



**Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho
u Rwanda ICTR/TPIR**

Umuryango w'Abibumbye

UGEREKO RWA MBERE RW'IREMEZO, III

Inyandiko y'umwimerere: icyongereza

Abacamanza: Vagn Joensen, Perezida
Bakhtiyar Tuzmukhamedov
GBerdao Gustave Kam

Gerefiye: Adama Dieng

Itariki: 17 Ugushyingo 2009

POROKIRERI aburana na **Michel BAGARAGAZA**

Urubanza n° ICTR-05-86-S

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INYANDIKO Y'URUBANZA

Ibiro bya Porokireri

Wallace Kapaya
Patrick Gabaake
Moussa Sefon
Iskander Ismail

Ubwunganizi

Me Geert-Jan Alexander Knoops
Wayne Jordash
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UMUTWE WA 1: INTANGIRIRO NO KWIBUTSA UKO IMIBURANISHIRIZE YAGENZE

1. Mu Nyandiko y'ibirego yemejwe n'Umucamanza Sergei Alekseevich Egorov ku itariki ya 28 Nyakanga 2005¹, Porokireri yaregaga Michel Bagaragaza (« Uregwa ») ibyaha by'ubwumvikane bugamije gukora jenocide, jenocide, iki cyaha kitamuhama akaryozwa icyo kuba icyitso cy'abakoze jenocide.
2. Mbere yo kwishyira mu maboko y'Urukiko, Uregwa yari yavuze ko yiteguye gukorana neza na Porokireri. Byongeye kandi, yari yumvikanye na Porokireri ko yaburanishwa n'urukiko rw'igihugu rwazagenwa nyuma².
3. Ku itariki ya 15 Kanama 2005, Michel Bagaragaza yishyize mu maboko y'Urukiko Arusha (Tanzaniya) ku bushake bwe. Ubwo yitabaga bwa mbere Urukiko ku muni ukurikiraho, Uregwa yahakanye ibyaha byose uko ari bitatu bikubiye mu Nyandiko y'ibirego ya mbere³. Nyuma yimuriwe i La Haye muri gereza y'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze cyitwa Yugosolaviya (« TPIY ») hashingiwe ku cyemezo cya Perezida w'Urukiko⁴.

¹ *Urubanza rwa Michel Bagaragaza*, n° ICTR-05-86, icyemezo cyemeza Inyandiko y'ibirego yakorewe Michel Bagaragaza (Urugereko rwa Mbere rw'Iremezo), 28 Nyakanga 2005.

² *Joint Motion for Consideration of a Guilty Plea Agreement* [icyifuzo abaturanyi bahuriyeho gisaba Urugereko gusuzuma amasezerano y'ubwemeracyaha] cyo ku itariki ya 17 Kanama 2009, cyatanzwe ku itariki ya 18 Kanama 2009, igika 4 ; Ikimenyetso gihamya cy'Ubwunganizi cyahawe n° D6, igika 4.

³ Inyandikomvugo y'iburanisha, 16 Kanama 2006.

⁴ *Urubanza rwa Bagaragaza, Order for Special Detention Measures*, [icyemezo gitegeka ko hafatwa ingamba zihariye zo gufunga] (Perezida w'Urukiko), 13 Kanama 2005. Nyuma Perezida w'Urukiko yemeye ibyifuzo byinshi bya Porokireri bisaba ko igihe cy'igifungo cy'Uregwa i La Haye cyakongerwa : Reba *Urubanza rwa Bagaragaza*, icyemezo gitegeka ko Michel Bagaragaza yakomeza gufungirwa i La Haye mu Buholandi, muri Gereza y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze cyitwa Yugosolaviya (Perezida w'Urukiko), 17 Gashyantare 2006 ; *Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague* [icyemezo cyo kugumisha Michel Bagaragaza i La Haye (mu Buholandi) muri gereza y'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze cyitwa Yugosolaviya] (Perezida w'Urukiko), 16 Kanama 2006 ; *Order for the Continued Detention of Michel Bagaragaza at the ICTY Detention Unit in The Hague* [icyemezo cyo kugumisha

4. Ku itariki ya 19 Gicurasi 2006, Urugereko rwa Mbere rw'Iremezo rwanze icyifuzo cya Porokireri cyasabaga ko urubanza rwaburanishwa n'inkiko z'igihugu cya Norvège. Urugereko rwanze kwemera icyo Cyifuzo kubera ko icyo gihugu kidafite amategeko ahana icyaha cya jenocide.⁵ Ku itariki ya 30 Kanama 2006, Urugereko rw'ubujurire rwanze icyifuzo cya Porokireri kijuririra icyo Cyemezo⁶.
5. Ku itariki ya 30 Ugushyingo 2006, Urugereko rwemeye icyifuzo cya Porokireri gisaba guhindura Inyandiko y'ibirego maze akongera ku birego bitatu bya mbere, icyaha cy'ubwicanyi n'icyo kwibasira ubuzima bw'abantu no kubateza ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe. Ibyo byaha bigize ukunyuranya bikomeye n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve yo mu wa 1949 n'Umugereka wayo wa II wemejwe mu wa 1977⁷. Ku itariki ya mbere Ukuboza 2006, ubwo yitabaga Urukiko ku nshuro ya kabiri mbere y'uko iburanisha ritangira, Uregwa yahakanye icyaha cya kane gikubiye mu Nyandiko y'ibirego yahinduwe⁸.
6. Ku itariki ya 13 Mata 2007, Urugereko rwemeye icyifuzo cya Porokireri gisaba ko urubanza rwaburanishwa n'inzego z'ubutabera zo mu Buholandi⁹. Cyakora, rumaze kumenyeshwa ko inkiko z'Ubuholandi zitaburanisha ibyaha bivugwa mu Nyandiko

Michel Bagaragaza i La Haye (mu Buholandi) muri gereza y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze cyitwa Yugosilaviya] (Perezida w'Urukiko), 14 Gashyantare 2007.

⁵ *Urubanza rwa Bagaragaza*, icyemezo ku cyifuzo cya Porokireri cyo kwimurira urubanza mu nzego z'ubutabera z'igihugu cya Norvège (Urugereko rwa Mbere rw'Iremezo), igika 16.

⁶ *Urubanza rwa Bagaragaza*, icyemezo ku bujurire bushingiye ku ngingo ya 11 bis y'Amategeko (Urugereko rw'ubujurire), 30 Kanama 2006.

⁷ *Urubanza rwa Bagaragaza*, *Decision on the Prosecutor's Application for Leave to Amend the Indictment* [icyemezo ku cyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego] (Urugereko rwa Mbere rw'Iremezo), 30 Ugushyingo 2006.

⁸ Inyandikomvugo y'iburanisha, 1 Ukuboza 2006.

⁹ *Urubanza rwa Bagaragaza*, icyemezo ku cyifuzo cya Porokireri gisaba ko urubanza rwakwimurirwa mu nzego z'ubutabera zo mu Buholandi (Urugereko rwa Mbere rw'Iremezo), 13 Mata 2007.

y'ibirego, rwavanyeho icyemezo rwari rwafashe ku itariki ya 17 Kanama 2007 cyo kwimurira urubanza mu nkiko z'u Buholandi¹⁰.

7. Ku itariki ya 20 Gicurasi 2008, abategetsu b'u Buholandi bongeye kwimurira Uregwa Arusha muri gereza y'Umuryango w'Abibumbye, mu gihe yari agitegereje kuburanishwa¹¹.
8. Ku itariki ya 14 Mata 2008, ababuranyi batanze icyifuzo bahuriyeho gisaba Urugereko gusuzuma amasezerano bagiranye y'ubwemeracyaha¹². icyo Cyifuzo cyakurikiwe n'ikindi cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego akarekeramo gusa ikirego cyo kuba icyitso cy'abakoze jenocide¹³. Ku itariki ya 14 Nyakanga 2008, Urugereko rwanze icyifuzo cya Porokireri, kuko rwasangaga ibikorwa by'ingenzi bishyigikira icyo kirego bitagaragaza bihagije icyaha cyo kuba icyitso

¹⁰ *Urubanza rwa Bagaragaza*, icyemezo ku Cyifuzo cyihutirwa cyane cya Porokireri gisaba Urugereko gukuraho icyemezo cyo kohereza urubanza mu nzego z'ubutabera zo mu Buholandi, hashingiwe ku bika F) na G) by'ingingo ya 11 bis y'Amategeko (Urugereko rwa Mbere rw'Iremezo), 13 Mata 2007.

