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Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda

URUGEREKO RW'UBUJURIRE

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Umwimerere:Icyongereza

Abacamanza : Mohamed Shahabuddeen, Perezida
Patrick Robinson
Liu Daqun
Theodor Meron
Wolfgang Schomburg

Gerefiye : Adama Dieng

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POROKIRERI
ABURANA NA
ATHANASE SEROMBA

URUBANZA MU BUJURIRE

Ibiro bya Porokireri
Hassan Bubacar Jallow
Dior Fall
Amanda Reichman
Abdoulaye Seye
Alfred Orono Orono

Abunganira Athanase Seromba
Patrice Monthé
Sarah Ngo Bihegué

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1. Urugereko rw'Ubujurire rw'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rushinzwe gucira imanza abantu bakekwaho kuba barakoreye mu Rwanda ibyaha bya jenoside cyangwa ibindi byaha bikomeye binyuranyije bikomeye n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, n'Abanyarwanda bakekwaho kuba barabikoreye mu bihugu bituranye n'u Rwanda hagati y'itariki ya 1 Mutarama n'iya 31 Ukuboza 1994 (byitwa muri iyi nyandiko uko bikurikirana « Urugereko rw'Ubujurire » n'« Urukiko »), rwashyikirijwe ubujurire bwa Athanase Seromba n'ubwa Porokireri ku rubanza rwaciwe n'Urugereko rwa Mbere rw'Iremezo, III ku itariki ya 13 Ukuboza 2006 mu rubanza Porokireri yaburanagamo na Athanase Seromba (« Urubanza mu rw'iremezo»)[1].

I. INTANGIRIRO

A. Uko ibintu byagenze muri make

2. Athanase Seromba yavutse mu wa 1963 muri Komine ya Rutsiro, Perefegitura ya Kibuye mu Rwanda[2]. Muri Mata 1994, ari cyo gihe kivugwa mu nyandiko y'ibirego yo ku itariki ya 8 Kamena 2001 (« Inyandiko y'ibirego »), Athanase Seromba yari Padiri kuri Paruwasi ya Nyange, Komine ya Kivumu, Perefegitura ya Kibuye[3].

3. Rushingiye ku ngingo ya 6.1 ya Sitati y'Urukiko (« Sitati »), Urugereko rwa Mbere rw'Iremezo rwahamije Athanase Seromba icyaha cya jenoside n'ibyaha byibasiye inyokomuntu kubera ko yafashije kandi agashishikariza abantu kubikora. Ibyo byaha byakorewe impunzi z'abatutsi zari zaje kuri Paruwasi ya Nyange zihunga ibitero byibasiye abatutsi[4]. Urugereko rwa Mbere rw'Iremezo

[1] Kubera akamaro bishobora kugira ni ngombwa kuvuga ko iyi nyandiko y'urubanza mu bujurire irimo imigereka ikurikira : « Umugereka A : Kwibutsa uko iburanisha ryagenze » n' « Umugereka B : Inyandiko zivugwa, ibisobanuro n'amagambo y'impine ».
[2] Urubanza mu rw'iremezo, igika 6.
[3] Ni kimwe no haruguru, ibika 36-38.
[4] Ni kimwe no haruguru, ibika 44,54.

rwasanze Athanase Seromba yaragiranye ikiganiro n'abategetsi ba komine maze yemera icyemezo abo bategetsi bafashe cyo gusenya kiliziya y'i Nyange. Gusenya iyo kiliziya byahitanye impunzi zitari munsi ya 1500[5]. Rwasanze kandi yaragiriye inama umushoferi wa tingatinga maze amushishikariza gusenya iyo kiliziya[6]. Mu gusoza, kuri iyi ngingo, Urugereko rwasanze kubera ibyo bikorwa, Uregwa yarafashije kandi ashishikariza abantu kwica impunzi z'abatutsi zari mu kiliziya y'i Nyange[7].

4. Urugereko rwa Mbere rw'Iremezo rwasanze kandi haragaragajwe ko Athanase Seromba yabujije impunzi gushaka ibyo zirya mu rutoki rwa paruwasi maze ategeka abajandarume kurasa impunzi iyo ari yo yose igiye muri urwo rutoki[8]. Rwasanze kandi haragarajwe ko yanze gusomera misa impunzi z'abatutsi zari mu kiliziya y'i Nyange[9] kandi akirukana abakozi n'impunzi z'abatutsi bari kuri Paruwasi ya Nyange no mu gipadiri. Bamwe muri abo bantu baje kwicwa[10]. Rwasanze na none kubera ibyo bikorwa bye, yarafashije kandi agashishikariza abantu kwica impunzi z'abatutsi no gukora ibikorwa byo kubateza ububabare bukomeye bw'umubiri n'ubwo mu mutwe[11].

5. Rushingiye kuri ibyo bikorwa bye, Urugereko rwa Mbere rw'Iremezo rwahamije Athanase Seromba icyaha cyo gufasha no gushishikariza abantu gukora jenoside (ikirego cya 1) n'itsembatsemba nk'icyaha cyibasiye inyokomuntu (ikirego cya 4)[12]. Ariko Urugereko rwanze kwakira ikirego cy'umugereka cyo kuba icyitso cy'abakoze jenoside (ikirego cya 2), kubera ko rwari rumaze kumuhamya icyaha cy'ibanze cya jenoside[13]. Rwanamugize umwere ku cyaha cy'ubwumvikane

[5] Ni kimwe no haruguru, ibika 268, 285, 334 na 364. Urugereko rw'Ubujurire rusanga hari aho Urugereko rwa Mbere rw'Iremezo rwavuze impunzi z'abatutsi zirenga 1500 (igika 334), ubundi rukavuga impunzi z'abatutsi zitari mu nsi ya1500 (igika 285). Muri iyi nyandiko y'urubanza mu bujurire, haravugwa impunzi z'abatutsi zibarirwa ku 1500.
[6] Ni kimwe no haruguru, ibika 269, 364 na 365.
[7] Ni kimwe no haruguru, ibika 334, 335, 337 na 338.
[8] Ni kimwe no haruguru, ibika 95 na 323.
[9] Ni kimwe no haruguru, ibika 107 na 323.
[10] Ni kimwe no haruguru, ibika 114, 201, 202, 324, 325 na 332.
[11] Ni kimwe no haruguru, ibika 328, 331, 332, 335, 336 na 338.
[12] Ni kimwe no haruguru, ibika 342, 371 na 372.
[13] Ni kimwe no haruguru, ibika 343, 372.

bugamije gukora jenoside (ikirego cya 3)[14]. Athanase Seromba yakatiwe igihano rukumbi cy'igifungo cy'imyaka 15[15].

B. Ubujurire

6. Athanase Seromba atanga impamvu 10 z'ubujurire. Avuga ko Inyandiko y'ibirego irimo amakosa mu miterere yayo, ko yavukijwe uburenganzira afite bwo kuburanishwa nta karengane, ko hakozwe amakosa mu gusuzuma ibimenyetso, n'amakosa ajyanye n'ibyaha yahamijwe hashingiwe ku ngingo ya 6.1 ya Sitati. Akomeza avuga ko habaye amakosa mu gukoresha ingingo ya 2 n'iya 3 za Sitati no kumugenera igihano. Asaba Urugereko rw'Ubujurire kuvanaho icyemezo cyimuhamya icyaha, rukavanaho igihano yakatiwe maze rugategeka ko ahita arekurwa. Bitabaye ibyo, arasaba ko urubanza rwe rwasubizwa mu Rugereko rwa Mbere rw'Iremezo, rukaburanishwa n'abandi bacamanza[16]. Porokireri asaba Urugereko rw'Ubujurire kwanga kwakira impamvu zose z'ubujurire za Athanase Seromba[17].

