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**Urukiko nshinyabwaha mpuzamahanga
rwagenewe u Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
Tel: 255 57 4207-11 4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2848/49

URUGEREKO RWA MBERE RW'IREMEZO I

UMWIMERERE : IGIFARANSA

Haburanisha : Laity Kama, Perezida w'Urugereko
Lennart Aspegren, Umucamanza
Navanethem Pillay, Umucamanza

Icyemezo cyo : ku wa 4 Nzeri 1998

Gerefiye : Bwana Agwu Okali

HABURANA

UBUSHINJACYAHA

NA

YOHANI KAMBANDA

Urubanza N° : ICTR-97-23-S

URUBANZA RUGENA IGIHANO

Ibiro bya Porokireri : Bwana Bernard Muna
Bwana Mohamed Othman
Bwana James Stewart
Bwana Udo Gehring

Ubwunganizi : Me Oliver Michael Inglis

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I. Imiburanishirize

A. INKOMOKO Y'URUBANZA

1. Yohani Kambanda yafashwe n'abategetsu ba Kenya babisabwe ku mugaragaro na Porokireri ku wa 9 Nyakanga 1997, ashingiye ku ngingo ya 40 y'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso ("Amategeko"). Ku wa 16 Nyakanga 1997, Nyakubahwa Umucamanza Laity Kama, yubahiriza icyifuzo cya Porokireri cyo ku wa 9 Nyakanga 1997, yategetse iyimurwa n'ifungwa ry'agateganyo ry'iminsi mirongo itatu rya Yohani Kambanda muri gereza y'Urukiko, hakurikijwe ingingo ya 40 bis y'Amategeko. Ifungwa ry'agateganyo rya Yohani Kambanda ryongereweho iminsi mirongo itatu inshuro ebyiri, inshuro ya mbere hakurikijwe ingingo ya 40 bis (F), inshuro ya kabiri hakurikijwe ingingo ya 40 bis (G).
2. Ku wa 16 Ukwakira 1997, inyandiko y'ibirego ya Porokireri ishinja ukekwa icyaha Yohani Kambanda, yashyikirijwe Umucamanza Yakov Ostrovsky, wayemeje, agatanga na manda yo gufata Uregwa, akanatega ko anagumishwa mu gifungo.
3. Ku wa 1 Gicurasi 1998, ubwo yitabaga ubwa mbere Urugereko rwa mbere rw'iremezo, Ushinjwa yemeye ibyaha bitandatu bikubiye mu nyandiko y'iberego, aribyo: itsembabwoko, ubwumvikane bwo gukora itsembabwoko, guhamagarira abantu ku mugaragaro kandi mu buryo butaziguye ibikorwa by'itsembabwoko, kuba icyitso cy'abakora itsembabwoko, icyaha cyibasiye inyokomuntu (ingingo ya 3 (a) ya Sitati (ubuhotozi)), n'icyaha kibasiye inyokomuntu, (ingingo ya 3 (b) ya Sitati (itsembatsemba)).
4. Rumaze gusuzuma agaciro k'ubwemeracyaha bwe, cyane cyane ruherereye ku masezerano yabaye hagati ya Porokireri, Ushinjwa hamwe n'umwunganira,

yashyizweho umukono n'impande zombi¹, Urugereko rwahamije icyaha Ushinjwa mu birego byose bikubiye mu nyandiko y'ibirego. Mu nama itegura urubanza, yahise iterana nyuma y'iyitaba rya mbere, itariki y'iburanisha ribanziriza itangwa ry'ibihano iteganywa n'ingingo y'i 100 y'Amategeko yashyizwe ku wa 31 Kanama 1998. Nyuma, bisabwe na Porokireri, iyo tariki yimuriwe ku wa 3 Nzeri 1998. Muri iyo nama itegura urubanza, abaturanyi bemeye kuzatanga imyanzuro yabo mbere y'iyi tariki, baza guhabwa itariki ya 15 Kamena 1998. Uwunganira ushinjwa na Porokireri batanze imyanzuro yabo mbere y'iyi tariki. Iryo buranisha ribanza ryabaye ku wa 3 Nzeri 1998.

B. UBWEMERACYAHA

5. Nk'uko byavuzwe haruguru, Yohani Kambanda yemeye icyaha, nk'uko biteganywa n'ingingo ya 62 y'Amategeko, gikomoka ku birego bitandatu ashinjwa bikubiye mu nyandiko y'ibirego. Nk'uko byavuzwe, Ushinjwa yongeye gushimangira ko yagiranye amasezerano na Porokireri, amasezerano yashyizweho umukono n'Umwunganira, nawe ubwe, afungishijwe ubujeni, akaba ayiyemereramo ibyo bamushinja byose.
6. Urugereko rwashatse ariko kugenzura agaciro k'ubwo bwemeracyaha ; ni muri urwo rwego rwabajije Ushinjwa :
 - (i) Niba ubwemeracyaha bwe bwarabaye kubushake, mu yandi magambo, niba yarabukoze mu bwigenge kandi azi icyo akora, nta gahato, nta terabwoba, nta n'icyo bamusezeranyije ;
 - (ii) Niba yarumvise neza imiterere y'ibyo ashinjwa n'ingaruka z'ubwemeracyaha bwe;
 - (iii) Niba ubwemeracyaha bwe budafite ibindi buhishe, mu yandi magambo, niba yari azi neza ko budashobora kubangikanywa n'indi myiregurire ishobora kubuvuguruza.

¹ Reba mu bikurikira, igice cyahariwe ubwemera cyaha

7. Kuri ibyo bibazo byose, Ushinjwa yashubije yemera . Ku bw’ibyo, Urugereko rwafatiye ku kicaro cya rwo icyemezo gikurikira :

“Bwana Yohani Kambanda, nyuma y’impaka z’abacamanza n’igenzura ry’uko ubwemeracyaha bwanyu bwakozwe ku bushake, nta bindi buhishe kandi ko mwumvise neza ireme n’ingaruka ryabwo :

Hakurikijwe uko ibintu biteye n’icyo Amategeko abivugaho, bikubiye mu masezerano mwakoranye n’ibiro bya Porokireri kandi mwemeye ko mwashyizeho umukono ndetse n’ubunganira, Urukiko rubahamije icyaha gikomoka ku birego bitandatu babarega ;

Rutegetse ko mukomeza gufungwa kandi rukaba rusabye ko inama itegura urubanza yahita iterana nyuma y’iri buranisha kugira ngo rwemeranye na Gerefiye itariki y’iburanisha ribanziriza isomwa ry’ibihano [...]]²

II. Amategeko n’amahame akurikizwa

8. Urugereko ruzibutsa amategeko agena ibihano n’irangizwa ryabyo, hanyuma runagaragaze urutonde rw’ibihano bitangwa, n’amahame rusange agenga igenwa ry’ibihano.

A. Amategeko akurikizwa

9. Urugereko ruributsa mu mirongo ikurikira, ingingo za Sitati n’iz’amategeko zirebana n’ibihano, zikurikizwa k’Ushinjwa.

Ingingo ya 22 ya Sitati : Urubanza

“Urugereko rwa mbere rw’iremezo ruca imanza kandi rugahana abantu bahamwe n’ibyaha bikomeye binyuranyije n’Amategeko mpuzamahanga arengera ikiremwanuntu”.

² Reba inyandiko-mvugo y’iburanisha ry’Urugereko rwa mbere rw’iremezo I, ku wa mbere Gicurasi 1998, Urukiko nshinjabyaha mpuzamahanga rwagenewe u Rwanda, Umuryango w’Abibumbye.

Ingingo y'i 100 y'Amategeko : Imihango ibanziriza itangwa ry'ibihano

“Nyuma y’impaka z’abaturanyi cyangwa nyuma yuko icyaha gihama Uregwa, Porokireri n’Uwunganira Ushinjwa bashobora gushyikiriza Urugereko rwa mbere rw’iremezo ingingo zose zatuma rutanga igihano gikwiranye n’icyaha”.

Ingingo ya 23 ya Sitati : Ibihano

- “1. Urugereko rwa mbere rw’iremezo rutanga ibihano by’igifungo gusa. Kugira ngo rutange ibihano byo gufunga, Urugereko rwa mbere rw’iremezo rwifashisha urutonde rusange rw’ibihano by’igifungo rukurikizwa n’inkiko zo mu Rwanda.
2. Mu gutanga igihano icyo aricyo cyose, Urugereko rwa mbere rw’iremezo ruzirikana ingingo nyinshi nk’uburemere bw’icyaha n’imibereho y’uwakatiwe.
3. Uretse igihano cyo gufunga uwakatiwe, Urugereko rwa mbere rw’iremezo rushobora gutegeka ko ibintu byose n’umutungo byigaruriwe mu nzira zinyuranyije n’amategeko, bisubizwa ba nyira byo, hakaba hakoreshwa n’ingufu”.

