatangiye kumva nta mutekano afite muri Segiteri ya Nzige maze agahungira ku gasozi ka Mwulire[392]. VN yavuze ko ku itariki ya 8 Mata 1994 aho hantu hari hamaze guhungira abantu barenga ibihumbi bitanu, abenshi muri bo ari Abatutsi, kandi ko bagabweho igitero[393]. Imirwano yatangiye saa munani z'amanywa irangira mu masaa kumi n'igice nta muntu n'umwe uyiguyemo ku mpande zombi zari zihanganye[394]. VN yavuze ko abagabye igitero barengaga ijana kandi ko bari bayobowe na François Rwabugibo, wari umuporisi wa Komini ya Bicumbi[395].

216. VN yavuze ko ibitero byakomeje ku itariki ya 9 Mata 1994, ko kandi ku itariki ya 10 Mata 1994 ku gasozi ka Mwulire hari hamaze kugera impunzi zirenga ibihumbi bitanu, zose zikaba zari zigizwe n'abasiviri[396]. VN yavuze ko ibitero byakomeje kugeza ku itariki ya 18 Mata 1994[397]. VN yavuze ko abagabye ibitero bari bitwaje imbunda n'amagerenade, ndetse n'intwaro gakondo, mu gihe bamwe mu mpunzi bari

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[392] Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, imp. 69-70.

[393] Inyandikomvugo z'iburanisha, 9 Ugushyingo 2000, imp. 71-72; 14 Ugushyingo 2000, imp. 17-18.

[394] Inyandikomvugo y'iburanisha, 14 Ugushyingo 2000, imp. 26, 27.

[395] Inyandikomvugo z'iburanisha, 9 Ugushyingo 2000, urup. 72; 14 Ugushyingo 2000, urup. 24.

[396] Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, imp. 75, 101, 106.

[397] Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, urup. 101.

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bafite intwaro gakondo zirimo amacumu, imyambi, inkoni, n'amabuye[398]. Ibyo bitero byagabwe ku gasozi ka Mwulire byahitanye abantu batandatu bo mu muryango wa VN[399].

217. VN yavuze ko Uregwa yaje ku gasozi ka Mwulire ku itariki ya 18 Mata 1994, umunsi hagabwaga igitero simusiga ku mpunzi[400]. VN yavuze ko Uregwa yazanye Interahamwe n'abasirikare hamwe n'ibikoresho byabo muri kamyoneti itukura yo mu bwoko bwa Toyota yari iy'ikigo cy'ishuri APEGA[401]. VN yavuze ko Interahamwe n'abasirikare bazanywe n'Uregwa baje biyongera ku bandi bantu bagabye igitero ku mpunzi[402]. VN yavuze ko Uregwa yagumye hafi y'imodoka ye ubwo yari amaze kuzana Interahamwe n'abasirikare[403]. VN yavuze ko atigeze abona Uregwa ajya mu mirwano[404]. Impunzi zagerageje kwirwanaho, ariko ku itariki ya 18 Mata 1994 zaraneshejwe burundu kubera ko abagabye ibitero bari bazanye intwaro « urebye ziremereye» hamwe n'abasirikare bo kubatiza umurindi[405]. VN yavuze ko ku itariki ya 19 n'iya 20 Mata 1994, abasirikare ba FPR baje maze bakajyana inkomere[406]. VN yavuze ko ku itariki ya 18 Mata 1994 abasirikare ba FPR bari bataragera muri Bicumbi, ko ariko bari i Gahini n'i Rukara, no ku isoko rya Kayonza muri Komini ya Kayonza[407].

218. Umutangabuhamya ushinja wiswe VP, akaba ari Umututsi kandi akaba yarerekanye Uregwa mu cyumba cy'iburanisha, yavuze ko yahungiye ku gasozi ka Mwulire guhera ku itariki ya 13 Mata 1994 nyuma ya saa sita[408]. Ubwo yageraga kuri ako gasozi, yahasanze abantu barenga ibihumbi bitanu bari bahahungiye, abenshi muri bo

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398 Inyandikomvugo z'iburanisha, 9 Ugushyingo 2000, imp. 102, 104; 14 Ugushyingo 2000, urup. 103.

399 Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, urup. 107.

400 Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, imp. 102, 104.

401 Inyandikomvugo z'iburanisha, 9 Ugushyingo 2000, imp. 104-106; 14 Ugushyingo 2000, imp. 60, 61.

402 Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, imp. 105, 106.

403 Inyandikomvugo z'iburanisha, 9 Ugushyingo 2000, urup. 105; 14 Ugushyingo 2000, imp. 61-62.

404 Inyandikomvugo y'iburanisha, 14 Ugushyingo 2000, urup. 61.

405 Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, urup. 104.

406 Inyandikomvugo z'iburanisha, 9 Ugushyingo 2000, urup. 107; 14 Ugushyingo 2000, urup. 62.

407 Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, imp. 108, 112.

408 Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, imp. 35, 36, 59.

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ari Abatutsi, kandi umubare wabo wakomeje kwiyongera ku buryo ku itariki ya 18 Mata 1994 hari hamaze kugera impunzi zigera ku bihumbi icumi[409]. VP yavuze ko kuva ku itariki ya 15 kugeza ku ya 17 Mata 1994 impunzi zagabwagaho ibitero buri munsi, ariko zikagerageza kubikumira zikoresheje amabuye[410]. VP yamenye bamwe mu bagabye ibitero, barimo n'abari barahawe intwaro n'Uregwa ndetse na Rugambarara[411].

219. VP yavuze ko ku itariki ya 18 Mata 1994 abantu bagabye igitero simusiga ku mpunzi zari ku gasozi ka Mwulire[412]. Uyu mutangabuhamya yavuze ko, kuri iyo tariki, Uregwa yageze kuri ako gasozi mbere ya saa sita z'amanywa[413]. VP yavuze ko icyo gihe Uregwa yari yambaye imyenda ya gisirikare kandi yitwaje imbunda[414]. VP yasobanuye ko Uregwa, wari ugaragiwe n'abakozi ba komini, abasirikare, n'Interahamwe, yari ku ruhande rw'iburengerazuba rw'ibiro bya Segiteri ya Mwulire, naho abandi bagabye igitero bakaba bari ku rundi ruhande ku buryo impunzi zari zagoswe[415]. VP yavuze ko Uregwa yakoresheje imbunda ye mu gitero arasa ku mpunzi zari zakoraniye ku kibuga cy'umupira w'amaguru cyegereye ibiro bya segiteri[416]. VP yavuze ko hari impunzi nyinshi zaguye ku kibuga cy'umupira w'amaguru mbere ya saa sita z'amanywa[417].

220. VP yavuze ko ubwo abagabye igitero amasasu yabashiranaga mu masaa saba z'amanywa, ibitero byahagaze kugeza mu masaa munani n'igice z'amanywa, ubwo abagabye ibitero bagarukaga, bari kumwe n'Uregwa[418]. VP yavuze ko abagabye ibitero bahise birara mu mpunzi zari zarokotse igitero cyari cyabaye mbere[419]. VP

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[409] Inyandikomvugo z'iburanisha, 4 Ukuboza 2000, imp. 62, 63, 64; 5 Ukuboza 2000, urup. 93.

[410] Inyandikomvugo z'iburanisha, 4 Ukuboza 2000, imp. 63-64; 5 Ukuboza 2000, imp. 84-85.

[411] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, imp. 66-67, 71-72.

[412] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, imp. 68, 83.

[413] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 68.

[414] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 69.

[415] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 69.

[416] Inyandikomvugo z'iburanisha, 4 Ukuboza 2000, imp. 69-70; 5 Ukuboza 2000, urup. 99.

[417] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 70.

[418] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 70.

[419] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 70.

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yavuze ko impunzi zagerageje kwirwanaho, by'umwihariko zirwana ku bagore n'abana ndetse no ku matungo yazo, ko ariko byageze aho zikaneshwa[420]. Igitero cyarakomeje kugeza mu masaa kumi n'imwe z'igicamunsi kandi abagabye igitero bahitanye abantu benshi ku buryo « agasozi kose kari kuzuye imirambo »[421]. VP yavuze ko umwana we w'imfura yiciwe muri icyo gitero, kimwe na muramu we n'abandi bene wabo, kandi ko umwe mu bana be yamugajwe n'icyo gitero[422].

221. Uregwa yahakanye ibivugwa ko yagiye mu gitero cyagabwe i Mwulire cyangwa ko yari i Mwulire ku matariki « avugwa mu Nyandiko y'ibirego »[423]. By'umwihariko yavuze ko atigeze ajya i Mwulire ku matariki ya 8, 9, 11, 12, na 13 Mata 1994[424]. Uregwa yongeyeho ko yumvise impunzi zivuga ko ku itariki ya 18 Mata 1994 Mwulire yagenzurwaga na FPR[425].

222. Umutangabuhamya ushinjura witwa Nyetera yavuze ko FPR yagenzuraga agace ka Mwulire kuva mu ntangiriro za Mata 1994 kandi ko «mu minsi ya mbere ya Mata … ndetse mbere y'itariki ya 6 Mata» FPR yari ifite « abantu bayo» aho hantu, ariko ntiyasobanuye aho yakomoye ayo makuru[426]. Nyetera yemeye ko yari azi ko ku gasozi ka Mwulire hakorewe ubwicanyi muri Mata 1994, ariko ko ntiyashoboraga kwibuka itariki nyayo byabereyeho[427].

223. Umutangabuhamya w'impuguke wahamagajwe n'Ubwunganizi, ari we Ndengejeho, yavuze ko yumvise bavuga ko i Mwulire habaye imirwano hagati y'Abahutu n'Abatutsi kubera ikibazo cy'abacengezi[428].

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[420] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, imp. 70-71.

[421] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 71.

[422] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, imp. 72-73.

[423] Inyandikomvugo y'iburanisha, 27 Gashyantare 2002, urup. 111. Reba kandi Icyiciro III.G.2-6 cy'iyi Nyandiko y'urubanza.

[424] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, urup. 125; 28 Gashyantare 2002, imp. 76, 77, 78.

[425] Inyandikomvugo y'iburanisha, 18 Gashyantare 2002, urup. 132.

[426] Inyandikomvugo y'iburanisha, 11 Gashyantare 2002, imp. 58-59.

[427] Inyandikomvugo y'iburanisha, 11 Gashyantare 2002, urup. 59.

[428] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 133-134.

2. *Umwanzuro w'Urugereko*

224. Hashingiwe ku buhamya bwatanzwe n'abatangabuhamya bashinja biswe VN na VP, hamwe n'umutangabuhamya ushinjura witwa Nyetera ndetse n'umutangabuhamhya w'impuguke wahamagajwe n'Ubwunganizi witwa Ndengejeho, Urugereko rusanga muri Mata 1994 haragabwe igitero ku mpunzi z'abasiviri zari ziganjemo Abatutsi ku gasozi ka Mwulire. Mu buhamya bwa VN na VP, havugwa ko muri Mata 1994 abantu bari biganjemo Abatutsi bahungiye ku gasozi ka Mwulire ku buryo ku itariki ya 10 Mata 1994 hari hamaze kugera impunzi zirenga ibihumbi bitanu, naho ku ya 18 Mata 1994 hakaba hari hamaze kugera izikabakaba mu bihumbi icumi. Kuva ku itariki ya 8 Mata 1994, izo mpunzi zagiye zigabwaho ibitero buri munsi. Ku itariki ya 18 Mata 1994, impuzi zari ku gasozi ka Mwulire zagabweho igitero zitsindwa n'abakigabye barimo Interahamwe, abasirikare, abakozi ba komini, n'Uregwa. By'umwihariko, VN na VP bavuze ku birebana n'urupfu rwa bene wabo bahitanywe n'icyo gitero, kandi VP yanavuze ko abagabye igitero bishe abantu benshi cyane ku buryo ako gasozi kose kari kuzuyeho imirambo.

225. VP yavuze ko mu gitero cyo ku itariki ya 18 Mata 1994, Uregwa, wari witwaje imbunda kandi aherekejwe n'abakozi ba komini, abasirikare, n'Interahamwe, yarashe ku mpunzi zari ku kibuga cy'umupira w'amaguru hafi y'ibiro bya segiteri, kandi ko abenshi muri izo mpunzi bapfuye. VN yavuze ko kuri iyo tariki, Uregwa yazanye Interahamwe n'abasirikare ndetse n'«ibikoresho» byabo ku gasozi ka Mwulire. Urugereko rwiyumvisha ko ijambo «ibikoresho» rishaka kuvuga ibintu byose byakoreshejwe mu kwica no gukomeretsa. N'ubwo VN yavuze ko yabonye Interahamwe n'abasirikare Uregwa yazanye bajya gufatanya n'abandi bantu bari bagabye igitero ku mpunzi, yasobanuye ko Uregwa yagumye hafi y'imodoka ye kandi ko atigeze amubona ajya mu mirwano.

226. Urugereko rusanze ubuhamya bwatanzwe na VN na VP bwakwizerwa kandi bwakwemerwa. Urugereko, rusanga ubuhamya bwa VN buvuga ko atigeze abona Uregwa ajya mu mirwano budahabanye n'ubwatanzwe na VP buvuga ko yabonye Uregwa ari mu mirwano arasa ku mpunzi. Urugereko ruributsa ko icyo gitero cyabaye ku manywa ko kandi cyarimo abantu benshi. VN ntiyerekana igihe yaboneye Uregwa

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ku gasozi ka Mwulire ku itariki ya 18 Mata 1994 n'igihe yamaze amureba, kandi ntiyavuze ahantu nyirizina yabonye Uregwa uwo munsi.

227. Urugereko rwasuzumanye kandi ubwitozi imyiregurire ya sinari mpari y'Uregwa, nk'uko yasesenguwe hano hejuru mu Mutwe wa III. By'umwihariko, Urugereko ruributsa ko Uregwa yavuze mu buhamya bwe ko ku itariki ya 18 Mata 1994 yari muri Perefegitura ya Gitarama, aho yakoze urugendo ava mu Ruhango ajya mu mujyi wa Gitarama, ubwo buhamya bukaba bwarashyigikiwe n'umutangabuhamya ushinjura wiswe PFM, ariko Urugereko rusanga abogamye kubera umubano wihariye afitanye n'Uregwa, bukaba bushyigikirwa kandi n'umutangabuhamya ushinjura wiswe CYS, na we ufitanye umubano wa hafi n'Uregwa.

228. Urugereko rumaze gusuzuma ibimenyetso byose rwashyikirijwe, hakubiyemo n'imyiregurire ya sinari mpari y'Uregwa, rushingiye cyane cyane ku buhamya bwa VP wiboneye n'amaso ye ibyabaye, rusanze nta gushidikanya Uregwa yaragize uruhare mu bwicanyi bwakorewe ku gasozi ka Mwulire ku itariki ya 18 Mata 1994, bukaba bwaribasiye Abatutsi bari barahahungiye. Nyamara ariko, Urugereko rusanze nta bimenyetso rwashyikirijwe bihamya ko Uregwa yacuze umugambi w'ibyo bitero, yabiteguye cyangwa yabiyoboye.

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D. Igika cya 3.13 cy'Inyandiko y'ibirego

229. Igika cya 3.13 cy'Inyandiko y'ibirego kigira kiti:

> Ku itariki ya 12 Mata 1994 cyangwa hafi y'iyo tariki, Laurent Semanza yateguye kandi ashyira mu bikorwa ubwicanyi bwabereye ku musigiti w'i Mabare muri Komini ya Bicumbi, aho abantu babarirwa mu magana bari bahungiye ubwicanyi. Ku itariki ya 12 Mata 1994 cyangwa hafi y'iyo tariki, Laurent Semanza yayoboye igitero cyagabwe ku bantu bari bahungiye ku musigiti w'i Mabare, kandi icyo gihe na we ubwe yakoze ubwicanyi.

1. Ibivugwa

230. Umutangabuhamya ushinja wiswe VAK, akaba ari Umututsi, yavuze ko ku itariki ya 11 Mata 1994, yahungiye ku musigiti w'i Mabare, akaba yarawerekanye mu cyumba cy'iburanisha ubwo yerekwaga igishushanyo kigize ikimenyetso gihamya N° P5, 14(A)[429]. VAK yavuze ko ku itariki ya 12 Mata 1994 mu masaa ine za mu gitondo, Interahamwe, abaporisi ba Komini ya Bicumbi, n'Uregwa, yerekanye mu cyumba cy'iburanisha, bagabye igitero ku mpunzi z'Abatutsi zari mu musigiti, bakoresheje imbunda n'amagerenade[430]. VAK yavuze ko Uregwa, byabonekaga ko ari we wayoboraga icyo gitero cyose uko cyakabaye, yari yitwaje imbunda ntoya kandi yambaye ikote riririre[431]. Nyamara ariko, VAK yavuze ko atigeze abona Uregwa hari impunzi n'imwe arasaho[432]. VAK yasobanuye ko icyo gitero cyakomeje kugeza saa kumi z'igicamunsi kandi ko cyahitanye abantu bagera kuri magana atatu[433]. VAK yavuze ko nyuma y'ubwicanyi, Uregwa yafashe ijambo imbere y'Interahamwe maze akazibwira ati « Twari twazanywe no kubatiza umurindi, kandi ndumva abatishwe badashobora kubananira. Mugende mubashashakishe hanyuma mubatsemba-tsembe »[434].

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[429] Inyandikomvugo y'iburanisha, 15 Werurwe 2001, imp. 91, 117, 118.

[430] Inyandikomvugo y'iburanisha, 15 Werurwe 2001, imp. 91-92, 103-104.

[431] Inyandikomvugo y'iburanisha, 15 Werurwe 2001, imp. 92, 93.

[432] Inyandikomvugo y'iburanisha, 15 Werurwe 2001, urup. 119.

[433] Inyandikomvugo y'iburanisha, 15 Werurwe 2001, urup. 92.

[434] Inyandikomvugo y'iburanisha, 15 Werurwe 2001, urup. 92.

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231. Uregwa yahakanye ibivugwa ko yagiye mu bwicanyi bwakorewe ku musigiti w'i Mabare kandi yemeje ko kuri uwo musigiti atigeze ahagera ku itariki ya 12 Mata 1994[435].

232. Umutangabuhamya ushinjura wiswe MDB yavuze ko muri Mata 1994 yari muri Segiteri ya Mabare, mu rugo rwa mwene wabo wari utuye hafi y'umusigiti w'i Mabare[436]. MDB yasobanuye ko guhera ku itariki ya 7 Mata 1994, « byavugwaga» ko hari impunzi zikomoka mu duce tunyuranye zari zatangiye gukoranira ku musigiti w'i Mabare[437]. MDB yavuze ko muri izo mpunzi harimo Abahutu n'Abatutsi, kandi ko agereranyije zageraga nko kuri magana atanu[438]. MDB yavuze ko abo bantu bari bitwaje imyambi n'amacumu, kandi ko ninjoro bibaga ibintu by'abaturage bo muri ako gace, bigakurura umutekano uba muke[439]. MDB yavuze ko ibyo byatumye abaturage bo muri ako agace bajya kureba abashinzwe umutekano, by'umwihariko abajandarume, maze bajya ku musigiti kuhirukana abantu bari bahari[440]. MDB yavuze ko yabonye abajandarume bambaye iniforume banyura iwe ku rugo ubwo berekezaga ku musigiti[441].

233. MDB yavuze ko atari ku musigiti igihe igitero cyahagabwaga, ko ariko ibyahabereye yabimenye abibwiwe na bene wabo bari bahagiye kureba abatera umutekano muke[442]. MDB yavuze ko impunzi zimaze kubona abajandarume zahise zitangira kubarasaho zikoresheje imyambi n'imbunda[443]. MDB yavuze ko abajandarume na bo barashe kuri izo mpunzi, ariko birwanaho[444]. MDB yavuze ko abaturage b'abasiviri «batatije umurindi» abajandarume, ko ariko babagendaga inyuma kandi « hafi cyane»[445].

[435] Inyandikomvugo z'iburanisha, 27 Gashyantare 2002, urup. 114; 28 Gashyantare 2002, urup. 78. Reba kandi Icyiciro III.G.2-6 cy'iyi Nyandiko y'urubanza.

[436] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 35, 37.

[437] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 12, 13.

[438] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 14, 16.

[439] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 13, 35.

[440] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, urup. 13.

[441] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 14, 15, 36, 37.

[442] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 17, 36.

[443] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, urup. 16.

[444] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, urup. 16.

[445] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 17, 19.

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MDB, wari werekanye mbere Uregwa mu cyumba cy'iburanisha, yavuze ko atigeze abona Uregwa ku musigiti kandi ko nta muntu wigeze amubwira ko yari aho hantu[446].

234. MDB yavuze ko icyo gitero cyahitanye impunzi « nyinshi» kandi ko nta mujandarume n'umwe azi waba warakiguyemo[447]. Nyamara ariko, nyuma yaho MDB yavuze ko hatapfuye impunzi «nyinshi» ngo kubera ko hamaze gupfa nkeya muri zo, izindi zahunze[448].

235. Umutangabuhamya ushinjura witwa Nyetera yavuze ko yumvise ibyabereye ku musigiti w'i Mabare, ko ariko atigeze yumva hari uvuga ko Uregwa yabigizemo uruhare[449]. Nyetera yagize ati «abaturage bamenye ko hari agatsiko k'abayisilamu kari gafite intwaro ndetse aho hantu hari intwaro, kandi ni ko byagenze. Udutsiko twarahuye turarwana, bamwe mu bari batugize bari bafite imbunda, imiheto n'imyambi, n'izindi ntwaro»[450].

236. Umutangabuhamya ushinjura wiswe CBN yavuze ko, ashingiye ku makuru yabwiwe n'abaporisi ba komini, Abatutsi bahungiye i Mabare baturutse mu yandi masegiteri ya Komini ya Bicumbi[451]. CBN yavuze ko hari abandi Batutsi baje kwiyongera kuri izo mpunzi kugira ngo ako gace bakigarurire[452]. CBN yavuze ko abaturage b'Abahutu bumvise bagiye kumererwa nabi noneho bagerageza kwirwanaho ngo barwanye uko kuvogerwa, cyane cyane ko abo Batutsi bari bitwaje intwaro kandi bakaba baragabaga ibitero ku baturage[453]. Ibi byatumye haba imirwano ikomeye[454]. Nyamara ariko, CBN yasobanuye ko nta muntu n'umwe utari uwo muri iyo komini waje kwica Abatutsi[455].

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[446] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 10-11, 19.

[447] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 16-17.

[448] Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, urup. 16.

[449] Inyandikomvugo y'iburanisha, 11 Gashyantare 2002, imp. 87, 88.

[450] Inyandikomvugo y'iburanisha, 11 Gashyantare 2002, urup. 88.

[451] Ikimenyetso gihamya n° D 21, Inyandikomvugo y'ubuhamya bw'umutangabuhamya wiswe CBN, urup. 5.

[452] Ikimenyetso gihamya n° D 21, Inyandikomvugo y'ubuhamya bw'umutangabuhamya wiswe CBN, imp. 5-6.

[453] Ikimenyetso gihamya n° D 21, Inyandikomvugo y'ubuhamya bw'umutangabuhamya wiswe CBN, urup. 6.

[454] Ikimenyetso gihamya n° D 21, Inyandikomvugo y'ubuhamya bw'umutangabuhamya wiswe CBN, urup. 6.

[455] Ikimenyetso gihamya n° D 21, Inyandikomvugo y'ubuhamya bw'umutangabuhamya wiswe CBN, urup. 6.

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CBN yavuze Uregwa atashoboraga kuba muri icyo gitero kubera ko yari yaravuye muri Bicumbi ku itariki ya 9 Mata 1994[456].

237. Umutangabuhamya w'impuguke wahamagajwe n'Ubwunganizi, witwa Ndengejeho, yavuze ko yumvise abantu bavuga, kandi yaranabisomye, ko abantu bakoze ubwicanyi aho hantu ari abaturutse hanze ya komini, ko kandi hari abantu bagera ku 1.500 bafungiye muri gereza kubera ubwo bwicanyi bwakorewe ku musigiti[457].

2. *Umwanzuro w'Urugereko*

238. Umutangabuhamya ushinja wiswe VAK yatanze ubuhamya burambuye bw'ibyo yahagazeho, burebana n'ibyabereye ku musigiti w'i Mabare ku itariki ya 12 Mata 1994, kandi Urugereko rusanga ari ubwo kwizerwa no kwemerwa.

239. Urugereko ruributsa ko ubuhamya bw'umutangabuhamya ushinjura wiswe MDB kuri ibyo byabaye bushingiye ahanini ku kuba yarabonye abajandarume bagenda berekeza ku musigiti no ku makuru yabwiwe na bene wabo bari ku musigiti igihe hagabwaga igitero. Urugereko rwemera ubuhamya bwe buvuga ko abashinzwe umutekano ba Leta hamwe n'abaturage b'abasiviri bagiye ku musigiti w'i Mabare kandi ko abajandarume bahiciye impunzi. Nyamara ariko, Urugereko rusanga ubuhamya bwe butakwizerwa ku birebana no kumenya niba impunzi zari zitwaje intwaro cyangwa niba ari zo zasemburanye, cyangwa no kumenya niba Uregwa yari aho hantu, kubera ko icyo gitero atigeze akibona.

240. Urugereko ruributsa ko ubuhamya bw'umutangabuhamya ushinjura wiswe CBN ku birebana n'ibyabereye ku musigiti w'i Mabare abukomora gusa ku makuru yabwiwe n'abaporisi ba komini bataziwe umwirondoro. Nta kigaragaza ko ayo makuru yayahawe n'abantu biboneye ibyabaye muri icyo gitero cyangwa se ko bamubwiye ibyahabereye byose. Urugereko rusanga kandi ubuhamya buvuga ko Uregwa atagiye mu bwicanyi bushingiye gusa ku byo Uregwa yabwiye uyu mutangabuhamya ko ahunze ubwo bari ku biro bya komini i Nzige ku itariki ya 9 Mata 1994. Urugereko rusanze rero ubuhamya bwa CBN atari ubwo kwizerwa.

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456 Ikimenyetso gihamya n° D 21, Inyandikomvugo y'ubuhamya bw'umutangabuhamya wiswe CBN, urup. 6.

457 Inyandikomvugo y'iburanisha, 30 Mutarama 2002, urup. 141.

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241. Urugereko rusanze ubuhamya bw'umutangabuhamya ushinjura witwa Nyetera buvuga ko hari udutsiko tubiri «twarwanye» atari ubwo kwizerwa cyangwa kwemerwa kubera ko aterekana aho ashingira avuga ibyo, bikaba kandi bihabanye n'amakuru yatanzwe n'umutangabuhamya ushinja wiswe VAK ku byo yiboneye no ku yatanzwe n'umutangabuhamya ushinjura wiswe MDB wari hafi y'aho hantu.

242. Urugereko rusanze ubuhamya bw'umutangabuhamya w'impuguke wahamagajwe n'Ubwunganizi witwa Ndengejeho atari ubwo kwizerwa kuko budasobanuye ku buryo burambuye, cyane cyane ko na bwo bushingiye gusa ku byo yasomye cyangwa yabwiwe, kandi aterekana ababimubwiye cyangwa aho yabisomye.

243. Urugereko rwasusumanye kandi ubwitonzi imyiregurire ya sinari mpari y'Uregwa, nk'uko byasesenguwe hano hejuru mu Mutwe wa III, mu rwego rw'ibimenyetso byose byatanzwe ku birebana n'ibyabereye ku musigiti w'i Mabare. By'umwihariko, Urugereko ruributsa ko Uregwa yavuze ko yari muri Perefegitura ya Gitarama ku itariki ya 12 Mata 1994. Iyo mvugo y'Uregwa yashyigikiwe n'umutangabuhamya ushinjura wiswe PFM, ariko Urugereko rukaba rwarasanze abogamye kubera ko afitanye umubano wihariye n'Uregwa, yashyigikiwe kandi n'umutangabuhamya ushinjura wiswe SAM, wari usanzwe aziranye n'Uregwa kandi wakundaga kujya mu rugo rwe, aho yavuze ko yabonye Uregwa mu isoko ryo mu Ruhango ku itariki ya 12 Mata 1994 mu masaa tatu za mu gitondo.

244. Rumaze gusuzuma ibimenyetso byose birebana n'iki kibazo, hakubiyemo n'imyiregurire ya sinari mpari y'Uregwa, Urugereko rusanze nta gushidikanya Uregwa yari yitwaje intwaro kandi yari ku musigiti w'i Mabare igihe igitero cyahagabwaga ku itariki ya 12 Mata 1994 kandi icyo gitero cyahitanye impunzi z'Abatutsi nka magana atatu; uwo mwanzuro rukaba ruwushingira cyane cyane ku buhamya bw'umutangabuhamya ushinja wiswe VAK. Nyamara ariko, Urugereko rusanze nta bimenyetso bihagije byatanzwe bihamya nta gushidikanya ko Uregwa yateguye ubwo bwicanyi, yabutsotsobye cyangwa yabuyoboye. Urugereko ruzirikana ubuhamya bwa VAK buvuga ko Uregwa yasaga nk'aho ari we uyoboye igitero cyose uko cyakabaye. Nyamara ariko, uyu mutangabuhamya nta gisobanuro na kimwe kirambuye atanga cyerekana impamvu yibwiye ibyo, kandi Urugereko nta kimenyetso

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na kimwe rwabonye muri dosiye gishyigikira ko Uregwa yayoboye igitero cyagabwe ku musigiti w'i Mabare.

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E. Igika cya 3.14 cy'Inyandiko y'ibirego

245. Igika cya 3.14 cy'Inyandiko y'ibirego kigira kiti:

> Ubwicanyi buvugwa kuva ku gika cya 3.8 kugeza ku cya 3.13 bwahitanye abantu, abandi bubatera ubumuga bubazahaza umubiri no mu mutwe, hakubiyemo n'ibikorwa byo gusambanya ku gahato n'ibindi bikorwa by'urugomo rushingiye ku gitsina byakorewe Abatutsi. **Laurent Semanza** yari agamije ko ubwo bwicanyi bubarirwa mu bikorwa by'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR kuko yumvaga impunzi z'Abatutsi zari abanzi ba Leta na/cyangwa ibyitso bya FPR, nk'uko bivugwa mu gaka ka 3.4.2 no mu ka 3.4.3.

246. Ibimenyetso birebana n'ibikorwa by'ubugizi bwa nabi byakorewe aho ubwicanyi bwabereye byamaze gusesengurwa n'Urugereko mu myanuro yarwo ishingiye ku byabaye yerekeranye n'ibika bya 3.10, 3.11, 3.12, na 3.13 by'Inyandiko y'ibirego[458].

1. Imyanzuro y'Urugereko

a Ubwicanyi

247. Urugereko rwamaze kwemeza ko hari Abatutsi benshi biciwe i Ruhanga, ku kiriziya y'i Musha, ku gasozi ka Mwulire, no ku musigiti w'i Mabare.

b. Gutera abantu ububabare bubazahaza umubiri cyangwa mu mutwe

248. Urugereko rusanze nta gushidikanya umutangabuhamya wiswe VF n'abandi Batutsi bakorewe ibyaha baragize ububabare bukomoka ku gutwikwa n'ubundi bwabazahaje umubiri mu gitero cyagabwe ku rusengero rw'i Ruhanga ku itariki ya 10 Mata 1994. Nyamara ariko, Urugereko rwamaze kwemeza ko Porokireri atashoboye gutanga ibimenyetso bidashidikanywaho bihamya ko Uregwa yari muri icyo gitero cyangwa ko yari aho hantu igihe cyahagabwaga.

249. Urugereko rwumvise ubuhamya buvuga ko abandi bantu, barimo umutangabuhamya wiswe VA n'umwana w'umutangabuhamya wiswe VP, bakomerekeye mu bwicanyi

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[458] Urugereko rwamaze gufata umwanzuro ku birebana n'igika cya 3.8 n'icya 3.9 by'Inyandiko y'ibirego. Reba hejuru, igika 61.

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bwakorewe ku kiriziya y'i Musha no ku gasozi ka Mwulire. Umutangabuhamya ushinjura wiswe BZ yavuze abantu bakomeretse barimo n'abasirikare ku kiriziya y'i Musha, kandi umutangabuhamya wiswe VN yavuze ko abasirikare ba FPR ari bo batwaye inkomere zari ku gasozi ka Mwulire. Nyamara ariko, Porokireri ntiyabashije gutanga ibimenyetso byerekana imiterere y'ibyo bikomere n'ingano yabyo, bityo Urugereko rukaba rudashobora gufata umwanzuro werekeranye no kumenya niba ibyo bikomere byarateye ububara buzahaza umubiri cyangwa mu mutwe. Umutangabuhamya wiswe VA na we yavuze ko Manda na Twagerayezu batwitse umusore igice cyo hasi cy'umubiri we ubwo buriraga bajya ku gisenge cya kiriziya y'i Musha. Nyamara ariko, uyu mutangabuhamya ntiyasobanuye niba uwo musore yari impunzi cyangwa niba yari umwe mu bagabye igitero kandi ntiyavuze ubwoko bwe. Nta mutangabuhamya n'umwe wigeze agira icyo avuga ku birebana n'ibikorwa bizahaza umubiri cyangwa mu mutwe byaba byarakozwe mu gitero cyagabwe ku musigiti w'i Mabare. Urugereko rusanze rero Porokireri ataratanze ibimenyetso bihamya nta shiti ko ubwicanyi bwakorewe ku kiriziya y'i Musha, ku gasozi ka Mwulire, cyangwa ku musigiti w'i Mabare bwari bukubiyemo n'ibikorwa bizahaza Abatutsi umubiri cyangwa mu mutwe. N'ubwo bishoboka ko abakorewe ibyaha benshi aho hantu batewe ibikomere binyuranye, kubera cyane cyane n'intwaro zakoreshejwe n'ibyakozwe n'abagabye ibitero, Porokireri ntiyatanze ibimenyetso bihagije byafasha Urugereko mu gufata umwanzuro wihariye ku birego byerekeranye n'ibikorwa bizahaza umubiri cyangwa mu mutwe byaba byarakozwe muri ubwo bwicanyi. Urugereko rusanze rero Porokireri ataratanze ibimenyetso bihamya ku buryo budashidikanywaho ko ibyo byaha byakozwe.

c. Gusambanya ku gahato n'ibindi bikorwa by'urugomo rushingiye ku gitsina

250. Porokireri nta kimenyetso na kimwe yatanze ku birebana no gusambanya ku gahato cyangwa n'ibindi bikorwa by'urugomo rushingiye ku gitsina byaba byarakozwe mu gihe cy'ubwicanyi bwabereye ku gasozi ka Mwulire, ku kiriziya y'i Musha, cyangwa ku musigiti w'i Mabare. Umutangabuhamya ushinja wiswe VAO ni we wenyine wavuze ko habayeho ibikorwa byo gusambanya ku gahato mu gihe cy'ubwicanyi bwakorewe i Ruhanga. Urugereko ruributsa ko uyu mutangabuhamya atiboneye ibyo bikorwa byo gusambanya ku gahato, ko ahubwo yaba yarabibwiwe n'umugore

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bahuriye mu nkambi y'impunzi. Urugereko rusanze rero Porokireri ataratanze ibimenyetso bihamya ku buryo budashidikanywaho ko ibyo byaha byakozwe.

251. Urugereko rusanga hari abagabye ibitero basambanyije ku gahato Abatutsikazi barimo abatangabuhamya bashinja biswe VR, VAW, VAV, na VAO, ahantu hanyuranye muri Komini ya Bicumbi n'iya Gikoro muri Mata 1994. Nyamara ariko, nta n'umwe muri abo bagore wasambanyijwe ku gahato mu gihe cy'ubwicanyi buvugwa kuva ku gika cya 3.8 kugeza ku cya 3.13 by'Inyandiko y'ibirego nk'uko bivugwa mu gika cya 3.14. Ibyo byaha bisa ahubwo n'ibikubiye mu bikorwa bivugwa mu buryo bwaguye mu gika cya 3.15 n'icya 3.16 by'Inyandiko y'ibirego. Nyamara ariko, Urugereko rwafashe umwanzuro wo kutirirwa rusuzuma ibyo bika kubera ko bidasobanutse na busa[459].

F. Igika cya 3.17 cy'Inyandiko y'ibirego

252. Igika cya 3.17 cy'Inyandiko y'ibirego kigira kiti:

> Hagati y'itariki ya 7 n'iya 30 Mata 1994, Laurent Semanza yabonanye n'agatsiko k'abagabo bo muri Komini ya Gikoro. Yababwiye ko bishe Abatutsikazi ariko ko bagomba kujya babanza kubasambanya ku gahato mbere yo kubica. Mu gushyira mu bikorwa ibyo yari amaze kubabwira, abo bagabo bahise birukira aho abagore b'Abatutsikazi babiri, ari bo biswe A na B, bari bihishe. Umwe muri abo bagabo yasambanyije ku gahato A, naho abandi babiri basambanya ku gahato B maze barangije baramwica. Laurent Semanza yifuzaga ko ibikorwa bivugwa muri iki gika bibarirwa mu by'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR nk'uko byavuzwe mu gaka ka 3.4.2 no mu ka 3.4.3**.**

1. Ibivugwa

253. Umutangabuhamya ushinja wiswe VV, akaba ari Umututsikazi, yavuze ko rimwe mu mu masaa ine za mu gitondo ku munsi kiriziya y'i Musha yagabiweho igitero muri Mata 1994, yumvirije ikiganiro cyabaye hagati y'Uregwa, Rugambage, Bisengimana,

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[459] Reba hejuru, ibika 51, 52, 54, 61.

abajepe batatu, n'imbaga y'abaturage bo muri Komini ya Bicumbi n'iya Gikoro[460]. Yavuze ko Uregwa yabajije iyo mbaga y'abantu niba akazi ko kwica Abatutsi kagenda neza, maze bamusubiza ko na n'ubu bakigakora[461]. VV yavuze kandi ko yumvise Uregwa avuga ngo « None ntimwaba mwica abagore n'abakobwa b'Abatutsikazi mutabanje kubarongora … mugomba kubikora, n'iyo baba barwaye mugomba kubajombamo ibiti»[462]. Uyu mutangabuhamya yasobanuye ko Uregwa yakoresheje ijambo ry'ikinyarwanda « kurongora », rishaka kuvuga «gushyingirwa» cyangwa se na none «gusambanya»[463].

254. VV yavuze ko abagabo batatu mu bari bumvise amabwiriza y'Uregwa baje mu rugo yari yihishemo hamwe na mubyara we[464]. Yasobanuye ko umwe muri abo bagabo yagumanye na we mu nzu naho abandi babiri bakajyana mubyara we hanze[465]. VV yavuze ko uwo mugabo yamubwiye ngo bemerewe kubasambanya ku gahato[466]. VV yavuze ko uwo mugabo yamuvanyemo imyenda noneho akamusambanya ku gahato kandi ko yamubwiye ngo niyiha kwanga amwica[467]. VV yavuze ko atashoboraga kubona ibyo ba bagabo bandi barimo gukorera mubyara we, ko ariko yamwumvise ataka avuga ngo byarutwa n'uko bamwica[468]. VV yavuze ko ubwo yavaga mu rugo, yasanze mubyara we bamwishe n'umurambo we bawutabye[469].

255. Uregwa yavuze ko nta gikorwa na kimwe cyo gusambanya ku gahato azi cyaba cyarabereye muri Komini ya Bicumbi, kandi yasobanuye ko «mu muco nyarwanda, gusambanya ku gahato bitigeze bibaho na rimwe»[470]. Abandi batangabuhamya bashinjura na bo bavuze ibintu bisa n'ibyo muri rusange, bemeza ko gusambanya ku

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[460] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 7-8, 14, 16-18.

[461] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 8-9.

[462] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 9, 33-35.

[463] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, urup. 10.

[464] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 10, 12.

[465] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, urup. 10.

[466] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 11, 12.

[467] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 11, 42-43.

[468] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, urup. 11.

[469] Inyandikomvugo y'iburanisha, 29 Werurwe 2001, urup. 11.

[470] Inyandikomvugo y'iburanisha, 20 Gashyantare 2002, urup. 42.

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gahato bitabaho mu Rwanda[471] cyangwa ko nta gikorwa cyo gusambanya ku gahato bigeze babona cyangwa bumva mu wa 1994[472].

256. Uregwa yavuze ko atari muri ako gace muri icyo gihe kivugwa[473]. Uregwa yavuze kandi ko atigeze aha Interahamwe amabwiriza yo gukoresha icyo bashaka Abatutsikazi, hakubiyemo no kubasambanya ku gahato. Yongeyeho ko asanga ashinjwa ibintu byabereye ahantu hanyuranye kandi mu gihe kimwe kuri iyo tariki[474].

2. Umwanzuro w'Urugereko

257. Urugereko rusanze umutangabuhamya wiswe VV ari we mu Nyandiko y'ibirego wiswe Uwakorewe icyaha A, naho mubyara we akaba yariswe uwakorewe icyaha B.

258. Urugereko rwasuzumanye ubushishozi inyandikomvugo y'ubuhamya bwatanzwe na VV atari mu Rukiko mu buryo buteganywa n'Ingingo ya 71 y'Amategeko kandi rwitaye ku biyikubiyemo. Urugereko rusanze VV yaratanze amakuru arambuye kandi atavuguruzanya, bityo ubuhamya bwe bukaba bwakwizerwa kandi bwakwemerwa. N'ubwo VV nta tariki nyakuri yo muri Mata 1994 yavuze, Urugereko rusanga yaravuze ko igikorwa yavugagaho cyabereye mu gihe kimwe n'igitero cyagabwe ku kiriziya y'i Musha. Bityo rero, Urugereko rusanze igikorwa cy'urugomo cyakorewe VV cyarabaye ku itariki ya 13 Mata 1994 cyangwa hafi y'iyo tariki.

259. Urugereko rusanze ibivugwa n'abatangabuhamya bashinjura ko nta bikorwa byo gusambanya ku gahato byigeze bibera mu gace kabo cyangwa mu Rwanda nta wabyizera ndetse nta n'uwabyemera, kubera ko ari imvugo gusa zidafite ikizishyigikira. Urugereko rusanze kandi nta bimenyetso byakwizerwa cyangwa

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471 Umutangabuhamya wiswe BP, Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, imp. 16, 18; Umutangabuhamya wiswe ZC, Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, imp. 56-57.

472 Reba Umutangabuhamya wiswe KM, Inyandikomvugo y'iburanisha, 9 Ukwakira 2001, urup. 3; Umutangabuhamya wiswe MV, Inyandikomvugo y'iburanisha, 22 Ukwakira 2001, urup. 137; Umutangabuhamya wiswe BP, Inyandikomvugo y'iburanisha, 3 Ukwakira 2001, urup. 121; Inyandikomvugo y'iburanisha, 4 Ukwakira 2001, urup. 15; Umutangabuhamya wiswe MDB, Inyandikomvugo y'iburanisha, 26 Ugushyingo 2001, imp. 23, 40.

473 Inyandikomvugo y'iburanisha, 20 Gashyantare 2002, urup. 65.

474 Inyandikomvugo z'iburanisha, 20 Gashyantare 2002, urup. 65; 27 Gashyantare 2002, imp. 116-117.

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byakwemerwa biriho bigaragaza ko Uregwa yari ahandi hantu hatari aho inama ivugwa yabereye.

260. Urugereko rwasuzumanye kandi ubwitonzi imyiregurire ya sinari mpari y'Uregwa kuri ibyo byabaye, nk'uko byasesenguwe hano hejuru mu Mutwe wa III. By'umwihariko, Urugereko ruributsa ko Uregwa yavuze ko yari mu mujyi wa Gitarama ku itariki ya 13 Mata 1994, iyo mvugo ye ikaba yarashyigikiwe n'umutangabuhamya ushinjura wiswe PFM, ariko Urugereko rukaba rusanga ubuhamya bw'uyu mutangabuhamya bubogamye kubera umubano wihariye afitanye n'Uregwa.

261. Urugereko, rumaze gusuzuma ibimenyetso byose birebana n'ikibazo hakubiyemo n'imyiregurire ya sinari mpari kandi rushingiye ku buhamya bwa VV, rusanze Porokireri yaratanze ibimenyetso bihamya ku buryo budashidikanywaho ko ku itariki ya 13 Mata 1994 mu masaa ine za mu gitondo Uregwa yahaye agatsiko k'abantu amabwiriza yo gusambanya Abatutsikazi mbere yo kubica. Urugereko rusanze kandi nta gushidikanya uwakorewe icyaha wiswe A yarasambanyijwe n'umugabo umwe wo muri ako gatsiko, naho mubyara we ari we uwakorewe icyaha wiswe B akaba yarajyanywe hanze n'abandi bagabo babiri bo muri ako agatsiko maze bakamwica.

262. VV ntiyabonye ibyakorewe uwo mubyara we amaze kujyamwa hanze, ariko yavuze ko yumvise ataka avuga ngo byarutwa n'uko bamwica. Urugereko rusanze rutagendera kuri ubu buhamya ngo bwemeze nta gushidikanya ko uwakorewe icyaha wiswe B na we yasambanyijwe ku gahato kandi/cyangwa yakorewe ibikorwa by'iyicarubozo mbere yo kwicwa.

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G. Igika cya 3.19 cy'Inyandiko y'ibirego

263. Igika cya 3.19 cy'Inyandiko y'ibirego kigira kiti:

> Ku itariki ya 8 Mata 1994 cyangwa hafi y'iyo tariki, Laurent Semanza yahuriye na Juvénal Rugambarara hamwe n'agatsiko k'Interahamwe imbere y'inzu yari ahantu muri Komini ya Bicumbi. Semanza yasabye izo Nterahamwe guhiga no kwica abari bagize umuryango w'Abatutsi yari amaze kuzirangira. Laurent Semanza akimara kuvuga ibyo ndetse agihagaze aho, Juvénal Rugambarara na we yahise asaba izo Nterahamwe guhiga abagize uwo muryango w'Abatutsi zikabica. Nyuma yaho gato, Interahamwe zajagajaze umurima wari hafi aho maze zihavumbura abantu bane bo muri uwo muryango zirabivugana, ari bo abiswe D, E, F, G hamwe n'uwari umuturanyi wabo wiswe H, n'umwana we muto wiswe J.

1. Ibivugwa

264. Umutangabuhamya ushinja wiswe VAM, akaba ari Umututsikazi, yavuze ko ku itariki ya 8 Mata 1994 mu masaa tatu za mu gitondo yabonye Uregwa, waje wenyine mu modoka, na Rugambarara wazanye mu modoka n'Interahamwe, ahagaze imbere y'inzu y'umwe mu bahungu b'uyu mutangabuhamya[475]. Iyo nzu yari ku muhanda, hafi y'urugo rw'uyu mutangabuhamya[476]. VAM yumvise Uregwa avuga ko umuryango we wari utaricwa kandi ko nta Mututsi ugomba kurokoka, ko Abatutsi bagomba guhigwa maze bakicwa[477].

265. VAM yavuze ko nyuma yaho uwitwa Denis w'i Gahengeri yaje maze agasaba Rugambarara n'Uregwa intwaro kugira ngo bajye « gukora » i Mwulire ngo kubera ko Abatutsi baho bari bashoboye kwirwanaho[478]. VAM yavuze ko ibyo byose yabibonye ari nko muri metero icumi z'aho abo bantu bari, aho yari yihishe inyuma y'inzu y'umuhumgu we mu murima w'amasaka[479]. VAM yemeje ko Denis yavuze ko hari umuntu wo mu muryango w'uyu mutangabuhamya wari mu Batutsi birwanagaho

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[475] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 31, 32, 96, 100.

[476] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 98.

[477] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 31-32.

[478] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 32, 101, 102.

[479] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 102.

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i Mwulire[480]. Ku birebana n'abana b'uyu mutangabuhamya, Uregwa yabwiye Interahamwe zari aho ibi bikurikira: « Mugomba kubashakisha maze mukabica. Kandi uwo musore uri hano i Mwulire mugomba kumubona. Kandi umuntu wese uzanzanira umurambo we nzamuhemba 300.000 Frw»[481]. VAM yavuze ko umwe mu bahungu be ari we Uregwa yashyiriyeho igihembo cyo kumuhiga[482]. Uregwa amaze gutanga ayo mabwiriza yaragiye maze Interahamwe zitangira guhiga abantu bo mu muryango w'uyu mutangabuhamya[483].

266. VAM yavuze ko ari aho yari yihishe mu murima w'amasaka, yabonye Interahamwe yitwa Rutegesha irasa ku nzu y'umuhungu w'uyu mutangabuhamya; uwo Rutegesha akaba yari umwe mu gatsiko k'abantu Uregwa yari yasabye kwica abana b'uyu mutangabuhamya[484]. Nyuma yaho, VAM yaje gusobanura neza ko umuntu warashe ku nzu y'umuhungu we ari uwitwa Antoine Rutikanga[485]. VAM yavuze ariko ko nta muntu n'umwe wari muri iyo nzu kubera ko bari bihishe mu murima w'amasaka[486]. Nyuma y'uko kurasa, VAM yagumye mu murima w'amasaka kuko yabonaga nta handi yashoboraga guhungira[487].

267. VAM yavuze ko nyuma yaho uwo munsi, saa sita n'igice z'amanywa, yabonye Interahamwe zica abantu batandatu[488]. Interahamwe zavumbuye bane mu bana be bari bihishe mu murima w'amasaka, maze babavuza imipanga n'amahiri kugeza bapfuye[489]. Izo Nterahamwe zishe kandi umuturanyi we n'umwana we[490]. VAM yavuze ko Interahamwe zimaze kuvumbura abo bantu zagize ziti: «Ubu nonaha tugomba kubica kubera ko Abatutsi bagomba gupfa», maze bahita babatsinda aho[491].

[480] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 32.
[481] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 33.
[482] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 34, 104.
[483] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 37.
[484] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 34.
[485] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 42.
[486] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 35-36.
[487] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 102-103.
[488] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 36-37.
[489] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 37-38, 44-47.
[490] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 37.
[491] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 39.

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VAM yavuze ko abagabye ibitero bari bazi abana be[492]. Mu bari bagize ako gatsiko k'Interahamwe harimo Rutagakwa, Antoine Rutikanga, na Manigura[493].

268. Umutangabuhamya ushinjura wiswe CBM1 yavuze ko yari azi bamwe mu bari bagize umuryango wa VAM[494]. CBM1 yavuze ko yari azi ko umuhungu wa VAM yari afite inzu «yegereye cyane» umuhanda ugana i Gahengeri[495]. CBM1 yavuze ko atashobora kumenya niba hari umurima w'amasaka wari imbere y'iyo nzu kubera ko atari azi ahantu nyirizina iyo nzu yari iri[496]. CBM1 yavuze ko atigeze abona abantu bo mu muryango w'umutangabuhamya wiswe VAM bicirwa mu murima w'amasaka wari wegeranye n'iyo nzu, ko yemwe atigeze yumva hari n'ubivuga[497].

2. Umwanzuro w'Urugereko

269. Urugereko rusanze VAM, watanze amakuru arambuye ku bintu yahagazeho, yakwemerwa kandi ubuhamya bwe bwakwizerwa. Kuba VAM yarabanje kuvuga ko inzu y'umuhungu we yarashweho na Rutegesha nyuma akaza kuvuga ko uwayirasheho ari Rutikanga, Urugereko ntirubona ko ari ikintu gikomeye. Urugereko rwemeye ubuhamya yatanze ku birebana n'ibyabaye bimaze kuvugwa. Ikindi kintu gishyikira na none uyu mwanzuro w'Urugereko ni uko VAM yiboneye ibyabaye ari hafi y'aho byabarereye. Ubuhamya bwa CBM1 ntibuvuguruza ubwa VAM. Ahubwo, ubuhamya bwa CBM1 bushyigikira ubwa VAM kugeza n'aho bwemeje amwe mu mazina VAM yavuze.

270. Urugereko rwasuzumanye kandi ubwitonzi imyiregurire ya sinari mpari y'Uregwa, nk'uko yasesenguwe hano hejuru mu Mutwe wa III, mu rwego rw'ibimenyetso byose byatanzwe ku birebana n'ubwo bwicanyi. By'umwihariko, Urugereko ruributsa ko Uregwa yavuze ko yari iwe mu rugo ku itariki ya 8 Mata 1994, ibyo bikaba byarashyigikiwe n'abatangabuhamya bashinjura biswe KNU na PFM, ariko

[492] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, urup. 40.
[493] Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 41-42.
[494] Inyandikomvugo y'iburanisha, 29 Ukwakira 2001, urup. 60.
[495] Inyandikomvugo y'iburanisha, 29 Ukwakira 2001, urup. 59.
[496] Inyandikomvugo y'iburanisha, 29 Ukwakira 2001, urup. 59.
[497] Inyandikomvugo y'iburanisha, 29 Ukwakira 2001, urup. 61.

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ubuhamya bwabo Urugereko rukaba rusanga butakwizerwa kandi bubogamye kubera umubano wa hafi bafitanye n'Uregwa. Urugereko ruributsa kandi ko Uregwa nta wigeze mu by'ukuri amubona iwe mu rugo kuva ku itariki ya 7 Mata 1994 mu gitondo cya kare kugeza ku ya 8 Mata 1994 saa kumi z'igicamunsi, kuba yari iwe mu rugo bikaba byemezwa gusa na KNU na PFM bagendeye ku byo bibwira gusa.

271. Urugereko rumaze gusuzuma ibimenyetso byose, hakubiyemo n'imyiregurire ya sinari mpari y'Uregwa, rushingiye kandi ku buhamya bwa VAM, rusanze nta gushidikanya ku itariki ya 8 Mata 1994 mu gitondo, Uregwa yarabonaniye na Rugambarara n'agatsiko k'Interahamwe imbere y'inzu yari ahantu muri Komini ya Bicumbi. Uregwa yabwiye Interahamwe ko hari umuryango w'Umututsi utaricwa kandi ko nta Mututsi ugomba kurokoka, ndetse ko Abatutsi bagomba guhigwa maze bakicwa. Nyuma yaho uwo munsi, Interahamwe zajagajaze umurima wari hafi y'inzu y'umuryango wari wavuzwe n'Uregwa, zivumbura abantu bane bo muri uwo muryango maze zirabica. Muri icyo gihe kimwe, izo Nterahamwe zishe kandi abaturanyi babiri b'uwo muryango.

272. Urugereko, rusanze rero ibivugwa mu gika cya 3.19 cy'Inyandiko y'ibirego byaratangiwe ibimenyetso bibihamya ku buryo budashidikanywaho.

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H. *Ibivugwa muri rusange*

Ibika bya 3.1, 3.2, na 3.3 by'Inyandiko y'ibirego

273. Ibika bya 3.1, 3.2, na 3.3 by'Inyandiko y'ibirego bigira biti:

> 3.1 Keretse biramutse bivuzwe ukundi ku buryo bweruye, ibikorwa binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara bivugwa muri iyi Nyandiko y'ibirego byabereye mu Rwanda hagati y'itariki ya 1 Mata n'iya 31 Nyakanga 1994.
>
> 3.2 Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, mu Rwanda hari ubwoko butatu : Abatutsi, Abahutu n'Abatwa.
>
> 3.3 Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, mu Rwanda habaye ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko.

a. Umwanzuro w'Urugereko

274. Nk'uko Urugereko rwabyemeje mu byiciro byerekeranye n'ibyabaye binyuranye bivugwa, ibikorwa byose binyuranyije na Sitati kandi byatangiwe ibimenyetso muri uru rubanza byabereye mu Rwanda mu wa 1994.

275. Ku birebana n'igika cya 3.2 cy'Inyandiko y'ibirego, Urugereko ruributsa ko rwamaze kwemeza ko ibyabaye bikurikira bitagomba kugibwaho impaka n'ababuranyi: « Hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994, buri Munyarwanda kavukire yabarizwaga muri bumwe mu bwoko bukurikira : Abatutsi, Abahutu n'Abatwa »[498]. Urugereko rusanze rero mu bihe bivugwa mu Nyandiko y'ibirego, Abatutsi, Abahutu, n'Abatwa barafatwaga nk'ubwoko butandukanye.

276. Urugereko rwemeje kandi ibitagomba kugibwaho impaka n'ababuranyi ku birebana n'igika cya 3.3 cy'Inyandiko y'ibirego:

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[498] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibintu bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Urugereko rwa Mbere rw'Iremezo, 3 Ugushyingo 2000, igika 48. Reba Umugereka wa II, Igice A, igika 1.

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> Hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994, ibintu byari byifashe mu buryo bukurikira mu Rwanda: Mu Rwanda hose habaye ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri bazira ko ari abo mu bwoko bw'Abatutsi. Muri ibyo bitero, bamwe mu Banyarwanda bishe abantu bafatwaga ko ari Abatutsi cyangwa babatera ubumuga bubazahaza umubiri cyangwa mu mutwe. Ibyo bitero byahitanye abantu benshi cyane bo mu bwoko bw'Abatutsi[499].

277. Urugereko rusanze rero hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994 mu Rwanda harabaye ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira ko ari abo mu bwoko bw'Abatutsi.

2. Igika cya 3.4 cy'Inyandiko y'ibirego

278. Igika cya 3.4 n'agaka ka 3.4.1 by'Inyandiko y'ibirego bigira biti:

> 3.4. Nyuma y'igitero cyagabwe n'umutwe wa FPR mu Ukwakira 1990, politiki ya Leta y'u Rwanda yaranzwe no gufata Abatutsi nk'abanzi bagomba kwivunwa.
>
> 3.4.1 Iyo politiki yavugaga ko abanzi bo mu rwego rwa mbere ari Abatutsi, baba abari mu Rwanda cyangwa abari hanze yarwo bashakaga ubutegetsi, batemeraga ibyiza byazanywe na revolisiyo yo mu wa 1959 kandi bashakaga intambara. Umwanzi wo mu rwego rwa kabiri yari umuntu wese wateraga inkunga iyo ari yo yose uwo mwanzi wo mu rwego rwa mbere, akaba yarafatwaga nk'icyitso cya FPR.

279. Mu gushyigikira ibyo avuga, Porokireri ashingira cyane cyane ku bitekerezo by'impuguke zinyuranye n'iby'abandi bakurikiraniye hafi ibyabaye, birebana na za disikuru za bamwe mu bategetsi ba Leta n'ab'amashyaka, birebana kandi n'ibikubiye muri rusange mu biganiro byagiye binyuzwa ku maradiyo, n'ibyo Uregwa yavugiye

[499] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibintu bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Urugereko rwa Mbere rw'Iremezo, 3 Ugushyingo 2000, igika 48. Reba Umugereka wa II, Igice A, igika 2.

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mu ruhame cyangwa ahatari mu ruhame[500]. Uhereye kuri ibyo, umuntu ashobora kwemeza rwose ko muri rusange Abatutsi bafatwaga nk'abantu ba FPR. Nyamara ariko, ibimenyetso Porokireri yatanze ni rusange kandi ntibihagije kuba byashingirwaho n'Urugereko ngo rufate umwanzuro ku birebana n'imiterere ya gahunda yeruye ya Leta y'u Rwanda.

280. Igika cya 3.4.2 cy'Inyandiko y'ibirego kigira kiti:

> Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, mu Rwanda hari intambara itari iyo mu rwego mpuzamahanga yari ishyamiranyije ingabo za Leta y'u Rwanda n'iza FPR. Abakorewe ibyaha bavugwa muri iyi Nyandiko y'ibirego bari abasiviri b'Abatutsi bo muri Komini ya Bicumbi n'iya Gikoro. Abo bantu nta ruhare bari bafite mu mirwano yabaga, bakaba baragombaga rero kurengerwa hakurikijwe Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve hamwe n'Amasezerano y'Inyongera yayo ya II.

281. Urugereko rwemeje ko ibi bikurikira byabaye bitagomba kugibwaho impaka n'ababuranyi: « hagati y'itariki ya 1 Mutarama 1994 n'iya 17 Nyakanga 1994 mu Rwanda habaye intambara itari iyo mu rwego mpuzamahanga »[501]. Urugereko ntirushidikanya ku birebana n'imiterere y'iyo ntambara. Bityo rero, ku byerekeranye n'igice kibanza cy'igika cya 3.4.2 cy'Inyandiko y'ibirego, Urugereko rusanze igihe ibivugwa muri iyo Nyandiko byabaga, mu Rwanda hari intambara itari iyo mu rwego mpuzamahanga yari ishyamiranyije Leta y'u Rwanda na FPR.

282. Urugereko ruzirikana ibivugwa mu gika cya 3.4.2 ko abakorewe ibyaha bari abasiviri b'Abatutsi muri Komini ya Bicumbi n'iya Gikoro kandi ko barengerwaga n'Ingingo ya 3 Ihuriweho hamwe n'Amasezerano y'Inyongera ya II. Urugereko ruri busuzume ibyo bivugwa mu myanzuro ruza gufata irebana n'icyo kibazo.

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[500] Imyanzuro nsozarubanza yanditse ya Porokireri, yatanzwe ku wa 12 Kamena 2002, [« Imyanzuro nsozarubanza yanditse ya Porokireri »], igika 34.

[501] Urubanza rwa Semanza, N° ICTR-97-20-I, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibintu bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Urugereko rwa Mbere rw'Iremezo, 3 Ugushyingo 2000, igika 48. Reba Umugereka wa II, Igice A, igika 3.

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283. Igika cya 3.4.3 cy'Inyandiko y'ibirego kigira kiti :

> Laurent Semanza yari agamije ko ibyo bitero byagabwe ku bakorewe ibyaha bibarirwa mu bikorwa by'intambara itari iyo mu rwego mpuzamahanga kuko yumvaga ko abasiviri b'Abatutsi ari abanzi ba Leta na/cyangwa ibyitso bya FPR, kandi yibwiraga ko kurimbura abo Batutsi byari gufasha Leta gushyira mu bikorwa gahunda yayo yo kurwanya abanzi no gutsinda FPR.