7. Porokireri we atanga impamvu eshatu z'ubujurire. Anenga Urugereko rwa Mbere rw'Iremezo kuba rwaragize Athanase Seromba umwere ku cyaha cyo gucura umugambi, gutegeka no gukora ubwe jenoside n'icyaha cy'itsembatsemba nk'icyaha cyibasiye inyokomuntu, ndetse rukanamugira umwere ku cyaha cy'ubwumvikane bugamije gukora jenoside. Asaba Urugereko rw'Ubujurire guhamya Athanase Seromba ibyo byaha no kongera igihano yakatiwe[18]. Uretse izo mpamvu zombi z'ubujurire, Porokireri asaba Urugereko rw'Ubujurire kongera igihano Athanase Seromba yakatiwe kubera ko yafashije kandi agashishikariza abantu gukora jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu, maze rukamukatira igihano cy'igifungo cy'imyaka iri hagati ya 30 na burundu[19].

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[14] Ni kimwe no haruguru, ibika 351, 372.
[15] Ni kimwe no haruguru, urup. 90 (Umutwe VI : Icyemezo).
[16] Inyandiko y'ubujurire ya Seromba, urup. 11 ; imyanzuro y'ubujurire ya Seromba, imp. 75, 76.
[17] Imyanzuro isubiza ya Porokireri , igika 213.
[18] Inyandiko y'ubujurire ya Porokireri , ibika 1-13 na 20 ; Imyanzuro y'ubujurire ya Porokireri , ibika 3, 4, 17-99 na154.
[19] Ni kimwe no haruguru, ibika 14-19 ; Ni kimwe no haruguru, ibika 4 na 100-154.

Athanase Seromba asubiza ko impamvu zose z'ubujurire bwa Porokireri zitagomba kwakirwa[20].

8. Mu iburanisha mu bujurire ryabaye ku itariki ya 26 Ugushyingo 2007, ababuranyi batanze ingingo zabo mu magambo.

II. AMAHAME AGENGA UBUJURIRE

9. Urugereko rw'Ubujurire ruributsa amahame agenga ubujurire butanzwe hashingiwe ku ngingo ya 24 ya Sitati. Urugereko rw'Ubujurire rushyikirizwa ubujurire bwerekeye amakosa yo mu rwego rw'amategeko yatuma icyemezo cyafashwe kivanwaho, n'ubwerekeye amakosa ku byabaye yaba yaratumye urubanza rucibwa nabi[21].

10. Ku byerekeye amakosa yo mu rwego rw'amategeko, Urugereko rw'Ubujurire rwemeje ko :

> «Umuburanyi uvuga ko habaye ikosa rishingiye ku mategeko agomba gutanga ingingo zishyigikira ibyo avuga, akanasobanura impamvu iryo kosa rikwiye gutuma icyo cyemezo kivanwaho. Ariko ibyo ujurira avuga ntibihita byangwa, kabone n'iyo bidashyigikiwe n'ingingo yatanze, kubera ko, rushingiye ku mpamvu zitandukanye, Urugereko rw'Ubujurire rushobora kwakira, rubyibiwirije, ibyo avuga ku ikosa rishingiye ku mategeko[22]. »

11. Ku byerekeye amakosa ku byabaye, ubukemuramanza budahinduka bw'Urugereko rw'Ubujurire bwerekana ko Urugereko rwirinda kuvanaho, nta mpamvu zikomeye rushingiyeho, imyanzuro ku byabaye yafashwe n'Urugereko rwa Mbere rw'Iremezo :

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[20] Imyanzuro isubiza ya Seromba, ibika 13-132.

[21] Reba Urubanza rwa Nahimana mu bujurire, igika 11, Urubanza rwa *Simba* mu bujurire, igika 8, n'Urubanza rwa *Blagojević* mu bujurire, igika 6, igisobanuro nomero 14 (Hibutwa ubukemuramanza bwerekeye ingingo ya 25 ya Sitati ya TPIY na 24 ya Sitati ya TPIR).

[22] Reba Urubanza rwa Gacumbitsi mu bujurire, igika 7 (hasubirwamo ibivugwa mu Nyandiko y'Urubanza rwa Ntakirutimana mu bujurire, igika 11, ibisobanuro ntibyongewemo). Reba na none Urubanza rwa Muhimana mu bujurire, igika 7, Urubanza rwa Kajelijeli mu bujurire, igika 5, Urubanza rwa *Stakić mu bujurire*, igika 8, n'Urubanza rwa *Vasiljević* mu bujurire, igika 6.

> « Iyo Ubwunganizi buvuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ku byabaye, Urugereko rw'Ubujurire rugomba kwizera uburyo Urugereko rwa Mbere rw'Iremezo rwasuzumye ibimenyetso byatanzwe mu rubanza. Ruvanaho umwanzuro wafashwe n'Urugereko rwa Mbere rw'Iremezo ari uko gusa rusanga nta mucamanza wo mu rw'iremezo ushyira mu gaciro, wari gufata umwanzuro nk'uwo, cyangwa iyo rusanga uwo mwanzuro wose urimo amakosa. Byongeye kandi, umwanzuro urimo amakosa ntushobora kuvanwaho cyangwa gusubirwamo kereka iyo watumye urubanza rucibwa nabi[23]. »

Uko gushyira mu gaciro no kwifata ku myanzuro yafashwe n'Urugereko rwa Mbere rw'Iremezo ni nabyo bikoreshwa iyo Porokireri yajuririye icyemezo kigira uregwa umwere. Ibyo ari byo byose, Urugereko rw'Ubujurire ntirushobora kwemeza ko habaye ikosa ku byabaye kereka bigaragaye ko nta mucamanza wo mu rw'iremezo ushyira mu gaciro wari gufata umwanzuro nk'uwo ujuririrwa. Byongeye kandi, kubera ko ari Porokireri ufite inshingano yo kugaragariza Urugereko rwa Mbere rw'Iremezo, ku buryo budashidikanywaho, ko uregwa yakoze icyaha, iyo Porokireri yajuririye icyemezo cyo kugira uregwa umwere n'Ubwunganizi bukajurira icyemezo cyo guhamya uregwa icyaha, inshoza y'ikosa ku byabaye yatumye urubanza rucibwa nabi ntigira ingaruka imwe muri ubwo bujurire bwombi. Mu by'ukuri, n'ubwo uwakatiwe agomba kugaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa ku byabaye atuma haba ugushidigikanya gushyize mu gaciro ku gihano yakatiwe, Porokireri agomba kugaragaza ku buryo budashidikanywaho ko n'ubwo Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ku byabaye, uwakatiwe igihano yakoze icyaha[24].

12. Mu bujurire, umuburanyi ntiyasubiramo gusa ingingo yatanze zitakiriwe mu rw'iremezo, kereka agaragaje ko kuba zitarakiriwe ari ikosa risobanura impamvu

[23] Urubanza rwa Gacumbitsi mu bujurire, igika 8 (hasubirwamo ibivugwa mu nyandiko y'Urubanza rwa *Krstić* mu bujurire, igika 40, ibisobanuro ntibyongewemo). Reba na none Urubanza rwa Muhimana mu bujurire, igika 8, n'Urubanza rwa Kajelijeli mu bujurire , igika 5.
[24] Urubanza rwa Limaj mu bujurire, igika 13, Urubanza rwa Rutaganda mu bujurire, igika 24, n'Urubanza rwa Bagilishema mu bujurire, ibika 13 na 14.

yajuriye[25]. Mu ikubitiro, Urugereko rw'ubujurire rushobora kutakira ibivugwa rutabanje kubisuzuma birambuye, igihe bidashobora gutuma icyemezo kirwanywa kivanwaho cyangwa gisubirwamo[26].