¹¹ Ku itariki ya 17 Kanama 2007, Ubwo rwakuragaho icyemezo cyo kwimurira urubanza mu nzego z'ubutabera zo mu Buholandi, Urugereko rwanatanzwe inyandiko yo kwimurira Uregwa (*Urubanza rwa Bagaragaza*, Inyandiko yo gufata, kwimurira no gufunga Uregwa, 17 Kanama 2007). Ku itariki ya 29 Kanama 2007 Perezida w'Urukiko yanze icyifuzo cy'Ubwunganizi gisaba ko Uregwa yafungirwa i La Haye muri gereza y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahozwe cyitwa Yugosolaviya (icyemezo ku Cyifuzo cy'Ubwunganizi cyitwa: "*Public Defence Application to the President of the Tribunal for Modification of Detention Conditions Pursuant to Rule 64*", icyifuzo cy'Ubwunganizi kitari ibanga gisaba Perezida w'Urukiko guhindura uburyo Uregwa afunzwemo, hakurikijwe ingingo ya 64 » (Perezida w'Urukiko), 29 Kanama 2007. Ku itariki ya 6 Werurwe 2008, Perezida yongeye kwanga icyifuzo ababuranyi bahuriyeho gisa n'ikimaze kuvugwa (icyemezo ku Cyifuzo cyitwa *Joint Prosecution and Defence Application for Modification of Detention Conditions of the Accused* [icyifuzo Porokireri n'Ubwunganizi bahuriyeho gisaba guhindura uburyo Uregwa afunzwemo (Perezida w'Urukiko), 6 Werurwe 2008.

¹² *Joint Motion for Consideration of a Guilty Plea Agreement between Michel Bagaragaza and the Office of the Prosecutor* [icyifuzo ababuranyi bahuriyeho gisaba Urugereko gusuzuma amasezerano y'ubwemeracyaha hagati ya Porokireri na Michel Bagaragaza], icyemezo cyo mu ibanga cyashyikirijwe Urugereko ku itariki ya 14 Mata 2008.

¹³ *Prosecutor's Request for Leave to File an Amended Indictment*, [icyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego], icyifuzo cy'ibanga cyatanzwe ku itariki ya 8 Nyakanga 2008.

- cy'abakoze jenocide¹⁴. Nyuma y'icyo Cyemezo, ababuranyi bafatanyije gusaba gukuraho icyifuzo bahuriyeho gisaba Urugereko gusuzuma amasezerano bagiranye yerekeranye n'ubwemeracyaha¹⁵. Urugereko rwemeye icyo cyifuzo¹⁶.
9. Kubera iyo mpamvu, ababuranyi batangiye kwitegura itangira ry'urubanza mu Rukiko¹⁷.
 10. Ku itariki ya 17 Kanama 2009, mbere gato y'itariki yagenwe ngo urubanza rutangire, ababuranyi batanze icyifuzo bahuriyeho gisaba Urugereko gusuzuma amasezerano y'ubwemeracyaha Porokireri yagiranye n'Uregwa («Icyifuzo gihuriweho»). icyo Cyifuzo cyari giherekejwe n'inyandiko ikubiyemo amakuru ku byabaye Uregwa yemera kandi iriho umukono we («amakuru y'ibyabaye») n'amasezerano y'ubwemeracyaha ariho umukono wa Porokireri n'uw'Uregwa (« amasezerano y'ubwemeracyaha»)¹⁸.
 11. Ku itariki ya 17 Nzeri 2009, mu iburanisha ku bwemeracyaha, Michel Bagaragaza yemeye icyaha cyo kuba icyitso cy'abakoze jenocide, maze ahakana ibindi byaha bitatu

¹⁴ *Urubanza rwa Bagaragaza, Confidential Decision on the Prosecution Motion to File a Further Amended Indictment* [Icyemezo cy'ibanga ku Cyifuzo cya Porokireri gisaba uruhusha rwo gutanga indi Nyandiko y'ibirego yahinduwe] (Urugereko rwa Mbere rw'Iremezo), 14 Nyakanga 2008.

¹⁵ *Joint Application to Withdraw the Joint Motion for Consideration of a Guilty Plea Agreement between Michel Bagaragaza and the Office of the Prosecutor* [Icyifuzo ababuranyi bahuriyeho gisaba Uruhushya rwo gukuraho icyifuzo bahuriyeho cyasabaga gusuzuma amasezerano y'ubwemeracyaha hagati ya Michel Bagaragaza na Porokireri], icyifuzo cy'ibanga cyo ku itariki ya 21 Nyakanga cyo ku itariki ya 22 Nyakanga 2008.

¹⁶ *Urubanza rwa Bagaragaza, Confidential Decision on the "Joint Application to Withdraw the Joint Motion for Consideration of a Guilty Plea Agreement between Michel Bagaragaza and the Office of the Prosecutor"* [Icyemezo cy'ibanga ku « Cyifuzo ababuranyi bahuriyeho gisaba gukuraho icyifuzo gihuriweho cyasabaga Urugereko gusuzuma amasezerano y'ubwemeracyaha hagati ya Michel Bagaragaza na Porokireri »] (Urugereko rwa Mbere rw'Iremezo), 24 Nyakanga 2008.

¹⁷ Reba inama zitegura urubanza zo ku itariki ya 16 Ukuboza 2008 n'ya 9 Werurwe 2009.

¹⁸ *Joint Motion for Consideration of a Guilty Plea Agreement*, icyifuzo ababuranyi bahuriyeho gisaba Urugereko gusuzuma amasezerano y'ubwemeracyaha, cyo ku itariki ya 17 Kanama 2009 kandi cyatanze ku ya 18 Kanama 2009 (« Icyemezo gihuriweho »), giherekejwe n'umugereka Akayesu witwa: «*Statement of the Admitted Facts of Michel Bagaragaza*» [Inyandiko y'ibyabaye Michel Bagaragaza yemera] («Amakuru ku byabaye») n'umugereka B witwa: «*Guilty Plea Agreement between Michel Bagaragaza and the Prosecutor*» [Amasezerano y'ubwemeracyaha Michel Bagaragaza yagiranye na Porokireri] (« amasezerano y'ubwemeracyaha »).

biri mu Nyandiko y'ibirego yahinduwe¹⁹. Byongeye kandi, muri iryo buranisha Urugereko rwemeye icyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego. Uwo muni, Porokireri yatanze Inyandiko y'ibirego yagenderwaho (« Inyandiko y'ibirego ») kandi muri iyo Nyandiko Uregwa yaryozwaga icyaha ku giti cye, hashingiwe ku ngingo ya 6.1 ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda (« Sitati »), kandi gishingiye ku kirego rukumbi cyo kuba icyitso cy'abakoze jenoside. Iyo Nyandiko y'ibirego yometse, nk'umugereka, kuri iyi nyandiko y'urubanza mu rw'iremezo.

12. Ku itariki ya 3 Ugushyingo 2009, Urugereko rwumvise umutangabuhamya wavuze ku myitwarire y'Uregwa²⁰. Umunsi ukurikiyeho, rwemeye ko inyandiko 12 z'ubuhamya bw'abagabo bavuga ku myitwarire y'Uregwa zishyirwa muri dosiye, hashingiwe ku ngingo ya 92 bis y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso («Amategeko»), ndetse n'amakuru ababuranyi bahuriyeho ku bitagibwaho impaka byerekeranye n'ukuntu Michel Bagaragaza yafashije Porokireri²¹. Uwo muni, Urugereko rwumvise kandi ingingo z'ababuranyi ku byerekeye igenabihano ndetse n'imvugo Michel Bagaragaza agaragarizamo ko yicuza ibyo yakoze²².
13. Ku itariki ya 5 Ugushyingo 2009, Urugereko rwahanishije Michel Bagaragaza igifungo cy'imyaka umunani kandi, mu cyemezo rwafashe mu magambo, runavuga ko ruzasobanura mu nyandiko impamvu icyo gihano gishingiyeho²³. Iyi nyandiko y'urubanza igenderwaho ikubiyemo imyanzuro Urugereko rwagezeho n'imitekerereze rwagendeyeho.

¹⁹ Inyandikomvugo y'iburanisha, 17 Nzeri 2009 ; reba amakuru ku byabaye, ibika 4, 5.

²⁰ Inyandikomvugo y'iburanisha, 3 Ugushyingo 2009.

²¹ Inyandikomvugo y'iburanisha, 4 Ugushyingo 2009.

²² Ni kimwe no haruguru.

²³ Inyandikomvugo y'iburanisha, 5 Ugushyingo 2009.