284. Urugereko ruri busuzume imigambi Uregwa yari afite n'impamvu zabimuteye mu myanzuro yarwo irebana na buri kirego gikubiye mu Nyandiko y'ibirego.

3. Igika cya 3.5 cy'Inyandiko y'ibirego

285. Igika cya 3.5 cy'Inyandiko y'ibirego kigira kiti:

> Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byababaga, ishyaka rya MRND (Muvoma Iharanira Repubulika, Demokarasi n'Amajyambere ya Rubanda) ryari rimwe mu mashyaka ya politiki yari mu Rwanda. Abari bagize ishami ry'urubyiruko rwa MRND bitwaga Interahamwe. Abenshi muri bo baremye umutwe witwara gisirikare. Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byababaga, byaje kugera aho ijambo Interahamwe rikoreshwa no ku basiviri bagababaga ibitero ku basiviri bandi b'Abatutsi, hatitaweho amashyaka ya politiki cyangwa se imitwe abagabaga ibitero barimo.

a. Ibivugwa

286. Umutangabuhamya w'impuguke witwa Guichaoua wahamagajwe na Porokireri yavuze ku birebana n'ishyirwaho ry'Interahamwe nk'« urugaga rw'urubyiruko » kandi yemeje ko icyo gikorwa cyongereye imbaraga za MRND mu kwimenyekanisha no mu mikorere yayo[502].

287. Umutangabuhamya w'impuguke witwa Ndengejeho wahamagajwe n'Ubwunganizi yavuze ko ibikorwa bimwe by'ubwicanyi byabaye hagati ya Mata 1994 na Nyakanga 1994 bivugwa ko byakozwe n'Interahamwe[503]. Ndengejeho yasobanuye ko kugeza ku itariki ya 6 Mata 1994, Interahamwe zari ishami ry'urubyiruko rwa MRND, ko ariko

[502] Reba ikimenyetso gihamya n° P 14.I-9, urup. 38.

[503] Inyandikomvugo y'iburanisha, 5 Gashyantare 2002, urup. 145.

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nyuma yaho « ijambo Interahamwe ryumvikanaga nk'urubyiruko rw'intagondwa rw'amashyaka anyuranye, ndetse rwarimo n'abantu batari muri ayo mashyaka »[504].

288. Uregwa yavuze ko Interahamwe zari ishami ry'urubyiruko rwa MRND kandi ko zari zishinzwe gucengeza muri rubanda amatwara y'ishyaka rya MRND no gushakira iryo syaka abayoboke[505].

289. Ubuhamya bwatanzwe n'abandi batangabuhamya bashinjura bwashyigikiye ibyo bivugwa ko Interahamwe zari ishami ry'urubyiruko rw'ishyaka rya MRND[506].

b. Umwanzuro w'Urugereko

290. Urugereko rumaze gusuzuma ibimenyetso rwashyikirijwe, rusanze ishyaka rya MRND ryari rimwe mu mashyaka yariho mu gihe kivugwa mu Nyandiko y'ibirego kandi umutwe witwaga Interahamwe ukaba wari ishami ry'urubyiruko rw'iryo shyaka. Nyamara ariko, ibimenyetso byatanzwe ntibihagije guhamya ko abenshi mu Nterahamwe bahindutse abantu bitwaraga gisirikare. Urugereko nta mwanzuro ruri bufate kuri icyo kibazo kivugwa muri rusange, uretse ko ruri bugisuzume gusa aho rusanga gifite aho gihuriye n'ibirego byihariye bikubiye mu Nyandiko y'ibirego.

291. Urugereko nta mwanzuro na none ruri bufate ku bivugwa muri rusange ko ijambo Interahamwe ryageze aho rigakoreshwa no ku basiviri, hatitaweho amashyaka cyangwa se indi miryango barimo, bagabaga ibitero ku basiviri b'Abatutsi. Hatitawe ku bivugwa na Porofeseri Ndengejeho mu buhamya bwe ko nyuma y'itariki ya 6 Mata 1994 ijambo *Interahamwe* ryumvikanaga nk'«urubyiruko rw'intagondwa rw'amashyaka anyuranye, ndetse rwarimo n'abantu batari muri ayo mashyaka», Urugereko rubona ko rwafata umwanzuro urebana no kumenya niba itsinda iri n'iri ryarabarirwaga mu mutwe w'Interahamwe ari uko gusa bibaye ngombwa, mu rwego rw'imiterere yihariye y'ibirego bikubiye mu Nyandiko y'ibirego.

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[504] Inyandikomvugo y'iburanisha, 5 Gashyantare 2002, imp. 148, 149.

[505] Inyandikomvugo y'iburanisha, 13 Gashyantare 2002, urup. 102.

[506] Reba, nk'urugero, Umutangabuhamya wiswe SDN1, Inyandikomvugo y'iburanisha, 30 Ukwakira 2001, urup. 14; Umutangabuhamya wiswe ZC, Inyandikomvugo y'iburanisha, 6 Ugushyingo 2001, urup. 53; Umutangabuhamya wiswe KM, Inyandikomvugo y'iburanisha, 9 Ukwakira 2001, urup. 11; Umutangabuhamya wiswe SAM, Inyandikomvugo y'iburanisha, 8 Ukwakira 2001, urup. 70.

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4. *Igika cya 3.6 cy'Inyandiko y'ibirego*

292. Igika cya 3.6 cy'Inyandiko y'ibirego kigira kiti:

> Laurent Semanza yabaye Burugumesitiri wa Komini ya Bicumbi mu gihe kirenga imyaka makumyabiri. Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, Uregwa yari umwe mu bagize Komite Nyobozi ya MRND. Byongeye kandi, yari yarahawe umwanya w'ubudepite mu Nteko Ishinga Amategeko y'inzibacyuho yaguye yagombaga kujyaho hakurikijwe Amasezerano y'amahoro ya Arusha. Bityo rero, yari umuntu ufite ijambo rikomeye muri rubanda, haba muri Komini ya Bicumbi ndetse no muri Komini ya Gikoro byahanaga imbibi, akaba yari afite ububasha, bwaba ubwo yakomoraga ku mategeko cyangwa ubwo atayakomoragaho, bwo gutegeka no kugenzura abari mu mitwe yitwaraga gisirikare, cyane cyane Interahamwe n'abandi bantu barimo ingabo z'u Rwanda, abaporisi ba komini n'abandi bakozi ba Leta. Yitwaje ijambo yari afite muri rubanda n'ububasha bwe nk'umukozi wa Leta mu gushyigikira gahunda ya Leta yo kurwanya FPR.

a. **Ibivugwa**

293. Ibimenyetso byatanzwe byerekana ko Uregwa yabaye burugumesitiri wa Komini ya Bicumbi imyaka irenga makumyabiri kugeza mu wa 1993, ubwo yasimburwaga na Rugambarara[507]. Uregwa ndetse n'abatangabuhamya bashinja biswe VN na VC bavuze ko nyuma yaho Uregwa yagizwe depite[508].

294. Hari abatangabuhamya bashinja bavuze ko Uregwa yari umukire, yamaze igihe kirekire ayobora komini, yari afitanye umubano ugaragara na Perezida Habyarimana

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[507] Umutangabuhamya wiswe VN, Inyandikomvugo y'iburanisha, 8 Ugushyingo 2000, imp. 144, 145; Umutangabuhamya wiswe VP, Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 38; Umutangabuhamya witwa Nyetera, Inyandikomvugo y'iburanisha, 7 Gashyantare 2002, imp. 99, 101; Umutangabuhamya wiswe BZ, Inyandikomvugo y'iburanisha, 1 Ukwakira 2001, imp. 106, 107, 108; Ubuhamya bw'Uregwa, Inyandikomvugo y'iburanisha, 13 Gashyantare 2002, urup. 102; Inyandikomvugo y'iburanisha, 27 Gashyantare 2002, urup. 11; Umutangabuhamya wiswe PFM, Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 24.

[508] Ubuhamya bw'Uregwa, Inyandikomvugo y'iburanisha, 27 Gashyantare 2002, urup. 17; Umutangabuhamya wiswe VN, Inyandikomvugo y'iburanisha, 8 Ugushyingo 2000, urup. 146; Inyandikomvugo y'iburanisha, 13 Ugushyingo 2000, imp. 13, 23; Umutangabuhamya wiswe VC, Inyandikomvugo y'iburanisha, 7 Ugushyingo 2000, imp. 108-109, 110.

n'abandi bategetsi cyangwa ko ariko abantu babyibwiraga, kandi bemeje ko n'ubwo Uregwa atari akiri burugumesitiri yagumanye ijambo muri rubanda ndetse akaba yarasaga nk'aho ari we uyobora komini[509]. Abatangabuhamya bashinja biswe VC na VAO bavuze ko hari abantu benshi bibwiraga ko Uregwa yari akiri burugumesitiri muri Mata 1994[510].

295. Umutangabuhamya w'impuguke witwa Guichaoua, wahamagajwe na Porokireri, yavuze mu nyandiko ye ku birebana n'imirimo Uregwa yakoze, yerekana ko yabanje kuba kontabure nyuma akaza kuba «burugumesitiri w'igihangange», ndetse ko yari afitanye umubano usanzwe cyangwa wo mu rwego rwa politiki n'abantu b'ibikomerezwa barimo na Perezida Habyarimana[511].

296. Guichaoua yavuze ko akurikije ubushakashati yakoze, Uregwa yabaye umuyobozi w'ishyaka rya MRND muri Perefegitura ya Kigali Ngari nyuma ya Mata 1992, kandi ubusanzwe uwo mwanya wabaga ari uwa perefe[512]. Kubera ko nta perefe wariho muri icyo gihe, Guichaoua yemeye igitekerezo cy'uko uwo mwanya watumaga Uregwa agira ijambo mu butegetsi bw'iyo perefegitura[513]. Guichaoua yasobanuye kandi ko nk'umuyobozi wa MRND muri perefegitura, Uregwa yari umwe, kubera umwanya yari afite, uteganywa n'itegeko kuba mu bagize Komite y'igihugu ya MRND[514]. Guichauoa yavuze ko kuva mu wa 1992, Komite nyobozi ya MRND itari ikiriho, ko

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[509] Umutangabuhamya wiswe VP, Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, imp. 38, 92; Umutangabuhamya wiswe VC, Inyandikomvugo y'iburanisha, 7 Ugushyingo 2000, imp. 107, 109, 110-111, 114; Umutangabuhamya wiswe VAP, Inyandikomvugo y'iburanisha, 6 Ukuboza 2000, imp. 129-130, 132; Inyandikomvugo y'iburanisha, 7 Ukuboza 2000, urup. 36; Umutangabuhamya wiswe VAO, Inyandikomvugo y'iburanisha, 20 Werurwe 2001, imp. 46-47; Umutangabuhamya wiswe VJ, Inyandikomvugo y'iburanisha, 6 Ugushyingo 2000, imp. 56-57, 93-94; Umutangabuhamya wiswe VN, Inyandikomvugo y'iburanisha, 8 Ugushyingo 2000, imp. 150-151, 153, 154-157; Inyandikomvugo y'iburanisha, 13 Ugushyingo 2000, urup. 51; Umutangabuhamya witwa Duclos, Inyandikomvugo y'iburanisha, 17 Ukwakira 2000, urup. 24.

[510] Umutangabuhamya wiswe VAO, Inyandikomvugo y'iburanisha, 20 Werurwe 2001, imp. 46-47, 30-31; Umutangabuhamya wiswe VC, Inyandikomvugo y'iburanisha, 7 Ugushyingo 2000, imp. 110-111.

[511] Ikimenyetso gihamya P 14.

[512] Inyandikomvugo z'iburanisha, 23 Mata 2001, urup. 158; 25 Mata 2001, imp. 25-27.

[513] Inyandikomvugo z'iburanisha, 23 Mata 2001, imp. 158, 161; 24 Mata 2001, imp. 73-74.

[514] Inyandikomvugo y'iburanisha, 25 Mata 2001, imp. 25-26.

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kandi nyuma yo kuvugurura iryo shyaka hashyizweho Komite y'igihugu[515]. Umutangabuhamya wiswe VN yavuze kandi ko Uregwa yari umuyobozi wa MRND muri Perefegitura ya Kigali Ngari, ndetse ko yagize uruhare mu gushyiraho udushyaka dutoya twari dushamikiye kuri MRND, afatanyije na ba burugumesitiri bo mu makomini yari aturanye n'iye[516].

297. Guichaoua yemeranya na Porokireri kuri ibi bikurikira: (i) Uregwa yari afite uruhare mu buyobozi bwa Komini ya Gikoro n'iya Bicumbi ku buryo bugaragara; (ii) umwanya Uregwa yarimo mu wa 1994 watumaga yayobora abicanyi mu bitero byagabwe ku Batutsi, no ku Bahutu barwanyaga ubwicanyi bwibasiye Abatutsi kandi amabwiriza y'Uregwa yagombaga kubahirizwa; (iii) Uregwa « yashoboraga » kugira uruhare mu buyobozi bwa gahunda yo kwirwanaho kw'abaturage bitewe n'umwanya yari afite muri MRND; (iv) Uregwa yari azwi nk'umuntu uvuga rikijyana kubera ko yari yaratoranyijwe kuzaba depite mu Nteko ishinga amategeko y'inzibacyuho ; kandi (v) Uregwa yafatwaga nk'umukire[517]. Guichaoua yasobanuye ko kuba Uregwa yari umukire byamuhaga ubushobozi bwa gutera inkunga y'amafaranga abayoboke b'ishyaka no mu bikorwa byaryo[518].

298. Guichaoua yasobanuye ko ububasha butaziguye bwo kwiyambaza abajandarume bwari bufitwa n'inama ya prefegitura ishinzwe umutekano, yari igizwe na perefe ari na we wayiyoboraga, uhagarariye Minisiteri y'Ubutabera, porokireri, na komanda w'ikigo cya gisirikare[519]. Guichaoua yavuze ko atazi neza niba Uregwa yari umwe mu bari bagize iyo nama[520].

299. Uregwa yahakanye ibivugwa ko yakomeje gukora imirimo yo mu rwego rwa politiki cyangwa ko yari afite umwanya mu buyobozi bwa MRND, kandi yavuze ko nta

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[515] Inyandikomvugo y'iburanisha, 25 Mata 2001, urup. 25.

[516] Inyandikomvugo y'iburanisha, 8 Ugushyingo 2000, imp. 146, 147-148.

[517] Inyandikomvugo z'iburanisha, 23 Mata 2001, imp. 139-142, 153-154, 166-167; 24 Mata 2001, imp. 30-34.

[518] Inyandikomvugo y'iburanisha, 24 Mata 2001, imp. 34-36, 39-40.

[519] Inyandikomvugo y'iburanisha, 25 Mata 2001, imp. 11-12.

[520] Inyandikomvugo y'iburanisha, 25 Mata 2001, urup. 12.

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jambo cyangwa ububasha yari afite ku bantu bakoze jenoside[521]. Abandi batangabuhamya bashinjura barimo abiswe BZ, PFM wabanaga n'Uregwa, JAM wari umwe mu bakozi bo mu rugo b'Uregwa, n'uwitwa Nyetera bavuze ko mu gihe ibivugwa byabaga mu wa 1994, Uregwa nta bikorwa byo mu rwego wa politiki yari akirangwamo, ko atarakize cyangwa ngo agire ijambo ku buryo bugaragara, ndetse ko nta n'umubano wihariye yari afitanye n'abantu bakomeye[522].

300. Umutangabuhamya w'impuguke wiswe Ndengejeho wahamagajwe n'Ubwunganizi, akaba yari umuyobozi muri MDR no muri Leta, yemeye ko Uregwa, nka burugumesitiri, yari afite umwanya ukomeye kandi yari icyamamare[523]. Nyamara ariko, yavuze ko abantu bose bahurizaga ku kintu cy'uko Uregwa yagombaga kuva ku mwanya wa burugumesitiri kubera ko komini ye yariho « ihinduka akarima ke»[524].

301. Ndengejeho yasobanuye ko ubwo yajyaga muri Komini ya Bicumbi nyuma y'aho Rugambarara abereye burugumesitiri, yabonanye na Rugambarara ko ariko atabonanye n'Uregwa[525]. Ndengejeho yavuze ko Rugambarara amaze kuba burugumesitiri, Uregwa yavuye muri politiki, kandi ko n'ubwo yatumirwaga mu nama za perefegitura nta na rimwe yigeze azijyamo[526]. Nyamara ariko, Ndengejeho yavuze ko Uregwa yakomeje kuba umwe mu bagize Komite y'igihugu ya MRND, ariko asobanura ko iyo komite nta kindi yakoraga uretse kuba gusa urwego ngishwanama[527].

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[521] Ubuhamya bw'Uregwa, Inyandikomvugo z'iburanisha, 19 Gashyantare 2002, urup. 34; 27 Gashyantare 2002, imp. 17-18; 28 Gashyantare 2002, urup. 115.

[522] Umutangabuhamya wiswe BZ, Inyandikomvugo y'iburanisha, 1 Ukwakira 2001, imp. 108, 109, 110; Umutangabuhamya witwa Nyetera, Inyandikomvugo y'iburanisha, 7 Gashyantare 2002, urup. 116; Inyandikomvugo y'iburanisha, 11 Gashyantare 2002, imp. 12-14; Inyandikomvugo y'iburanisha, 12 Gashyantare 2002, imp. 182-183; Umutangabuhamya wiswe JAM, Inyandikomvugo y'iburanisha, 28 Ugushyingo 2001, imp. 10, 11, 36, 44-46; Umutangabuhamya wiswe PFM, Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, imp. 28-29.

[523] Inyandikomvugo y'iburanisha, 31 Mutarama 2002, imp. 57-58.

[524] Inyandikomvugo y'iburanisha, 29 Mutarama 2002, imp. 120-121.

[525] Inyandikomvugo y'iburanisha, 29 Mutarama 2002, imp. 123, 139.

[526] Inyandikomvugo y'iburanisha, 29 Mutarama 2002, imp. 134-135.

[527] Inyandikomvugo z'iburanisha, 29 Mutarama 2002, urup. 132; 30 Mutarama 2002, urup. 52.

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302. Ndengejeho yasobanuye ko Uregwa amaze kuva ku mwanya wa burugumesitiri yabaye umucuruzi kandi ko yari yarashoye imari mu isosiyete y'ubwikorezi mu gihugu[528]. Ndengejeho yemeye ko Uregwa yari umukire ndetse afite n'amasambu yera, ariko avuga ko kugira amafaranga bidaha umuntu ububasha bwo kugira ijambo ku bandi n'ubwo gutuma ibintu bijya mu cyerekezo iki n'iki[529]. Abandi batangabuhamya bashinjura na bo bavuze ko Uregwa yari umukire kandi ko yari afite n'amasambu n'amazu[530].

b. Umwanzuro w'Urugereko

303. Urugereko rushingiye ku bimenyetso bitagibwaho impaka, bikubiyemo n'ubuhamya bw'Uregwa, rusanze Uregwa yarabaye burugumesitiri wa Komini ya Bicumbi imyaka irenga makumyabiri kugeza mu wa 1993, kandi nyuma yaho yatoranyijwe kuba depite mu Nteko ishinga amategeko yagombaga kujyaho hashingiwe ku Masezerano y'Arusha.

304. Urugereko rusanze Uregwa yarafatwaga muri rusange nk'umuntu ukomeye kandi uvuga rikijyana mu karere ke, kubera cyane cyane ko yamaze igihe kinini ari burugumesitiri kandi akora neza, yari yaratoranyijwe kuzaba depite mu Nteko ishinga amategeko, yari umukire, abantu bibwiraga ko afitanye umubano na Perezida, n'uko abatangabuhamya bose ari ko bamufataga. Urugereko rwemera kandi ko nibura Uregwa yari aziranye na Perezinda n'abategetsi bo hejuru bamwe muri Leta. Nyamara ariko, Urugereko rusanze Porokireri atarashoboye gutanga ibimenyetso bidashidikanywaho byerekana imiterere n'intera by'uwo mubano bwite cyangwa wo mu rwego rwa politiki Uregwa yari afitanye n'abo bategetsi, kimwe n'inkurikizi zawo.

305. N'ubwo Urugereko rusanga hari abaturage bumvaga Uregwa yarakomeje kuba burugumesitiri wa Komini ya Bicumbi mu gihe kivugwa mu Nyandiko y'ibirego, nta bimenyetso bihagije rwagejeweho byerekana ko Uregwa yakomeje koko gukora mu

[528] Inyandikomvugo y'iburanisha, 29 Mutarama 2002, imp. 134-135.

[529] Inyandikomvugo y'iburanisha, 30 Mutarama 2002, imp. 52, 60.

[530] Umutangabuhamya wiswe CYM3, Inyandikomvugo y'iburanisha, 5 Ugushyingo 2001, imp. 18, 19; Umutangabuhamya wiswe PFM, Inyandikomvugo y'iburanisha, 13 Ugushyingo 2001, urup. 67.

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buryo butaziguye umurimo uwo ari wo wose ushinzwe burugumestiri cyangwa ko yavugiraga muri Rugambarara.

306. Porokireri ntiyatanze kandi ibimenyetso bihamya nta shiti ko Uregwa yari afite umwanya w'ubuyobozi muri MRND mu gihe kivugwa mu Nyandiko y'ibirego, by'umwihariko muri Mata 1994. Urugereko ruributsa ko Guichaoua yemeye ko bigoranye gutanga ibimenyetso bihamya ko umuntu yari umuyobozi muri MRND, kandi ko ikimenyetso yashingiyeho ari inyandiko imwe rukumbi yakuye muri Minisiteri y'Ubutegetsi bw'Igihugu kandi idafite itariki yakoreweho[531]. Byongeye kandi, umutangabuhamya wiswe VN ntiyashoboye kwibuka igihe Uregwa yabereye umuyobozi wa MRND muri Kigali-Ngari, kandi Ndengejeho ntiyigeze yerekana neza igihe nyakuri Uregwa yagiriye muri komite y'igihugu. Uko byagenda kose, n'iyo ibyo bimenyetso biza kugaragazwa, Porokireri ntiyashoboye gutanga ibimenyetso bihagije byerekana imiterere y'ububasha bw'umwe mu bagize Komite y'igihugu ya MRND cyangwa bw'umuyobozi w'iryo shyaka ku rwego rwa perefegitura, cyangwa imiterere n'ingano by'uruhare Uregwa yari afite mu mirimo y'ishyaka.

307. Mu myazuro yo mu rwego rw'amategeko Urugereko ruri bufate, ni bwo ruza gusuzuma niba Uregwa yaragenzuraga nyabyo abantu bitwaraga gisirikare, by'umwihariko Interahamwe, n'abandi bantu, harimo n'abasirikare ba Leta (« FAR »), abaporisi ba komini, n'abandi bakozi ba Leta, ndetse n'aho biza kuba ngombwa rurasuzuma niba yaritwaje ijambo yari afite mu baturage n'ububasha yari afite nk'umukozi wa Leta mu gushyigikira umugambi wa Leta wo kurwanya FPR.

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[531] Inyandikomvugo y'iburanisha, 25 Mata 2001, imp. 27-29.

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V. AMATEGEKO AKURIKIZWA

A. Jenoside

308. Mu kirego cya 1 cy'Inyandiko y'ibirego, Uregwa ashinjwa jenoside. Mu kirego cya 2, ashinjwa guhamagarira abantu mu ruhame kandi mu buryo butaziguye gukora jenoside. Mu kirego cya 3 ashinjwa kuba icyitso cy'abakoze jenoside. Guhamagarira abantu mu ruhame kandi mu buryo butaziguye gukora jenoside no kuba icyitso cy'abakoze jenoside birasuzumwa hano hasi mu kindi cyiciro cyibanda ku buryozwacyaha bw'Uregwa nka gatozi.

309. Ingingo ya 2(2) ya Sitati igira iti:

> Icyaha cya jenoside 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[532].

310. Inyandiko y'ibirego ishinja Uregwa jenoside kubera kwica abantu bo mu bwoko bw'Abatutsi cyangwa kubatera ububabare bubazahaza umubiri cyangwa mu mutwe, hakubiyemo no kubasambanya ku gahato no kubakorera ibindi bikorwa by'urugomo

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[532] Igisobanuro cya jenoside gikubiye muri Sitati y'Urukiko ni kimwe n'igikubiye mu Masezerano mpuzamahanga yerekeranye no gukumira no guhana icyaha cya jenoside, 18 Ukuboza 1948, Ingingo ya II, 78 U.N.Inyandikomvugo y'iburanisha, S. 277 [« Amasezerano yerekeye jenoside »], no muri Sitati y'Urukiko Mpanabyaha Mpuzamahanga Ruhoraho, 17 Nyakanga 1998, Ingingo ya 6, UN Doc. A/Conf.183/9 [« Sitati ya CPI »].

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

rushingiye ku gitsina. Urugereko rurasesengura gusa ibigize icyaha bigomba kwitabwaho mu kureba niba Uregwa yaryozwa jenoside muri uru rubanza.

1. Umugambi wo gukora icyaha

311. Kugira ngo hafatwe umwanzuro wemeza ko uregwa ahamwa n'icyaha cya jenoside, hagomba gutangwa ibimenyetso bihamya ko yari afite umugambi wo gukora ibikorwa bigize icyaha cya jenoside birondorwa mu Ngingo ya 2 ya Sitati. Bityo rero, hagomba kwerekanwa ko ukekwaho icyaha yakoze igikorwa icyo ari cyo cyose kirondorwa muri iyo Ngingo, afite umugambi wo kurimbura abantu bose cyangwa igice cyabo bagize itsinda runaka rirengerwa n'amategeko mpuzamahanga, ni ukuvuga bahuriye ku bwenegihugu, ku bwoko cyangwa ku idini, bazira icyo bari cyo[533].

312. Kureba niba harabayeho umugambi wo gukora jenoside bisaba ko hasuzumwa ibi bikurikira: icya mbere hagomba kwerekanwa ko umuntu wishe undi cyangwa wamuteye ububabare bumuzahaza umubiri cyangwa mu mutwe yabikoze amuziza ko ari uwo mu itsinda runaka rirengerwa n'amategeko mpuzamahanga ; icya kabiri, hagomba kwerekanwa ko uwakoze icyo gikorwa yari afite umugambi wo kurimbura abagize iryo tsinda bose uko bakabaye cyangwa se igice cyabo, abaziza icyo bari cyo.

313. Umugambi wo gukora icyaha ushobora kugaragarira mu buryo buziguye mu bikorwa bye. N'ubwo mu rubanza rw'Akayesu mu rw'iremezo Urugereko rwasanze bigoye gufata umwanzuro wemeza ko uwakoze icyaha yari afite umugambi wo kugikora iyo nta bwemeracyaha bwabayeho cyanga ikindi gisa na bwo, mu nyandiko y'urwo rubanza hakubiyemo ibintu binyuranye Urugereko rugomba gusuzuma mbere yo kwemeza ko uwakoze icyaha yari afite umugambi runaka :

> Birashoboka gufata umwanzuro wemeza ko Uregwa yari afite umugambi wo gukora icyaha runaka hashingiwe ku gucukumbura uko ibintu byari byifashe muri rusange, urebye uko ibindi bikorwa bibisha byibasiye abantu bo mu

533 Sitati, Ingingo ya 2(2). Reba Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 784; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 60-61; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 164; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 49; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 91; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 517.

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

> itsinda rimwe byaba byarakozwe n'uwo muntu ukekwaho icyaha cyangwa se n'abandi. Ibindi bishobora gushingirwano ni intera y'amarorerwa yakozwe, imiterere y'ayo marorerwa mu karere cyangwa mu gihugu, cyangwa se na none kwibasira ku bwende kandi mu buryo buri kuri gahunda abagomba gukorerwa ibyaha bazira gusa ko bari mu itsinda runaka, mu gihe abo mu yandi matsinda batibasiwe. Ibyo bishobora gufasha Urugereko gufata umwanzuro wemeza ko ukekwaho icyaha yari afite umugambi wo gukora jenoside[534].

314. Urugereko rurakurikiza uburyo bwarondowe mu nyandiko y'urubanza rw'Akayesu mu gusesengura niba Uregwa yari afite umugambi wihariye wo gukora jenoside.

a. «Kurimbura»

315. Ingingo ya 2 ya Sitati ivuga ko hagomba gutangwa ibimenyetso bihamya ko ukekwaho icyaha yakoze ibyo bikorwa bibujijwe agamije « kurimbura » itsinda ry'abantu runaka. Abateguye Amasezerano yerekeranye na jenoside, ari na yo Sitati y'Urukiko yakuyemo igisobanuro cy'ijambo jenoside cyandukuwe uko cyakabaye, bahisemo nta shiti guhinira igisobanuro cy'ijambo «kurimbura» ku bikorwa byerekeranye gusa no kuvutsa abantu ubuzima cyangwa kubabuza kororoka[535].

b. « Abantu bose cyangwa igice cyabo »

316. N'ubwo nta mubare w'ifatizo w'abakorewe ibyaha ugomba kugenderwaho mu kwemeza ko habayeho jenoside, Porokireri agomba gutanga ibimenyetso

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[534] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 523. Reba kandi Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 62-63; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 166-167; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 61-63; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 93; Inyandiko y'urubanza rwa Jelisic mu rw'iremezo, igika 73.

[535] Raporo ya Komisiyo y'amategeko mpuzamahanga irebana n'ibyo yakoze mu nteko yayo ya mirongo ine n'umunani, 6 Gicurasi – 26 Nyakanga 1996, *UN GAOR International Law Commission, 51st Sess., Supp. No. 10, urup. 90, UN Doc. A/51/10 (1996)* [Inyandiko z'Inama Rusange y'Umuryango w'Abibumbye, Komisiyo y'amategeko mpuzamahanga, Inteko ya 51, Inyongera n° 10, urup. 90, Inyandiko z'Umuryango w'Abibumbye A/51/10 (1996] (« Nk'uko bisobanurwa neza mu nyandiko zateguye umushinga w'ayo Masezerano, kurimbura bivugwa ni ukurimbura itsinda ry'abantu ubavutsa ubuzima cyangwa ubabuza kororoka, ntabwo ari ukubavutsa ubwenegihugu, ururimi, idini, umuco cyangwa ibindi byihariye biranga iryo tsinda »).

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

bidashidikanywaho byerekana ko uwakoze icyaha yari afite umugambi wo kurimbura itsinda ry'abantu bose cyangwa igice cyabo abaziza icyo bari cyo[536]. Igitekerezo cyo kurimbura abantu kigomba nibura kuba kigamije guhitana abantu batari bake bo muri iryo tsinda[537].

c. « Amatsinda arengerwa n'amategeko mpuzamahanga»

317. Sitati y'Urukiko nta gisobanuro itanga cyatuma umuntu amenya niba itsinda uregwa afitiye umugambi wo kwibasira ryemezwa hakurikijwe ibigenderwaho bitarimo amarangamutima cyangwa ibyo abantu batabona kimwe, cyangwa se hakurikijwe ikintu cy'imvange y'ibyo byombi. Ingereko zinyuranye z'uru Rukiko zasanze kwemeza ko itsinda runaka ribarirwa mu rwego rw'abarengerwa hashingiwe ku Ngingo ya 2 ya Sitati bigomba gusesengurwa hakurikijwe imiterere ya buri rubanza kandi hazirikanwa uko ibintu byifashe mu rwego rw'imbonezamubano n'amateka ndetse n'imyumvire bwite y'uwakoze icyaha[538]. Urugereko rusanze kwemeza ko itsinda runaka ribarirwa mu matsinda arengerwa n'amategeko mpuzamahanga bigomba gukorwa hakurikijwe imiterere ya buri rubanza, hazirikanwa ibigenderwaho bitarimo irangamutima n'ibyo abantu batabona kimwe.

2. Igikorwa gifatika

318. Ingingo ya 2(2) ya Sitati irondora ibikorwa bifatika bigize icyaha cya jenoside.

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536 Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 58; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 165; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 60; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 95, 96, 98; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 521.

537 Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 64.

538 Reba, nk'urugero, Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 65; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 161-163; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 56-58; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 98; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 702. Reba kandi Inyandiko y'urubanza rwa Jelisic mu rw'iremezo, ibika 69-72 (hakoreshejwe igitekerezo gishingiye ku irangamutima mu gutanga igisobanuro cy'itsinda, ariko bemera ko igitekerezo cy'abateguye Amasezerano yerekeye jenoside cyari uko mu gusobanura itsinda hagenderwa ku bintu bitarangwamo irangamutima).

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

a. Kwica abantu bagize itsinda runaka

319. Kugira ngo uregwa aryozwe icyaha cya jenoside kubera kwica abantu bagize itsinda runaka, uretse kwerekana ko yari afite umugambi wo kurimbura abagize iryo tsinda bose uko bakabaye cyangwa igice cyabo, abaziza icyo bari cyo, Porokireri agomba no kwerekana ibi bikurikira: (1) uwakoze icyaha agomba kuba yarishe abishaka umuntu umwe cyangwa abantu bo mu itsinda runaka, ariko si ngombwa ko aba yarabicuriye umugambi[539]; kandi (2) uwo wakorewe icyaha cyangwa abakorewe ibyaha bagomba kuba bari bibasiwe kubera impamvu z'ubwoko, iz'ubwenegihugu, cyangwa izi'idini[540].

b. Gutera abo bantu ububabare bubazahaza umubiri cyangwa mu mutwe

320. Sitati nta gisobanuro itanga cy'amagambo «ububabare buzaha umubiri». Nyamara ariko, Urugereko rusanga Sitati ishaka guhana ibikorwa by'ubugizi bwa nabi byibasira bikomeye umubiri, hakubiyemo iby'urugomo rushingiye ku gitsina, ariko bitabarirwa mu bikorwa by'ubwicanyi. Mu rubanza rwa Kayishema na Ruzindana, Urukiko rwemeje ko ibikorwa bizahaza umubiri ari «ibikorwa biteza ububabare bukomeye amagara y'uwabikorewe, bimwangiza isura mu maso, cyangwa bizahaza ingingo z'umubiri z'inyuma, iz'imbere cyangwa ibyumviro»[541]. Byongeye kandi,

[539] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 55, 57-58; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 155; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 49, 50; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 103; Inyandiko y'Urubanza rwa Akayesu mu rw'iremezo, igika 501. Reba kandi Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 151.

[540] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 55; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 154-155; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 60; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 99; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 499.

[541] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 109. Reba ariko Raporo ya Komisiyo y'amategeko mpuzamahanga irebana n'ibyo yakoze mu nteko yayo ya mirongo ine n'umunani 6 Gicurasi – 26 Nyakanga 1996, *UN GAOR International Law Commission, 51st Sess., Supp. No. 10, urup. 90, UN Doc. A/51/10 (1996)* (« Ibikorwa bibabaza umubiri cyangwa mu mutwe bikorewe umuntu ugize itsinda runaka bigomba kuba bikabije ku buryo bishobora guhitana abantu bose bagize iryo tsinda cyangwa bamwe muri bo »).

Urukiko rwemeje ko amagambo « ibikorwa bizahaza umubiri » adasobanura byanze bikunze ko biba byateye ububabare buhoraho cyangwa se budashobora gukira[542].

321. Muri urwo rwego na none, Sitati nta gisobanuro itanga cy'amagambo « ububabare buzahaza mu mutwe ». Uru Rukiko rwemeje ko «ububabare buzahaza mu mutwe » bugomba kuba bukubiyemo ububabare bukomeye bwo mu mutwe, atari ubworoheje cyangwa ubw'igihe gito[543].

322. Urugereko rwemera ibyo bigenderwaho byemejwe mu rubanza rw'Akayesu no mu rwa Kayishema na Ruzindana ku birebana no kwemeza niba harabayeho ibikorwa bizahaza umubiri cyangwa mu mutwe. Byongeye kandi, Urugereko rusanze amagambo « ububabare buzahaza umubiri cyangwa mu mutwe » atavuga ko byanze bikunze ubwo bubabare buba ari ubuhoraho cyangwa se ubudashobora gukira.

323. Uretse kwerekana ko uregwa yari afite umugambi wo kurimbura abantu bose bagize itsinda rirengerwa n'amategeko mpuzamahanga cyangwa igice cyabo, bazira icyo bari cyo, ibintu bikurikira na byo bigomba gutangirwa ibimenyetso bihamya ko Uregwa yakoze icyaha cya jenoside kubera gukorera abantu bagize itsinda runaka ibikorwa bibazahaza umubiri cyangwa mu mutwe: (1) uwakoze icyaha yateye abagize itsinda runaka ububabare bubazaha umubiri cyangwa mu mutwe kandi abishaka[544]; kandi (2) uwo muntu cyangwa abo bantu bakorewe icyaha bagomba kuba bari mu itsinda ryibasiwe kubera impamvu z'ubwenegihugu, ubwoko cyangwa idini[545].

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[542] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 59; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 156; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 51; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 108; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 502.

[543] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 110.

[544] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 55, 59; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 154, 156; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 49, 51; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 100, 108-110, 112-113.

[545] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 55; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 154; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 60; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 502, 712, 721.

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B. Ibyaha byibasiye inyokomuntu

324. Mu birego bya 4, 5, 6, 8, 10, 11, 12, na 14 by'Inyandiko y'ibirego, Uregwa ashinjwa ibyaha byibasiye inyokomuntu.

325. Ingingo ya 3 ya Sitati igira iti:

> Urukiko Mpuzamahanga Rwashyiriweho u Rwanda rufite ububasha bwo gucira imanza abantu bakekwaho kuba barakoze ibyaha bikurikira, mu gihe byakozwe mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri abo ari bo bose bazira ubwenegihugu bwabo, impamvu za politiki, ubwoko bwabo cyangwa idini ryabo:
>
> a) Ubuhotozi;
>
> b) Itsembatsemba;
>
> c) Gushyira mu bucakara;
>
> d) Gucira ishyanga;
>
> e) Gufunga;
>
> f) Ibikorwa by'urugaraguro ;
>
> g) Gusambanya ku gahato;
>
> h) Gutoteza bishingiye ku mpamvu za politiki, iz'ubwoko n'iz'idini;
>
> i) Ibindi bikorwa bibi birenze kameremuntu.

1. Isano hagati y'ibyaha bimaze kurondorwa hamwe n'ibigize ibyo byaha muri rusange

326. Icyaha cyibasiye inyokomuntu kigomba kuba cyarakozwe mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri ku mpamvu z'ivangura. N'ubwo atari ngombwa ko icyo gikorwa kibisha kigomba kuba cyabereye ahantu hamwe n'ahagabwe igitero kandi mu gihe kimwe cyangwa ko kigomba kuba kirangwa neza neza n'ibiranga icyo gitero, kigomba kuba cyakozwe mu rwego rw'igitero gishingiye ku ivangura, ukurikije ibikiranga, umugambi, imiterere, n'ingaruka za cyo.

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2. Igitero

327. Muri rusange, ijambo « igitero » rishaka kuvuga igikorwa kinyuranyije n'amategeko, icyabaye cyangwa ibyabaye biri mu rwego bw'ibiteganywa n'Ingingo ya 3 ya Sitati kuva ku gaka a) kugeza kuri i)[546]. Si ngombwa ko haba hakoreshejwe intwaro kugira ngo « igitero » kibeho, gishobora no kubaho kubera gusa ibikorwa by'ubugizi bwa nabi byakorewe abaturage b'abasiviri[547].

a. Igitero kigomba kuba ari rusange cyangwa kiri kuri gahunda

328. Uru Rukiko rwemeje igihe cyose, mu murongo umwe n'uw'amategeko mpuzamahanga ashingiye ku muco, ko igitero kigomba kuba ari « rusange » bitaba ibyo kikaba kiri kuri « gahunda» hakurikijwe inyandiko ya Sitati yo mu rurimi rw'icyongereza; si ngombwa ko kiba ari rusange kandi kiri no kuri gahunda nk'uko bivugwa mu nyandiko ya Sitati yo mu rurimi rw'igifaransa[548]. Urugereko rusanga ubwo bukemuramanza budasobanura bihagije aho uwo muco ushingiye. Nyamara ariko, Urugereko rusanga mu rubanza rwa Tadic, Urugereko rwa Mbere rw'Iremezo rw'Urukiko Mpuzamahanga Rwashyiriweho Icyahoze Cyitwa Yugosilaviya (TPIY) rwarasuzumye ubukemuramanza bw'imbonekarimwe kuri icyo kibazo maze rufata umwanzuro wemeza ko kuba igitero ari rusange cyangwa kiri kuri gahunda ari bimwe mu bigize icyaha cyibasiye inyokomuntu mu mategeko mpuzahamanga ashingiye ku muco[549]. Nta mpamvu n'imwe uru Rugereko rubona yatuma runyuranya n'ubwo bukemuramanza buhuriweho n'izo Nkiko zombi.

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[546] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 205; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 70; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 122; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 581.

[547] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 205; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 70; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 581.

[548] Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 804; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 77; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 202-203; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 68; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 123, igisobanuro cyo hasi ku rupapuro 26; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 579.

[549] Inyandiko y'urubanza rwa Tadic mu rw'iremezo, ibika 646-648. Reba kandi Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 93; Inyandiko y'urubanza rwa Tadic mu bujurire, igika 248; Inyandiko y'urubanza

329. Ijambo «rusange» rishaka kuvuga ko icyo gitero kiba cyibasiye abantu benshi[550]. Amagambo « kiri kuri gahunda » ashaka kuvuga ko icyo gitero kiba cyarateguwe neza[551]. Urugereko rw'Ubujurire rwa TPIY ruherutse gusobanura ko iyo hagaragajwe ko habayeho gahunda cyangwa umugambi biba ari ingirakamaro, kubera ko bifasha mu kwerekana ko igitero cyibasiye abaturage b'abasiviri kandi ko cyari rusange cyangwa kiri kuri gahunda, ariko rwavuze ko kuba hariho umugambi atari ikintu cyafatwa ukwacyo mu bigize icyaha cyibasiye inyokomuntu[552].

b. Igitero kigomba kuba cyibasiye abaturage b'abasiviri abo ari bo bose

330. Abaturage b'abasiviri ni bo baba bibasiwe mbere na mbere n'igitero[553]. Abaturage bakomeza kwitwa ko ari abasiviri kabone n'iyo muri bo harimo bamwe batari abasiviri, ndetse n'iyo abo baturage b'abasiviri baba barigeze kwitwaza intwaro, bipfa gusa ko baba «biganjemo abasiviri»[554]. Kuba hibasiwe « abaturage » ntibishaka kuvuga ko ibyaha byibasiye inyokomuntu bigomba kuba byibasiye abaturage bose

rwa Krnojelac mu rw'iremezo, igika 55; Inyandiko y'urubanza rwa Krstic mu rw'iremezo, igika 480; Inyandiko y'urubanza rwa Kordic na Cerkez mu rw'iremezo, igika 178; Inyandiko y'urubanza rwa Blaskic mu rw'iremezo, igika 202; Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, igika 544; Inyandiko y'urubanza rwa Jelisic mu rw'iremezo, igika 53.

[550] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 580. Reba kandi Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 804; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 77; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 204; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 69.

[551] Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 804; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 204; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 69; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 123; Inyandiko y'Urubanza rwa Akayesu mu rw'iremezo, igika 580.

[552] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 98.

[553] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 79; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 207; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 72; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 127, 128; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 582.

[554] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 79; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 72; Inyandiko y'urubanza mu rw'iremezo, igika 128; Urubanza, Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 582.

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b'igihugu cyangwa b'akarere[555]. Abakorewe icyaha cyarondowe si ngombwa ko baba batuye mu karere kamwe cyangwa se ko baba bafite ibibaranga bahuriyeho n'abaturage bibasiwe mbere na mbere n'igitero, ariko ibyo bibaranga bishobora kwifashishwa mu kwerekana ko icyo cyaha cyarondowe cyakozwe mu rwego rw'icyo gitero.

c. Igitero kigomba kuba gishingiye ku mpamvu z'ivangura

331. Ingingo ya 3 ya Sitati ivuga ko igitero kigomba kuba cyibasiye abaturage b'abasiviri kubera «impamvu z'ubwenegihugu, iza polititiki, iz'ubwoko cyangwa iz'idini ». Ibikorwa byakorewe abantu batari mu itsinda ryibasiwe bishobora ariko kubarirwa mu byakozwe mu rwego rw'igitero iyo bishyigikira cyangwa bishishikaza abagabye igitero ku baturage bo mu itsinda ryibasiwe kubera imwe mu mpamvu zimaze kuvugwa, cyangwa ari cyo bigamije[556].

3. Umugambi wo gukora ibyaha byibasiye inyokomuntu

332. Uregwa agomba kuba yarakoze ibyo ashinjwa azi neza urwego ibitero birimo kugabwamo muri rusange kandi azi ko ibikorwa bye bibarirwa mu bigize ibyo bitero byibasiye abaturage b'abasiviri[557]. Nyamara ariko, si ngombwa ko uregwa aba asangiye intego n'abagabye ibyo bitero rusange. Si ngombwa na none ko ibikorwa byarondowe, uretse itoteza, bigomba kuba bishingiye ku mpamvu z'ivangura[558].

4. Ibikorwa byarondowe

333. Uregwa ashinjwa ibyaha byibasiye inyokomuntu bigizwe n'ubwicanyi, itsembatsemba, iyicarubozo, gusambanya ku gahato, no gutoteza. Urugereko rurasesengura rero gusa ibyo byaha.

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[555] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 80; Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 90.

[556] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 209; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 74.

[557] Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 803; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 94; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 206; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 134.

[558] Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 467.

a. Ubwicanyi

334. Ingingo ya 3(a) ya Sitati yanditse mu rurimi rw'icyongereza ikoresha ijambo « *murder* » [ubwicanyi], rikaba ari ijambo ryo mu rwego rw'amategeko rikubiyemo muri rusange kwica umuntu wabigambiriye, kwica umuntu ku bushake, n'ubwicanyi bumwe na bumwe buterwa no kudashishoza[559]. Ingingo ya 3(a) ya Sitati yanditse mu rurimi rw'igifaransa yo ikoresha ijambo «*assassinat*» rishaka kuvuga gusa ubuhotozi, ni ukuvuga kwica umuntu wabigambiriye[560].

335. Mu manza za *Akayesu*, *Rutaganda*, na *Musema*, Ingereko za Mbere z'Iremezo zemeje ko gukoresha ijambo rusange « *murder* » riri mu nyandiko y'icyongereza y'Ingingo ya 3 ya Sitati ari byo bihuye kurushaho n'amategeko mpuzamahanga ashingiye ku

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559 Reba, nk'urugero, « *BLACK'S LAW DICTIONARY* » [INKORANYAMAGAMBO Y'AMATEGEKO YANDITSWE NA BLACK], urup. 1019 (icapwa rya 6, 1990); « *United States MODEL PENAL CODE* » [Igitabo cy'amategeko ahana y'icyitegererezo muri Leta Zunze Ubumwe z'Amerika], § 210.2 (« …kwica umuntu bifatwa nk'icyaha cy'ubwicanyi iyo : (a) iyo uwabikoze afite umugambi wo gukora icyaha kandi azi neza icyo akora; cyangwa (b) iyo uwabikoze atashishoje ku buryo biba bigaragaza ko agaciro k'ubuzima bw'umuntu nta cyo kamubwiye »); « *Canada CRIMINAL CODE* » [Igitabo cy'amategeko ahana muri Kanada], *R.S.C. 1985*, *Ch. C-46 Ingingo ya 229* («Kwica umuntu bifatwa nk'icyaha cy'ubwicanyi iyo (a) umuntu watumye undi apfa (i) ashaka ko uwo wundi apfa, cyangwa (ii) ashaka kumukorera ibikorwa bimubabaza umubiri kandi azi neza ko bishobora kumwica, atitaye ku kumenya niba byamuhitana koko cyangwa bitamuhitana»); *«New South Wales CRIMES ACT»* [Amategeko ahana muri New South Wales], (1900), ingingo ya 18 (« (a) Ubwicanyi bufatwa nk'icyaha iyo ibikorwa umuntu yakoze cyangwa yateshutswe gukora ashinjwa ko ari byo byahitanye undi muntu, yabikoze cyangwa yateshutse kubikora kubera ko ubuzima bwa muntu nta cyo bumubwiye, cyangwa agamije kwica cyangwa gutera umuntu runaka ubababare bumuzahaza umubiri, cyangwa ibyo bikorwa biri mu rwego rw'ubwinjiracyaha, cyangwa mu gihe icyaha cyakorwaga cyangwa cyari kikimara gukorwa n'uregwa cyangwa se n'ibyitso bye, ashobora guhanishwa igihano cy'igifungo cya burundu cyangwa cy'igifungo cy'imyaka 25 »).

560 Reba, nk'urugero, « *France NOUVEAU CODE PÉNAL* » [Igitabo cy'amategeko ahana gishya mu Bufaransa], Ingingo ya 221-3 (Ubwicanyi bwakozwe bwagambiriwe bwitwa ubuhotozi); Igitabo cy'amategeko ahana mu Rwanda, ingingo ya 312 (Ubwicanyi bukozwe bwagambiriwe cyangwa bwategewe igico bwitwa ubuhotozi); «CODE PÉNAL DE BURKINA FASO» [Igitabo cy'amategeko ahana muri Burkina Faso], 1996, ingingo ya 318 (Kwica umuntu ku bushake bwitwa ubwicanyi. Ubwicanyi bwagambiriwe cyangwa bwategewe igico bwitwa ubuhotozi); *«NOUVEAU CODE PÉNAL DU SÉNÉGAL»* [Igitabo cy'amategeko ahana gishya muri Senegal], ingingo ya 281 (ubwicanyi bukozwe bwagambiriwe cyangwa bwategewe igico bwitwa ubuhotozi)); *« Belgium CODE PENAL »* [Igitabo cy'amategeko ahana mu Bubiligi], ingingo ya 394 (Ubwicanyi bwagambiriwe bwitwa ubuhotozi); *«CODE PENAL DE HAITI»* [Igitabo cy'amategeko ahana muri Haiti], ingingo ya 241 (Ubwicanyi bwagambiriwe cyangwa bwategewe igico bwitwa ubuhotozi).

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muco, ariko ntizatanze ibimenyetso byuzuye ku birebana n'uwo muco[561]. Ahubwo, Ingereko za Mbere z'Iremezo mu rubanza rwa Bagilishema, no mu rwa Kayishema na Ruzindana zahisemo gukoresha igipimo gihanitse cy'ubwicanyi bwagambiriwe zivuga ko ari byo bihuye n'imyumvire ya Sitati yanditse mu ndimi ebyiri no kubera ko, iyo habayeho ugushidikanya, ibintu byose birebana n'imyumvire y'itegeko bigomba gukemurwa mu buryo burengera inyungu z'uregwa[562]. Kubera iryo nyuranya riboneka mu bukemuramanza, uru Rugereko rwiyemeje gusuzuma icyo kibazo.

336. Iyo Urugereko rusesengura ijambo ryo muri Sitati rushaka kumva icyo rivuga, ruhera ku gisobanuro cyaryo gisanzwe[563]. Iyo ibisobanuro by'iryo jambo binyuranye mu ndimi zombi zemewe Sitati yanditsemo, Urugereko rukurikiza ihame ryashinze imizi ryerekeranye no gusobanura ingingo z'amategeko nk'uko rikubiye mu Ngingo ya 33(4) y'Amasezerano y'i Vienna yerekeranye n'Amategeko agenga Amasezerano Mpuzamahanga, ivuga ko mu gusesengura ingingo z'ayo masezerano zanditse mu ndimi ebyiri cyangwa zirenze, igisobanuro gihuriweho kurushaho n'izo nyandiko zombi zigenderwaho kimwe ari cyo kigomba kwemezwa[564].

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[561] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 214; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 79; Inyandiko y'Urubanza rwa Akayesu mu rw'iremezo, igika 588.

[562] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 84-85; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 138-139. Reba kandi Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igisobanuro 1151 cyo hasi ku rupapuro, igika 808 (hasubirwamo ibyanditswe mu rubanza rwa Bagilishema no mu rwa Akayesu ku birebana « n'umugambi wo gukora icyaha»).

[563] Reba muri rusange Amasezerano Mpuzamahanga y'i Vienne yerekeranye n'amategeko agenga Amasezerano hagati y'ibihugu, 23 Gicurasi 1969, 1155, Umuryango w'Abibumbye U.N.T.S 331, Ingingo ya 31(1) [«Amasezerano y'i Vienne»]; Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 478; Urubanza rwa Bagosora, N° ICTR-98-37-A, Icyemezo ku birebana no kwakira ubujurire bwa Porokireri ajuririra icyemezo cy'Umucamanza cyanze kwemeza Inyandiko y'ibirego yakorewe Theoneste Bagasora n'abandi bantu 28, Urugereko rw'Ubujurire, 8 Kamena 1998, ibika 28-29; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 139; Inyandiko y'urubanza rwa Aleksovski mu bujurire, igika 98; Inyandiko y'urubanza rwa Jelisic mu bujurire, igika 35; Inyandiko y'urubanza rwa Tadic mu bujurire, igika 282.

[564] Reba muri rusange Amasezerano Mpuzamahanga y'i Jeneve, Ingingo ya 33(4) (« Uretse igihe hari inyandiko yihariye yagizwe nyamukuru igomba kugenderwaho hakurikijwe ibivugwa mu gika cya 1, iyo igereranya ry'inyandiko mvaho zinyuranye rigaragaza ko hari ibintu bitumvikana kimwe kandi Ingingo ya 31 n'iya 32 nta cyo zifashaho mu gukemura icyo kibazo, igisobanuro kibereye izo nyandiko zinyuranye, hitawe ku mpamvu y'ayo masezerano n'icyo agamije, ni cyo kizemezwa»). Inyandiko y'urubanza rwa Blaskic mu rw'iremezo,

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337. Urugereko rusanze ijambo « *assassinat* » [ubuhotozi] na ryo rivuga ubwicanyi, ariko bufite umwihariko ko buba bwagambiriwe, bityo rikaba risobanutse kurusha ijambo «*murder*» [ubwicanyi] riri mu nyandiko y'icyongereza. Urugereko rusanga bishoboka guhuza ibisobanuro by'inyandiko zombi za Sitati haramutse hongewemo ko hagomba kubaho umugambi. Uyu mwanzuro uhuje n'amahame rusange avuga ko amategeko ahana agomba gusobanurwa uko ateye mu buryo butaguye, kandi ko iyo arimo ibintu bidasobanutse agomba kumvikana mu buryo bufitiye inyungu uregwa[565].

338. Isesengura ry'imyandikire ya Sitati rishyigikira kandi uwo mwanzuro, kubera ko inyandiko zombi za Sitati, ni ukuvuga iri mu rurimi rw'icyongereza n'iri mu rw'igifaransa, zikoresha amagambo ku Ngingo ya 3(a) yerekana ko igipimo cy'umugambi wo gukora icyaha kiri hejuru kurusha igisabwa mu byaha biteganywa n'Ingingo ya 2(2)(a). Mu bisobanuro by'ayo magambo bisanzwe, icyaha cya «*murder»* (icyaha cyibasiye inyokomuntu) kivugwa mu rurimi rw'icyongereza kirangwa n'umugambi urenze uw'ubwicanyi (jenoside), kimwe n'uko mu gifaransa hakoreshwa ijambo « *assassinat*» (icyaha cyibasiye inyokomuntu), icyo cyaha kikaba

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igika 326 (hakurikijwe Amasezerano y'i Vienne, Ingingo ya 33(4)); Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 139 (hasuzumirwa hamwe Sitati mu ndimi zombi yanditsemo kugira ngo hagaragazwe igisobanuro gikwiye). Urugereko rusanga ayo mahame agenderwaho mu gusobanura inyandiko z'amategeko ari yo akurikizwa no mu nyandiko zo mu bihugu bikoresha indimi ebyiri. Reba, nk'urugero, **«***Hong Kong Interpretation and General Clauses Ordinance*» [Isobanurwa ry'amategeko n'ingingo rusange zayo], Umutwe wa 1, Icyiciro cya 10B (3) (« Iyo igereranya ry'inyandiko mvaho zinyuranye rigaragaza ko hari ibintu bidasobanura kimwe kandi amahame y'amategeko asanzwe agenderwaho mu gutanga igisobanuro nyacyo adakemura icyo kibazo, igisobanuro kibereye izo nyandiko zinyuranye, hitawe ku mpamvu z'itegeko n'icyo rigamije ni cyo cyemezwa »); *R. v. Proulx, [2000,] 1 S.C.R. 61* (Canada), igika 95 (**«** Hashingiwe ku ihame rimaze igihe kinini ryerekeranye n'isobanurwa ry'amategeko, mu gukemura impaka zirebana n'imyumvire y'itegeko ryanditse mu ndimi ebyiri zemewe, tugomba gushakisha igisobanuro kibereye inyandiko zo muri izo ndimi zombi»).

[565] Ibi bihuje n'imitekerereze y'Urukiko ku birebana n'ihabana ry'ibisobanuro hagati y'aya magambo: **«** *killing*» (mu nyandiko yo mu cyongereza) na *« meurtre*» (mu nyandiko yo mu gifaransa) akoreshwa mu Ngingo ya 2(2)(a) ya Sitati. Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 151; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 57; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 155; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 50; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 103; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 501.

kirangwa n'umugambi urenze uwa « *meurtre*» (jenoside). Mu Ngingo ya 4(a), ijambo ryo mu cyongereza « *murder* » rigendana n'iryo mu gifaransa «*meurtre*», ibyo bikaba byongera kwerekana ko hashingiwe ku nyandiko yo mu rurimi rw'igifaransa, ubwicanyi nk'icyaha cyibasiye inyokomuntu busaba ko buba bwagambiriwe kurushaho.

339. Kubera izo mpamvu, Urugereko rusanze kwica umuntu byagambiriwe (*ubuhotozi*) ari byo bigize icyaha cyibasiye inyokomuntu giteganywa n'Ingingo ya 3(a) ya Sitati. Kugambirira bisaba nibura ko uregwa aba yakoze gahunda yo kwica mbere y'igikorwa gitsotsoba icyaha, ntabwo igitekerezo cyo kwica kigomba kuziraho mu gihe cyo gutsotsoba icyo cyaha. Si ngombwa ko haba hashize igihe kinini umuntu afite icyo gitekerezo; birahagije ko yabitekerezaho igihe gito gusa. Urugereko rusanga igisabwa ko uregwa agomba kuba yaramenye ko ibikorwa bye byari mu rwego rw'ibitero rusange byibasiye abaturage b'abasiviri gisa nk'igishaka kuvuga ko ubwicanyi buba bwarabanje gucurirwa umugambi. Urugereko rurashimangira ko atari ngombwa ko uregwa aba yaragambiriye kwica umuntu runaka; mu byaha byibasiye inyokomuntu ni ngombwa ko uregwa aba yaragambiriye kwica abasiviri bazira impamvu z'ivangura, mu rwego rw'ibitero rusange kandi biri kuri gahunda.

b. Itsembatsemba

340. Igitandukanya itsembatsemba n'ubwicanyi n'uko itsembatsemba ryibasira abaturage muri rusange aho kwibasira abantu ku giti cyabo. Ikintu cy'ingenzi kiranga itsembatsemba ni uko ari ubwicanyi bworeka imbaga y'abaturage cyangwa bwakozwe muri urwo rwego. Mu itsembatsemba, hagomba kuba hishwe abantu benshi. Kwica umuntu umwe cyangwa abantu bake ntibihagije gushingirwaho ngo umuntu aryozwe icyaha cy'itsembatsemba[566]

341. Uru Rukiko rwemeje ko itsembatsemba rishobora kuba rigizwe no kwica abantu ubishaka, cyangwa utabishaka kubera uburangare bukabije cyangwa kutagira icyo

[566] Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, ibika 813-814; Inyandiko y'urubanza rwa Vasiljevic mu rw'iremezo, ibika 227, 232.

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witaho[567]. Urukiko rwa TPIY rwo si ko rubibona kuko rusanga igitekerezo cyo gukora ubwicanyi (bwacuriwe umugambi) ari kimwe n'icyo gukora itsembatsemba[568]. Urugereko rw'Ubujurire rwa TPIR na TPIY kugeza ubu ntirurakemura ibirebana n'iryo nyuranya hagati y'ibyemezo by'izo nkiko zombi kuri icyo kibazo. Kubera ko nta ngingo yo muri Sitati cyangwa ihame ryo mu mategeko mpuzamanhanga ashingiye ku muco bivuga kuri icyo kibazo ku buryo bweruye, Urugereko rwa Mbere rw'Iremezo rusanga uburyozwacyaha mpuzamahanga bugomba gushingira gusa ku bikorwa umuntu aba yakoze ku bwende[569]. Bityo rero, Urugereko rusanga umugambi wo gukora icyaha ugize itsembatsemba ari igitekerezo umuntu aba afite cyo koreka imbaga cyangwa se cyo kugira urundi ruhare muri icyo gikorwa.

c. Iyicarubozo

342. Mu rubanza rw'Akayesu, Urugereko rwa Mbere rw'Iremezo rwagendeye ku gisobanuro cy'iyicarubozo kiri mu Maseserano y'Umuryango w'Abibumbye arwanya iyicarubozo n'ibindi bihano byuzuye ubugome, bitabereye umuntu cyangwa bimutesha agaciro[570]. Urugereko rw'Ubujurire rwa TPIY rwavuze ko n'ubwo igisobanuro kiri mu Masezerano Mpuzamahanga arwanya iyicarubozo gihuje n'ibiteganywa n'amategeko mpuzahamaga ashingiye ku muco ku birebana n'inshingano z'ibihugu, icyo gisobanuro ntigihuye n'icy'iyicarubozo nk'icyaha cyibasiye inyokomuntu[571]. By'umwihariko, Urugereko rw'Ubujurire rwa TPIY rwemeje ko, uretse gusa mu rwego rw'Amasezerano Mpuzamahanga arwanya iyicarubozo, mu mategeko mpuzamahanga ashingiye ku muco ntaho biteganywa ko

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[567] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 89; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 144.

[568] Reba, nk'urugero, Inyandiko y'urubanza rwa Krstic mu rw'iremezo, igika 495.