13. Kugira ngo Urugereko rw'Ubujurire rushobore gusuzuma ibyo avuga, ujurira agomba kuvuga aho akura ibyo avuga, akerekana amapaji biriho mu nyandikomvugo y'iburanisha, kandi akerekana ibika by'icyemezo cyangwa amapaji y'urubanza ajuririra[27]. Urugereko rw'Ubujurire ntirushobora gusuzuma birambuye imyanzuro y'ababuranyi mu gihe iyo myanzuro itumvikana, yivuguruza, idasobanutse, cyangwa igihe irimo andi makosa y'imyandikire akomeye[28]. Urugereko rw'Ubujurire rufite kandi ububasha busesuye bwo kwemeza ibivugwa bigomba gutangirwa ibisubizo mu nyandiko, rukagira n'ububasha bwo kwanga, nta bisobanuro birambuye, ibivugwa bigaragara ko bidafite ishingiro[29].

[25] Urubanza rwa Simba mu bujurire, igika 10, Urubanza rwa Muhimana mu bujurire, igika 9, Urubanza rwa Ndindabahizi mu bujurire, igika 11, Urubanza rwa Gacumbitsi mu bujurire, igika 9, n'Urubanza rwa Niyitegeka mu bujurire, igika 9. Reba na none Urubanza rwa *Stakić* mu bujurire, igika 11, n'Urubanza rwa *Naletilić* mu bujurire, igika 13.

[26] Urubanza rwa Nahimana mu bujurire, igika 16, Urubanza rwa Simba mu bujurire, igika 10, Urubanza rwa Muhimana mu bujurire, igika 9, Urubanza rwa Ndindabahizi mu bujurire, igika 11, Urubanza rwa Kajelijeli mu bujurire, igika 6, n'Urubanza rwa Ntakirutimana mu bujurire, igika 13. Reba na none Urubanza rwa *Stakić mu bujurire*, igika 11, n'Urubanza rwa *Naletilić* mu bujurire, igika 13.

[27] Amabwiriza yerekeye kujurira, ingingo ya. 4, igika *b*. Reba na none Urubanza rwa Nahimana mu bujurire, igika 16, Urubanza rwa Simba mu bujurire, igika 11, Urubanza rwa Muhimana mu bujurire, igika 10, Urubanza rwa Ndindabahizi mu bujurire, igika 12, Urubanza rwa Gacumbitsi mu bujurire, igika 10, Urubanza rwa Kajelijeli mu bujurire , igika 7, Urubanza rwa *Stakić* mu bujurire, igika 12, n'Urubanza rwa *Vasiljević* mu bujurire, igika 11.

[28] Urubanza rwa Nahimana mu bujurire, igika 16 (hasubirwamo ibivugwa mu rubanza rwa *Vasiljević* mu bujurire, igika 12), n'Urubanza rwa Simba mu bujurire , igika 11. Reba na none Urubanza rwa Muhimana mu bujurire, igika 10, Urubanza rwa Ndindabahizi mu bujurire, igika 12, Urubanza rwa *Naletilić* mu bujurire, igika 14, n'Urubanza rwa Kajelijeli mu bujurire, igika 7.

[29] Urubanza rwa Nahimana mu bujurire, igika 17, Urubanza rwa Simba mu bujurire, igika 11, Urubanza rwa Muhimana mu bujurire, igika 10, Urubanza rwa Gacumbitsi mu bujurire, igika 10, Urubanza rwa Kajelijeli mu bujurire, igika 8, n'Urubanza rwa Niyitegeka mu bujurire, igika 11. Reba na none Urubanza rwa *Stakić* mu bujurire, igika 13, n'Urubanza rwa *Blaškić* mu bujurire, igika 13.

III. UBUJURIRE BWA ATHANASE SEROMBA

14. Urugereko rw'Ubujurire rugiye gusuzuma impamvu z'ubujurire za Athanase Seromba. Muri rusange, turazisuzuma rukurikije uburyo zikurikirana ariko ntibivuga ko ubwo buryo ari bwo byanze bikunze bukurikizwa urebye uburemere bw'ibyaha yahamijwe n'Urugereko rwa Mbere rw'Iremezo.

A. Kuba yaba yaravukijwe uburenganzira afite bwo kuburanishwa nta karengane (Impamvu ya mbere y'ubujurire)

15. Athanase Seromba avuga ko hakozwe amakosa mu rubanza rwe, kubera ko Urugereko rwa Mbere rw'Iremezo rwategetse ko, niba ateganya gutanga ubuhamya, yabikora mbere y'umugabo wa nyuma umushinjura[30]. Avuga kandi ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amategeko kubera ko rwapfundikiye itangwa ry'ibimenyetso bishinjura kandi Urugereko rw'Ubujurire rutari rwafata icyemezo ku bujurire yari yatanze ku cyemezo cya Biro y'abacamanca cyo kwanga Icyifuzo cye gisaba gukura abacamanza mu rubanza rwe mu rw'iremezo[31]. Athanase Seromba avuga ko ibyo byemezo byamuvukije uburenganzira ahabwa n'ingingo ya 20.1 n'iya 20.4 za Sitati, bwo guhabwa igihe n'ibyangombwa akeneye kugira ngo ategure ukwiregura kwe, ubwo guhabwa uburyo bwo kwiregura bungana n'ubwahawe Porokireri, no kubaza cyangwa gushaka umubariza abatangabuhamya bamushinja, akemererwa ko abatangabuhamya bamushinjura bahamagarwa mu rukiko kandi bakabazwa, mu buryo bumwe n'ubuteganyirizwa abamushinja, n'uburenganzira ahabwa n'ingingo ya 85 A) na 85 C) y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso (« Amategeko »), bwo guhamagaza abatangabuhamya mu Rukiko, n'ubwo gutanga ubuhamya mu rubanza rwe yiregura[32].

16. Porokireri asubiza ko Athanase Seromba atatanze ikimenyetso na kimwe kigaragaza ko yavukijwe uburenganzira bwe ku buryo imikirize y'urubanza

[30] Inyandiko y'ubujurire ya Seromba, igika 8 ; imyanzuro y'ubujurire ya Seromba, ibika 8-13.
[31] Ni kimwe no haruguru. ; Ni kimwe no haruguru, ibika 10, 14 na 17.
[32] Ni kimwe no haruguru, igika 9 ; Ni kimwe no haruguru, ibika 5 -7 na 15-17.

yavanwaho[33]. Yemeza ko Urugereko rwa Mbere rw'Iremezo rwakoresheje uko bikwiye ububasha ruhabwa n'ingingo ya 90 F) y'Amategeko bwo gutegeka Athanase Seromba gutanga ubuhamya mbere y'umugabo wa nyuma umushinjura[34]. Porokireri asanga ibiteganywa n'ingingo za 48, 85 na 98 z'amategeko, nk'uko bisobanurwa mu bukemuramanza bwa TPIR na TPIY, bitavuga ko uregwa afite uburenganzira busesuye bwo gutanga ubuhamya nyuma y'abandi mu itangwa ry'ibimenyetso bishinjura[35]. Porokireri avuga kandi ko Urugereko rwa Mbere rw'Iremezo rwahaye Athanase Seromba uburyo bwose akeneye ngo ategure ukwiregura kwe, ndetse rufata ingamba zikwiye kugira ngo urubanza rwe rukomeze hatabayeho gukererwa bitari ngombwa[36].