UMUTWE WA 2: UBWEMERACYAHA

14. Sitati ntiteganya ingingo n'imwe yihariye yerekeranye n'ubwemeracyaha. Ubusanzwe, ingingo zigenga ubwemeracyaha ni iya 62 B) na 62 bis z'Amategeko²⁴.
15. Ku itariki ya 17 Nzeri 2009, Uregwa yemeye icyaha cyo kuba icyitso cy'abakoze jenocide²⁵ kandi yemeza ko yacyemeye ku bushake, nta gahato, adashyizweho iterabwoba, ibikangisho cyangwa akorewe urugomo²⁶, ndetse ko yabikoze abizi kandi adahuzagurika.

²⁴ Ingingo ya 62: Kwitaba Urugereko bwa mbere na mbere no kwemera/guhakana icyaha.

[...]

B) Iyo uregwa yemeye icyaha nk'uko biteganyijwe n'igika A) v) cyangwa asabye gusubira ku kwisubiraho akemera icyaha, Urugereko rugomba kureba niba ukwemera icyaha:

- i) gukozwe mu bwigenge no ku bushake,
- ii) gukozwe habayeho gusobanukirwa,
- iii) gusobanutse, kandi
- iv) gushingiye ku byabaye bihagije ku buryo byagaragaza icyaha cyakozwe n'uruhare uregwa yakigizemo, hashingiye ku bintu bigaragara, nko kuba nta kutumvikana kugaragara kuri hagati ya Porokireri n'uregwa ku bijyanye n'ibyabaye urubanza rushingiyeho.

Urugereko rushobora guhamya uregwa icyaha rugaha Gerefiye amabwiriza yo kugena itariki yo gutangaza igihano.

Ingingo ya 62 bis: Iburanisha iyo kwirega byumvikanyweho.

- A) Porokireri n'Ubwunganizi bashobora kumvikana ko, uregwa namara kwemera ibyaha ashinjwa byose, kimwe cyangwa byinshi muri byo, Porokireri azubahiriza ingingo zose cyangwa zimwe mu zikurikira imbeere y'Urugereko rwa Mbere rw'Iremezo:
 - i) azasaba uruhushya rwo rwo guhindura Inyandiko y'ibirego;
 - ii) azasaba igihano cyatanzwe cyangwa ibihano asanga ko bikwiriye;
 - iii) ntazabangamira icyifuzo cy'uregwa cyo guhabwa igihano cyagenwe cyangwa ibihano biri hagati.
- B) Urugereko rwa Mbere rw'Iremezo ntiturubwa n'amasezerano avugwa mu gika A).
- C) Iyo abaturanyi baragiranye amasezerano ku kwemera icyaha, Urugereko rwa Mbere rw'Iremezo rusaba ko ayo masezerano yatanzwe, mu iburanisha ritari mu muhezo, cyangwa mu muhezo iyo hatanzwe impamvu zumvikana, igihe uregwa yemera icyaha nk'uko biteganyijwe n'ingingo ya 62 A) (v), cyangwa rugasaba ko guhakana icyaha kwe kwagarukwaho.

²⁵ Inyandikomvugo y'iburanisha, 17 Nzeri 2009.

²⁶ Ni kimwe no haruguru, urup. 3

16. Urugereko rwasanze ubwemeracyaha n'Inyandiko y'ibirego 1) byujuje ibivugwa mu masezerano ku bwemeracyaha²⁷; 2) bihuye n'ibivugwa mu bisobanuro ku byabaye, 3) ndetse bishingiye ku byabaye bihagije kugira ngo hagaragazwe icyaha cyo kuba icyitso cy'abakoze jenocide, kandi 4) nta kutumvikana gukomeye kuri hagati y'ababuranyi ku biburanishwa. Kubera iyo mpamvu, Urugereko rwasanze ibyangombwa biteganywa n'ingingo ya 62 B) y'Amategeko byujujwe maze rwemeza ko Uregwa yemeye icyaha²⁸.

UMUTWE WA 3: IBYABAYE

I. Uregwa

17. Michel Bagaragaza yavukiye mu Rwanda, mu Bushiru, muri Komine ya Giciye (Perefegitura ya Gisenyi)²⁹, mu wa 1945. Arubatse kandi afite abana umunani³⁰.
18. Muri jenocide, Bagaragaza yari Umuyobozi Mukuru wa OCIR/Ishami ry'icyayi. OCIR cyari ikigo cy'igihugu cyafashaga Leta gucunga ishami ry'icyayi mu Rwanda, kikaba na kimwe mu bigo by'inganda bikomeye mu gihugu³¹. Bityo rero, Uregwa yacungaga inganda 11 z'icyayi zikoresha abakozi babarirwa mu bihumbi 55³². Yari kandi Visi-Perezida wa BACAR « *Banque continentale africaine au Rwanda* » akaba n'umwe mu bagize komite ya MRND muri Perefegitura ya Gisenyi. Iyo komite ni yo yashinze umutwe witwaraga gisirikare w'Interahamwe muri iyo perefegitura.³³
19. Ikindi kandi, Bagaragaza yari mu itsinda rigizwe n'abantu bake kandi bafite ingufu, rizwi ku izina ry'«Akazu»³⁴. Iryo tsinda ryari rifite ububasha bukomeye mu rwego rwa politiki

²⁷ Amasezerano y'ubwemeracyaha, igika 3.

²⁸ Inyandikomvugo y'iburanisha, 17 Nzeri 2009, imp. 10, 11.

²⁹ Inyandiko y'ibirego, 17 Nzeri 2009, igika 1.

³⁰ Amasezerano y'ubwemeracyaha, igika 5.3.

³¹ Amakuru ku byabaye, igika 4; reba kandi Inyandiko y'ibirego, igika 2.

³² Amakuru ku byabaye, igika 4.

³³ Ni kimwe no haruguru, igika 5.

³⁴ Ni kimwe no haruguru, igika 6; reba kandi n'Inyandiko y'ibirego, igika 3

n'urw'imari mu Rwanda. Ryari rigizwe n'abantu bo mu muryango wa Perezida w'u Rwanda bakomokaga mu karere k'u Bushiru, aka Gisenyi n'aka Ruhengeri.³⁵

II. Imyanzuro y'Urugereko ku byabaye no mu rwego rw'amategeko

A. Inyandiko y'ibirego

20. Mu gushyigikira ikirego kirebana n'icyaha cyo kuba icyitso cy'abakoze jenocide Porokireri avuga mu Nyandiko y'ibirego ko muri Mata 1994 muri Perefegitura ya Gisenyi, Michel Bagaragaza yatanze inkunga ikomeye mu iyicwa ry'Abatutsi barenga 1000 bari bahungiye ku gasozi ka Kesho no kuri Katedarari ya Nyundo³⁶. Mu bikorwa byose Porokireri yatanze bishyigikira iki kirego, avuga ko Uregwa yabyishoyemo azi neza ko ababicuriye umugambi n'ababitsotsobye bari bafite intego yo kurimbura abaturage bose bo mu bwoko bw'Abatutsi cyangwa se igice cyabo. Mu bacuze uwo mugambi n'abatsotsobye icyaha harimo abayobozi ba gisirikare n'aba gisiviri, Interahamwe, abajeppe, abasirikare hamwe n'abakozi b'Uruganda rw'icyayi rwa Rubaya n'urwa Nyabihu. Bityo rero, Urugereko rusanga Inyandiko y'ibirego ivuga ko Uregwa yabaye icyitso cy'abakoze jenocide nk'uko biteganywa n'ingingo ya 2.3 e) ya Sitati, akaba agomba kubiryoza hashingiwe ku ngingo ya 6.1 ya Sitati.³⁷

B. Uburyozwacyaha nka gatozi ku cyaha cyo kuba icyitso cy'abakoze jenocide

1. Amategeko akurikizwa

21. Ingingo ya 6.1 ya Sitati ikubiyemo ihame rivuga ko uryozwa icyaha icyo ari cyo cyose giteganywa na Sitati atari gatozi w'icyaha gusa, ahubwo ari umuntu uwo ari wese wacyitabiriye cyangwa agatera inkunga ikorwa ryacyo³⁸.

³⁵ Ibyabaye, igika cya 6.

³⁶ Inyandiko y'ibirego, ibika 6-12.