[569] Urugereko rusanga umugambi uwakoze icyaha yari afite ushobora gutahurwa hasuzumwe imyitwarire ye cyangwa uko ibintu byari bimeze.

[570] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 593-595. Reba Amasezerano Mpuzamahanga y'Umuryango w'Abibumbye yo kurwanya iyicarubozo n'ibindi bikorwa by'ubugome cyangwa ibihano, birenze kameremuntu cyangwa bitesha umuntu agaciro, Inyandiko y'Umuryango w'Abibumye A/RES/39/46 (1984), 1465 U.N.T. S. 85 [« Amasezerano yerekeye kurwanya iyicarubozo»].

[571] Inyandiko y'urubanza rwa Kunarac mu bujurire, ibika 146-148.

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ugomba kuba uri «umukozi wa Leta» kugira ngo uryozwe nka gatozi iyicarubozo nk'icyaha cyibasiye inyokomuntu[572].

343. Bityo rero, Urugereko rusanze iyicarubozo, nk'icyaha cyibasiye inyokomuntu, ari igikorwa gitera ububabare bukabije bw'umubiri cyangwa bwo mu mutwe hagamijwe ibintu bibujijwe bikubiyemo: guhabwa amakuru cyangwa kwemeza umuntu icyaha ku gahato; guhana cyangwa gutera ubwoba uwakorewe icyaha cyangwa undi muntu cyangwa kubahatira gukora iki n'iki cyangwa kubakorera ivangura[573]. Si ngombwa ko icyo gikorwa kiba kigamije ikintu kimwe gusa muri ibyo bibujijwe[574]

d. Gusambanya ku gahato

344. Mu rubanza rw'Akayesu hatanzwe igisobanuro cyaguye cyo gusambanya ku gahato gikubiyemo « iyinjiramubiri rishingiye ku gitsina », ariko ritavuga ko ari uguhuza ibitsina gusa ku gahato[575]. Urugereko rw'Ubujurire rwa TPIY, rwo rubibona ukundi, rwemeje igisobanuro kitaguye cy'igikorwa gifatika kigize gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu aho ruvuga ko ari ukwinjiza imboro cyangwa ikindi kintu icyo ari cyo cyose mu gituba cyangwa mu nnyo by'uwakorewe icyaha, cyangwa se kwinjiza imboro mu kanwa ke, kabone n'iyo byaba ari gato cyane[576]. Ubwumvikane muri ibyo bikowa bugomba kubaho ku bushake kandi mu bwisanzure kandi mu gusesengura ko bwabayeho ni ngombwa kureba uko ibintu byari byifashe muri icyo gihe byababaga[577].

345. N'ubwo uru Rukiko rwabanje kutemera icyo gisobanuro cyo gusambanya ku gahato gishingiye ku kintu cyakoreshejwe n'uwakoze icyaha, Urugereko rusanga isesengura rishingiye ku bikorwa binyuranye ryakozwe mu rubanza rwa Kunarac rifite ireme,

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[572] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 148.

[573] Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, igika 140; Inyandiko y'urubanza rwa Furundzija mu rw'iremezo, igika 162; Inyandiko y'urubanza rwiswe urwa Celebici mu rw'iremezo, igika 470.

[574] Inyandiko y'urubanza rwiswe urwa Celebici mu rw'iremezo, igika 470. Reba kandi Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 486.

[575] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 598. Reba kandi Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 226.

[576] Urubanza rwa Kunarac, Inyandiko y'urubanza mu bujurire, ibika 127-128.

[577] Inyandiko y'urubanza rwa Kunarac mu bujurire, ibika 127, 128, 130.

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bityo rukaba rwemera igisobanuro cyo gusambanya ku gahato cyemejwe n'Urugereko rw'Ubujurire rwa TPIY muri urwo rubanza. N'ubwo rufashe uwo mwanzuro, Urugereko ruzirikana ko ibindi bikorwa by'urugomo rushingiye ku gitsina bitinjira muri icyo gisobanuro bishobora kuregerwa nk'ibyaha byibasiye inyokomuntu uru Rukiko rufite ububasha bwo kuburanisha nk'iyicarubozo, gutoteza, gushyira mu bucakara, cyangwa ibindi bikorwa bibi birenze kameremuntu.

346. Umugambi wo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu ni igitekerezo cyo gukora igikorwa cy'iyinjiragitsina uzi neza ko ubikorerwa atabyemeye[578].

e. Gutoteza

347. Mu rubanza rwa Kupreskic, Urugereko rwa Mbere rw'Iremezo rwa TPIY rwerekanye muri make ibintu by'ingenzi bigize icyaha cyo gutoteza, aho rwavuze ko ari «ukutemerera umuntu ku buryo bweruye cyangwa bugaragara, hashingiwe ku mpamvu z'ivangura, uburenganzira bw'ibanze buteganywa n'amategeko mpuzamahanga ashingiye ku muco cyangwa mu mategeko agenga amasezerano mpuzamahanga, ku buryo biba ari igikorwa gifite uburemere nk'ubw'ibindi bibujijwe n'Ingingo ya 5 »[579]. Iki gisobanuro cyemejwe n'Urugereko rwa Mbere rw'Iremezo mu rubanza rwa Ruggiu kandi rwaragikurikije[580].

348. Gutoteza bishobora gukorwa mu buryo bunyuranye kandi si ngombwa ko bikoreshwa igitugu[581]. Ingingo ya 7(2)(g) ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga ruhoraho (CPI) ivuga ko «gutoteza bisobanura ko ari ukutemerera umuntu ku bushake kandi mu buryo bukomeye uburenganzira bw'ibanze, mu buryo bunyuranyije n'amategeko mpuzamahanga, azira itsinda ry'abantu abarirwamo[582]. Ingingo ya Sitati

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[578] Inyandiko y'urubanza rwa Kunarac mu bujurire, ibika 127-128.

[579] Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, igika 621. Reba kandi Inyandiko y'urubanza rwa Kordic na Cerkez mu rw'iremezo, igika 195.

[580] Inyandiko y'urubanza rwa Ruggiu mu rw'iremezo, igika 21.

[581] Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, igika 568; Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 707.

[582] Sitati ya CPI, Ingingo ya 7(2)(g).

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ya CPI ikubiyemo ibisabwa kugira ngo icyaha cy'itotezwa kibeho, na yo ivuga ko ibintu by'ingenzi bigize icyaha cyo gutoteza ari:

> 1. Uwakoze icyaha yavukije ku buryo bukomeye umuntu umwe cyangwa barenze umwe uburenganzira bw'ibanze, kandi mu buryo bunyuranyije n'amategeko mpuzamahanga.
>
> 2. Uwakoze icyaha yibasiye uwo muntu cyangwa abo bantu abaziza amatsinda babarizwamo cyangwa se yibasiye ayo matsinda[583].

349. Ibikorwa byo gutoteza bigomba gusesengurwa hitawe ku kuntu ibintu byari byifashe muri icyo gihe, umuntu areba inkurikizi zabyo zose zibumbiye hamwe[584]. Nk'uko biteganywa n'amategeko mpuzamahanga ashingiye ku muco, ibikorwa byo gutoteza bishobora kuba bikubiyemo ibindi bikorwa birondorwa mu tundi twiciro tw'ibyaha byibasiye inyokomuntu, nk'ubwicanyi cyangwa gucira ishyanga, iyo byakozwe hashingiwe ku mpamvu z'ivangura[585]. Ibikorwa byo gutoteza bishobora kandi kuba bikubiyemo ibindi bikorwa binyuranye birangwa n'ivangura, bidafite ahantu na hamwe biteganywa muri Sitati, byambura abantu uburenganzira bwabo[586].

350. Igikorwa cyo gutoteza kigomba kuba cyarakozwe kubera impamvu za politiki, iz'ubwoko cyanga iz'idini. Uretse ko atariko bimeze mu bindi byaha byibasiye inyokomuntu birondorwa, gutoteza bisaba ko ubikora aba afite umugambi w'ivangura[587]. Urugereko rusanga impamvu zirondorwa mu Ngingo ya 3(h) ya Sitati itoteza rishingiraho zidakubiyemo ivangura rishingiye ku bwenegihugu cyangwa ku bwoko. Izo mpamvu zikubiye mu z'ivangura igitero kiba gishingiyeho zivugwa mu gika cy'intangirio cy'Ingingo ya 3 utundi duka dushamikiyeho.

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583 Raporo, Inteko ya mbere 3-10 Nzeri 2002, Raporo y'Inama rusange y'ibihugu byasinye Sitati y'i Roma ishyiraho Urukiko Mpanabyaha Mpuzamahanga *(ICC-ASP/1/3 na Corr.1)*, igice cya II B, Ingingo ya 7(1)(h)(1) na (2) (igisobanuro cyo hasi ku rupapuro twacyihoreye).

584 Inyandiko y'urubanza rwa Krstic mu rw'iremezo, igika 535; Inyandiko y'urubanza rwa Kordic na Cerkez mu rw'iremezo, igika 199; Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, igika 622.

585 Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, ibika 607, 615.

586 Inyandiko y'urubanza rwa Kordic na Cerkez mu rw'iremezo, igika 194; Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, igika 615.

587 Inyandiko y'urubanza rwa Akayesu mu bujurire, ibika 464, 468.

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C. Ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve n'Amasezerano y'Inyongera ya II (Ingingo ya 4 ya Sitati)

351. Mu birego bya 7, 9, na 13 by'Inyandiko y'ibirego, Uregwa ashinjwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949 arengera abahohotewe n'intambara n'Amasezerano y'Inyongera ya II yo ku wa 8 Kamena 1977.

352. Hakurikijwe Ingingo ya 4 ya Sitati y'Urukiko, Urukiko rufite ububasha bwo kuburanisha abantu « bakoze cyangwa bategetse ko hakorwa » ibikorwa binyuranyije bikomeye n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Iyo Ngingo ya 4 ya Sitati ivuga ko ibyo bikorwa bikubiyemo ibikurikira, ariko atari byo byonyine:

a) Ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, cyane cyane ubwicanyi n'ibikorwa by'ubugome nk'iyicarubozo, guca ingingo z'umubiri, cyangwa ibindi bihano bibabaza umubiri;

b) Guhana abantu mu buryo bwa rusange;

c) Gufata abantu ho ingwate;

d) Ibikorwa by'iterabwoba;

e) Guhungabanya agaciro k'umuntu, by'umwihariko kumukorera ibikorwa bimusuzuguza kandi bimutesha agaciro, gusambanya ku gahato, guhatira umuntu gukora uburaya, n'ibindi bikorwa by'iterasoni;

f) Ubusahuzi;

g) Gukatira umuntu no kurangiza urubanza bidakomotse ku cyemezo cyafashwe n'urukiko rwemewe n'amategeko, ku buryo bwubahirije uburenganzira bw'uregwa ibihugu byateye imbere mu isanzuramuco bifata nk'ubw'ibanze;

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h) Gukangisha umuntu kumukorera ibivugwa muri iyi Ngingo.

1. Ingingo ya 4 ya Sitati n'ihame rivuga ko nta cyaha kibaho kitarateganyijwe n'itegeko

353. Uru Rukiko rwamaze kwemeza ko Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II byakurikizwaga mu Rwanda mu wa 1994 mu rwego rwo kubahiriza amategeko ashingiye ku muco no ku masezerano[588]. Ku itariki ya 5 Gicurasi 1964 ni bwo u Rwanda rwemeye Amasezerano Mpuzamahanga y'i Jeneve yo mu wa 1949, ubwo rwiyemezaga kubahiriza Amasezerano Mpuzamahanga igihugu cyaruyoboraga mbere cyari cyaremeye mu izina ryarwo[589], naho Amasezerano y'Inyongera ya II rwayashyizeho umukono ku itariki ya 19 Ugushyingo 1984[590]. Byongeye kandi, ibyaha biteganywa n'Ingingo ya 4 nk'uko bikubiye mu Nyandiko y'ibirego byari bisanzwe mu mategeko ahana mu Rwanda mu wa 1994[591]. Urugereko rusanze rero Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II byarakurikizwaga mu Rwanda mu wa 1994, kandi rusanze gukurikiza Ingingo ya 4 ya Sitati ku birebana n'ibyabereye mu Rwanda mu gihe Urukiko rufiteho ububasha bwo kuburanisha ibyakibayemo nta ho binyuranyije n'ihame rivuga ko nta cyaha kibaho kitateganyijwe n'itegeko.

2. Imiterere y'intambara

354. Biteganyijwe ku buryo bweruye ko Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II bikurikizwa mu birebana n'intambara zitari izo mu rwego mpuzamahanga. Bityo rero, Urugereko rugomba gusubiza ikibazo cyo kumenya niba intambara yo mu Rwanda yo mu wa 1994 itari iyo mu rwego mpuzamahanga ku

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[588] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 98; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 242; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 90; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 156-157, Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 617.

[589] Amasezerano Mpuzamahanga y'i Jeneve yo mu wa 1949 yatangiye gukurikizwa na Leta y'u Rwanda ku wa 1 Nyakanga 1962, ni ukuvuga mbere y'igihe rwayemerejeho, iyo tariki ikaba ihuye n'iyo u Rwanda rwaboneyeho ubwigenge. Reba www.icrc.org/ihl.nsf.

[590] Reba www.icrc.org/ihl.nsf.

[591] Reba, nk'urugero, Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 157; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 617.

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buryo hakurikizwa ibiteganywa n'izo ngingo, ndetse n'ibiteganywa n'Ingingo ya 4 ya Sitati y'Urukiko.

355. Ingingo ya 3 Ihuriweho igira iti «Iyo mu gihugu cyashyize umukono kuri aya masezerano hari intambara itari iyo mu rwego mpuzamahanga, buri ruhande mu zirwana rutegetswe kubahiriza, nibura, … [zimwe] mu ngingo … ». Bityo rero, Ingingo ya 3 Ihuriweho ikurikizwa ku birebana n'intambara itari iyo mu rwego mpuzamahanga ibera mu gihugu cyashyize umukono ku Masezerano. Muri rusange, intambara zitari izo mu rwego mpuzamahanga zivugwa mu Ngingo ya 3 ihuriweho ni intambara zikocoranya abasirikare b'impande zombi zishyamiranye, kandi ukurikije ibivugwa n'Umuryango Mpuzamahanga Utabara Imbabare (CICR) izo ntambara «zifite byinshi zihuriyeho n'izo mu rwego mpuzamahanga, uretse ko zo ziba zibera mu gihugu kimwe gusa»[592].

356. Amasezerano y'Inyongera ya II yivugira ko asobanura ku buryo burambuye kandi yuzuza Ingingo ya 3 Ihuriweho «nta cyo ihinduraho ibisabwa mu kuyubahiriza»[593]. Nyamara ariko, Ingingo ya 1 y'Amasezerano y'Inyongera ya II yagura Ingingo ya 3 Ihuriweho kubera ko ivuga ku buryo bweruye ko ayo Masezerano akurikizwa mu birebana n'intambara zitari izo mu rwego mpuzamahanga «zibera mu gihugu cyashyize umukono kuri ayo masezerano kandi zicakiranya ingabo z'icyo gihugu n'izindi zigometse cyangwa se n'izigize udutsiko twitwaje intwaro dufite inzego ndetse n'ubuyobozi bizwi, kandi zifite igice cy'igihugu zigenzura ku buryo zishobora gukora ku buryo buhoraho kandi buhurije hamwe ibikorwa bya gisirikare no gushyira mu bikorwa aya Masezerano y'inyongera»[594].

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[592] *International Committee of the Red Cross, The Geneva Conventions of 12 Kanama 1949 Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, urup. 36 (1958) [« Geneva Conventions Commentary »].* [Komite Mpuzamahanga y'Umuryango Utabara Imbabare, Ibisobanuro by'Amasezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949: IV Amasezerano Mpuzamahanga y'i Jeneve yerekeranye no kurengera abasiviri mu gihe cy'intambara, urup. 36 (1958) - « Ibisobanuro by'Amasezerano y'i Jeneve»].

[593] Reba Amasezerano y'Inyongera ku Masezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949, yerekeranye no kurengera abashobora guhohoterwa n'intambara zitari izo mu rwego mpuzamahanga (Amasezerano y'Inyongera ya II), Ingingo ya 1 [«Amasezerano y'Inyongera ya II»].

[594] Amasezerano y'Inyongera ya II, Ingingo ya 1.

357. Kugira ngo umuntu yemeze niba intambara iri mu rwego rw'izirebwa n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II cyangwa rw'izirebwa na kimwe muri ibyo byombi, ni ngombwa kubanza gusesengura ibisabwa muri izo ngingo kandi mu buryo buzira irangamutima[595].

3. Abantu barebwa n'Amasezerano : Abakoze ibyaha

358. Ingingo ya 4 ya Sitati ivuga ko Urukiko «rufite ububasha bwo gucira imanza abantu bakoze cyangwa bategetse abandi gukora ibikorwa binyuranyije bikomeye [n'Ingingo ya 3 Ihuriweho, n'Amasezerano y'Inyongera ya II]». Urugereko rw'Ubujurire rw'uru Rukiko ruherutse kwerekana ko «Ingingo ya 4 nta na hamwe yerekana ibyiciro by'abantu bashobora gukurikiranwa hashingiwe kuri aya mategeko»[596].

359. Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II na byo ntibisobanura ibyiciro by'abantu bashobora gukurikiranwa ko bakoze ibyo byaha, ahubwo byerekana abategetswe kubahiriza inshingano zikubiye muri ayo Masezerano mpuzamahanga. Mu Ngingo ya 3 ihuriweho, ni « buri ruhande ruri mu ntambara»[597]. Mu nyandiko ikubiyemo ibisobanuro bya CICR by'Amasezerano y'Inyongera ya II havugwamo gusa ko abantu barebwa na yo ari abagomba kubahiriza ingingo zimwe na zimwe zerekeranye n'uko bagomba kwitwara imbere y'uwo bahanganye n'imbere y'abaturage b'abasiviri»[598].

360. Koko rero, nta bindi bisobanuro by'abashobora gukurikiranwaho ibyaha bikenewe urebye ikintu cy'ingenzi kigamijwe Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II: kurengera abashobora gukorerwa ibyaha[599]. Urugereko

[595] Reba, nk'urugero, Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 101; INTERNATIONAL COMMITTEE OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 KAMENA 1977 TO THE GENEVA CONVENTIONS OF 12 KANAMA 1949, urup. 1351 (1987) [« ADDITIONAL PROTOCOL II COMMENTARY »]. [Komite Mpuzamahanga y'Umuryango Utabara Imbabare, Ibisobanuro by'Amasezerano y'Inyongera yo ku wa 8 Kamena 1977 ku Masezerano Mpuzamahanga y'i jeneve yo ku wa 12 Kanama 1949, urup. 1351 (1987) - «Ibisobanuro by'Amasezerano y'Inyongera»]

[596] Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 435.

[597] Reba Ingingo ya 3 Ihuriweho.

[598] Ibisobanuro by'Amasezerano y'Inyongera ya II, urup. 1359.

[599] Reba Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 442.

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rw'Ubujurire rwa TPIR rwemeje ko kugira ngo ingamba zo kurengera abantu zikubiye mu Ngingo ya 3 ihuriweho zubahirizwe, bisaba ko abakoze ibikorwa binyuranyije n'ayo Masezerano bahanwa nyabyo, abo ari bo bose[600]. Mu rubanza rw'Akayesu, Urugereko rw'Ubujurire rwemeje ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko ubwo rwahiniraga ikurikizwa ry'Ingingo ya 3 Ihuriweho ku byiciro bimwe gusa by'abakoze ibyaha[601]. By'umwihariko, icyiciro cy'abantu bavugwa mu nyandiko y'urubanza rwo mu Rugereko rwa Mbere rw'Iremezo ni ikigizwe n'abasirikare « bafite abayobozi bo mu rwego rwa gisirikare b'uruhande urwo ari rwo rwose ruri mu ntambara, [hamwe na] … abantu bafite ububasha ku bw'amategeko bwo gushyigikira gahunda zo kurwana intambara kandi bitezweho kuyishyigikira koko, nk'abategetsi cyangwa abakozi ba Leta cyangwa abandi bantu bari mu myanya y'ububoyozi cyangwa abakora mu izina rya Leta ariko batabikomora ku mategeko»[602].

361. Urugereko rw'Ubujurire rwa TPIR ntirwemeye inshoza y'uko hagomba kubaho isano hagati y'uwakoze ibyaha n'impande ziri mu ntambara: «… iyo sano yihariye si ngombwa ko iba iriho kugira ngo hashobore gukurikizwa Ingingo ya 3 Ihuriweho ndetse n'Ingingo ya 4 ya Sitati»[603]. Urugereko rw'Ubujurire rwasobanuye imitekerereze yarwo ku buryo bukurikira:

> Urugereko rw'Ubujurire rusanga kurengera abakorewe ibyaha, biteganyijwe mu Ngingo ya 3 ihuriweho n'Amasezerano bisobanura, byanze bikunze, ko abanyuranyije n'iyi ngingo bagomba guhabwa igihano nyacyo. Cyakora, icyo gihano kigomba no guhabwa umuntu wese, nta kuvangura, nk'uko bisabwa n'amahame y'uburyozwacyaha bw'umuntu ku giti cye yashyizweho, nk'urugero, n'Urukiko rwa *Nuremberg*. Urugereko rw'Ubujurire rusanga amategeko mpuzamahanga arengera abantu mu gihe cy'intambara yaba ateshejwe agaciro kandi apfobejwe, haramutse hemewe ko abantu bamwe

[600] Reba Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 443.

[601] Inyandiko y'Urubanza rwa Akayesu mu bujurire, ibika 444-445.

[602] Reba Inyandiko y'urubanz arwa Akayesu mu bujurire, igika 444; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 631.

[603] Reba Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 444.

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> banyuranyije n'Ingingo ya 3 Ihuriweho n'Amasezerano bataryozwa icyaha ku giti cyabo, hitwajwe ko batari mu rwego uru n'uru rwihariye[604].

362. Kubera ibyo bimaze kuvugwa, uburyozwacyaha ku birebana n'ibikorwa bivugwa mu Ngingo ya 4 ya Sitati ntibuterwa n'icyiciro runaka uwakoze icyo gikorwa abarizwamo.

4. Abantu barebwa n'Amasezerano : Abashobora guhohoterwa

363. Ingingo ya 3 Ihuriweho irengera «abantu batari mu mirwano, hakubiyemo n'abasirikare bashyize intwaro hasi n'abadashobora kujya ku rugamba kubera uburwayi, gukomereka, gufungwa, cyangwa indi mpamvu iyo ari yo yose»[605]. Inyandiko ikubiyemo ibisobanuro bya CICR isobanura iyo Ngingo ku buryo bukurikira:

> …Ingingo ya 3 ikoreshwa mu buryo bwagutse cyane kandi ireba abasirikare n'abandi bantu batari mu mirwano. Nyamara ariko kuri iki kibazo, *iyo Ngingo irengera mbere na mbere abasiviri—ni ukuvuga abaturage batitwaje intwaro*[606].

364. Amasezerano y'Inyongera ya II akurikizwa ku «bantu bose intambara igiraho ingaruka»[607]. Inyandiko ikubiyemo ibisobanuro bya CICR yerekana ko muri icyo cyiciro habarirwamo «abantu batari mu mirwano cyangwa batakiyitabira»[608]. Ingingo ya 4(1) y'Amasezerano y'Inyongera ya II isobanura kandi ko mu bo irengera harimo «n'abantu bose batari mu mirwano mu buryo butaziguye cyangwa batakiyitabira »[609].

365. Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II mu mizi yabyo birengera abantu batari mu mirwano[610]. Urugereko rw'Ubujurire rwa TPIY

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[604] Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 443.

[605] Ingingo ya 3 Ihuriweho.

[606] Ibisobanuro by'Amasezerano Mpuzamahanga y'i Jeneve, urup. 40 (ni twe twabishimangiye tubyandika mu nyuguti ziberamye).

[607] Amasezerano y'Inyongera ya II, ingingo ya 2(1).

[608] Ibisobanuro by'Amasezerano y'Inyongera ya II, urup. 1359.

[609] Amasezerano y'Inyongera ya II, ingingo ya 4(1).

[610] Reba Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 629.

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rwashimangiye ko Ingingo ya 3 ireba «umuntu *uwo ari we wese* utari mu mirwano»[611]. Uru Rukiko na rwo ni ko rubibona[612].

366. Ikibazo umuntu agomba kwibaza ahangaha ni icyo kumenya niba, igihe icyaha kivugwa cyakorwaga, uwo bavuga ko yagikorewe yari mu mirwano[613]. Niba atari ayirimo, ni ukuvuga ko yari mu barengerwa n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II[614]. Kuba mu mirwano mu buryo butaziguye bisobanura, muri aya masezerano mpuzamahanga, gukora ibikorwa by'intambara bihashya abarwanyi bo ku ruhande rw'umwanzi cyangwa byangiza ibikoresho byabo[615].

5. Ahantu intambara ibera

367. Iyo ibisabwa kugira ngo hakurikizwe Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II byuzuye, byubahirizwa mu ifasi yose y'igihugu intambara iberamo bitagarukiye gusa «ku rugamba» cyangwa mu «karere aka n'aka k'igihugu imirwano iberamo»[616].

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[611] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 420 (birashimangiye mu nyandiko y'umwimerere).

[612] Reba Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 103-104; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 280; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 101; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 179; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 629. Reba kandi L.C. GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT, urup. 231 (2d ed. 2000) [L.C. Green, Amategeko yo muri iki gihe yerekeranye n'intambara, urup. 231, icapwa rya 2, 2000]. (« Mu ntambara itari iyo mu rwego mpuzamahanga, abasiviri barengerwa n'Ingingo ya 3 Ihuriweho … iyo ngingo ikaba … ikurikizwa ku basiviri kimwe no ku bandi bantu batakiri mu mirwano»).

[613] Reba Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 104; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 279; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 100; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 179; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 629. Reba kandi Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 615.

[614] Reba Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 615.

[615] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 104; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 279; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 100. Reba kandi Ibisobanuro by'Amasezerano y'Inyongera ya II, urup. 1453.

[616] Reba Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 101; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 283-284;, Inyandiko y'urubanza Urubanza rwa Rutaganda mu rw'iremezo, ibika 102-103;

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6. Isano riri hagati y'intambara n'ibikorwa binyuranyije n'Amasezerano Mpuzamahanga

368. Kugira ngo icyaha gikurikiranwe hashingiwe ku Ngingo ya 4 ya Sitati y'Urukiko, Urugereko rugomba kubanza gusuzuma niba hari isano iri hagati y'intambara n'igikorwa kinyuranyije n'Ingingo ya 3 Ihuriweho cyangwa n'Amasezerano y'Inyongera ya II[617]. Iki gisabwa cyumvikana neza iyo umaze gusesengura ikigamijwe n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Icyo ayo mategeko agamije ni ukurengera abaturage nk'abantu bashobora guhohoterwa n'intambara zitari izo mu rwego mpuzamahanga[618], ntabwo ari ukubarengera mu birebana n'ibyaha bidafitanye isano n'iyo ntambara, n'ubwo bwose ibyo byaha byaba bihanwa n'amategeko.

369. Kumenya niba iyo sano yari iriho igihe ibyaha bivugwa byakorwaga ni ikibazo kigomba kubonerwa igisubizo hakurikijwe ibimenyetso byatanzwe. Uru Rukiko kimwe n'urwa TPIY zemeje ko iyo sano iba iriho iyo icyaha kivugwa «gifite aho gihuriye bya hafi n'intambara » cyangwa se « cyarakozwe mu rwego rw'iyo ntambara »[619].

Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 182-183; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 635-636. Reba kandi urubanza rwa Tadic, N° IT-94-1-AR72, Icyemezo ku bujurire bw'Ubwunganizi bunenga icyemezo cyafashwe ku ngoboka yerekeranye n'ububasha bw'Urukiko, Urugereko rw'Ubujurire, 2 Ukwakira 1995, igika 69; Ibisobanuro by'Amasezerano y'Inyongera ya II, imp. 1359-1360.

[617] Reba Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 105; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 259; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 104; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 185; Inyandiko y'Urubanza rwa Akayesu mu rw'iremezo, igika 643. Ibi bihuje kandi n'umwanzuro wafashwe na TPIY. Reba, nk'urugero, Urubanza rwa Tadic, Icyemezo ku bujurire bw'Ubwunganizi bunenga icyemezo cyafashwe ku ngoboka yerekeranye n'ububasha bw'Urukiko, Urugereko rw'Ubujurire, igika 70.

[618] Reba Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 189.

[619] Reba Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 105; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 260; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 104; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 186; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 643 (… « Nta bimenyetso bidashidikanywaho byatanzwe bihamya ko ibikorwa bivugwa … byakozwe mu rwego rw'intambara »). Ibi bihuje kandi n'umwanzuro wafashwe na TPIY. Reba, nk'urugero,

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

7. *Ibikorwa binyuranyije bikomeye n'Amasezerano Mpuzamahanga*

370. Ingingo ya 4 ya Sitati iha Urukiko ububasha bwo kuburanisha *ibikorwa binyuranyije* bikomeye n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Uru Rukiko rwemeje ko igikorwa kinyuranyije bikomeye n'ayo Maseserano mpuzamahanga kivugwa mu Ngingo ya 4 ari ikinyuranyije n'itegeko rirengera indangagaciro zikomeye za muntu kandi kikagira ingaruka mbi ku muntu wagikorewe[620]. Rushingiye kuri ibyo, Urukiko rwemeje ko ibikorwa birondorwa mu Ngingo ya 4 ya Sitati binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II, bityo uwabikoze akaba yabiryozwa nka gatozi[621]. Uru Rugereko rwa Mbere rw'Iremezo na rwo ni ko rubibona.

371. Bityo rero, Porokireri aramutse atanze ibimenyetso byerekana ko igikorwa icyo ari cyo cyose kivugwa mu Ngingo ya 4 ya Sitati cyabayeho, Urugereko rwakwemeza ko icyo gikorwa kinyuranyije bikomeye n'Amasezerano Mpuzamahanga hakurikijwe uko iyo Ngingo ya 4 ibiteganya.

8. *Ibikorwa binyuranyije n'Amasezerano Mpuzamahanga ku buryo bwihariye*

372. Inyandiko y'ibirego ishinja Uregwa ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, cyane cyane ubwicanyi

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Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 58; Urubanza rwa Tadic, Icyemezo ku bujurire bw'Ubwunganizi bunenga icyemezo cyafashwe ku ngoboka yerekeranye n'ububasha bw'Urukiko, Urugereko rw'Ubujurire, igika 70 (« Birahagije ko ibyaha bivugwa byari bifitanye isano ya hafi n'intambara yaberaga mu bindi bice by'igihugu byagenzurwaga n'impande zishyamiranye »).

[620] Reba Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 102; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 286; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 106; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 184; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 616. Uyu mwanzuro ushingiye ku cyemezo cy'Urugereko rw'Ubujurire rwa TPIY aho rwavuze ko «igikorwa kibujijwe kigomba kuba gikabije, ni ukuvuga ko kigomba kuba kinyuranyije n'itegeko rirengera agaciro gakomeye ka muntu kandi kikagira ingaruka mbi ku muntu wagikorewe». Urubanza rwa Tadic, Icyemezo ku bujurire bw'Ubwunganizi bunenga icyemezo cyafashwe ku ngoboka yerekeranye n'ububasha bw'Urukiko, Urugereko rw'Ubujurire, igika 94.

[621] Reba Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 288; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 106; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 184; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 616.

n'iyicarubozo, nk'uko biteganywa n'Ingingo ya 4(a) ya Sitati; ikaba imushinja kandi ibikorwa bisuzuguza kandi bitesha agaciro abagore, bikubiyemo gusambanya ku gahato n'ibindi bikorwa by'urugomo rushingiye ku gitsina, nk'uko biteganywa n'Ingingo ya 4(e) ya Sitati. Urugereko rukurikije imyanzuro rwafashe irebana n'ibyabaye, ruri busesengure gusa ibikorwa byihariye byerekeranye n'ubwicanyi n'iyicarubozo.

373. Ubwicanyi buvugwa mu Ngingo ya 4 ni igikorwa cyo kwica umuntu ku bushake, bitari ngombwa ko biba byacuriwe umugambi. Urugereko rukaba rufashe uyu mwanzuro rumaze gusesengura amagambo akoreshwa mu nyandiko ya Sitati yo mu rurimi rw'igifaransa, ahakoreshejwe ijambo «*meurtre*» [ubwicanyi], aho kuba «*assassinat*» [ubuhotozi][622].

374. Ibigize iyicarubozo rivugwa mu Ngingo ya 4 ni bimwe n'ibigize iyicarubozo nk'icyaha cyibasiye inyokomuntu[623].

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[622] Reba hano hejuru, ibika 334-339.

[623] Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, ibika 465, 497; Inyandiko y'urubanza rwa Kunarac mu bujurire, ibika 144, 156. Ku birebana n'ibigize icyaha cy'iyicarubozo, reba hano hejuru ibika 342-343.

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

D. Uburyozwacyaha nka gatozi

375. Inyandiko y'ibirego ishinja Uregwa jenoside, ibyaha byibasiye inyokomuntu, n'ibikorwa binyuranyije bikomeye n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II, hashingiwe ku Ngingo ya 6(1) n'iya 6(3) za Sitati. Na none, Inyandiko y'ibirego ishinja Uregwa icyaha cya jenoside hashingiwe ku Ngingo ya 2(3) ya Sitati.

1. Uburyozwacyaha hashingiwe ku Ngingo ya 6(1) ya Sitati

376. Ingingo ya 6(1) yerekeranye n'uburyozwacyaha bw'Uregwa kubera ibikorwa bye binyuranyije n'amategeko kandi ikurikizwa mu birebana n'amatsinda atatu yose y'ibyaha bivugwa[624]. Ingingo ya 6(1) igira iti:

> Umuntu uwo ari we wese wacuze umugambi, akawuhamagarira abandi, agategeka ko icyaha gikorwa, akagikora cyangwa ku bundi buryo ubwo ari bwo bwose, agashyigikira abandi mu gucura umugambi, gutegura, cyangwa gutsotsoba icyaha icyo ari cyo cyose kivugwa mu Ngingo ya 2 kugeza ku ya 4 z'iyi Sitati, akiryozwa nka gatozi.

377. Ingingo ya 6(1) igaragaza ihame ry'uko umuntu ataryozwa gusa icyaha yatsotsobye, ko ahubwo anaryozwa icyo yafashije abandi gukora cyangwa se icyo yagizemo uruhare urwo ari rwo rwose, hakurikijwe amahame y'uburyozwacyaha bw'icyitso[625].

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[624] Urugereko rusanga uburyo bwose icyaha gikorwamo kimwe n'imiterere y'uburyozwacyaha biteganywa n'Ingingo ya 6 ya Sitati bikurikizwa no ku bikorwa binyuranyije n'Ingingo ya 4 ya Sitati, kabone n'ubwo iyo ngingo ivuga ko Urukiko rufite ububasha bwo gucira imanza « abantu bakoze cyangwa bategetse abandi gukora » ibikorwa binyuranyije bikomeye n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Iyi mvugo yakoreshejwe mu Ngingo ya 4 ishobora kumvikanishwa n'uko muri iyo ngingo handukuwe uko biri ibikubiye mu Ngingo ya 3 ihuriweho n'Amasezerano Mpuzamahanga ane y'i Jeneve. Ingingo ya 6(1) n'Ingingo ya 6(3) zombi zikurikizwa ku buryo bweruye ku Ngingo ya 2, iya 3 n'iya 4 kandi zerekana ko umuntu aryozwa icyaha kubera gucura umugambi wo kugikora, guhamagarira no gutegeka abandi kugikora, kugikora we ubwe, gushyigikira abagikoze, cyangwa nk'ukuriye abandi kubera kutaburizamo ikorwa ry'ibyaha biteganywa n'amategeko ahana ibyaha mpuzamahanga birondorwa na Sitati. Ingingo ya 1 ivuga kandi ko Urukiko rufite ububasha bwo gucira imanza abantu bakekwaho kuba barakoze ibyaha biteganywa na Sitati. Bityo, hashingiwe ku Ngingo ya 1 n'iya 6, Urukiko rufite ububasha bwo kuburanisha ibyaha bivugwa mu Ngingo ya 4 ya Sitati hakurikijwe uburyo bwose ibyaba byakozwemo.

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378. Hakurikijwe ibivugwa mu Ngingo ya 6(1), icyaha Urukiko rufitiye ububasha bwo kuburanisha kigomba kuba cyaratsotsobwe kugira ngo uregwa abashe kukiryozwa[626]. Ingingo ya 6(1) ntihana ibyaha bitegura ibindi, uretse gusa mu birebana n'icyaha cya jenoside hashingiwe ku Ngingo ya 2(3)(b), (c), na (d)[627].

379. Kugira ngo Ingingo ya 6(1) ikurikizwe, uregwa agomba kuba yarateye inkunga igaragara mu ikorwa ry'icyaha, cyangwa iyo nkunga igomba kuba yaragize uruhare runini mu itsotsoba ry'icyaha[628].

a. Uburyo icyaha cyakozwemo

(i) Gucura umugambi

380. «Gucura umugambi» bivuga ko umuntu umwe cyangwa abantu benshi bahanga gahunda yo gukora icyaha, haba mu bikorwa by'intangiriro y'icyaha cyangwa se mu byo kugitsotsoba[629]. Uruhare umuntu yagize mu gucura umugambi rugomba kuba rukomeye, nko guhanga ubwe gahunda cyangwa se kwitabira iyateguwe n'undi muntu[630].

(ii) Guhamagarira abantu gukora icyaha

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[625] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 185. Reba kandi Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 114; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 33; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 196-197; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 473.

[626] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, ibika 186, 187; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 115-116; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 34, 35, 43; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 473, 482.

[627] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 115; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 34; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 473.

[628] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, ibika 186, 198; Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 787; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 30, 33; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 126; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 43; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 199, 207; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 477.

[629] *BLACK'S LAW DICTIONARY*, urup. 1150 (Icapwa rya 6, 1990) (ahasobanurwa ijambo « *plan* » [umugambi]); Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 37.

[630] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 30.

381. «Guhamagarira abantu gukora icyaha» bivuga kubakangurira, kubashishikariza cyangwa kuboshya gukora icyaha[631]. Si ngombwa ko guhamagarira abantu gukora icyaha bikorwa mu buryo butaziguye cyangwa ko bikorerwa mu ruhame[632]. Hagomba gutangwa ibimenyetso bihamya ko guhamagarira abantu gukora icyaha bifite aho bihuriye n'itsotsobwa ry'icyo cyaha[633]

(iii) Gutegeka abantu gukora icyaha

382. «Gutegeka abantu gukora icyaha» bivugwa iyo umuntu ufite umwanya w'ubuyobozi akoresheje ububasha akomora kuri uwo mwanya maze agategeka – bityo agahatira – abo ayobora gukora icyaha[634]. Kugira ngo uregwa aryozwe icyaha cyo gutegeka abantu gukora icyaha, hagomba kwerekanwa ko yari akuriye abatsotsobye icyaha bakurikiza amategeko ye[635].

(iv) Gukora icyaha

383. «Gukora icyaha» bivuga ko uregwa aba yagize uruhare rutaziguye mu gukora icyaha giteganywa na Sitati cyangwa se ko we ubwe aba yagitsotsobye[636].

(v) Gufasha no gushishikaza mu gucura umugambi, kuwutegura, cyangwa kuwutsotsoba

384. Amagambo «gufasha» no «gushishikaza» ni inshoza ebyiri zitandukanye mu rwego rw'amategeko[637]. Ijambo «gufasha» rivuga gutera inkunga undi muntu cyangwa

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[631] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 30; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 482.

[632] Inyandiko y'urubanza rwa Akayesu mu bujurire, ibika 478-482.

[633] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 30.

[634] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 30; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 39; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 483.

[635] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 30; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 39; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 483.

[636] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 187; Inyandiko y'urubanza rwa Tadic mu bujurire, igika 188.

[637] Reba Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 484. Reba muri rusange *MEWETT & MANNING ON CRIMINAL LAW* [Amategeko ahana], *urup. 272 (icapwa rya 3, 1994)*; BLACK'S LAW DICTIONARY, *urup. 69 (icapwa rya 7, 1999)* (ahasobanurwa amagambo « *aid and abet* » [gufasha no gushishikaza]), hasubirwamo ibyanditswe na *Wharton's Criminal Law* [Amategeko ahana], *igika 29 (icapwa rya 15, 1993);* Reba, urugero,

kumutiza umurindi mu gutsotsoba icyaha, naho ijambo «gushishikaza» rivuga gutera akanyabugabo, kugira inama cyangwa gukangurira undi muntu gutsotsoba icyaha[638]. Cyakora, amagambo «gufasha » no «gushishikaza» akunda gukoreshwa icyarimwe nk'inshoza imwe rukumbi yo mu rwego rw'amategeko[639], kandi ni ko bimeze muri uru Rukiko.

385. Mu bukemuramanza bw'uru Rukiko, «gufasha no gushishikaza» bivuga ibikorwa ibyo ari byo byose byo gushyigikira cyangwa gutiza umurindi mu ikorwa ry'icyaha[640]. Uku gushyigikira no gutiza umurindi bishobora kugaragarira mu bikorwa bifatika, mu magambo, ndetse rimwe na rimwe no mu kuba umuntu ari aho ibivugwa byabereye nk'«indorerezi ishyigikiye ibirimo kuba»[641]. Uretse ku birebana n'«indorerezi ishyigikiye ibirimo kuba», inkunga igomba gutangwa mbere y'uko icyaha gitsotsobwa cyangwa se mu gihe kirimo gitsotsobwa, kandi si ngombwa ko uregwa aba ari aho icyaha cyakorewe mu gihe cyakorwaga[642].

The Criminal Code, R.S.C. 1985, ch. C-46, igika 21(b), (c) (Canada) (ahavugwa amagambo gufasha no gushishikaza buri jambo ukwaryo).

[638] Reba Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 787; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 484; SMITH & HOGAN, CRIMINAL LAW [Amategeko ahana], urup. 144 (icapwa rya 10, 2002) (hasubirwamo ibyanditse muri *Oxford English Dictionary); MEWETT & MANNING ON CRIMINAL LAW urup. 272 (Icapwa rya 3, 1994)*; BLACK'S LAW DICTIONARY, urup. 69 (icapwa rya 7, 1999) (hasobanurwa « gufasha no gushishikaza »), hasubirwamo ibyanditse muri *Wharton's Criminal Law, igika 29 (icapwa rya 15, 1993).*

[639] *MEWETT & MANNING ON CRIMINAL LAW urup. 272 (icapwa rya 3, 1994)* (ahavugwa ko amagambo gufasha no gushishikaza hafi ku isi hose akoreshwa icyarimwe »).

[640] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 186; Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 787; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 33, 36; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 125-126; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 200-202; Reba Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 484.

[641] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, ibika 201-202; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 198; Inyandiko y'urubanza rwa Aleksovski mu rw'iremezo, igika 63.

[642] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 33; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 43; Inyandiko y'urubanza Urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 200; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 484. Kuba uregwa yari aho icyaha cyakorewe ni cyo kintu kuva kera gitandukanya gushyigikira, bisaba byanze bikunze ko uba uhari, n'ubundi buryo bwo kuba

386. Kugira ngo uregwa aryozwe icyaha nk'«indorerezi yashyigikiye ibirimo kuba» bisaba ko yari aho icyaha cyakorewe igihe cyakorwaga cyangwa se nibura ko yari hafi yaho, ku buryo uwatsotsobye icyaha yabifataga nko kuba ashyigikiwe mu byo akora[643]. Ububasha uregwa aba afite akenshi ni ikintu cyakwerekana ko uwatsotsobye icyaha yabonaga ko kuba uregwa ahari ari ukumushishikariza kugikora[644]. Nyamara ariko, kuba uregwa yari aho icyaha cyakorewe ubwabyo ntibihagije gutuma akiryozwa, hagomba kwitabwaho ukuntu yari aho hantu hashingiwe ku kuntu ibintu byari byifashe icyo gihe[645].

b. Umugambi wo gukora icyaha

387. Umuntu «utsotsoba» icyaha nka gatozi agomba kuba afite umugambi wo kugikora[646].

388. Iyo uregwa aryozwa icyaha nk'icyitso, umugambi wo gukora icyaha ubu uriho iyo ibyo avugwaho aba yabikoze ku bushake kandi azirikana ko arimo koshya cyangwa gutera inkunga undi muntu gutsotsoba icyaha[647]. Si ngombwa ko uregwa aba asangiye umugambi n'uwatsotsobye icyaha; nyamara ariko, uregwa agomba kuba azi ibintu by''ingenzi bigize icyaha cyatsotsobwe, hakubiyemo n'umugambi w'uwagitso-tsobye[648].

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icyitso nko gushyiramo umuntu igitekerezo cyo gukora icyaha no kumworohereza kugikora. Reba muri rusange igitabo cyanditswe na ANDREW ASHWORTH, *PRINCIPLES OF CRIMINAL LAW* [AMAHAME Y'AMATEGEKO AHANA], *urup. 429 (icapwa rya 3, 1999).*

643 Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 36; Inyandiko y'urubanza rwa Aleksovski mu rw'iremezo, ibika 64-65.

644 Inyandiko y'urubanza rwa Aleksovski mu rw'iremezo, igika 65.

645 Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, igika 257; Inyandiko y'urubanza rwa Aleksovski mu rw'iremezo, ibika 64-65. Reba, nk'urugero, Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 693 (ububasha n'amagambo yavuzwe mbere yo gushishikaza); Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 690 (kuba iryo tsinda ryari ahantu hakorewe icyaha kandi ryaragize uruhare rutaziguye mu bikorwa bimeze nk'ibyo rishinjwa).

646 Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 187.

647 Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 186; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 32; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 201.

648 Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 205. Reba kandi Inyandiko y'urubanza rw'Aleksovski mu bujurire, igika 162; Inyandiko y'urubanza rwa Vasiljevic mu rw'iremezo, igika

389. Ku birebana n’uburyozwacyaha bw’«indorerezi ishyigikiye ibirimo kuba», uregwa agomba kuba azirikana ko kuba ari aho icyaha kirimo gukorerwa, ugitsotsoba abifata nko kumushishikaza cyangwa kumushyigikira[649]. Umugambi wo gukora icyaha ushobora kugaragazwa hashingiwe ku bintu uko byari byifashe, hakubiyemo imyitwarire iteye ityo uregwa yari asanganywe, kudahana abakoze ibyaha, cyangwa amagambo yo kubashishikaza[650].

2. Uburyozwacyaha buteganywa n’Ingingo ya 2(3) ya Sitati

390. Ingingo ya 2(3) irondora ibikorwa bishingirwaho mu kuryoza uregwa jenoside hakurikijwe ibiteganywa na Sitati, ari byo bikurikira: jenoside, ubwumvikane bugamije gukora jenoside, guhamagarira abantu mu ruhame kandi mu buryo butaziguye gukora jenoside, ubwinjiracyaha bwa jenoside, no kuba icyitso cy’abakoze jenoside.

391. Urugereko rusanga inshoza «jenoside» ikubiye mu Ngingo ya 2(3)(a) ifite ibintu ihuriraho n’inshoza «gukora icyaha» ikubiye mu Ngingo ya 6(1), kimwe n’uko inshoza «kuba icyitso cy’abakoze jenoside» ikubiye mu Ngingo ya 2(3)(e) ifite ibintu ihuriraho n’ubufatanyacyaha buteganywa n’Ingingo ya 6(1)[651]. Iryo subiramo umuntu

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71; Inyandiko y’urubanza rwa Krnojelac mu rw’iremezo, ibika 75, 90; Inyandiko y’urubanza rwa Kvocka mu rw’iremezo, ibika 255, 262; Inyandiko y’urubanza rwa Kunarac mu rw’iremezo, igika 392; Inyandiko y’urubanza rwa Furundzija mu rw’iremezo, igika 249. Ariko reba Inyandiko y’urubanza rwa Ntakirutimana mu rw’iremezo, igika 787 (ahavugwa ko gufasha no gushishikaza) bivugwa mu Ngingo ya 6(1) bisaba ko hatangwa ibimenyetso bihamya ko uregwa yari afite igitekerezo cyo gukora icyaha nyamukuru, nk’urugero, igitekerezo cyihariye cyo gukora jenoside); Urubanza rwa Akayesu, Inyandiko y’urubanza mu rw’Iremezo, ibika 485, 547. Urugereko rusanga izo manza zidatanga igisobanuro na kimwe cyerekana impamvu yatuma igitekerezo gisabwa mu gufasha no gutera inkunga hakurikijwe Ingingo ya 6(1) cyafatwa mu buryo bunyuranye n’igisabwa mu cyaha cyo kuba icyitso cy’abakoze jenoside, ahadasabwa gutanga ibimenyetso bihamya ko uregwa yari afite igitekerezo cyo gukora icyaha nyamukuru.

[649] Inyandiko y’urubanza Urubanza rwa Bagilishema mu rw’iremezo, igika 36.

[650] Inyandiko y’urubanza Urubanza rwa Bagilishema mu rw’iremezo, igika 36.

[651] Inyandiko y’urubanza rwa Krstic mu rw’iremezo, igika 640.

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yavuga ko ryatewe n'uko abateguye inyandiko ya Sitati bayishyizemo Ingingo ya III y'Amaseserano yerekeranye na jenoside bayandukuye uko yakabaye[652].

392. Porokireri ashinja Uregwa jenoside, nk'uko byasesenguwe hano hejuru mu Cyiciro V.A.; amushinja kandi guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside, no kuba icyitso cy'abakoze jenoside. Muri iri sesengura, Urugereko ruribanda gusa ku birebana no kuba icyitso cy'abakoze jenoside, kuko rwamaze gufata icyemezo cyo kutita ku bika bishyigikira ikirego cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside bitewe n'uko kidasobanutse[653].

393. Ubukemuramanza bwasobanuye ko ijambo kuba icyitso ari ugukora ibikorwa byo gufasha abantu gukora icyaha, kubibashishikariza, kubibahamagarira, no kubaha ibyo bakeneye ngo bagikore, kandi uwo mwanzuro abacamanza bawufashe bazirikana igisobanuro rusange cy'inshoza yo kuba icyitso mu mategeko ashingiye ku muco w'Abongereza *(common law)* no mu mategeko ashingiye ku muco w'Abaromani *(civil law),* kimwe no mu mategeko akurikizwa mu Rwanda[654].

394. Urugereko rusanga nta tandukanyirizo rikomeye riri hagati yo kuba icyitso bivugwa mu Ngingo ya 2(3)(e) ya Sitati no mu gisobanuro cyaguye cy'amagambo gufasha no gushishikaza akubiye mu Ngingo ya 6(1)[655]. Urugereko rusanga kandi umugambi nka

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[652], Inyandiko y'urubanza rwa Krstic mu rw'iremezo, igika 640. Ibintu bigenda bihurirwaho n'ingingo zinyuranye byavanyweho muri Sitati ya CPI aho uburyo bwose icyaha gikorwamo, harimo n'uburebana gusa na jenoside, burondorwa mu Ngingo ya 25. Reba Sitati ya CPI, Ingingo ya 25.

[653] Reba hano hejuru, igika 61.

[654] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 69-70; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 177, 179; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 533, 535, 537. Ni ngombwa kwifashisha Igitabo cy'amategeko ahana mu Rwanda mu kureba niba ihame rivuga ko nta cyaha kibaho kitarateganyijwe n'itegeko ryahungabanyijwe. Nyamara ariko, Urugereko rusanga nta mpamvu simusiga iriho yatuma ijambo ry'amategeko risobanurwa mu buryo bweruye muri Sitati irugenga hifashishijwe igitabo cy'amategeko ahana cy'igihugu iki n'iki, kandi iryo jambo ryarandukuwe uko riri rivanwe mu masezerano mpuzamahanga.

[655] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 546 (aho Urugereko rwasanze « ibikorwa byo gushyigikira » biteganywa n'Ingingo ya 6(1) « bimeze kimwe n'ibikorwa bifatika bigize icyaha cyo kuba icyitso ». Reba kandi Inyandiko y'urubanza rwa Krstic mu rw'iremezo, igika 640; Raporo yakozwe na Komite idahoraho yashyiriweho gutegura Amasezerano yerekeranye na jenoside, 5 Mata - 10 Gicurasi 1948, Inyandiko z'Inama Rusange y'Umuryango w'Abibumbye, Akanama gashizwe ubukungu n'imibereho myiza, Inteko ya 7,

kimwe mu bisabwa kugira ngo habeho icyaha cyo kuba icyitso cy'abakoze jenoside nk'uko biteganywa n'Ingingo ya 2(3)(e)[656] ntaho utaniye n'uwo gufasha no gushishikariza abantu gukora icyaha, ndetse n'uwo mu bindi bikorwa by'ibyitso biteganywa n'Ingingo ya 6(1)[657].

395. Bityo rero, kuba icyitso cy'abakoze jenoside biteganywa n'Ingingo ya 2(3)(e) bishaka kuvuga gukora ibikorwa byose byo gufasha cyangwa gushishikaza byabaye inkunga ikomeye mu ikorwa rya jenoside, cyangwa byagize ingaruka ikomeye mu gutuma jenoside ikorwa. Uregwa agomba kuba yarakoze icyaha ku bushake kandi azi neza ko yarimo atanga inkunga mu ikorwa ry'icyaha cya jenoside, hakubiyemo ibintu byose by'ingenzi bigize icyo cyaha.

396. Muri uru rubanza, mu kirego cya 1 Uregwa ashinjwa gukora jenoside, hashingiwe ku Ngingo ya 6(1) no ku ya 6(3) za Sitati. Iki kirego gishaka kwerekana ko Uregwa agomba kuryozwa icyaha nka gatozi watsotsobye icyaha, nk'umuntu wabaye icyitso, ndetse nk'umuntu wari ukuriye abandi. Niba mu kirego cya 1 umuntu yakumva ko hakubiyemo icyaha cyo kuba icyitso, ikirego cya 3 cy'Inyandiko y'ibirego cyaba ari ugusubiramo gusa, kubera ko agishinjwamo kuba icyitso cy'abakoze jenoside, hashingiwe ku Ngingo ya 2(3)(e), kandi ibikorwa bishingirwaho ari bimwe.

397. Iyo ikirego kidasobanura neza uburyo bwihariye icyaha cyakozwemo hakurikijwe ibiteganywa n'Ingingo ya 6(1), Urugereko rushobora gusuzuma icyo kirego rushingiye ku buryo runaka icyaha cyakozwemo ariko hatarengerewe ibikubiye mu

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Umugereka, N° 6, Doc. E 794 (26 Gicurasi 1948), urup. 8 (« Uhagarariye Leta Zunze Ubumwe z'Amerika yavuze ko, yemera ko 'kuba icyitso' bishyirwa muri iyi ngingo, yumvaga ko bishaka kuvuga ibikorwa byo gushyigikira mu ikorwa ry'ibyaha birondorwa muri iyo ngingo, haba mbere y'uko bikorwa haba nya nyuma yaho).

[656] Reba Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 71; Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 180-181; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 545.

[657] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 186; Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 32; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 201, 205. Reba kandi Inyandiko y'urubanza rwa Aleksovski mu bujurire, igika 162; Inyandiko y'urubanza rwa Vasiljevic mu rw'iremezo, igika 71; Inyandiko y'urubanza rwa Krnojelac mu rw'iremezo, ibika 75, 90; Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, ibika 255, 262; Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 392; Inyandiko y'urubanza rwa Furundzija mu rw'iremezo, igika 249.

Nyandiko y'ibirego n'ibyamenyeshejwe uregwa mu buryo bukwiye[658]. Urugereko ruzirikana ko gushinja umuntu gukora icyaha no kumushinja kuba icyitso cy'abakoze icyo cyaha ari ibirego bishobora kubangikanywa ariko ko adashobora kubiryozwa icyarimwe[659]. Iyo hari ikirego gisa nk'igishinja umuntu gukora icyaha mu buryo butaziguye no kuba icyitso cy'abakoze icyo cyaha hashingiwe ku Ngingo ya 6(1), hari n'ikindi kirego kimushinja by'umwihariko kuba icytiso muri ibyo bikorwa bimwe, Urugereko ruhina ikirego cyaguye ku buryo ibintu ibyo birego byombi bigenda bihuriraho bivanwemo.

398. Bityo rero, Urugereko rusanga gushingira ikirego ku Ngingo ya 6(1) mu kirego cya 1 cy'Inyandiko y'ibirego bisobanura gusa ko uregwa ashinjwa «gutsotsoba icyaha » nka gatozi, kandi ko ubundi buryozwacyaha nk'icyitso bwasusuzumwa mu kirego cya 3, gishinja Uregwa kuba icyitso cy'abakoze jenoside ariko hashingiwe ku bikorwa bimwe n'ibyavuzwe mu kirego cya 1.

3. Uburyozwacyaha hashingiwe ku Ngingo ya 6(3) ya Sitati

399. Ingingo ya 6(3) ya Sitati yerekeranye n'uburyozwacyaha bw'umuntu ukuriye abandi kubera kutaburizamo ibyaha byakozwe n'abo yari akuriye cyangwa kutabahana, kandi ikoreshwa muri rusange ku matsinda yose uko ari atatu y'ibyaha. 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'umuntu wari ukuriwe n'undi ntibibuza uwari umukuriye kukiryozwa, iyo yari azi cyangwa yaragombaga kuba azi ko uwo akuriye agiye gukora icyaha cyangwa ko yagikoze ariko ntafate ingamba za ngombwa kandi zishyize mu gaciro kugira ngo aburizemo ikorwa ry'icyo cyaha cyangwa ngo ahane abagikoze.

400. Hakurikijwe Ingingo ya 6(3), umuntu ukuriye abandi, yaba umusirikare cyangwa se yaba umusiviri, yaba afite umwanya w'ubuyobozi akomora ku mategeko cyangwa se atayakomoraho, ashobora kuryoza ibyaha byakozwe n'abo yari akuriye yagenzuraga

[658] Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 388.

[659] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 67; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 175; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 532.

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nyabyo[660]. Ibintu bitatu bikurikira bigomba kuba byuzuye kugira ngo ubwo buryozwacya bubeho: (a) kuba uregwa yari akuriye abakoze ibyaha; (b) kuba ukuriye abandi yari azi cyangwa yaragombaga kumenya ko abo akuriye biteguraga gukora ibyaha cyangwa se ko babikoze; na (c) kuba ukuriye abandi atarafashe ingamba za ngombwa kandi zishyize mu gaciro zo kuburizamo ikorwa ry'ibyaha cyangwa zo guhana ababikoze[661].

a. Kuba uregwa yari akuriye abakoze ibyaha

401. Kuba uregwa yari akuriye abakoze ibyaha bivuga ko yari abasumbye mu ntera, haba mu buryo buteganywa n'amategeko cyangwa se haba mu buryo budateganywa na yo[662]. Kuba umuntu akuriye abandi ntibikurikizwa mu nzego za girikare gusa[663].

402. Ukuriye abandi agomba kuba afite ububasha n'ubushobozi, yaba abikomora ku *mategeko* cyangwa *atayabikomoraho*, byo kuburizamo ibyaha byakozwe n'abo akuriye cyangwa se byo kubahana[664]. Urugereko rwa Mbere rw'Iremezo rugomba kuba rwemera ko uregwa yagenzurga nyabyo abo yari akuriye igihe icyaha cyakorwaga[665]. Kugenzura nyabyo bivuga kugira ubushobozi bugaragara bwo

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[660] Inyandiko y'urubanza rwa Bagilishema mu bujurire, ibika 50, 51; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 294; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 148. Reba kandi Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 192-196.

[661] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 38; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 189-198, 225-226, 238-239, 256, 263. Reba kandi Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 395.

[662] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 303 (Urugereko rw'Ubujurire rwumva ko kuba ari ngombwa gutanga ibimenyetso bihamya ko uwatsotsobye icyaha yari « akuriwe » n'uregwa, bitavuga ko igisabwa ari ukwerekana ko yari amukuriye mu buryo butaziguye cyangwa buteganywa n'amategeko, ko ahubwo ari ukwerekana ko uregwa yari amukuriye mu buryo buteganywa n'amategeko cyangwa budateganywa na yo hakurikijwe umwanya wisumbuye uregwa yari afite mu nzego izi n'izi ugereranyije n'uw'uregwa »).

[663] Inyandiko y'urubanza rwa Bagilishema mu bujurire, igika 56 (aho Urugereko rutemeye inshoza y'uko hagomba kubaho isano « rikomoka ku mategeko »).

[664] Inyandiko y'urubanza rwa Bagilishema mu bujurire, igika 50; Inyandiko y'urubanza Urubanza rwa Kayishema na Ruzindana mu bujurire, igika 294; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 192.

[665] Inyandiko y'urubanza rwa Bagilishema mu bujurire, igika 50; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 294; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 266.

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kuburizamo ikorwa ry'icyaha cyangwa bwo guhana abatsotsobye icyaha[666]. Kwerekana gusa ko muri rusange uregwa yavugaga rikijyana ntibihagije[667].

b. Umugambi wo gukora icyaha*:* kuba yari azi cyangwa yaragombaga kumenya

403. Kugira ngo umuntu ukuriye abandi aryozwe icyaha hashingiwe ku Ngingo ya 6(3), hagomba gutangwa ibimenyetso bihamya ko yari azi cyangwa yagombaga kumenya ko abo yari akuriye barimo bakora ibyaha Urukiko rufite ububasha bwo kuburanisha cyangwa se ko bamaze kubikora[668].

404. Kuba umuntu yari mu nzego z'ubuyobozi mu karere aka n'aka ntibihagije byonyine gushingirwaho mu kumuryoza icyaha nk'uwari ukuriye abandi[669]. N'ubwo umwanya umuntu yari afite mu nzego z'ubuyobozi ari ikintu cy'ingenzi cyashingirwaho mu kwemeza ko yari azi cyangwa yagomba kumenya ibikorwa by'abo yari akuriye, kuba mu mwanya runaka w'ubuyobozi ubwabyo si ikimenyetso ko yari azi ibyakorwaga[670].