Ingingo y'i 101 y'Amategeko : Ibihano

- “(A) Umuntu wese uhamijwe icyaha n’Urukiko, ahanishwa igihano cy’igifungo gishobora no kuba icya burundu.
- (B) Iyo Urugereko rwa mbere rw’iremezo rutanga ibihano, ruzirikana ibiteganyijwe n’ingingo ya 23 ya Sitati mu gika cya (2) ndetse n’ibi bikurikira :
- (i) impamvu nyongeracyaha ;

- (ii) impamvu nyoroshiyacyaha harimo n'ubwitonzi ndetse n'ubufatanye Uregwa yagaragarije Ubushinjacyaha mbere cyangwa nyuma yuko icyo cyaha kimuhama ;
 - (iii) Urutonde rusange rw'ibihano by'igifungo nk'uko bitangwa n'inkiko zo mu Rwanda ;
 - (iv) Iyo bibaye ngombwa, igihe Uregwa yamaze muri gereza afungiwe icyo cyaha ku cyemezo cy'Urukiko rw'igihugu iki n'iki hakurikijwe ingingo ya 9 ya Sitati mu gika cy'ayo cya (3).
- (C) Iyo ibihano ari byinshi, Urugereko rwa mbere rw'iremezo rwemeza niba ibyo bihano bigomba kurangizwa kimwe nyuma y'ikindi, cyangwa se niba bigomba kurangirizwa hamwe.
- (D) Urubanza rusomerwa mu ruhame, uwahamijwe icyaha ahibereye haseguriwe ibiteganywa n'ingingo y'i 102 y'aya mategeko mu gika cyayo cya (B)
- (E) Iyo Uregwa yamaze igihe ahagaritswe, ategereje gushyikirizwa Urukiko cyangwa gucirwa urubanza n'Urugereko rwa mbere rw'iremezo cyangwa n'Urugereko rw'ubujurire, icyo gihe gikurwa mu gihe cy'igifungo cyose''.

Ingingo ya 26 ya Sitati :

Irangizwa ry'ibihano

“Ibihano byo gufungwa birangirizwa mu Rwanda cyangwa mu gihugu cyatoranyijwe n'Urukiko kuri lisiti y'Ibihugu byamenyesheje Inama ishinze amahoro ku isi ko byiteguye kwakira abakatiwe. Ibyo bihano birangizwa nk'uko amategeko y'igihugu bireba abiteganywa ariko bikagenzurwa n'Urukiko''.

Ingingo y’i 102 y’Amategeko : Uko bigendera uwakatiwe

- “(A) Urubanza ruhita rurangizwa rukimara gusomwa nk’uko biteganyijwe mu gika (D) cy’ingingo y’i 100 y’aya Mategeko. Ariko iyo habaye ijurira, irangizarubanza rirasubikwa mu gihe hategerejwe icyemezo cy’Urugereko rw’ubujurire. Iyo bigenze bityo, uwakatiwe akomeza gufungwa nk’uko ingingo ya 64 y’aya Mategeko ibiteganyana.
- (B) Iyo, hakurikijwe icyemezo cyafashwe n’Urugereko rwa mbere rw’iremezo, uwakatiwe yarekuwe by’agateganyo cyangwa ari hanze kubera impamvu iyo ari yo yose, agasomerwa adahari, Urugereko rutanga manda yo kumufata. Mu ifatwa rye, amenyeshwa ko icyaha cyamuhamye n’ibihano byamugenewe, noneho ibiteganyijwe n’ingingo y’i 103 y’aya Mategeko bikubahirizwa”.

Ingingo y’i 103 y’Amategeko : Aho uwakatiwe afungirwa

- “(A) Igihano cyo gufunga kirangirizwa mu Rwanda cyangwa mu gihugu Urukiko ruhiseho kuri lisiti y’ibihugu byagaragaje ko byiteguye kwakira abakatiwe kugira ngo barangize ibihano byabo. Mbere yuko icyemezo gifatwa ku byerekeye ahantu uwakatiwe azafungirwa, Urugereko rubimenyesha Leta y’u Rwanda.
- (B) Kwimurira uwakatiwe mu gihugu azafungirwamo bikorwa iyo bishobotse nyuma y’uko igihe cyateganyirijwe ubujurire kirangiye”.

Ingingo ya 27 ya Sitati : Imbabazi n’ihindurwa ry’igihano

“Iyo uwakatiwe ashobora guhabwa imbabazi cyangwa igihano cye kigahindurwa hakurikijwe amategeko y’igihugu afungiwemo, icyo Gihugu kibimenyesha Urukiko mpuzamahanga rwagenewe u Rwanda. Imbabazi cyangwa ihindurwa ry’igihano bigenwa ari uko Perezida w’Urukiko mpuzamahanga rwagenewe u Rwanda, agishije inama abacamanza, abyemeye akurikije inyungu z’ubutabera kandi yisunze amahame remezo y’amategeko”.

Ingingo y'i 104 y'Amategeko : Igenzurwa ry'ifungwa

“Irangizwa ry'ibihano byose by'igifungo rigenzurwa n'Urukiko cyangwa n'urwego rwishyiriyeho”.

B. Uko ibihano bihanishwa Ushinjwa wahamijwe kimwe mu byaha biteganywa n'ingingo ya 2, ya 3 cyangwa ya 4 ya Sitati y'Urukiko, bikurikirana

10. Nk'uko bigaragara mu isuzumwa ry'amategeko twavuze haruguru yerekeranye n'ibihano, Urukiko rushobora gukatira gusa ushinjwa, wemeye icyaha cyangwa ufatwa atyo, igihano cy'igifungo gishobora kugera ku gifungo cya burundu hakurikijwe ingingo y'i 100 (1)(A) y'Amategeko, anakurikizwa na none mu guhana ibyaha Urukiko rufitiye ububasha bwo kuburanisha, nk'itsembabwoko (ingingo ya 2 ya Sitati), ibyaha byibasiye inyokomuntu (ingingo ya 3) n'ibikorwa binyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Umugereka wayo wa II (ingingo ya 4). Nta bundi bwoko bw'ibihano Sitati yemera, nk'igihano cyo kwicwa, imirimo y'uburetwa cyangwa igihano cy'ihazabu.
11. Ari Sitati mu ngingo yayo ya 23, ari n'Amategeko mu ngingo yayo y'i 101, ntibiteganywa igihano kihariye kuri buri cyaha Urukiko rufitiye ububasha bwo kuburanisha. Ukugena igihano byeguriwe ubushishozi bw'Urugereko, rugomba kuzirikana, uretse urutonde rusange rw'ibihano by'igifungo nk'uko rukoreshwa n'inkiko zo mu Rwanda, n'izindi ngingo, nk'uburemere bw'icyaha, imibereho bwite y'uwakatiwe, impamvu nkomezacyaha cyangwa nyoroshyacyaha, ubwitonzi ndetse n'ubufatanye Uregwa yagaragarije ubushinjacyaha mbere cyangwa nyuma yuko icyaha kimuhama.
12. Ubundi mu mategeko menshi y'ibihugu runaka, urutonde rw'ibihano rushingira ku buremere bw'ibyaha. Ariko Urugereko rwo rusanga, nk'uko byavuzwe haruguru, Sitati idasumbanya ibyaha binyuranye Urukiko rufitiye ububasha bwo kuburanisha, bityo ntirunasumbanya n'ibihano byabyo ;

ubusanzwe icyo gihano ni kimwe kuri buri kimwe muri ibyo byaha uko ari bitatu, ni ukuvuga igihano cy'igifungo, gishobora kugera, iyo gikabije, ku gifungo cya burundu.

13. Birumvikana ko, ibyo ari byo byose, mu gutanga igihano, Urugereko rwa mbere rw'iremezo rugomba kuzirikana, nk'uko biteganywa n'ingingo ya 23 (2) ya Sitati, ku ngingo izi n'izi nk'uburemere bw'icyaha.
14. Urugereko ntirushidikanya ko ibikorwa binyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Umugereka wayo wa II, nubwo bikomeye bwose, bifatwa nk'aho ari ibyaha byoroheje ubigereranyije n'itsembabwoko cyangwa se n'ibyaha byibasiye inyokomuntu ; ahubwo rusanga birugoye kugereranya icyaha cy'itsembabwoko n'ibyibasiye inyokomuntu uherye k'uburemere bwabyo. Ku bw'Urugereko, ibyaha byibasiye inyokomuntu byahanwe n'inkiko za Nuremberg n'izi Tokyo n'itsembabwoko, icyaha cyasobanuwe mu bihe byakurikiyeho, byose ni ibyaha birenze kamere-muntu. Urugereko rugasanga, ku bw'ibyo, ibyaha by'ubugome byaburanishijwe n'Urukiko rwa Nuremberg aribyo : Irimburwa ry'Abayahudi cyangwa "Umuti rurangiza ku kibazo cy'Abayahudi", byari bigize rwose itsembabwoko, ariko ntibyashobora kwitwa gutyo kuko icyaha cy'itsembabwoko cyasobanuwe nyuma yaho".
15. Inyandiko y'ibirego y'abashinjwa mu manza za Nuremberg yagaragazaga, ku byerekeye ibyaha byibasiye inyokomuntu, "ko ubwo buryo n'ibyo byaha by'ubugome byari ibyaha binyuranyije n'amategeko mpuzamahanga, n'amategeko y'igihugu iki n'iki, n'amahame remezo y'amategeko ahana nk'uko akomoka ku mategeko ahana y'ibihugu byateye imbere".³ Nk'uko Urukiko nshinjabyaha mpuzamahanga rwagenewe icyahoze cyitwa Yugosilaviya (TPIY) rubibona :