³⁷ Ni kimwe no haruguru, igika cya 4 n'icya 5

³⁸ *Urubanza rwa Kajelijeli*, n° ICTR-98-44A, Inyandiko y'urubanza mu rw'iremezo, 1 Ukuboza 2003, igika 757; *Urubanza rwa Semanza*, n° ICTR-97-20, Inyandiko y'urubanza mu rw'iremezo, 15 Gicurasi 2003, igika 377; *Urubanza rwa Kayishema na Ruzindana*, n° ICTR-95-I, Impamvu zashingiweho mu guca urubanza mu bujirire, 1 Kamena 2001, igika 185; *Urubanza rwa Musema*, n° ICTR-96-13, Inyandiko y'urubanza mu rw'iremezo, 27

22. Ubukemuramanza bw'Urukiko busobanura ko kuba icyitso ari ugukora igikorwa icyo ari cyo cyose cyo gufasha, gutera akanyabugabo, gushishikaza cyangwa gutanga inkunga³⁹. Kugira ngo habeho icyaha cyo kuba icyitso biturutse ku gufasha cyangwa gutanga inkunga, hagomba kuba harabayeho igikorwa gifatika. Bivuze mu by'ukuri ko umuntu adashobora kuba icyitso cy'uwakoze icyaha kubera kwirinda cyangwa kwirengagiza kurangiza inshingano ze.⁴⁰ Ubufatanyacyaha mu kuba icyitso bushobora guhera ku rwego rwo gucura no gutegura umugambi wo gukora icyaha cyangwa kugitsotsoba. Bushobora kubanziriza cyangwa gukurikira igikorwa cya gatozi⁴¹. Si ngombwa ko umuntu wafashije cyangwa washishikarije gatozi aba ahari icyaha gitsotsobwa⁴².
23. Ikindi kandi, ubukemuramanza bwo mu Rugereko rw'ubujurire buvuga ko kuba icyitso cy'abakoze jenocide ufasha kandi ushishikariza bibaho gusa iyo icyitso cyari kizi igitekerezo cyihariye cyo gukora jenocide ba gatozi bari bafite. Naho ku byerekeye ubundi buryo bwo kuba icyitso, bishobora kuba ngombwa kwerekana ko icyitso cyari gihuje na ba gatozi igitekerezo cyihariye cyo gukora jenocide.⁴³ Porokireri agomba kugaragaza ko Uregwa yafashije gatozi, yamushishikarije cyangwa yamuteye akanyabugabo ku buryo bufatika kandi bufite ireme, ku buryo byatumye icyaha

Mutarama 2000, igika 114; *Urubanza rwa Rutaganda*, n° ICTR-96-3, Inyandiko y'urubanza mu rw'iremezo, 6 Ukuboza 1999, igika 33; *Urubanza rwa Kayishema na Ruzindana*, Inyandiko y'urubanza mu rw'iremezo, 21 Gicurasi 1999, ibika 196-197; *Urubanza rw'Akayesu*, n° ICTR-96-4, Inyandiko y'urubanza mu rw'iremezo, 2 Nzeri 1998, igika 473.

³⁹ *Urubanza rwa Semanza*, Inyandiko y'urubanza mu rw'iremezo, 15 Gicurasi 2003, igika 393 ; *Urubanza rwa Musema*, Inyandiko y'urubanza mu rw'iremezo, 27 Mutarama 2000, ibika 177-183; *Urubanza rwa Bagilishema* n° ICTR-95-1A, Inyandiko y'urubanza mu rw'iremezo, 7 Kamena 2001, igika 69.

⁴⁰ *Urubanza rwa Musema*, Inyandiko y'urubanza mu rw'iremezo, 27 Mutarama 2000, ibika 177-183.

⁴¹ *Urubanza rwa Kajelijeli*, Inyandiko y'urubanza mu rw'iremezo, 1 Ukuboza 2003, igika 766 ; *Urubanza rwa Semanza*, Inyandiko y'urubanza mu rw'iremezo, 15 Gicurasi 2003, igika 386.

⁴² *Urubanza rwa Musema*, Inyandiko y'urubanza mu rw'iremezo, 27 Mutarama 2000, igika 125.

⁴³ *Urubanza rwa Ntakirutimana na mugenzi we*, n° ICTR-96-10 na ICTR-96-17 Inyandiko y'urubanza mu bujurire, 13 Ukuboza 2004, igika 500; *Urubanza Porokireri aburana na Milorad Krnojelac*, n° IT-97-25, Inyandiko y'urubanza mu bujurire, igika 52 ; *Urubanza Porokireri aburana na Duško Tadić*, n° IT-94-1, Inyandiko y'urubanza mu bujurire, igika 229.

gitsotsobwa.⁴⁴ Si ngombwa ko inkunga yatanzwe iba kamara mu itsotsobwa ry'icyaha, ariko kandi igomba kuba yaragize uruhare ruremereye mu ikorwa ry'icyaha.⁴⁵

2. Amasezerano yo kwemera icyaha

24. Mu masezerano yo kwemera icyaha yasinnye n'abaturanyi, Michel Bagaragaza yemera ko akwiye kuryozwa icyicwa ry'Abatutsi barenga 1000 bari bahungiyeye ku gasozi ka Kesho mu karere ka Kabaya no kuri Katedarari ya Nyundo muri Perefegitura ya Gisenyi. Uregwa yemera kandi ko kubera ibikorwa bye, gushyigikira no gushishikaza ba gatozi b'ibyaha, yatanze inkunga ihambaye muri ubwo bwicanyi.
25. By'umwihariko, Uregwa yemera ko, ku itariki 8 Mata 1994 cyangwa hafi yayo, yakoranye inama na Bwana Gahinjori wari Burugumesitiri wa Komine ya Giciye, Thomas Kuradusenge, wari umukuru w'Interahamwe kandi yungirije Burugumesitiri Gahinjori. Michel Bagaragaza yemeye ko yamenye ko abo bagabo bombi bemeranyijwe ko Kuradusenge yagombaga gutegura no kuyobora ibitero byari kugabwa ku Batutsi bari ku gasozi ka Kesho no kuri Katedarari ya Nyundo, kandi ko abari kujya mu bitero bagombaga gukomeza kohererezwa abantu bo kubakubita ingabo mu bitugu. Ikindi kandi, Uregwa [avuga ko] yemeye ko imodoka na lisansi by'Uruganda rw'icyayi rwa

⁴⁴ *Urubanza rwa Kayishema na Ruzindana*, Impamvu zashingiweho mu guca urubanza mu bujirire, 1 Kamena 2001, igika 186; *Urubanza rwa Kajelijeli*. Inyandiko y'urubanza mu rw'iremezo, 1 Ukuboza 2003, ibika 763 na 766; *Urubanza rwa Kamuhanda*, n° ICTR-95-54A Inyandiko y'urubanza mu rw'iremezo, 22 Mutarama 2003, igika 597; *Urubanza rw'Akayesu*, Inyandiko y'urubanza mu rw'iremezo, 2 Nzeli 1998, ibika 473-475; *Urubanza rwa Rutaganda*, Inyandiko y'urubanza mu rw'iremezo, 6 Ukuboza 1999, igika 43.

⁴⁵ *Urubanza rwa Bagilishema*, Inyandiko y'urubanza mu rw'iremezo, 7 Kamena 2001, ibika 33-71; *Urubanza rwa Kamuhanda*, Inyandiko y'urubanza mu rw'iremezo, 22 Mutarama 2003, igika 597, n'Inyandiko y'urubanza mu bujirire, 19 Nzeli 2005, igika 70; *Urubanza rwa Kayishema na Ruzindana*, Impamvu zashingiweho mu guca urubanza mu bujirire, 1 Kamena 2001, igika 186; *Urubanza rwa Kajelijeli*, Inyandiko y'urubanza mu rw'iremezo, 1 Ukuboza 2003, ibika 763 na 766; *Urubanza rwa Akayesu*, Inyandiko y'urubanza mu rw'iremezo, 2 Nzeli 1998, ibika 473-475, 537, 538 na 540; *urubanza rwa Rutaganda*, Inyandiko y'urubanza mu rw'iremezo, 6 Ukuboza 1999, igika 43; *Urubanza rwa Musema*, Inyandiko y'urubanza mu rw'iremezo, 27 Mutarama 2000, ibika 180-182, *Urubanza n° IT-95-14A Porokireri aburana na Tihomir Blaškić*, Inyandiko y'urubanza mu bujirire, 29 Nyakanga 2004, igika 49.