17. Ku itariki ya 21 Mata 2006, mu mpera z'itangwa ry'ibimenyetso bishinjura, Urugereko rwa Mbere rw'Iremezo rwemeje ko, niba ashaka gutanga ubuhamya mu rukiko, Athanase Seromba yabikora ku itariki ya 24 Mata 2006[37]. Kubera iyo mpamvu, rwemeje ko undi mugabo usigaye ugomba gutanga ubuhamya, ari we wahawe izina rya PS2, yabutanga ku itariki ya 26 Mata 2006 ataje mu rukiko, hakoreshejwe uburyo bw'itumanaho bwitwa *videoconference*, nk'uko rwari rwarabitegetse mu cyemezo rwafashe ku itariki ya 20 Mata 2006[38]. Muri icyo cyemezo, rwanavuze ko byari ngombwa ko Athanase Seromba atanga ubuhamya bwe mu rukiko ku itariki ya 24 n'iya 25 Mata 2006 kugira ngo gutanga ibimenyetso bishinjura birangire ku itariki ya 27 Mata 2006, nk'uko ababuranyi n'Urukiko bari babyumvikanyeho mbere[39]. Ubwunganizi ntibwarwanyije icyo cyemezo igihe cyafatwaga ahubwo ku itariki ya 24 Mata 2006, ari nawo munsi wari uteganyijwe ngo Athanase Seromba atange ubuhamya, niho bwasabye ko

[33] Imyanzuro isubiza ya Porokireri, ibika 26 na 86 ; Inyandikomvugo y'iburanisha y'ubujurire, 26 Ugushyingo 2007, imp. 71, 72 na 79.
[34] Ni kimwe no haruguru, ibika 44-51 ; Ni kimwe no haruguru, urup. 59.
[35] Ni kimwe no haruguru, ibika 52-63 ; Ni kimwe no haruguru, urup. 58.
[36] Imyanzuro isubiza ya Porokireri, ibika 64-85.
[37] Inyandikomvugo y'iburanisha, 21 Mata 2006, urup. 1.
[38] Ni kimwe no haruguru. Reba Icyemezo ku Cyifuzo cy'Ubwunganizi gisaba ko umutangabuhamya wiswe PS2 yatanga ubuhamya hakoreshejwe videoconference, 20 Mata 2006.
[39] Ni kimwe no haruguru. Reba Inyandikomvugo y'iburanisha, 18 Mata 2006, imp. 7-10.

cyasubirwamo[40]. Rumaze kumva ababuranyi mu iburanisha ryabaye uwo munsi, Urugereko rwa Mbere rw'Iremezo rwanze kwakira icyifuzo cy'Ubwunganizi gisaba Urugereko gusubira ku cyemezo rwafashe ku itariki ya 21 Mata 2006. Rwanze kandi no kwakira icyifuzo cy'Ubwunganizi gisaba kujuririra icyo cyemezo[41].

18. Kubera ko Urugereko rwanze kwakira ibyifuzo bwatanzwe birebana n'icyemezo cyo ku itariki ya 21 Mata 2006, Ubwunganizi bwashyikirije Biro y'abamacanza icyifuzo gisaba gukura abacamanza b'Inteko y'Urugereko rwa Mbere rw'Iremezo muri urwo rubanza[42]. Ku itariki ya 25 Mata 2006, Biro yanze kwakira icyo cyifuzo[43] maze bukeye, ku itariki ya 26 Mata 2006, Ubwunganizi bujuririra icyo cyemezo[44]. Uwo munsi [ku itariki ya 26 Mata 2006], Urubanza rwarasubukuwe, ariko n'ubwo ibisabwa byose byari bihari ngo umugabo wiswe PS2 atange ubuhamya hakoreshejwe *videoconference*, Ubwunganizi bwanze kubaza uwo mutangabuhamya buvuga ko bwari bugitegereje icyemezo ku bujurire bwatanze ku cyemezo cya Biro[45]. Rumaze kumva ibyo ababuranyi bavuga kuri icyo kibazo, Urugereko rwa Mbere rw'Iremezo rwanze gusubika urubanza nk'uko Ubwunganizi bwabisabaga[46]. Rushingiye ku ngingo ya 54 y'Amategeko, Urugereko rwasabye Ubwanditsi bw'Urukiko kumenyesha Athanase Seromba ko agomba kwitaba Urukiko kugira ngo avuge niba yifuza gutanga ubuhamya[47]. Kubera ko Athanase Seromba yiyemeje kutitaba Urukiko, Urugereko rwa Mbere rw'Iremezo rwafashe icyemezo gikurikira :

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[40] Icyifuzo cyihutirwa cyane gisaba Urugereko guhindura icyemezo cyafashwe ku itariki ya 21 Gicurasi 2006 ku kibazo kirebana n'itangwa ry'ubuhamya mu Rukiko ry'Uregwa, 24 Mata 2006.
[41] Inyandikomvugo y'iburanisha , 24 Mata 2006, imp. 6-8.
[42] Icyifuzo cyihutirwa cyane gisaba kwikura Abacamanza Andrésia Vaz, Gustave Kam na Karin Hökborg, 24 Mata 2006, n'Inyandiko ikosora Icyifuzo cyihutirwa cyane cyatanzwe n'Ubwunganizi, 25 Mata 2006.
[43] Icyemezo ku Cyifuzo gisaba gukura abacamanza mu rubanza, 26 Mata 2006.
[44] Icyifuzo cy'Ubwunganizi kijuririra Icyemezo cya Buro cyatangajwe ku itariki ya 25 Mata 2006 yafashe ku cyifuzo cy'Ubwunganizi cyo kwikura Abacamanza Vaz, Kam et Hökborg, 26 Mata 2006. Urugereko rw'Ubujurire rwanze ko icyo Cyemezo kijuririrwa, kubera ko Athanase Seromba atari afite uburenganzira bwo kujurira Icyemezo cya Biro. Reba Icyemezo ku bujurire butanzwe hagati mu rubanza ku Cyemezo cya Biro, 22 Gicurasi 2006, igika 7.
[45] Inyandikomvugo y'iburanisha, 26 Mata 2006, imp. 4- 8.
[46] Ni kimwe no haruguru, imp. 19 na 20.
[47] Ni kimwe no haruguru, imp. 10, 19 na 20.

> « Kubera ko [Ubwunganizi] budateganya ko Uregwa atanga ubuhamya, igisobanuro rukumbi Urugereko rwatanga ni uko Uregwa yanze kwitaba Urukiko, bityo akaba atagishaka gutanga ubuhamya mu Rugereko. Kubera iyo mpamvu, nta kindi dushobora kwemeza uretse kuvuga ko nta wundi mutangabuhamya Urugereko rufite wo kumva, bityo itangwa ry'ibimenyetso bishinjura bikaba bipfundikiwe uyu munsi ku itariki ya 27 Mata 2006[48]. »

1. <u>Ikosa rivugwa ku burenganzira bwo kwitaba Urukiko nk'umutangabuhamya</u>

19. Athanase Seromba avuga ko yavukijwe uburenganzira afite bwo kwitaba Urukiko nk'umutangabuhamya kubera ko Urugereko rwa Mbere rw'Iremezo rwategetse ko niba ashaka gutanga ubuhamya mu Rukiko agomba kubikora mbere y'umugabo wiswe PS2[49]. Urugereko rw'Ubujurire rusanga ko, mu rubanza rwa *Galić,* mu gihe Urugereko rw'Ubujurire rwa TPIY rwasubizaga ikibazo cyo kumenya niba Urugereko rwa Mbere rw'Iremezo rwaravukije Stanislav Galić uburenganzira afite bwo kuburanishwa nta karengane rumusaba gutanga ubuhamya mu rukiko mbere y'abagabo b'impuguke batanzwe n'Ubwunganizi[50], rwaravuze ko n'ubwo mu mikorere yarwo urwo rukiko rwemerera abaregwa guhitamo igihe batangira ubuhamya, ntibivuga ko abaregwa bafite uburenganzira bwo guhitamo igihe bashobora gutangira ubuhamya cyangwa guhitamo igihe bafatira ijambo mu rubanza[51]. Urugereko rw'Ubujurire rwa TPIY rwanzuye rugira ruti :

> «Hashingiwe ku ngingo ya 90 F) y'Amategeko, Ingereko za Mbere z'Iremezo zifite uburenganzira busesuye bwo kugena igihe uregwa ashobora gutangira ubuhamya mu kwiregura kwe. Ariko rugomba kwitondera gukoresha ubwo bubasha kuko, ahanini, ababuranyi ari bo bagena uko abatangabuhamya babo bazakurikirana, kandi rugakora ku buryo uburenganzira bw'uregwa bwubahirizwa, cyane cyane ubwo kuburanishwa nta karengane[52]. »

[48] Inyandikomvugo y'iburanisha, 27 Mata 2006, urup. 5.
[49] Imyanzuro y'ubujurire ya Seromba, ibika 7 na 9-13.
[50] Urubanza rwa *Galić* mu bujurire, ibika 13-23.
[51] Ni kimwe no haruguru, ibika 19.
[52] Ni kimwe no haruguru, ibika 20.