405. Hemezwa ko umuntu wari ukuriye abandi yari afite umugambi wo gukora icyaha cyangwa se ko byafatwa nk'aho yari awufite kugira ngo aryozwe icyaha iyo: (i) ukuriye abandi yari azi koko, hakurikijwe ibimenyetso bitaziguye cyangwa biziguye, ko abo akuriye bari hafi gukora icyaha giteganywa na Sitati, barimo bagikora cyangwa bamaze kugikora[671]; cyangwa (ii) ukuriye abandi yari afite amakuru yamumenyeshaga mbere y'igihe ko ibyo byaha bishobora gukorwa, kandi ayo makuru yerekana ko ari ngombwa gukora irindi perereza kugira ngo umuntu amenye neza

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[666] Inyandiko y'urubanza rwa Bagilishema mu bujurire, igika 50; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 266.

[667] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 266, 303.

[668] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 45; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 225.

[669] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 44-45; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 489 (« Ni ngombwa kureba ko habayeho igitekerezo kibisha, cyangwa, nibura, ko habayeho kutita ku bintu ku buryo bukabije bihwanye no kwemera ibyakorwaga cyangwa ndetse n'umugambi mubisha »).

[670] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 45.

[671] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 46; Inyandiko y'urubanza rwiswe urwa Celebici mu rw'iremezo, ibika 384-386.

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niba koko ibyo byaha byari hafi gukorwa, niba byarimo gukorwa cyangwa se niba byaramaze gukorwa n'abo akuriye[672].

c. Kutaburizamo ikorwa ry'ibyaha cyangwa kudahana ababikoze

406. Ukuriye abandi aryozwa icyaha iyo gusa atafashe «ingamba za ngombwa kandi zishyize mu gaciro» zo kuburizamo ibyaha biteganywa na Sitati byakozwe n'abo yari akuriye cyangwa se zo guhana ababikoze. Izo ngamba zasobanuwe ko ari iziri «mu bubasha bugaragarara» bw'ukuriye abandi kabone n'ubwo yaba adafite «ububasha buteganywa n'amategeko ku buryo bweruye» bwo gufata izo nganba[673]. Kumenya ingano y'ubushobozi umuntu yari afite bwo kugenzura nyabyo abo yari akuriye, bituma hashobora gusesengurwa neza niba yarafashe ingamba zishyize mu gaciro zo kuburizamo ibyaha byakozwe n'abo yari akuriye, guhagarika ikorwa ryabyo cyangwa se guhana ababikoze[674].

407. Inshingano yo kuburizamo ikorwa ry'ibyaha cyangwa guhana ababikoze ntiha uregwa amahitamo muri ibyo byombi[675]. Iyo ukuriye abandi azi ko ibyaha biri hafi gukorwa cyangwa ko birimo gukorwa, agomba gufata ingamba za ngombwa kandi zishyize mu gaciro zo kuburizamo ikorwa ryabyo cyangwa ryo kubihagarika[676]. Ukuriye abandi uzi ibyo kandi afite ubushobozi bugaragara bwo kuburizamo ikorwa ry'ibyaha

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[672] Inyandiko y'urubanza rwa Bagilishema mu bujurire, igika 28; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 239, 241. Reba kandi Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 46, hasubirwamo ibyavuzwe mu Nyandiko y'urubanza rwiswe urwa Celebici mu rw'iremezo, ibika 390-393; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 228. Urugereko rw'Ubujurire mu rubanza rwiswe urwa Celebici rwasobanuye ko ukuriye abandi agomba gusa kuba « yari afite » amakuru, ko « atari ngombwa ko mu by'ukuri yamenye neza ibiyakubiyemo. », Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 239. Byongeye kandi, amakuru ashobora kuba ari ayo mu rwego rwa rusange, nko kuba ukuriwe n'abandi asanzwe ari umunyarugomo. Ni kimwe no haruguru, igika 238. Na none kandi, amakuru ashobora kuba yanditse cyangwa atanditse kandi si ngombwa ko atangwa mu nyandiko ifite uko iteye cyangwa muri raporo ikozwe ku buryo ubu n'ubu bwateganyijwe. Ni kimwe no haruguru.

[673] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu bujurire, igika 302, hasubirwamo ibivugwa mu Nyandiko y'urubanza rwiswe urwa Celebici mu rw'iremezo, igika 395.

[674] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 48; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 228.

[675] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 49.

[676] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 49.

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ntashobora kwikuraho icyaha yitwaje ko yahisemo guhana abo yari akuriye bamaze gukora ibyaha[677].

E. Gushinja no guhamya uregwa ibyaha binyuranye hashingiwe ku gikorwa kimwe

1. Gushinja uregwa ibyaha binyuranye hashingiwe ku gikorwa kimwe

408. Ubwunganizi bwavuze ko Uregwa yashinjwe mu buryo bw'amafuti ibyaha binyuranye hashingiwe ku gikorwa kimwe gusa[678]. Hakurikijwe umwanzuro w'Urugereko rw'Ubujurire mu rubanza rwa Musema, biremewe gushinja uregwa ibyaha binyuranye hashingiwe ku gikorwa kimwe[679].

2. Guhamya uregwa ibyaha binyuranye hashingiwe ku gikorwa kimwe

409. Mu rubanza rwa Musema, Urugereko rw'Ubujurire rwemeje kandi ko guhamya uregwa ibyaha binyuranye hakurikijwe Ingingo zinyuranye sa Sitati kandi hashingiwe ku gikorwa kimwe ari ikintu cyemewe, iyo buri ngingo ikubiyemo ibyangombwa by'umwihariko biyigize bitaboneka mu yindi ngingo[680]. Urugereko rw'Ubujurire rwasobanuye ko icyangombwa kigize icyaha runaka kiba gitandukanye n'ikigize

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[677] Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, igika 49.

[678] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 19-21, 73, 74.

[679] Inyandiko y'urubanza rwa Musema mu bujurire, igika 369, hasubirwamo ibivugwa mu Nyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 400 (« Gushinja uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe ni ikintu cyemewe ariko hagomba kuzirikanwa ko, mbere y'itangwa ry'ibimenyetso byose, biba bidashoboka kumenya neza icyaha iki n'iki uregwa ashinjwa kizatangirwa gihamya »). Reba na none Inyandiko y'urubanza rwa Bagilishema mu rw'iremezo, ibika 108-109.

[680] Inyandiko y'urubanza rwa Musema mu bujurire, ibika 361, 363. Mu gutanga icyo gitekerezo, Urugereko rw'Ubujurire rwakurikije ibisabwa n'imitekerereze byagendeweho n'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwiswe urwa Celebici. Reba kandi Inyandiko y'urubanza rwa Musema mu bujurire, igika 363 (« Urugereko rw'Ubujurire rwemeza ko ibyo bisabwa ari byo bigomba kugenderwaho ku birebana no guhamya uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe mu rwego rw'ibiteganywa na Sitati ya TPIR. Urugereko rw'Ubujurire rushyigikira kandi igitekerezo cyagendeweho n'Urugereko rw'Ubujurire mu Rubanza rwiswe urwa Celebici, ku birebana n'ibigize ibyaha bigomba kwitabwaho mu gukurikiza ibyo bisabwa ») (hasubirwamo ibyanditswe mu Nyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 412-413).

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ikindi cyaha, iyo hasabwa ibimenyetso by'igikorwa runaka bidasabwa mu kindi cyaha[681].

[681] Inyandiko y'urubanza rwa Musema mu bujurire, igika 365.

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VI. IMYANZURO YO MU RWEGO RW'AMATEGEKO

A. Uburyozwacyaha

410. Inyandiko y'ibirego ishinja Uregwa ibyaha hashingiwe ku Ngingo za 2(3), 6(1), na 6(3) za Sitati. Muri iki cyiciro, Urugereko rurasuzuma niba Uregwa yaryozwa ibyaha nk'umuntu wari ukuriye abandi hashingiwe ku Ngingo ya 6(3), cyangwa niba yabiryozwa nk'umuntu wategetse abandi kubikora hashingiwe ku Ngingo ya 6(1). Urugereko ruri busuzume mu yindi myanzuro yo mu rwego rw'amategeko uburyozwacyaha bw'Uregwa hashingiwe ku Ngingo za 2(3) na 6(1), uretse gusa ibirebana no gutegeka abandi gukora ibyaha.

411. Inyandiko y'ibirego ivuga ko Uregwa yari afite ububasha yakomoraga kandi/cyangwa atakomoraga ku mategeko ku bantu bitwaraga gisirikare, by'umwihariko ku Nterahamwe, no ku bandi bantu bari bakubiyemo abasirikare ba Leta, abaporisi ba komini, n'abandi bakozi ba Leta[682]. Porokireri ashingiye kuri ubwo bubasha avuga ko Uregwa yari afite, amushinja ibyaha byakorewe ku rusengero rw'i Ruhanga, ku kiriziya y'i Musha, ku musigiti w'i Mabare, no ku gasozi ka Mwulire, ndetse anamushinja ibyaha yakoreye abiswe A, B, C, D, E, F, G, H na J.

[682] Porokireri yagaragaje kandi igitekerezo kidasanzwe kivuga ko Uregwa agomba kuryozwa icyaha nk'uwari ukuriye Interahamwe hashingiwe ku « ihame ry'uburyozwe bw'uwivanze mu bitamureba». Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 122-124. Porokireri asobanura ko : «iyo umuntu wese, udafite ububasha akomora ku mategeko cyangwa uruhushya, yivanze mu bintu bitamureba, ntashobora kwikuraho uburyozwe bw'ibikorwa yagizemo uruhare yitwaza ko nta bubasha yari afite». Ni kimwe no haruguru, igika 122. Porokireri avuga ko « iryo hame rikomoka ku gitekerezo cyo kwivanga mu by'abandi rishingiye ku bintu bisobanutse». Ni kimwe no haruguru. Urugereko rusanga ahantu hamwe Porokireri ashingiraho mu rwego rw'amategeko mu gushyigikira igitekerezo cye ari ibyo akomozaho birebana n'amahame agenga izungura n'agace kandukuwe mu nkoranyamagambo y'amategeko yanditswe na Black, ivuga kuri iyo nshoza ku birebana n'uburyozwe bwo mu rwego rw'imbonezamubano bw'umuntu urangiza ibikubiye mu irage atarabiherewe uruhushya mu buryo bwemewe n'amategeko. Urugereko rusanze Porokireri nta nyandiko y'inzobere cyangwa ubukemuramanza cyangwa indi nyandiko ikomeye byo mu rwego rw'amategeko byagenderwaho yashingiyeho asaba ko hakurikizwa igitekerezo cye kidasanzwe, ahubwo igitangaje, gishingiye ku kwivanga mu birebana no kurangiza irage, maze agasaba ko icyo gitekerezo cyakurikizwa no mu rwego rw'uburyozwacyaha mpuzamahanga mu guhamya uwari ukuriye abandi ibyakozwe n'abo yari akuriye. Ihange nk'iryo rinyuranyije n'igisabwa cy'ingenzi ko ukuriye abandi agomba kuba ashobora kubagenzura nyabyo.

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412. Porokireri avuga ko muri Mata 1994, Uregwa yari afite ububasha yakomoraga ku mategeko kubera ko yari yaratoranyijwe kuba Depite mu Nteko ishinga amategeko, ko yari umuyobozi wa MRND muri Perefegitura ya Kigali-Ngari, kandi ko yari yarashyizeho amashyaka anyuranye[683]. Urugereko ruributsa ko Porokireri nta bimenyetso yatanze bihamya ko Uregwa yari umuyobozi wa MRND mu gihe ibivugwa byabaga, kandi ko nta kimenyetso na kimwe yatanze cyerekaha ko Uregwa yari umuyobozi wemewe n'amategeko mu rindi shyaka iryo ari ryo ryose. Urugereko rwamaze kwemeza ko Uregwa yari yaratoranyijwe kuba Depite mu Nteko y'inzibacyuho ishinga amategeko. Nyamara ariko, Porokireri nta bimenyetso yatanze byerekana ingano n'imiterere by'ububasha bwa depite muri kiriya gihe cyangwa byerekana ko ku bw'amategeko uwo mwanya wahaga Uregwa ububasha ku bantu bitwaraga gisirikare no ku bandi bantu. Bityo rero, Porokireri, ntiyabashije gutanga ibimenyetso bihamya ko Uregwa yari afite ububasha yakomoraga ku mategeko ku bantu batsotsobye ibyaha muri Komini ya Bicumbi n'iya Gikoro.

413. Porokireri yavuze kandi ko Uregwa yari afite ububasha atakomoraga ku mategeko ku bantu batsotsobye ibyaha muri Komini ya Bicumbi n'iya Gikoro, ashingiye ku mpamvu y'uko yavugaga rikijana muri rubanda, ibyo bikaba bigaragazwa, nk'urugero n'uko: (i) yabaye burugumesitiri imyaka irenga makumyabiri kugeza mu wa 1993; (ii) abantu benshi muri rubanda bari bamushyigikiye kandi bamwemera kubera ibikorwa byiza yari yarakoze mbere; (iii) «kuzamurwa mu ntera» ubwo yatoranywaga kuba Depite uhagarariye Perefegitura ya Kigali-Ngari mu Nteko ishinga amategeko ; (iv) kuba buri gihe yarabaga ari kumwe mu ruhame na burugumesitiri mushya ari we Rugambarara, kandi abantu benshi bakaba baribwiraga ko yari akiri burugumesitiri; (v) inshingano yari afite nk'umuyobozi wa MRND muri Perefegitura ya Kigali-Ngari; (vi) kuba bivugwa ko yari aziranye na Perezida Habyarimana n'abandi bategetsi bakuru ba Leta; no kubera ko (vii) yari umukire[684]. Urugereko ruributsa ko mu myanzuro ishingiye ku byabaye rwamaze gufata, rwemeje ko muri rusange Uregwa yafatwaga nk'umuntu w'igikomerezwa kandi wavugaga rikijyana. Nyamara ariko, Urugereko ruributsa na none ko Porokireri atashoboye gutanga ibimenyetso bihamya

[683] Imyanzuro nsozarubanza yanditse ya Porokireri, igika 112.

[684] Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 113-114.

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ingano n'imiterere y'ikimenyane Uregwa yari afitanye n'abantu mu rwego rwa politiki cyangwa ku giti cye bwite, n'inkurikizi z'icyo kimenyane.

414. Porokireri yavuze kandi ko hari ingero zimwe na zimwe zerekana ko Uregwa yagaragaye «ayoboye» abantu batsotsosbye ibyaha cyangwa «ahuza ibikorwa byabo», bityo ngo bikaba byerekana ko yabagenzuraga nyabyo[685]. By'umwihariko, abatangabuhamya bashinja biswe VAK, VA, na VM bavuze ko Uregwa yayoboye ubwicanyi bwakorewe ku musigiti w'i Mabare no ku kiriziya y'i Musha[686]. Byongeye kandi, hari ingero zimwe na zimwe zerekana ko Uregwa yagaragaye atanga amabwiriza cyangwa amategeko cyangwa uruhushya rwo kwica Abatutsi cyangwa kubasambanya ku gahato[687].

415. Urugereko rurashimangira ko imitekerereze ya Porokireri, imeze kimwe n'iyo yagendeyeho mu rubanza rwa Musema ariko itaremewe n'Urugereko[688], itazirikana byimazeyo igipimo ngenderwaho gikwiye mu rwego rw'amategeko. Kuba uregwa akuriye abandi bigomba gutangirwa ibimenyetso bihamya ko yari afite intera isumba iyabo ikomoka ku mategeko cyangwa itayakomokaho, ituma agenzura nyabyo

[685] Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 115-116.

[686] Imyanzuro nsozarubanza yanditse ya Porokireri, igika 115; Ubuhamya bwa VAK, Inyandikomvugo y'iburanisha, 15 Werurwe 2001, imp. 92-93 (umusigiti w'i Mabare); Ubuhamya bwa VA, Inyandikomvugo y'iburanisha, 7 Werurwe 2001, imp. 57-58, 105 (kiriziya y'i Musha); Ubuhamya bwa VM, Inyandikomvugo y'iburanisha, 6 Werurwe 2001, imp. 90, 91, 99, 144 (kiriziya y'i Musha).

[687] Ubuhamya bwa VV, Inyandikomvugo y'iburanisha, 29 Werurwe 2001, imp. 8-9; Ubuhamya bwa VAM, Inyandikomvugo y'iburanisha, 13 Werurwe 2001, imp. 31-32, 96, 99, 100; Ubuhamya bwa VAK, Inyandikomvugo y'iburanisha, 15 Werurwe 2001, urup. 92; Ubuhamya bwa VAV, Inyandikomvugo y'iburanisha, 20 Werurwe 2001, urup. 28; Ubuhamya bwa VP, Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, urup. 93.

[688] Kimwe no muri uru rubanza, hari abatangabuhamya bashinja mu rubanza rwa Musema bavuze ko Uregwa, wari diregiteri w'uruganda rw'icyayi, « yafatwaga nk'umutegetsi ukomeye kandi uvuga rikijyana mu karere yabagamo », «yari yubashywe cyane muri ako gace», «yari afite umwanya ukomeye mu Rwanda», «yafatwaga nk'ufite ububasha kimwe n'ubwa perefe» kandi abantu bamubonaga yicaranye n'abategetsi muri za mitingi z'amashyaka. Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 868. Urugereko rwa Mbere rw'Iremezo rushingiye ku bimenyetso byatanzwe mu rubanza rwa Musema, rwasanze Musema yari «umuntu ukomeye kandi wari ufite ububasha bukomeye mu karere», nyamara ariko rwasanze ibyo bimenyetso bitari bihagije kwerekana ko yari afite ububasha akomora ku mategeko cyangwa atayakomoraho ku baturage bo muri perefegitura yabagamo. Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 881.

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abatsotsobye ibyaha. Kwerekana gusa muri rusange ko Uregwa yavugaga rikijyana muri rubanda ntibihagije guhamya ko yari akuriye abandi bantu[689].

416. Ibivugwa n'abatangabuhamya biswe VA, VM, na VAK ko Uregwa yayoboraga ibitero ni amagambo gusa adafite aho ashingiye, abuzemo ibisobanuro birambuye byerekana ku buryo bwakwizerwa ko Uregwa yagenzuraga nyabyo abandi bantu. Byongeye kandi, Urugereko rusanga abatangabuhamya badafite aho bahuriye n'imyanya runaka ituma bivugwa ko umuntu akuriye abandi mu buryo buteganywa cyangwa budateganywa n'amategeko cyangwa batazi ibyayo, batabasha gusobanura uko bikwiye niba umuntu yari akuriye abandi koko[690]. Uretse ibimenyetso byatanzwe mu buryo bwa rusange byo kwerekana ko Uregwa yari afite ijambo muri rubanda, nta bindi bimenyetso byakwizerwa cyangwa byakwemerwa byatanzwe byerekana mu buryo busobanuye neza imiterere nyirizina y'umwanya Uregwa yarimo wamuhaga kuba akuriye umuntu uwo ari we wese uzwi watsotsobye ibyaha, hakubiyemo abo yaba yarahaye amabwiriza yo gusambanya ku gahato no kwica cyangwa abo yashishikarije kubikora. Kubera ko nta kimenyetso nk'icyo cyatanzwe, Urugereko rusanze nta gihamya ko Uregwa yari afite koko ububasha ku batsotsobye ibyaha.

417. Urugereko rusanze ibimenyetso byatanzwe muri uru rubanza byo kwerekana ko Uregwa yari afite ijambo muri rubanda bitagaragaza mu buryo buhagije ko yari afite umwanya watumaga afatwa nk'ukuriye abandi mu buryo buteganywa cyangwa budateganywa n'amategeko, ku buryo yari kuba afite ububasha bwo kugenzura nyabyo ba gatozi bazwi batsotsobye ibyaha. Byongeye kandi, nta bimenyetso bihagije Porokireri yatanze bihamya nta shiti ko Uregwa yari afite ubushobozi bugaragara bwo kuburizamo ikorwa ry'ibyaha muri Komini ya Bicumbi cyangwa iya Gikoro cyangwa bwo guhana abatsotsobye ibyaha bazwi.

418. Kubera ko Porokireri atabashije kwerekana ko Uregwa yari akuriye abatsotsobye ibyaha, si ngombwa gusuzuma niba Uregwa yari azi cyangwa yaragombaga kumenya ibyaha byatsotsobwe na ba gatozi runaka, cyangwa niba atarafashe ingamba za

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[689] Inyandiko y'urubanza rwa Bagilishema mu bujurire, igika 50; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 266, 303; Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, ibika 439, 440; Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 881.

[690] Reba, nk'urugero, Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, ibika 431-440.

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ngombwa kandi zishyize mu gaciro zo kuburizamo ikorwa ry'ibyo byaha cyangwa guhana ababitsotsobye.

419. Urugereko rusanze rero Uregwa adashobora kuryozwa ibyaha ashinjwa mu Nyandiko y'ibirego hashingiwe ku Ngingo ya 6(3) ya Sitati cyangwa ibyo gutegeka abantu gukora ibyaha ashinjwa hashingiwe ku Ngingo ya 6(1).

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B. Jenoside no kuba icyitso cy'abakoze jenoside

420. Mu kirego 1 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa ubwicanyi bwakorewe Abatutsi cyangwa ibikorwa bibazahaza umubiri cyangwa mu mutwe, agamije kurimbura abagize ubwoko bose cyangwa igice cyabo bazira icyo bari cyo, bityo akaba yarakoze icyaha cya **JENOSIDE**; icyo cyaha giteganywa n'Ingingo ya 2 (3) (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

421. Mu kirego cya 3 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa kuba icyitso mu bwicanyi bwahitanye Abatutsi cyangwa mu bikorwa byabazahaje umubiri cyangwa mu mutwe, bityo akaba yarakoze icyaha cyo **KUBA ICYITSO CY'ABAKOZE JENOSIDE**; icyo cyaha giteganywa n'Ingingo ya 2 (3) (e) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

1. Jenoside muri Komini ya Bicumbi n'iya Gikoro

422. Urugereko rwamaze kwemeza ko ibi bikurikira bitagomba kugibwaho impaka: « Hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994, buri Munyarwanda kavukire yabarirwa muri bumwe mu bwoko bukurikira: Abatutsi, Abahutu n'Abatwa »[691]. Bityo rero, ku birebana n'uru rubanza byatangiwe gihamya ko Abatutsi mu Rwanda bari bagize «ubwoko» bwihariye.

423. Urugereko rwamaze kandi kwemeza ko ibi bikurikira bitagomba kugibwaho impaka n'ababuranyi:

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[691] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibintu bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Urugereko rwa Mbere rw'Iremezo, 3 Ugushyingo 2000, Umugereka A, igika 1. Reba Umugereka II, Igice A, igika 1.

> Hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994 mu Rwanda ibintu byari byifashe mu buryo bukurikira. Mu Rwanda hose habaye ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri bazira ko ari abo mu bwoko bw'Abatutsi. Muri ibyo bitero, Abanyarwanda bamwe bishe abantu bafataga nk'Abatutsi cyangwa babateye ububabare bubazahaza umubiri cyangwa mu mutwe. Ibyo bitero byahitanye Abatutsi benshi cyane[692].

424. Hashingiwe ku myanzuro yafashwe ku byabaye byerekeranye n'ubwicanyi bwakorewe ahantu hane ho muri Komini ya Bicumbi n'iya Gikoro havugwa mu Nyandiko y'ibirego, ari ho ku rusengero rw'i Ruhanga, ku kiriziya y'i Musha, ku gasozi ka Mwulire, no ku musigiti w'i Mabare, Urugereko rusanga uko ibintu byari bimeze byerekana ko abasirikare, Interahamwe, n'abandi batsotsobye ibyaha, bitabiriye gushyigikira poropagande rusange yo kwica abantu babonaga ko ari Abatutsi yariho mu Rwanda hose icyo gihe. Byongeye kandi, bitewe n'uko ubwicanyi bwabereye aho hantu hane havugwa mu Nyandiko y'ibirego bwibasiye abasiviri b'Abatutsi, Urugereko ruheraho rufata umwanzuro ko abatsotsobye ibyaha bari bafite umugambi wo kurimbura ubwoko bw'Abatutsi uko bwakabaye. Bityo rero, Urugereko rusanze muri Komini ya Bicumbi n'iya Gikoro harabaye jenoside.

2 Kiriziya y'i Musha

425. Mu myanzuro y'Urugereko ku byabaye birebana n'igika cya 3.11 cy'Inyandiko y'ibirego, Urugereko rwasanze mbere y'ubwicanyi, ku itariki ya 8 cyangwa iya 9 Mata 1994, Uregwa, ari kumwe na Bisengimana n'abandi bantu, yaragiye ku kiriziya y'i Musha kureba uko ibintu byifasheyo. Nyuma y'ibyo Uregwa yari amaze kubona, abantu bamwumvise abwira Bisengimana ko kiriziya igomba gutwikwa kugira ngo impunzi zarimo zipfiremo. Urugereko rwasanze abasirikare, abajandarume, n'Interahamwe barishe abasiviri b'Abatutsi benshi cyane bari bahungiye ku kiriziya y'i Musha, ku itariki ya 13 Mata 1994. Kuri iyo tariki, Uregwa yakoranyije izindi Nterahamwe kugira ngo zigabe igitero ku kiriziya y'i Musha. Abagabye igitero

[692] Urubanza rwa Semanza, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibintu bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko. Umugereka A, igika 2. Reba Umugereka II, Igice A, igika 2.

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barashe amasasu y'urufaya banatera amagerenade menshi ku kiriziya no ku Batutsi benshi bari bahahungiye. Abagabye igitero barashe igisasu cyo mu bwoko bwa gerenade ku rukuta rwa kiriziya kugira ngo bashobore kwinjiramo imbere bakomeze kwica Abatutsi bari bahungiyemo no kubakorera ibindi bikorwa by'ubugizi bwa nabi.

426. Urugereko rusanze Uregwa yarahaye inkunga ikomeye abatsotsobye jenoside kubera ko yakoranyije Interahamwe kugira ngo zigabe igitero ku kiriziya y'i Musha kandi akaba yarahaye abagabye igitero amabwiriza yo kwica Abatutsi bari barahungiye ku kiriziya.

427. Umugambi w'Uregwa ugaragazwa nta shiti n'uko ibintu byari byifashe ubwo yateraga inkunga ikomeye abatsotsobye ibyaha. Ibikorwa byihariye by'Uregwa bigomba gusuzumwa hitawe ku bintu uko byari byifahe ubwo hagabwaga ibitero ku basiviri b'Abatutsi ahantu hanyuranye muri Komini ya Bicumbi n'iya Gikoro. Urugereko rwasanze Uregwa yari ahantu hanyuranye hiciwe abasiviri benshi cyane b'Abatutsi bazira gusa ko ari Abatutsi, hakubiyemo ku kiriziya y'i Musha, ku gasozi ka Mwulire no ku musigiti w'i Mabare, muri Mata 1994[693]. Kubera ko Uregwa yari aho ubwo bwicanyi bwakorewe, yari azi ko abatsotsobye ubwicanyi bicaga Abatutsi babaziza gusa ubwoko bwabo. Kuba Uregwa yari azi ibyo ni ikimenyetso kigaragaza ko yari yaritswemo n'umugambi wo kuba icyitso cy'abakoze jenoside.

428. Urugereko rusanze kandi ibyo Uregwa yakoze yarabikoze azi neza umugambi w'abatsotsobye ubwicanyi bwahitanye Abatutsi ahantu hakurikira: ku kiriziya y'i Musha, ku gasozi ka Mwulire no ku musigiti w'i Mabare. Bityo rero, Urugereko rusanze ibyo Uregwa yakoze ari aho hantu yarabikoze afite umugambi wo gushyigikira abatsotsobye icyaha cy'ubwicanyi aho hantu.

429. Uretse kuba Uregwa yari azi ko abatsotsobye icyaha bari bafite umugambi wa jenoside ahantu hanyuranye hakorewe ubwicanyi muri Komini ya Bicumbi n'iya Gikoro, Urugereko rusanze Uregwa yari afite n'umugambi wihariye wo kurimbura

[693] Reba Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibyabaye bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Umugereka A, igika 2. Reba Umugereka II, igice A, igika 2.

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ubwoko bw'Abatutsi uko bwakabaye. Dosiye y'urubanza rwo mu Rugereko rwa Mbere rw'Iremezo ikubiyemo ibimenyetso bisobanutse neza kandi bitarimo urujijo byerekana umugambi wa jenoside Uregwa yari afite igihe ku kiriziya y'i Musha hakorerwaga ubwicanyi. Urugereko rwafashe umwanzuro wemeza ko Uregwa yari afite umugambi wihariye wo gushyigikira abatsotsobye jenoside rushingiye ku bikorwa bye no ku magambo ye. Ku itariki ya 8 cyanga iya 9 Mata 1994, Uregwa yabwiye Bisengimana ko kiriziya igomba gutwikwa kugira ngo abantu bari bayihungiyemo bari biganjemo Abatutsi bapfiremo. Na none, umugambi wihariye w'Uregwa wo kurimbura ubwoko bw'Abatutsi uko bwakabaye, ugaragazwa n'uko yahaye abasirikare amabwiriza yo kuvangura Abahutu n'Abatutsi, maze nyuma Abatutsi bakicishwa amasasu n'amagerenade. Byongeye kandi, Urugereko rwafashe umwanzuro ucukumbuye uvuga ko Uregwa yari afite umugambi wa jenoside rushingiye ku magambo yabwiye abagabye igitero ubwo bari bamaze kwica abantu ku musigiti w'i Mabare ku itariki ya 12 Mata 1994: «Twazanywe no kubatera inkunga, kandi ndakeka ko abataricwa batari bubananire. Mugende mubahige maze mubatsembatsembe».

430. Urugereko rusanze Uregwa yaratanze inkunga ikomeye ubwo yakoranyaga Interahamwe kugira ngo zigabe igitero ku mpunzi zari ku kiriziya y'i Musha, bityo akaba yarashyigikiye abatsotsobye ibikorwa bya jenoside byabereye aho hantu. Na none, nyuma gato Uregwa amaze gutanga amabwiriza ni bwo abagabye igitero bishe impunzi z'Abatutsi zimaze kuvangurwa n'iz'Abahutu. Kubera ibyo bimaze kuvugwa, hiyongereyeho n'umugambi wihariye w'Uregwa, Urugereko rusanze yarashyigikiye ubwicanyi bwakorewe ku kiriziya y'i Musha, nk'uko byasobanuwe hano hejuru.

3 *Agasozi ka Mwulire*

431. Mu myanzuro y'Urugereko ku byabaye byerekeranye n'igika cya 3.12 cy'Inyandiko y'ibirego, Urugereko rwasanze Uregwa « yaragiye mu bwicanyi » bwabereye ku gasozi ka Mwulire ku itariki ya 18 Mata 1994, bitewe n'uko yageze aho hantu yitwaje intwaro kandi azanye abasirikare, Interahamwe, n'« ibikoresho byabo », n'uko yarashe n'imbunda ku mpunzi ziganjemo Abatutsi zari zakoraniye ku kibuga cy'umupira w'amaguru cyegeranye n'ibiro bya segiteri. N'ubwo Urugereko rwasanze Uregwa yararashe n'imbunda ku mbaga y'impunzi, Porokireri ntiyabashije gutanga

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ibimenyetso bihamya nta *shiti* ko icyo gikorwa cyo kurasa hari umuntu n'umwe cyahitanye cyangwa se cyateye ububare buzahaza umubiri cyangwa mu mutwe. Nyamara ariko, Urugereko rusanze na none Uregwa yarahaye inkunga ikomeye abagabye igitero kubera ko yazanye ku gasozi ka Mwulire abasirikare n'Interahamwe n'ibikoresho byabo ». Byongeye kandi, Urugereko rusanze Uregwa yari acyaritswemo n'umughambi wihariye, mu bihe byifashe kimwe, kandi azi ko ibikorwa bye bitera inkunga ikomeye abagabye igitero, uwo mugambi akaba ari na wo yari afite ubwo yajyaga mu bwicanyi bwabereye ku kiriziya y'i Musha ku itariki ya 13 Mata 1994.

432. Byongeya kandi, kubera ko Uregwa yazanye Interahamwe n'« ibikoresho byazo » ahantu harimo hicirwa imbaga y'Abatutsi, yatanze inkunga ikomeye mu mugambi mubisha wa jenoside wari ufitwe n'abagabye igitero barimo bica Abatutsi ku gasozi ka Mwulire. Uregwa yazanye izindi Nterahamwe n'ibikoresho byazo, byafashije mu gukora jenoside yarimo kubera ku gasozi ka Mwulire.

433. Kubera ubwo buryo Uregwa yakozemo icyaha, hamwe n'umugambi we wo gukora jenoside, Urugereko rusanze ahamwa no kuba icyitso cy'abakoze jenoside kubera gushyigikira abatsotsobye ubwicanyi bwakorewe Abatutsi ku gasozi ka Mwulire.

4 *Umusigiti w'i Mabare*

434. Ku birebana n'igika cya 3.13 cy'Inyandiko y'ibirego, Urugereko rwasanze kandi Porokireri yaratanze ibimenyetso bihamya nta shiti ko Uregwa yari ku musigiti w'i Mabare ku itariki ya 12 Mata 1994 igihe hakorerwaga ubwicanyi bwibasiye Abatutsi bari bahahungiye, ndetse icyo gihe akaba yari yitwaje intwaro. Urugereko rusanze Uregwa ataryozwa ibikorwa by'ubwicanyi byakorewe abantu ku musigiti w'i Mabare n'ibyabateye ububabare ku mubiri. Kuba Uregwa yari ku musigiti w'i Mabare igihe ubwicanyi bwahaberaga ubwabyo ntibihagije kumuhamya icyaha.

5 *Umwanzuro w'Urugereko ku birebana n'ikirego cya 1 n'icya 3*

435. Mu gusoza, Urugereko rusanze Uregwa yarashyigikiye abatsotsobye ubwicanyi bwakorewe Abatutsi, babaziza gusa ubwoko bwabo. Urugereko rwasanze Uregwa: (1) yarakoranyije Interahamwe zo gutera inkunga mu bwicanyi bwabereye ku kiriziya y'i

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Musha ku itariki ya 13 Mata 1994; (2) yaragize uruhare mu kuvangura impunzi z'Abatutsi n'iz'Abahutu zari ku kiriziya y'i Musha ku itariki ya 13 Mata 1994 no kuba yaratanze amabwiriza yo kwica impunzi z'Abatutsi; kandi (3) yaragize uruhare mu bwicanyi bwakorewe ku gasozi ka Mwulire ku itariki ya 18 Mata 1994 kubera ko yazanye abasirikare n'Interahamwe aho hantu gutanga inkunga mu bwicanyi. Kubera ubwo buryo bwo gukora icyaha, hamwe n'umugambi wo gukora jenoside, kandi rukurikije igipimo ngenderwaho mu rwego rw'amategeko n'imyanzuro ku byabaye Urugereko rwerekanye mbere, rusanze Uregwa ahamwa, nta gushidikanya, n'icyaha cyo kuba icyitso cy'abakoze jenoside, nk'uko agishinjwa mu kirego cya 3 cy'Inyandiko y'ibirego.

436. Urugereko rusanze imiterere y'uruhare rw'Uregwa yerekana neza ko inyito y'icyaha Uregwa agomba kuryozwa ari iyo kuba icyitso cy'abakoze ibyaha aho kuba iya gatozi wabitsotsobye. Kubera ko ikirego cya 1 n'icya 3 by'Inyandiko y'ibirego bishingiye ku bikorwa bimwe, Urugereko rusanze Uregwa atagomba kuryozwa icyaha nka gatozi wagitsotsobye hakurikijwe ibikubiye mu kirego cya 1 cy'Inyandiko y'ibirego, ahubwo agomba kukiryozwa nk'icyitso. Bityo rero, Urugereko rusanze Uregwa ahamwa n'ibivugwa mu kirego cya 3, ariko adahamwa n'ibivugwa mu kirego cya 1.

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C. *Guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside*

437. Mu kirego cya 2 cy'Inyandiko y'ibirego, Porokireri ashinja Uregwa ibikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.7 n'icya 3.8, ashinjwa guhamagarira abantu mu buryo butaziguye kandi mu ruhame kwica Abatutsi cyangwa kubakorera ibikorwa bizahaza umubiri cyangwa mu mutwe, agamije kurimbura abagize ubwoko bwose cyangwa igice cyabo bazira icyo bari cyo, bityo akaba yarakoze icyaha cyo **GUHAMAGARIRA ABANTU KU BURYO BUTAZIGUYE KANDI MU RUHAME GUKORA JENOSIDE**; icyo cyaha giteganywa n'Ingingo ya 2 (3) (c) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

438. Kubera ko Urugereko rwasanze ibivugwa mu gika cya 3.7 n'icya 3.8 by'Inyandiko y'ibirego bidasobanutse na gato ku buryo byashyigikira ikirego, ntibyitwaweho kandi nta buryozwacyaha bushobora gushingira kuri ibyo bivugwa. Byongeye kandi, Urugereko ruramutse rusuzumye ibyabaye bivugwa mu gika cya 3.7 n'icya 3.8 by'Inyandiko y'ibirego, rwasanga n'ubundi ibimenyetso byatanzwe bidahagije gushyigikira ibirego. Bityo rero, Urugereko rusanze Uregwa adahamwa n'icyaha kivugwa mu kirego cya 2.

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D. Ibyaha byibasiye inyokomuntu

1. Ibigize icyaha muri rusange

439. Uregwa ashinjwa ibyaha byibasiye inyokomuntu bikurikira: ubuhotozi (ibirego bya 4, 12, na 14), gusambanya ku gahato (ikirego cya 8 n'icya 10), iyicarubozo (ikirego cya 11), gutoteza (ikirego cya 6), n'itsembatsemba (ikirego cya 5).

440. Nk'uko byavuzwe hano hejuru mu cyiciro kirebana n'amategeko akurikizwa, Porokireri afite inshingano yo gutanga ibimenyetso bihamya ko ibyaha byibasiye inyokomuntu byose byakozwe mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu z'ivangura zirondorwa.

441. Urugereko rwamaze kwemeza ko kuba mu Rwanda harabaye ibitero rusange cyangwa biri kuri gahunda ari ikintu kitagomba kugibwaho impaka n'ababuranyi:

> Hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994 mu Rwanda ibintu byari byifashe mu buryo bukurikira. Mu Rwanda hose habaye ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri bazira ko ari abo mu bwoko bw'Abatutsi. Muri ibyo bitero, Abanyarwanda bamwe bishe abantu bafataga nk'Abatutsi cyangwa babateye ububabare bubazahaza umubiri cyangwa mu mutwe. Ibyo bitero byahitanye Abatutsi benshi cyane[694].

442. Urugereko rushobora noneho gufata umwanzuro wihariye kurushaho wo mu rwego rw'amategeko. Rushingiye ku bintu rwemeje ko bitagomba kugibwaho impaka n'ababuranyi, ku myanzuro ku byabaye irebana n'intambara itari iyo mu rwego mpuzamahanga yabereye mu Rwanda[695], no ku bimenyetso byatanzwe ku bwicanyi bwibasiye abasiviri hagati y'itariki ya 6 Mata 1994 n'iya 31 Nyakanga 1994[696], rusanze muri Komini ya Bicumbi n'iya Gikoro harabaye ibitero simusiga, bya buri gihe, kandi rusange byibasiye abasiviri b'Abatutsi. Abagabye ibyo bitero bibasiye

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[694] Urubanza rwa Semanza, N° ICTR-97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibintu bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Umugereka A, igika 2. Reba Umugereka II, Igice A, igika 2.

[695] Reba hano hejuru, igika 281.

[696] Reba Umutwe wa IV w'iyi Nyandiko y'urubanza.

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abantu benshi bazira gusa ko bari abo mubwoko bw'Abatutsi. Bityo rero, Urugereko rusanze nta gushidikanya muri ibyo bihe byose bivugwa harabaye ibitero rusange byibasiye abasiviri b'Abatutsi bo muri Komini ya Bicumbi n'iya Gikoro, bazira ubwoko bwabo. Urugereko rumaze kubona ko ibyo bitero byari rusange, rugiye noneho gusuzuma niba byari kuri gahunda.

443. Ubwunganizi bwavuze ko Porokireri agomba no gutanga ibimenyetso bihamya ko ibyaha byibasiye inyokomuntu byakozwe mu rwego rwo gushyigikira gahunda yo kurwana intambara itari iyo mu rwego mpuzamahanga, bitewe n'uko bivugwa mu Nyandiko y'ibirego[697]. Urugereko rusanze iyo ngingo nta shingiro ifite kubera ko mu rwego rw'amategeko ntaho Sitati iteganya ko ibyaha byibasiye inyokomuntu bigomba gukorwa mu rwego rw'intambara.

2. Ikirego cya 4: Ubuhotozi

444. Mu kirego cya 4 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa **UBUHOTOZI** bwakorewe abaturage b'abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byabibasiye bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

445. Urugereko rushingiye ku myanzuro yarwo irebana n'ibyabaye n'iyo mu rwego rw'amategeko, ntiruri busuzume ibivugwa mu bika bya 3.7, 3.8, 3.9, 3.10, 3.15, na 3.16 by'Inyandiko y'ibirego[698]. Urugereko rwamaze gufata umwanzuro ku byabaye bivugwa mu bika bya 3.11, 3.12, 3.13 na 3.14 by'Inyandiko y'ibirego ku birebana n'uruhare rw'Uregwa mu bwicanyi bwakorewe ku kiriziya y'i Musha, ku musigiti w'i Mabare, no ku gasozi ka Mwulire.

[697] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 116.

[698] Reba hano hejuru, ibika 50, 51, 52, 54, 61.

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a. Kiriziya y'i Musha (igika cya 3.11)

446. Urugereko rumaze gusuzuma ibimenyetso byatanzwe byo gushyikira ibivugwa mu gika cya 3.11, rwasanze ku itariki ya 13 Mata 1994 Uregwa yarakoranyije Interahamwe kugira ngo zijye mu gitero cyo kwica Abatutsi bari barahungiye ku kiriziya y'i Musha kandi yarabwirije abo bagabye ibitero kuvangura impunzi z'Abatutsi n'iz'Abahutu no kwica Abatutsi gusa.

447. Urugereko rusanze abagabye ibitero bariciye impunzi ku kiriziya y'i Musha. Rusanze kandi ubwo bwicanyi bwari bwacuriwe umugambi, by'umwihariko kubera ko abagabye ibitero baje bitwaje intwaro kandi bumviye amabwiriza bahawe n'Uregwa yo kwica impunzi z'Abatutsi. Rushingiye ku bitero binyuranye byagabwe ku Batutsi mu karere ka Bicumbi n'aka Gikoro muri Mata 1994, Urugereko rusanze igitero cyagabwe ku kiriziya y'i Musha cyari mu rwego rw'ibitero rusange kandi abakigabye bari bazi ko ibikorwa byabo byo kwica impunzi z'Abatutsi byari mu rwego rw'ibitero rusange. Bityo rero, Urugereko rusanze abatsotsobye icyaha barakoze ubuhotozi nk'icyaha cyibasiye inyokomuntu.

448. Urugereko rusanze na none ibikorwa by'Uregwa byo gukoranyiriza Interahamwe ku kiriziya byari inkunga ikomeye ku batsotsobacyaha mu bikorwa byabo by'ubwicanyi bwacuriwe umugambi. Nyuma gato impunzi zimaze guteranira ku kiriziya, Uregwa yarahagiye kandi atanga igitekerezo cyo kwica izo mpunzi. Urugereko rusanze rero mu gukoranya interahamwe kugira ngo zikore ubwicanyi ku kiriziya, Uregwa yarabikoze yabigambiriye kandi azi neza ko arimo atera inkunga abatsotsobye icyaha mu gukora ubuhotozi ku kiriziya y'i Musha, bwari mu rwego rw'ibitero rusange byibasiye abaturage b'abasiviri muri ako karere kubera impamvu z'ubwoko. Urugereko rusanze Uregwa yarazirikanaga ibishobora kuza kuba ubwo yakoranyaga Interahamwe kugira ngo zice abantu ku kiriziya kubera ko ku munsi ubanziriza uwo yari yagiye ku musigiti w'i Mabare aho Interahamwe zari zakoze ubwicanyi bwibasiye impunzi.

449. Urugereko rusanze kandi Uregwa yarashishikarije abantu ubuhotozi bwakorewe impunzi kandi yarabashyigikiye muri icyo gikorwa, kubera ko yategetse ko impunzi z'Abatutsi zivangurwa n'iz'Abahutu, yafashije mu gutahura impunzi z'Abatutsi

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kugira ngo zicwe, kandi yahaye Interahamwe n'abasirikare amabwiriza yo kwica izo mpunzi. Urugereko rusanze ibyo bikorwa byarabaye inkunga ikomeye mu bwicanyi bwari bwagambiriwe bwakorewe impunzi kubera ko abagabye igitero bubahirije amabwiriza y'Uregwa akimara kuyatanga. Uruhare rw'Uregwa mu gutahura impunzi z'Abatutsi ndetse n'amabwiriza yatanze yo kuzica bigaragaza ko ibyo yakoze yari yabigambiriye kandi ko yazirikanaga ko yarimo atera inkunga ba gatozi batsotosbye icyaha mu gukora ubuhotozi nk'icyaha cyibasiye inyokomuntu.

450. Urugereko rusanze rero nta gushidikanya Uregwa yarashyigikiye abatsotsobye ubwicanyi bwagambiriwe bwahitanye impunzi z'Abatutsi zari ku kiriziya y'i Musha, bityo rero akaba ahamwa n'icyaha cyibasiye inyokomuntu.

b. Agasozi ka Mwulire (igika cya 3.12)

451. Mu myanzuro y'Urugereko ku byabaye bivugwa mu gika cya 3.12, rwasanze Uregwa yarazanye Interahamwe n'abasirikare ndetse n'«ibikoresho» byabo ku gasozi ka Mwulire ku itariki ya 18 Mata 1994 ubwo impunzi zahicirwaga kandi na we ubwe yarashe ku mpunzi zari zihari.

452. Urugereko rusanze ku itariki ya 18 Mata 1994, abatsotsobye icyaha bariciye abasiviri b'impunzi benshi cyane ku gasozi ka Mwulire. Urugereko rwemera kandi ko abatsotsobye icyaha bakoze ibintu bacuriye umugambi, nk'uko bigaragazwa n'ibitero bya buri munsi byibasiye impunzi kuva ku itariki ya 8 Mata 1994 kugeza ku gitero cya nyuma cyo ku itariki ya 18 Mata 1994. Hashingiwe ku bimenyetso byose byatanzwe, byerekana ibitero binyuranye byagabwe ku basiviri b'Abatutsi hirya no hino muri Komini ya Bicumbi n'iya Gikoro muri Mata 1994, Urugereko rusanze abatsotsobye icyaha bari bazi neza ko ibikorwa byabo byo kwica Abatutsi benshi cyane byari mu rwego rw'ibitero rusange byibasiye abaturage b'abasiviri bazira gusa impamvu z'ivangura. Urugereko rusanze rero abatsotsobye icyaha barakoze ubuhotozi nk'icyaha cyibasiye inyokomuntu ku gasozi ka Mwulire.

453. Urugereko rusanze ibyo Uregwa yakoze byo kuzana Interahamwe, abasirikare, n'intwaro zabo aho ubwicanyi bwakorewe ari inkunga ikomeye yahawe abatsotsobye icyaha barimo bica abasiviri b'Abatutsi ku gasozi ka Mwulire. Ntawakwirengagiza kandi ko impunzi zaneshejwe burundu ku itariki ya 18 Mata 1994 nyuma y'uko

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Uregwa azana Interahamwe n'abasirikare bitwaje intwaro mu gitero simusiga cyazigabweho. Urugereko rusanze ubwo Uregwa yazanaga Interahamwe n'abasirikare mu gitero, yarabikoze yabigambiriye kandi azirikana ko arimo gutera inkunga ba gatozi barimo batsotsoba ibyaha aho hantu. Kuba Uregwa yari mbere ku musigiti w'i Mabare no kuba yaragiye mu bwicanyi bwakorewe ku kiriziya y'i Musha byerekana ko yazirikanaga ko mu kuzana Interahamwe, abasirikare, n'intwaro ahakorewe ubwicanyi byateraga inkunga mu bwicanyi kandi yari azi neza ko ubwo bwicanyi bwari mu rwego rw'ibitero rusange byibasiye abasiviri b'Abatutsi.

454. Urugereko rwasanze kandi Uregwa yararashe n'imbunda ku mbaga y'impunzi. Urugereko rukurikije ibimenyetso rwagejejweho, ntirwemera ko hari impunzi n'imwe yishwe n'Uregwa ubwe. Nyamara ariko, icyo gikorwa gishyigikira byimazeyo umwanzuro w'Urugereko ko Uregwa yari afite umugambi wo gutera inkunga abatsotsobye ubwicanyi bwakorewe impunzi kandi ibyo yabikoze azi neza ingaruka zabyo.

455. Urugereko rusanze rero nta gushidikanya Uregwa yarashyigikiye ubwicanyi bwagambiriwe bwakorewe abasiviri b'Abatutsi ku gasozi ka Mwulire ku itariki ya 18 Mata 1994, bityo rere akaba ahamwa n'icyaha cyibasiye inyokomuntu.

c. Umusigiti w'i Mabare Mosque (igika cya 3.13)

456. Ku birebana n'igika cya 3.13, Urugereko rwasanze Uregwa, wari witwaje imbunda ngufi, yari ku musigiti w'i Mabare ku itariki ya 12 Mata 1994 mu gihe impunzi zahicirwaga. Nyuma y'ubwo bwicanyi, Uregwa yabwiye Interahamwe ati « twari twaje kubatiza umurindi ».

457. Urugereko rusanze Porokireri ataratanze ibimenyetso bihamya ko Uregwa yakoresheje imbunda ye, cyangwa ko mu by'ukuri yateye inkunga abagabye igitero ku bundi buryo ubwo ari bwo bwose nko kwikorera intwaro mu modoka cyangwa abantu bo gutiza umurindi. Urugereko ntirwemera ko ibyo Uregwa yavuze nyuma y'igitero ari ikimenyetso gihagije kumuhamya ubwicanyi bwakorewe aho hantu. Urugereko ruributsa ko hakurikijwe ibiteganywa na Sitati, umuntu aryozwa icyaha kubera gutanga inkunga iyo gusa iyo nkunga yari ikomeye. Bityo rero, kubera ko nta kimenyetso cyihariye kigaragaza imiterere nyayo y'inkunga Uregwa yaba yaratanze,

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Urugereko ntaho rwashingira rwemeza ko iyo nkunga yari ikomeye. Porokireri nta kimenyetso yatanze gihamya ko kuba Uregwa yari ahantu habereye ubwicanyi igihe bwakorwaga kandi afite ijambo byagize ingaruka ikomeye kuri ubwo bwicanyi.

458. Nyuma y'ubwo bwicanyi, Uregwa yaravuze ati «ndumva abatishwe badashobora kubananira. Mugende mu bashashakishe hanyuma mubatsembatsembe ». Nyamara ariko, nta kimenyetso cyatanzwe kigaragaza ko hari ubundi bwicanyi bwabayeho nyuma hagendewe kuri ayo mabwiriza yatanzwe n'Uregwa.

459. Bityo rero, Urugereko ntirushobora guhamya Uregwa ibyaha byibasiye inyokomuntu ku birebana n'ibyabereye ku musigiti w'i Mabare.

d. Umwanzuro w'Urugereko ku kirego cya 4

460. Urugereko rusanze rero nta gushidikanya Uregwa yarashyigikiye abatsotsobye ubuhotozi ku kiriziya y'i Musha no ku gasozi ka Mwulire. Nyama ariko, kubera impamvu zisobanurwa hano hasi, nta cyemezo mpamyacyaha kiri bufatwe ku kirego cya 4 kubera ko ibyaha bivugwamo bikubiye no mu kirego cya 5 (itsembatsemba nk'icyaha cyibasiye inyokomuntu).

3. Ikirego cya 5: Itsembatsemba

461. Mu kirego cya 5 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa **ITSEMBATSEMBA** ryakorewe abaturage b'abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byabibasiye bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (b) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

462. Urugereko, rugendeye ku myanzuro yarwo irebana n'ibyabaye n'iyo mu rwego rw'amategeko, ntiruri busuzume ibivugwa mu bika bya 3.7, 3.8, 3.9, 3.10, 3.15, na

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3.16 by'Inyandiko y'ibirego[699]. Urugereko rwafashe imyanzuro irebana n'ibyabaye n'iyo mu rwego rw'amategeko ku bivugwa mu bika bya 3.11, 3.12, 3.13 na 3.14 by'Inyandiko y'ibirego aho Uregwa ashinjwa ubwicanyi bwakorewe ku kiriziya y'i Musha, ku musigiti w'i Mabare, no ku gasozi ka Mwulire. Nyamara ariko, Urugereko rusanga hataratanzwe ibimenyetso bihamya ko Uregwa yatanze inkunga ikomeye mu bwicanyi bwakorewe ku musigiti w'i Mabare.

463. Igikorwa gifatika kigize itsembatsemba ni ubwicanyi buhitana abasiviri benshi. Mu myanzuro y'Urugereko yo mu rwego rw'amategeo, rwamaze gusanga Uregwa yarafashije abatsotsobye ubwicanyi bwakorewe abasiviri ku kiriziya y'i Musha no ku gasozi ka Mwulire. Nyamara ariko, Urugereko ntirushobora gufata umwanzuro wihariye ku birebana n'umubare nyirizina w'abantu biciwe ku kiriziya y'i Musha cyangwa ku gasozi ka Mwulire. Urugereko ruributsa ko ku kiriziya y'i Musha hiciwe impunzi nyinshi. Hari umutangabuhamya wavuze ko yibukaga ko yabonye imirambo igera nko ku 100 aho hantu. Urugereko ruributsa kandi ko ku itariki ya 18 Mata 1994 hari impunzi zigera nko ku 10.000 ku gasozi ka Mwulire kandi ko nyuma y'igitero agasozi kose kari kuzuyeho imirambo. Urugereko, rushingiye ku bimenyetso bikwiye kwizerwa no kwemerwa ku byabereye aho hantu hombi, rwemera ko hatanzwe ibimenyetso bihamya nta shiti ko habayeho igikorwa gifatika kigize itsembatsemba, ari cyo ubwicanyi bwahitanye imbaga. Urugereko rusanze intera ubwicanyi bwafashe aho hantu hombi ihagije kugaragaza ko hakozwe itsembatsemba. Urugereko rusanze rero abatsotsobye icyaha barakoze itsembatsemba nk'icyaha cyibasiye inyokomuntu.

464. Urugereko rwasanze Uregwa yarafashije yabigambiriye abatsotsobye icyaha ku kiriziya y'i Musha no ku gasozi ka Mwulire azi neza ko arimo kubatera inkunga mu gukora ubwicanyi nk'icyaha cyibasiye inyokomuntu. Urugereko, rushingiye kuri ibyo bimenyetso kandi rukurikije intera ibyo byabaye byafashe, rwemera kandi ko Uregwa na we yateye inkunga abatsotsobye itsembatsemba nk'icyaha cyibasiye inyokomuntu abizi neza kandi abizirikana. Urugereko, rukurikije ibimenyetso byose byatanzwe, kandi by'umwihariko kuba Uregwa yari aho hantu hanyuranye hakorewe ubwicanyi no kubera amagambo yavuze, rwemera nta gushidikanya ko Uregwa yateye inkunga yabigambiriye abatsotsobye itsembatsemba nk'icyaha cyibasiye inyokomuntu.

[699] Reba hano hejuru, ibika 50, 51, 52, 54, 61.

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465. Bityo rero, Urugereko rusanze Uregwa agomba kuryozwa nka gatozi icyaha cyo gushyigikira abatsotsobye itsembatsemba nk'icyaha cyibasiye inyokomuntu. Nyamara ariko, kubera impamvu Umucamanza Dolenc asobanura mu gitekerezo cye kinyuranye n'icya bagenzi be, uwo mucamanza avuga ko bitaba ari byo guhamya Uregwa icyaha gikubiye mu kirego cya 5 kubera ko gisa nk'igihuriye ku mugambi umwe n'icyo kuba icyitso cy'abakoze jenoside ashinjwa mu kirego cya 3. Urugereko, ku bwiganze bw'amajwi, rusanze Uregwa ahamwa n'icyaha gikubiye mu kirego cya 5.

4. Ikirego cya 6 : Itoteza

466. Mu kirego cya 6 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa **ITOTEZA** ryakorewe abaturage b'abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byabibasiye bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (h) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

467. Mu gushyigikira ikirego cy'itoteza, Porokireri ashingira ku bivugwa kuva ku gika cya 3.7 kugeza ku cya 3.16 by'Inyandiko y'ibirego, bishinja Uregwa ko yakoze ibyaha bikurikira : ubwicanyi bwakorewe abasiviri n'ibikorwa bibazahaza umubiri cyangwa mu mutwe, ndetse no kubasambanya ku gahato. Inyandiko y'ibirego isobanura neza mu gika cya 3.14 ko ubwo bwicanyi bwari bwibasiye abantu bo mu bwoko bw'Abatutsi.

468. Mu myanzuro y'Urugereko irebana n'ibyabaye, rwasanze Uregwa yaragize uruhare mu bwicanyi bwibasiye abasiviri, cyane cyane b'Abatutsi, ku kiriziya y'i Musha no ku gasozi ka Mwulire, ariko ntirubona ko Uregwa yagize uruhare urwo ari rwo rwose mu bikorwa byo gusambanya ku gahato byaba byarabereye aho hantu. Urugereko,

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rugendeye ku myanzuro yarwo irebana n'ibyabaye n'iyo mu rwego rw'amategeko, ntiruri busuzume ibivugwa mu bika bya 3.7, 3.8, 3.9, 3.10, 3.15, na 3.16[700].

469. Igikorwa gifatika kigize icyaha cy'itoteza ni ukubuza bikomeye umuntu uburenganzira bwe bw'ibanze kubera impamvu z'ivangura. Urugereko rusanga byumvikana rwose ko igikorwa cy'ubwicanyi gihungabanya uburenganzira bw'ibanze bwo kubaho[701], kandi icyo gikorwa gishobora kuba mu bifatika bigize icyaha cy'itoteza, ubwicanyi buramutse bukozwe ku mpamvu z'ivangura.

470. Mu Nyandiko y'ibirego, Uregwa ashinjwa icyaha cy'itoteza rishingiye ku mpamvu za politiki, ubwoko, cyangwa idini. Urugereko rusanga Porokireri mu myanzuro nsozarubanza ye yanditse nta ngingo n'imwe yatanze yerekana ko itoteza ryakozwe kubera impamvu z'ubwoko (*race*) cyangwa iz'idini, na none kandi nta bimenyetso byatanzwe byo gushyigikira ibyo avuga[702]. Nyamara ariko, mu myanzuro nsozarubanza yanditse ye abyutsa ingingo nshya ivuga ko itoteza ryari rishingiye ku bwoko *(ethnic).* Kubera ko iyi mpamvu y'ubwoko *(ethnic)* itigeze ivugwa mu Nyandiko y'ibirego, kandi ikaba itari mu ziteganywa na Sitati, Urugereko ntiruri buyisuzume.

471. Porokireri yavuze ko itoteza rishingiye ku mpamvu za politiki ryakorewe Abahutu batari intangondwa hamwe n'abandi bantu barengeraga Abatutsi[703]. Nyamara ariko, Porokireri nta kimenyetso yatanze kigaragaza ko abo bantu bari bagize itsinda ryo mu rwego rwa « politiki ». Urugereko rusanga kandi mu mpinamyanzuro y'ibyabaye nta na hamwe hagaragara ko hakozwe ubwicanyi bushingiye ku mpamvu za politiki. Rumaze gusuzuma ibimenyetso byatanzwe, kandi ruzirikana by'umwihariko ko habayeho igikorwa cyo kuvangura Abatutsi n'Abahutu ku kiriziya y'i Musha ndetse

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[700] Reba hano hejuru, ibika 50, 51, 52, 54, 61.

[701] Itangazo mpuzamahanga ryerekeranye n'uburenganzira bwa muntu, Icyemezo cy'Inama Rusange y'Umuryango w'Abibumbye, 217A (III), Inyandiko y'Umuryango w'Abibumbye A/810, urup. 71 (1948), Ingingo ya 3; Amasezerano Mpuzamahanga yerekeranye n'uburenganzira mu by'imbonezamubano no mu bya politiki, Icyemezo cy'Inama Rusange y'Umuryango w'Abibumbye, 2200A (XXI), 21 UN GAOR Supp. (No. 16), urup. 49, UN Doc. A/6316 (1966), 993 U.N.T. S.3, Ingingo ya 6.

[702] Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 73-78.

[703] Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 77-78.

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n'amagambo Uregwa yavugiye mu ruhame cyangwa ahatari mu ruhame, Urugereko rusanze ubwicanyi bwari bwibasiye mbere na mbere abantu bo mu bwoko bw'Abatutsi. Nta bimenyetso bihagije byatanzwe byo gusobanura impamvu zatumye Abahutu bapfira muri ibyo bitero. Byongeye kandi, uyu mwanzuro uhuje n'inyito Porokireri ubwe yahaye ubwicanyi ndetse n'imyanzuro y'Urugereko yo mu rwego rw'amategeko yerekeranye n'ibirego bya jenoside.

472. Bityo rero, Urugereko rusanze Porokireri ataratanze ibimenyetso bihamya ko Uregwa ahamwa n'itoteza nk'icyaha cyibasiye inyokomuntu.