Rubaya n'urwa Nyabihu bikoreshwa mu gutwara Interahamwe zari zigiye mu bitero⁴⁶. Yemeye ko abakozi b'izo nganda zombi bitabira ibitero, anemera ko intwari nini zihabwa abari bagiye mu bitero. Mu wa 1993, uwari umugaba w'ingabo, Jenerali Déogratias Nsabimana yahaye Michel Bagaragaza amabwiriza yo guhisha izo intwari muri izo nganda. Byongeye kandi, hagati y'itariki 9 n'ya 13 Mata 1994, Bagaragaza yabonye na Kuradusenge inshuro ebyiri cyangwa eshatu. Kuradusenge yamumenyesheje ko Interahamwe zari zikeneye agahimbazamusyi kugira ngo zibashe gukomeza kwica Abatutsi. Yasabye Bagaragaza amafaranga yo kugurira Interahamwe inzoga kugira ngo zibashe gukomeza ubwicanyi mu karere ka Kabaya n'aka Bugoyi⁴⁷. Michel Bagaragaza yamuhaye akayabo k'amafaranga.

3. Imyanzuro yo mu rwego rw'amategeko

26. Urugereko rusanga Uregwa ahamwa n'icyaha nk'uko na we abiyemerera. Rusanga yaratanze inkunga ikomeye mu bwicanyi bw'Abatutsi barenga 1000, kandi azi igitekerezo cyo gukora jenocide abacuze umugambi na ba gatozi bari bafite.
27. Kubera iyo mpamvu, Urugereko rusanga, ku buryo budashidikanywaho, Michel Bagaragaza ahamwa n'icyaha cyo kuba icyitso cy'abakoze jenocide hakurikijwe ingingo ya 2.3 e) ya Sitati, akaba agomba kukiryoza nka gatozi nk'uko biteganywa n'ingingo ya 6.1 ya Sitati.

UMUTWE WA 4 : IGENABIHANO

I. Amahame akurikizwa mu igenabihano

28. Urugereko rusanga mu kugena igihano hagomba kuzirikanwa intego zacyo ari zo : imponyano y'icyaha, guca intege [undi watekerezaga gukora icyaha], gusubiza [uwakatiwe] mu buzima busanzwe, no kurinda umutekano wa rubanda. Mu kugena igihano, Urugereko rugomba kuzirikana ibintu binyuranye nk'uko biteganywa n'ingingo ya 23 (2) ya Sitati n'ya 101 y'Amategeko. Ibyo ni nk'uburemere bw'icyaha, imibereho

⁴⁶ Ibyabaye, igika 11.

⁴⁷ Ni kimwe no haruguru, igika 12.

bwite y'Uregwa, impamvu zongera cyangwa zigabanya ububi bw'icyaha, harimo n'uburyo Uregwa yafashije Porokireri ndetse n'urutonde rusange rw'ibihano by'igifungo rukurikizwa n'inkiko zo mu Rwanda.

II. Ibukurikizwa mu igenabihano

29. Urugereko ruributsa ko, n'ubwo rugomba kuzirikana impamvu zose zongera cyangwa zigabanya ububi bw'icyaha muri uru rubanza, rufite ububasha busesuye bwo gusuzuma ibyabaye n'ukuntu ibintu byagiye bigenda⁴⁸. Ruributsa ko rufite ububasha bwo kwifashisha ikintu icyo ari cyo cyose rusanga kirufitiye akamaro⁴⁹. Ruributsa kandi ko impamvu zongera ububi bw'icyaha zigomba gutangirwa ibimenyetso ku buryo budashidikanywaho, naho impamvu zigabanya ububi bw'icyaha zikaba zisuzumwa hashingiwe ku gisobanuro kirusha ibindi gusa n'ukuri⁵⁰.

A. Uburemere bw'icyaha

30. Urugereko rwemera ko uburemere bw'icyaha cyakozwe n'Uregwa n'uko uruhare rwe rungana ari ingingo za ngombwa zishingirwaho mu kugena igihano gikwiriye⁵¹.
31. Uregwa yahamwe n'icyaha gifitanye isano na jenocide, kandi jenocide ni cyo cyaha cy'ubugome kandi giteye ishozi kuruta ibindi mu muryango nyamuntu⁵². Uruhare Michel Bagaragaza yagize ni urwo kuba yarafashije kandi agashishikaza ku buryo bukomeye

⁴⁸ *Urubanza rwa Serushago*, n°ICTR-98-39, Impamvu zashingiweho mu guca urubanza (Urugereko rw'ubujurire), 6 Mata 2000, igika 23; *Urubanza rwa Ntagerura na bagenzi be*, n° ICTR-99-46, Inyandiko y'urubanza mu mu bujurire, igika 430.

⁴⁹ *Urubanza rwa Serushago*, Impamvu zashingiweho mu guca urubanza (Urugereko rw'ubujurire), 6 Mata 2000, igika 23.

⁵⁰ *Urubanza rwa Kajelijeli*, Inyandiko y'urubanza mu bujurire, 23 Gicurasi 2005, igika 294; *Urubanza rwa Serugendo*, n° ICTR-2005-84, Inyandiko y'urubanza mu rw'iremezo, 12 Kamena 2006, igika 40; *Urubanza rwa Bisengimana*, n° ICTR-00-60, Inyandiko y'urubanza mu rw'iremezo, 13 Mata 2006, igika 111; *Urubanza rwa Simba*, n° ICTR-01-76, Inyandiko y'urubanza mu rw'iremezo, 13 Ukuboza 2005, igika 438; *Urubanza rwa Kalimanzira*, n° ICTR-05-88, 22 Kamena 2009, igika 748.

⁵¹ Nk'urugero, reba *Urubanza rwa Serugendo*, Inyandiko y'urubanza mu rw'iremezo, 12 Kamena 2006, igika 39.

⁵² *Urubanza rwa Ruggiu*, n° ICTR-97-32, Inyandiko y'urubanza mu rw'iremezo, 1 Kamena 2000, igika 48.

abacuze umugambi na ba gatozi bishe Abatutsi barenga 1000 bahungaga bakiza amagara yabo, kandi azi ko abo banyabyaha bagamije gukora jenocide.

32. Nyamara ariko, nta kimenyetso na kimwe cyatuma Urugereko rwanzura ko mu wa 1993, Bagaragaza yari yaremeye ko intwaro zihishwa mu nganda z'icyayi azi ko izo ntware zari gukoreshwa mu bikorwa bya jenocide cyangwa ko yaba yarabigambiriye igihe yemeraga gukora ibyo abayobozi b'abanyapolitiki b'ako karere n'abakuru b'Interahamwe bamusabaga. Ku rundi ruhanda ariko, Urugereko rusanga kuba yaritabiriye ibyo bikorwa ari icyaha gikomeye cyane kandi kinyuraniye bikomeye n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara.

B. Impamvu zongera ububi bw'icyaha

33. Urugereko rusanga ntacyo ababuranyi bavuze ku byerekeye impamvu zongera ububi bw'icyaha, bityo rukaba rwanzura ko muri uru rubanza nta mpamvu nk'izo zihari.

C. Impamvu zigabanya ububi bw'icyaha

34. Si ngombwa ko impamvu zigabanya ububi bw'icyaha zigirana isano itaziguye n'icyaha cyakozwe⁵³. Urugereko rufite ububasha busesuye mu kugena ingingo zigabanya ububi bw'icyaha, n'uburemere izo ngingo zihabwa.⁵⁴ Kuba hariho impamvu zigabanya ububi bw'icyaha ntibivuga byanze bikunze ko uregwa agabanyirizwa igihano. Nyamara ariko, Urugereko rwa mbere rw'iremezo rufite inshingano yo kugira icyo ruvuga ku gaciro rushobora guha izo mpamvu mu igenabihano⁵⁵.
35. Urugereko rwasanze ingingo zisobanuye mu mirongo ikurikira ari impamvu zigabanya ububi bw'ibyaha ku nzego zinyuranye.

⁵³ *Urubanza rwa Bisengimana*, Inyandiko y'urubanza mu rw'iremezo, 13 Mata 2006, igika 125; *Urubanza n° IT-02-60/1 Porokireri aburana na Mormir Nikolić*, Inyandiko y'urubanza mu rw'iremezo, 18 Ukuboza 2003, igika 145; *Urubanza n° IT-02-61 Porokireri aburana na Miroslav Deronjić*, Inyandiko y'urubanza mu rw'iremezo, 30 Werurwe 2004, igika 155.

⁵⁴ *Urubanza rwa Kalimanzira*, Inyandiko y'urubanza mu rw'iremezo, 22 Kamena 2009, igika 748.

⁵⁵ *Urubanza rwa Niyitegeka*, n° ICTR-96-14, Inyandiko y'Urubanza mu bujirire, 9 Nyakanga 2004, igika 267.