"Ibyaha byibasiye inyokomuntu bireba ibikorwa bikabije by'ubugizi bwa nabi bubangamira ikiremamuntu, bigihungabanya mu by'ibanze byacyo :

³ Imanza za baruharwa b'intambara mu Rukiko mpuzamahanga rwa gisirikare, Nuremberg, ku wa 14 Ugushyigoye 1945, ku wa 1 Ukwakira 1946. Umutungo wa 1

imibereho, ubwigenge, ubusugire bw'umubiri, ubuzima, icyubahiro. Ni ibikorwa birenze kamere-muntu bituma, kubera ingano yabyo cyangwa se uburemere bwabyo, birenga imyihanganire y'umuryango mpuzamahanga ugomba kubisabira igihano. Ariko ibyaha byibasiye inyokomuntu nabyo birenze muntu ku giti cye kuko iyo umusagariye, ni ubumuntu uba wibasiye, ni ubumuntu uba uhinyura, ubumuntu bunagize umwihariko w'icyaha cy'ubugome cyibasiye inyokomuntu''⁴.

16. Ku byerekeranye by'umwihariko n'icyaha cy'itsembabwoko, iribuliro ry'Amasezerano yerekeye itsembabwoko ryemera ko icyaha cy'itsembabwoko, mu mateka, cyateje isi imibabaro ikabije kandi ryibutsa akamaro k'ubufatanye mpuzamahanga kugira ngo bwomere isi igikomere nk'icyo. Icyaha cy'ubugome cy'itsembabwoko kigaragazwa n'uburiganya bwacyo bwihariye, busaba ko kiba cyarakozwe kigamije kurimbura igice kimwe cy'abantu cyangwa bese bahuriye ku bwenegihugu, ku isanomuzi, ku bwoko cyangwa ku idini nk'uko Sitati ibiteganyaga mu ngingo yayo ya 2 ; Urugereko rurasanga kandi rero icyo cyaha ari icyaha cy'ubugome ndengakamere, bityo rukazagena igihano bikwiranye.
17. Ntabwo bishidikanywaho ko, ukurikije uburemere bukabije bwabyo, ibyaha byibasiye inyokomuntu n'iby'itsembabwoko bigomba guhanishwa igihano gikwiye. Ingingo ya 27 y'Amategekoshingiro y'Urukiko rwa Nuremberg yemereraga urwo Rukiko gukatira uregwa wahamwe n'ibyaha byibasiye inyokomuntu, hakurikijwe ingingo ya 6(e) y'ayo mategekoshingiro, igihano cy'urupfu cyangwa se ikindi gihano rwabona ko gikwiye.
18. Kimwe n'Ibihugu byose byashyize ibyaha byibasiye inyokomuntu cyangwa icyaha cy'itsembabwoko mu mategeko yabyo, u Rwanda rwateganyirije ibyaha by'ubugome ibihano birushije ibindi gukara mu bikubiye mu mategeko yarwo ahana. Ni muri urwo rwego Itegekongenga nyarwanda rigena imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha

⁴ Reba Urukiko nshinjabyaha mpuzamahanga rw'icyahoze cyitwa Yugosilaviya, icyemezo cy'Urugereko rwa mbere rw'iremezo I cyo ku wa 1 Ugushyingo 1996, mu rubanza rwa DRAZEN ERDEMOVIC

cy'itsembabwoko cyangwa ibyaha byibasiye inyokomuntu byakozwe kuva ku itariki ya mbere Ukwakira 1990, ryemejwe mu mwaka w'i 1996⁵, rishyira abashinjwa mu nzego enye, hakurikijwe ibikorwa bigaragaza uruhare rwabo mu gukora ibyo byaha by'ubugome. Izo nzego ni izi zikurikira :

Urwego rwa 1

- a) Umuntu ibyaha by'ubugome yakoze cyangwa ibikorwa by'ubufatanyacyaha bishyira mu bacuze umugambi, abawuteguye, abawushishikarije abandi, abagenzuye n'abayoboye itsembabwoko cyangwa ibindi byaha byibasiye inyokomuntu ;
- b) Umuntu wari icyo gihe mu nzego z'ubuyobozi mu rwego rw'igihugu, urwa perefegitura, urwa komini, urwa segiteri cyangwa urwa selire, mu mashyaka ya politiki, mu gisirikare, mu madini, mu mitwe y'insoresore yitwara gisirikare ku buryo butemewe n'amategeko, akaba yakoze ibyo byaha cyangwa akoshya abandi kubikora ;
- c) Umwicanyi ruharwa, wamamaye aho yari ari cyangwa aho yanyuze kubera umwete yagize mu bwicanyi cyangwa ubugome bukabije yabukoranye ;
- d) Umuntu wakoze ibikorwa byo kwangiza no kwica urubozo imyanya ndangabitsina.

Urwego rwa 2

Umuntu ibikorwa by'ubugome yakoze cyangwa ubufatanyacyaha bishyira mu mubare w'abakoze icyaha, abafatanyije ku gikora cyangwa babaye ibyitso mu bwicanyi ku bushake cyangwa bakoze ibikorwa bikomeye byagiriwe abantu bikabaviramo gupfa.

⁵ Itegekongenga n° 08/96 ryo ku wa 30 Kanama 1996, ryatangajwe mu Igazeti ya Leta ya Repubulika y'u Rwanda, umwaka wa 35, n° 17, itariki ya 1 Nzeri 1996.

Urwego rwa 3

Umuntu wakoze ibikorwa by'ubugome cyangwa by'ifatanya bugome bituma ahamwa n'ibindi bikorwa bikomeye byakorewe abantu.

Urwego rwa 4

Umuntu wakoze ibyaha byerekeye ku mutungo.

19. Yohani Kambanda, nk'uko bigaragazwa na lisiti yometse ku myanzuro y'Umushinjacyaha yakozwe y'Umushinjacyaha mukuru mu Rukiko rw'Ikirenga rw'u Rwanda, akurikije Itegekongenga twavuze haruguru, arashyirwa mu rwego rwa mbere kandi ingingo ya 14 y'Itegekongenga ivuga ko :

“Ibihano bitangwa ku byaha bivugwa mu ngingo ya mbere ni ibiteganywa mu gitabo cy'amategeko ahana, uretse ko:

- a) abantu bo mu rwego rwa mbere bahanishwa igihano cy'urupfu ;
- b) abantu bo mu rwego rwa kabiri, igihano cy'urupfu gisimbuzwa igifungo cya burundu [...]’’⁶

20. Ku bantu bo mu rwego rwa 3, igihano cy'igifungo kiroroshywa cyane.
21. Nk'uko byagaragajwe haruguru, Urugereko, mu kugena igihano, rugomba no “kwifashisha urutonde rusange rw'ibihano by'igifungo rukurikizwa n'inkiko zo mu Rwanda” (ingingo ya 23 ya Sitati) cyangwa se “nk'uko rukurikizwa n'inkiko mu Rwanda” (ingingo y'i 101 y'Amategeko).

⁶ [Nk'uko byavuzwe ku rupapuro rwa 31].

22. Urugereko rurasanga byumvikana ko mu kugena igihano, rwakwitabaza ibihano byonyine by'igifungo bitangwa mu Rwanda uvanyemo ibindi bihano bitangwa muri icyo gihugu, nk'igihano cy'urupfu.
23. Urugereko ruribaza ariko niba ukwitabaza urutonde rw'ibihano bitangwa mu Rwanda byafatwa nk'aho ari itegeko cyangwa se byafatwa nk'aho ari ifatizo. Urugereko rurasanga iryo fatizo ari bimwe mu bigomba kwitabazwa mu kugena ibihano kandi bibaye ngombwa rurasanga, nk'uko Urugereko rwa mbere rw'iremezo I rw'Urukiko nshinjabyaha mpuzamahanga rw'icyahoze cy'itwa Yugosilaviya rwabikoze mu rubanza rwa Erdemovic ko "ukwiyambaza urwo rutonde byafatwa nk'aho ari urugero fatizo rutari itegeko rigomba gukurikizwa ntakabuza"⁷. Nk'uko urwo Rugereko rubibona, ibyo birashimangirwa n'ibisobanuro by'Umunyamabanga mukuru w'Umuryango w'Abibumbye muri raporo ye yerekeranye n'ishyirwaho ry'Urukiko nshinjabyaha mpuzamahanga rw'icyahoze cyitwa Yugosilaviya. usanga ko "kugira ngo rugene igihe cy'igifungo, Urugereko rwa mbere rw'Iremezo rwashobora kwiyambaza urutonde rusange rw'ibihano byigifungo rukoreshwa mu nkiko z'icyahoze cyitwa Yugosilaviya"⁸.
24. Ku byerekeye ibihano bitangwa mu Rwanda, Urugereko rurasanga ko kuva igihe imanza zerekeranye n'ibyabaye mu mwaka w'i 1994, zitangiriye muri icyo gihugu, ibihano by'urupfu n'iby'igifungo kugeza ku cya burundu byatanzwe inshuro nyinshi. Urugereko ntirwashoboye ariko kumenya ibyari bikubiye muri ibyo byemezo cyane cyane n'impamvu zabyo.
25. Mu gukomeza rero kugendera, igihe cyose bishobotse, ku rutonde rusange rw' ibihano by'igifungo bitangwa n'inkiko z'u Rwanda, Urugereko ruzahitamo, hano na none, gushyira imbere ububasha bwarwo busesuye bwo kwisuzumira, hakurikijwe imiterere yihariye y'urubanza, n'ingamuntu