5. Ikirego cya 8: Gusambanya ku gahato

473. Mu kirego cya 8 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.15 n'icya 3.16, ashinjwa **GUSAMBANYA KU GAHATO** abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo rero yakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (g) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

474. Urugereko rumaze kubona ko mu myanzuro yarwo rwasanze Uregwa ataramenyeshejwe uko bikwiye ibikubiye mu gika cya 3.15 n'icya 3.16 by'Inyandiko y'ibirego, rusanze adahamwa n'icyaha gikubiye mu kirego cya 8. Byongeye kandi, Porokireri nta bimenyetso yatanze byemeza Urugereko ko Uregwa hari igikorwa cyo gusambanya ku gahato yagizemo uruhare, uretse gusa icyo gusambanya ku gahato uwiswe A ashinjwa mu kirego cya 10.

6. *Ikirego cya 10: Gusambanya ku gahato*

475. Mu kirego cya 10, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.17, ashinjwa **GUSAMBANYA KU GAHATO** abiswe A na B mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze

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> **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (g) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

476. Ku birebana n'igika cya 3.17 cy'Inyandiko y'ibirego, Urugereko rwasanze nta gushidikanya Uregwa yaragejeje ijambo ku mbaga y'abaturage ababaza aho akazi kabo ko kwica Abatutsi kageze kandi abashishikariza gusambanya ku gahato Abatutsikazi mbere yo kubica, ibyo akaba yarabivugiye mu maso y'abategetsi bo mu rwego rwa komini n'aba gisirikare. Nyuma yaho gato, umwe muri abo baturage yasambanyije ku gahato uwiswe A, wari wihishe mu rugo rwari hafi aho. Urugereko rwasanze uwiswe B yarishwe n'abandi bagabo babiri bari muri abo baturage, ariko rwasanze nta bimenyetso bihagije byatanzwe rwashingiraho rufata umwanzuro ko na we yasambanyijwe ku gahato.

477. Urugereko rusanze nta gushidikanya uwiswe A yarasambanyijwe ku gahato n'umwe mu bagabye igitero wumvise Uregwa ashishikariza imbaga y'abaturage gusambanya ku gahato Abatutsikazi. Kubera amabwiriza rusange yatangwaga yo gusambanya no kwica Abatutsi, nk'abantu bo mu bwoko bwari bwibasiwe n'ibitero rusange, no kuba umwe mu bagabye igitero yaragiye aho uwiswe A yari yihishe ari kumwe n'abandi bantu babiri bishe uwiswe B, Urugereko rusanze icyo gikorwa cyo gusambanya ku gahato cyari mu rwego rw'ibitero rusange byari byibasiye abasiviri b'Abatutsi kandi uwo wagabye igitero yarabizirikanaga. Urugereko rusanze rero uwo mutsotsobacyaha yarakoze igikorwa cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu.

478. Kubera ko, ariko atari byo gusa, Uregwa ari umuntu wavugaga rikijyana no kubera ko igikorwa cyo gusambanya ku gahato uwiswe A cyabaye Uregwa akimara guha imbaga y'abaturage amabwiriza yo gusambanya ku gahato, Urugereko rusanze igikorwa cy'Uregwa cyo gushishikaza kigize icyaha cyo guhamagarira abantu gukora icyaha kubera ko bifitanye isano kandi icyo gikorwa kikaba cyarateye inkunga ikomeye uwatsotsobye icyaha. Imvugo y'uwo mutsotsobacyaha y'uko yari yemerewe gusambanya ku gahato uwiswe A ni ikimenyetso kigaragaza ko hari isano yeruye hagati y'ibyo Uregwa yavuze n'icyaha cyakozwe. Urugereko rusanze kandi Uregwa

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yaravuze ayo magambo yabigambiriye kandi azirikana ko yatumaga uwo mutsotsobacyaha ari bukore icyaha.

479. Urugereko rusanze nta gushidikanya Uregwa yarahamagariye abantu gukora igikorwa cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu uwiswe A. Bityo rero, Urugereko rusanze Uregwa ahamwa n'icyaha gikubiye mu kirego cya 10.

7. Ikirego cya 11: Iyicarubozo

480. Mu kirego cya 11, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.17 n'icya 3.18, ashinjwa **KWICA URUBOZO** abiswe A, B, na C, mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (f) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

a. Abakorewe ibyaha biswe A na B

481. Ku birebana n'igika cya 3.17 cy'Inyandiko y'ibirego, Urugereko rwasanze Uregwa yarashishikarije imbaga y'abaturage gusambanya ku gahato Abatutsikazi mbere yo kubica, kandi ibyo yabivuze hari abategetsi ba komini n'aba gisirikare. Urugereko rwasanze nyuma yaho gato umwe mu bagabo bari muri iyo mbaga yarasambanyije ku gahato uwiswe A. Urugereko rwasanze uwiswe B yarishwe n'abandi bagabo babiri na bo bari muri iyo mbaga y'abaturage ariko ntirwabonye ibimenyetso bihagije rwaheraho rufata umwanzuro wemeza ko na we yasambanyijwe ku gahato cyangwa ko yakorewe ibikorwa by'iyicarubozo.

482. Kubera by'umwihariko umwuka w'icyoba wariho muri icyo gihe ibyo bivugwa byabaga n'imiterere y'igikorwa cyo gusambanya ku gahato uwiswe A, Urugereko rusanze uwo mutsotsobacyaha yarakoze igikorwa gitera ububabare buzahaza mu mutwe, nka kimwe mu bigize icyaha cy'iyicarubozo. Bityo rero, si ngombwa gusuzuma niba icyo gikorwa cyo gusambanya ku gahato cyaranateye *ububabare*

buzahaza umubiri, kuko kuri ibyo Porokireri yatanze gusa ibimenyetso bigaragaza ko iyo mibonano mpuzabitsina itabayeho ku bushake bw'uwakorewe icyaha.

483. Urugereko rusanze gusambanya ku gahato byarakozwe kubera impamvu z'ivangura, hibasiwe uwiswe A azira gusa ko ari Umututsikazi. Urugereko ruributsa ko gutera umuntu ububabare bukomeye kubera impamvu z'ivangura ari ugukora icyaha cy'iyicarubozo, bityo rukaba rusanga umutsotsobacyaha wasambanyije ku gahato uwiswe A kubera impamvu z'ivangura yaramukoreye igikorwa cy'iyicarubozo.

484. Urugereko rusanze kandi icyo gikorwa cy'iyicarubozo cyari mu rwego rw'ibitero rusange byibasiye abaturage b'abasiviri kubera ko uwasambanyijwe ku gahato yazize gusa ko ari Umututsikazi, ubwoko bwe bukaba bwari bwibasiwe n'abagabaga ibitero. Urugereko rusanze umutsotsobacyaha yarazirikanaga urwego rusange igikorwa cye cyarimo, kubera ko yivugiye ko Uregwa yari yamushishikarije gusambanya abagore ku gahato mu rwego rw'akazi kabo muri rusange ko kwica Abatutsi, kandi yari azi ko bagenzi be bari mu mbaga y'abaturage na bo barimo bahiga Abatutsi kugira ngo babasambanye kandi babice. Urugereko rusanze rero umutsotsobacyaha yarakoze iyicarubozo nk'icyaha cyibasiye inyokomuntu.

485. Urugereko rusanze mu gushishikariza imbaga y'abantu gusambanya ku gahato abagore baziraga ubwoko bwabo, Uregwa yarashishikarije abo bantu gutera abo bagore ububabare bubazahaza umubiri cyangwa mu mutwe kubera impamvu z'ivangura. Bityo rero, nta bwo yarimo abahamagarira gusa gusambanya ku gahato, ahubwo yabibahamagarira kubera impamvu z'ivangura, ibyo mu rwego rw'amategeko bikaba ari iyicarubozo. Urugereko rusanze amagambo Uregwa yavuze yari afite aho ahuriye n'iyicarubozo ryakorewe uwiswe A kandi yabaye inkunga ikomeye mu ikorwa ry'icyo cyaha, kubera ko Uregwa akimara kugeza ijambo ku mbaga y'abaturage, umwe muri bo yagiye mu rugo rwari hafi aho maze akorera uwiswe A igikorwa cy'iyicarubozo kubera ko yamusambanyije ku gahato amuziza gusa ko ari Umututsikazi. Urugereko rusanga kuba Uregwa yari umuntu uvuga rikijyana muri rubanda no kuba yaravuze ijambo hari abategetsi ba komini n'aba gisirikare byaratumye igikorwa cye cyo gushishikaza kirushaho kugira agaciro no kwemerwa. Urugereko rusanze ibyo Uregwa yakoze yari yabigambiriye kandi yarazirikanaga ko yarimo atuma abandi bantu bakora ibikorwa byo gusambanya ku

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gahato kubera impamvu z'ivangura, mu rwego rw'ibitero rusange byibasiye abaturage b'abasiviri bazira ubwoko bwabo. Bityo rero, Urugereko rusanze Uregwa ahamwa no guhamagarira abantu iyicarubozo nk'icyaha cyibasiye inyokomuntu.

b. Uwakorewe icyaha wiswe C (Rusanganwa)

486. Ku birebana n'igika cya 3.18 cy'Inyandiko y'ibirego, Urugereko rwasanze ku itariki ya 13 Mata 1994, Uregwa yarakomerekeje bikomeye uwiswe C, ari we Rusanganwa, mu gihe yarimo amuhata ibibazo, kandi na Burugumesitiri Bisengimana yari ahari. Icyo gihe Uregwa yabajije Rusanganwa igihe Inkotanyi zizagerera muri ako gace, maze undi amusubiza ko atabizi. Uregwa yahise atema Rusanganwa n'umupanga, ku buryo yahitanywe n'ibyo bikomere. Kubera ibyo, Urugereko rusanze ububabare uwakorewe icyaha yatewe bwaramuzahaje umubiri no mu mutwe. Urugereko rusanze kandi ibyo Uregwa yakoreye uwakorewe icyaha byari bigamije kumukuramo amakuru. Imiterere y'umugambi w'Uregwa igaragazwa n'uko yashakishije Rusanganwa mu mbaga y'abantu, ndetse inagaragazwa n'imiterere y'ikibazo kirebana n'aho FPR yari igeze.

487. Iyicarubozo Uregwa yakoreye Rusanganwa ryabaye mu gihe cy'igitero cyagabwe ku kiriziya y'i Musha, hiciwe Abatutsi benshi cyane kandi ibyo byamaze kwemezwa ko byari mu rwego rw'ibitero rusange. Urugereko rusanze iryo yicarubozo ryarakorewe Rusanganwa hagamijwe kubona amakuru yerekeranye n'aho FPR igeze na byo byari mu rwego rw'ibitero rusange kandi Uregwa yari abizi neza. Bityo rero, Urugereko rusanze Uregwa yarakoze iyicarubozo nk'icyaha cyibasiye inyokomuntu.

c. Umwanzuro w'Urugereko ku kirego cya 11

488. Kubera ibimaze kuvugwa, Urugereko rusanze Uregwa ahamwa n'igikorwa cy'iyicarubozo nk'icyaha cyibasiye inyokomuntu, kikaba kimuhama nk'uwagitsotsobye ku birebana n'uwakorewe icyaha wiswe C, naho ku birebana n'uwakorewe icyaha wiswe A kikaba kimuhama nk'uwahamagariye abandi kugikora. Bityo rero, Urugereko rusanze Uregwa ahamwe n'icyaha kivugwa mu kirego cya 11.

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8. *Ikirego cya 12: Ubuhotozi*

489. Mu kirego cya 12, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent** Semanza yakoze bivugwa haruguru mu gika cya 3.17 n'icya 3.18, ashinjwa **UBUHOTOZI** bwahitanye abiswe B na C mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

a. Uwakorewe icyaha wiswe B

490. Mu myanzuro yarwo ku byabaye n'iyo mu rwego rw'amategeko yerekeranye n'igika cya 3.17 cy'Inyandiko y'ibirego, Urugereko rwasanze Uregwa yarahamagariye imbaga y'abantu kwica Abatutsikazi bamaze kubasambanya ku gahato. Nyuma gato y'iryo jambo ry'Uregwa, abagabo babiri bari muri iyo mbaga bishe uwakorewe icyaha wiswe B, wari wihishe mu rugo rwari hafi aho.

491. Urugereko rusanze ibyo abatotsobacyaha bakoze bari babigambiriye kubera ko bagiye gushakisha Umututsikazi wakorewe icyaha bakurikije amabwiriza bahawe n'Uregwa kandi bamaze kumubona baramwishe. Urugereko rukurikije imiterere rusange y'amabwiriza yatanzwe n'Uregwa, kandi abatsotsobacyaha bakaba bari bazi neza ko umwe muri bagenzi babo bari mu gitero yarimo akorera ibyaha undi Mututsikazi aho hantu, rusanze abo batsotsobacyaha bari bazi ko ibyo bikorwa byabo byari mu rwego rw'ibitero rusange byari byibasiye abasiviri b'Abatutsi. Bityo rero, Urugereko rusanze abo batsotsobacyaha barakoze ubuhotozi nk'icyaha cyibasiye inyokomuntu ubwo bicaga uwakorewe icyaha wiswe B.

492. Urugereko rusanze amabwiriza yatanzwe n'Uregwa ari igikorwa cyo guhamagarira abantu gukora ibyaha kubera ko ijambo rye ryari rifite aho rihuriye n'iyicwa ry'uwiswe B kandi ryabaye inkunga ikomeye yatumye ubwo bwicanyi buba. Mu kugera kuri uyu mwanzuro, Mu byo Urugereko rwasanze, harimo ko abatsotsobacyaha bari aho Uregwa yavugiye ijambo kandi bahise bagaba igitero ku

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Batutsikazi nk’uko Uregwa yari yabibasabye. Urugereko rusanze Uregwa yaravuze iryo jambo azi neza kandi azirikana ko rishobora gutuma imbaga y’abantu ikora ubuhotozi nk’icyaha cyibasiye inyokomuntu. Urugereko rusanze rero Uregwa ahamwa no guhamagarira abatsotsobacyaha gukora ubuhotozi nk’icyaha cyibasiye inyokomuntu.

b. Uwakorewe icyaha wiswe C (Rusanganwa)

493. Urugereko ruributsa kandi imyanzuro yarwo ku byabaye irebana n’igika cya 3.18 cy’Inyandiko y’ibirego, aho rwafashe umwanzuro wemeza ko Uregwa yakomerekeje bikomeye kandi yabigambiriye uwitwa Rusanganwa, wahitanywe n’ibyo bikomere. Uregwa yashakishije Rusanganwa maze amubona mu mbaga y’abantu, ibyo bikaba bigaragaza ko icyo gikorwa yari yakigambiriye. Urugereko rusanze kuba Uregwa yaratemaguye Rusanganwa n’umupanga, yewe na nyuma yo kumuhata ibibazo, yari agambiriye kumwica. Urugereko rwamaze kwemeza ko ibyo bikorwa byari mu rwego rw’ibitero rusange bishingiye ku ivangura byari byibasiye abasiviri b’Abatutsi, kandi Uregwa yari azi neza ko ariko bimeze. Bityo rero, Urugereko rusanze Uregwa ahamwa n’ubuhotozi nk’icyaha cyibasiye inyokomuntu bwakorewe Rusanganwa.

c. Umwanzuro w’Urugereko ku kirego cya 12

494. Kubera izo mpamvu, Urugereko rusanze nta gushidikanya Uregwa ahamwa n’ubuhotozi nk’icyaha cyibasiye inyokomuntu kubera ko yahamagariye abantu kwica uwiswe B no kubera ko we ubwe yishe Rusanganwa. Urugereko rusanze rero Uregwa ahamwa n’icyaha kivugwa mu kirego cya 12.

9. Ikirego cya 14: Ubuhotozi

495. Mu kirego cya 14, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa mu gika cya 3.19, ashinjwa **UBUHOTOZI** bwahitanye abiswe D, E, F, G, H, I na J bwakozwe mu rwego rw’ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b’abasiviri bazira impamvu za politiki cyangwa iz’ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU** ; icyo cyaha giteganywa n’Ingingo ya 3 (a) ya Sitati y’Urukiko, agishinjwa hashingiwe ku Ngingo ya

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6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

496. Urugereko rwasanze Uregwa yarabwiye agatsiko k'Interahamwe ko hari umuryango w'Umututsi runaka wari utaricwa kandi ko nta Mututsi wagombaga kurokoka. Nyuma yaho gato, Interahamwe zahize abantu bo muri uwo muryango maze zifata bane mu bawugize zirabica hamwe n'abaturanyi babo babiri.

497. Urugereko rusanze abatsotsobye icyaha barubahirije amabwiriza y'Uregwa maze bashakisha babigambiriye abantu bo muri uwo muryango bafatamo bane barabica hamwe n'abaturanyi babo babiri. Urugereko rusanze rero ubwo bwicanyi bwarakozwe ku bushake kandi bwagambiriwe. Urugereko rusanze ubwo buhotozi bwarakozwe mu rwego rw'ibitero rusange, kandi abatsotsobye icyaha barabizirikanaga, kubera ko byabonekaga ko abakorewe icyaha bari bibasiwe bazira gusa ubwoko bwabo bw'Abatutsi, no kubera ko byavugwaga ko umwe mu bari bagize uwo muryango yari mu Batutsi barimo birwanaho ku gasozi ka Mwulire. Urugereko rusanze rero abatsotsobye icyaha barakoze ubuhotozi nk'icyaha cyibasiye inyokomuntu.

498. Urugereko rwemera ko ijambo ry'Uregwa rifite aho rihuriye n'ubwicanyi bwahitanye abantu bo muri uwo muryango hamwe n'abaturanyi babo babiri bari bihishe hamwe kandi ko ryabaye inkunga ikomeye muri ubwo bwicanyi. Porokireri yatanze ibimenyetso bihamya ko umwe mu bicanyi witwa Antoine Rutikanga yari ahantu Uregwa yavugiye ijambo. Nyuma y'amasaha make yakurikiye amabwiriza y'Uregwa, abatsotsobye icyaha bahize abantu bo muryango Uregwa yari yavuze, bica bane muri bo hamwe n'abaturanyi babo babiri. Urugereko rusanze Uregwa yaravuze iryo jambo azirikana kandi agambiriye ko iryo jambo rituma abatsotsobye icyaha bakora ubuhotozi nk'icyaha cyibasiye inyokomuntu.

499. Urugereko rusanze rero Uregwa ahamwa no guhamagarira abantu gukora ubuhotozi nk'icyaha cyibasiye inyokomuntu bwakorewe abiswe D, E, F, G, H, na J, bityo akaba ahamwa n'icyaha kivugwa mu kirego cya 14.

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10. Guhamya icyarimwe uregwa ibyaha binyuranye bivugwa mu Ngingo ya 3 hashingiwe ku bikorwa bimwe

a. Guhamya icyarimwe uregwa ubuhotozi n'itsembatsemba hashingiwe ku bikorwa bimwe by'ubwicanyi

500. Urugereko rwasanze Uregwa ahamwa n'ubuhotozi n'itsembatsena nk'ibyaha byibasiye inyokomuntu hashingiwe ku bikorwa bimwe, ari byo ubwicanyi bwakorewe ku kiriziya y'i Musha no ku gasozi ka Mwulire. Urugereko rukurikije igitekerezo cyagendeweho mu rubanza rwa Musema, rusanze ubuhotozi n'itsembatsemba nk'ibyaha byibasiye inyokomuntu buri cyose muri ibyo byombi gisaba ibimenyetso by'ikintu kikigize bidasabwa mu kindi. Ubuhotozi nk'icyaha cyibasiye inyokomuntu nk'uko buteganywa na Sitati ni igikorwa bisaba ko kiba cyagambiriwe, nyamara kuba habayeho umugambi si ikintu gisabwa mu bwicanyi bugize itsembatsemba. Ku rundi ruhande, itsembatsemba ni gikorwa bisaba ko gihitana abantu benshi, nyamara mu buhotozi ntibisaba ko haba hishwe abantu benshi. Bityo rero, mu rwego rw'amategeko ibyo byaha byombi biratandukanye.

501. Guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku gikorwa kimwe biremewe iyo ibyo byaha bifite ibintu bibigize bitandukanye, kubera ko bisobanura kurushaho uburyozwacyaha bw'uregwa kandi bigatanga ishusho yuzuye y'imyitwarire mibisha ye[704]. Nyamara ariko, Urugereko ruracirikana ibiherutse kwemezwa n'Urugereko rw'Ubujurire rwa TPIY aho rwavuze ko ibisabwa bitandukanye muri buri cyaha bishingirwaho mu guhamya umuntu ibyaha binyuranye ku gikorwa kimwe bitagomba kugenderwaho buhumyi cyangwa hatitawe ku miterere ya buri rubanza. Urugereko rw'Ubujurire rwa TPIY rwavuze ko ari ngombwa gushishoza mu gukurikiza iryo hame ry'ibintu binyuranye bigize buri cyaha kugira ngo uregwa atava aho aharenganira[705].

502. Ikintu kimwe rukumbi kiranga by'umwihariko ubuhotozi nk'icyaha cyibasiye inyokomuntu giteganywa na Sitati ni uko gikorwa byagambiriwe. Kubera ko hagati y'inyandiko ya Sitati mu cyongereza n'iyo mu gifaransa harimo urujijo, Urugereko

[704] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 169.

[705] Inyandiko y'urubanza Urubanza rwa Kunarac mu bujurire, ibika 168-174.

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rwahisemo gukurikiza ahateganywa umugambi mubisha kurushaho wo kugambirira, cyane cyane kubera ko ari byo bihuje n'ubusobanuro bwa Sitati yanditse mu ndimi ebyiri no kubera ko ari byo bisa n'ibirengera kurushaho inyungu z'Uregwa[706]. Nyamara ariko, Urugereko rusanga gukurikiza iryo hame ryo kureba icyaha gifite umugambi wateguwe kurushaho bituma Uregwa ahamwa n'icyaha cy'ubuhotozi n'icy'itsembatsemba hashingiwe ku gikorwa kimwe.

503. Byongeye kandi, Urugereko rusanga ibintu bigize ubuhotozi n'ibigize itsembatsemba birangwa hombi no kwica umuntu bidatandukanye cyane. Kugambirira icyaha, bisaba gucura umugambi, gutegura, cyangwa nibura igihe gito cyo kubitekerezaho[707], si ikintu gisabwa mu rwego rw'amategeko kugira ngo habeho ubwicanyi bugize itsembatsemba. Nyamara ariko, biragoye kwiyumvisha ukuntu umuntu ashobora gutekereza gukora ubwicanyi buhitana imbaga y'abasiviri azi neza ko icyo gikorwa kiri mu rwego rw'ibitero rusange bishingiye ku ivangura, nta kanunu k'igitekerezo afite kegeranye rwose cyangwa kameze kimwe n'ako kugambirira icyaha. Mu by'ukuri, ibikorwa bifatika byerekana ubuhotozi n'ibyerekana ubwicanyi bugize itsembatsemba ni bimwe. Nta wavuga rero ko ibikorwa bigize buri cyaha muri ibyo byombi bitandukanye cyane[708].

504. Muri uru rubanza, kubera ko ubuhotozi n'itsembatsemba bishingiye ku bikorwa bimwe by'ubwicanyi bwagambiriwe no ku buryo bumwe byakozwemo, guhamya Uregwa ibyo byaha byombi si byo byakwerekana neza cyangwa ku buryo bwuzuye kurushaho imyifatire mibisha ye yose uko yakabaye.

505. Muri uru rubanza, Urugereko rusanga rero ubuhotozi n'itsembatsemba nk'ibyaha byibasiye inyokomuntu bigize icyaha kimwe nyamukuru kandi ubuhotozi

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[706] Ariko reba Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 214; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 79; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 588; Inyandiko y'urubanza rwa Vasiljevic mu rw'iremezo, igika 205; Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, igika 132; Inyandiko y'urubanza rwa Krstic mu rw'iremezo, igika 485; Inyandiko y'urubanza rwa Kordic mu rw'iremezo, igika 235; Inyandiko y'urubanza rwa Blaskic mu rw'iremezo, igika 216; Inyandiko y'urubanza rwa Jelisic mu rw'iremezo, igika 51.

[707] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 139.

[708] Inyandiko y'urubanza Urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 633.

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bwakwinjizwa mu bwicanyi bugize itsembatsemba. Ukurikije uko ibintu bimeze, nta mpamvu yatuma Uregwa ahamywa ibyo byaha byombi hashingiwe ku nshoza y'impurirane y'imbonezamugambi. Bityo rero, Urugereko ntiruhamya Uregwa ubuhotozi nk'icyaha cyibasiye inyokomuntu ashinjwa mu kirego cya 4.

b. Guhamya icyarimwe uregwa gusambanya ku gahato n'iyicarubozo ryatewe n'uko gusambanya ku gahato

506. Urugereko rwamaze kwemeza ko Uregwa yahamagariye abantu ibikorwa byo gusambanya ku gahato n'iyicarubozo nk'ibyaha byibasiye inyokomuntu, mu bikorwa bimwe. Urugereko, rushingiye ku gitekerezo cyagendeweho mu rubanza rwa Musema, rwasuzumye ibintu bigize icyaha cyo gusambanya ku gahato n'ibigize icy'iyicarubozo nk'ibyaha byibasiye inyokomuntu. Mu rubanza rwa Kunarac, Urugereko rw'Ubujurire rwa TPIY rwemeje ko byemewe guhamya icyarimwe uregwa ibyo byaha byombi hashinigwe ku bikorwa bimwe, kubera ko buri cyaha muri ibyo byombi gifite ikintu kikiranga by'umwihariko kitaboneka mu kindi; gusambanya ku gahato bisaba ko habaho igikorwa cy'iyinjiragitsina, naho iyicarubozo risaba ko uwakorewe icyaha akorerwa ibikorwa bimubabaza umubiri hagamijwe ikindi kintu kibujijwe[709]. Bityo rero, Uregwa arahamywa ibyo byaha byombi kugira ngo hagaragazwe ishusho yuzuye y'imyitwarire mibisha ye.

c. Guhamya icyarimwe uregwa ubuhotozi n'iyicarubozo hashingiwe ku gikorwa kimwe

507. Urugereko rwamaze kwemeza ko Uregwa ahamwa n'iyicarubozo hamwe n'ubuhotozi ku birebana n'ibyaha byakorewe Rusanganwa. Hakurikijwe igitekerezo cyagendeweho mu rubanza rwa Musema, biragaragara ko iyicarubozo n'ubuhotozi nk'ibyaha byibasiye inyokomuntu bifite ibintu bibigize binyuranye. Iyicarubozo ni igikorwa cyo kubabaza umuntu bikomeye hagamijwe ikindi kintu kibujijwe, mu gihe ubuhotozi ari ubwicanyi bwagambiriwe. Iyo ibikorwa by'iyicarubozo byahitanye uwakorewe icyaha, bigomba guhabwa agaciro kanini kihariye ku buryo kagaragarizwa mu guhamya icyarimwe uregwa ibyo byaha byombi. Muri uru rubanza, aho Rusanganwa yapfuye ahitanwe n'ibikorwa by'iyicarubozo yakorewe, ni

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[709] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 179.

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ngombwa ko ahamywa ibyo byaha byombi kugira ngo hasobanurwe uko bikwiye imyitwarire mibisha y'Uregwa uko yakabaye.

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d. Guhamya uregwa ibyaha by'ubuhotozi binyuranye hashingiwe ku bikorwa bimwe

508. Urugereko rusanga Porokireri yarakoresheje uburyo buhuzagurika ashinja Uregwa ubuhotozi nk'icyaha cyibasiye inyokomuntu mu birego bitatu binyuranye nyamara bifite ibintu bigenda bihuriraho. Rugikubita, Urugereko rusanga ubusanzwe buri kirego cyagombye kuba gikubiyemo icyaha kimwe. Ukurikije imiterere y'ibyaha mpuzamahanga, icyaha kimwe gishobora kuba gikubiyemo ibikorwa bimwe by'imaragihe cyangwa ibisubiwemo kenshi bifite inyurabwenge bihuriraho nk'igihe n'ahantu byakorewe, abakorewe ibyaha, abafatanyacyaha, uburyo icyaha cyakozwe, umwanya mu butegetsi, imiterere y'uruhare, impamvu, cyangwa umugambi, kandi byose biri kuri gahunda imwe.

509. Mu myanzuro yo mu rwego rw'amategeko Urugereko rwafashe ku kirego cya 5, rwasanze Uregwa ahamwa n'icyaha cyo gushyigikira itsembatsemba ku byerekeranye n'ubwicanyi bwahitanye imbaga ku kiriziya y'i Musha. Rwasanze kandi Uregwa ahamwa n'icyaha gikubiye mu kirego cya 12 kubera ko we ubwe yishe uwiswe C mu gihe cy'itsembatsemba ryakorewe ku kiriziya y'i Musha. Urugereko rusanga n'ubwo ibyo byaha byombi bishingiye ku byabereye ku kiriziya y'i Musha ku itariki ya 13 Mata 1994, mu by'ukuri ibikorwa bikomokaho biri mu twiciro dutandukanye. Uburyozwacyaha bw'Uregwa mu itsembatsemba bushingiye ku gushyigikira abatsotsobye icyaha mu bwicanyi bwakorewe ku kiriziya y'i Musha. Uburyozwacyaha mu buhotozi bwakorewe uwiswe C, ari we Rusanganwa, bushingiye ku byo Uregwa yakoze we ubwe byo kumushakisha, kumukorera iyicarubozo no kumwica, byabereye ahantu hamwe mu gihe cy'itsembatsemba.

510. Muri uru rubanza, Urugereko rusanga Uregwa agomba guhamywa ibyo byaha byombi kugira ngo imyitwarire mibisha ye yose uko yakabaye ku kiriziya y'i Musha irusheho gusobanuka neza.

E. Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera ya II

511. Mu birego bya 7, 9, na 13 Uregwa ashinjwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II hashingiwe ku Ngingo ya 4 ya Sitati.

512. Mu ikubitiro, Porokireri agomba gutanga ibimenyetso bihamya nta gushidikanya ibi bintu bitatu: (1) ko mu gihugu kivugwa habaye intambara itari iyo mu rwego mpuzamahanga; (2) ko abakorewe ibyaha batari mu mirwano igihe bakorerwaga ibyaha bivugwa; kandi (3) ko ibyo Uregwa ashinjwa bifite aho bihuriye n'iyo ntambara itari iyo mu rwego mpuzamahanga. Ibyo bintu bitatu bimaze gutangirwa gihamya, ni bwo Urugereko rwasuzuma niba harabayeho ibikorwa byihariye binyuranyije n'Ingingo ya 3 Ihuriweho cyangwa n'Amasezerano y'Inyongera ya II.

513. Rukurikije iyo myanzuro, Urugereko ruri busuzume gusa ibirego bya 7, 9, na 13 mu rwego rw'ibyaha bivugwa ko byakorewe ku kiriziya y'i Musha (igika cya 3.11), ku gasozi ka Mwulire (igika cya 3.12), no ku musigiti w'i Mabare (igika cya 3.13), kimwe n'ibivugwa ko byakorewe Rusanganwa (igika cya 3.18) n'abiswe A na B (igika cya 3.17).

1. Kuba hariho intambara itari iyo mu rwego mpuzamahanga

514. Urugereko rushingiye ku myanzuro yarwo irebana n'igika cya 3.4.2 cy'Inyandiko y'ibirego, rusanze nta gushidikanya mu gihe kivugwa mu Rwanda hari intambara itari iyo mu rwego mpuzamahanga[710].

2. *Abakorewe ibyaha*

515. Urugereko ruributsa ko Rusanganwa, abakorewe ibyaha biswe A na B, n'abandi bakorewe ibyaha ku kiriziya y'i Musha, ku gasozi ka Mwulire, no ku musigiti w'i

[710] Reba Urubanza rwa Semanza, N° 97-20-I, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko kwemeza ibintu ababuranyi batagomba kujyaho impaka no kwemera ibyabaye bimwe na bimwe bishingiye ku bimenyetso bicukumbuwe, nk'uko biteganywa n'Ingingo ya 94 n'iya 54 z'Amategeko, Urugereko rwa Mbere rw'Iremezo, 3 Ugushyingo 2000, igika 48, Umugereka A, igika 3. Reba Umugereka II, Igice A, igika 3.

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Mabare batari mu mirwano ubwo ibyaha bivugwa byakorwaga. Mu kugera kuri uwo mwanzuro, Urugereko rwasuzumye byimazeyo ibivugwa n'Ubwunganizi ko abacengezi ba FPR ari bo basembuye ibitero cyangwa ko bari mu mirwano. Nyamara ariko, ibyo bivugwa nta kimenyetso na kimwe gikwiye kwizerwa cyangwa kwemerwa kibishyigikira. Byongeye kandi, Urugereko rurashimangira ko n'iyo mu itsinda ry'impunzi haba harimo abarwanyi bitabuza abatari abarwanyi uburenganzira bwabo bwo kurengerwa n'amategeko.

3. Isano hagati y'ibyaha bivugwa n'intambara itari iyo mu rwego mpuzamahanga

516. Ku bwiganze bw'amajwi y'abacamanza bagize inteko, Urugereko rusanze ibyaha Uregwa ashinjwa mu birego bya 7, 9, na 13 byari bifite aho bihuriye bya hafi n'intambara; Umucamanza Ostrovsky afite igitekerezo kinyuranye n'icyo bagenzi be bagaragaza mu isesengura ryo muri aka kiciro, kubera impamvu asobanura mu nyandiko ye ikubiyemo icyo gitekerezo cye. Mu birego bya 7, 9, na 13, Porokireri yavuze ko Uregwa yakoze ibyaha bivugwa « mu gihe cy'intambara itari iyo mu rwego mpuzamhanga ». Urugereko rwumva iyo nteruro ishaka kuvuga ko ibyaha bivugwa byari bifite aho bihuriye n'intambara.

517. Haba hari isano hagati y'ibyaha bivugwa n'intambara itari iyo mu rwego mpuzamahanga, iyo ibyo byaha bifite aho bihuriye bya hafi n'iyo ntambara. Mu kureba niba iyo sano ya hafi isabwa iriho, Urugereko rwemera imitekerereze ikurikira y'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa *Kunarac*:

> Kuba hariho intambara bigomba kuba nibura byaragize uruhare rukomeye ku bushobozi bw'uwakoze icyaha, ku cyemezo yafashe cyo kugikora, ku buryo yagikozemo cyangwa ku mpamvu yamuteye kugikora. Bityo, bishoboye kugaragazwa … ko uwakoze icyaha yagikoze mu rwego rwo gushyigikira intambara cyangwa ayitwaje, bishobora kuba bihagije gufata umwanzuro wemeza ko ko ibikorwa bye byari bifite aho bihuriye bya hafi n'intambara[711].

518. Urugereko rusanze, kuba hariho intambara yari ishyamiranyije ingabo za Leta y'u Rwanda na FPR, yitirirwaga Abatutsi bari bagize ubwoko bwa ba nyamuke mu Rwanda, byaratumye habaho ubwicanyi rusange n'ibindi bikorwa by'urugomo

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[711] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 58.

byibasiye abasiviri b'Abatutsi cyangwa byarabaye urwitwazo. Urugereko ruributsa ko kuri icyo kibazo, ubwicanyi muri Komini ya Gikoro n'iya Bicumbi bwatangiye Perezida Habyarimana akimara gupfa, ubwo imirwano yuburaga hagati y'ingabo za FPR n'iza Leta. Abasiviri bavanywe mu byabo n'intambara, kimwe n'abatinyaga ibikorwa by'ubugizi bwa nabi byiyongeraga mu duce bari batuyemo, abenshi muri bo bakaba bari Abatutsi, bahungiye ku musigiti w'i Mabare, ku kiriziya y'i Musha, no ku gasozi ka Mwulire, cyangwa bajya kwihisha ahandi hantu, nk'uko abakorewe ibyaha biswe A na B babigenje.

519. Urugereko rusanze, abategetsi bamwe ba gisiviri n'aba gisirikare, kimwe n'abandi bantu bakomeye, baritwaje intambara yariho kugira ngo bice cyangwa bagirire nabi Abatutsi muri Bicumbi na Gikoro. Abasirikare n'abajandarume ba Leta y'u Rwanda babaye inkwakuzi mu bitero byagabwe ku mpuzi zari zakoraniye ku kiriziya y'i Musha, ku musigiti w'i Mabare, no ku gasozi ka Mwulire. Kuba abasirikare n'abajandarume bitwaje intwaro bari muri ibyo bitero byagize uruhare rukomeye mu buryo ubwicanyi bwashyizwe mu bikorwa. Ibimenyetso byatanzwe byerekana ko ibyo bitero muri rusange byababaga birimo abantu bitwaje intwaro, baba abasirikare, abajandarume, Interahamwe, n'abategetsi ba komini. Kuba abasirikare bakuru n'abato barishoye mu bwicanyi bwakorewe abasiviri b'Abatutsi muri ako karere byashimangiye isano hagati y'ubwo bwicanyi n'intambara muri rusange.

520. Uregwa yagiye muri ibyo bikorwa akoranya Interahamwe n'abasirikare cyangwa abajyana mu bitero. Yakoranaga kandi n'abasirikare n'Interahamwe mu gutahura no kwica impunzi z'Abatutsi b'abasiviri. Urugereko ruributsa kandi ko ubwo Uregwa yari kumwe n'abasirikare bato n'abakuru ndetse n'abayobozi bo mu rwego rwa komini, yabajijе imbaga y'abantu aho akazi ko kwica Abatutsi kageze kandi abashishikariza gusambanya ku gahato Abatutsikazi mbere yo kubica.

521. Intambara yabaye kandi impamvu ikomeye yatumye hagabwa ibitero ku basiviri b'Abatutsi muri Bicumbi na Gikoro. Urugereko ruributsa ko mu gihe cy'ubwicanyi bwabereye ku kiriziya y'i Musha, Uregwa yashakishije by'umwihariko Rusanganwa, wari Umututsi ukomeye, maze amubaza ibirebana n'aho FPR igeze. Kubera ko Rusanganwa nta makuru yahaye Uregwa kuri icyo kibazo, Uregwa yamutemaguye n'umupanga bituma ahitanwa n'ibikomere. Byongeye kandi, uko ingabo za FPR

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zagenda zisatira Komini ya Bicumbi n'iya Gikoro, ubwicanyi bwakorewe abasiviri b'Abatutsi bwarushagaho gukaza umurego muri ayo makomini. Ibyo bigaragarira by'umwihariko mu bwicanyi bwabereye ku gasozi ka Mwulire, aho impunzi zari zarashoboye gukumira ibitero zagabwagaho buri munsi hagati y'itariki ya 8 n'iya 18 Mata 1994. Nyamara ariko, Urugereko ruributsa ko ku itariki ya 18 Mata 1994, ubwo ingabo za FPR zarimo zisatira komini, Uregwa yazanye Interahamwe n'abasirikare bitwaje intwaro ku gasozi ka Mwulire kugira ngo batize umurindi mu gitero simusiga, icyo gitero ni cyo cyagamburuje impunzi zari zarashoboye kwirwanaho kandi cyahitanye abenshi mu basiviri bari aho hantu.

522. Kuba Uregwa yaragize uruhare mu bikorwa bya gisirikare byibasiye impunzi z'abasiviri kandi, by'umwihariko, kuba yaragerageje gutara amakuru y'aho ingabo z'umwanzi zigeze byerekana ko ibikorwa bye byari bifitanye isano ya hafi n'intambara. Urugereko ntirushidikanya rero ko ibyaha Uregwa ashinjwa byari bifitanye isano ya hafi n'intambara yariho mu Rwanda.

4. Ibikorwa byihariye binyuranyije n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II

a. Ikirego cya 7: Ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, cyane cyane ubwicanyi n'ibikorwa by'ubugome nk'iyicarubozo, guca ingingo z'umubiri, cyangwa ibindi bihano bibabaza umubiri.

523. Mu kirego cya 7 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu bika bya 3.4 (kuva ku gaka ka 3.4.1 kugeza ku ka 3.4.3), 3.6, no kuva ku cya 3.9 kugeza ku cya 3.16 by'umwihariko, ashinjwa ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, byakozwe mu gihe cy'intambara itari iyo mu rwego mpuzamahanga, cyane cyane ubwicanyi n'ibikorwa by'ubugome nko gusambanya ku gahato, iyicarubozo, guca ingingo z'umubiri, cyangwa ibindi bihano bibabaza umubiri, bityo akaba yarakoze **IBIKORWA BINYURANYIJE BIKOMEYE N'INGINGO YA GATATU IHURIWEHO N'AMASEZERANO Y'I JENEVE** yo ku wa 12

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> Kanama 1949 agamije **KURENGERA ABASHOBORA GUKORERWA IBYAHA MU BIHE BY'INTAMBARA,** cyane cyane mu gika cyayo cya (1) (a), n'**INYONGERA YAYO YA II** yo ku wa 8 Kamena 1977, cyane cyane mu Ngingo yayo ya 4 (2) (a); icyo cyaha giteganywa n'Ingingo ya 4 (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

524. Uregwa ashinjwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II ku birebana n'ibyo yakoreye ku kiriziya y'i Musha (igika cya 3.11), ku gasozi ka Mwulire (igika cya 3.12), no ku musigiti w'i Mabare (igika cya 3.13).

(i) Kiriziya y'i Musha (igika cya 3.11)

525. Uregwa yakoranyije Interahamwe kandi azizana mu bwicanyi bwakorewe Abatutsi babarirwaga mu magana bari barahungiye ku kiriziya y'i Musha, kandi yahaye Interahamwe n'abasirikare amabwiriza yo kuvangura impunzi z'Abatutsi n'iz'Abahutu no kwica Abatutsi.

526. Igikorwa gifatika kigize « icyaha cy'ubwicanyi » ni ukwica abasiviri ubishaka. Urugereko rusanze nta gushidikanya abatsotsobye icyaha ku kiriziya y'i Musha barishe abasiviri babishaka nk'uko byatangiwe ibimenyetso bihamya ko abasiviri b'Abatutsi bishwe ku mabwiriza y'Uregwa bamaze kuvangurwa n'impunzi z'Abahutu.

527. Urugereko rusanze ibyo Uregwa yakoze byo gukoranya Interahamwe kugira ngo zitabire ubwicanyi byarabaye inkunga ikomeye mu bwicanyi bwahitanye abasiviri ku kiriziya y'i Musha kubera ko abagabye igitero bazanywe n'Uregwa bitabiriye ubwo bwicanyi. Urugereko rusanze kandi mu gukoranya Interahamwe kugira ngo zitabire ubwicanyi ku kiriziya, Uregwa yarabikoze ku bwende kandi azirikana ko arimo atera inkunga abatsotsobacyaha mu gukora ibyaha. Urugereko rusanze ubwo Uregwa yakoranyaga Interahamwe yarazirikanaga ibishobora kuba kubera ko ku munsi ubanziriza uwo yari yagiye ku musigiti w'i Mabare aho Interahamwe zakoze ubwicanyi. Na none, mbere yo kujya ku kiriziya y'i Musha, yahamagariye imbaga y'abaturage gusambanya ku gahato Abatutsikazi no kubica.

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528. Urugereko rusanze kandi Uregwa yarakoze ibikorwa byo gushishikaza no gushyigikira mu bwicanyi bwakorewe abasiviri ubwo yahaga abasirikare amabwiriza yo kuvangura impunzi z'Abatutsi n'iz'Abahutu, yafashaga mu gutahura Abatutsi bagombaga kwicwa, n'ubwo yahaga Interahamwe n'abasirikare amabwiriza yo kwica impunzi. Urugereko rusanze ibyo bikorwa byaragize uruhare rukomeye mu bwicanyi bwakorewe impunzi z'abasiviri kubera ko abagabye igitero bashyize mu bikorwa amabwiriza ye akimara kuyatanga, kandi Uregwa ubwe yatunze agatoki impunzi z'Abatutsi runaka hanyuma ziza kwicwa. Urugereko rusanze kandi kuba Uregwa ubwe yaritabiriye igikorwa cyo gutahura Abatutsi no kuba yarahaye abagabye igitero amabwiriza, bigaragaza ko yabikoze ku bushaka kandi azirikana ko yarimo atera inkunga abatsotsobye icyaha.

(ii) Agasozi ka Mwulire (igika cya 3.12)

529. Uregwa yazanye Interahamwe n'abasirikare mu gitero simusiga cyagabwe ku basiviri b'Abatutsi bari ku gasozi ka Mwulire ku itariki ya 18 Mata 1994 kandi yarashe ku mbaga y'impunzi.

530. Urugereko rusanze nta gushidikanya abagabye igitero ku gasozi ka Mwulire barishe ku bushake impunzi z'abasiviri b'Abatutsi.

531. Urugereko rusanze kuba Uregwa yarazanye Interahamwe, abasirikare, n'« ibikoresho » byabo aho ubwicanyi bwakorewe byarabaye inkunga ikomeye mu gushyigikira ubwicamyi bwakorewe abasiviri b'Abatutsi kubera ko abo bagabye igitero bitabiriye ubwicanyi bwahitanye imbaga muri icyo gitero cyonyine. Urugereko rusanze kandi mu kuzana Interahamwe n'abasirikare mu gitero, Uregwa yarabikoze abishaka kandi azirikana ko yarimo atera inkunga abatsotsobye icyaha. Kuba Uregwa yari yaragiye mbere ku musigiti w'i Mabare no kuba yaragiye mu bwicanyi bwakorewe ku kiriziya y'i Musha byerekana ko yazirikanaga ko kuzana Interahamwe, abasirikare, n'« ibikoresho » byabo ku gasozi ka Mwulire kwari ugutera inkunga mu bwicanyi.

532. Urugereko rwasanze kandi Uregwa yararashe ku mbaga y'impunzi akoresheje imbunda ye. Urugereko, rukurikije ibimenyetso rwashyikirijwe, ntirwemera ko Uregwa we ubwe hari impunzi n'imwe yishe cyangwa yakomerekeje. Nyamara ariko,

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icyo gikorwa gishimangira umwanzuro w'uko Uregwa yagikoze kugira ngo ashyigikire abatsotsobye icyaha mu kwica impunzi kandi ko ibyo yabikoze azi neza ingaruka zabyo.

(iii) Umusigiti w'i Mabare (igika cya 3.13)

533. Ubwo igitero cyagabwaga ku musigiti w'i Mabare, Uregwa yari ahari ndetse yitwaje intwaro kandi nyuma yacyo yabwiye abakigabye ngo «twari twaje kubatiza umurindi», kandi yahamagariye abagabye igitero guhiga no gutsembatsemba abantu bari bataricwa.

534. Porokireri nta bimenyetso yatanze ibihamya ko Uregwa yakoresheje imbunda ye cyangwa ko mu by'ukuri yateye inkunga abagabye igitero, nk'urugero, azana intwaro aho hantu cyangwa abantu bo gutiza umurindi. Urugereko ntirwemera ko ibyo Uregwa yavuze nyuma y'igitero ngo « twari twaje kubatiza umurindi», ari ikimenyetso gihagije gihamya ko yagize uruhare mu bwicanyi. Urugereko ruributsa ko inkunga ituma uregwa aryozwa icyaha hashingiwe kuri Sitati igomba kuba ikomeye. Bityo rero, kubera ko nta kimenyetso cyihariye kiriho cyerekana imiterere nyakuri y'inkunga Uregwa yaba yaratanze, Urugereko ntaho rwahera rwemeza ko iyo nkunga yari ikomeye. Byongeye kandi, Porokireri nta bimenyetso yatanze bihamya rwose ko kuba Uregwa yari aho hantu cyangwa ko ijambo yavuze nyuma y'ubwicanyi byagize ingaruka ikomeye ku gutsotsoba ubwo bwicanyi cyangwa ubundi ubwo ari bwo bwose bwabaye nyuma.

(iv) Umwanzuro w'Urugereko: Ikirego cya 7

535. Urugereko rusanze nta gushidikanya Uregwa yarashyigikiye abantu mu bwicanyi bwakozwe ku bushake ku kiriziya y'i Musha no ku gasozi ka Mwulire. Ku bwiganze bw'amajwi y'abacamanza bagize inteko, Urugereko rusanze ibyo bikorwa binyuranyije n'Ingingo ya 4(a) ya Sitati, ariko Umucamanza Ostrovsky we si ko abibona kubera impamvu asobanura mu nyandiko ikubiyemo igitekerezo cye kinyuranye n'icya bagenzi be.

536. Umucamanza Williams avuga ko hashingiwe ku mategeko no ku byabaye, Uregwa yagombye guhamywa icyaha kivugwa muri icyo kirego kubera impamvu zavuzwe

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hejuru. Nyamara ariko, kubera impamvu Umucamanza Dolenc asobanura mu gitekerezo cye cyihariye, asanga bidakwiye guhamya Uregwa icyaha kivugwa mu kirego cya 7 kubera ko bigaragara ko ari impurirane y'imbonezamugambi n'icyo kuba icyitso cy'abakoze jenoside kivugwa mu kirego cya 3. Bityo rero, ku bwiganze bw'amajwi, Uregwa ntahamwa n'icyaha kivugwa mu kirego cya 7.

b. Ikirego cya 9: Guhungabanya agaciro k'umuntu, by'umwihariko kumukorera ibikorwa bimusuzuguza kandi bimutesha agaciro, gusambanya ku gahato, guhatira umuntu gukora uburaya, n'ibindi bikorwa by'iterasoni.

537. Mu kirego cya 9 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu bika bya 3.4 (kuva ku gaka ka 3.4.1 kugeza ku ka 3.4.3), 3.6, 3.14, 3.15 na 3.16, ashinjwa ibikorwa byo guhungabanya agaciro k'abagore, hakubiyemo ibibasuzuguza kandi bibatesha agaciro, kubasambanya ku gahato, ibikorwa by'ubugizi bwa nabi bushingiye ku gitsina, n'ibindi bikorwa by'iterasoni, kandi ibyo byakozwe mu gihe cy'intambara itari iyo mu rwego mpuzamahanga; bityo yakoze **IBIKORWA BINYURANYIJE BIKOMEYE N'INGINGO YA GATATU IHURIWEHO N'AMASEZERANO Y'I JENEVE** yo ku wa 12 Kanama 1949 agamije **KURENGERA ABASHOBORA GUKORERWA IBYAHA MU BIHE BY'INTAMBARA,** cyane cyane mu gika cyayo cya (1) (c), hamwe n'**INYONGERA YAYO YA II** yo ku wa 8 Kamena 1977, cyane cyane mu Ngingo yayo ya 4 (2) (e); icyo cyaha giteganywa n'Ingingo ya 4 (e) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

538. Uregwa ashinjwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II kubera imyitwarire ye mu bikorwa byo gusambanya ku gahato no mu by'urugomo rushingiye ku gitsina byaba byarakorewe ku kiriziya y'i Musha (igika cya 3.11), ku gasozi ka Mwulire (igika cya 3.12), no ku musigiti w'i Mabare (igika cya 3.13).

539. Urugereko ruributsa ko Porokireri nta kimenyetso na kimwe yatanze gihamya ko aho hantu hakorewe ibikorwa byo gusambanya ku gahato cyangwa ibindi bikorwa

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by'urugomo rushingiye ku gitsina ibyo ari byo byose. Bityo rero Urugereko rusanze Uregwa adahamwa n'icyaha kivugwa mu kirego cya 9.

c. Ikirego cya 13 : Ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, cyane cyane ubwicanyi n'ibikorwa by'ubugome nk'iyicarubozo, guca ingingo z'umubiri, cyangwa ibindi bihano bibabaza umubiri.

540. Mu kirego cya 13 cy'Inyandiko y'ibirego, Uregwa ashinjwa ibi bikurikira:

> Kubera ibyo **Laurent Semanza** yakoze bivugwa mu bika bya 3.4 (kuva ku gaka ka 3.4.1, kugeza ku ka 3.4.3), 3.6, 3.17 na 3.18, ashinjwa ko yakoreye abiswe A, B na C ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, mu gihe cy'intambara itari iyo mu rwego mpuzamahanga, bikubiyemo ubuhotozi n'ibikorwa by'ubugome nko gusambanya ku gahato, urugaraguro no guca ingingo z'umubiri ; bityo yakoze **IBIKORWA BINYURANYIJE BIKOMEYE N'INGINGO YA GATATU IHURIWEHO N'AMASEZERANO Y'I JENEVE** yo ku wa 12 Kanama 1949 agamije **KURENGERA ABASHOBORA GUKORERWA IBYAHA MU BIHE BY'INTAMBARA,** cyane cyane mu gika cyayo cya (1) (a), hamwe n'**INYONGERA YAYO YA II** yo ku wa 8 Kamena 1977, cyane cyane mu Ngingo yayo ya 4 (2) (a); icyo cyaha giteganywa n'Ingingo ya 4(a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

541. Uregwa ashinjwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II kubera ibyaha bivugwa ko yakoreye abiswe A na B (igika cya 3.17) ndetse na Rusanganwa (igika cya 3.18).

(i) Abakorewe ibyaha biswe A na B (igika cya 3.17)

542. Uregwa yagejeje ijambo ku mbaga y'abaturage ababaza aho akazi kabo ko kwica Abatutsi kageze kandi yabashishikarije gusambanya ku gahato Abatutsikazi mbere yo kubica, ibyo akaba yarabivuze mu maso y'abayobozi bo muri komini n'aba gisirikare. Abagabo batatu bari muri iyo mbaga y'abaturage bahise bajya mu rugo rwari hafi aho rwari rwihishemo abakorewe ibyaba biswe A na B. Umwe muri abo bagabye igitero

yasambanyije ku gahato uwiswe A. Abandi babiri basohoye uwiswe B bamujyana hanze bamwicirayo.

543. Igikorwa gifatika kigize icyaha cyo gusambanya ku gahato ni iyinjiragitsina uwakorewe icyaha atabishaka. Urugereko rusanze uwiswe A yarasambanyijwe ku gahato n'umwe mu bagabye igitero wumvise Uregwa ashishikariza imbaga y'abantu bene ibyo bikorwa.

544. Igikorwa gifatika kigize icyaha cy'iyicarubozo ni igitera ububabare bukabije bw'umubiri cyangwa bwo mu mutwe hagamijwe gushakisha amakuru cyangwa kwemeza umuntu icyaha, guhana cyangwa gutera ubwoba uwakorewe icyaha cyangwa undi muntu cyangwa kubahatira gukora iki n'iki cyangwa kubavangura hashingiwe ku mpamvu iyo ari yo yose. Urugereko rusanga kandi igikorwa cyo gusambanya ku gahato gishobora kuba iyicarubozo, iyo cyakozwe hagamijwe ikindi kintu kibujijwe.

545. Urugereko rusanze igikorwa cyo gusambanya ku gahato uwiswe A ari iyicarubozo, kubera ko uwagikoze yamuhoye gusa ko ari Umututsikazi, bityo hakaba hari hagamijwe ivangura. By'umwihariko, Urugereko rusanze uwakoze icyo cyaha yari afite umugambi wo kugikora kandi agamije icyo kintu kibujijwe kubera ko yemeraga amabwiriza yari yatanzwe n'Uregwa ashingiye ku ivangura yo gusambanya ku gahato Abatutsikazi mu rwego rw'ibikorwa rusange abagabye igitero barimo byo kwica Abatutsi.

546. Umutangabuhamya ushinja wiswe VV yumvise uwakorewe icyaha wiswe B ataka avuga ko byarutwa n'uko abagabye ibitero babiri bari bamusohoye mu rugo bamwica, kandi uyu mutangabuhamya ubwo yajyaga hanze abagabye igitero bamaze kugenda, yasanze uwo wakorewe icyaha wiswe B yapfuye. Nta bimenyetso bihagije byatanzwe byerekana ko uwo wiswe B yasambanyijwe ku gahato cyangwa ko yishwe urubozo. Nyamara ariko, Urugereko rusanze uwakorewe icyaha wiswe B yarishwe n'abo bagabo babiri kandi babishaka.

547. Urugereko rusanze ibyo Uregwa yakoze byo gushishikariza imbaga y'abantu gusambanya ku gahato Abatutsikazi mu rwego rw'ibikorwa rusange byo kwica Abatutsi byarabaye imbarutso ikomeye yatumye uwiswe A akorerwa ibikorwa byo

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gusambanywa ku gahato n'iby'iyicarubozo, naho uwiswe B akicwa. Abagabye igitero bagiye gukora ibyo bikorwa bakimara kumva ijambo ry'Uregwa. Kuba uwagabye igitero wasambanyije ku gahato uwiswe A yarivugiye ko yumvise ijambo ry'Uregwa, kandi ko yari yemerewe gukora ibyo, byerekana ko yarimo akurikiza amabwiriza y'Uregwa yo gusambanya ku gahato Abatutsikazi. Urugereko rusanga kandi kuba muri rusange Uregwa yaravugaga rikijyama muri rubanda no kuba ijambo rye yararivugiye mu maso y'abayobozi bo muri komini n'abo mu gisirikare byaratumye igikorwa cye cyo gushishikaza gihabwa agaciro kurushaho kandi kiboneka ko cyemewe.

548. Urugereko rusanze kandi mu gushishikariza imbaga y'abantu gukora ibyaha, Uregwa yarabikoze ku bushake kandi azirikana ko arimo gutuma abatsotsobacyaha bakora ibyaha. Ibyo Uregwa yavuganyeho n'imbaga y'abaturage ababaza aho kwica Abatutsi byari bigeze byerekana ko yazirikanaga ko iyo mbaga y'abantu ishobora kwitabira ibikorwa by'ubugizi bwa nabi.

(ii) Rusanganwa (igika cya 3.18)

549. Mu gihe ubwicanyi bwarimo bukorerwa ku kiriziya y'i Musha, Uregwa ndetse na Bisengimana wari Burugumesitiri wa Komini ya Gikoro, bashakishije by'umwihariko Rusanganwa hanyuma bamuhata ibibazo byerekeranye n'aho FPR yari igeze. Kubera ko Rusanganwa nta makuru yabahaye kuri icyo kibazo, Uregwa yahise amutemagura n'umupanga. Urugereko rusanze kubera ibyo bikorwa, Uregwa yarishe urubozo Rusanganwa amutera ububabare bumuzahaza umubiri kugira ngo amukuremo amakuru y'aho FPR yari igeze. Imiterere y'umugambi w'Uregwa mu bikorwa bye ugaragazwa n'uko yashakishije Rusanganwa kugira ngo amuhate ibibazo, n'uko kandi yakoresheje umupanga kugira ngo amukomeretse bikabije ubwo yari amaze kumuhakanira ko nta makuru afite arebana n'icyo kibazo.

550. Urugereko rusanze kandi Uregwa yarishe ku bushake Rusanganwa. Uko Urugereko rubibona, kuba Uregwa yaratemaguye Rusanganwa n'umuhoro byerekana ko yari afite umugambi wo kumwica.

(iii) Umwanzuro w'Urugereko ku kirego cya 13

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551. Urugereko rusanze nta gushidikanya Uregwa yarahamagariye abantu igikorwa cyo gusambanya ku gahato n'icy'iyicarubozo byakorewe uwiswe A hamwe n'icy'ubwicanyi cyakorewe uwiswe B, ndetse yanakoreye Rusanganwa ibikorwa by'iyicarubozo no kumwica ku bushake. Urugereko ku bwiganze bw'amajwi y'abagize inteko rusanze ibyo bikorwa binyuranyije n'Ingingo ya 4(a) ya Sitati, uretse ko Umucamanza Ostrovsky we abibona ukundi kubera impamvu asobanura mu nyandiko ikubiyemo igitekerezo cye kinyuranye n'icya bagenzi be.

552. Umucamanza Williams asanga hashingiwe ku mategeko no ku byabaye, Uregwa yagombye guhamywa icyaha kivugwa muri iki kirego kubera impamvu zavuzwe hejuru. Nyamara ariko, kubera impamvu Umucamanza Dolenc asobanura mu gitekerezo cye cyihariye, asanga bidakwiye guhamya Uregwa icyaha kivugwa mu kirego cya 13 kubera ko bigaragara ko ari impurirane y'imbonezamugambi n'ibyo gusambanya ku gahato, iyicarubozo n'ubwicanyi nk'ibyaha byibasiye inyokomuntu ashinjwa mu birego bya 10, 11 na 12. Bityo rero, ku bwiganze bw'amajwi, Uregwa ntahamwa n'icyaha kivugwa mu kirego cya 13.

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VII. ICYEMEZO CY'URUGEREKO

553. Kubera impamvu zikubiye muri iyi Nyandiko y'urubanza, kandi rumaze gusuzuma ibimenyetso n'ingingo byose, Urugereko rwa Mbere rw'Iremezo rwemeje ibi bikurikira ku birebana n'Uregwa.

Ku bwumvikane bw'abacamanza bose bagize inteko :

Ikirego cya 1:	NTAHAMWA n'icyaha cya jenoside
Ikirego cya 2:	NTAHAMWA n'icyaha cya guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside
Ikirego cya 3:	AHAMWA n'icyaha cya kuba icyitso cy'abakoze jenoside
Ikirego cya 4:	NTAHAMWA n'ubuhotozi nk'icyaha cyibasiye inyokomuntu
Ikirego cya 6:	NTAHAMWA n'itoteza nk'icyaha cyibasiye inyokomuntu
Ikirego cya 8:	NTAHAMWA no gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu
Ikirego cya 9:	NTAHAMWA n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera ya II (Ingingo ya 4(e) ya Sitati
Ikirego cya 10:	AHAMWA no gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu
Ikirego cya 11:	AHAMWA n'iyicarubozo nk'icyaha cyibasiye inyokomuntu
Ikirego cya 12:	AHAMWA n'ubuhotozi nk'icyaha cyibasiye inyokomuntu

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Ikirego cya 14:	AHAMWA n'ubuhotozi nk'icyaha cyibasiye inyokomuntu

Ku bwiganze bw'amajwi y'abacamanza bagize inteko :

Ikirego cya 5:	AHAMWA n'itsembatsemba nk'icyaha cyibasiye inyokomuntu (Umucamanza Dolenc yatanze igitekerezo kinyuranye n'icya bagenzi be)
Ikirego cya 7:	NTAHAMWA n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera ya II (Ingingo ya 4(a) ya Sitati) (Umucamanza Williams yatanze igitekerezo kinyuranye n'icya bagenzi be)
Ikirego cya 13:	NTAHAMWA n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve, n'Amasezerano y'Inyongera ya II (Ingingo ya 4(a) ya Sitati) (Umucamanza Williams yatanze igitekerezo kinyuranye n'icya bagenzi be)

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VIII. IGENAGIHANO

554. Urugereko rumaze kwemeza ko Uregwa ahamwa n'ibyaha, rukaba rugiye noneho gusuzuma ibirebana n'igenagihano. Igihano gikwiye kiba kigamije kugenera uregwa impongano y'icyaha, guca intege undi wese washaka gukora ibyaha, gutuma uregwa abona ko agawa n'abandi, gutuma uregwa ashobora gusubira mu buzima busanzwe, kurinda umutekano wa rubanda, no gufasha mu bwiyunge bw'abenegihugu. Hashingiwe ku Ngingo ya 22 n'iya 23 za Sitati no ku Ngingo ya 101 y'Amategeko, Urugereko rurita ku buremere bw'ibyaha, ku bintu byihariye birebana n'Uregwa, ku mpamvu nyongeragihano n'impamvu nyoroshyagihano, hamwe n'ingano y'ibihano by'igifungo bitangwa n'inkiko zo mu Rwanda. Urugereko rurakura kandi mu gifungo cyose igihe Uregwa amaze afunzwe ategereje gucirwa urubanza. Hashingiwe ku cyemezo cyafashwe n'Urugereko rw'Ubujurire, Urugereko rwa Mbere rw'Iremezo ruragabanyiriza igihano Uregwa kubera ko uburenganzira bwe bwahungabanyijwe mu gihe yari afunzwe ategereje kuburanishwa[712].