Urugereko rw'Ubujurire rushyigikiye iyo myumvire[53]. Rugiye rero gusuzuma niba, Urugereko rwa Mbere rw'Iremezo, ubwo rwategekaga Athanase Seromba gutanga ubuhamya mu Rukiko mbere y'umugabo wiswe PS2, rwaramuvukije uburenganzira afite bwo gutanga ubuhamya, bityo rukamuvutsa uburenganzira bwo kuburanishwa nta karengane.

20. Kuri iki kibazo, Urugereko rwa Mbere rw'Iremezo rwemeje ko niba ashaka gutanga ubuhamya, Athanase Seromba yabutanga mbere y'umugabo wa nyuma umushinjura. Rwafashe icyo cyemezo kubera inyungu z'ubutabera kandi rushaka no gukoresha neza igihe cy'Urukiko, ruzirikana impamvu zo mu rwego rwa tekiniki zatumye rutegeka ko umugabo wiswe PS2 atanga ubuhamya ku itariki ya 26 Mata 2006 hakoreshejwe *videoconference.* Urugereko rwazirikanaga kandi ko impaka zagombaga gupfundikirwa ku itariki ya 27 Mata 2006[54]. Icyemezo rwafashe cyo kumva ubuhamya bwa Athanase Seromba mbere y'ubw'umugabo wiswe PS2 ni uburyo bushyize mu gaciro bwo kwirinda ko iburanisha ridakererwa nta mpamvu, no kwakira icyifuzo Ubwunganizi bwatanze bukerewe busaba ko PS2 yatanga ubuhamya ari muri Afurika y'Epfo hakoreshejwe *videoconference*. Urugereko rwa Mbere rw'Iremezo rwanavuze ko nyuma y'ubuhamya bwa PS2, Athanase Seromba yashoboraga kongera kwitaba Urukiko kugira ngo agire icyo avuga ku buhamya bw'uyu mugabo[55]. Nyamara Athanase Seromba yanze gutanga ubuhamya mu Rukiko n'umwunganira yanga kubaza PS2 ku matariki yari yateganijwe[56]. N'ubwo byagenze gutyo, Urugereko rwa Mbere rw'Iremezo rwamenyesheje Ubwunganizi ko Uregwa ashobora gutanga

[53] Urugereko rw'Ubujurire ntirwumva icyo Anathase Seromba ashaka kuvuga iyo yemeza ko afite uburenganzira bwo gutanga ubuhamya nyuma y'abandi bagabo bose yitwaje ko « mu mategeko ya *civil law* akoreshwa mu gihugu cye, uburenganzira bwo gutanga ubuhamya nyuma y'abandi bufatwa nk'ihame rikomeye mu manza mpanabyaha ». Imyanzuro y'ubujurire (Seromba), igika [12]. Si ngombwa ko Urukiko rugendera ku mikorere iyi n'iyi y'inkiko z'ibihuru. Byongeye kandi, nk' uko Urugereko rw'Ubujurire rwa TPIY rwabivuze, muri ibyo bihugu ntibigira imikorere bihuriyeho ku byerekeye igihe uregwa agomba gutangira ho ubuhamya mu Rukiko. Reba Urubanza rwa *Galić* mu bujurire, igika 19.

[54] Inyandikomvugo y'iburanisha, 24 Mata 2006, urup. 7 :
« Mu gushaka gucunga neza imigendekere y'urubanza, kubera inyungu z'ubutabera, ruzirikana kandi ibibazo bya tekiniki bijyanye no kumva umutangabuhamya wa nyuma w'Ubwunganizi wiswe PS2 buteganijwe ku wa gatatu utaha, Urugereko rwategetse ko uregwa atanga ubuhamya mbere mbere y'uwo mugabo kugira ngo kurangiza gutanga ibimenyetso bishinjura birangire birangire ku itariki ya hubarihizwe itariki ya 27 Mata 2006 nk'uko rwabyumvikanyeho n'ababuranyi »

[55] Ni kimwe no haruguru.

[56] Inyandikomvugo z'amaburanisha, 26 Mata 2006, imp. 4-8, 12-19, na 27 Mata 2006, urup. 5.

ubuhamya kugeza igihe cya nyuma kibanziriza itangwa ry'imyanzuro y'impande zombi mu magambo[57]. Byongeye kandi, amaze gutanga imyanzuro mu magambo, Athanase Seromba yagize icyo abwira Urugereko rwa Mbere rw'Iremezo[58]. Kubera uko ibintu byagenze, Urugereko rw'Ubujurire rusanga ibyo Urugereko rwa Mbere rw'Iremezo rwategetse Ubwunganizi kubahiriza bitatavukije Athanase Seromba, mu buryo budashyize mu gaciro, uburenganzira afite bwo gutanga ubuhamya kandi bitamuvukije uburenganzira afite bwo kuburanishwa nta karengane.

2. Amakosa Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze rwanga gusubika urubanza kandi rutangaza ko itangwa ry'ibimenyetso bishinjura ripfundikiwe.

21. Athanase Seromba avuga ko, kubera ko Urugereko rwa Mbere rw'Iremezo rwanze gusubika urubanza, «habaye akarengane mu rubanza maze avutswa uburenganzira bwe kubera ko atashoboye kurangiza neza gutanga ibimenyetso bimushinjura, no kubera ko Inteko y'Urugereko yamuhatiye kurangiza gutanga ibimenyetso bye kugira ngo Porokireri n'Ubwunganizi batange imyanzuro yabo mu magambo[59] ». Haba muri Sitati cyangwa mu Mategeko, nta na hamwe hateganywa ko urubanza rugomba gusubikwa mu gihe hasuzumwa Icyifuzo gisaba gukura umucamanza/abamacamanza mu rubanza. Nyamara, uregwa afite uburenganzira bwo kubisaba[60]. Icyemezo cyo gusubika cyangwa kudasubika urubanza gifatwa hakurikijwe ububasha Urugereko rwa Mbere rw'Iremezo rufite bwo gusuzuma ibintu[61] kandi ntigishobora kuvanwaho mu bujurire kereka hagaragajwe ko abacamanza bo mu rw'iremezo barengereye mu gukoresha ububasha bwabo, ku buryo umuburanyi yavukijwe uburenganzira bwe[62]. Muri uru rubanza, Athanase Seromba ntagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoresheje nabi ububasha bwarwo.

[57] Inyandikomvugo y'iburanisha, 26 Mata 2006, imp. 19 na 20.
[58] Inyandikomvugo y'iburanisha, 28 Kamena 2006, imp. 43-45.
[59] Imyanzuro y'ubujurire ya Seromba, igika 14.
[60] Reba arrêt *Galić*, igika 33.
[61] Ni kimwe no haruguru.
[62] Urubanza rwa Gacumbitsi mu bujurire, igika 19 (havugwa ku Rubanza rwa Semanza mu bujurire, igika 73).