⁷ Urukiko nshinjabyaha mpuzamahanga rw'icyahoze cyitwa Yugosilaviya, icyemezo cy'Urugereko rwa mbere rw'iremezo I cyo ku wa 1 Ugushyingo 1996. Urubanza rwa Drazen Erdemovic, igika cya 39.

⁸ Raporo y'Umunyamabanga mukuru yakozwe hubahirijwe icyemezo 808 (1993) mu gika cyayo cya 2 cy'Inama ishinzwe amahoro ku isi S/25704 cyo ku wa 3 Gicurasi 1993, igika cy'i 111.

y'Ushinjwa, igihe cyose ruzagomba guhana abantu bahamwe n'ibyaha by'ubugome rufitiye ububasha bwo kuburanisha.

C. AMAHAME RUSANGE AGENGA IGENWA RY'IGIHANO

26. Mu kugena igihano, Urugereko rugomba guhora ruzirikana ko uru Rukiko rwashyizweho n'Inama ishinzwe amahoro ku isi mu iyubahirizwa ry'Umutwe wa VII w'Amategekoshingiro agenga Umuryango w'Abibumbye mu byerekeranye n'ibyemezo iyo Nama yashoboraga gufata ishingiyeye ku ngingo ya 39 y'ayo Mategeko, kugira ngo bahagarike iyicwa ry'amategeko mpuzamahanga arengera ikiremwanuntu mu Rwanda mu mwaka w'i 1994 kandi hanasanwe ibyangiritse. Inama, nk'uko Amategekoshingiro abitegeka mu bihe nk'ibyho, yari yabanje kwibonera ko umwuka wari mu Rwanda wahungabanyaga amahoro n'umutekano mpuzamahanga. icyemezo rero 955 cyo ku wa 8 Ugushyiraho 1995 cyafashwe kubera izo mpamvu, kigaragaza neza ko mu gushyiraho urwo Rukiko, Inama yari igamije gukurikirana no guhana abakoze amarorerwa yabaye mu Rwanda kugira ngo bace burundu umuco wo kudahana, bityo bimakaze inzira y'ubwiyunge mu gihugu n'igaruka ry'amahoro.

27. Turasanga mw'iriburiro ry'Itegekongenga nyarwanda ryavuzwe haruguru havugwamo :

“Imaze kubona ko ari ngombwa kurandura burundu umuco wo kudahana kugira ngo ubwiyunge n'ubutabera bushobora kugerwaho mu Rwanda ;

Imaze kubona ko ibihe bidasanze igihugu kirimo bisaba ko hafatwa ibyemezo byatuma ubutabera abanyarwanda bakeneye bugerwaho”.

28. Birumvikana rero ko ibihano bihabwa abashinjwa bahamijwe icyaha n'Urukiko bigomba kuba bigamije ku ruhande rumwe, kubishyuzwa ibyo bakoze bityo ibyaha byabo bigahanwa, no guca intege abandi batekereza gukora ibyaha nk'ibyho ku rundi ruhande. Mu by'ukuri ni uguca intege burundu abazagerageza mu bihe bizaza gukora amahano nk'ayo

bagaragarizwa ko Amahanga atagishoboye kwihanganira ibikorwa bikomeye binyuranyije n'amategeko mpuzamahanga arengera ikiremamuntu n'uburenganzira bwa muntu.

29. Urugereko ruributsa ariko ko mu kugena ibyo bihano, rusabwa n'ingingo ya 23 ya Sitati (mu gika cyayo cya 2) n'iy'i 101 y'Amategeko (mu gika B) kuzirikana ingingo nyinshi zijyanye n'uburemere bw'icyaha, imibereho bwite y'Ushinjwa, impamvu nyongeracyaha cyangwa nyoroshyacyaha, n'ubwitonzi ndetse n'ubufatanye Uregwa yagaragarije Ubushinjacyaha mbere cyangwa nyuma yuko icyaha kimuhama. Ni uburyo bwo kugira ngo igihano gihabwe nyiracyo kuko byagaragaye ko "hagati y'abafatanyacyaha cyangwa se hagati y'abantu bahamwe n'ubwoko bumwe bw'ibyaha, hari ikintu kimwe bahuriyeho : icyaha kigaragara bakoze n'uburemerekamere bwacyo. Uretse icyo kibahuza, imiterere n'uburyozwacyaha bya buri wese birabatandukanya cyane : imyaka, imbanziriza, uburere, ubwenge, imiterere yo mu mutwe... Ntabwo byaba bikwiye rero ko bahanishwa igihano gifite uburemere bumwe. Bagomba kurekera rero umucamanza uburenganzira bwo guhuza uburemere bw'igihano giteganyijwe n'itegeko n'uburyozwe gatozi bwa buri mu nyacyaha".⁹
30. Biragaragarira nyamara Urugereko ko mu kugenera igihano nyiracyo, abacamanza batagombye kwibanda gusa ku ngingo zivugwa muri Sitati no mu Mategeko. Aha naho, ububasha busesuye bwabo bwo gusuzuma ibyabaye n'impamvu zibiherekeje bwagombye gutuma bashobora no kwita kuri buri impamvu ntanyi iyo ari yo yose.
31. Na none, impamvu zivugwa muri Sitati no mu Mategeko ntizishobora gufatwa nk'aho zigomba byanze bikunze gukomatanywa kugira ngo hagenwe igihano.
32. Tugarutse kuri izo mpamvu, Urugereko rurashaka kwibanda by'umwihariko kuri eshatu muri zo : Impamvu nyongeracyaha, imiterere bwite

⁹ Merle na Vitu, "Igitabo cy'amategeko ahana", Icapiro Cupas, Igika cya 66, urupapuro rw'i 115 n'urw'i 116".

y'uwakatiwe¹⁰ (igika cya 2 cy'ingingo ya 23 ya Sitati) n'impamvu nyoroshyacyaha.

33. Ku byerekeye impamvu nyongeracyaha, barasanga uburemere bw'ibyaha by'ubugome nk'itsembabwoko cyangwa icyaha cyibasiye inyokomuntu birenze kameremuntu bwihagije ubwabwo kugira ngo buvugweho byinshi. Ibyo aribyo byose, Urugereko ruzabigarukaho igihe ruzaba rugomba gushyira ku munzani impamvu nyongeracyaha na nyoroshyacyaha mu igena ry'igihano cy'Ushinjwa.
34. Kuberekeye "imiterere bwite ya Yohani Kambanda", ukugenera igihano nyiracyo, nk'uko iyo nshoza ubwayo yumvikana, bishoboka gusa mu gihe ibi bikurikira bizwi : imiterere ye, cyane cyane imbanziriza ze, imyitwarire ye mbere, mu gihe cyangwa nyuma y'ikorwa ry'icyaha, ngenga yamukoresheje n'ubwicuze yagaragaje nyuma y'ikorwa ry'icyaha bizwi.
35. Ku byerekeye impamvu nyoroshyacyaha, (Sitati mu gika cya 4 cy'ingingo yayo ya 6) irasanga ugushyira mu bikorwa itegeko rya guverinoma cyangwa iry'umuyobozi bidahanagura uburyozwacyaha bw'Ushinjwa ; bishobora icyakora gufatwa nk'impamvu nyoroshyacyaha iyo Urukiko rusanze biboneye ubutabera. Icyo kibazo ntabwo cyagombye kwibazwa urebye umwanya wa Minisitiri w'Intebe Ushinjwa yari afite. Amategeko yo arateganya mu ngingo yayo y'i 101 (B) (ii), nk'uko byavuzwe haruguru, nk'impamvu nyoroshyacyaha, "ubwitonzi ndetse n'ubufatanye Uregwa yagaragarije Ubushinjacyaha mbere cyangwa nyuma yuko icyo cyaha kimuhama. Kuri ibyo, mu gihe cyo kugenera igihano Yohani Kambanda, Urugereko ruzagomba guha agaciro ubufatanye bw'Ushinjwa, Porokireri avuga mu nyandiko ifungishije ubujeni yitwa "Amasezerano y'ubwemeracyaha" yashyizweho umukono na we ubwe, Ushinjwa n'Umwunganira.