36. Ubwunganizi bwatanze ibimenyetso byakwizerwa, bigaragaza ko mu buzima bwe bwite no mu mirimo ye, Michel Bagaragaza atigeze agira icyo apfa n'Abatutsi kandi ko yari abanye neza cyane nabo.⁵⁶ Babiri mu bana be barerewe mu muryango we, yababyaranye n'Umututsikazi ndetse anarwana kuri uwo Mututsikazi mu gihe cya jenoside. Ikindi kandi, mu kazi ke yahaga Abatutsi imyanya yo mu rwego rwo hejuru, akanabana ku mugaragaro n'imiryango y'Abatutsi. Bityo rero, Urugereko rusanze bishoboka ko Michel Bagaragaza yaba yeremeye gufasha abakoze jenoside kugira ngo umutekano we bwite n'uw'umuryango we bidahungabana⁵⁷. Ariko kandi, Urugereko ntirwigeze rugezwaho ibimenyetso bihagije byatuma rwanzura ko Michel Bagaragaza, nk'umuntu wari wifite kandi w'igikomerezwa, yari guhita agubwaho cyangwa yugarizwa n'akaga, iyo aramuka yanze gukora ibyo abayobozi bo mu rwego rwa politiki b'ibanze, n'ab'Interahamwe bamusabaga.
37. Nk'umugabo wubatse kandi ufite abana, Michel Bagaragaza yemeje Urugereko ko afite amahirwe menshi yo kongera kubana neza n'abandi mu buzima busanzwe nyuma yo kurekurwa. Ikindi kandi, ni umugabo usheshe akanguhe w'imyaka 63, w'ubuzima bujega. Byongeye kandi, mbere na nyuma yo gufatwa kwe, yagaragaje imyitwarire myiza.
38. Impamvu igabanya ububi bw'icyaha ikomeye cyane ni uko Bagaragaza yireze kuva na mbere, akishyikiriza Urukiko ku bwende bwe, akemera icyaha, bamaze kumugabanyiriza ibirego, maze bigahura n'ibyaha yiyemereye. Ikindi kandi, mu buhama yatanze mu ruhame imbere y'Urugereko, yagaragaje ko yicuza ibyaha yakoze abikuye ku mutima. Ubukemuramanza budahindagurika bugaragaza ko kwemera icyaha kw'Uregwa bishobora kumubera impamvu igabanya ububi bw'icyaha, kubera ko aba yerekanye ko yicuza ibyo yakoze. Igikorwa nk'icyo kikaba ari umusanzu w'ubwiyunge, kikaba kandi gituma ukuri kushyirwa ahagaragara ndetse byatuma n'abandi bakoze ibyaha

⁵⁶ Inyandikomvugo y'iburanisha, 3 Ugushyingo 2009, urup.13; ibimenyetsogihamya D3,D4,D7,D8,D9,10,11,D12 na D13 (byose byashyizweho ubujeni).

⁵⁷ Inyandikomvugo y'iburanisha, 3 Ugushyingo 2009, urup.23; 4 Ugushyingo 2009, urup.21; ikimenyetsogihamya D2 (cyashyizweho ubujeni).

- by'ubugome bakurikiza urugero rwe. Kwirega no kwemera icyaha birinda anketi n'urubanza birebire, bityo mu rubanza, ntihakenerwe abantu n'ibintu byinshi cyangwa igihe kirekire. Ikindi kandi bituma abatangabuhamya bataruha baza gutanga ubuhamya mu rukiko.⁵⁸
39. Hari indi impamvu igabanya ububi bw'icyaha ikomeye kurushaho. Ingingo zatanzwe n'abaturanyi zigaragaza ko Michel Bagaragaza yerekanye ubufatanye na Porokireri mu gihe cyo gutegura dosiye no mu ikurikiranacyaha kuva muri Gicurasi 2002. Ikindi kandi yahaye Porokireri amakuru ku ruhare rwe ubwe n'urw'abandi mu byabaye muri jenocide na mbere yayo, nta gutinya kwishinja. Ku itariki ya 19 Ukuboza 2004, yasinanye amasezerano y'ubufatanye na Porokireri kandi na nyuma y'ifatwa rye ryabaye ku itariki ya 15 Kanama 2005, akomeza ubwo bufatanye, atizigamye. Yatanze ubuhamya bushinja mu rubanza rwa Zigiranyirazo kandi yiyemeza ko, ni biba ngombwa⁵⁹, azakomeza kubikora no mu zindi manza. Ubufatanye bwe bwagize akamaro kanini cyane⁶⁰. Urugereko rusanga na none Michel Bagaragaza yarakomeje gufatanya na Porokireri na nyuma y'uko umwirondoro we ushyirwa ahagaragara, n'ubwo ibyo byari binyuranyije n'ingamba zari zarashyizweho n'Urukiko. Yabikoze atitaye ku nkeke zari ku buzima bwe no ku bw'abagize umuryango we, no ku kuntu yari yarashyizwe mu kumba ka wenyine kubera impamvu z'umutekano we kuva muri Kanama 2005.⁶¹
40. Urugereko ruributsa ingingo ya 101 y'Amategeko ivuga ku buryo bweruye ko ubufatanye bukomeye na Porokireri mbere na nyuma yo kwemera icyaha bugomba gufatwa

⁵⁸ *Urubanza rwa Bisengimana*, Inyandiko y'urubanza mu rw'iremezo, 13 Mata 2006, igika 126. Reba kandi *Urubanza rwa Ruggiu*, Inyandiko y'urubanza mu rw'iremezo, 1 Kamena 2000, ibika 53-55; *Urubanza Porokireri aburana na Biljana Plavšić*, n°IT-00-39 na 40/1, Inyandiko y'urubanza mu rw'iremezo, 27 Gashyantare 2003, ibika 70 na 73 ; n' *Urubanza Porokireri aburana na Dragan Nikolić*, n° IT-94-2, Inyandiko y'urubanza mu rw'iremezo, 18 Ukuboza 2003, igika 248.

⁵⁹ Icyifuzo gihuriweho, igika 5.2; Inyandikomvugo y'iburanisha, 4 Ugushyirwa 2009, imp.7 na 21; ikimenyetsogihamya D6.

⁶⁰ Ikimenyetsogihamya D6, igika 1.

⁶¹ Inyandikomvugo y'iburanisha, 4 Ugushyirwa 2009, urup.21; ibimenyetsogihamya D1,D5,D10 na D13 (byose byashyizweho ubujeni), ndetse n'ikimenyetsogihamya D6, ibika 7 na 8.

nk'impamvu igabanya ububi bw'icyaha⁶². Kubera iyo mpamvu, Urugereko rusanga ubufatanye Uregwa akomeje kugaragariza Porokireri guhera muri Gicurasi 2002, ari ubufatanye bufite agaciro gakomeye kandi buri ku rwego ruhanitse, rudasanzwe.

III. Ibyifuzo [by'ababuranyi] ku birebana n'igihano

41. Mu masezeramo yo kwemera icyaha, ababuranyi bemeranjwe ko bazasaba igihano kiri hagati y'imyaka itandatu n'icumi y'igifungo, havanwemo imyaka Uregwa yafunzwe by'agateganyo⁶³. Urugereko rwazirikanye uko bikwiye icyo ababuranyi bombi barusabye, ariko kandi rwibutsa ingingo ya 62 bis B) y'Amategeko ivuga ko rutagomba byanze bikunze gukurikiza ibikubiye muri ayo masezerano.

IV. Umwanzuro

42. Urugereko rwemera ko gatozi w'icyaha ahabwa igihano kiruta icy'icyitso cye⁶⁴. Rumaze gusuzuma ibisanzwe bikurikizwa n'uru Rukiko ndetse n'urw'icyahoze cyitwa Yugosilaviya ku byerekeye igenabihamo, Urugereko rusanga ibihano bihabwa ba gatozi bahamwa n'icyaha cya jenocide biri hagati y'igifungo cy'imyaka 15 n'igifungo cya burundu. Rusanga kandi ko umwe muri ba gatozi b'ubwicanyi bwakorewe ku gasozi ka Kesho, kandi wari ufite imibereho nk'iya Michel Bagaragaza, yarakatiwe igihano cy'imyaka 20 y'igifungo n'Urugereko rwa mbere rw'iremezo⁶⁵.