22. Mu rubanza, Athanase Seromba yasabye ko impaka zasubikwa kandi Biro yari yafashe icyemezo kidakuka ku cyifuzo cye gisaba gukura abacamanza mu rubanza rwe. Nk'uko Urugereko rw'Ubujurire rwabyemeje nyuma, hakurikijwe ingingo ya 15 B) y'Amategeko, Athanase Seromba ntiyari afite uburenganzira bwo kujuririra icyemezo cyafashwe na Biro, bityo ubujurire bwe ntibwari kwakirwa[63]. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rutarengereye mu gukoresha ububasha bwarwo bwo gusuzuma ibintu, ubwo rwangaga gusubika urubanza mu gihe hari hategerejwe icyemezo ku bujurire Athanase Seromba yari yatanze kandi atabyemerewe n'amategeko. Kubera iyo mpamvu, Urugereko rw'Ubujurire rwanzura ruvuga ko nyuma y'uko Ubwunganizi bwanze kubaza umutangabuhamya wiswe PS2 na nyuma y'uko Athanase Seromba ubwe yanze kwitaba Urukiko ngo avuge niba yifuza gutanga ubuhamya, Urugereko rwa Mbere rw'Iremezo rutakoze ikosa rutangaza ko gutanga ibimenyetso bishinjura bipfundikiwe.

3. Umwanzuro w'Urugereko rw'Ubujurire

23. Bityo rero, iyi mpamvu y'ubujurire ntiyakiriwe yose uko yakabaye.

B. Amakosa avugwa ashingiye ku nenge ziri mu Nyandiko y'ibirego (impamvu ya kabiri y'ubujurire)

24. Athanase Seromba avuga ko ibika 16 kuri 50 bigize Inyandiko y'ibirego bivuga ibintu muri rusange bityo bikaba « bitumvikana kandi bitakwemerwa » ko ibyo bintu bishingirwaho mu icibwa ry'urubanza[64]. Yemeza ko atashoboye kwiregura neza kubera ko «intango n'ireme » by'Inyandiko y'ibirego bivuga ibintu muri rusange[65]. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa yo mu rwego rw'amategeko n'ashingiye ku byabaye kubera ko

[63] Icyemezo ku bujurire butanzwe hagati mu rubanza ku Cyemezo cya Biro, igika 7.
[64] Imyanzuro y'ubujurire ya Seromba, igika 35.
[65] Ni kimwe no haruguru.

rutemeje ko Inyandiko y'ibirego irimo amakosa maze rugaca urubanza rushingiye kuri iyo Nyandiko[66].

25. Athanase Seromba asanga hari amakosa mu bika 5, 6, 7, 8, 11, 14, 15, 16, 17, 18, 24, 32, 33, 34, 35, 45 na 50 by'Inyandiko y'ibirego[67]. N'ubwo yibutsa ko Urugereko rwa Mbere rw'Iremezo rwemeye ko ibika 5, 18, 24, 32, 33, 34, 35, 45 na 50 bivuga ibintu muri rusange maze ntirubishingireho mu myanzuro yarwo[68], anenga urwo Rugereko kuba rutaremeye ko ibika 7, 8, 11, 14, 15, 16 na 17 birimo amakosa. Nk'uko yari yabivuze mu myanzuro ye yanditse, ibyo bika ntibisobanutse[69].

26. Porokireri asubiza ko iyi ngingo y'ubujurire igombwa kwangwa bitabaye ngombwa ko ibanza gusuzumwa birambuye[70]. Avuga ko, mu myanzuro ye ya nyuma yanditse ari ho Athanase Seromba yavuze ko Inyandiko y'ibirego ifite inenge[71] kandi ko haba mu itangwa ry'ibimenyetso byerekeye ibyo bintu byabaye cyangwa cyangwa ikindi gihe cyose cy'iburanisha, Uregwa atigeze avuga ko atahawe amakuru ku byabaye by'ingenzi aregwa[72]. Porokireri asanga mu myanzuro nsozarubanza no mu nyandiko y'ubujurire Athanase Seromba, adasobanura na rimwe, mu buryo bwumvikana, impamvu atavuze ayo makosa mu itangwa ry'ibimenyetso cyangwa nyuma yaho bidatinze[73]. Avuga ko mu bujurire bwe, Athanase Seromba atagaragaza ikosa na rimwe riri mu Nyandiko y'ibirego kandi ko adatanga ingingo n'imwe igaragaza ko kudahabwa amakuru nk'uko abivuga byaba byaramubangamiye mu kwiregura kwe[74].

27. Inyandiko y'ibirego igomba gusobanura mu buryo bwumvikana bihagije ibirego n'ibikorwa by'ingenzi ibyo birego bishingiyeho kugira ngo uregwa ahabwe

[66] Ni kimwe no haruguru, igika 52.
[67] Ni kimwe no haruguru, ibika 32, 33 na 52. Athanase Seromba ntagaragaza na rimwe ikosa ryaba riri mu gika cya 6 cy'Inyandiko y'ibirego.
[68] Ni kimwe no haruguru, igika 33.
[69] Ni kimwe no haruguru, igika 32.
[70] Imyanzuro isubiza ya Porokireri , igika 91.
[71] Ni kimwe no haruguru, igika 88.
[72] Ni kimwe no haruguru, igika 90.
[73] Ni kimwe no haruguru.
[74] Ni kimwe no haruguru, igika 88.

amakuru ku birego ashinjwa[75]. Iyo uregwa ashinjwa kuba gatozi w'ibyaha, Inyandiko y'ibirego igomba kuvuga mu magambo yeruye ibyo bikorwa bigize ibyaha, ikanatanga aho bishoboka amakuru nk'« umwirondoro w'abakorewe ibyo byaha, igihe n'ahantu byakorewe n'uburyo byakozwemo[76] ». Iyo uregwa ashinjwa kuba yaracuze umugambi, agahamagarira abantu gukora icyaha, agategeka cyangwa agafasha ndetse akanabashishikiriza gucura umugambi, gutegura cyangwa gukora ibyaha bivugwa, Porokireri agomba gusobanura « ibikorwa » cyangwa « umurongo w'imyitwarire » uregwa yagize ku buryo bituma amushinja ibyo byaha[77]. Urugereko rw'Ubujurire rwasanze Inyandiko y'ibirego igomba gufatwa nk'imbumbe[78]. Nta wavuga ko ifite amakosa kubera gusa ko irimo ibintu bivugwa rusange. Ishobora kuba irimo ibindi bintu bihagije ngo hagaragazwe ibikorwa by'ingenzi ibirego bishingiyeho.

28. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko ibika 1, 5, 18, 24, 32, 33, 34, 35, 45 na 50 by'Inyandiko y'ibirego bivuga ibintu muri rusange. Kubera iyo impamvu ntirwabishingiyeho mu gufata imyanzuro[79]. Nyamara Athanase Seromba avuga ko n'ibika 7, 8, 11, 14, 15, 16 na 17 by'Inyandiko y'ibirego na byo bifite inenge. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarasuzumye ibivugwa na Athanase Seromba kuri iyo ngingo maze rugafata umwanzuro ukurikira:

> « … ingingo Ubwunganizi butanga ntizigaragaza ko Inyandiko y'ibirego ifite inenge ku buryo yagombaga guhindurwa. Rwanze rero kwakira ibyo Ubwunganizi buvuga ko Inyandiko y'ibirego irimo amakosa maze, kubera iyo mpamvu, rusanga hatagomba kongera kuba izindi mpaka[80]. »

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[75] Urubanza rwa Simba mu bujurire, igika 63 (havugwa ku Rubanza rwa Muhimana mu bujurire, ibika 76, 167 et 195). Reba na none Urubanza rwa Gacumbitsi mu bujurire, igika 49 n'Urubanza rwa Ndindabahizi mu bujurire , igika 16.

[76] Urubanza rwa Muhimana mu bujurire, igika 76, Urubanza rwa Gacumbitsi mu bujurire, igika 49 n' Urubanza rwa Ntakirutimana mu bujurire, igika 32 (hasubirwamo ibivugwa mu rubanza rwa *Kupreškić* mu bujurire, igika 89). Reba na none Urubanza rwa Ndindabahizi mu bujurire , igika 16.