¹⁰ Bagombye ahubwo kuvuga "ushinjwa" kuko ntawukatira igihano uwakatiwe.

36. Cyakora imvugo yakoreshejwe mu ngingo y'i 101 yavuzwe haruguru (... ukubaho kw'impamvu nyoroshyacyaha harimo n'ubwitonzi ...) iragaragaza, nk'uko Urugereko rubibona, ko ubwitonzi n'ubufatanye Ushinjwa yagaragarije Umushinjacyaha ari zimwe mu mpamvu nyoroshyacyaha mu zindi zishobora gukomoka nko ku bwemeracyaha bw'Ushinjwa, k'ukwicuza kwe kuvuye k'umutima.
37. Ariko na none Urugereko rurasanga rugomba gushimangira ihame rigomba guhoraho ry'uko igabanywa ry'igihano rikomoka ku mpamvu nyoroshyacyaha ridashobora kugira icyo rigabanura k'uburemere bw'icyaha cy'ubugome. Itegekongenga nyarwanda n° 8/96 ryo ku wa 30 Kanama 1996 ryavuzwe haruguru rijya kure, kuko ryo risanga abantu bo mu rwego rwa 1 badashobora kugabanyirizwa igihano kabone n'iyi baba bemeye icyaha.

III. IREMEZO RY'URUBANZA

38. Nyuma yo kunyuzwa amaso mu mahame yavuzwe haruguru, Urugereko rugiye gusuzuma ingingo zose ntanyi zatanzwe n'abaturanyi bombi kugira ngo rugene igihano gikwiye nk'uko biteganywa n'ingingo y'i 100 y'Amategeko.

A. IMITERERE Y'URUBANZA

39. Uretse ubwemeracyaha bwa Yohani Kambanda, Urugereko rwashyikirijwe n'Umushinjacyaha inyandiko yitwa "Amasezerano hagati ya Yohani Kambanda n'Iburo by'Umushinjacyaha" yo ku wa 28 Mata 1998, yashyizweho umukono n'Ushinjwa, Umwunganira, Olivier Michael Inglis n'Umushinjacyaha. Muri ayo masezerano, Yohani Kambanda yemera ibyaha byose ashinjwa bikubiye mu Nyandiko y'ibirego. By'umwihariko :
- i) Yohani Kambanda aremera yuko mu Rwanda hagabwe ibitero rusange kandi biri kuri gahunda byari byibasiye abaturage b'abasivili b'Abatutsi, mu mugambi wo kubatsembatsemba ; ibihumbi amagana n'amagana by'Abatutsi byarishwe mu Rwanda : abagore n'abana,

abato n'abakuze barahizwe, bicirwa aho bari babonye ubuhungiro, ni ukuvuga ku biro bya perefegitura, by'amakomini, mu mashuri, mu nsengeru no muri sitade ;

- ii) Yohani Kambanda yemera yuko nka Minisitiri w'intebe wa guverinoma y'agateganyo y'u Rwanda yo ku wa 8 Mata kugeza ku wa 17 Nyakanga 1994, yayoboraga inama y'abaminisitiri igizwe n'abantu 20 kandi akaba yarategekaga anagenzura ku bw'amategeko abari bagize guverinoma ye. Iyo Guverinoma yashyiragaho kandi ikanagenzura politiki y'igihugu, ikaba yari inafite ubutegetsi ndetse n'ingabo. Nka Minisitiri w'intebe, yanategekaga ku bw'amategeko no ku bw'imirimo abakozi bakuru n'abasirikare bakuru bo mu ngabo ;
- iii) Yohani Kambanda aremera kuba yaragiye mu ma nama y'abaminisitiri n'ay'abaperefe, yakurikirirwagamo isakara ry'itsembatsemba, ariko akaba ataragize ingamba nimwe afata yo kurihagarika. Yagize icyo avuga ku cyemezo cyafashwe na guverinoma cyo kohereza bamwe mu ba minisitiri mu maperefegitura mu ngamba za guverinoma zerekeranye n'umutekano no guhamagarira abasivili kuba maso mu gutahura umwanzi n'ibytso bye. Yohani Kambanda aranemera kandi kuba yaragize uruhare mu iyirukanwa rya perefefe wa Butare wari wararwanyije itsembatsemba no mu ishyirwaho ry'umushya kugira ngo itsembatsemba ry'Abatutsi rishobore no gusakara muri Butare.
- iv) Yohani Kambanda aremera kuba yaragiye mu nama yo mu rwego rwo hejuru ku by'umutekano yabereye i Gitarama muri Mata 1994, yarinarimo Perezida T. Sindikubwabo, Umukuru w'ingabo (FAR) n'abandi. Iyo nama yavugiwemo ibyerekeye inkunga yaterwa ingabo z'igihugu mu kurwanya umuryango wa FPR "n'ibytso" byawo, aribyo Abatutsi n'Abahutu batavugaga rumwe n'ubutegetsi;
- v) Yohani Kambanda aremera kuba yatanze amabwiriza y'ukwirwanaho kw'abasivili yagejejwe ku baperefe ku wa 25 Gicurasi 1994, (AMABWIRIZA N° 024-0273, agatangazwa ku wa 8 Kamena 1994). Yohani Kambanda aranemera ko ayo mabwiriza yateye inkunga akanashishikaza Interahamwe zatsembatsembaga

abaturage b'abasivili b'Abatutsi mu maperefegitura. Yohani Kambanda aranemera kandi ko, ku bw'ayo mabwiriza, guverinoma yishyizeho uburyozwacyaha bw'ibikorwa byakozwe n'Interahamwe ;

- vi) Yohani Kambanda aremera ko mbere yo ku wa 6 Mata 1994, amashyaka, yumvikanye n'ingabo z'igihugu, yateguye, akanatangiza iyigishwa n'imyitozo ya gisirikare y'urubyiruko rwa MRND na CDR (Interahamwe n'Impuzamugambi), agamije kuzarukoresha mu itsembatsemba ryayikurikiye. Byongeye kandi, Yohani Kambanda aremera ko guverinoma yari ayoboye, yahaye urwo rubyiruko intwari n'amasasu. Na none Yohani Kambanda aremera ko, radiyo ikimara gutangaza urupfu rwa Perezida Habyarimana J., hashyizweho bariyeri ku mihanda i Kigali n'ahandi ; izo bariyeri zari zirinzwe n'abanyamarondo bavanze ingabo z'igihugu n'Interahamwe. Yohani Kambanda arongera akanemera ko itangazamakuru ryakoreshejwe mu mugambi wo gukangurira no gushishikariza abaturage gutsembatsemba abaturage b'abasivili b'Abatutsi. Na none, Yohani Kambanda aremera ko mu ngabo, mu mitwe y'abantu bitwara gisirikare no mu nzego za politiki, harimo udutsiko twari twateguye irimburwa ry'Abatutsi n'iry'Abahutu batavugaga rumwe n'ubutegetsu ;
- vii) Yohani Kambanda aremera kuba, ku wa 21 Kanama 1994 cyangwa se muri iyo minsi, nka Minisitiri w'intebe, yari ashigikiye ku mugaragaro "Radio Télévision des Mille Collines" (RTL) azi ko gahunda zayo zashishikarizaga kwica Abatutsi n'Abahutu batavugaga rumwe n'ubutegetsu, kubabangamira mu mibereho myiza y'umuburi cyangwa y'ubwenge no kubatoteza. Icyo gihe, avugira kuri iyo radiyo, Minisitiri w'intebe Yohani Kambanda yahimbarije RTL kugumya gushishikariza itsembatsemba ry'abaturage b'abasivili b'Abatutsi, avuga nta kujijinganya yuko iyo radiyo ari "intwari ya ngombwa kugira ngo barwanye umwanzu" ;
- viii) Yohani Kambanda aremera kuba, nka Minisitiri w'intebe, mu ma nama menshi y'abaminisitiri yakozwe hagati y'itariki ya 8 n'ya 17 Nyakanga 1994, yarashishikaje, yarafashije, yarateye inkunga

abaperefe, ababurugumesitiri n'abaturage mu bikorwa by'ubwicanyi n'iby'ubuhotozi bw'abasivili, by'umwihariko Abatutsi n'Abahutu batari intagondwa. Na none, hagati y'itariki ya 24 Mata n'ya 17 Nyakanga 1994, Yohani Kambanda n'abaminisitiri ba guverinoma ye bagiye mu maperefegitura menshi nka Butare, Gitarama (Nyabikenke) Gikongoro, Gisenyi na Kibuye gushishikariza no gutera inkunga abaturage mu itsembatsemba, cyane cyane, ashimira abantu bitabiriye ubwo bwicanyi ;