Uburyo bwo kwitabira gukora icyaha butari ubw'ingenzi cyangwa ku buryo buziguwe, muri rusange, buhanishwa igihano cyoroheje⁶⁶. Urugereko ruzirikana ko igihano kigomba

⁶² Ingingo 101 B) ii)

⁶³ Amasezerano y'ubwemeracyaha, igika 5.4

⁶⁴ *Urubanza rwa Semanza*, Inyandiko y'urubanza mu bujurire, 20 Gicurasi 2005, igika 388.

⁶⁵ Ni kimwe no haruguru. Reba n' *Urubanza rwa Musema*, Inyandiko y'urubanza mu rw'iremezo, 27 Mutarama 2000, igika 1008 ; *Urubanza rwa Rutaganda*, Inyandiko y'urubanza mu rw'iremezo, 6 Ukuboza 1999, igika 473 n' *Urubanza rwa Zigiranyirazo*, n° ICTR-2001-73, Inyandiko y'urubanza mu rw'iremezo, igika 468.

⁶⁶ Reba nk'urugero, *Urubanza rwa Ruggiu*, Inyandiko y'urubanza mu rw'iremezo, 1 Kamena 2000, igika 81(aho Uregwa nyuma y'ikomatanywa ry'ibihano, yakatiwe imyaka 12 y'igifungo kuko yahamwe n'icyaha cyo guhamagarira ku mugaragararo kandi ku buryo butaziguwe gukora jenocide, n'icyo gutoteza nk'icyaha cyibasiye

guhuzwa n'imyifatire mibisha yaranze Uregwa muri rusange. Muri uru rubanza, rwanzuye ko hari impamvu zigabanya ububi bw'icyaha zidasanzwe zituma Uregwa agabanyirizwa igihano cyane ugereraniye n'icyo yari guhabwa iyo atagaragaza imyifatire yavuzwe hejuru.

V. Kwita ku gihe Uregwa yamaze afunzwe by'agateganyo

43. Hashingiwe ku ngingo ya 101 C) y'Amategeko, igihe uhamwa n'icyaha yamaze afunzwe by'agateganyo ategereje gushyikirizwa Urukiko cyangwa ategereje gucibwa Urubanza n'Urugereko rwa mbere rw'iremezo cyangwa n'Urugereko rw'ubujurire, kivanwa mu gihe cy'igifungo yakatiwe. Uregwa yafashwe kandi ashyikirizwa gereza y'Umuryango w'Abibumye, Arusha, ku itariki ya 15 Kanama 2005. Igihe yamaze muri gereza n'icyo ashobora kuzahamara ategereje ko urubanza rwe rurangira burundu mu bujurire, haramutse habayeho ubujurire kigomba kvanwa mu gihe cyose cy'igihano yahawe. Ni uburenganzira bwe.

UMUTWE WA 5 : ICYEMEZO CY'URUGEREKO

44. Rushingiye kuri Sitati, Amategeko, uburemere bw'icyaha, urutonde rusange rw'ibihano by'igifungo bikurikizwa n'inkiko zo mu Rwanda, ibimenyetso byatanze mu iburanisha ry'igenabihano hamwe n'ingingo z'ababuranyi, rumaze kandi gusuzuma impamvu zigabanya ububi by'icyaha⁶⁷, Urugereko rwemeje ko Michel Bagaragaza ahamwa n'icyaha cyo kuba icyitso cy'abakoze jenocide nk'uko biteganywa n'ingingo ya 2.3 e) ya Sitati. Kubera izo mpamvu rumukatiye:

imyaka umunani y'igifungo

inyokomuntu) n'Urubanza rwa *Ntakirutimana*, Inyandiko y'urubanza mu rw'iremezo, 21 Gashyantare 2003, igika 921 (aho Uregwa yakatiwe igihano cy'imyaka 10 y'igifungo kuko yahamwe n'icyaha cyo gufasha no gutera inkunga abantu bakoze jenocide, ariko hazirikanywe by'umwihariko imyaka afite, ubuzima bwe bujajajega, kuba yaritwaye neza mbere [y'uko afatwa] n'ineza yagiriye rubanda).

⁶⁷ *Urubanza rwa Rutaganira*, n° ICTR-95-1C, Inyandiko y'urubanza mu rw'iremezo, 14 Werurwe 2005, igika 168.

45. Urugereko rusanze, hakurikijwe ingingo ya 101 C) y'Amategeko, ari uburenganzira bw'Uregwa ko igihe amaze afunzwe by'agateganyo cyavanwa mu gihano cye. icyo gihe kizatangira kubarwa kuva igihe yishyiriye mu maboko y'Urukiko, ni ukuvuga ku itariki ya 15 Kanama 2005, kugeza umunsi uru rubanza rusomeweho. Hakurikijwe ingingo ya 102 A y'Amategeko, iki gihano kigomba kurangizwa guhera ku itariki uru rubanza rusomeweho.
46. Hakurikijwe ingingo ya 103 B) y'Amategeko, Uregwa azaguma muri gereza arinzwe n'Urukiko kugeza igihe hazafatirwa ingamba za ngombwa zirebana no kumwimurira mu gihugu azarangirizamo igihano cye.

Bikorewe Arusha, ku itariki 17 Ugushyingo 2009.

[Umukono]

[Umukono]

[Umukono]

Vagn Joensen
Perezida

Bakhtiyar Tuzmukhamedov
Umucamanza

Gberdao Gustave Kam
Umucamanza

[Kashe y'Urukiko]



UMURYANGO
W'ABIBUMBYE

Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho
u Rwanda

URUGEREKO RWA MBERE RW'IREMEZO III

Abacamanza: Vagn Joensen, Perezida
Bakhtiyar Tuzmukhamedov
Gberdao Gustave Kam

Gerefiye: Adama Dieng

Itariki: 17 Nzeri 2009

URUBANZA POROKIRERI

Aburana na

MICHEL BAGARAGAZA

Urubanza No ICTR-2005-86-T

INYANDIKOY'IBIREGO YAHINDUWE

(Nk'uko yahinduwe ku itariki ya 17 Nzeri 2009)

Porokireri w’Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda (« Porokireri »), ashingiye ku bubasha ahabwa n’ingingo ya 17 ya Sitati y’Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda (« Sitati ») ararega :

Michel Bagaragaza

Kuba icyitso cy’abakoze jenocide, icyo cyaha kikaba giteganywa n’ingingo ya 2 (3) (e) ya Sitati.

(A) UREGWA

1. **Michel Bagaragaza** yavukiye mu karere k’u Bushiru, muri Komini ya Giciye, Perefegitura ya Gisenyi, Repuburika y’u Rwanda, mu wa 1945.
2. Mu bihe byose bivugwa muri iyi Nyandiko y’ibirego, keretse biramutse bivuzwe ukundi, **Michel Bagaragaza** yari umukozi mukuru wa Leta, akaba yari :
 - i. Umuyobozi mukuru w’ikigo cya OCIR/Ishami ry’icyayi. Icyo kigo cya Leta cyari gishinzwe gucunga inganda z’icyayi, kikaba na kimwe mu bigo by’inganda byari bikomeye mu Rwanda. Nk’umuyobozi mukuru wa OCIR/Ishami ry’icyayi, Bagaragaza yari afite ububasha ku nganda z’icyayi 11 zakoreshega abakozi bagera ku 55.000.
 - ii. Visi-Perezida wa banki yitwa BACAR.
 - iii. Umuyoboze wa MRND muri Perefegitura ya Gisenyi, akaba n’umwe mu bari bagize komite y’ishyaka rya MRND ku rwego rw’iyo perefegitura. Iyo komite ni yo yari yarashinze umutwe w’Interahamwe muri Perefegitura ya Gisenyi kandi ni na yo yawugenzuraga.
3. Nk’umuyobozi mukuru wa OCIR/Ishami ry’icyayi, Visi-Perezida wa BACAR, Umuyoboze wa MRND muri Perefegitura ya Gisenyi n’umwe mu bagize komite ya

MRND muri icyo perefegitura, Michel Bagaragaza yari mu itsinda ry'abantu bafite ingufu kandi bunze ubumwe, ryari rizwi ku izina ry'« Akazu ». Iryo tsinda ryari rifite ububasha bukomeye mu rwego rwa politiki n'urw'imari muri Repuburika y'u Rwanda. Ryari rigizwe n'abantu bo mu muryango wa Perezida, abakomoka mu karere k'u Bushiru Bagaragaza avukamo, no mu ntara z'amajyaruguru muri Gisenyi no mu Ruhengeri.