[77] Urubanza rwa Ntagerura mu bujurire, igika 25.

[78] Urubanza rwa Gacumbitsi mu bujurire, igika 123.

[79] Urubanza mu rw'iremezo ibika 29-35.

[80] Ni kimwe no haruguru, igika 23.

Urugereko rwa Mbere rw'Iremezo rwanzuye kandi ruvuga ko ibyo Athanase Seromba arwanya ku bivugwa mu bika 7, 8, 11, 14, 15, 16 na 17 by'Inyandiko y'ibirego nta « shingiro bifite[81] » kubera ko « hatangwa ibisobanuro by'ingenzi mu Nyandiko y'ibirego no mu myanzuro mbanzirizarubanza ya Porokireri yashyikirijwe Ubwunganizi mu gihe kiri mu gaciro[82] ».

29. Urugereko rw'Ubujurire rusanga ujurira uvuga ko atashoboye kwiregura ku byaha aregwa kubera ko inyandiko y'ibirego yarimo amakosa, agomba kugaragaza ko iyo nyandiko idasobanura ku buryo buhagije ibirego ashinjwa cyangwa ko idasobanura ibikorwa by'ingenzi bibishyigikira, kandi ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo kwanzura ruvuga ko iyo Nyandiko y'ibirego idafite izo nenge. Muri iyi mpamvu y'ubujurire, nta kintu na kimwe cyihariye Athanase Seromba avuga kigaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemeza ko ibika 7, 8, 11, 14, 15, 16 na 17 by'Inyandiko y'ibirego bidafite inenge. Ntiyanasobanuye ukuntu izo nenge avuga zaba zaramubangamiye mu myiregurire ye no mu kuyitegura. Kubera ibimaze kuvugwa, Urugereko rw'Ubujurire rusanze Athanase Seromba ataragaragaje inenge n'imwe iri mu Nyandiko y'ibirego yaba yaramubujije kubona amakuru ahagije ku kirego cyangwa ku gikorwa cy'ingenzi cyashingiweho mu kumuhamya ibyaha.

30. Bityo rero, iyi mpamvu y'ubujurire ntiyakiriwe.

C. <u>Amakosa yaba yarakozwe mu kumuhamya icyaha cya jenoside (impamvu y'ubujurire ya munani)</u>

31. Kubera ibikorwa yakoze n'uko yitwaye ku matariki ya 12, 14, 15 na 16 Mata 1994, Urugereko rwa Mbere rw'Iremezo rusanga haragaragajwe ko mu byabaye bivugwa mu Nyandiko y'ibirego, Athanase Seromba yatanze inkunga kandi agashishikariza abantu kwica abatutsi bari bahungiye ku kiliziya y'i Nyange, no kubateza ububabare bukomeye bwo mu mutwe n'ubw'umubiri[83].

[81] Ni kimwe no haruguru, igika 22.
[82] Ni kimwe no haruguru.
[83] Urubanza mu rw'iremezo ibika 322, 326 à 328, 331, 335 na 338.

Rumaze ngusanga hagaragajwe ko abatutsi bakorewe ibyo byaha bari bagize itsinda ririnzwe nk'uko biteganywa n'ingingo ya 2.2 ya Sitati[84], ko abagabye ibitero bibasiye abo bantu bakorewe ibyaha kubera ubwoko bwabo kandi bagamije kubarimbura nk'abantu bagize ubwoko[85], kubera ko Athanase Seromba atashoboraga kuyoberwa ko abagabye ibitero bari bagamije gukora ibikorwa bya jenoside bibasira impunzi z'abatutsi zari kuri Paruwasi ya Nyange[86], Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko Porokireri yagaragaje ko Athanase Seromba yakoze icyaha cya jenoside afasha kandi ashishikariza abayikoze[87].

1. Ingingo zirebana n'amategeko akurikizwa

a) Ingingo zirebana n'uburyo bwo gukora icyaha

32. Muri iyi mpamvu y'ubujurire, Athanase Seromba abanza kuvuga uko yumva igisobanuro cy'« amategeko akurikizwa » mu rwego rw'uburyozwacyaha buteganywa n'ingingo ya 6.1 ya Sitati. By'umwihariko, asobanura uko yumva «uburyo butanu bwo gukora icyaha » burondorwa muri iyo ngingo. Kuri ibyo, yifashisha ubukemuramaza bwa TPIR na TPIY, kuri we akaba yumva ko bujyanye n'imyumvire ye y'amategeko akurikizwa[88]. Kubera iyo mpamvu, avuga ko mbere yo gusuzuma ikibazo cy'uburyozwacyaha bwe n'ubufatanyacyaha bwe, Urugereko rwa Mbere rw'Iremezo rwagombye kuba rwaribajije niba Porokireri yaratanze koko ibimenyetso bigaragaza ko hari icyaha cyakozwe[89]. Avuga kandi ko Urugereko rwa Mbere rw'Iremezo rwagombye kuba rwarashatse kumenya niba ba gatozi b'icyo cyaha bari bafite umugambi wo kurimbura abatutsi[90].

33. Porokireri asubiza ko n'iyo umuntu yakwemera ko Athanase Seromba yasobanuye neza uburyo bwo gukora ibyaha yahamijwe, n'ibintu bigize ibyo

[84] Ni kimwe no haruguru, igika 339.
[85] Ni kimwe no haruguru, igika 340.
[86] Ni kimwe no haruguru, igika 341.
[87] Ni kimwe no haruguru, igika 342.
[88] Imyanzuro y'ubujurire ya Seromba, ibika 217-225.
[89] Ni kimwe no haruguru, ibika 220 na 221.
[90] Ni kimwe no haruguru, igika 224.

byaha, ntasobanura ukuntu Urugereko rwa Mbere rw'Iremezo rwaba rwarafashe umwanzuro urimo amakosa kuri izo ngingo[91].

34. Urugereko rw'Ubujurire rusanga mu isesengura rwakoze ku mategeko, Urugereko rwa Mbere rw'Iremezo rwarabanje kuvuga amategeko akoreshwa ku buryo bwo gukora ibyaha bivugwa mu Nyandiko y'ibirego. Rurangije, rwafashe imyanzuro rusange ku buryozwacyaha bwa Athanase Seromba kubera ibyo byaha[92]. By'umwihariko, rwafashe iyo myanzuro rusange rushingiye ku byabaye rwari rwemeje. Kubera iyo mpamvu, rwavuze ko uburyozwacyaha bwa Athanase Seromba bugarukira ku ruhare yagize rwo gutanga inkunga no gushishikaza abantu bakoze ibyaha ashobora guhamwa. Rwafashe uwo mwanzuro kubera ko rwasanze Porokireri ataragaragaje, ku buryo budashidikanywaho, ko Uregwa yahamwa icyaha hashingiwe ku bundi buryo bwo gukora icyaha[93].

35. Ku byerekeye ibyo Athanase Seromba avuga ko « mbere yo gusuzuma uburyozwacyaha bwe ku giti cye mu ikorwa ry'icyaha icyo ari cyo cyose aregwa, Urugereko rwa Mbere rw'Iremezo rwagombaga kubanza gusuzuma ikibazo cyo kumenya niba Porokireri yaragaragaje cyangwa ataragaragaje koko ko ibyo byaha byakozwe[94] », Urugereko rw'Ubujurire rusanga mu gusuzuma uburyozwacyaha bw'Uregwa, Urugereko rwa Mbere rw'Iremezo rutarahagarariye gusa ku myanzuro ku mategeko rusange ivugwa mu gika 311 n'icya 312 by'Inyandiko y'urubanza. Ahubwo, rwasuzumye ku buryo bweruye uruhare Athanase Seromba yagize muri buri cyaha aregwa mu Nyandiko y'ibirego[95]. Rwasuzumye uburyozwacyaha bwe rushingiye gusa ku byaha rwasangaga Porokireri yaragaragaje ku buryo budashidikanywaho[96].