A Uburemere bw'ibyaha

555. Igihano kigomba, mbere na mbere, kuba gihwanye n'uburemere bw'icyaha[713]. Ibyaha byose biteganywa na Sitati ni ibyaha bifite uburemere bukabije ku buryo bibujijwe mu rwego mpuzamahanga. Bityo, mu gusesengura uburemere bw'icyaha, Urugereko rugomba kureba kure ntirushingire gusa ku bintu bidafatika ahubwo rukita no bintu byihariye birebana n'urubanza, kimwe no ku miterere n'ingano by'uruhare rw'Uregwa mu byaha ashinjwa.

556. Urugereko rwasanze Uregwa ahamwa n'ibyaha bya jenoside n'itsembatsemba, hamwe n'ubuhotozi, gusambanya ku gahato, n'iyicarubozo nk'ibyaha byibasiye inyokomuntu. Ibyo byaha ubwabyo biraremereye cyane, bishegesha umuryango muntu mu mizi yawo, kandi bihungabanya umutimanama wa muntu. Uruhare Uregwa

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[712] Urubanza rwa Semanza, N° ICTR-97-20-A, Icyemezo cy'Urugereko rw'Ubujurire, 31 Gicurasi 2000.

[713] Sitati, ingingo ya 23(2). Inyandiko y'urubanza rwa Musema mu bujurire, igika 382; Inyandiko y'urubanza rwa Akayesu mu bujurire, igika 413; Inyandiko y'urubanza rwa Kambanda mu bujurire, igika 125; Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 442; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 731; Inyandiko y'urubanza rwa Aleksovski mu bujurire, igika 182.

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yagize mu byaha ashinjwa, rwatumye abasiviri b'Abatutsi benshi bicwa kandi bakorerwa n'ibindi bikorwa by'ubugizi bwa nabi.

557. Uretse ibikorwa by'iyicarubozo n'ubuhotozi Uregwa ubwe yakoreye Rusanganwa, Urugereko rwasanze Uregwa atarabaye umutsotsobacyaha mu bindi byaha yahamijwe, yewe nta n'ubwo yari akuriye ababikoze. Uregwa yahamijwe ibyaha bikurikira: kuba icyitso cy'abakoze jenoside; gushyigikira abakoze itsembatsemba nk'icyaha cyibasiye inyokomuntu; guhamagarira abantu ibikorwa by'ubuhotozi bwakorewe abantu barindwi, n'ibyo gusambanya ku gahato n'iy'iyicarubozo byakorewe umuntu umwe. Ibyo Uregwa ashinjwa byo kuba icyitso cy'abatsotsobye ibyaha, kubashyigikira no kubibahamagarira ni ibyaha yagizemo uruhare ruziguye.

558. Porokireri yasabiye Uregwa igihano cy'igifungo cya burundu[714]. Porokireri yavuze ko ubwicanyi bukorewe umuntu umwe buhagije kugira ngo uwakoze icyaha akatirwe igihano gisumba ibindi kandi yashimangiye ko yashoboraga kuba yaratanze ibirego amagana bishinja Uregwa, iyo aza gutanga ikirego cyihariye kuri buri muntu wishwe mu bwicanyi Uregwa ashinjwa[715]. Porokireri yavuze ko Uregwa aramutse akatiwe ikindi gihano icyo ari cyo cyose kitari igifungo cya burundu, byaba bipfobeje agaciro k'ubuzima bw'abakorewe ibyaha kandi byatuma inkiko mpanabyaha mpuzamahanga zihabwa urw'amenyo[716].

559. Urugereko rumaze gusuzuma ibimenyetso byose, ntirwemera ko igihano cy'igifungo cya burundu ari cyo cyaba kamara mu kugaragaza uburemere bw'ibyaha Uregwa yahamijwe. Igihano cy'igifungo cya burundu, ari na cyo gisumba ibindi byose Urukiko rushobora gutanga, cyagombye guharirwa ba ruharwa mu byaha kurusha abandi[717]. Ihame ry'ubusumbane bw'ibihano risaba ko Urugereko rutandukanya

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[714] Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 156-157.

[715] Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 159-160; Inyandikomvugo y'iburanisha, 17 Kamena 2002, imp. 173-174.

[716] Imyanzuro nsozarubanza yanditse ya Porokireri, ibika 142-144.

[717] Ingingo ya 77 ya Sitati ya CPI iteganya igihano cy'igifungo kitarenze imyaka mirongo itatu, n'igihano cy'igifungo cya burundu iyo gusa icyaha ari indengakamere kandi hakurikijwe ibintu byihariye birebana n'Uregwa.

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ibyaha rukurikije uburemere bwabyo[718]. Urugereko rukurikije imiterere y'ibyaha, imiterere n'ingano by'uruhare Uregwa yagize mu byaha, ntirubona ko ibyaha Uregwa yakoze bikwiye guhanishwa igihano gisumba ibindi.

1. Ingano y'ibihano

560. Urugereko rwitaye kandi ku ngano y'ibihano bitangwa n'inkiko zo mu Rwanda, nk'uko bigaragazwa n'ibihano biteganywa n'Igitabo cy'amategeko ahana mu Rwanda hamwe n'Itegeko Ngenga, ku byaha bisa n'ibyo Uregwa ashinjwa[719] ; rwitaye kandi ku bukemuramanza bw'uru Rukiko n'ubwa TPIY burebana n'igenagihano. Rukora ibyo, Urugereko ntirwirengagije inshingano yarwo y'ibanze yo guhuza igihano n'uburemere bw'icyaha ndetse no kugihuza n'ibintu byihariye birebana n'uwakoze icyaha[720].

561. Igitabo cy'amategeko ahana mu Rwanda giteganya ko igifungo kimara igihe kidashobora kurenza imyaka makumyabiri cyangwa, kubera impamvu zidasanzwe, imyaka mirongo itatu iyo hariho impurirane z'ibyaha[721]. Ibyaha bikomeye kurusha ibindi, nk'ubuhotozi, bishobora guhanishwa igihano cy'igifungo cya burundu cyangwa igihano cyo kwicwa[722]. Muri rusange, icyaha cyo gusambanya ku gahato gihanishwa igifungo kiri hagati y'imyaka itanu n'icumi, kandi gishobora kwikuba kabiri iyo hariho impamvu nyongeragihano zateganyijwe nk'iyo uwakorewe icyaha ari umwana utarageza ku myaka y'ubukure, umwanya w'ubutegetsi uwakoze icyaha

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[718] Inyandiko y'urubanza rwa Musema mu bujurire, ibika 381-382; Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 884.

[719] Itegeko Ngenga n° 08/96 du 30/08/96 ryerekeranye n'imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu, byakozwe kuva ku itariki ya 1 Ukwakira 1990, Igazeti ya Leta n° 17 yo ku wa 1 Nzeri 1996 (Rwanda).

[720] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 717, 719 («Urugereko rw'Ubujurire rusanga nk'ihame rusange iryo gereranya akenshi nta cyo rifashaho cyane. N'ubwo rudahakana ibivugwa ko abaregwa babiri bahamijwe ibyaha bimeze kimwe kandi byakozwe mu bihe bimeze kimwe bagombye mu by'ukuri kugenerwa ibihano bidatandukanye cyane, akenshi usanga ibitandukanya ibirebana n'ibyo byaha bikomeye kurusha ibyo bihuriyeho, kandi impamvu nyoroshyagihano n'impamvu nyongeragihano bituma inkurikizi zitaba zimwe. Ntabwo rero ari byo byonyine byashingirwaho mu kugenera uregwa igihano»).

[721] Igitabo cy'amategeko ahana, Ingingo 35, 93 (Rwanda).

[722] Reba, nk'urugero, Igitabo cy'amategeko ahana, Ingingo 311-317 (Rwanda).

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yari afite, cyangwa ubukana bw'ububabare ku mubiri uwakorewe icyaha yatewe[723]. Icyo gitabo cy'amategeko ahana giteganya by'umwihariko ko ibyitso bishobora guhanishwa igihano kimwe n'icy'abatsotsobye icyaha[724]. Itegeko Ngenga ryo mu Rwanda riteganya ko, kabone no ku cyaha cya jenoside n'ibyaha byibasiye inyokomuntu, ibihano bisanzwe biteganywa n'Igitabo cy'amategeko ahana bikurikizwa ariko hitawe ku byahinduwe, bikubiyemo ibihano byongerewe byo kwicwa biteganyirizwa abakoze ibyaha bo mu rwego rwa mbere, n'ibyo gufungwa burundu biteganyirizwa abakoze ibyaha bo mu rwego rwa kabiri[725].

562. Urugereko rwasuzumye kandi ubukemuramanza bw'uru Rukiko n'ubwa TPIY ku birebana n'igenagihano. Urugereko rusanga imikorere yo kugena igihano kimwe rukumbi ku byaha byose bihama Uregwa bituma bigorana kumenya ingano y'igihano cyagenwe kuri buri cyaha. Uretse izo ngorane, birashoboka ariko kwemeza ingano y'ibihano muri rusange Urugereko rushobora kugenderaho mu kugena ibihano bikwiye muri uru rubanza.

563. Abatsotsobye ibyaha bahamijwe icyaha cya jenoside cyangwa itsembatsemba nk'icyaha cyibasiye inyokomuntu, cyangwa byombi, bagiye bakatirwa igihano kiri hagati y'myaka cumi n'itanu y'igifungo[726] n'igifungo cya burundu[727]. Abantu batatsotsobye icyaha nyamukuru cyangwa bagize uruhare ruziguye mu ikorwa ryacyo bagiye bakatirwa muri rusange ibihano bitoya kurushaho. Urugero, Georges Ruggiu yakatiwe igihano cy'igifungo cy'imyaka cumi n'ibiri amaze kwemera icyaha cyo guhamagarira abantu gukora jenoside[728], na Elizaphan Ntakirutimana yakatiwe

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[723] Igitabo cy'amategeko ahana, Ingingo za 360, 361 (Rwanda).

[724] Igitabo cy'amategeko ahana, Ingingo ya 89 (Rwanda).

[725] Itegeko Ngenga n° 08/96 du 30/08/96 ryerekeranye n'imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu, byakozwe kuva ku itariki ya 1 Ukwakira 1990, Igazeti ya Leta n° 17 yo ku wa 1 Nzeri 1996, ingingo ya 14 (Rwanda).

[726] Inyandiko y'urubanza rwa Serushago mu rw'iremezo, urup. 15.

[727] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 1008; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 473; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'Iremezo, igika 27; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, urup. 13; Inyandiko y'urubanza rwa Kambanda mu rw'iremezo, urup. 28.

[728] Inyandiko y'urubanza rwa Ruggiu mu rw'iremezo, urup. 19.

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igihano cy'igifungo cy'imyaka icumi ku cyaha cyo gushyigikira abakoze jenoside, hitaweho by'umwihariko ko yari ageze mu zabukuru[729].

564. Mu bukemuramanza bw'Inkiko zombi, gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu byagiye bihanishwa igihano cy'igifungo kiri hagati y'imyaka cumi n'ibiri[730] n'imyaka cumi n'itanu[731]. Iyicarubozo nk'icyaha cyibasiye inyokomuntu ryagiye rihanishwa ibihano biri hagati y'imyaka itanu[732] n'imyaka cumi n'ibiri[733]. Ubuhotozi nk'icyaha cyibasiye inyokomuntu bwagiye buhanishwa igihano cy'igifungo kuva ku myaka cumibi n'ibiri[734] kugeza ku myaka makumyabiri[735]. Hari izindi manza ibyo byaha byagiye bihanishwa igihano kimwe rukumbi cy'igifungo kimara igihe cyangwa icya burundu hakurikijwe imyitwarire mibisha y'Uregwa yose uko yakabaye.

B **Impamvu nyongeragihano**

565. Porokireri yasobanuye impamvu nyongeragihano zinyuranye asaba Urugereko kuzitaho mu kugena igihano gikwiye[736]. Nyamara ariko, Urugereko rusanga ibintu byatangiwe ibimenyetso bidashidikanywaho ari byo byonyine bishobora kwitabwaho mu kongera igihano[737].

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729 Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, ibika 898, 906, 921.

730 Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 882.

731 Inyandiko y'urubanza rwa Akayesu mu rw'Iremezo, urup. 13.

732 Inyandiko y'urubanza rwa Simic mu rw'iremezo, igika 122.

733 Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 882.

734 Inyandiko y'urubanza rwa Kupreskic mu bujurire, igika 439 (Jospovic yari yakatiwe igihano cy'igifungo cy'imyaka cumi n'itanu n'Urugereko rwa Mbere rw'Iremezo kubera itoteza, ubwicanyi, n'ibindi bikorwa bibi birenze kameremuntu nk'ibyaha byibasiye inyokomuntu. Mu bujurire, icyo gihano cyaragabanyijwe gishyirwa ku myaka 12).

735 Inyandiko y'urubanza rwa Tadic mu bujurire, igika 58 (Igihano ku cyaha cy'ubwicanyi nk'icyaha cyibasiye inyokomuntu mu bujurire cyaragabanyijwe kivanwa ku myaka makumyabiri n'itanu y'igifungo gishyirwa kuri makumyabiri).

736 Imyanzuro nsozarubanza yanditse ya Porokireri, igika 156.

737 Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 893; Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 763.

1. *Ibyaha bitaregewe Urukiko mu Nyandiko y'ibirego*

566. Porokireri yavuze ko hari ibyaha Uregwa yakoze ariko atashinjwe mu Nyandiko y'ibirego, asaba Urugereko kubyitaho nk'impamvu nyongeragihano zashingirwaho mu kongera igihano[738]. Porokireri yavuze ko ibyaha bikurikira bigombwa kwitabwaho: (i) Uregwa ubwe yishe bunyamaswa Umututsikazi ku kigo nderabuzima cya Muyumbu; (ii) Uregwa yategetse abantu bari bafashwe kugendesha amavi maze umwicanyi wari ku kigo nderabuzima cya Muyumbu abaca imitwe akoresheje umupanga; (iii) Uregwa yahwase n'imodoka yari atwaye abantu bari bakomeretse; (iv) Uregwa yategetse Interahamwe « ze » kurasa Abatutsi bariho bahungira iwe mu rugo; kandi (v) Uregwa yakangishije uwakorewe icyaha umwe kumuca izuru ubwo yarimo amuhata ibibazo.

567. Urugereko rw'Ubujurire rwa TPIY rwafashe umwanzuro wemeza ko ibyaha bitaregewe ku buryo bweruye mu Nyandiko y'ibirego bishobora gufatwa nk'impamvu nyongeragihano iyo uregwa yabimenyeshejwe mu buryo bukwiye, iyo Porokireri yatanze icyifuzo cyihariye asaba ko hafatwa umwanzuro ku byabaye byerekeranye n'ibyaha by'inyongera, kandi iyo ibyo byaha byatangiwe ibimenyetso bibihamya ku buryo budashidikanywaho[739].

568. Ibimenyetso bya Porokireri ku byaha bidakubiye mu Nyandiko y'ibirego avuga ko byakozwe n'Uregwa asaba ko byashingirwaho mu kongera ibihano, byatanzwe mu gihe abatangabuhamya bashinja biswe VAQ[740], VM[741] na VI[742] batangaga ubuhamya bwabo imbere y'Urugereko. Ubwo ibyo bimenyetso byatangwaga, Ubwunganizi nta kibazo na kimwe bwigeze bubyutsa cyo kwerekana ko ibyo byaha bidafite aho bihuriye n'ibivugwa mu Nyandiko y'ibirego. Ubwunganizi bwabajije abo batangabuhamya ibibazo binyomoza kuri ibyo byaha[743], kandi Uregwa yarabihakanye

[738] Imyanzuro nsozarubanza yanditse ya Porokireri, igika 156.

[739] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 763.

[740] Inyandikomvugo y'iburanisha, 14 Werurwe 2001, imp. 76-85.

[741] Inyandikomvugo z'iburanisha, 6 Werurwe 2001, urup. 100; 7 Werurwe 2001, urup. 19.

[742] Inyandikomvugo y'iburanisha, 15 Ugushyingo 2000, imp. 64-67.

[743] Inyandikomvugo z'iburanisha, 15 Ugushyingo 2000, imp. 86-87; 7 Werurwe 2001, urup. 19; 14 Werurwe 2001, imp. 93, 102, 106, 110-112; 15 Werurwe 2001, imp. 4-12, 23-37.

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mu buhamya bwe[744] ndetse n'Ubwunganizi bwagize icyo bubivugaho mu myanzuro nsozarubanza yanditse yabwo[745]. Bityo rero, biragaragara ko Uregwa yamenyeshejwe imiterere y'ibyo byaha. Mu myanzuro nsozarubanza yanditse ya Porokireri, yasabye ku buryo bweruye Urugereko gufata ibyo byaha nk'impamvu nyongeragihano[746].

569. Nyamara ariko, Urugereko ntirwemera ko Uregwa yamenyeshejwe mu buryo bukwiye ko ibyo byaha by'inyongera Urukiko rufitiye ububasha bwo kuburanisha, ariko atashinjwe mu Nyandiko y'ibirego, bishobora kuzafatwa nk'impamvu nyongeragihano aramutse akatiwe. Nta hantu Porokireri yigeze avuga ibyo bintu mbere y'uko atanga imyanzuro ye nsozarubanza yanditse. Kuba Ubwunganizi bugomba kwibanda ku byaha bikubiye mu Nyandiko y'ibirego ni ikintu cy'ingenzi. Ubusanzwe, Urugereko ntirwita ku byaha bitaregewe mu Nyandiko y'ibirego.

570. Kongera igihano cy'Uregwa hashingiwe ku bindi byaha bitaregewe mu Nyandiko y'ibirego byaba bibangamiye imikirize myiza y'urubanza. Iyo Porokireri abona ko afite ibimenyetso bishobora kwizerwa by'ibyaha Urukiko rufitiye ububasha bwo kuburanisha, ashobora guhitamo kubishyira mu Nyandiko y'ibirego yakoreye uregwa. Iyo Porokireri amenye ibirebana n'ibyo byaha urubanza rwaratangiye kuburanishwa, ashobora gusaba Urugereko uruhushya rwo guhindura inyandiko y'ibirego kugira ngo yongeremo ibirego bishya. Kuba Porokireri yarateshutswe gushyira ibyo byaha mu Nyandiko y'ibirego, ntagomba kwemererwa ko bigira inkurikizi zimwe ku Uregwa bifatwa nk'impamvu nyongeragihano[747]. Kubera izo mpamvu, Urugereko

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[744] Inyandikomvugo z'iburanisha, 18 Gashyantare 2002, imp. 70, 124-125; 28 Gashyantare 2002, urup. 98; 27 Gashyantare 2002, imp. 114-115.

[745] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 91-93.

[746] Imyanzuro nsozarubanza yanditse ya Porokireri, igika 156.

[747] Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 850 (« Ibintu ni bibiri: Porokireri ashobora kuregera buri gikorwa nk'icyaha, cyangwa se, iyo igikorwa kidafitanye isano itaziguye n'ikindi cyaha cyaregewe, yareka kwifashisha icyo gikorwa nk'impamvu nyongeragihano. Urugereko rwa Mbere rw'Iremezo ruzirikana ko ubwinshi bw'ibikorwa bihungabanya amategeko arengera abantu mu gihe cy'intambara biba byarakozwe muri icyo gihe, mu rwego rw'umugambi mubisha umwe, akenshi butuma ibyo byaha bidashobora kugaragazwa neza muri make mu nyandiko y'ibirego. Nyamara ariko gucira urubanza uregwa mu buryo buboneye no gukoresha neza umutungo w'Urukiko birusha agaciro icyifuzo cyo kuregera no kuburanisha buri cyaha cyose cyakozwe mu ntambara uko bimeze kose – icyo ni ikintu Urukiko Mpuzamahanga rudashobora rwose gukora»).

ntirushingira na gato ku byaha bitaregewe mu Nyandiko y'ibirego kandi rutigeze rufataho imyanzuro irebana n'ibyabaye.

2. Umubare w'abantu bishwe

571. Porokireri yavuze kandi ko umubare w'abantu bakorewe ibyaha ari impamvu nyongeragihano[748]. Kubera ko umubare w'abakorewe ibyaha ari kimwe mu bigize itsembatsemba nk'icyaha cyibasiye inyokomuntu, Urugereko rwawitayeho mu isesengura ry'uburemere bw'icyaha cy'itsembatsemba kandi ntirushobora na none gufata uwo mubare nk'impamvu nyongeragihano mu gihe cyo kugena igihano kirebana n'itsembatsemba[749]. Nyamara ariko, umubare w'abakorewe icyaha ushobora gufatwa nk'impamvu nyongeragihano ku birebana na jenoside kubera ko ari icyaha kidasaba umubare w'ifatizo w'abagikorewe kugira ngo kibeho. Bityo rero, kubera uruhare Uregwa yagize mu bwicanyi bwakorewe ku kiriziya y'i Musha no ku gasozi ka Mwulire, Urugereko rusanze umubare w'abantu bahiciwe ugomba gufatwa nk'impamvu nyongeragihano mu kugena igihano kirebana n'icyaha cyo kuba icyitso cy'abakoze jenoside.

3. Imyitwarire y'Ubwunganizi

572. Porokireri yasabye kandi Urugereko kuzirikana ko « imyitwarire y'Uwunganizi mu kwiregura yaranzwe no gutandukira ku buryo byageze aho yafatwa nk'impamvu nyongeragihano»[750]. By'umwihariko, Porokireri yavuze ko umutangabuhamya w'impuguke witwa Ndengejeho yashyigikiye ibyo abantu bamwe bishyizemo bishobora kugira ingaruka mbi, aho yavuze ko umuco w'Abatutsi wari ushingiye ku kubeshya[751]. Urugereko ntirubona ko ubuhamya cyangwa imyifatire y'Ubwunganizi Porokireri avuga ko byaranzwe no gutandukira, bikwiye gufatwa nk'impamvu nyongeragihano muri uru rubanza.

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[748] Imyanzuro nsozarubanza yanditse ya Porokireri, igika 156.

[749] Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 893; Inyandiko y'urubanza rwa Vasiljevic mu rw'iremezo, ibika 277-278; Inyandiko y'urubanza rwa Simic mu rw'iremezo, igika 62; Inyandiko y'urubanza rwa Todorovic mu rw'iremezo, igika 57.

[750] Inyandikomvugo y'iburanisha, 17 Kamena 2002, imp. 170-171.

[751] Inyandikomvugo y'iburanisha, 17 Kamena 2002, imp. 170-171.

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4. Kuba Uregwa yaravugaga rikijyana

573. Urugereko rubyibwirije rwasanze kuba Uregwa yaravugaga rikijyana ndetse akaba yari umuntu ukomeye muri rubanda ari impamvu nyongeragihano. Uregwa yari igikomerezwa ndetse avuga rikijyana muri Komini ya Bicumbi mu wa 1994. N'ubwo Uregwa atari akiri burugumesitiri, yari yaratoranyijwe kuba umudepite mu Nteko ishinga amategeko yagombaga kujyaho hashingiwe ku Masezerano y'Arusha, kandi muri rusange abantu bo mu gace ke bari bakimufata nk'ufite ijambo muri rubanda[752]. Urugereko ntirwemera ko Uregwa yari afite umwanya mu rwego uru n'uru watumaga yafatwa nk'uwari akuriye abantu bo mu gace ke. Nyamara ariko, kuba Uregwa yari igikomerezwa kandi afite ijambo muri rubanda ni ibintu byashoboraga gutuma abandi bantu bakurikiza urugero rwe rubi[753]. Urugereko rusanze rero ibyo ari impamvu nyongeragihano.

C. **Impamvu nyoroshyagihano**

574. Ubwunganizi bwavuze ko kuba hariho ibintu byihariye birebana n'Uregwa no kuba uburenganzira bwe bwarahungabanyijwe bigomba gufatwa nk'impamvu nyoroshyagihano[754]. Impamvu nyoroshyagihano zigomba gutangirwa ibimenyetso hashingiwe ku kigereranyo cy'ibintu bishoboka n'ibidashoboka[755].

575. Ubwunganizi bwavuze ko ifungwa ry'agateganyo ry'Uregwa ryateye umuryango w'Uregwa akababaro gakomeye, n'ubwo butavuze ako ari ko, kandi ko yawukumbuye cyane akawubura[756]. Ubwunganizi bwanavuze ko Uregwa na we ari mu bantu bakozweho n'ibyabaye mu wa 1994, kubera ko yabitakarijemo imitungo ye

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[752] Reba hano hejuru, ibika 303, 304.

[753] Inyandiko y'urubanza rwa Simic mu rw'remezo, igika 67; Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 863.

[754] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, imp. 166-167.

[755] Inyandiko y'urubanza rwa Ntakirutimana mu rw'iremezo, igika 893;, Inyandiko y'urubanza rwa Vasiljevic mu rw'iremezo, igika 272; Inyandiko y'urubanza rwa Sikirica mu rw'iremezo, igika 110; Inyandiko y'urubanza rwa Simic mu rw'iremezo, igika 40; Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 857.

[756] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 166.

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n'abakobwa be babiri[757]. Urugereko rukurikije imiterere y'uru rubanza rusanga izo ngingo atari impamvu nyoroshyagihano.

576. Ubwunganizi bwavuze kandi ko ifungwa ry'Uregwa ryagize ingaruka ku magara ye[758]. Urugereko rwasuzumye raporo za Dogiteri Belai akaba ari Umuganga mukuru w'Urukiko, zo ku wa 4 Ukuboza 2000[759] no ku wa 6 Ukuboza 2000[760], hamwe na raporo ye y'ibanga yo ku wa 6 Ukuboza 2000, zerekana ko nta kibazo gikomeye Uregwa afite kirebana n'amagara ye, kandi ko ameze neza ku buryo ashobora kuburana. Kubera ibyo, Urugereko rusanze ikibazo cy'amagara y'Uregwa kitagomba kwitabwaho mu igenagihano.

577. Ubwunganizi bwavuze ko imyaka makumyabiri Uregwa yamaze yitangira ibikorwa by'iterambere yagombye kwitabwaho mu kugena igihano gikwiye[761]. Urugereko rwumvise ubuhamya bwatanzwe n'abatangabuhamya baba abashinja baba n'abashinjura, buvuga ko Uregwa yakoze neza imirimo ya burugumesitiri wa Komini ya Bicumbi mu gihe kirenga imyaka makumyabiri. Urugereko rwumvise ko Uregwa yazanye ubukungu n'iterambere mu karere ke. Urugereko rusanze rero imico Uregwa yari asanganywe n'ibikorwa yari yaragezeho ari impamvu nyoroshyagihano.

578. Uregwa yavuze kandi ko kuba yari umuyobozi wo mu rwego rwo hasi bigomba gufatwa nk'impamvu nyoroshyagihano[762]. Urugereko rwamaze gusuzuma uruhare rw'Uregwa ubwo rwasesenguraga uburemere bw'ibyaha. Muri uru rubanza, kubera ko Uregwa nta cyaha na kimwe yigeze ahamywa nk'uwari ukuriye abandi, nta mpamvu Urugereko rubona yatuma hasuzumwa intera y'ubuyobozi yariho mu nzego runaka z'ubutegetsi. Ingingo nk'iyo iba ingirakamaro iyo hagomba gufatwa icyemezo mpamyacyaha ku birebana no gutegeka abantu gukora icyaha, hashingiwe ku Ngingo ya 6(1), cyangwa ku birebana n'uburyozwacyaha bw'ukuriye abandi, hashingiwe ku Ngingo ya 6(3).

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[757] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 167.

[758] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 166.

[759] Inyandikomvugo y'iburanisha, 4 Ukuboza 2000, imp. 27-29.

[760] Inyandikomvugo y'iburanisha, 6 Ukuboza 2000, imp. 39-41, 44.

[761] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 166.

[762] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 167.

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1. Kugabanya igihano kubera ko uburenganzira bw'Uregwa bwahungabanyijwe

579. Urugereko rw'Ubujurire rwemeje ko mbere y'uko Uregwa ashyikirizwa Urukiko, uburenganzira bwe bwo kumenyeshwa bidatinze imiterere y'ibyaha ashinjwa bwahungabanyijwe, akaba yaramaze igihe kigera ku minsi cumi n'umunani afunzwe by'agateganyo mbere y'uko amenyeshwa imiterere y'ibyaha Porokireri amushinja[763]. Ku yindi nshuro ya kabiri, Uregwa yafunzwe na none indi minsi cumi n'umunani atamenyeshejwe imiterere y'ibyaha ashinjwa, ariko Urugereko rw'Ubujurire rwasanze kuri iyo nshuro ya kabiri uburenganzira bwe butarahungabye cyane kubera ko ubwo yari afunzwe by'agateganyo ku nshuro ya mbere yaje kumenyeshwa imiterere y'ibyaha yashinjwaga[764]. Urugereko rw'Ubujurire rwemeje kandi ko uburenganzira bw'Uregwa bwo kuregera ifungwa rye ry'agateganyo rinyuranyije n'amategeko bwahungabanyijwe, kubera ko icyifuzo cye cy'ingoboka cyinubiraga ifungwa ry'agateganyo rinyuranyije n'amategeko [« *habeas corpus* »] kitigeze gisuzumwa n'Urugereko[765]. Nyamara ariko, Urugereko rw'Ubujurire rwasanze avoka wunganira Uregwa atarafashe ingamba za ngombwa ngo ageze ikibazo imbere y'Urugereko mu gihe cya vuba, kandi kubera ko igisubizo ku kibazo cyabonetse nyuma yaho gato, uko kudasuzuma icyifuzo cy'Ubwunganizi nta karengane gakomeye byateye Uregwa[766]. Bityo, Urugereko rw'Ubujurire rwemeje ibi bikurikira:

> Ku birebana no guhungabanya uburenganzira bw'Uwajuriye, akwiye indihano izagenwa igihe urubanza ruzacibwa n'Urugereko rwa Mbere rw'Iremezo, kandi izaba iteye itya:
>
> (a) Uwajuriye nadahamwa n'icyaha, azahabwa indishyi y'amafaranga;

[763] Urubanza rwa Semanza, N° ICTR-97-20-A, Icyemezo cy'Urugereko rw'Ubujurire, 31 Gicurasi 2000, igika 87.

[764] Urubanza rwa Semanza, Icyemezo cy'Urugereko rw'Ubujurire, 31 Gicurasi 2000, igika 90.

[765] Urubanza rwa Semanza, Icyemezo cy'Urugereko rw'Ubujurire, 31 Gicurasi 2000, igika 114.

[766] Urubanza rwa Semanza, Icyemezo cy'Urugereko rw'Ubujurire, 31 Gicurasi 2000, ibika 121, 124.

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(b) Uwajuriye nahamwa n'icyaha, igihano cye kizagabanywa kubera ko uburenganzira bwe bwahungabanyijwe, hashingiwe ku Ngingo ya 23 ya Sitati[767].

580. Urugereko rwasuzumye byimazeyo imiterere y'iryo hungabanya ry'uburenganzira bw'Uregwa. Uburenganzira bwe bwo kumenyeshwa bidatinze ibyaha aregwa bwahungabanyijwe mu gihe cyose hamwe kingana n'iminsi mirongo itatu n'itandatu, naho kuba uburenganzira bwe bwo kuburana ibirebana n'ifungwa ry'agateganyo bwarahungabanyijwe hemejwe ko nta karengane gakomeye byamuteye. Rukurikije agaciro gakomeye k'ubwo burenganzira bw'ibanze, Urugereko rusanze bikwiye kugabanya igihano cy'igifungo cy'Uregwa ho amezi atandatu.

581. Mu myanzuro nsozarubanza yanditse y'Ubwunganizi, bwabyukije ibindi bibazo buvuga ko byahungabanyije uburenganzira bw'Uregwa. Ubwunganizi bwavuze ko kuba Urukiko rutarahaye Uregwa inyandiko zose zahinduwe mu kinyarwanda mu gihe cy'iburanisha byahungabanyije uburenganzira bwe bwo kwiregura mu rurimi yumva[768]. Urugereko rusanga iyo ngingo nta shingiro ifite. Uburenganzira bw'uregwa ku birebana n'indimi buteganywa n'Ingingo ya 20(4)(a), (b), na (f) ya Sitati hamwe n'Ingingo ya 3(B) na (E) y'Amategeko. Muri uru rubanza, Uregwa, wumva igifaransa[769], yagenewe umusemuzi w'ikinyarwanda ku buntu mu gihe cyose iburanisha ry'urubanza ryamaze, hakubiyemo no mu gihe yatangaga ubuhamya. Inyinshi mu nyandiko z'ingenzi ziri muri dosiye zasomewe Uregwa kandi azisemurirwa mu kinyarwanda. Ibiro bya Gerefiye, bibivuganyeho n'Ubwunganizi, bishinzwe gufasha mu guhindura mu kinyarwanda inyandiko ziri mu zindi ndimi kandi mu gihe gikwiye, nyamara Ubwunganizi ntibwigeze bubyutsa ikibazo cyerekana ko hari inyandiko izi n'izi bwasabye ko zihindurwa ntibikorwe. Byongeye

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[767] Urubanza rwa Semanza, Icyemezo cy'Urugereko rw'Ubujurire, 31 Gicurasi 2000, urup. 34.

[768] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 167.

[769] Reba, nk'urugero, Inyandikomvugo y'iburanisha, 16 Gashyantare 1998, urup. 19 (« Uyu munsi nshobora kuvuga igifaransa, nshobora kwisobanura mu gifaransa, ariko nyuma ibyiza kuri njye nsanga ari ugukoresha ururimi kavukire rwanjye, ari rwo ikinyarwanda … Yego, ndifuza kuvuga mu gifaransa uyu munsi »); Inyandikomvugo z'iburanisha, 23 Nzeri 1999 urup. 18; 18 Kamena 1999, imp. 6-11; 25 Mata 2001, urup. 167; 7 Nyakanga 2000, urup. 7 («Mu by'ukuri ntavuga neza igifaransa, ariko n'ubwo inyandiko zahindurwa mu rurimi rw'igifaransa byaba ari byiza »).

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kandi Ibiro bya Gerefiye, bikurikije icyifuzo cy'Ubwunganizi, byahaye akazi umusemuzi wigenga wakomeje gusemurira Uregwa mu bindi byose yakeneraga. Uwo musemuzi yaje gufatwa n'ubutegetsi bwo muri Tanzaniya[770], Ubwunganizi bukaba buvuga ko ibyo byaciye intege abandi basemuzi bashoboraga kuba bakorana na bwo. Urugereko rusanga ibyo bivugwa nta shingiro bifite kuko bitatangiwe gihamya. Ubwunganizi nta ngingo yihariye bwatanze yerekana ko kuba inyandiko iyi n'iyi itarahinduwe mu rundi rurimi hari icyo byahungabanyijeho uburenganizira bw'Uregwa bwo kwiregura. Bityo rero, Urugereko rusanze uburenganzira bw'Uregwa ku birebana n'indimi akoresha ntaho bwahungabanyijwe ku buryo yagenerwa indihano mu igenagihano.

582. Ubwunganizi buvuga kandi ko uburenganzira bw'Uregwa bwo gucirwa urubanza ku buryo butazaririye bwahungabanyijwe kubera igihe kirekire imiburanishirize yamaze no kubera ko Urugereko rwa Mbere rw'Iremezo rwakunze kububonerana rubufatira ibihano hato na hato[771]. Mu kwerekana ko Porokireri yagiye atinza imiburanishirize, Ubwunganizi buvuga ko Porokireri yahinduye Inyandiko y'ibirego inshuro eshatu kandi ko yahamagaje abatangabuhamya bo kunyomoza ababwo. Urugereko rukurikije imiburanishirize y'uru rubanza rusanga izo ngingo nta shingiro zifite. Amategeko ateganya ko Inyandiko y'ibirego ishobora guhindurwa, kandi ibyo Porokireri yabikoze abiherewe uruhushya n'Urugereko mu buryo bukurikije Amategeko[772]. Byongeye kandi, Ubwunganizi ni bwo bwakoze amakosa yo kutamenyekanisha mu buryo bukwiye ko buzireguza imyiregurire ya sinari mpari (« *alibi* »), nk'uko biteganywa n'Ingingo ya 67 y'Amategeko, ibyo bikaba ari byo byatumye Urugereko rwihutira gufata icyemezo giha Porokireri uruhushya rwo guhamagaza abatangabuhamya bo kuvuguruza ab'Ubwunganizi batanze ubuhamya ku birebana n'imyiregurie ya sinari mpari y'Uregwa[773]. Urugereko rurebye igihe cyose Uregwa

[770] Inyandikomvugo y'iburanisha, 22 Ugushyingo 2001, urup. 3.

[771] Imyanzuro nsozarubanza yanditse y'Ubwunganizi, urup. 167.

[772] Reba hano hejuru, igika 6.

[773] Urubanza rwa Semanza, N° ICTR-97-20-T, Icyemezo ku cyifuzo cya Porokireri gisaba Urugereko uruhushya rwo guhamagaza abatangabuhamya bo kunyomoza abo Ubwunganizi bwatanze no ku cyifuzo cy'inyongera cya Porokireri gisaba Urugereko uruhushya rwo guhamagaza abandi batangabuhamya bo kunyomoza abo Ubwunganizi bwatanze, Urugereko rwa Mbere rw'Iremezo, 27 Werurwe 2002.

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yamaze afunzwe mbere yo gucirwa urubanza, rusanga kuva yashyirwa mu maboko y'urukiko kugeza ku munsi w'icibwa ry'urubanza hashize koko igihe kinini kandi ibyo birababaje. Nyamara ariko, Urugereko rusuzumye icyo gihe cyose hazirikanwa ukuntu uru rubanza ari insobe, umubare w'abandi baburanyi Urukiko ruburanisha, amikoro make y'Urukiko n'itinza ry'imiburanishirize ryatewe n'Ubwunganizi, rusanga uburenganzira bw'Uregwa bwo kuburanishwa nta kuzarira butarahungabanyijwe.

2. Kuvana igihe Uregwa yamaze afunzwe by'agateganyo mu gihe cy'igifungo akatiwe

583. Uregwa yafatiwe bwa mbere muri Kameruni ku itariki ya 26 Werurwe 1996, hakurikijwe urwandiko mpuzamahanga rufata rwatanzwe n'Ubushinjacyaha bwo mu Rwanda. Kuva icyo gihe kugeza ubu, Uregwa yagumye muri gereza, akaba yarabanje gufungirwa muri Kameruni, nyuma agafungirwa muri gereza y'Urukiko iri Arusha.

584. Hashingiwe ku Ngingo ya 101(D) y'Amategeko, igihe cyose Uregwa amaze afunzwe, haba ubwo yari ategereje gushyikirizwa Urukiko haba no mu gihe iburanisha ryamaze, gikurwa mu gihe cy'igifungo yakatiwe. Urugereko rusanga icyo gihe kigomba kuba gikubiyemo n'icyo yafunzwemo hashingiwe gusa ku rwandiko rwo gufata rwatanzwe n'u Rwanda, kubera ko urwo rwandiko rwari rushingiye ku byaha bimwe n'ibyo ashinjwa muri uru rubanza[774]. Kubera izo mpamvu no kugira ngo hatabaho akarengane, ni ngombwa kwita ku gihe cyose Uregwa yamaze afunzwe. Bityo rero, ufatiye ku itariki ya 15 Gicurasi 2003, mu gihe cy'igifungo Uregwa akatiwe hagomba kuvanwamo imyaka irindwi, ukwezi kumwe n'iminsi cumi n'icyenda.

D. Umwanzuro w'Urugereko

1. Jenoside n'itsembatsemba (ikirego cya 3 n'icya 5)

585. Kubera impamvu zimaze kuvugwa, Urugereko rusanze igihano gikwiye Uregwa ku cyaha cyo kuba icyitso cy'abakoze jenoside (ikirego cya 3) no ku cyaha cyo gushyigikira abakoze itsembatsemba nk'icyaha cyibasiye inyokomuntu (ikirego cya

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[774] Inyandiko y'urubanza rwa Tadic mu bujurire, igika 38.

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5) ari igifungo cy'imyaka cumi n'itanu kuri buri cyaha. Kubera ko ibyo byaha byombi bishingiye ku bikorwa bimwe, ari byo ubwicanyi bwakorewe ku kiriziya y'i Musha n'ubwakorewe ku gasozi ka Mwulire, ibyo bihano byombi bizarangirizwa icyarimwe.

2. Gusambanya ku gahato, iyicarubozo, ubuhotozi (ibirego bya 10, 11, 12, na 14)

586. Uregwa yahamijwe gusambanya ku gahato (ikirego cya 10), iyicarubozo (ikirego cya 11), n'ubuhotozi (ikirego cya 12) nk'ibyaha byibasiye inyokomuntu hashingiwe ku bikorwa bibiri bitandukanye. Icyaha cyo gusambanya ku gahato Uregwa yagihamijwe kubera ko yahamagariye imbaga y'abaturage gusambanya ku gahato Abatutsikazi mbere yo kubica. Icyo gikorwa ni na cyo gishingirwaho mu kumuhamya icyaha cy'iyicarubozo n'icy'ubuhotozi. Ibyaha by'iyicarubozo n'ubuhotozi bikubiyemo kandi n'ibikorwa by'iyicarubozo n'ubwicanyi Uregwa ubwe yakoreye Rusanganwa. Kubera ko ibyo byaha bitatu bishingiye ku bikorwa bifitanye isano, Urugereko rusanze ibihano kuri ibyo byaha bigomba kurangizwa icyarimwe.

587. Uregwa yahamijwe kandi ikindi cyaha mu kirego gitandukanye n'ibimaze kuvugwa, ari cyo ubuhotozi nk'icyaha cyibasiye inyokomuntu (ikirego cya 14) bwakozwe n'agatsiko k'Interahamwe kabihamagariwe n'Uregwa, ubwo bwicanyi bukaba bwarahitanye abantu batandatu. Iki gikorwa cyari kandi mu rwego rw'ibitero rusange rumwe n'urw'ibyaha byibasiye inyokomuntu kandi mu miterere yacyo gisa kuri bimwe n'ibivugwa mu kirego cya 12. Kubera ko igikorwa cyo guhamagarira abantu gukora ibyaha gifite aho gihurira bya hafi n'ibivugwa mu kirego cya 12, Urugereko rusanze igihano kigenwa ku kirego cya 14 kigomba kurangirizwa rimwe n'ibihano bigenwa ku birego bya 10, 11, na 12.

588. **Ibihano ku birego bya 10, 11, 12, na 14 ni ibi bikurikira:**

Ikirego cya 10 :	Guhamagarira abantu gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu – Igihano cy'igifungo cy'imyaka irindwi
Ikirego cya 11:	Guhamagarira abantu ibikorwa by'iyicarubozo n'ibyo gusambanya ku gahato, no gutsotsoba we ubwe iyicarubozo nk'icyaha cyibasiye

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inyokomuntu – Igihano cy'igifungo cy'imyaka icumi

Ikirego cya 12 : Guhamagarira abantu igikorwa kimwe cy'ubuhotozi no kuba na we ubwe yaratsotsobye igikorwa kimwe cy'ubuhotozi – Igihano cy'igifungo cy'imyaka icumi

Ikirego cya 14 : Guhamagarira abantu ibikorwa by'ubuhotozi bwakorewe abantu batandatu – Igihano cy'igifungo cy'imyaka umunani

589. Hari icyiciro cy'ibihano bizarangirizwa icyarimwe byagenwe ku birego bya 10, 11, 12, na 14, hakaba n'icy'ibizarangirizwa icyarimwe byagenwe mu kirego cya 3 n'icya 5 ; ariko ibihano byo mu cyiciro kimwe bizarangizwa ibyo mu kindi cyiciro birangiye.

3. Umusozo

590. Bityo rero, igihano cy'igifungo cyose hamwe ni imyaka makumyabiri n'itanu. Muri icyo gihe, hazavanwamo amezi atandatu nk'indihano y'uko uburenganzira bw'Uregwa bwahungabanyijwe. Ni ukuvuga ko igihe Uregwa agomba gufungwa ari imyaka makumyabiri n'ine n'amezi atandatu.

591. Igihe uregwa yamaze afunzwe by'agateganyo mbere yo gucirwa urubanza, Urugereko rwasanze ari imyaka irindwi, ukwezi kumwe, n'iminsi cumi n'icyenda. Bityo rero, ku itariki ya 15 Gicurasi 2003, Uregwa azaba asigaje gufungwa igihe kingana n'imyaka cumi n'irindwi, amezi ane, n'iminsi cumi n'umwe.

592. Hakurikijwe Ingingo ya 102(A) n'iya 103 z'Amategeko, Uregwa agomba kuguma muri gereza y'Urukiko mu gihe ategereje koherezwa mu gihugu azarangirizamo igihano cye.

593. Abacamanza Ostrovsky na Dolenc bometse kuri iyi Nyandiko y'urubanza ibitekerezo byabo byihariye.

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594. Bikozwe mu cyongereza no mu gifaransa ; icyongereza ni cyo kigenderwaho igihe hari ibyanditse muri izo ndimi bitumvikana kimwe.

Arusha, 15 Gicurasi 2003

Yakov Ostrovsky	Lloyd G. Williams, QC	Pavel Dolenc
Perezida w'inteko	Umucamanza	Umucamanza

(Kashe y'Urukiko)

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Urukiko Mpanabyaha Mpuzamahanga
Rwashyiriweho u Rwanda

UMURYANGO
W'ABIBUMBYE

URUGEREKO RWA MBERE RW'IREMEZO III

Umwimerere: Icyongereza

Abacamanza: Yakov Ostrovsky, Perezida
Lloyd G. Williams, QC
Pavel Dolenc

Gerefiye: Adama Dieng

Itariki: 15 Gicurasi 2003

POROKIRERI

Aburana na:

LAURENT SEMANZA

Urubanza N° TPIR-97-20-T

Igitekerezo cyihariye cy'Umucamanza Yakov Ostrovsky ku birebana n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve hamwe n'Amasezerano y'Inyongera ya II

Ibiro bya Porokireri:

Chile Eboe-Osuji

Abavoka b'Ubwunganizi:

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CIII03-0021K

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Sadikou Ayo Alao

1. Nemeye rwose imikirize y'uru rubanza, icyo ntemera gusa ni igitekerezo benshi mu bacamanza b'uru Rugereko bahuriraho bemeza ko Ingingo ya 4 (a) ya Sitati y'Urukiko itubahirijwe. Iyo ngingo ihuye n'Ingingo ya 4.2 (a) y'Amasezerano y'Inyongera ya II isubiramo ku by'ingenzi Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve («Ingingo ya 3 Ihuriweho»).

2. Abacamanza bagize inteko ku bwiganze bw'amajwi basanga harakozwe ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Ayo mategeko mpuzamahanga yombi arondora ibikorwa byose biciye ukubiri n'amategeko n'umuco bikurikizwa mu ntambara, ibyo bikorwa bikaba byariswe ibyaha byo mu ntambara mu Ngingo ya 6 ya Sitati y'i «*Nuremberg*».

3. Ku bwanjye, ndabona igitekerezo cy'abo bacamanza benshi nta shingiro gifite mu rwego rw'amategeko, yewe nta n'ubwo gishingiye ku myanzuro y'Urugereko irebana n'ibyabaye.

A. Imiterere y'ikibazo

4. Mu birego bya 7, 9 na 13 by'Inyandiko y'ibirego, Uregwa ashinjwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II hashingiwe ku Ngingo ya 4 ya Sitati y'Urukiko.

5. Mpereye ku myanzuro y'Urugereko yo mu rwego rw'amategeko n'irebana n'ibyabaye, ndemera ko ibirego bya 7, 9 na 13 bigomba gusuzumwa mu rwego rw'ibyabereye ku kiriziya i Musha (igika cya 3.11), ku gasozi ka Mwulire (igika cya 3.12) no ku musigiti w'i Mabare (igika cya 3.13) [«ahantu hatatu hakorewe ibyaha »]. Ndemera kandi ko bikwiye gusuzuma ibyaha Uregwa ashinjwa ko yakoreye Rusanganwa (igika cya 3.18) n'ibyo yakoreye uwiswe A n'uwiswe B (igika cya 3.17).

6. Urugereko rwafashe umwanzuro wemeza ko abakorewe ibyaha hariya hantu hatatu n'abakorewe ibindi byaha byavuzwe hano hejuru bari impunzi z'Abatutsi zitari zifite

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uruhare na ruto mu ntambara itari yo mu rwego mpuzamahanga yaberaga mu Rwanda muri kiriya gihe kivugwa mu Nyandiko y'ibirego.

7. Urugereko rwasanze kandi izo mpunzi z'Abatutsi zarazize gahunda ya jenoside yatangijwe nyuma y'urupfu rwa Perezida ku itariki ya 6 Mata i 1994.

8. Ikibazo cy'ingenzi kigomba kubonerwa igisubizo ni icyo kumenya niba abo bantu barakorewe gusa icyaha cya jenoside n'ibindi byaha byibasiye inyokomuntu, cyangwa niba baranazize ibikorwa byo mu ntambara.

9. Nk'uko Ingingo ya 3 Ihuriweho ibivuga, impande zishyamiranye zigomba kubahiriza ingingo z'amategeko zirengera abahohoterwa n'abashobora guhohoterwa n'intambara. Hakurikijwe ibiteganywa n'Ingingo ya 1 y'Amasezerano y'Inyongera ya II, usanga impande zari zishyamiranye mu ntambara yo mu Rwanda igihe ibivugwa mu nyandiko y'ibirego byabaga, ari ingabo za Leta y'u Rwanda ari zo zitwaga FAR, n'ingabo za FPR zari zarigometse ku za Leta. Buri ruhande rwagombaga kubahiriza amategeko n'umuco bikurikizwa mu ntambara, bitaba ibyo rukaba rwishe Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II birimo ayo mategeko n'uwo muco.

B. Kurengera abaturage b'abasiviri

10. Iriburiro ry'Amasezerano y'Inyongera ya II rishimangira ko ari ngombwa rwose kurengera uko bikwiye abahoterwa n'abashobora guhohoterwa n'intambara itari iyo mu rwego mpuzamahanga. Ibyo bikaba bisobanura mu by'ukuri ko abashyamiranye bagomba kwitwararika kugira ngo ibikorwa byabo bya gisirikare bitagira abaturage b'abasiviri bihutaza. Bityo, Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II bigamije kurengera abantu bashobora guhohoterwa n'intambara itari iyo mu rwego mpuzamahanga, nta bwo bigamije kurengera abantu bose ku birebana n'ibyaha bidafite aho bihuriye na gato n'intambara. Iri hame rishimangirwa n'Amasezerano y'Inyongera

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ya II ateganya ko «Abaturage b'abasiviri muri rusange n'umusiviri wese ku giti cye bagomba kurindwa muri rusange *amakuba yose yakomoka ku bikorwa bya gisirikare»*[775].

11. Bityo rero, Amasezerano y'Inyongera ya II agamije kurengera birenzeho abantu bashobora guhohoterwa n'intambara itari iyo mu rwego mpuzamahanga. Kurengera abaturage b'abasiviri ku birebana n'ibikorwa by'ubugizi bwa nabi bakorerwa n'abayobozi babo ni ikindi kibazo kidakemurwa n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Kuri ibyo bikorwa, abaturage barengerwa n'andi masezerano mpuzamahanga menshi yerekeranye n'uburenganzira bwa muntu.

12. Mu ntambara, hashobora gukorwa ibyaha binyuranye ariko si ko byose biba binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara. Mu rubanza rwa Aleksovski, Urugereko rwa Mbere rw'Iremezo rwaragize ruti : « ibyaha byose bikorwa mu gihe cy'intambara si ko bihanwa hashingiwe ku mategeko mpuzamahanga arengera abantu mu gihe cy'intambara. Ayo mategeko akurikizwa gusa ku bikorwa bifite aho bihuriye bya hafi n'intambara »[776].

13. Ku birebana n'ibyo, ni ngombwa kwibutsa ibyavuzwe na Komite Mpuzamahanga y'Umuryango Utabara Imbabare ko mu ntambara, amategeko mpuzamahanga arengera abantu mu gihe cy'intambara yubahirizwa hamwe n'amategeko arengera uburenganzira bwa muntu, akaba ari nta gihugu na kimwe gishobora kwitwaza ko kiri mu ntambara ngo gihonyore ayo mategeko arengera uburenganzira bwa muntu[777].

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[775] Amasezerano y'Inyongera ku Masezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949, kandi yerekeranye no kurengera abashobora guhohoterwa n'intambara (Amasezerano y'Inyongera ya II), Ingingo ya 13 (ni twe twabishimangiye tubishyira mu nyuguti ziberamye).

[776] Inyandiko y'urubanza rwa Aleksovski mu rw'iremezo, igika 45.

[777] Raporo ya CICR, Inama y'impuguke, Jeneve, 27-29 Ukwakira 1998, urup. 2.

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C. Kuba hariho isano hagati y'ibyaha n'intambara ni ikintu cy'ingenzi gisabwa

14. Duhereye ku byo tumaze kuvuga, ubukemuramanza bwa TPIR n'ubwa TPIY bwerekana ko « isano » ari ikintu cy'ingenzi kigomba kwitabwaho mu kureba niba icyaha cyakozwe mu ntambara cyujuje ibisabwa kugira ngo cyitwe icyaha cy'intambara. Uru Rukiko n'urwa TPIY zemeje ko isano risabwa riba ririho iyo icyaha Uregwa ashinjwa « gifite aho gihuriye bya hafi n'intambara », cyangwa iyo « cyakozwe mu rwego rw'intambara », cyangwa iyo ari « kimwe mu bikorwa by'intambara ». Abantu bashobora kubivuga mu buryo butandukanye ariko icy'ingenzi kibiranga ni uko icyo cyaha kigomba kuba giciye ukubiri n'amategeko cyangwa umuco bikurikizwa mu ntambara mu gihe cy'intambara itari iyo mu rwego mpuzamahanga. Icyo ni cyo gisobanuro cy'ukuri cy'ijambo « isano ».

15. Mu rubanza rwa Kayishema na Ruzindana, Urugereko rwa Mbere rw'Iremezo rwabisobanuye neza rugira ruti :

> ijambo « isano » ntirigomba gufatwa nk'ikintu kidasobanutse kandi kidafite urubibi. Hagomba kwerekanwa ko ibyabaye bivugwa mu Nyandiko y'ibirego bifite aho bihuriye ku buryo butaziguye n'imirwano. Ibi rero ntibishobora kugerwaho umuntu adashingiye ku kintu gifatika[778].

16. Nk'urugero, mu rubanza rwa Rutaganda, Urugereko rwa Mbere rw'Iremezo rwavuze ko bitari bihagije ko Porokireri avuga gusa muri rusange ko umutwe w'Interahamwe wakoze ubwicanyi mu rwego rwo gushyigikira ingabo z'u Rwanda, ko bityo rero ibyo ubwabyo bihagije kwerekana ko Uregwa, wari ufite umwanya w'ubuyobozi muri uwo mutwe, na we yari ashyigikiye izo ngabo[779]. Koko rero, n'ubwo Urugereko rwemeye ko hariho isano hagati ya jenoside n'intambara, ntirwabuze gusaba Porokireri kugaragaza ibimenyetso

[778] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 188.

[779] Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 442-444.

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bihamya ku buryo budashidikanywaho ko ibikorwa byihariye Uregwa ashinjwa yabikoze mu rwego rw'intambara[780].

17. Mu rubanza rw'Akayesu, Urugereko rwa Mbere rw'Iremezo rwasanze ibyaha yashinjwaga atarabikoze mu rwego rw'intambara, n'ubwo bwose yari yarateye ingabo « inkunga icirirітise » ubwo zari zigeze muri Komini ya Taba, nko kuba yarazemereye gukorera mu biro bye, gushyiraho uburyo bw'itumanaho hakoreshejwe radiyo, no kuzikorera imirimo y'ubutasi[781].

18. Izo ngero rero zavuye mu bukemuramanza bw'uru Rukiko ziragaragaza neza ko kuba Uregwa hari ibyo ahuriyeho n'abasirikare cyangwa na rumwe mu mpande zishyamiranye, bitavuga byanze bikunze ko ibyo yakoze byari bifitanye isano n'intambara.

19. Muri uru rubanza, Urugereko ku bwiganze bw'amajwi y'abacamanza bagize inteko rurondora ibyaha byakozwe n'Uregwa. Ubwo buryo bwagira akamaro ari uko hagaragajwe aho buri cyaha cyakozwe gihuriye n'intambara. Kuri ibyo, mu rubanza rwa Tadic, Urugereko rwa Mbere rw'Iremezo rwaragize ruti «… Kugira ngo bivugwe ko icyaha kinyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, Urugereko rwa Mbere rw'Iremezo rugomba kuba rwemera nta gushidikanya ko buri gikorwa gishinjwa Uregwa gifitanye isano ya hafi n'intambara »[782].

[780] Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 442-444; Reba kandi Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 974; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 619.
[781] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 641-643. N'ubwo Urugereko rw'Ubujurire rutemeye umwanzuro wafashwe n'Urugereko rwa Mbere rw'Iremezo uvuga ko uregwa agomba kuba afite aho ahuriye na rumwe mu mpande zishyamiranye, nyamara ariko ntirwahinduye umwanzuro w'Urugereko rwa Mbere rw'iremezo wemeje ko Porokireri atatanze ibimenyetso bihamya ku buryo budashidikanywaho ko ibikorwa uregwa ashinjwa yabikoze mu rwego rw'intambara.
[782] Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 573.

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20. Icyo gitekerezo tugisanga no mu rubanza rw'Akayesu mu Rugereko rw'Ubujurire, aho urwo rugereko rwemeye ko igisabwa cy'ingenzi ari uko haba hariho « isano ya hafi » hagati y'igikorwa uregwa ashinjwa n'intambara[783].

21. Mbere ya byose rero, muri uru rubanza ni ngombwa gusuzuma niba ubwicanyi bugize icyaha cya jenoside bwakorewe ahantu hatatu havuzwe n'ibyaha bivugwa ko byakorewe Rusanganwa, uwiswe A n'uwiswe B ari ibyaha by'intambara cyangwa, mu yandi magambo, niba ibyo byaha hari isano bifitanye n'intambara.

D. Imiterere y'intambara itari iyo mu rwego mpuzamahanga

22. Ku bijyanye no kureba niba hariho isano hagati y'ibyaha bivugwa n'intambara, Urugereko, ku bwiganze bw'amajwi y'abacamanza bagize inteko, rwemera mu gika cya 518 cy'Inyandiko y'urubanza igitekerezo gikurikira cyatanzwe n'Urugereko rw'Ubujurire mu rubanza rwa *Kunarac:*

> « Kuba hariho intambara bigomba kuba nibura byaragize uruhare rukomeye ku bushobozi bw'uwakoze icyaha, ku cyemezo yafashe cyo kugikora, ku buryo yagikozemo cyangwa ku mpamvu yamuteye kugikora. Bityo, bishoboye kugaragazwa … ko uwakoze icyaha yagikoze mu rwego rwo gushyigikira intambara cyangwa ayitwaje, bishobora kuba bihagije gufata umwanzuro wemeza ko ibikorwa bye byari bifite aho bihuriye bya hafi n'intambara »[784].

23. Nanjye nemera icyo gitekerezo cy'Urugereko rw'Ubujurire. Nyamara ariko, nta kintu na kimwe nsanga muri icyo gitekerezo gifite aho gihuriye n'uru rubanza kandi gishyigikiye umwanzuro wakwemeza ko hari isano hagati y'ibyaha uru Rugereko rwaregewe n'intambara.

24. Byongeye kandi, kuri icyo kibazo interuro zombi z'urwo Rugereko rw'Ubujurire ntizandukuwe uko zakabaye. Interuro ya mbere uko yakabaye iteye itya :

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[783] Inyandiko y'urubanza Urubanza rwa Akayesu mu bujurire, igika 444.

[784] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 58.

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> « Si ngombwa ko icyaha runaka kiba cyarakozwe bitewe n'intambara, ariko kuba hariho intambara bigomba kuba nibura byaragize uruhare rukomeye ku bushobozi bw'uregwa bwo gukora icyaha, ku cyemezo yafashe cyo kugikora, ku buryo yagikozemo no ku cyo yari agamije agikora»[785].