(B) IKIREGO : KUBA ICYITSO CY'ABAKOZE JENOSIDE

4. Porokireri w'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda arega Michel Bagaragaza icyaha cyo **KUBA ICYITSO CY'ABAKOZE JENOSIDE**, giteganywa n'ingingo ya 2 (3) (e) ya Sitati, kubera ko hagati y'itariki ya 1 Mutarama n'ya 31 Ukuboza 1994, mu Rwanda hose, cyane cyane muri Perefegitura ya Gisenyi, Michel Bagaragaza, yamenye ko abandi bantu bafite umugambi wo kurimbura abaturage bose bo mu bwoko bw'Abatutsi cyangwa se igice cyabo, arawitabira. Bityo akaba yarabaye icyitso mu gukora icyaha cya jenocide, nk'uko bigiye gusobanurwa.

Uburyozwacyaha nka gatozi, hashingiwe ku ngingo ya 6(1) ya Sitati

5. Hashingiwe ku ngingo ya 6 (1) ya Sitati, Michel Bagaragaza aryozwa icyaha nka gatozi cyo kuba icyitso cy'abakoze jenocide, kubera ko yamenye ko abantu runaka barimo gukora jenocide, akabafasha kandi akaborohereza mu gutegura no gutsotsoba icyo cyaha. Abo bantu barimo abayobozi ba gisirikare n'aba gisiviri, Interahamwe nka Thomas Kuradusenge wari umukuru wazo, akaba kandi yari yungirije Burugumesitiri wa Komine ya Giciye, abajepe, abasirikare, abakozi batazwi amazina bo mu ruganda rw'icyayi rwa Rubaya n'urwa Nyabihu, n'abandi bantu batazwi. Ibyo bikorwa Michel Bagaragaza yabikoze ku giti cye cyangwa abikoresha abandi, nibura kuva muri Mutarama 1994 kugeza muri Nyakanga 1994. Ibyabaye bigiye kuvugwa mu buryo burambuye kuva ku gika cya 6 kugeza ku cya 12, ni byo bituma agomba kuryozwa icyaha nka gatozi.

(C) INCAMAKE Y'IBYABAYE

6. Michel Bagaragaza, abizi neza, yafashije kandi yorohereza abantu runaka barimo abayobozi ba gisirikare n'aba gisiviri, Interahamwe zirimo Thomas Kuradusenge akaba kandi yari yungirije Burugumesitiri wa Komine ya Giciye, abajepe, abakozi b'Uruganda rw'icyayi rwa Rubaya n'ab'urwa Nyabihu, n'abandi bantu batazwi, gukora jenocide hagati y'itariki ya 7 n'ya 13 Mata 1994.
7. Mu wa 1993, Michel Bagaragaza yasabwe n'umugaba w'ingabo, Général Déogratias Nsabimana, guhisha intwaro ziremerye z'ingabo z'u Rwanda. Nyuma yaho, Michel Bagaragaza yategetse ubuyobozi bw'Uruganda rw'icyayi rwa Rubaya n'uw'urwa Nyabihu guhisha izo ntwaro nk'uko yari yabisabwe. Ubuyobozi bw'izo nganda bwaje kumenyesha Michel Bagaragaza ko izo ntwaro zahageze koko, kandi ko muri izo nganda zombi hakambitse abasirikare. Hagati ya Mata na Nyakanga 1994, Michel Bagaragaza, azi neza icyo akora, yemeye ko Interahamwe n'abandi Bahutu b'abasiviri bakoresha izo ntwaro mu kwica abaturage bo mu bwoko bw'Abatutsi bo muri Perefegitura ya Gisenyi.
8. Umunsi umwe, ku itariki ya 7, iya 8 cyangwa se iya 9 Mata 1994, Michel Bagaragaza, azi neza icyo akora, yahaye abakozi bo mu ruganda rw'icyayi rwa Rubaya uruhusa rwo guha lisansi imodoka z'Interahamwe n'iz'abandi Bahutu b'abasiviri, urwo gukoresha imbunda zari mu bubiko mu ruganda rwa Rubaya n'urwa Nyabihu, ndetse n'urwo kugena abakozi b'uruganda b'inyongera ngo bafashe abandi bantu mu kwica abaturage bo mu bwoko bw'Abatutsi babarirwaga hagati ya 800 na 1.500 bari bahungiye ku gasozi ka Kesho. Kubera ibyo bikorwa, Michel Bagaragaza yagize uruhare rukomeye muri ubwo bwicanyi kuko yashyigikiye ababutsotsobye kandi akabatera akanyabugabo, bityo akaba yarabaye icyitso mu iyicwa ry'Abatutsi.
9. Ku itariki ya 8 Mata 1994, cyangwa hafi yayo, Michel Bagaragaza yahuye na Thomas Kuradusenge wari umukuru w'Interahamwe, akaba kandi yari yungirije Burugumesitiri wa Komine ya Giciye hamwe na Gahinjori wari Burugumesitiri w'iyo Komine. Michel

Bagaragaza yari azi ibanga ry'ako kanama Gahinjori na Thomas Kuradusenge bemeranjwemo ko Thomas Kuradusenge agiye gutegura no kuyobora ibitero byagombaga kugabwa ku Batutsi bari bahungiyeye ku gasozi ka Kesho no kuri Katedarari ya Nyundo, muri Perefegitura ya Gisenyi. Bemeranjwe kandi ko mu gihe ibitero bizaba bigabwa ku basiviri b'Abatutsi bari ku gasozi ka Kesho mu karere ka Kabaya no kuri Katedarari ya Nyundo mu karere ka Bugoyi, Kuradusenge azakomeza kohererezwa abantu bo kumutiza umurindi.

10. Ku itariki ya 8 Mata 1994, cyangwa hafi yayo, Michel Bagaragaza yahaye Gahinjori na Kuradusenge uruhusa rwo gukoresha imodoka na lisansi by'Uruganda rw'icyayi rwa Rubaya n'iby'urwa Nyabihu, ngo byifashishwe mu kujyana Interahamwe mu bitero byo kwica abasiviri b'Abatutsi bari ku gasozi ka Kesho no kuri Katedarari ya Nyundo. Kubera ibyo bikorwa, Michel Bagaragaza yagize uruhare rukomeye muri ubwo bwicanyi kuko yashyigikiye ababutsotsobye kandi akabatera akanyabugabo, bityo akaba yarabaye icyitso mu iyicwa ry'Abatutsi.
11. Hagati y'itariki ya 9 n'ya 13 Mata 1994, Kuradusenge yagiye kureba Michel Bagaragaza inshuro ebyiri cyangwa eshatu. Muri icyo mishyikirano, Kuradusenge yabwiye Michel Bagaragaza ko Interahamwe zifuza agahimbazamusyi kugira ngo zikomeze ubwicanyi. Ni bwo rero yamusabaga amafaranga yo kugurira Interahamwe inzoga kugira ngo zikaze umurego mu kwica. Michel Bagaragaza yamuhaye amafaranga atubutse y'agahimbazamusyi kagenewe Interahamwe kugira ngo zishishikarire ubwicanyi bwibasiye Abatutsi mu turere twa Kabaya na Bugoyi. Kubera ibyo bikorwa, Michel Bagaragaza yagize uruhare rukomeye muri ubwo bwicanyi kuko yashyigikiye ababutsotsobye kandi akabatera akanyabugabo, bityo akaba yarabaye icyitso mu iyicwa ry'Abatutsi.
12. Michel Bagaragaza yateye inkunga Interahamwe mu kwica Abatutsi babarirwa hagati ya 800 na 1.500 bari ku gasozi ka Kesho ku itariki 8 April 1994 cyangwa hafi yayo, n'abandi babarirwa mu magana bari kuri Katedarari ya Nyundo ku itariki ya 10 Mata 1994 cyangwa hafi yayo, kubera ko yafashije mu gutanga lisansi, mu gutwara abari mu

bitero, mu gutanga imbunda n'abakozi b'inganda. Ibyo byose, kimwe n'abo bakozi, bikaba byarifashishijwe mu bwicanyi bwabereye ku gasozi ka Kesho no kuri Katedarari ya Nyundo. Kubera ibyo bikorwa, Michel Bagaragaza yagize uruhare rukomeye muri ubwo bwicanyi kuko yashyigikiye ababutsotsobye kandi akabatera akanyabugabo, bityo akaba yarabaye icyitso mu iyicwa ry'Abatutsi.

Ibyo Michel Bagaragaza yakoze, nk'uko byasobanuwe muri iyi nyandiko ku buryo burambuye, bihanishwa ingingo ya 22 n'iya 23 za Sitati.

Bikorewe Arusha, kuri iyi tariki ya 17 Nzeri 2009.

Porokireri

Hassan Bubacar Jallow

[Umukono]