- ix) Yohani Kambanda aremera ko ku wa 3 Gicurasi 1994, yasabwe ubwe gufata ingamba zo kurengera abana bari mu bitaro bari barokotse itsembatsemba, ntiyagira icyo abikoraho. Uwo muni, nyuma y'inama, abana barishwe. Aremera ko yateshutse ku nshingano ye yo kubungabunga umutekano w'abana n'uw'abanyarwanda ;
- x) Yohani Kambanda aremera ko, nk'uko yari afite ububasha bwo gufata mu ruhamye ibyemezo mu izina rya guverinoma, yafashe ijamba mu makoraniro manini, mu itangamakuru mu bice binyuranye by'igihugu, ashishikariza ku mugaragaro kandi mu buryo butaziguye abaturage kugirira nabi Abatutsi n'Abahutu batari intagondwa. Aremera kuba yarakoresheje imvugo gashozantambara yagiye isubirwamo inshuro nyinshi kuri radiyo "(wima igihugu amaraso imbwa zikayanywera ubusa)" ;
- xi) Yohani Kambanda aremera kuba yarategetse ishyirwaho rya za bariyeri mu mihanda, azi ko zizafasha kumenya Abatutsi kugira ngo babarimbure, no kuba, nka Minisitiri w'intebe, yarahaye intwari n'amasasu abanyamashyaka, imitwe yitwara gisirikare n'abaturage, azi ko izo ntware zizakoreshwa mu itsembatsemba ry'abasivili b'Abatutsi ;
- xii) Yohani Kambanda aremera ko yari azi cyangwa ko yagombaga kumenya ko abo yari akuriye bicaga imbaga y'Abatutsi, akaba atarigeze ababuza, ntabwo. Yohani Kambanda aremera kuba yaribonye n'amaso ye itsembatsemba ry'Abatutsi, akaba yaranarimenyeshwe muri za raporo za buri gihe z'abaperefe n'iz'inama y'abaminisitiri.

Urubanza

40. Rushingiye k'ukwemera kwakozwe na Yohani Kambanda, kuzuzaga ubwemeracyaha bwe, Urugereko rwemeye ku wa mbere Gicurasi 1998, iburana rye, rumuhamya ibyaha bikurikira :

- 1) Yohani Kambanda, kubera kuba yarakoze cyangwa atarakoze ibyagombaga gukorwa bivugwa mu bika guhera ku cya 3.12 kugeza ku cya 3.15 no kuva ku cya 3.17 kugeza ku cya 3.19 by'Inyandiko y'ibirego, arahamwa n'ubwicanyi n'ibikorwa bikomeye by'ubugizi bwa nabi bukabije bwakorewe abaturage b'Abatutsi, agamije kurimbura igice kimwe cy'abantu cyangwa bese bahuriye ku isanomuzi cyangwa ku bwoko, bityo akaba yarakoze icyaha cy'itsembabwoko, icyaha cy'ubugome giteganywa n'ingingo ya 2 (3)(a) ya Sitati y'Urukiko ; icyo cyaha kikaba kimuhama hashingiwe ku ngingo ya 6 (1) n'ya 6 (3), kandi kikaba gihanishwa ingingo ya 22 n'ya 23 z'iyo Sitati.
- 2) Yohani Kambanda, kubera kuba yarakoze cyangwa atarakoze ibyagombaga gukorwa bivugwa mu gika cya 3.8, icya 3.9, mu bika guhera ku cya 3.13 kugeza ku cya 3.15 no mu gika cya 3.19 by'Inyandiko y'ibirego, yumvikanye n'abandi cyane cyane abaminisitiri ba guverinoma ye, nka Pawulina Nyiramasuhuko, Andereya Ntagerura, Eliyezeri Niyitegeka na Eduwaridi Karemera, kugira ngo bahotore kandi bagirire nabi bikabije abaturage b'Abatutsi, bagamije kurimbura, igice kimwe cy'abantu cyangwa bese, bahuriye ku isanomuzi cyangwa ku bwoko, bityo akaba yarakoze icyaha cy'ubwumvikane bwo gukora itsembabwoko, icyaha cy'ubugome giteganywa n'ingingo ya 2 (3)(b) ya Sitati y'Urukiko ; icyo cyaha kikaba kimuhama hashingiwe ku ngingo ya 6 (1) kandi kikaba gihanishwa ingingo ya 22 n'ya 23 z'iyo Sitati.
- 3) Yohani Kambanda, kubera kuba yarakoze cyangwa atarakoze ibyagombaga gukorwa bivugwa mu bika guhera ku cya 3.12 kugeza

ku cya 3.14, mu gika cya 3.16 n'icya 3.19 by'Inyandiko y'ibirego, yashishikarije mu buryo butaziguye kandi ku mugaragaro kwica no kugirira nabi bikabije abaturage b'Abatutsi, agamije kurimbura, igice kimwe cy'abantu cyangwa bose bahuriye ku isanomuzi cyangwa ku bwoko, bityo akaba yarakoze icyaha cyo guhamagarira abantu ku mugaragaro kandi mu buryo butaziguye, ibikorwa by'itsembabwoko, icyaha cy'ubugome giteganywa n'ingingo ya 2(3)(c) ya Sitati y'Urukiko ; icyo cyaha kikaba kimuhama hashingiwe ku ngingo ya 6(1) n'iya 6(3), kandi kikaba gihanishwa ingingo ya 22 n'iya 23 z'iyi Sitati.

- 4) Yohani Kambanda, kubera kuba yarakoze cyangwa atarakoze ibyagombaga gukorwa bivugwa mu gika cya 3.10, mu bika guhera ku cya 3.12 kugeza ku cya 3.15, no kuva ku cya 3.17 kugeza ku cya 3.19, ni icyitso mu bwicanyi bwakorewe abaturage b'Abatutsi, bityo akaba yarakoze icyaha cyo kuba icyitso mu itsembabwoko, icyaha giteganywa n'ingingo ya 2(3) ya Sitati y'Urukiko ; icyo cyaha kikaba kimuhama hashingiwe ku ngingo ya 6(1) n'iya 6(3) kandi kikaba gihanishwa ingingo ya 22 n'iya 23 z'iyi Sitati.
- 5) Yohani Kambanda, kubera kuba yarakoze cyangwa atarakoze ibyagombaga gukorwa bivugwa mu bika guhera ku cya 3.12 kugeza ku cya 3.15, no kuva ku cya 3.17 kugeza ku cya 3.19, arahamwa n'ubwicanyi bwakorewe abasivili, mu rwego rw'ibitero rusange, cyangwa biri kuri gahunda byabibasiye abasivili kubera isanomuzi yabo cyangwa ubwoko bwabo, bityo akaba yarakoze icyaha cyibasiye inyokomuntu, icyaha cy'ubugome giteganywa n'ingingo ya 3 (a) ya Sitati ; icyo cyaha kikaba kimuhama hashingiwe ku ngingo ya 6(1) n'iya 6(3) kandi kikaba gihanishwa ingingo ya 22 n'iya 23 z'iyi Sitati.
- 6) Yohani Kambanda, kubera kuba yarakoze cyangwa atarakoze ibyagombaga gukorwa bivugwa mu bika guhera ku cya 3.12 kugeza ku cya 3.15, icya 3.17 n'icya 3.19, arahamwa itsembatsemba ryakorewe abasivili, mu rwego rw'ibitero rusange cyangwa biri kuri

gahunda byabibasiye kubera isanomuzi yabo cyangwa ubwoko bwabo, bityo akaba yarakoze icyaha cy'ubugome cyibasiye inyokomuntu, icyaha giteganywa n'ingingo ya 3(b) ya Sitati y'Urukiko ; icyo cyaha kikaba kimuhama hashingiwe ku ngingo ya 6(1) n'ya 6(3) kandi kikaba gihanishwa ingingo ya 22 n'ya 23 z'iyi Sitati.

B. INGINGO ZEREKERANYE N'IBIHANO

41. Ingingo ya 23 ya Sitati mu gika cyayo cya mbere, iteganya ko Urugereko rwa mbere rw'iremezo rutanga ibihano by'igifungo gusa. Kugira ngo rugene ingano y'igifungo, Urugereko rwa mbere rw'iremezo rwiambaza urutonde rusange rw'ibihano by'igifungo rukoreshwa n'inkiko z'u Rwanda. Urugereko rurasanga igihano cy'urupfu, gitegetswe ku byaha by'ubugome nk'ibyo mu Rwanda, kibujijwe na Sitati y'Urukiko. Ifatizo ryo ku rutonde rusange rw'ibihano bitangwa mu Rwanda, rigenewe kuyobora Urugereko ku byerekeye itangwa ry'igihano gikwiye ariko ntiribangamira na busa ububasha bwarwo bwihariye mu kugena ibihano. Iyo rutanga igihano, Urugereko, nk'uko Amategeko abiteganywa, rwita ku ngingo nk'uburemere bw'icyaha n'imiterere bwite ya Yohani Kambanda.

i) Uburemere bw'icyaha

42. Mu myanzuro yo ku wa 8 Kanama 1998 no mu mvugo ye mu rukiko, Umushinjacyaha yashimangiye uburemere bw'icyaha cy'ubugome cy'itsembabwoko n'ibyaha byibasiye inyokomuntu. Imiterere irenze kameremuntu n'ugucibwa kwacyo burundu bigiha icyasha gikomeye. Uburemere bw'ibyaha by'ubugome bwo kwica imbaga y'abasivili¹¹ bagera ku bihumbi magana atanu mu Rwanda mu gihe cy'iminsi ijana, ni impamvu nyongeracyaha.