25. Bityo rero, Urugereko rw'Ubujurire rushimangira uruhare intambara yaba yaragize ku bantu bakoze ibyaha. Mu rubanza rwa Kunarac, byaragaragaye ko icyaha cyakozwe mu buryo bwihariye « ubwo abaregwa uko ari batatu, nk'abasirikare, bitabiraga n'umurava ibikorwa bya gisirikare mu ntambara, barwanirira uruhande rumwe mu zari zishyamiranye ari rwo rw'Abaseribe, kandi kubera ibyo bari bazi ko hariho intambara »[786].

26. Bityo, intambara yariho n'ubwo atari yo yatumye icyo cyaha gikorwa, yagize uruhare runini ku bushobozi bw'abo basirikare bwo kugikora, ku cyemezo bafashe cyo kugikora, ku buryo bagikozemo cyangwa ku cyo bari bagamije bagikora.

27. Hari igice gikomeye cyirengagijwe cyo mu nteruro ya kabiri y'Urugereko rw'Ubujurire yavuzwe, ahavugwa ko icyo cyemezo kirebana by'umwihariko n'ibyaha biregerwa mu rubanza rwa Kunarac. Muri urwo rubanza, nta muntu wigeze ahakana ko hariho isano hagati y'ibyo bikorwa n'intambara kubera ko «abasiviri b'abayisilamu bishwe, basambanyijwe ku gahato cyangwa ku bundi buryo ubwo ari bwo bwose bakaba barakorewe ibikorwa by'ubugizi bwa nabi biturutse kuri iyo ntambara *mu buryo butaziguye*, kandi bikaba byaragaragaye ko iyo ntambara yari ikibaba abakoze ibyaha bitwikiraga ngo badahanwa»[787].

28. Bityo rero, Urugereko ku bwiganze bw'amajwi rwashingiye ku mpamvu y'uko mu rubanza rwa Kunarac Urugereko rw'Ubujurire rwemeye ko ibyaha byaregewe bifitanye isano n'intambara, maze rwemeza ko no muri uru rubanza iyo sano iriho hatitaweho

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[785] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 58.

[786] Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 569.

[787] Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, igika 568 (ni twe twabishimangiye tubishyira mu nyuguti ziberamye).

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kureba ko Uregwa atari umusirikare nka bariya basirikare batatu b'Abaseribe, kandi n'uburyo yakozemo ibyaha butandukanye cyane n'ubwo abo basirikare bagikozemo.

29. Kuba hariho isano hagati y'ibikorwa uregwa ashinjwa n'intambara si ikintu gishobora gutangirwa ibimenyetso muri ubwo buryo. Ni ibintu byumvikana ko icyemezo Urugereko rw'ubujurire rufata mu rubanza runaka, bitavuga ko byanze bikunze gishobora gukurikizwa mu rundi rubanza hatabanje gukorwa isesengura ryo kugaragaza ko hariho impamvu zatuma icyo cyemezo gishingirwaho.

30. Bityo rero, biragarara ko mu rubanza rwa Kunarac ibyaha byakozwe n'abasirikare batatu mu rwego rw'intambara kandi ko abakorewe ibyaha bari abasiviri b'abayisilamu. Mu rubanza rwa Krnojelac, Urugereko rwa Mbere rw'Iremezo rwasanze harabayeho ibitero rusange kandi biri kuri gahunda byagabwe n'ingabo za Seribiya ku baturage b'abasiviri batari Abaseribe[788]. Byongeye kandi, mu rubanza rwa Tadic, Urugereko rwa Mbere rw'Iremezo rwavuze mu buryo burushijeho gusobanuka ko iyo ntambara yari iteye nk'iy'amoko[789].

31. Imiterere y'intambara yo mu Rwanda yari yihariye. Umutwe wa F.P.R. ushoza intambara mu wa 1990 ntiwari ugamije kwibasira ubwoko ubu n'ubu. Yari intambara irwanira ubutegetsi mu Rwanda. Nta kimenyetso cyatanzwe cyerekana ko mu myaka ya 1990, 1991,1992 na 1993 habayeho jenoside. Gahunda ya jenoside yatangiye nyuma y'itariki ya 6 Mata 1994, kandi ntiyatangijwe n'umutwe wa F.P.R cyangwa ngo ibe yari igamije kuwurimbura cyangwa kurimbura abayoboke bawo.

32. Ibimenyetso byatanzwe byerekana ko iyo gahunda ya jenoside yatangijwe n'abayobozi bashakaga kurimbura igice kimwe cy'abaturage bari bashinzwe kuyobora bakiziza ubwoko. Icyo cyaha cyakozwe mu gihe kimwe n'intambara, ariko nta bwo byahuriranaga. Ni yo mpamvu iyo gahunda ya jenoside itarebwa n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II, kuko ayo mategeko agamije

[788] Inyandiko y'urubanza rwa Krnojelac mu rw'iremezo, igika 61.

[789] Inyandiko y'urubanza rwa Tadic mu rw'iremezo, igika 574.

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kurengera abantu bashobora guhohoterwa n'intambara[790]. Nk'uko byavuzwe n'Urugereko rwa Mbere rw'Iremezo mu rubanza rwa Akayesu, « ni ngombwa gushimangira ko n'ubwo jenoside yakorewe Abatutsi yabaye mu gihe kimwe … n'intambara, yari itandukanye n'intambara »[791].

E. Gahunda ya jenoside

33. Kubera iyo gahunda ya jenoside, Abatutsi b'abasiviri bagabweho ibitero hose mu Rwanda, harimo n'ahantu bari baramenyereye guhungira mbere ntihagire ubakura.

34. Ibimenyetso byatanzwe bigaragaza ko abari ku isonga y'ibyo bitero bari bagizwe ahanini n'urubyiruko rw'ishyaka rya M.R.N.D, rwari ruzwi ku izina ry'«Interahamwe». Abenshi mu bari muri ibyo bitero bari abasiviri b'Abahutu bakoreshaga intwaro gakondo. Akenshi abo bose babaga bagabye ibitero bitwaga Interahamwe.

35. Na none kandi, nk'uko umuryango uharanira uburenganzira bwa muntu witwa «*African Rights*» ubisobanura, «Interahamwe ntabwo zoherejwe mu byaro kwica gusa, ahubwo zanasabwaga guhatira abaturage baho kwica»[792]. Umuntu agereranyije, yavuga ko hafi kimwe cya kabiri cy'abaturage b'Abahutu, bakoze jenoside[793].

36. Abayobozi ba Leta bo mu nzego zo hejuru n'abo mu nzego z'ibanze bashyigikiye gahunda ya jenoside mu buryo bunyuranye no ku rugero rutari rumwe. Hari n'aho wasangaga abo bayobozi bashora abajandarume n'abasirikare muri iyo gahunda ya jenoside, yari ishyigikiwe n'itangazamakuru, bamwe mu baminisitiri, mu baperefe, mu baburugumesitiri, no mu bantu bari bafite ijambo muri rubanda.

F. Ubwicanyi bwakorewe ahantu hatatu havuzwe

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[790] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 621.

[791] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 128.

[792] Reba igitabo: *AFRICAN RIGHTS, RWANDA: DEATH, DESPAIR, AND DEFIANCE, p. xx (rev. ed. 1995).*

[793] Reba igitabo: *Elizabeth Neuffer, Amid Tribal Struggles, Crimes Go Unpunished, THE BOSTON GLOBE, 8 December 1996, p. A20*.

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37. Urugereko rukurikije ibimaze kuvugwa, rugomba gusuzuma ibyabereye hariya hantu hatatu abasiviri b'Abatutsi bagabweho ibitero. Ingabo za FPR n'iza Leta y'u Rwanda ntaho zari zihuriye n'ubwicanyi bwakorewe hariya hantu, yewe n'imirwano hagati y'izo ngabo ntaho yari ihuriye na bwo. Ibimenyetso byatanzwe byerekana neza ko ubwo bwicanyi bwakozwe mu rwego rwa jenoside. Interahamwe zagabye ibitero ku basiviri b'Abatutsi hariya hantu hatatu, rimwe na rimwe zabonaga inkunga y'imbunda n'amagerenade bahabwaga n'abasirikare babaga batari kumwe na bagenzi babo ku rugamba rwo kurwanya ingabo za FPR. Ibimenyetso byatanzwe bihamya kandi ko abenshi muri abo basirikare «bari baratorotse urugamba»[794]. Kuba abo basirikare baritabiriye gahunda ya jenoside yakorewe Abatutsi, byabonekaga ko bisa nk'aho byemewe mu gihugu, ntibituma habaho isano hagati y'ibyo byaha n'intambara, kubera ko abo basirikare bari bashishikajwe cyane n'icyo gikorwa cya jenoside bari bitabiriye, aho gushishikazwa n'intambara.

G. Gukikira ibisabwa bigaragaza isano

38. Aho kugira ngo Porokireri n'Urugereko ku bwiganze bw'amajwi basuzume neza ko hari isano hagati y'intambara n'ibyaha Uregwa yakoreye ahantu hatatu havuzwe, bahisemo koroshya icyo kibazo cyane. Basobanuye ko intambara n'ingaruka yagize ku byaha byakozwe mu Rwanda bigaragaza isano isabwa. Bityo, bakaba barakikiye igisobanuro cy'iyo nshoza n'uko igomba kumvikana hakurikijwe ubukemuramanza bwa TPIR n'ubwa TPIY.

39. Mu kwerekana ko iyo sano isabwa iriho, Urugereko ku bwiganze bw'amajwi rwaragize ruti : «kuba hariho imirwano yari ishyamiranyije ingabo za Leta y'u Rwanda n'iza FPR byatumye habaho ubwicanyi rusange n'ibindi bikorwa by'ubugizi bwa nabi byibasiye abasiviri b'Abatutsi cyangwa byabaye urwitwazo (igika cya 518) ; ubwicanyi muri Komini ya Gikoro n'iya Bicumbi bwatangiye Perezida Habyarimana akimara gupfa ubwo imirwano yuburaga hagati y'ingabo za FPR n'iza Leta (igika cya 518); bitwaje intambara yariho kugira ngo bice cyangwa bagirire nabi Abatutsi muri Bicumbi no muri

[794] Ubuhamya bw'umutangabuhamya wiswe VN, Inyandikomvugo y'iburanisha, 9 Ugushyingo 2000, urup. 101.

Gikoro(igika cya 519); intambara yabaye kandi impamvu ikomeye yatumye hagabwa ibitero ku basiviri b'Abatutsi muri Bicumbi no muri Gikoro (igika cya 521); uko ingabo za FPR zagendaga zisatira Komini ya Bicumbi n'iya Gikoro, ubwicanyi bwakorewe abasiviri b'Abatutsi bwarushagaho gukaza umurego muri ayo makomini yombi (igika cya 521).

40. Imyanzuro ivuga ibyo igaragaza ko habaye kujenjeka mu gusuzuma ikibazo. Yerekana gusa impamvu zatumye ibyaha bikorwa n'ukuntu ibintu byari byifashe icyo gihe, ariko ibyo nta cyo bigomba guhindura ku nshingano yo kwerekana ibimenyetso bya ngombwa bihamya ko amategeko cyangwa umuco bikurikizwa mu ntambara bitubahirijwe.

41. Mu by'ukuri, ndemera ko hariho isano hagati y'intambara n'ibyaha birimo gusuzumwa ariko iyo sano si iya hafi. Umuntu ntiyaba yibeshye avuze ko iyo ntambara yabaye urwitwazo rwo gutangiza icyo gikorwa cya jenoside no gutuma kirushaho gukara. Umuntu yakwemeza kandi ko abakoze icyo cyaha cya jenoside bari bishingikirije iyo ntambara cyangwa se ko bayigiraga urwitwazo, kuko ari yo yatumye haboneka uburyo bwo gushyira jenoside mu bikorwa no gutiza umurindi abayikoze.

42. Nyamara ariko, ibyo bintu ntibihagije gushingirwaho mu rwego rw'amategeko ngo umuntu abe yakwemeza ko hari isano hagati y'ubwicanyi bwabereye hariya hantu hatatu n'intambara.

43. Urugero rusobanutse neza kurushaho rwerekana ko habayeho ukujenjeka ni uko Porokireri yihandagaje akavuga ko icyaha cyose umuntu akoze yishingikirije intambara yangwa se ayigize urwitwazo kiba ari icyaha cy'intambara[795].

44. Imitekerereze nk'iyo ijenjetse ishobora gutuma abantu bumva ko atari ngombwa gusuzuma imiterere ya buri rubanza kubera ko buri cyaha cyajya cyitwa byanze bikunze icyaha cy'intambara.

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[795] Inyandikomvugo y'iburanisha, 17 Kamena 2002, urup. 87.

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45. Ikintu cya gatatu kigaragaza ko muri uru rubanza habayeho ukujenjeka ni uko Porokireri, nta gisobanuro na kimwe abitangiye, yemeza ko ibyaha Uregwa ashinjwa ari ibyaha by'intambara ngo kubera ko «byakozwe mu gihe cy'intambara itari mu rwego mpuzamahanga» nk'uko bivugwa mu birego bya 7, 9 na 13 byo mu Nyandiko y'ibirego.

46. Mu kuvuga ibyo, Porokireri yirengagije isano ivugwa kandi ari ngombwa mu kugaragaza ko habayeho ibikorwa binyuranyije n'Ingingo ya 4 ya Sitati y'Urukiko. Hakurikjwe iyo myumvire, byasa nk'aho bivuga ko kuba icyaha gikozwe mu gihe cy'intambara bihagije ubwabyo kugira ngo cyitwe icyaha cy'intambara. Bibaye ari uko bimeze, ntibyaba bikiri ngombwa ko Porokireri asabwa gutanga ibimenyetso bihamya ko icyo cyaha gifitanye isano n'intambara mu gihe yerekanye gusa ko cyakozwe mu gihe cy'intambara.

47. Nyamara ariko, ku bwiganze bw'amajwi, Urugereko rwirengagije icyo kintu kibura mu Nyandiko y'ibirego ubwo rwafataga umwanzuro uvuga ko «rwumva iyo nteruro ishaka kuvuga ko ibyaha bivugwa byari bifite aho bihuriye n'intambara» (igika cya 516). Umwanzuro w'Urugereko n'imyumvire ya Porokireri byerekana ko ibyo amategeko asaba bitubahirijwe uko bikwiye.

48. Ikintu cya kane kigaragaza ko muri uru rubanza habayeho ukujenjeka ni uko Porokireri avuga ko kuba jenoside n'ibindi byaha byibasiye inyokomuntu ari «ibyaha by'indengakamere, bihagije kugira ngo hakurikizwe ayo mategeko yerekeranye n'ibyaha by'intambara kubera ko yibanda ku bikorwa by'amarorerwa byangiza ubuzima, amagara, bihungabanya umuntu ku mubiri cyangwa mu mutwe, cyane cyane ubwicanyi n'ibikorwa by'ubugome nk'iyicarubozo, guca ingingo z'umubiri, cyangwa ibindi bihano bibabaza umubiri, byakorewe abahohotewe n'intambara »[796].

49. Porokireri ku ruhande rumwe yemera mu myanzuro nsozarubanza ye mu magambo ko « amategeko asaba ko habaho isano hagati y'ibyo byaha n'intambara, cyangwa ko biba byarakozwe mu rwego rw'intambara »[797]. Ku rundi ruhande, mu myanzuro nsozarubanza

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[796] Imyanzuro nsozarubanza yanditse ya Porokireri, igika 103.

[797] Inyandikomvugo y'iburanisha, 17 Kamena 2002, urup. 65.

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ye yanditse avuguruza ibyo aho yemeza ko iyo sano atari ngombwa ko kandi Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II bigomba gukurikizwa hashingiwe ku mpamvu ko ibyaha biburanishwa ari indengakamere.

50. Ku birebana n'ibyo, ni ngombwa kwibutsa umwanzuro w'Urugereko mu gika cya 368 cy'Inyandiko y'urubanza aho rwemera ko Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II bigamije kurengera abashobora guhohoterwa n'intambara itari iyo mu rwego mpuzamahanga, «ko bitagamije kubarengera mu birebana n'ibyaha bidafitanye isano n'iyo ntambara, *n'ubwo bwose ibyo byaha biba bihanwa n'amategeko* » (ni twe twabishimangiye tubishyira mu nyuguti ziberamye).

H. Ikurikizwa ry'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera

51. Imyumvire ya Porokireri n'iy'Urugereko ku bwiganze bw'amajwi ku birebana n'ikurikizwa ry'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera yuzuyemo urujijo. Mu birego bya 7, 9 na 13, Porokireri yifashisha ingingo zimwe na zimwe z'ariya mategeko mpuzamahanga ziteganya ibyaha nk'ubwicanyi, ibikorwa byuzuyemo ubugome, gusambanya ku gahato, n'iyicarubozo. Ndemera ko nibura bimwe muri ibyo byaha byakozwe mu gihe cy'ubwicanyi bwibasiye abasiviri b'Abatutsi nk'uko Urugereko rwabisobanuye mu myanzuro yarwo yo mu rwego rw'amategeko irebana na jenoside n'ibyaha byibasiye inyokomuntu.

52. Nyamara ariko, Porokireri n'Urugereko ku bwiganze bw'amajwi birengagiza ko izo ngingo zo mu mategeko mpuzamahanga zikurikizwa gusa iyo ibyaha bikurikiranywe byakozwe mu rwego rwo guhonyora amategeko cyangwa umuco bigenga intambara, bityo bikaba binyuranyije n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'nyongera ya II.

53. Mu gika cya 3.17 cy'Inyandiko y'ibirego, Porokireri avuga ko Uregwa yabwiye agatsiko k'abagabo muri Komini ya Gikoro ko bagomba gusambanya Abatutsikazi mbere yo kubica, ibyo ngo bikaba ari byo byatumye abo baturage bo muri Gikoro basambanya ku gahato uwiswe A, bakanica undi wiswe B. Mu myanzuro y'Urugereko kuri iki kibazo,

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hasobanuwe ku buryo burambuye ibirebana n'icyaha cyo gusambanya ku gahato n'icy'ubwicanyi kimwe n'uruhare Uregwa yabigizemo. Nyamara ariko, muri ibyo bisobanuro nta hantu na hato Urugereko rwagerageje kwerekana isano iri hagati y'ibyo byaha byombi n'intambara.

54. Ahubwo, Urugereko rwemera ko gusambanya ku gahato abo Batutsikazi byakozwe n'abo bagabo batatu mu rwego rw'ibikorwa byabo rusange byo kwica Abatutsi (igika cya 547). Ibyo biragaragaza ko abo Batutsikazi bakorewe ibikorwa by'iyicarubozo, ibyo gusambanywa ku gahato no kwicwa mu rwego rw'ibitero rusange byari bigamije jenoside, ariko ntaho bigararagara ko byari bifatanye isano n'intambara.

55. Ibyo kandi ni ko bimeze no ku byakorewe Rusanganwa. Mu bwicanyi bwabereye ku kiriziya y'i Musha, Uregwa yabajije Rusanganwa igihe FPR izagerera muri ako gace. Rusanganwa yaramusubije ati « Si ndi Imana, sinzi umunsi, sinzi n'isaha» (igika cya 170). Buri mpunzi yose yashoboraga kubazwa bene icyo kibazo, kandi byanze bikunze, uwari kukibazwa wese, nta kindi gisubizo yari gutanga kitari kiriya. Nta kintu na kimwe cyerekana ko Rusanganwa hari icyo yari azi ku byerekeye uko kuza kwa FPR, yewe nta n'impamvu zihari zerekana ko yagombaga kubimenya. Nta n'ikigaragaza ko hari aho yari ahuriye na FPR ngo abe yamenya ayo makuru. Ahubwo, ibimenyetso byatanzwe byerekana ko Uregwa, na burugumesitiri Bisengimana bishe Rusanganwa bamaze kumukomeretsa cyane bamuziza ko yari Umututsi ukomeye. Jye uko mbibona, nsanga icyo cyaha baragikoreye Rusanganwa mu rwego rwa jenoside, nta bwo bagikoze bashishikajwe n'amakuru yaba yari afite arebana na FPR cyangwa se n'andi ayo ari yo yose. Na none kandi, muri uru rubanza nta na hamwe Urugereko rwagerageje kugaragaza ko icyo cyaha cyihariye cyari gifitanye isano n'intambara.

56. Nyamara ariko, ku birebana n'ibyaha byakorewe Rusanganwa, n'ibyakorewe abiswe A na B, Porokireri yagerageje kuziba icyo cyuho avuga ko mu gika cya 3.17 n'icya 3.18 by'Inyandiko y'ibirego, Uregwa yifuzaga ko ibikorwa bivugwa muri ibyo bika byombi bibarirwa mu by'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR. Nyamara ariko, nta kimenyetso cyatanzwe gihamya ko ari byo Uregwa yatekerezaga

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koko. Bityo rero, isano isabwa ikaba nta handi ishobora kugaragarira hatari mu byabaye. Ibyo Uregwa cyangwa undi wese yaba atekereza ntibishobora gufatwa nk'ikimenyetso kigaragaza ko iyo sano isabwa yariho.

57. Bityo rero, hakurikijwe ubuhamya bwatanzwe, ibyo byaha byakozwe mu rwego rwa jenoside. Nta kimenyetso na kimwe cyatanzwe gihamya ko ibyo byaha byakozwe mu rwego rwo guhonyora amategeko n'umuco bikurikizwa mu ntambara.

58. Kubera ibyo, Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II ntibishobora kugenderwaho, kandi Porokireri n'Urugereko ku bwiganze bw'amajwi bakoze amakosa yo mu rwego rw'amategeko bashingira ku ngingo zo muri ayo mategeko mpuzamahanga ku byaha bitari iby'intambara.

59. Iryo hame ryo mu rwego rw'amategeko ritagibwaho impaka ryarirengagijwe aho Porokireri, mu gika cya 3.4.2 cy'Inyandiko y'ibirego, avuga ko Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II birengera abaturage b'abasiviri, adasobanuye ko abo basiviri barengerwa n'ayo mategeko mpuzamahanga ku birebana n'ibyaha by'intambara gusa, ko atabarengera ku byaha bibonetse byose bikorwa mu gihe cy'intambara. Birababaje kubona Urugereko ku bwiganze bw'amajwi rwaremeye imyumyire ikosamye ya Porokireri maze rugakurikiza Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II ku byaha bidafitanye isano n'intambara.

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I. Izindi nenge ziri mu myumvire y'abacamanza bagenzi banjye

60. Hari izindi nenge ziri mu myumvire y'abacamanza bagenzi banjye, zikwiye kugira icyo zivugwaho.

61. Abacamanza bagenzi banjye baribeshya aho bavuga ko Uregwa yitabiriye ibikorwa bya gisirikare byibasiye impunzi z'abasiviri (igika cya 522). Ibitero bya jenoside byibasiye abasiviri b'Abatutsi ntibikwiye kwitwa ibikorwa bya gisirikare. Biragaragara ko Uregwa atigeze yitabira igikorwa na kimwe cya gisirikare mu ntamabara yari ishyamiranyije ingabo za FPR n'iza Leta y'u Rwanda (FAR). Uko byagenda kose, nta kimenyetso na kimwe cyatanzwe cyo kubihamya.

62. Urugereko ku bwiganze bw'amajwi ruvuga ko abasiviri bavuye mu byabo kubera intambara no kubera gutinya ibikorwa by'ubugizi bwa nabi byagendaga byiyongere mu duce bari batuyemo (igika cya 518). Iyo myumvire rusange ntiyerekana neza uko ibintu byari byifashe icyo gihe. Abasiviri b'Abatutsi, baje gukorerwa ibyaha, ntibavanywe mu byabo n'intambara, ahubwo babivuyemo bahunga abicanyi bakoze jenoside babahigaga.

63. Urugereko ku bwiganze bw'amajwi ruvuga ko abasirikare ba Leta y'u Rwanda babaye inkwakuzi mu bitero byagabwe ku mpuzi zari zakoraniye ku kiriziya y'i Musha, ku musigiti w'i Mabare, no ku gasozi ka Mwulire (igika cya 518). Ibi ariko ntibishyigikiwe n'imyanzuro y'Urugereko ishingiye ku byabaye.

64. Imyanzuro y'Urugereko ku byabaye igaragaza ko nta basirikare bari mu bagabye igitero ku musigiti w'i Mabare. Ibitero byagabwe ku basiviri b'Abatutsi ku gasozi ka Mwulire byatangiye ku itariki ya 8 Mata 1994. Ibimenyetso byatanzwe byerekana ko impunzi z'Abatutsi zakomeje kugabwaho ibitero buri munsi kuva kuri iyo tariki kugeza ku ya 18 Mata 1994. Muri iyo minsi icumi ibitero byagabwaga nta basirikare babirimo. Ibimenyetso byatanzwe bivuga ko ku itariki ya 18 Mata 1994 yonyine, ubwo impunzi

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zari zimaze kugera nko ku 10.00, ari bwo Uregwa yazanye aho hantu Interahamwe n'abasirikare bitwaje intwaro, abatwaye muri kamyoneti Toyota y'umutuku kugira ngo bagabe igitero simusiga kuri izo mpunzi. Ukurikije ibimenyetso byatanzwe, usanga uruhare abasirikare bagize rwarakabirijwe.

65. Uruhare abasirikare bagize mu bwicanyi bwabereye ku kiriziya y'i Musha na rwo rwarakabirijwe. Nk'uko byavuzwe hejuru, hari abantu benshi bishoye mu bikorwa bya jenoside, byabonekaga ko byari bishingiye kuri gahunda ya Leta, kandi bamwe mu basirikare batari ku rugamba aho bagenzi babo barwanaga n'ingabo za FPR na bo bitabiriye ibyo bikorwa bya jenoside. Nyamara ariko, iyo si impamvu yatuma uruhare rwabo rukabirizwa.

66. Ibyo Urugereko ku bwiganze bw'amajwi rugerageza kwerekana ko hari isano hagati y'ibyaha bivugwa n'intambara bashingiye ku magambo yerekana ibya gisirikare, ntibikwiye. Amagambo nka «abategetsi ba girikare», «abasirikare bakuru», «abasirikare bafite amapete yo hejuru» n'«ibikorwa bya gisirikare» ntashingiye ku myanzuro irebana n'ibyabaye, kandi ntashobora kuba urwitwazo rwo kutubahiriza inshingano rufite yo gusesengura ibimenyetso bigamije kwerekana ko hariho isano hagati y'intambara n'ibyaha Uregwa ashinjwa.

67. Mu gika cya 522, Urugereko ku bwiganze bw'amajwi ruvuga ko Uregwa yagerageje «gutara amakuru yerekeranye n'aho umwanzi ageze». Ariko, umwanzuro rusange nk'uwo ntushingiye ku myanzuro y'Urugereko irebana n'ibyabaye. Mu bimenyetso byatanzwe harimo igikorwa kimwe gusa : mu gihe cy'ubwicanyi bwabereye ku kiriziya y'i Musha, Uregwa yabajije Rusanganwa wari umwarimu w'Umututsi igihe FPR izagerera muri ako gace. Rusanganwa yamushubije muri aya magambo: «Si ndi Imana, sinzi umunsi n'isaha » (igika cya 170). Nyuma y'ibyo, Uregwa, na Bisengimana bahise bica Rusanganwa, bashaka kwereka Abatutsi bari batuye muri Gikoro uko bishobora kuzagendekera abari bategereje ukuza kwa FPR. Abacamanza bagenzi banjye bumvise icyo gikorwa ku buryo butandukiriye cyane kubera ko nta kimenyetso cyatanzwe cyerekana ko hari amakuru na make ya gisirikare Rusanganwa yari afite. Jye ndahamya

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ko niba yarakorewe ibikorwa by'iyicarubozo nyuma akaza kwicwa byatewe gusa n'uko yari Umututsi ukomeye.

68. Mu gika cya 522, mu musozo w'icyiciro cyasesenguwemo inshoza y'isano, Urugereko ku bwiganze bw'amajwi rwafashe umwanzuro ukurikira : «ntirushidikanya rero ko ibyaha Uregwa ashinjwa bifitanye isano ya hafi n'intambara yariho mu Rwanda ».

69. Uwo mwanzuro ushingiye kuri ibi bikurikira:

(a) Kwitwaza ibintu bya gisirikare ku buryo bukabirije ndetse budakwiye, nk'uko byasobanuwe haruguru, kandi uko byagenda kose hatagaragazwa isano hagati y'ibyaha biregerwa n'intambara ;

(b) Ibivugwa muri rusange bidafite ibimenyetso bibishyigikiye, kandi bidashyigikiwe n'imyanzuro y'Urugereko ku byabaye n'impamvu rwashingiyeho rufata icyemezo ;

(c) Igitekerezo cy'Urugereko rw'Ubujurire mu rubanza rwa *Kunarac* kivugwa mu gika cya 517, kandi nk'uko byasobanuwe hano hejuru, abacamanza bagenzi banjye bakaba baracyumvise nabi ;

(d) Imvugo zakoreshejwe mu gusobanura ingaruka iyo ntambara yagize ku byaberaga mu Rwanda, nk'uko byasobanuwe haruguru, izo mvugo zikaba zidakubiyemo ibisabwa kugira ngo hemezwe ko habayeho ibyaha by'intambara. Izo mvugo zikaba zishobora kugaragaza gusa impamvu zatumye ibyo byaha bya jenoside bikorwa ndetse n'uburyo byakozwemo.

70. Ubwo nyuma Urugereko rwasuzumaga ibikorwa byihariye binyuranyije n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II, ziriya mvugo nyinshi zerekeranye n'igisirikare ntizongeye gukoreshwa, ariko havuka ikindi kibazo.

71. Urugereko ku bwiganze bw'amajwi rurondora ibyaha Uregwa yakoreye hariya hantu hatatu, ibyo yakoreye Rusanganwa ndetse n'ibyo yakoreye abiswe A na B.

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72. Uko kurondora ibyaha Uregwa yakoze tunabisanga mu mitwe ibanza y'Inyandiko y'urubanza. Aho bitandukaniye gusa ni uko muri iyo mitwe, Urugereko rwerekanye impamvu bimwe muri ibyo bikorwa bigize ibyaha byibasiye inyokomuntu n'ibyo kuba icyitso cy'abakoze jenoside.

73. Mu isesesengura ry'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II, Urugereko ku bwiganze bw'amajwi ntirushaka gusobanura impamvu ibyo byaha binanyuranyije n'ayo masezerano mpuzamahanga yombi. N'ubwo ibyo byaha birondorwa inshuro nyinshi ariko haterekanwa isano iri hagati yabyo n'intambara, kubivuga gusa nta cyo bihamya na gito.

74. Mu gika cya 535 cy'Inyandiko y'urubanza, Urugerko ku bwiganze bw'amajwi rwafashe umwanzuro ukurikira : «Urugereko rusanze nta gushidikanya Uregwa yarashyigikiye abantu mu bwicanyi bwakozwe ku bushake ku kiriziya y'i Musha no ku gasozi ka Mwulire ». Na jye uwo mwanzuro ndawemera, ukaba wari unasanzwe uri mu myanzuro yo mu rwego rw'amategeko irebana na jenoside n'ibyaha byibasiye inyokomuntu. Nyamara ariko, ntiherekanwa impamvu ibyo byaha binanyuranyije n'Ingingo ya 4(a) ya Sitati yerekeranye n'ibyaha by'intambara, nkaba mbona hatarabayeho no kugeregeza kwerekana ko hari isano iri hagati y'ibyo byaha n'intambara.

75. Ibintu nk'ibyo kandi tubisanga ku gika cya 551 cy'Inyandiko y'urubanza aho Urugereko rwemeza nta gushidikanya ko Uregwa yashishikarije abantu ibikorwa byo gusambanya ku gahato n'iby'iyicarubozo byakorewe uwiswe A, n'iyicwa ry'uwiswe B, kandi ko yakoreye Rusanganw ibikorwa by'iyicarubozo kandi akamwica ku bushake. Nemera ko ibyo byaha byakozwe koko, ariko na none ntiherekanwa na gato impamvu ibyo byaha byibasiye inyokomuntu binanyuranyije n'Ingingo ya 4(a) ya Sitati yerekeye ibyaha by'intambara. By'umwihariko, ntihabayeho no kugerageza kwerekana isano iri hagati y'ibyo byaha n'intambara.

76. Bityo rero, kuva hatagaragajwe ko hari isano iri hagati y'ibyo byaha n'intambara, nta mpamvu yatuma kuri ibyo byaha hakurikizwa n'Ingingo ya 4 ya Sitati, ikubiyemo

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ibivugwa mu Ngingo ya 3 ihuriweho no mu Ngingo ya 4(2)(a) y'Amasezerano y'Inyongera ya II.

77. Ikibazo gihari ni uko imyumvire y'abacamanza bagenzi banjye idafite ishingiro mu rwego rw'amategeko kandi itanashingiye ku byabaye cyangwa ku isesengura ry'uburyo bwihariye ibyaha Uregwa ashinjwa byakozwemo. Kuri icyo kibazo, Urugereko rw'Ubujurire mu rubanza rwa *Kunarac* rwavuze ibi bikurikira*:*

> « Kugira ngo Urugereko rwa Mbere rw'Iremezo rwemeze niba igikorwa runaka gifitanye isano n'intambara, dore bimwe mu byo rugomba gushingiraho : kuba uwakoze icyaha yari mu barwanyi ; kuba uwakorewe icyaha atari mu barwanyi ; kuba uwakorewe icyaha ari umwe mu bantu bo ku ruhande ruhanganye n'urw'uwakoze icyaha ; kuba icyo gikorwa kigamije gushyigikira gahunda z'igisirikare ; no kuba icyo gikorwa cyarakozwe n'umuntu mu mirimo ye yemewe cyangwa mu rwego rw'iyo mirimo [798]».

78. Urugereko ku bwiganze bw'amajwi ntirwasuzumye ibyo bintu hamwe n'ibindi byinshi, kandi ibyo bintu ari ngombwa cyane mu kwerekana ko hariho isano hagati y'ibyaha Uregwa yakoze n'intambara. Kuba Urugereko ku bwiganze bw'amajwi rwarahisemo gusuzuma icyo kibazo ku buryo bwa rusange butagicengeye mu mizi, byatumye rudashobora kugera ku mwanzuro ufite ishingiro mu rwego rw'amategeko kandi ujyanye n'imyanzuro yarwo ku byabaye.

J. Umwanzuro

79. Nshingiye ku byavuzwe haruguru no ku bimenyetso byose byatanzwe muri uru rubanza, nageze ku mwanzuro w'uko hatatanzwe ibimenyetso bihamya nta shiti ko ibyaha Uregwa yakoze bifitanye isano n'intambara mu buryo butaziguye. Nta sano itaziguye iri hagati y'ibyo byaha n'ibikorwa bya gisirikare cyangwa n'abahohotewe n'iyo ntambara.

80. Nta bimenyetso byatanzwe bihamya ko ibyo bikorwa bitari bigize gusa ibyaha byibasiye inyokomuntu n'ibyo kuba icyitso cy'abakoze jenoside, ko ahubwo byari binagize ibyaha

[798] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 59.

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by'intambara. Ahubwo, ibimenyetso byatanzwe byerekana neza ko abasiviri b'Abatutsi bibasiwe n'ibyo bikorwa by'ubugizi bwa nabi bitewe na gahunda ya jenoside yari yateguwe n'abategetsi b'igihugu cyabo.

81. Bityo, muri uru rubanza ntibikwiye gufata umwanzuro wemeza ko hakozwe ibikorwa binyuranyije n'Ingingo ya 3 Ihuriweho, Amasezerano y'Inyongera ya II, n'Ingingo ya 4 (a) ya Sitati.

82. Bityo rero, nta kibazo kigomba kubaho cyo kumenya niba Uregwa agomba kuryozwa ibikorwa binyuranyije n'ayo mategeko mpuzamahanga. Kubera ibyo, nsanga Uregwa atagomba kuryozwa ibyo ashinjwa mu birego bya 7, 9, na 13.

83. Kubera izo mpamvu zose, nkaba ntanze iki gitekerezo cyanjye cyihariye.

Bikozwe mu rurimi rw'icyongereza n'igifaransa ; icyongereza ni cyo kigenderwaho iyo hari ibyanditse muri izo ndimi bitumvikana kimwe.

Arusha, ku wa 15 Gicurasi 2003

[Umukono]

Yakov Ostrovsky

Perezida w'inteko

[Kashi y'Urukiko]

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

UMURYANGO
W'ABIBUMBYE

Urukiko Mpanabyaha Mpuzamahanga
Rwashyiriweho u Rwanda

URUGEREKO RWA MBERE RW'IREMEZO III

Umwimerere: Icyongereza

Abacamanza:	Yakov Ostrovsky, Presiding Lloyd G. Williams, QC Pavel Dolenc
Gerefiye:	Adama Dieng
Itariki:	15 Gicurasi 2003

POROKIRERI

Aburana na:

LAURENT SEMANZA

Case N° TPIR-97-20-T

Igitekerezo cy'Umucamanza Pavel Dolenc cyihariye kandi kinyuranye n'icyabagenzi be

---

Ibiro bya Porokireri:

Chile Eboe-Osuji

Abavoka bunganira Uregwa:

Charles Acheleke Taku

CIII03-0021K

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Sadikou Ayo Alao

A. Intangiriro

1. Mu gusuzuma ikibazo cyo gushinja no guhamya Uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe muri uru rubanza, Urugereko rwagendeye ku gitekerezo cyasobanuwe mu rubanza rwa Musema mu bujurire, cyemera ko uregwa ashobora guhamywa ibyaha binyuranye hashingiwe ku bikorwa bimwe iyo ibyo byaha bifite bimwe mu bibiranga bitandukanye[799]. Sinemera iyo nzira yakoreshejwe uko yakabaye kubera impamvu ngiye gusobanura muri iyi nyandiko ikubiyemo igitekerezo cyanjye cyihariye. Uko mbibona, ibisabwa byasobanuwe kandi byagendeweho mu rubanza rwa Musema mu bujurire nta sesengura ryimbitse byakorewe kandi byatuma uregwa ahamwa n'ibyaha binyuranye hashingiwe ku bikorwa bimwe aho bitari ngombwa. N'ubwo ibisabwa byavuzwe mu rubanza rwa Musema mu bujurire bigamije kugabanya ibyemezo bihamya uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe, hashyirwaho icyitonderwa ko buri cyaha mu biregerwa hamwe kigomba kuba gifite ibikigize bimwe binyuranye n'ibigize ibindi, ntibibuza ko mu by'ukuri guhamya uregwa ibyaha binyuranye ku bikorwa bimwe, hashingiwe ku ngingo zinyuranye bishobora iteka gukorwa ku byaha bitatu biteganywa na Sitati, nta nkomyi yo mu rwego rw'amategeko.

2. Bityo, kubera ko bisa n'aho ibyaha byari impurirane y'imbonezamugambi nk'uko bisobanurwa hano hasi, sinshobora guhamya Uregwa itsembatsemba nk'icyaha cyibasiye inyokomuntu (ikirego cya 5), cyangwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho (ikirego cya 7 n'icya 13).

3. Mu bukemuramanza bw'uru Rukiko no mu bwa TPIY, rimwe hakoreshwa ijambo ryo mu cyongereza « *crime* » ubundi hagakoreshwa « *offence* » bashaka kuvuga inyito y'icyaha mu rwego rw'amategko cyangwa igikorwa kibujijwe cyangwa ingaruka y'icyo gikorwa. Kugira ngo hirindwe urwo rujijo, ndakoresha irindi jambo ryo mu cyongereza ari ryo « *criminalisation* » mu rwego rwo kwerekana inyito y'icyaha mu mategeko.

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[799] Urubanza rwa Semanza, Inyandiko y'urubanza, ibika 408 na 409, hasubirwamo ibyanditse mu Nyandiko y'urubanza rwa Musema mu bujurire, ibika 361, 363, 369.

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4. Muri iyi nyandiko ikubiyemo igitekerezo cyanjye cyihariye, ndakoresha amagambo « impurirane y'imbonezamugambi » na « impurirane y'imbonezabyaha », yumvikana neza mu muryango w'amategeko ashingiye ku y'Abaromani ari wo mu cyongereza witwa *«civil law»*, kandi ayo magambo yinjijwe mu bukemuramanza bw'Inkiko zombi zimaze kuvugwa. Habaho impurirane mbonezabyaha iyo uregwa yakoze ibyaha birenze kimwe, byaba ari icyaha kimwe yakoze inshuro zinyuranye cyangwa se byaba ari ibyaha binyuranye yakoze mu bikorwa bitandukanye. Bigaragara ko ibyaha ari imbonezabyaha iyo hari urutonde rw'ibyaha binyuranye, ariko bifite aho bihuriye bya hafi, byose byujuje ibisabwa kugira ngo icyaha runaka kibeho, ariko bifatwa nk'icyaha kimwe, kabone n'iyo cyaba ari icyaha cy'imaragihe. Bavuga ko hariho impurirane y'imbonezamugambi iyo igikorwa kimwe cyangwa icyabaye kimwe bivuyemo ibyaha birenze kimwe[800]. Havugwa ko hariho ibisa n'icyaha mbonezamugambi iyo kubona isano ibyaha bihuriyeho bisaba isesengura rihanitse kurushaho.

B. Impurirane y'imbonezamugambi iyo ikoreshejwe nta gusesengura byimbitse: Ubukemuramanza bw'Inkiko zombi zidahoraho

5. Iyo usuzumye ubukemuramanza bw'uru Rukiko b'ubwa TPIY, usanga ikibazo cyo guhamya uregwa ibyaha binyuranye hashingiwe ku bikorwa cyarahagamye ingereko za mbere z'iremezo kuva ku rubanza rwa mbere zaburanishije, ugasanga na none ibisubizo izo Nkiko zombi zatanze kuri icyo kibazo bigenda bidahura na gato. Iri sesengura rirerekana kandi ko ibitekerezo bishingiye ku mategeko byagiye bigenderwaho mu gusubiza ibyo bibazo byagiye bihindagurika. Mu manza za mbere, TPIR yakoze ku buryo guhamya uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe bidakunda kubaho[801], mu gihe TPIY yo yagiye isuzuma icyo kibazo iyo gusa yabaga igeze mu cyiciro

[800] Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, ibika 662.

[801] Reba, nk'urugero, Inyandiko y'urubanza rwa Musema mu rw'iremezo, ibika 289-299; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, ibika 108-119; Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 625-650; Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, ibika 461-470.

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cy'igenagihano[802]. Mu cyiciro cya kabiri cy'iyo mitekerereze, Urugereko rw'Ubujurire rwa TPIY rwagabanyije ibyo guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe rukurikije igitekerezo ko buri cyaha kigomba kuba gifite ibintu bikigize byihariye bitaboneka mu kindi[803]. Iki gitekerezo cyaje nyuma kwemezwa no gukurikizwa n'Urugereko rw'Ubujurire rwa TPIR[804]. Mu byo nita icyiciro cya gatatu cy'iyo mitekerereze, Urugereko rw'Ubujurire rwa TPIY rwerekanye icyitonderwa ku birebana n'uko hagomba kubaho ibigize icyaha byihariye bitaboneka mu kindi, ruvuga ko bishobora kudakemura buri gihe ingaruka zishobora guterwa no guhamya uregwa icyarimwe ibyaha binyuranye hashingiwe ku bikorwa bimwe[805]. Nemera uyu mwanzuro kandi nifuza ko hakwitabwaho n'ibindi bitekerezo bya ngombwa birebana n'icyo kibazo.

6. Kuva ku rubanza rwaciwe mbere n'uru Rukiko, ari rwo rwa Akayesu, rwemeye ko guhamya icyarimwe uregwa ibyaha binyuranye bikomoko ku bikorwa bimwe ari ikintu kitagomba kubaho hato na hato kubera ko bishobora gukururira uregwa akarengane. Urugereko rwa Mbere rw'Iremezo rwemeje ko guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe bitemewe muri rusange, kubera ko bibujijwe guhana umuntu inshuro zirenze imwe ku cyaha kimwe[806]. Hagamijwe kugabanya ibyemezo byo guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe, Urugereko rwa Mbere rw'Iremezo rwerekanye ibintu bitatu byagenderwaho mu kureba niba byakwemerwa guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe: (1) iyo ibintu bigize buri cyaha binyuranye n'ibigize ikindi; cyangwa (2) iyo ingingo z'amategeko ziteganya ibyo byaha zirengera inyungu zitandukanye; cyangwa (3) iyo ari ngombwa guhamya Uregwa ibyaha binyuranye kugira ngo

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[802] Reba, nk'urugero, Inyandiko y'urubanza rwa Furundzija mu rw'iremezo, ibika 292, 296; Inyandiko y'urubanza rwiswe urwa Celebici mu rw'iremezo, igika 1286; Urubanza rwa Tadic, Icyemezo ku cyifuzo cy'Ubwunganizi cyerekeranye n'imyandikire y'Inyandiko y'ibirego, IT-94-1-T, Urugereko rwa Mbere rw'Iremezo, 14 Ugushyingo 1995.

[803] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 412.

[804] Inyandiko y'urubanza rwa Musema mu bujurire, ibika 361, 363.

[805] Inyandiko y'urubanza rwa Kunarac mu bujurire, ibika 168-198.

[806] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 462.

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hasobanurwe ku buryo bwuzuye ibyo uregwa yakoze[807]. Nyamara ariko, guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe ntibyemewe iyo icyaha kimwe cyoroheje kiba gikubiye mu kindi, cyangwa iyo uregwa ashinjwa nk'uwatsotsobye icyaha akongera agashinjwa nk'icyitso cy'abatsotsobye icyo cyaha nyirizina[808].

7. Mu rubanza rwa Kayishema na Ruzindana, Urugereko rwa Mbere rw'Iremezo, ku bwiganze bw'amajwi, rwagabanyije ibintu bisabwa kugira ngo icyo gitekerezo gikubiye mu rubanza rw'Akayesu gishobore gukurikizwa, bityo rukaba rwarakuyemo ibirebana no gusobanura neza imyitwarire mibisha y'uregwa, maze rurekeramo ibindi bisabwa bibiri, ariko Umucamanza Khan yatanze igitekerezo kinyuranye n'icya bagenzi be kuri icyo kibazo. Ukurikije icyo gitekerezo, guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe bigomba kwemerwa iyo buri cyaha gifite ibikigize bitaboneka mu kindi cyangwa iyo amategeko abiteganya arengera inyungu z'umuryango muntu zinyuranye[809]. By'umwihariko, Urugereko rwasuzumye ibirebana no guhamya icyarimwe uregwa jenoside, n'itsembatsemba nk'icyaha cyibasiye inyokomuntu maze rusanga ibintu byo mu rwego rw'amategeko bigize jenoside binyuranye n'ibigize ibyaha byibasiye inyokomuntu, ariko ruvuga ko ibigize kimwe bishobora no kuba bigize ikindi mu gikorwa kimwe runaka[810]. Muri urwo rubanza, Urugereko rwasanze ibigize jenoside biboneka no mu buhotozi no mu itsembatsemba nk'ibyaha byibasiye inyokomuntu kubera ko ibimenyetso bimwe ari byo byashingiweho mu guhamya ibyo birego byombi[811]. Bityo, inyungu z'umuryango muntu zarengerwaga muri ibyo byaha bitatu zari zimwe, kandi n'ibigize ibyo byaha byari bimwe[812]. Ubuhotozi n'itsembatsemba nk'ibyaha byibasiye inyokomuntu byari « bikubiye » muri jenoside, ibyo bigatuma ibyo

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[807] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 468.

[808] Inyandiko y'urubanza rwa Akayesu mu rw'iremezo, igika 468.

[809] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 627.

[810] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 636.

[811] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 647.

[812] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 641-643.

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byaha uko ari bitatu bihinduka «icyaha kimwe »[813]. Kubera ibyo, guhamya icyarimwe uregwa ibyo byaha bitatu ntibyaba bikwiye, ntaho byaba bishingiye, kandi ntaho byaba bitaniye no guhana kabiri uregwa ku cyaha kimwe[814].

8. Umucamanza Khan mu gitekerezo cye kinyuranye n'icya bagenzi be yasanze guhamya uregwa ibyaha binyuranye hashingiwe ku gikorwa kimwe byemewe, kandi avuga ko ingaruka zabyo zasuzumwa gusa mu gihe cy'igenagihano[815]. Yavuze ko n'ubwo mu bukemuramanza bwo mu bihugu ibyemezo bigenda bifatwa bitandukanye, ubukemuramanza mpuzamahanga bwo budasobanya kuri icyo kibazo kuko busanga kigomba gukemurwa mu gihe cy'igenagihano[816].

9. Igitekerezo cya Khan kinyuranye n'icya bagenzi be cyaje gikurikira ibyemezo n'imanza bya TPIY, byari bishingiye ku mwanzuro wafashwe mbere ku ngoboka mbanzirizarubanza yatanzwe mu rubanza rwa *Tadic*, wemezaga ko gushinja no guhamya icyarimwe uregwa ibyaha binyuranye by'imbonezamugambi bikomoka ku bikorwa bimwe ari ikintu cyemewe muri rusange kubera ko kumuhamya icyarimwe ibyo byaha ari ingirakamaro gusa « iyo hari ikibazo cy'ibihano kigomba gukemurwa »[817]. Hakurikijwe icyo gitekerezo cyatanzwe mu rubanza rwa Tadic, Porokireri afite ububasha busesuye bwo gushinja uregwa ibyaha binyuranye mu buryo bukomatanyije cyangwa se yerekana ko kimwe muri byo kiramutse kitamuhamye yaryozwa ikindi, kandi ibyo byaha

[813] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, igika 648.

[814] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 649-650.

[815] Inyandiko y'urubanza rwa Kayishema na Ruzindana, Igitekerezo cy'Umucamanza Tafazzal Hossain Khan cyihariye kandi kinyuranye n'icya bagenzi be ku birebana n'ibyemezo byafashwe ku birego by'ibyaha byibasiye inyokomuntu/ubwicanyi n'ibyaha byibasiye inyokomuntu /itsembatsemba, Urugereko rwa Mbere rw'Iremezo, igika 6.

[816] Inyandiko y'urubanza rwa Kayishema na Ruzindana mu rw'iremezo, Igitekerezo cy'Umucamanza Tafazzal Hossain Khan cyihariye kandi kinyuranye n'icya bagenzi be ku birebana n'ibyemezo byafashwe ku birego by'ibyaha byibasiye inyokomuntu/ubwicanyi n'ibyaha byibasiye inyokomuntu/itsembatsemba, ibika 12, 23.

[817] Urubanza rwa Tadic, Icyemezo ku cyifuzo cy'ubwunganizi cyerekeranye n'imyandikire y'Inyandiko y'ibirego, IT-94-1-T, Urugereko rwa Mbere rw'Iremezo, 14 Ugushyingo 1995, igika 17. Reba kandi Inyandiko y'urubanza rwiswe urwa Celebici mu rw'iremezo, igika 1268.

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bikomoka ku gikorwa kimwe. Umwanzuro urimo inyurabwenge ni uko uregwa ashobora guhamywa ibyaha binyuranye hashingiwe ku bikorwa bimwe, ko ariko igihano kigomba kugaragaramo imyitwarire mibisha y'uregwa, aho kwita ku « ku buryo ibyaha byaregewe »[818].

10. Mu rubanza rwa *Rutaganda* no mu rwa *Musema*, Urugereko rwa Mbere rw'Iremezo rwemeye ko bishoboka guhamya icyarimwe uregwa ibyaha bibiri cyangwa birenzeho bikomoka ku gikorwa kimwe kubera impamvu zinyuranye. Urugereko rwa Mbere rw'Iremezo rwashimangiye imyanzuro yafashwe mu rubanza rw'Akayesu maze rwemeza ko ibyaha bikubiye muri Sitati bigizwe «n'ibibiranga bitandukanye» kandi ko ingingo zibiteganya zigamije kurengera inyungu zitandukanye[819]. Na none, izo manza zombi zashyigikiye igitekerezo cy'Umucamanza Khan kinyuranye n'icya bagenzi be, by'umwihariko ku birebana n'ukuntu guhamya uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe ari ikintu cy'ingirakamaro mu kugaragaza imiterere yuzuye y'ibyaha byaregewe[820].

11. Mu rubanza rwiswe urwa *Celebici*, Urugereko rw'Ubujurire ntirwashyigikiye igitekerezo cyo guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe cyagendeweho n'Ingereko za Mbere z'Iremezo zimwe na zimwe, ahubwo rwavuze ko kubera impamvu zo gucira uregwa urubanza mu buryo buboneye, ibyaha binyuranye ari byo byonyine bishobora gutuma uregwa ahamywa buri cyose[821]. Urugereko rw'Ubujurire

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[818] Urubanza rwa Tadic, Iyemezo ku cyifuzo cy'Ubwunganizi cyerekeranye n'imyandikire y'Inyandiko y'ibirego, IT-94-1-T, Urugereko rwa Mbere rw'Iremezo, 14 Ugushyingo 1995, igika 17.

[819] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 297; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 117.

[820] Inyandiko y'urubanza rwa Musema mu rw'iremezo, igika 296; Inyandiko y'urubanza rwa Rutaganda mu rw'iremezo, igika 116.

[821] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 412. Ibi bisabwa byagiye byemezwa kandi bigenderwaho mu zindi manza zaciwe nyuma na TPIY. Reba, nk'urugero, Inyandiko y'urubanza rwa Kupreskic mu bujurire, ibika 385-388; Inyandiko y'urubanza rwa Jelisic mu bujurire, igika 82; Inyandiko y'urubanza rwa Vasiljevic mu rw'iremezo, ibika 265-266; Inyandiko y'urubanza rwa Krnojelac mu rw'iremezo, ibika 502-503; Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, ibika 213-215; Inyandiko y'urubanza rwa Krstic mu rw'iremezo,

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rwemeje ko guhamya icyarimwe uregwa ibyaha mbonezamugambi bikomoka ku bikorwa bimwe bishoboka iyo ibibigize bitandukanye ku buryo bugaragara (igitekerezo cy'uko buri cyaha kiba gifite ibikiranga bitaboneka mu kindi)[822]. Urugereko rw'Ubujurire rwasanze bitemewe guhamya uregwa, hashingiwe ku bikorwa bimwe, ibyaha by'intambara biteganywa n'Ingingo ya 3 ya Sitati ya TPIY n'ibyaha binyuranyije n'Amasezerano Mpuzamahanga y'i Jeneve hakurikijwe Ingingo ya 2 ya Sitati kubera ko ibibigize bidatandukanye ku buryo bugaragara, ukurikije uko ibintu byari byifashe igihe byakorwaga[823]. Bityo, Urugereko rw'Ubujurire rwakurikije ihame ryo kugendera ku cyaha gikubiyemo ibintu byihariye bitaboneka mu kindi[824]. Urugereko rw'Ubujurire mu rubanza rwa Musema rwagendeye kuri icyo gitekerezo[825].

12. Nyamara ariko, n'ubwo Urugereko rw'Ubujurire mu rubanza rwiswe urwa Celebici rwemeye igitekerezo cy'uko buri cyaha kigomba kuba gifite ibikigize bitaboneka mu kindi, babiri mu bacamanza batanu bari bagize inteko basanze iyo myumvire iteye ikibazo[826]. Abacamanza Hunt na Bennouna bavuze mbere na mbere, nk'ihame, ko guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe ari ikintu kigomba kwirindwa kubera ko birenganya ku maherere uregwa[827]. Bemeye ko bishoboka guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe iyo buri

igika 664; Inyandiko y'urubanza rwa Kordic na Cerkez mu rw'iremezo, igika 814-818; Inyandiko y'urubanza rwa Kunarac mu rw'iremezo, ibika 549-552.

[822] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 412.

[823] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, ibika 423-427.

[824] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, igika 413.

[825] Inyandiko y'urubanza rwa Musema mu bujurire, ibika 361, 363.

[826] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, Ibitekerezo by'Abacamanza David Hunt na Mohamed Bennouna byihariye kandi binyuranye n'ibya bagenzi babo.

[827] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, Ibitekerezo by'Abacamanza David Hunt na Mohamed Bennouna byihariye kandi binyuranye n'ibya bagenzi babo, ibika 22, 23 (ruzirikana akaga gakururwa « n'igihano n'umugayo wa rubanda iyo umuntu *yahamijwe icyaha* », n'ingaruka bigira ku gihano, gufungurwa by'agateganyo, gufungurwa igihe cyagenwe kitaragera, kuba yugarijwe no kongererwa ibihano yongeye guhamwa n'icyaha mu rundi rukiko (inyuguti ziberamye zerekana aho bishimangiye mu mwimerere).

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cyaha muri ibyo gifite ibikigize bitaboneka mu kindi[828]. Nyamara ariko, mu gitekerezo cy'abo bacamanza baganjwe mu majwi, ibyo bigomba kwibanda gusa ku nyito ibikorwa by'uregwa bihabwa mu mategeko *(ibikorwa bifatika bigize icyaha* hamwe *n'umugambi wo gukora icyaha*), ntabwo bigomba kwibanda ku bibigize biri mu mategeko cyangwa mu bika ibindi biba bishingiyeho, kubera ko izo ngingo rusange nta kintu gikubiyemo gifite akamaro mu kwerekana imyitwarire mibisha y'uregwa cyangwa cyagirira akamaro abakorewe icyaha[829].

13. Mu rubanza rwa Kunarac, Urugereko rw'Ubujurire rwa TPIY rwemeye igitekerezo cyagendeweho mu bujurire mu rubanza rwiswe urwa Celebici cy'uko buri cyaha kigomba kuba gifite bimwe mu bikigize bitaboneka mu kindi, kandi runabikurikiza ku birebana n'ibyaha by'intambara by'impurirane y'imbonezamugambi biteganywa n'Ingingo ya 3 no ku birebana n'ibyaha byibasiye inyokomuntu biteganywa n'Ingingo ya 5 ya Sitati ya TPIY[830]. Nyamara ariko, Urugereko rw'Ubujurire rwatanze icyitonderwa ko icyo gitekerezo «ushobora kwibeshya ko byoroshye kukigenderaho» kandi ko bigoye kugikurikiza mu buryo «budahuzagurika kandi bushyira imbere inyungu z'ubutabera»[831]. Urugereko rw'Ubujurire rwemeye ko guhamya uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe bishobora koko kuviramo uregwa akarengane kandi kadashobora kuvanwaho n'ibihano bikomatanyije[832]. Urugereko rw'Ubujurire rwemeje ko kuba byemewe guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe usanga amaherezo bihuje n'igitekerezo cy'uwashyizeho amategeko, kandi rwasanze

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[828] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, Ibitekerezo by'Abacamanza David Hunt na Mohamed Bennouna byihariye kandi binyuranye n'ibya bagenzi babo, igika 24.

[829] Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, Ibitekerezo by'Abacamanza David Hunt na Mohamed Bennouna byihariye kandi binyuranye n'ibya bagenzi babo, ibika 25-27, 33. Reba kandi Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, igika 699 (« kugira ngo hashobore gukurikizwa amahame arebana no gushinja uregwa ibyaha binyuranye bikomoka ku bikorwa bimwe bivugwa hano hejuru, ikigomba kwitabwaho ni ibyaha byihariye aho kwita ku matsinda anyuranye y'ibyaha » (ayo magambo aciyeho umurongo mu mwimerere mu rwego rwo kuyashimangira).

[830] Inyandiko y'urubanza rwa Kunarac mu bujurire, ibika 168-198.

[831] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 172.

[832] Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 169.

Inama Ishinzwe Amahoro ku Isi yarifuzaga ko ibyaha byose uko byakabaye « byerekanwa uko biteye kandi bihanwa mu buryo bukwiye »[833].

14. Uko mbibona, ubukemuramanza bw'Inkiko zombi zidahoraho buvuga ko, mu by'ukuri, guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe ari ikintu kitagomba kugirwa akamenyero kubera ko bishobora kuviramo uregwa akarengane. Ingereko zinyuranye zerekanye ibitekerezo bitandukanye bigamije gushyigikira iyo ntego. Igitekerezo cy'uko buri cyaha kigomba kuba gifite bimwe bikigize bitaboneka mu kindi, cyatanzwe n'Urugereko rw'Ubujurire mu rubanza rwitiriwe Celebici no mu rwa Musema, gishingiye kuri icyo kibazo. Nyamara ariko, mu by'ukuri, icyo gitekerezo nta nkurikizi igaragara cyagize mu kugabanya akamenyero ko guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe. Ndakeka ko icyo kibazo ari cyo Urugereko rw'Ubujurire mu rubanza rwa *Kunarac* rwatanzeho icyitonderwa ruvuga ko igitekerezo cyavuzwe kitagomba gukurikizwa uko kiri gusa hatazirikanywe imiterere ya buri rubanza.

15. Uko mbibona, icyo gihirahiro ni ikintu kigaragara no muri uru Rukiko, kubera ko amatsinda atatu y'ibyaha biteganywa na Sitati ya TPIR, ari yo jenoside, ibyaha byibasiye inyokomuntu, n'ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II, bifite ibibigize binyuranye biteganywa n'amategeko. Ni ngombwa kwibutsa ko igitekerezo gikubiye mu rubanza rwiswe urwa Celebici cyatanzwe mu rwego rwo kubonera igisubizo ibibazo byarebanaga no guhamya icyarimwe uregwa ibyaha binyuranye bikomoka ku bikorwa bimwe hashingiwe ku Ngingo ya 2 n'iya 3 za Sitati ya TPIY. Igitangaje ni uko igitekerezo cyatanzwe hagamijwe kugabanya umubare w'ibyemezo bihamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe muri TPIY cyabaye nk'uruhushya rusange muri TPIR rwo guhamya uregwa ibyaha muri ubwo buryo hakurikijwe ingingo zinyuranye za Sitati ya TPIR, kandi iyo sitati ifite ingingo imwe gusa yerekeranye n'ibyaha by'intambara. Mu rubanza rwa Musema, Urugereko rw'Ubujurire rwirinze

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833 Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 178.

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kwemeza iyo ngaruka igaragara, bityo bikaba byaratumye rureka gukurikiza igitekerezo kiri mu rubanza rwa Akayesu gishyiraho imbibi mu guhamya uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe, ahubwo rwahisemo igitekerezo gikubiye mu rubanza rwiswe urwa Celebici cyita gusa ku kureba niba buri cyaha gifite bimwe bikigize bitaboneka mu kindi[834].