¹¹ Raporo ya nyuma y'akanama k'impuguke yatanze hakurikijwe icyemezo 935 (1994) cy'Inama ishinze amahoro ku isi (S/1994/1405) cyo ku wa 9 Ukuboza 1995, igika cya 57.

43. Ibyaha byibasiye inyokomuntu bifatwa nk'uko byavuzwe haruguru, nk'ubugizi bwa nabi butagira ingano bukorewe umuntu mu buzima no mu kwishyira ukizana kwe.
44. Igihe ibyo byaha by'ubugome byakorwaga, Yohani Kambanda yari Minisitiri w'intebe asangiye n'abagize guverinoma ye inshingano yo kubungabunga amahoro n'umutekano mu Rwanda. Yohani Kambanda, yishingikirije ubutegetsi bwe, yakoresheje igitugu, anahemukira abaturage b'abasivili. Yagize ubwe ku giti cye uruhare mu itsembabwoko atanga intwari, avuga amadisikuru ya gashozantambara, ayobora inama z'inkoramutima zari muri guverinoma n'izindi nama zateguye zikanacoca itsembabwoko. Yateshutse ku nshingano ye yo gufata ingamba zose za ngombwa kandi zikwiye kugira ngo abuze abo akuriye gukorera abaturage ibyaha by'ubugome. Igitugu gishingiye ku butegetsi n'ubuhemu bifatwa muri rusange nk'impamvu nkomezacyaha.
- ii) Imibereho n'imyifatire bwite ya Yohani Kambanda
Ibimwerekeye ku giti cye.
45. Yohani Kambanda yavukiye i Mubumbano muri perefegitura ya Butare ku wa 10 Ukwakira 1955. Arubatse, afite abana babiri. Afite impamyabushobozi ihanitse mu byerekeye ubucuruzi. Yakoze mu ihuriro ry'amabanki y'abaturage mu Rwanda hagati ya Gicurasi 1989 na Mata 1994, ihuriro ry'amabanki yaje kubera umuyobozi. Yari visi Perezida w'agashami k'i Butare ka MDR, akaba n'umwe mu bagize biro politiki yayo. Ku wa 9 Mata 1994, yagizwe Minisitiri w'intebe wa guverinoma y'agateganyo y'u Rwanda. Ubushinjacyaha ntibwagaragaje ko Yohani Kambanda yaba yarigeze guhanwa mu rwego rw'inshinjabyaha.
- iii) Impamvu nyoroshyacyaha
46. Ubwunganizi bwatanze impamvu nyoroshyacyaha eshatu : -
ubwemeracyaha, ukwigaya nk'uko Ubwunganizi bubibona, guturuka nta

shiti mu bwemeracyaha bw'Ushinjwa no mu bufatanye yagaragarije Ibiro bya Porokireri.

47. Ubushinjacyaha buremeza ko Yohani Kambanda yabufashije bihagije, ko kandi yabushyikirije amakuru afite akamaro. Burasaba rero Urugereko gufata nk'impamvu nyoroshyacyaha ikomeye ubwo bufatanye bwa Yohani Kambanda n'ubundi ubwo ari bwo bwose azagaragaza ashinja mu manza z'abandi baregwa.
48. Biragaragara neza mu Masezerano yashyizweho umukono n'Ababuranyi ko hatigeze haba hagati yabo igihango, ubwumvikane, amasezerano ku byerekeye igihano ; ariko rero bigomba kumvikana neza ko igihano kigenwa mu bubasha bwihariye kandi busesuye bw'Urugereko.
49. Ubushinjacyaha bwatangaje ko, nk'ingurano y'ubufatanye Yohani Kambanda yagaragaje, hafashwe ingamba zikomeye zo kumumara ubwoba yaba afite bwerekeranye n'umutekano w'umuryango we.
50. Ubushinjacyaha bwavuze ko Yohani Kambanda yari yaragaragaje icyifuzo cyo kwemera icyaha akimara gufatwa no kwimurirwa mu Rukiko ku wa 18 Nyakanga 1997. Ushinjwa yatangaje mu Masezerano yavuzwe haruguru ko yari yiyemeje kwemera icyaha mbere yuko anafatirwa muri Kenya , kandi ko ari cyo cyifuzo cye cy'ibanze kandi kivuye ku mutima cyo kuvuga ukuri ; ni ukuvuga kunyura mu nzira imwe yonyine ishoboka yo kubaka ubumwe bw'igihugu n'ubwiyunge bw'abanyarwanda byatumye yemera icyaha. Yohani Kambanda wamaganye itsembatsemba ryabaye mu Rwanda, arafata ubwemeracyaha bwe nk'umuganda wo kugarura amahoro mu Rwanda.
51. Urugereko rurasanga ariko Kambanda ataratanze ibisobanuro ku bufatanyacyaha bwe yagize ku bushake mu itsembabwoko. Nta nubwo yanagaragaje ukwicuzwa, ukwigaya cyangwa ukwifatanya mu kababaro n'abakorewe icyaha bo mu Rwanda, habe n'igihe Urugereko rwabimuharaga umwanya mu iburanisha ryo ku wa 3 Nzeri 1998.

52. Uhagarariye Parike n'Umwunganizi bombi basabye Urugereko kubona mu bwemeracyaha bwa Yohani Kambanda, ukwigaya, ugusaba imbabazi n'ubushake bwo kwemera uruhare rwe mu bikorwa byabaye. Urugereko ntiruyobewe ko ukwigaya atariyo ngaruka yonyine ikwiye ishobora gukomoka k'ubwemeracyaha. Ruremera ariko ko inyinshi mu nkiko nshinjabyaha zo mu bihugu ibi n'ibi zifata ubwemeracyaha nk'impamvu igomba kuzirikanwa mu koroshya ibihano.

“Kuba Ushinjwa yaremeye icyaha mu ikubitiro bifatwa nk'impamvu nyoroshyacyaha ikomeye¹² (Aya magambo ntiyahinduwe n'Urukiko).

53. Mu nkiko nshinjabyaha za «Civil Law», ubwemeracyaha bushobora gufatwa nk'impamvu nyoroshyacyaha y'igihano, haseguriwe ububasha busesuye bw'umucamanza mu igena ry'igihano¹³.

“Ubwemeracyaha ni ikimenyetso cyo kuvugisha ukuri, kubushyigikira rero bifitiye akamaro Urukiko mpuzamahanga, bwaba ubw'abahamijwe icyaha cyangwa se ubw'abanyarugomo batazwi¹⁴ (Aya magambo ntiyahinduwe n'Urukiko).

54. Urugereko rwasabwe na none kuzirikana ubwemeracyaha bwa Yohani Kambanda kuko bwafashije ubutabera kudatagaguza imbaraga, kurinda ihahamuka abakorewe icyaha, n'agahinda kajyana n'izo manza, bwafashije kandi imigendekere myiza y'ubucamanza.

¹² R.V Sandercock (1985) ; 22 C.C.C. (3d) 79 ku rupapuro rwa 86.
C.R. (3d) 154 (1986) I.W.W.R. 291 (Alta CA.)

¹³ Merle R na Vitu A. ; Igitabo cy'amategeko agenga ibyaha by'ubugome, impamvu nyoroshyacyaha, icapiro Cujas, icapa rya gatandatu, impapuro kuva ku rwa 946 kugeza ku rwa 954, 1984.

¹⁴ Urubanza ruhana P.V Drazen Erdemovic, ICTY, urubanza n° IT96-22Tbis, rwo ku wa 5 Werurwe 1998, urupapuro rwa 16.