16. Iki kibazo kiremerezwa kurushaho n'ukuntu ibintu byari byifashe mu gihe ibyaha byakorerwaga mu Rwanda mu wa 1994, aho jenoside, yari mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abasiviri b'Abatutsi, yakozwe mu gihe hariho intambara. Bityo, ibikorwa bimwe byabaye muri kiriya byujuje ibigize buri cyaha muri biriya bitatu biteganywa na Sitati. Kubera iyo mpamvu muri rusange, buri gikorwa kibisha gishobora kubarwa nk'ikinyuranyije n'ingingo eshatu za Sitati ziteganya buri yose icyaha cyihariye gifite ibyo gitandukaniyeho n'ibindi.

17. Uko mbibona, ibyo byagezweho ntibihuje n'amahame y'ibanze y'amategeko. Hakurikijwe inyurabwenge, kimwe n'ihame ryo mu muryango w'amategeko wa « *civil law* » ryitwa mu kilatini «*ultima ratio*» [icyo wiyambaza kubera amaburakindi], abashyiraho amategeko bagomba guhana igikorwa cy'ubugizi bwa nabi gihungabanya umuryango muntu cyangwa ingaruka zacyo nk'icyaha kimwe rukumbi iyo gusa nta kundi babigenza. Na none, hariho ihame ry'ibanze ry'ubutabera rivuga ko uregwa agomba guhanwa rimwe gusa ku cyaha kimwe. Kugira ngo ibyo bigerweho, abashyiraho amategeko bagomba gukura mu bya ngombwa bigize icyaha utuntu twihariye tuboneka rimwe na rimwe ariko tutari ngombwa mu kwerekana imiterere y'icyaha.

18. Kubera ibyo, sinemera umwanzuro uvuga ko Inama Ishinzwe Amahoro ku isi yari igamije ko uregwa yahamywa icyarimwe ibyaha binyuranye hashingiwe ku bikorwa bimwe[835]. Sitati ntabwo yateguwe hagamijwe gukora umubumbe w'amategeko mpanabyaha mpuzamahanga y'iki gihe, waba wemera ko umuntu ahamywa icyarimwe ibyaha binyuranye hashingiwe ku bikorwa bimwe; ahubwo usanga Sitati ahanini ari

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[834] Inyandiko y'urubanza rwa Musema mu bujurire, igika 368.

[835] Reba, nk'urugero, Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 178.

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ikintu gikocamye gikomatanyirijemo ibyaha bitatu bitandukanye mu mategeko ariko bifite ibibigize bimwe bigenda bihuriraho[836]. Niba uwashyizeho Sitati yari afite umugambi wo gutuma uregwa ashobora guhamywa icyarimwe ibyaha binyuranye hashingiwe ku bikorwa bimwe, hatitawe ku mahame asanzwe y'inyurabwenge, yo gushyira mu gaciro n'ay'ubutabera, uwo mugambi wagombye kuba warerekanywe mu buryo busobanutse neza muri Sitati. Byongeye kandi, niba koko Inama Ishinzwe Amahoro ku Isi yari igamije ko uregwa yahamywa icyarimwe ibyaha binyuranye hashingiwe ku bikorwa bimwe kugira ngo herekanwe imyitwarire mibisha ye yose uko yakabaye, guhamya uregwa ibyaha muri ubwo buryo hanyuma hakagenwa ibihano bikomatanyije si byo bituma iyo ntego igerwaho[837].

19. Na none, gushungura uko ibintu by'insobe birebana n'intambara yo mu Rwanda byari byifashe kugira ngo uvangure ibigize buri cyaha bitandukanye hagamijwe guhamya icyarimwe Uregwa ibyaha binyuranye hashingiwe ku bikorwa bimwe, bihabanye n'ihame rivuga ko icyemezo mpamyacyaha n'igihano bigomba kuba bihuje n'imyitwarire mibisha yose y'Uregwa. Uko mbibona, byaba byiza kurushaho hasuzumwe ibyo byabaye hamwe n'uruhare uregwa yabigizemo, nk'ikintu kimwe. Ibikorwa byose hamwe biramutse bibuzemo ikintu kigize icyaha runaka bishobora gufatwa nk'impamvu nyongeragihano. Mbona nta cyo bimaze guhamya uregwa, ushingiye ku gikorwa kimwe, icyaha cya

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[836] Reba Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, Ibitekerezo by'Abacamanza David Hunt na Mohamed Bennouna byihariye kandi binyuranye n'ibya bagenzi babo, ibika 21, 27.

[837] Niba igikorwa kimwe cyarashingiweho guhamya uregwa ibyaha bitatu byose biteganywa na Sitati, akenshi ingaruka ni uko hazagenwa ibihano bitatu birangirizwa icyarimwe. Uko mbibona, iki gitekerezo gituma ibihano byoroha kurushaho kandi gituma imyifatitire mibisha yose y'Uregwa idahanwa hakurikijwe uko ibintu biba byaragenze, kubera ko buri gihano kigenwa hatitawe ku byagenwe ku bindi byaha bibiri. Nk'urugero, igihano kimwe gishobora kugaragaza imyitwarire y'uregwa ku birebana n'ibyo yakoze mu rwego rw'intambara, ikindi gihano kigaragaza imyitwarire ye mu birebana n'ibitero rusange, naho icya gatatu kigaragaza imyitwarire ye muri bimwe mu bikorwa bigize jenoside; nta gihano kimwe rukumbi gikomatanyije kizashobora kugaragaza imyitwarire ye yose hakurikijwe uko ibintu byagenze muri rusange. Ku rundi ruhande, iyo ibyabaye byitaweho hakurikijwe uko ibintu byose byari byifashe, ku buryo umuntu ahamywa icyaha kimwe rukumbi ndetse akagenerwa n'igihano kimwe gikwiye, ibyabaye byose by'ingenzi byagaragarira mu cyemezo mpamyacyaha no mu gihano.

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jenoside, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara, hagamijwe gusa kwerekana amasura atatu y'uko ibintu byari byifashe.

C. Imiterere nyakuri y'impurirane mbonezamugambi

20. Ntekereza ko inshoza y'ibyaha by'impurirane mbonezamugambi yumvikana neza, hatitawe ku magambo afite utuntu atandukanyeho akoreshwa mu miryango y'amategeko. Iyo ibyaha byakozwe mu buryo bw'impurirane y'imbonezamugambi, uregwa ashobora guhamywa no guhanirwa icyarimwe ibyaha binyuranye hashingiwe ku bikorwa bimwe, ibyo bikaba binyuranyije n'amahame remezo y'ubutabera kandi bikaba bishobora kurenganya uregwa. By'umwihariko, guhamya icyarimwe uregwa ibyaha binyuranye hashingiwe ku gikorwa kimwe ni ukumubonerana ku maherere kandi bishobora kumugiraho ingaruka mbi, nko kongererwa igihano cyangwa kugabanyirizwa amahirwe yo gufungurwa mbere y'igihe yakatiwe[838].

21. Igitekerezo gikubiye mu rubanza rwiswe urwa Celebici no mu rwa Musema gishingiye ku isesengura ritimbitse ry'ibyaha by'impurirane mbonezamugambi, hagendewe ku magambo yerekana ibigize ibyaha mu rwego rw'amategeko, hakubiyemo ibyerekana uko ibintu byari byifashe, ariko nta kintu gifatika kigendeweho. Iyi mitekerereze ntiha agaciro ibintu bisa nk'ibitandukanye, byaba ari ibirebana n'ibyabaye mu Rwanda cyangwa se ibirebana n'urubanza ubwarwo. Imitekerereze nk'iyo ntishobora kandi gutuma habaho isesengura ku buryo bukwiye ryo kumenya niba inyito z'ibyaha zifite koko ikizitandukanya. Kubera ko imitekerereze yagaragajwe mu rubanza rwiswe urwa *Celebici no mu rwa Musema* byitwa ko yari igamije kugabanya ibyemezo bihamya icyarimwe uregwa ibyaha binyuranye koko hashingiwe ku gikorwa kimwe, nsanga iyo mitekerereze idahagije kugera kuri iyo ntego.

22. Bityo, igitekerezo ntanga ni icyo gukora isesengura hashingiwe ku miterere nyakuri y'ibintu. Mu gukora ntyo, nagendeye ku ihame risanzwe ryemewe muri uru Rukiko

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[838] Reba, nk'urugero, Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, Ibitekerezo by'Abacamanza David Hunt na Mohamed Bennouna byihariye kandi binyuranye n'ibya bagenzi babo, ibika 22, 23.

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ry'uko igihano kigomba kugaragaza ku buryo bwuzuye imyifatire mibisha yose y'uregwa. Guhamya icyarimwe uregwa ibyaha mbonezamugambi binyuranye hashingiwe ku bikorwa bimwe, harengerewe iyo ntego nta shingiro rero biba bifite. Guhamya uregwa ibyaha muri ubwo buryo, n'ubwo bivugwa ko byemewe, ntibigomba gufatwa nk'ihame ngenderwaho, ahubwo bigomba kuba irengayobora.

23. Muri rusange, nemera ko mu ikubitiro ari ngombwa kubanza gusesengura ibintu binyuranye bigize ibyaha kugira ngo umuntu amenye ibiboneka muri kimwe bitaboneka mu kindi. Nemera kandi ko iryo sesengura rigomba kuba rinakubiyemo uko ibintu byari byifashe. Nyamara ariko, ntekereza ko iryo gereranya rigomba kuba rikubiyemo isesengura nyakuri ryo kumenya niba ibigize buri cyaha ari ingenzi ku buryo bishobora guhindura imiterere cyangwa uburemere by'ibyaha bivugwa, bityo bikaba byatuma uregwa ahamywa icyarimwe ibyaha by'imbonezamugambi binyuranye biri mu ngingo zinyuranye hashingiwe ku bikorwa bimwe[839]. Icyo kintu cy'inyongera gisabwa cyaba ingirakamaro cyane cyane ukurikije ibyabaye mu Rwanda. Nk'uko byamaze kuvugwa, urebye uburyo ibyinshi mu byaha byabereye mu Rwanda mu wa 1994 byakozwemo, usanga bishobora kwinjizwa mu cyiciro icyo ari cyo cyose cya biriya byaha bitatu biteganywa na Sitati.

24. Ibyagenderwaho mu gusesengura imiterere nyakuri y'ibyaha bisanzwe biri mu bukemuramanza bw'Inkiko mpuzamahanga zidahoraho. Nk'urugero, ihame rivuga ko icyaha gikomeye kimira igito («*lex consumens derogat legi consumptae*», mu kilatini) na ryo rishobora gukurikizwa nk'ubundi buryo bwo gusuzuma ukuntu uregwa yahamywa icyarimwe ibyaha by'imbonezamugambi bikomoka ku gikorwa kimwe[840]. Icyaha kimwe kimira ikindi iyo ibyaha biteye kimwe, ariko uburemere bwabyo butandukanye cyane,

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[839] Reba, nk'urugero, Inyandiko y'urubanza rwiswe urwa Celebici mu bujurire, Ibitekerezo by'Abacamanza David Hunt na Mohamed Bennouna byihariye kandi binyuranye n'ibya bagenzi babo, igika 18 (« Nyamara ariko, ntitubona ko inyungu zirengerwa zavuzwe na Porokireri *zinyuranye mu by'ukuri* ku buryo byatuma uregwa ahamywa ibyaha binyuranye hashingiwe ku gikorwa kimwe ») (ni twe twabishimangiye tubyandika mu nyuguti ziberamye).

[840] Reba, nk'urugero, Inyandiko y'urubanza rwa Kunarac mu bujurire, igika 170; Inyandiko y'urubanza rwa Kupreskic mu rw'iremezo, igika 688.

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byateganyijwe mu rwego rwo kurengera inyungu zimwe z'umuryango muntu cyangwa inyungu zijya kuba zimwe, ariko bitandukanyijwe n'utuntu twihariye tubigize. Iyo bimeze gutyo, icyaha gikomeye kurusha ikindi kirakimira. Na none, uburyo bwo gukora icyaha bukomeye kurusha ubundi burabumira, bityo gutsotsoba icyaha bikamira guhamagarira abandi kugikora, cyangwa kubashyigikira, ndetse no kuryozwa icyaha nk'ukuriye abandi mu buryo ubwo ari bwo bwose.

25. Ihame ry'uko icyaha kitari nyamukuru gihanwa iyo gusa icyaha nyamukuru kidashobora guhanwa, ryagiye rikurikizwa n'Inkiko mpuzamahanga zidahoraho zombi, na ryo rishobora kugira akamaro mu gusuzuma ibirebana no guhana ibyaha by'imbonezamugambi[841]. Hashingiwe ku ihame rya «*lex primaria derogat legi subsidiariae*» [ryo mu kilatini], icyaha cyoroshye kurusha ikindi gishingirwaho iyo gusa igikomeye kurushaho kidashobora gushingirwaho. Isano hagati y'ibyo byaha ishobora kugaragazwa ku buryo bweruye mu ngingo z'amategeko hakoreshejwe nk'amagambo «niba nta kundi biteganyijwe» cyangwa «ibindi … bikorwa», cyangwa ishobora gucukumburwa hashingiwe ku miterere y'ibyaha bivugwa.

26. Ihame ry'icyaha gikubiye mu kindi na ryo rishobora kwifashishwa. Iyo ibikorwa uregwa ashinjwa bihanwa hashingiwe ku ngingo ebyiri cyangwa zirenze z'amategeko, ariko ushyize mu gaciro ukabona ko atahamywa icyarimwe ibyaha binyuranye bitewe n'uko icyaha kirushijeho koroha nta gaciro gakomeye cyahabwa, icyaha kirushijeho koroha gikubirwamo mu gikomeye kurushaho, hakurikijwe iryo hame.

D. Gukurikiza imiterere nyakuri y'ibyaha mbonezamugambi ku byabaye

27. Uko mbibona, jenoside ni icyaha gifite umwihariko kurusha ibyaha byibasiye inyokomuntu cyangwa ibikorwa binyuranyije bikomeye n'Ingingo ya 3 Ihuriweho, hamwe n'Amasezerano y'Inyongera ya II. Bityo, kubera amahame avuga ko ingingo y'amategeko iteganya icyaha gifite umwihariko cyangwa iyerekana ko icyaha gikubiye

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[841] Reba, nk'urugero, Inyandiko y'urubanza rwa Kvocka mu rw'iremezo, igika 228 (aho rwasanze ibindi bikorwa bibi birenze kameremuntu biteganywa n'Ingingo ya 5(i) mu miterere yabyo atari ibyaha by'ibanze).

mu kindi ari zo zikurikizwa iyo ibyaha byaregewe ari imbonezamugambi, ibyaha bigize jenoside ni byo bigomba kwitabwaho mbere ya byose ugereranyije n'ibikubiye mu matsinda y'ibyaha bindi bibiri byavuzwe.

28. Niba uregwa ashinjwa ibyaha by'imbonezamugambi kandi ukurikije uko ibintu biteye bikaba byujuje ibisabwa kugira ngo habeho ibyaha biteganywa muri ariya matsinda y'ibyaha avugwa, namuhamya icyaha cya jenoside. Urebye agaciro kahabwa ibigize ariya matsinda atatu y'ibyaha, nsanga umugambi wa jenoside, ari wo kurimbura itsinda ry'abantu runaka kubera impamvu z'ivangura, ari wo umaramaje mu gukomera, mu kuba urukozasoni no mu kugira ingaruka kurusha ariya matsinda y'ibyaha yandi abiri. Ukurikije ibyabereye mu Rwanda, jenoside imira ibyaha byibasiye inyokomuntu iyo ibyo byaha byombi bishingiye ku bikorwa bimwe byakorewe abaturge b'abasiviri kubera impamvu z'ivangura zimwe. Jenoside n'ibyaha byibasiye inyokomuntu bimira ibikorwa binyuranyije bikomeye n'Ingingoya 3 ihuriweho, hamwe n'Amasezerano y'Inyongera ya II iyo bishingiye ku bikorwa bimwe byakorewe abaturage b'abasiviri bazira impamvu z'ivangura, kubera ko isano iri hagati y'ibyaha Uregwa yakozwe n'intambara ari nto cyane ugereranyije n'umugambi wa jenoside, cyangwa ugereranyije n'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri.

29. Muri uru rubanza, Uregwa yashinjwe ibyaha bitandatu bishingiye ku bikorwa bimwe byakorewe ahantu hane. Urugereko rwamuhamije icyaha cyo kuba icyitso cy'abakoze jenoside (ikirego cya 3) n'icyo gushyigikira abakoze itsembatsemba (ikirego cya 5), hashingiwe ku bikorwa bimwe. Urugereko, ku bwiganze bw'amajwi, rushingiye ku mitekerereze yagendeweho mu rubanza rwa Musema ivuga ko buri cyaha kigomba kuba gifite ibintu by'umwihariko bikigize bitaboneka mu kindi, rwasanze muri uru rubanza harabayeho impurirane y'imbonezamugambi kandi byombi bihama Uregwa. Uko mbibona, ibigize jenoside bivugwa mu kirego cya 3 bimira ibigize icyaha cyibasiye inyokomuntu bivugwa mu kirego cya 5 kubera ko ukurikije ibyabaye bivugwa muri uru rubanza, jenoside yabaye mu rwego rw'ibitero rusange byakozwe kubera impamvu z'ivangura. Sinshobora rero guhamya Uregwa icyaha hashingiwe ku kirego cya 5 kubera

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ko bigaragara ko ibikivugwamo ari impurirane y'imbonezamugambi n'ibivugwa mu kirego cya 3.

30. Kubera izo mpamvu na none, sinshobora guhamya Uregwa ibikorwa binyuranyije n'Ingingoya 3 ihuriweho byakorewe ahantu habereye ubwicanyi (ikirego cya 7) kubera ko, ukurikije ibyabaye bivugwa muri uru rubanza, jenoside yari ifitanye isano n'intambara kandi ibyakozwe n'Uregwa ahabereye ibyaha bisobanurwa mu buryo burambuye mu kirego cya 3. Nsanga kandi ibikorwa binyuranyije n'Ingingo ya 3 Ihuriweho (ikirego cya 13) bigaragara ko ari impurirane y'imbonezamugambi n'ibyo gusambanya ku gahato, iyicarubozo, n'ubuhotozi nk'ibyaha byibasiye inyokomuntu (ibirego bya 10, 11, 12). Bityo, mbona Uregwa atagomba guhamywa icyaha kivugwa mu kirego cya 13.

E. Kuba bigaragara ko hariho impurirane y'imbonezabyaha

31. Hanyuma, ndifuza gusesengura ikibazo cy'impurirane y'imbonezabyaha igaragara. N'ubwo nta gice na kimwe cy'iyi Nyandiko y'urubanza nenga, ndifuza gutanga igitekerezo cyanjye kugira ngo nshimangire agaciro k'impurirane y'imbonezabyaha kagombye kuzitabwaho mu nyandiko zizakorwa nyuma zaba iz'ibirego cyangwa iz'imanza.

32. Urugero rukunze gutangwa rw'impurirane y'imbonezabyaha ni urw'ibyaha by'imaragihe, aho icyaha nyamukuru kiba kigizwe n'ibikorwa byinshi bifitanye isano byagiye bikurikirana kandi buri gikorwa cyujuje ibisabwa ngo kibe ubwacyo icyaha runaka. Iyo bimeze gutyo, birashoboka gufata icyo cyaha cyose uko cyakabaye cyangwa se ibyaha byose uko byagiye bikurikirana, nk'icyaha kimwe rukumbi. Kugira ngo ibyo bikorwa bishobore guhurizwa hamwe, ibintu bimwe bibihuza bigomba kwitabwaho, nko gukomeza gukora ibyaha by'ubwoko bumwe, kuba umugambi w'uwakoze ibyo byaha ari umwe, kuba bifite aho bihuriye bya hafi ku birebana n'igihe byakorewe, aho byakorewe, uwabikorewe cyangwa imiterere y'uwabikorewe, impamvu cyangwa umugambi, n'urwego byakozwemo. Gusobanukirwa neza n'ibyaha by'imaragihe ni ikintu gikomeye by'umwihariko ku birebana n'ibyaha mpuzamahanga biri muri Sitati, hakurikijwe cyane

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cyane uburyo ibikorwa byo guhonyora uburenganzira bw'ibanze bwa muntu byakorewe imbaga y'abantu mu Rwanda mu gihe gito.

33. Nyamara ariko, mu Nyandiko y'ibirego, Porokireri yagoretse ihame ry'impurirane y'imbonezabyaha kandi nta mpamvu n'imwe igaragara. Hakurikijwe ibivugwa ko Uregwa yagiye mu bikorwa by'ubwicanyi bine bitandukanye, ashinjwa ibyaha mu birego umunani bitandukanye, bitandatu muri byo bikaba bishingiye gusa ku bwicanyi muri rusange naho ibindi bibiri bikaba bishingiye, kuri bimwe, ku iyicarubozo n'ubuhotozi yakoreye Rusanganwa. Urebye neza imiterere ya biriya birego bitandatu, usanga bigaragara ko Porokireri afata ibikorwa byose by'ubwicanyi uko ari bine nk'igikorwa kimwe cy'imaragihe, kabone n'ubwo Inyandiko y'ibirego ivuga uburyo bunyuranye ibyaha byakozwemo n'ubwoko bunyuranye bw'ibyaha byakozwe, byakorewe abantu banyuranye, mu bihe n'ahantu binyuranye. Urugereko rwemera ko muri uru rubanza, ibikorwa bine by'ubwicanyi Uregwa ashinjwa bigize icyaha kimwe rukumbi. Uyu mwanzuro ndawemera kubera ko ushingiye ku isano iri hagati y'ibintu bigize ibyaha byarondowe hano hejuru no mu Nyandiko y'urubanza[842].

34. Nyamara ariko, ku birebana n'ibirego by'iyicarubozo n'ubuhotozi nk'ibyaha byibasiye inyokomuntu bikubiye mu kirego cya 11 n'icya 12, uburyo byaregewe ntibwumvikana cyane, kubera ko bishaka guhuriza hamwe ibikorwa bibiri byabaye bidafite aho bihuriye, birangwa n'uburyo butandukanye bwo gukora ibyaha, ababikorewe ari abantu batandukanye ndetse n'ahantu byakorewe hatandukanye: ibyo byaha bikaba ari iyicarubozo n'ubuhotozi byakorewe Rusanganwa ku itariki ya 13 Mata 1994 ku kiriziya y'i Musha, no guhamagarira abantu gusambanya no kwica Abatutsikazi byakozwe kuri uwo munsi umwe muri Komini ya Gikoro[843]. Ibyo birego by'iyicarubozo n'ubuhotozi

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[842] Inyandiko y'urubanza, igika 508. N'ubwo inshoza y'«uruhererekane rw'ibikorwa biri mu mugambi umwe» ivugwa mu Ngingo ya 2 y'Amategeko idahuye n'inshoza y'icyaha cy'imaragihe, ibyo bintu bimwe bigaragaza isano hagati y'ibikorwa bishobora kuba ingirakamaro mu kwemeza niba itsinda ry'ibyaha ibi n'ibi ryafatwa nk'aho rikubiyemo ibyaha by'imaragihe.

[843] Iki kibazo kinagaragarira mu kirego cya 13 (Ibikorwa binyuranyije n'Ingingo ya 3 Ihuriweho), kandi icyo kirego ntabwo Urugereko rwagifasheho icyemezo mpamyacyaha.

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bihuriza hamwe ibyo byaha bitandukanye bibiri bibishingiyeho, kandi Porokireri aterekana aho bihuriye. N'ubwo mu by'ukuri Porokireri afite ububasha busesuye bwo gutanga ibirego, ubwo bubasha ntagomba kubukoresha uko yishakiye, nta nyurabwenge akurikiza cyangwa mu buryo burenganya. Uko mbibona, kuba Porokireri atarashoboye gutanga ibirego mu Nyandiko y'ibirego mu buryo burimo inyurabwenge kandi busobanura neza imiterere y'ibirego n'aho bigarukira, bishobora kuviramo Uregwa akarengane mu gihe aba agomba gutegura imyiregurire ye asubiza inyandiko y'ibirego yuzuyemo ibintu by'urujijo kandi bidafite inyurabwenge. Uko mbibona, ibintu nk'ibyo byo gutanga ibirego uko wishakiye birababaje kandi ntibyagombye kwemerwa mu minsi iri imbere.

F. Umwanzuro

35. Kubera impamvu zimaze kuvugwa, sinshobora guhamya Uregwa ibyaha bivugwa mu bika bya 5, 7, cyangwa 13. Kubera ko imyitwarire mibisha y'Uregwa n'ubundi igaragararira mu bindi byaha yahamijwe, kumugira umwere kuri biriya byaha nta cyo byahindura ku gihano cye.

Bikozwe mu cyongereza no mu gifaransa ; icyongereza ni cyo kigenderwaho igihe hari ibyanditse muri izo ndimi bitumvikana kimwe.

Arusha, 15 Gicurasi 2003

[Umukono]

Pavel Dolenc

Umucamanza

(*Kashe y'Urukikol*)

UMUGEREKA WA I: INYANDIKO Y'IBIREGO

INYANDIKO Y'IBIREGO YAHINDUWE BWA GATATU

1. 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 »), arega :

LAURENT SEMANZA

Ibyaha bikurikira hashingiwe ku Ngingo ya 2, iya 3 n'iya 4 za Sitati y'Urukiko :

JENOSIDE, GUHAMAGARIRA ABANTU MU BURYO BUTAZIGUYE KANDI MU RUHAME GUKORA JENOSIDE, IBYAHA BYIBASIYE INYOKOMUNTU, N'IBIKORWA BINYURANYIJE BIKOMEYE N'INGINGO YA 3 IHURIWEHO N'AMASEZERANO Y'I JENEVE YO KU WA 12 KANAMA MU WA 1949, HAMWE N'INYONGERA YAYO YA II YO KU WA 8 KAMENA 1977.

2. UREGWA

2.1 **Laurent Semanza** yavukiye muri Komini ya Musasa, Perefegitura ya Kigali Ngari, muri Repubulika y'u Rwanda, mu wa 1944. Yabaye Burugumesitiri wa Komini ya Bicumbi mu gihe cy'imyaka makumyabiri, kugeza mu wa 1993 ubwo yasimburwaga na Juvénal Rugambarara.

3. INCAMAKE Y'IBYABAYE

3.1 Keretse biramutse bivuzwe ukundi ku buryo bweruye, ibikorwa binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara bivugwa muri iyi Nyandiko y'ibirego byabereye mu Rwanda hagati y'itariki ya 1 Mata n'iya 31 Nyakanga 1994.

3.4 Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, mu Rwanda hari ubwoko butatu : Abatutsi, Abahutu n'Abatwa.

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3.5 Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, mu Rwanda habaye ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko.

3.6 Nyuma y'igitero cyagabwe n'umutwe wa FPR mu Ukwakira 1990, politiki ya Leta y'u Rwanda yaranzwe no gufata Abatutsi nk'abanzi bagomba kwivunwa.

3.6.1 Iyo politiki yavugaga ko abanzi bo mu rwego rwa mbere ari Abatutsi, baba abari mu Rwanda cyangwa abari hanze yarwo bashakaga ubutegetsi, batemeraga ibyiza byazanywe na revolisiyo yo mu wa 1959 kandi bashakaga intambara. Umwanzi wo mu rwego rwa kabiri yari umuntu wese wateraga inkunga iyo ari yo yose uwo mwanzi wo mu rwego rwa mbere, akaba yarafatwaga nk'icyitso cya FPR.

3.6.2 Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, mu Rwanda hari intambara itari iyo mu rwego mpuzamahanga yari ishyamiranyije ingabo za Leta y'u Rwanda n'iza FPR. Abakorewe ibyaha bavugwa muri iyi Nyandiko y'ibirego bari abasiviri b'Abatutsi bo muri Komini ya Bicumbi n'iya Gikoro. Abo bantu nta ruhare bari bafite mu mirwano yabaga, bakaba baragombaga rero kurengerwa hakurikijwe Ingingo ya 3 Ihuriweho n'Amasezerano Mpuzamahanga y'i Jeneve hamwe n'Amasezerano y'Inyongera yayo ya II.

3.6.3 **Laurent Semanza** yari agamije ko ibyo bitero byagabwe ku bakorewe ibyaha bibarirwa mu bikorwa by'intambara itari iyo mu rwego mpuzamahanga kuko yumvaga ko abasiviri b'Abatutsi ari abanzi ba Leta na/cyangwa ibyitso bya FPR, kandi yibwiraga ko kurimbura abo Batutsi byari gufasha Leta gushyira mu bikorwa gahunda yayo yo kurwanya abanzi no gutsinda FPR.

3.7 Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, ishyaka rya MRND (Muvoma Iharanira Repubulika, Demokarasi n'Amajyambere ya Rubanda) ryari rimwe mu mashyaka ya politiki yari mu Rwanda. Abari bagize ishami ry'urubyiruko rwa MRND bitwaga Interahamwe. Abenshi muri bo baremye umutwe witwara gisirikare. Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, byaje kugera aho ijambo Interahamwe

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rikoreshwa no ku basiviri bagabaga ibitero ku basiviri bandi b'Abatutsi, hatitaweho amashyaka ya politiki cyangwa se imitwe abagabaga ibitero barimo.

3.8 **Laurent Semanza** yabaye Burugumesitiri wa Komini ya Bicumbi mu gihe kirenga imyaka makumyabiri. Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, Uregwa yari umwe mu bagize Komite Nyobozi ya MRND. Byongeye kandi, yari yarahawe umwanya w'ubudepite mu Nteko Ishinga Amategeko y'inzibacyuho yaguye yagombaga kujyaho hakurikijwe Amasezerano y'amahoro ya Arusha. Bityo rero, yari umuntu ufite ijambo rikomeye muri rubanda, haba muri Komini ya Bicumbi ndetse no muri Komini ya Gikoro byahanaga imbibi, akaba yari afite ububasha, bwaba ubwo yakomoraga ku mategeko cyangwa ubwo atayakomoragaho, bwo gutegeka no kugenzura abari mu mitwe yitwaraga gisirikare, cyane cyane Interahamwe n'abandi bantu barimo ingabo z'u Rwanda, abaporisi ba komini n'abandi bakozi ba Leta. Yitwaje ijambo yari afite muri rubanda n'ububasha bwe nk'umukozi wa Leta mu gushyigikira gahunda ya Leta yo kurwanya FPR.

3.9 Hagati y'umwaka wa 1991 n'uwa 1994, **Laurent Semanza** yayoboye amanama yavugiyemo amagambo yo gukangisha kugirira nabi Abatutsi n'abandi bantu batari abayoboke b'ishyaka rya MRND.

3.10 Guhera mu ntangiriro z'umwaka wa 1994, **Laurent Semanza** yayoboye amanama yari agamije guhamagarira abantu kwica abasiviri b'Abatutsi, gucura umugambi w'ubwo bwicanyi no kubutegura.

3.11 Kuva mu mwaka wa 1991, **Laurent Semanza** yateye inkunga kandi na we ubwe yitabiriye igikorwa cyo gutanga intwaro no guha imyitozo urubyiruko rwa MRND rwitwaga Interahamwe kandi rwitwaraga gisirikare. Izo Nterahamwe zari zifite inzego z'ubuyobozi zizwi kandi zihamye, zunganiraga ingabo z'igihugu kuko zakoranaga na zo muri iyo ntambara itari iyo mu rwego mpuzamahanga nk'uko byavuzwe haruguru (mu gaka ka 3.4.2), kandi zakomeje ibyo bikorwa byazo kugeza mu mwaka wa 1994. Mu gihe ibivugwa muri iyi Nyandiko y'ibirego byabaga, bamwe mu bari bagize iyo mitwe yitwaraga gisirikare bitabiriye mu buryo butaziguye ubwicanyi bwahitanye abasiviri

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b'Abatutsi. **Laurent Semanza** yari agamije ko ubwo bwicanyi bubarirwa mu bikorwa by'intambara itari iyo mu rwego mpuzamahanga nk'uko byavuzwe haruguru mu gaka ka 3.4.2.

3.12 Ku itariki ya 10 Mata 1994 cyangwa hafi y'iyo tariki, **Laurent Semanza** yakoranye bya hafi na Burugumesitiri wa Komini ya Gikoro ari we Paul Bisengimana mu gutegura no gushyira mu bikorwa ubwicanyi bwabereye i Ruhanga muri Komini ya Gikoro, aho abantu babarirwa mu bihumbi bari bahungiye ubwicanyi bwaberaga mu duce bari batuyemo.

3.13 Hagati y'itariki ya 9 n'iya 13 Mata 1994, **Laurent Semanza** yakoranye bya hafi na Burugumesitiri wa Komini ya Gikoro ari we Paul Bisengimana mu gutegura no gushyira mu bikorwa ubwicanyi bwabereye kuri kiriziya y'i Musha muri Komini ya Gikoro, aho abantu babarirwa mu magana bari bahungiye ubwicanyi bwaberaga mu duce bari batuyemo. Ku itariki ya 13 Mata 1994 cyangwa hafi y'iyo tariki, **Laurent Semanza** yayoboye igitero cyagabwe ku bantu bahungiye ku kiriziya y'i Musha, kandi icyo gihe na we ubwe yakoze ubwicanyi.

3.14 Hagati y'itariki ya 7 n'iya 20 Mata 1994, **Laurent Semanza** yateguye kandi ashyira mu bikorwa ubwicanyi bwabereye ku gasozi ka Mwulire, muri Komini ya Bicumbi, aho abantu babarirwa mu bihumbi bari bahungiye ubwicanyi. Ku itariki ya 16 no ku ya 18 Mata 1994 cyangwa hafi y'ayo matariki, **Laurent Semanza** yayoboye igitero cyagabwe ku bantu bari bahungiye ku gasozi ka Mwulire, kandi icyo gihe na we ubwe yakoze ubwicanyi.

3.15 Ku itariki ya 12 Mata 1994 cyangwa hafi y'iyo tariki, **Laurent Semanza** yateguye kandi ashyira mu bikorwa ubwicanyi bwabereye ku musigiti w'i Mabare muri Komini ya Bicumbi, aho abantu babarirwa mu magana bari bahungiye ubwicanyi. Ku itariki ya 12 Mata 1994 cyangwa hafi y'iyo tariki, **Laurent Semanza** yayoboye igitero cyagabwe ku bantu bari bahungiye ku musigiti w'i Mabare, kandi icyo gihe na we ubwe yakoze ubwicanyi.

3.16 Ubwicanyi buvugwa kuva ku gika cya 3.8 kugeza ku cya 3.13 bwahitanye abantu, abandi bubatera ubumuga bubazahaza umubiri no mu mutwe, hakubiyemo n'ibikorwa byo gusambanya ku gahato n'ibindi bikorwa by'urugomo rushingiye ku gitsina byakorewe Abatutsi. **Laurent Semanza** yari agamije ko ubwo bwicanyi bubarirwa mu bikorwa by'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR kuko yumvaga impunzi z'Abatutsi zari abanzi ba Leta na/cyangwa ibyitso bya FPR, nk'uko bivugwa mu gaka ka 3.4.2 no mu ka 3.4.3.

3.17 Hagati y'itariki ya 6 n'iya 30 Mata 1994, muri Komini ya Bicumbi n'iya Gikoro, **Laurent Semanza** yahamagariye, ategeka kandi ashishikariza imitwe yitwaraga gisirikare, cyane cyane Interahamwe n'abandi bantu, gusambanya ku gahato Abatutsikazi cyangwa kubakorera ibindi bikorwa bibatesha agaciro, kandi koko abo bantu basambanyije ku gahato Abatutsikazi banabakorera ibindi bikorwa bibatesha agaciro kubera ko Semanza yari yabibahamagariye, yabibategetse kandi yabibashishikarije.

3.18 Hagati y'itariki ya 6 n'iya 30 Mata 1994, **Laurent Semanza** yari afite ububasha muri Komini ya Bicumbi n'iya Gikoro, bwaba ubwo yakomoraga ku mategeko cyangwa ubwo atayakomoragaho, bwo gutegeka no kugenzura abari mu mitwe yitwaraga gisirikare, cyane cyane Interahamwe n'abandi bantu barimo ingabo z'u Rwanda, abaporisi ba komini n'abandi bakozi ba Leta, kandi yari azi cyangwa yagombaga kuba yari azi ko abo bantu bariho bitegura gukora ibikorwa byo gusambanya Abatutsikazi ku gahato cyangwa kubakorera ibindi bikorwa bibatesha agaciro, ariko nta ngamba za ngombwa kandi zishyize mu gaciro yafashe ngo abiburizemo. **Laurent Semanza** yari agamije ko ibikorwa bivugwa mu gika cya 3.15 no mu cya 3.16 bibarirwa mu by'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR nk'uko byavuzwe mu gaka ka 3.4.2 n'aka 3.4.2.

3.19 Hagati y'itariki ya 7 n'iya 30 Mata 1994, **Laurent Semanza** yabonanye n'agatsiko k'abagabo bo muri Komini ya Gikoro. Yababwiye ko bishe Abatutsikazi ariko ko bagomba kujya babanza kubasambanya ku gahato mbere yo kubica. Mu gushyira mu bikorwa ibyo yari amaze kubabwira, abo bagabo bahise birukira aho abagore

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

b'Abatutsikazi babiri, ari bo biswe A na B, bari bihishe. Umwe muri abo bagabo yasambanyije ku gahato A, naho abandi babiri basambanya ku gahato B maze barangije baramwica. **Laurent Semanza** yifuzaga ko ibikorwa bivugwa muri iki gika bibarirwa mu by'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR nk'uko byavuzwe mu gaka ka 3.4.2 no mu ka 3.4.3.

3.20 Ku itariki ya 13 Mata 1994 cyangwa hafi y'iyo tariki, muri Segiteri ya Musha muri Komini ya Gikoro, **Laurent Semanza** na Paul Bisengimana bahase ibibazo umugabo w'Umututsi wiswe C, bashaka ko ngo yabaha amakuru yerekeranye n'ibikorwa bya gisirikare by'Inkotanyi, cyangwa FPR. Muri icyo gihe bamuhataga ibibazo, FPR yasatiraga Komini ya Gikoro n'iya Bicumbi. Ubwo **Laurent Semanza** na Paul Bisengimana bahataga uwo muntu ibibazo, buri wese yamuciye ukuboko maze aza gupfa azize ibyo bikomere. **Laurent Semanza** yari agamije ko ibikorwa bivugwa muri iki gika bifatwa nk'iby'intambara itari iyo mu rwego mpuzamahanga yo kurwanya FPR nk'uko bivugwa mu duka 3.4.2 na 3.4.3.

3.21 Ku itariki ya 8 Mata 1994 cyangwa hafi y'iyo tariki, **Laurent Semanza** yahuriye na Juvénal Rugambarara hamwe n'agatsiko k'Interahamwe imbere y'inzu yari ahantu muri Komini ya Bicumbi. Semanza yasabye izo Nterahamwe guhiga no kwica abari bagize umuryango w'Abatutsi yari amaze kuzirangira. **Laurent Semanza** akimara kuvuga ibyo ndetse agihagaze aho, Juvénal Rugambarara na we yahise asaba izo Nterahamwe guhiga abagize uwo muryango w'Abatutsi zikabica. Nyuma yaho gato, Interahamwe zajagajaze umurima wari hafi aho maze zihavumbura abantu bane bo muri uwo muryango zirabivugana, ari bo abiswe D, E, F, G hamwe n'uwari umuturanyi wabo wiswe H, n'umwana we muto wiswe J.

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

IBIREGO

Ibikorwa binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara bivugwa muri iyi Nyandiko y'ibirego kuva ku gika cya 3.1 kugera ku cya 3.19 byakorewe mu ifasi ya Repubulika y'u Rwanda hagati y'itariki ya 1 Mata n'iya 31 Nyakanga 1994.

Mu bikorwa byose bisobanurwa muri buri kirego, Uregwa yacuze umugambi wo kubikora, ahamagarira abandi kubikora, arabibategeka ndetse na we ubwe arabikora, cyangwa mu bundi buryo ubwo ari bwo bwose yashyigikiye abandi mu gucura umugambi, mu gutegura cyangwa mu gutsotsoba ibyo byaha, cyangwa yari azi cyangwa yagombaga kuba azi ko abantu yari akuriye kandi yagenzuraga bari hafi gukora ibyo byaha cyangwa ko babikoze, ariko ntiyafashe ingamba za ngombwa kandi zishyize mu gaciro kugira ngo aburizemo ikorwa ry'ibyo byaha cyangwa ahane ababikoze.

IKIREGO CYA MBERE

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa ubwicanyi bwakorewe Abatutsi cyangwa ibikorwa bibazahaza umubiri cyangwa mu mutwe, agamije kurimbura abagize ubwoko bose cyangwa igice cyabo bazira icyo bari cyo, bityo akaba yarakoze icyaha cya **JENOSIDE**; icyo cyaha giteganywa n'Ingingo ya 2 (3) (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA KABIRI

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.7 n'icya 3.8, ashinjwa guhamagarira abantu mu buryo butaziguye kandi mu ruhame kwica Abatutsi cyangwa kubakorera ibikorwa bizahaza umubiri cyangwa mu mutwe, agamije kurimbura abagize ubwoko bwose cyangwa igice cyabo bazira icyo bari cyo, bityo akaba yarakoze icyaha cyo **GUHAMAGARIRA ABANTU KU BURYO BUTAZIGUYE KANDI MU RUHAME GUKORA JENOSIDE**; icyo cyaha giteganywa n'Ingingo ya 2 (3) (c) ya Sitati y'Urukiko,

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

agishinjwa hashingiwe ku Ngingo ya 6 (1) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA GATATU

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa kuba icyitso mu bwicanyi bwahitanye Abatutsi cyangwa mu bikorwa byabazahaje umubiri cyangwa mu mutwe, bityo akaba yarakoze icyaha cyo **KUBA ICYITSO CY'ABAKOZE JENOSIDE**; icyo cyaha giteganywa n'Ingingo ya 2 (3) (e) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA KANE

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa **UBUHOTOZI** bwakorewe abaturage b'abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byabibasiye bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA GATANU

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa **ITSEMBATSEMBA** ryakorewe abaturage b'abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byabibasiye bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (b) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA GATANDATU

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru kuva ku gika cya 3.7 kugeza ku cya 3.16, ashinjwa **ITOTEZA** ryakorewe abaturage b'abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byabibasiye bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (h) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA KARINDWI

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu bika bya 3.4 (kuva ku gaka ka 3.4.1 kugeza ku ka 3.4.3), 3.6, no kuva ku cya 3.9 kugeza ku cya 3.16 by'umwihariko, ashinjwa ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, byakozwe mu gihe cy'intambara itari iyo mu rwego mpuzamahanga, cyane cyane ubwicanyi n'ibikorwa by'ubugome nko gusambanya ku gahato, urugaraguro, guca ingingo z'umubiri, cyangwa ibindi bihano bibabaza umubiri, bityo akaba yarakoze **IBIKORWA BINYURANYIJE BIKOMEYE N'INGINGO YA GATATU IHURIWEHO N'AMASEZERANO Y'I JENEVE** yo ku wa 12 Kanama 1949 agamije **KURENGERA ABASHOBORA GUKORERWA IBYAHA MU BIHE BY'INTAMBARA,** cyane cyane mu gika cyayo cya (1) (a), n'**INYONGERA YAYO YA II** yo ku wa 8 Kamena 1977, cyane cyane mu Ngingo yayo ya 4 (2) (a); icyo cyaha giteganywa n'Ingingo ya 4 (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA MUNANI

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.15 n'icya 3.16, ashinjwa **GUSAMBANYA KU GAHATO** abasiviri mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo rero yakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (g) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA CYENDA

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu bika bya 3.4 (kuva ku gaka ka 3.4.1 kugeza ku ka 3.4.3), 3.6, 3.14, 3.15 na 3.16, ashinjwa ibikorwa byo guhungabanya agaciro k'abagore, hakubiyemo ibibasuzuguza kandi bibatesha agaciro, kubasambanya ku gahato, ibikorwa by'urugomo rushingiye ku gitsina, n'ibindi bikorwa by'iterasoni, kandi ibyo byakozwe mu gihe cy'intambara itari iyo mu rwego mpuzamahanga; bityo yakoze **IBIKORWA BINYURANYIJE BIKOMEYE N'INGINGO YA GATATU IHURIWEHO N'AMASEZERANO Y'I JENEVE** yo ku wa 12 Kanama 1949 agamije **KURENGERA ABASHOBORA GUKORERWA IBYAHA MU BIHE BY'INTAMBARA,** cyane cyane mu gika cyayo cya (1) (c), hamwe n'**INYONGERA YAYO YA II** yo ku wa 8 Kamena 1977, cyane cyane mu Ngingo yayo ya 4 (2) (e); icyo cyaha giteganywa n'Ingingo ya 4 (e) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA CUMI

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.17, ashinjwa **GUSAMBANYA KU GAHATO** abiswe A na B mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (g) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA CUMI NA RIMWE

Kubera ibyo **Laurent Semanza** yakoze bivugwa haruguru mu gika cya 3.17 n'icya 3.18, ashinjwa **KWICA URUBOZO** abiswe A, B, na C, mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3(f) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

ICYAHA CYA CUMI NA KABIRI

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Kubera ibyo **Laurent** Semanza yakoze bivugwa haruguru mu gika cya 3.17 n'icya 3.18, ashinjwa **UBUHOTOZI** bwahitanye abiswe B na C mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU**; icyo cyaha giteganywa n'Ingingo ya 3 (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA CUMI NA GATATU

Kubera ibyo **Laurent Semanza** yakoze bivugwa mu bika bya 3.4 (kuva ku gaka ka 3.4.1, kugeza ku ka 3.4.3), 3.6, 3.17 na 3.18, ashinjwa ko yakoreye abiswe A, B na C ibikorwa byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, mu gihe cy'intambara itari iyo mu rwego mpuzamahanga, bikubiyemo ubuhotozi n'ibikorwa by'ubugome nko gusambanya ku gahato, urugaraguro no guca ingingo z'umubiri ; bityo yakoze **IBIKORWA BINYURANYIJE BIKOMEYE N'INGINGO YA GATATU IHURIWEHO N'AMASEZERANO Y'I JENEVE** yo ku wa 12 Kanama 1949 agamije **KURENGERA ABASHOBORA GUKORERWA IBYAHA MU BIHE BY'INTAMBARA,** cyane cyane mu gika cyayo cya (1) (a), hamwe n'**INYONGERA YAYO YA II** yo ku wa 8 Kamena 1977, cyane cyane mu Ngingo yayo ya 4 (2) (a); icyo cyaha giteganywa n'Ingingo ya 4(a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

IKIREGO CYA CUMI NA KANE

Kubera ibyo **Laurent Semanza** yakoze bivugwa mu gika cya 3.19, ashinjwa **UBUHOTOZI** bwahitanye abiswe D, E, F, G, H, I na J bwakozwe mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasiviri bazira impamvu za politiki cyangwa iz'ubwoko, bityo akaba yarakoze **ICYAHA CYIBASIYE INYOKOMUNTU** ; icyo cyaha giteganywa n'Ingingo ya 3 (a) ya Sitati y'Urukiko, agishinjwa hashingiwe ku Ngingo ya 6 (1) n'iya 6 (3) kandi gihanwa hakurikijwe Ingingo ya 22 n'iya 23 z'iyo Sitati.

Bernard A. Muna

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Porokireri Wungirije

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

UMUGEREKA WA II: IBYEMEJWE N'URUGEREKO KO BITAGOMBA KUGIBWAHO IMPAKA N'ABABURANYI

IGICE A

1. Hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994, buri Munyarwanda kavukire yabarirwaga muri bumwe mu bwoko butatu bukurikira: Abatutsi, Abahutu n'Abatwa.

2. Hagati y'itariki ya 6 Mata 1994 n'iya 17 Nyakanga 1994, mu Rwanda ibintu byari biteye ku buryo bugiye kuvugwa. Mu Rwanda hose hari ibitero rusange cyangwa biri kuri gahunda byagabwe ku baturage b'abasiviri bazira ko ari abo mu bwoko bw'Abatutsi. Muri ibyo bitero, Abanyarwanda bamwe bishe abo bafataga nk'Abatutsi cyangwa babateye ububabare bwabazahaje umubiri cyangwa mu mutwe. Ibyo bitero byahitanye Abatutsi batabarika.

3. Hagati y'itariki ya 1 Mutarama 1994 n'iya 17 Nyakanga 1994, mu Rwanda hari intambara itari iyo mu rwego mpuzamahanga.

4. Hagati y'itariki ya 1 Mutarama 1994 n'iya 17 Nyakanga 1994, u Rwanda rwari mu bihugu byasinye *Amasezerano agamije gukumira no guhana icyaha cya jenoside (1948*), rukaba rwarayemeje ku itariki ya 16 Mata 1975.

5. Hagati y'itariki ya 1 Mutarama 1994 n'iya 17 Nyakanga 1994, u Rwanda rwari mu bihugu byasinye Amasezerano Mpuzamahanga y'i Jeneve yo ku wa 12 Kanama 1949 n'Amasezerano y'Inyongera yayo ya II yo ku wa 8 Kamena 1977 ; ku itariki ya 5 Gicurasi 1964 u Rwanda ni bwo rwemeye ayo Masezerano y'i Jeneve yo ku wa 12 Kanama 1949, naho ku itariki ya 19 Ugushyingo 1984 rukaba ari bwo rwemeye ayo Masezerano y'inyongera ya II yo mu wa 1977.

6. Mbere y'uko politiki ishingiye ku mashyaka menshi yemerwa mu Rwanda mu wa 1991, imirimo ya Burugumesitiri yarangwaga n'ibi bikurikira :

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

a. Burugumesitiri ni we wari uhagarariye ubutegetsi nyubahirizategeko muri Komini.

b. Burugumesitiri yashyirwagaho kandi agakurwaho na Perezida wa Repubulika abisabwe na Minisitiri w'ubutegetsi bw'igihugu.

c. Burugumesitiri ni we wari ukuriye abakozi ba Leta bakoreraga muri komini ayobora.

d. Burugumesitiri ni we wari ushinzwe ibirebana no kubahiriza amategeko n'umutekano muri komini ayobora.

IGICE B

i. Itegeko-teka n° 01/81 ryo ku wa 16 Mutarama 1981 ryerekeye ibarura ry'abaturage, indangamuntu, aho umuntu yandikwa n'aho aba.

ii. Itegeko-teka rya Minisitiri n° 01/03 ryo ku wa 19 Mutarama 1981 rirebana no gushyira mu bikorwa Itegeko-teka n° 01/81 ryo ku wa 16 Mutarama ryerekeye ibarura ry'abaturage, indangamuntu, aho umuntu yandikwa n'aho aba : Igazeti ya Leta y'u Rwanda, n° 2 *bis* yo ku wa 20 Mutarama 1981.

iii. Komisiyo ishinzwe ibyo kwibuka jenoside n'ubundi bwicanyi byakorewe mu Rwanda, « Raporo y'ikubitiro ku bijyanye no kureba ahantu hakorewe jenoside n'ubundi bwicanyi mu Rwanda hagati ya Mata na Nyakanga 1994 ».

iv. Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye, « Raporo irebana n'uko uburenganzira bwa muntu bwifashe mu Rwanda », yatanzwe na Bwana R. Degni-Ségui, Intumwa yihariye ya Komisiyo y'Uburenganzira bwa muntu, hakurikijwe igika cya 20 cy'umwanzuro wa Komisiyo E/DN.4/S-3/1 wo ku wa 25 Gicurasi 1994 no ku wa 28 Kamena 1994, impapuro za 5, 6, 7, 8 na 17. Inyandiko y'Umuryango w'Abibumbye E/CD.4/1995/7.

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

v. Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye « Raporo ya nyuma irebana n'uko uburenganzira bwa muntu bwifashe mu Rwanda », yatanzwe na Bwana R. Degni-Ségui, Intumwa yihariye ya Komisiyo y'uburenganzira bwa muntu, hakurikijwe igika cya 20 cy'umwanzuro wa Komisiyo E/DN.4/S-3/1 wo ku wa 25 Gicurasi 1994 no ku wa 18 Kamena 1995. Inyandiko y'Umuryango w'Abibumbye E/CD.4/1995/7.

vi. Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye, « Raporo ya nyuma ya komisiyo y'impuguke yashyizweho hakurikijwe Icyemezo 935(1994) cy'Inama Ishinzwe Amahoro ku Isi, Inyandiko y'Umuryango w'Abibumbye S/1994/1405, 9 Ukuboza 1994.

vii. Raporo y'Intumwa yihariye ku Rwanda irebana no kwica abantu badaciriwe imanza, baciriwe imanza za nyirarureshwa, cyangwa bazira amaherere, yatanzwe na Bwana Bacre Waly Ndiaye, 8-17 Mata 1993, ikubiyemo mu mugereka wayo wa II Itangazo rya Leta y'u Rwanda ryo ku wa 7 Mata 1993 ryerekeye Raporo ya nyuma ya Komisiyo Mpuzamahanga yigenga ishinzwe iperereza ku birebana n'ihungabanya ry'uburenganzira bwa muntu mu Rwanda guhera ku wa 1 Ukwakira 1990. Inyandiko y'Umuryango w'Abibumbye E/CN.4/1994/7/add.1, 11 Kanama 1993.

viii. Raporo yihariye y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye ku birebana na MINUAR, 20 Mata 1994. Inyandiko y'Umuryango w'Abibumbye S/1994/470.

ix. Raporo ya Komiseri Mukuru w'Ishami ry'Umuryango w'Abibumbye rishinzwe uburenganzira bwa muntu ku butumwa yagiyemo mu Rwanda ku itariki ya 11 n'iya 12 Gicurasi 1994, yo ku wa 19 Gicurasi 1994. Inyandiko y'Umuryango w'Abibumbye E/CN.4/S-3/3.

x. Umuryango w'Abibumbye n'u Rwanda 1993-1996. «*The United Nations Blue Books Series*» [Ibitabo by'Umuryango w'Abibumbye], Umutumba wa X (New York, Ishami rishinzwe itangazamakuru, Umuryango w'Abibumbye, 1996).

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

UMUGEREKA WA III: URUTONDE RW'INYANDIKO Z'IMANZA ZIFASHISHIJWE

Akayesu (TPIR)

Urubanza Porokireri aburana na Akayesu, N° ICTR-96-4-T, Inyandiko y'urubanza mu rw'iremezo, 2 Nzeri 1998.

Urubanza Porokireri aburana na Akayesu, N° ICTR-96-4-T, Inyandiko y'urubanza ngenagihano mu rw'iremezo, 2 Ukwakira 1998.

Urubanza Porokireri aburana na Akayesu, N° ICTR-96-4-A, Inyandiko y'urubanza mu bujurire, 1 Kamena 2001.

Aleksovski (TPIY)

Urubanza Porokireri aburana na Aleksovski, N° IT-95-14/1-T, Inyandiko y'urubanza mu rw'iremezo, 25 Kamena 1999.

Urubanza Porokireri aburana na Aleksovski, N° IT-95-14/1-A, Inyandiko y'urubanza mu bujurire, 24 Werurwe 2000.

Bagilishema (TPIR)

Urubanza Porokireri aburana na Bagilishema, N° ICTR-95-1A-T, Inyandiko y'urubanza mu rw'iremezo, 7 Kamena 2001.

Urubanza Porokireri aburana na Bagilishema, N° ICTR-95-1A-A, Inyandiko y'urubanza mu bujurire, 13 Ukuboza 2002.

Blaskic (TPIY)

Urubanza Porokireri aburana na Blaskic, N° IT-95-14-T, Inyandiko y'urubanza mu rw'iremezo, 3 Werurwe 2000.

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Celebici (TPIY)

Urubanza Porokireri aburana na Delalic na bagenzi be (Urubanza rwiswe urwa Celebici), N° IT-96-21-T, Inyandiko y'urubanza mu rw'iremezo, 16 Ugushyingo 1998.

Urubanza Porokireri aburana na Delalic na bagenzi be (Urubanza rwiswe urwa Celebici), N° IT-96-21-A, Inyandiko y'urubanza mu bujurire, 20 Gashyantare 2001.

Furundzija (TPIY)

Urubanza Porokireri aburana na Furundzija, N° IT-95-17/1-T, Inyandiko y'urubanza mu rw'iremezo, 10 Ukuboza 1998.

Jelisic (TPIY)

Urubanza Porokireri aburana na Jelisic, N° IT-95-10-T, Inyandiko y'urubanza mu rw'iremezo, 14 Ukuboza 1999.

Urubanza Porokireri aburana na Jelisic, N° IT-95-10-A, Inyandiko y'urubanza mu bujurire, 5 Nyakanga 2001.

Kambanda (TPIR)

Urubanza Porokireri aburana na Kambanda, N° ICTR-97-23-S, Inyandiko y'urubanza mu rw'iremezo, 4 Nzeri 1998.

Urubanza Kambanda aburana na Porokireri, N° ICTR-97-23-A, Inyandiko y'urubanza mu bujurire, 19 Ukwakira 2000.

Kayishema na Ruzindana (TPIR)

Urubanza Porokireri aburana na Kayishema na Ruzindana, N° ICTR-95-1-T, Inyandiko y'urubanza mu rw'iremezo, 21 Gicurasi 1999.

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR

Urubanza Porokireri aburana na Kayishema na Ruzindana, N° ICTR-95-1-T, Inyandiko y'urubanza ngenagihano mu rw'iremezo, 21 Gicurasi 1999.

Urubanza Porokireri aburana na Kayishema na Ruzindana, N° ICTR-95-1-A, Inyandiko y'urubanza mu bujurire, 1 Kamena 2001.

Kordic na Cerkez (TPIY)

Urubanza Porokireri aburana na Kordic na Cerkez, N° IT-95-14/2-T, Inyandiko y'urubanza mu rw'iremezo, 26 Gashyantare 2001.

Krnojelac (TPIY)

Urubanza Porokireri aburana na Krnojelac, N° IT-97-25-T, Inyandiko y'urubanza mu rw'iremezo, 15 Werurwe 2002.

Krstic (TPIY)

Urubanza Porokireri aburana na Krstic, N° IT-98-33-T, Inyandiko y'urubanza mu rw'iremezo, 2 Kanama 2001.

Kunarac (TPIY)

Urubanza Porokireri aburana na Kunarac na bagenzi be, N° IT-96-23-T & IT-96-23/1-T, Inyandiko y'urubanza mu rw'iremezo, 22 Gashyantare 2001.

Urubanza Porokireri aburana na Kunarac na bagenzi, N° IT-96-23-A & IT-96-23/1-A, Inyandiko y'urubanza mu bujurire, 12 Kamena 2002.

Kupreskic (TPIY)

Urubanza Porokireri aburana na Kupreskic na bagenzi be, N° IT-95-16-T, Inyandiko y'urubanza mu rw'iremezo, 14 Mutarama 2000.

Urubanza Porokireri aburana na Kupreskic na bagenzi be, N° IT-95-16-A, Inyandiko y'urubanza mu bujurire, 23 Ukwakira 2001.

Kvocka (TPIY)

Urubanza Porokireri aburana na Kvocka na bagenzi be, N° IT-98-30/1-T, Inyandiko y'urubanza mu rw'iremezo, 2 Ugushyingo 2001.

Musema (TPIR)

Urubanza Porokireri aburana na Musema, N° ICTR-96-13-T, Inyandiko y'urubanza mu rw'iremezo, 27 Mutarama 2000.

Urubanza Musema aburana na Porokireri, N° ICTR-96-13-A, Inyandiko y'urubanza mu bujurire, 16 Ugushyingo 2001.

Ntakirutimana (TPIR)

Urubanza Porokireri aburana na Elizaphan Ntakirutimana na Gerard Ntakirutimana, N° ICTR-96-10-T & ICTR-96-17-T, Inyandiko y'urubanza mu rw'iremezo, 21 Gashyantare 2003.

Ruggiu (TPIR)

Urubanza Porokireri aburana na Ruggiu, N° ICTR-97-32-I, Inyandiko y'urubanza mu rw'iremezo, 1 Kamena 2000.

Rutaganda (TPIR)

Urubanza Porokireri aburana na Rutaganda, N° ICTR-96-3-T, Inyandiko y'urubanza mu rw'iremezo, 6 Ukuboza 1999.

Serushago (TPIR)

Urubanza Porokireri aburana na Serushago, N° ICTR-98-39-S, Inyandiko y'urubanza mu rw'iremezo, 5 Gashyantare 1999.

Sikirica (TPIY)

Urubanza Porokireri aburana na Sikirica na bagenzi be, N° IT-95-8-S, Inyandiko y'urubanza mu rw'iremezo, 13 Ugushyingo 2001.

Simic (TPIY)

Urubanza Porokireri aburana na Simic, N° IT-95-9/2-S, Inyandiko y'urubanza mu rw'iremezo, 17 Ukwakira 2001.

Tadic (TPIY)

Urubanza Porokireri aburana na Tadic, N° IT-94-1-T, Inyandiko y'urubanza mu rw'iremezo, 7 Gicurasi 1997.

Urubanza Porokireri aburana na Tadic, N° IT-94-1-A, Inyandiko y'urubanza mu bujurire, 15 Nyakanga 1999.

Urubanza Porokireri aburana na Tadic, N° IT-94-1-A na IT-94-1-A*bis*, Inyandiko y'urubanza mu bujurire, 26 Mutarama 2000.

Todorovic (TPIY)

Urubanza Porokireri aburana na Todorovic, N° IT-95-9/1-S, Inyandiko y'urubanza mu rw'iremezo, 31 Nyakanga 2001.

Vasiljevic (TPIY)

Urubanza Porokireri aburana na Vasiljevic, N° IT-98-32-T, Inyandiko y'urubanza mu rw'iremezo, 29 Ugushyingo 2002.

Byahinduwe mu kinyarwanda kandi byemezwa na SSL/TPIR