55. Urugereko rurasanga uburemere bw'icyaha cy'ubugome bwagaragajwe kandi n'ingaruka z'impamvu nyoroshyagihano zarasobanuwe ku buryo bwumvikana.
56. Urugereko rubona ko impamvu nyoroshyacyaha zijyana n'igenwa ry'igihano, ko zitagira icyo zihindura ku buremere bw'icyaha cy'ubugome. Zoroshya igihano ariko ntizoroshya icyaha cy'ubugome. Ku bw'ibyo, Urugereko rwemera uburyo bwo gutekereza bwakurikijwe mu rubanza rwa *Erdemovic* no mu rwa *Otaga*.
- “Ibyo ari byo byose, Urugereko rurasanga ko iyoroshyagihano ritagabanura na gato uburemere bw'icyaha cy'ubugome. Icyo kibazo rero nticyafatwa mu rwego rwo kwisobanura ahubwo cyafatwa mu rw'imbabazi. Mu yandi magambo, igihano cyatanze si uburyo buboneye bwo kugaragaza ibyo Urukiko rwabonye ku byerekeranye n'uburemere bw'icyaha cy'ubugome”¹⁵ (Aya magambo ntiyahinduwe n'Urukiko).
57. Ingano y'amarorerwa yakozwe ikomeza gufatwa nk'urugero rw'ibanze mu kugena igihano.
58. Igihano kigomba kugaragaza ihame rizwi neza ry'uburinganire bw'uburemere bw'icyaha n'ingano y'uruhare rw'uwigikoze. Igihano gikwiye gufasha kubahiriza itegeko kandi kikanafasha ubusugire bw'imibanire ikwiye y'abaturage, mu mahoro no mu mutekano.
59. Urugereko ruributsa ko, nk'uko byavuzwe haruguru, Urukiko rwashyizweho bisabwe na guverinoma y'u Rwanda kandi ko inshingano yarwo ari ugushyikiriza inkiko, mu izina ry'amahanga, abantu bakoze ibyaha by'ubugome, gufasha mu buryo bukwiye ihana ry'urugomo, kurimbura umuco wo kudahana no gutezimbere ubwiyunge n'amahoro mu Rwanda (Iriburiro, icyemezo 955 (1994) cy'Inama ishinzwe amahoro ku isi).

¹⁵ Urubanza ruhana P.V. Drzen Erdemovic, ICTY urubanza n°IT96-22 rwa Leta zunze Ubumwe z'Amerika na Wilhelm List n'abandi (Hostage Case), XI T.W.C 757, urupapuro rw'i 1317 (1948).

60. Mu myanzuro ye, Umushinjacyaha yasabiye Yohani Kambanda igihano cy'igifungo cya burundu, ariko anasaba Urukiko, kuzirikana mu igena ry'igihano, ubwemeracyaha n'ubufatanye yagaragarije ibiro bya Porokireri. Naho mu myanzuro ye, Umwunganira yashimangiye ko Yohani Kambanda yari igikoresho cya bamwe mu bategetsi b'abasirikare bakuru ; bityo ububasha bwe bukaba butari busesuye. Nuko asaba Urukiko, ashingiye ku bwemeracyaha bw'Ushinjwa, ku bufatanye yagaragarije kandi azakomeza kugaragariza Porokireri no kuruhare Yohani Kambanda ashobora kugira mu nzira y'ubwiyunge mu Rwanda, ko bamukatira igihano kitarenze imyaka ibiri y'igifungo.
61. Urugereko rwa mbere rw'iremezo rwasuzumanye ubushishozi ingingo zose rwashyikirijwe n'Ababuranyi bombi zerekeranye n'igena ry'igihano. Ibizikubiyemo by'ingenzi ni ibi:
- (A) (i) Yohani Kambanda yafatanyije, kandi aracyafatanya ku bushake, n'Ibiro bya Porokireri ;
- (ii) Ubwemeracyaha bwa Yohani Kambanda bushobora yenda gufasha abandi kwemera uruhare rwabo mu marorerwa yabaye mu Rwanda mu w'i 1994 ;
- (iii) Mu nkiko nyinshi z'ibihugu ndetse no mu Rwanda, ubwemeracyaha bufatwa muri rusange nk'impamvu nyoroshiyacyaha ;
- (iv) Ubwo bwemeracyaha, bw'uwohoze ari Minisitiri w'intebe, bufite, by'umwihariko, agaciro mu nzira y'ubwiyunge bw'abanyarwanda mu Rwanda ;
- (B) Ariko, ibyo aribyo byose :
- (v) Ibyaha by'ubugome bishinjwa Yohani Kambanda bifite uburemere byihariye ; ubwinshi, ubunyamanswa bwabyo, gahunda yabyo birenze cyane kameremuntu ;

(vi) Yohani Kambanda yakoze ibyo byaha by'ubugome abizi neza kandi yabigambiriye ;

(vii) Cyane ko ibyo byaha by'ubugome byakozwe bidashobora kwihanganirwa kubera ko, nka Minisitiri w'intebe, Yohani Kambanda yari afite inshingano n'ubushobozi byo kurengera abanyarwanda no kubungabunga umutekano ; yateshutse ku nshingano ye.

62. Rushingiye ku byavuzwe byose, Urugereko rurasanga impamvu nyongeracyaha ziherekeje ikorwa ry'ibyaha by'ubugome na Yohani Kambanda zisumbye kure impamvu nyoroshyacyaha zimurengera kandi ko, cyane cyane, kuba Yohani Kambanda, igihe yakoraga ibyo byaha by'ubugome, yari ashinzwe imirimo ya Leta yo mu rwego rw'abaminisitiri, bituma nta mpamvu n'imwe iboneka yakoroshya igihano cye.

IV. ICYEMEZO CY'URUKIKO

URUGEREKO RWA MBERE RW'IREMEZO I.

KUBERA IZO MPAMVU,

RUKATIYE mu ruhame

RUSHINGIYE ku ingingo za 23, 26 na 27 za Sitati no ku ngingo y'i 100, 101, 102, 103 ni y'i 104 z'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso ;

RUMAZE KUBONA urutonde rusange rw'ibihano by'igifungo rukurikizwa n'Inkiko mu Rwanda ;

RUMAZE KUBONA Inyandiko y'ibirego yemejwe ku wa 16 Ukwakira 1997 ;

RUMAZE KUBONA ko Yohani Kambanda yemeye ubwe ku wa mbere Gicurasi 1998 ibyaha bikurikira :

ICYAHA CYA 1 : Itsembabwoko (icyaha cy'ubugome giteganywa n'ingingo ya ya 2(3)(a) ya Sitati, ashinjwa hakurikijwe ingingo ya 6(1) n'iya 6(3), kikaba gihanishwa ingingo ya 22 n'iya 23 z'iyo Sitati) ;

ICYAHA CYA 2 : Ubwumvikane bwo gukora itsembabwoko, (icyaha cy'ubugome giteganywa n'ingingo ya 2(3)(6) ya Sitati, ashinjwa hakurikijwe ingingo ya 6(1), kikaba gihanishwa ingingo ya 22 n'iya 23 z'iyo Sitati) ;

ICYAHA CYA 3 : Guhamagarira abantu ku mugaragaro kandi mu buryo butaziguye, ibikorwa by'itsembabwoko (icyaha cy'ubugome giteganywa n'ingingo ya 2(3)(c) ya Sitati, ashinjwa

hakurikijwe ingingo ya 6(1) na 6(3), kikaba gihanishwa ingingo ya 22 n'ya 23 z'iyoyi Sitati) ;

ICYAHA CYA 4 : Kuba icyitso cy'abakora itsembabwoko (icyaha cy'ubugome giteganywa n'ingingo ya 2(3)(e) ya Sitati, ashinjwa hakurikijwe ingingo ya 6(1) na 6(3), kikaba gihanishwa ingingo ya 22 n'ya 23 z'iyoyi Sitati) ;

ICYAHA CYA 5 : Icyaha cyibasiye inyokomuntu (ubuhotozi) (icyaha cy'ubugome giteganywa n'ingingo ya 3(a) ya Sitati, ashinjwa hakurikijwe ingingo ya 6(1) n'ya 6(3), kikaba gihanishwa ingingo ya 22 n'ya 23 z'iyoyi Sitati) ;

ICYAHA CYA 6 : Icyaha cyibasiye inyokomuntu (itsembatsemba) (icyaha cy'ubugome giteganywa n'ingingo ya 3(b) ya Sitati, ashinjwa hakurikijwe ingingo ya 6(1) n'ya 6(3), kikaba gihanishwa ingingo ya 22 n'ya 23 z'iyoyi Sitati) ;

RUMAZE kumuhama buri cyaha ku wa mbere Gicurasi 1998 ;

RUMAZE KUBONA imyanzuro y'Ababuranyi ;

RUMAZE KUMVA Ubushinjacyaha n'Ubwunganizi ;

KUBERA IBYO BYAHA

RUHANISHIJE Yohani Kambanda

Wavutse ku wa 19 Ukwakira 1955, muri komini ya Gishamvu, perefegitura ya Butare (Rwanda) ;

IGIFUNGO CYA BURUNDU

RUTEGETSE ko icyo gihano cy'igifungo kizarangirizwa mu gihugu kizagenwa na Perezida w'Urukiko abyumvikanyeho n'Urugereko rwa mbere rw'iremezo, kandi Gerefiye akazabimenyesha guverinoma y'u Rwanda n'icyo gihugu cyagenwe ;

RWEMEJE ko uru rubanza ruhita rurangizwa kandi ko mu gihe agitegereje iryo yimurwa, Yohani Kambanda azakomeza gufungwa uko byari bisanzwe.

Arusha, tariki ya 4 Nzeri 1998,

(Sé)	(Sé)	(Sé)
Laïty Kama	Lennart Aspegren	Navanethem Pillay
Perezida w'Urugereko	Umucamanza	Umucamanza

Ikirangantego cy'Urukiko