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[91] Imyanzuro isubiza ya Porokireri, igika 188.
[92] Urubanza mu rw'iremezo ibika 301- 313.
[93] Ni kimwe no haruguru, ibika 311 na 312.
[94] Imyanzuro y'ubujurire ya Seromba, igika 220.
[95] Reba by'umwihariko, urubanza, igika 322.
[96] Reba by'umwihariko, urubanza, igika 340 (aho Urugereko rwa Mbere rw'Iremezo rwasanze nta muntu ushobora guhakana ko mu gihe cy'ibyabereye ku kiliziya y'i Nyange muri Mata 1994, abagabye igitero n'indi mitwe *interahamwe* ytiwara gisirikare bishe impunzi z'abatutsi zari ku kiliziya y'i Nyange kandi bakanabatera ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe bagamije kurimbura abantu bose, cyangwa igice cyabo, bagize ubwo bwoko).

36. Urugereko rw'Ubujurire rusanga uburyo Urugereko rwa Mbere rw'Iremezo rugomba gukoresha buterwa ahanini n'imiterere yihariye ya buri rubanza. Muri uru rubanza, Athanase Seromba ntiyagaragaje ko uko iburanisha ryakurikiranye, by'umwihariko, uburyo Urugereko rwa Mbere rw'Iremezo rwakoresheje mu gusuzuma amategeko yerekeye uburyozwacyaha, bishobora kuba ikosa ryatuma imikirize y'urubanza mu rw'iremezo ivanwaho.

37. Ku byerekeye ibyo Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwagombye kuba « rwarasuzumye niba abakoze ibyaha bose bari bagamije kurimbura abatutsi[97] », Urugereko rw'Ubujurire rusanga Athanase Seromba atavuga na rimwe ukuntu Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze ikosa mu isuzuma rwakoze kuri iki kibazo. Abacamanza bo mu rw'iremezo basuzumye rwose umugambi wa ngombwa ba gatozi bari bafite, maze basanga nta wahakana ko «mu gihe cy'ibyabaye muri Mata 1994 ku kiliziya y'i Nyange, abagabye igitero n'indi mitwe y'Interahamwe yitwara gisirikare bishe impunzi z'abatutsi zari kuri iyo kiliziya, bakanazitera ububabare bukomeye bw'umubiri n'ubwo mu mutwe babaziza ubwoko bwabo kandi bagamije *kubarimbura bose cyangwa igice cyabo nk'abantu bagize ubwo bwoko*[98] ». Kubera iyo mpamvu, ibyo Athanase Seromba avuga kuri iyo ngingo nta shingiro bifite.

38. Urugereko rw'Ubujurire rusanze Athanase Seromba ataragaragaje ikosa na rimwe ryaba riri mu buryo rusange Urugereko rwa Mbere rw'Iremezo rwakoresheje amategeko ubwo rwasuzumaga uburyozwacyaha bw'Uregwa, ngo bibe byatuma imikirize y'urubanza ivanwaho.

b) <u>Ingingo z'Ujurira ku birebana na jenoside</u>

39. Mu myanzuro ye, Athanase Seromba avuga uko yumva igisobanuro cy'amategeko akurikizwa ku cyaha cya jenoside. Aha icyo cyaha igisobanuro yumva gihuye n'ubukemuramanza bw'Urukiko, ari nako asobanura igikorwa

[97] Imyanzuro y'ubujurire ya Seromba, igika 224.
[98] Urubanza mu rw'iremezo igika 340 (ntibishimangiwe mu nyandiko y'umwimerere).

gifatika n'igitekerezo cyo gukora icyaha biranga jenoside[99]. Porokireri avuga ko ahanini icyo gisobanuro cy'Ubwunganizi cyibutsa muri make amategeko akurikizwa, kikaba kitarimo ingingo n'imwe ishingiye ku mategeko cyangwa ku byabaye yatuma Urugereko rw'Ubujurire ruvanaho icyemezo cyafashwe cyo kumuhamya ibyaha[100].

40. Urugereko rw'Ubujurire rusanga muri iyi mpamvu y'ubujurire, Athanase Seromba atagaragaza ikosa na rimwe ryaba riri mu buryo Urugereko rwa Mbere rw'Iremezo rwasuzumye ingingo zijyanye n'iki kibazo. Kuri iyi ngingo, Urugereko rw'Ubujurire ruributsa ko mu bujurire, ababuranyi bagomba kuvuga gusa amakosa yo mu rwego rw'amategeko yaba yarakozwe ashobora gutuma ibyemezo byafashwe mu rw'iremezo bivanwaho, bakavuga n'amakosa ku byabaye ashobora kuba yaratumye urubanza rucibwa nabi. Ibyo bintu bigenderwaho bivugwa mu ngingo ya 24 ya Sitati kandi bikoreshwa buri gihe n'Ingereko z'ubujurire za TPIR na TPIY[101]. Kubera iyo mpamvu, Urugereko rw'Ubujurire rurasuzuma gusa ibibazo Athanase Seromba yabyukije bisobanutse, byashobora gutuma icyemezo cy'Urugereko rwa Mbere rw'Iremezo gita agaciro.

2. Amakosa avugwa ku buryozwacyaha burebana n'icyaha cya jenoside

a) Amakosa avugwa ku birebana no gutera abantu ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe

41. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rwafashe icyemezo « gishingiye ku binyoma » ruvuga ko yaba

[99] Imyanzuro y'ubujurire ya Seromba, ibika 226-254.
[100] Imyanzuro isubiza ya Porokireri, ibika 183 na188.
[101] Urubanza rwa Simba mu bujurire, igika 8, Urubanza rwa Ndindabahizi mu bujurire, ibika 8-10, Urubanza rwa Ntagerura mu bujurire, ibika 11 na 12, Urubanza rwa Gacumbitsi mu bujurire, ibika 6-8, Urubanza rwa Kajelijeli mu bujurire, igika 5, Urubanza rwa Semanza mu bujurire, ibika 7 na 8, Urubanza rwa Musema mu bujurire, igika 15, Urubanza rwa *Kayishema* mu bujurire, igika 177, n'Urubanza rwa Akayesu mu bujurire, ibika 178 na 179. Ku byerekeye ubukemuramanza burebana n'ingingo ya 25 ya Sitati ya TPIY, Reba Urubanza rwa *Blagojević* mu bujurire, igika 6, Urubanza rwa *Brđanin mu bujurire*, igika 8, Urubanza rwa G*alić* mu bujurire, igika 6, Urubanza rwa *Blagoje Simić* mu bujurire, igika 7, Urubanza rwa *Stakić* mu bujurire, igika 7, Urubanza rwa *Kvočka* mu bujurire, igika 14, n'Urubanza rwa *Vasiljević* mu bujurire, igika 5 ; Reba na none Urubanza rwa *Kunarac* mu bujurire, ibika 35-48, Urubanza rwa *Kupreškić*, ibika 21-41, Urubanza rwa *Čelebići* mu bujurire, ibika 434 na 435, n'Urubanza rwa *Furundžija mu bujurire*, ibika 34-40.

yarabujije impunzi gushaka ibyo zirya mu rutoki rwa paruwasi, kuba yaba yarategetse abajandarume kurasa ku mpunzi babona muri urwo rutoki, kuba yaba yaranze gusomera misa impunzi z'abatutsi zari mu kiliziya y'i Nyange no kuba yaba yarafashe icyemezo cyo kwirukana kuri paruwasi abatutsi b'abakozi bari bahahungiye, bityo akaba yaragize uruhare mu bikorwa byateje impunzi z'abatutsi zari kuri Paruwasi ya Nyange ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe [102] . Muri rusange, avuga ko uyu mwanzuro w'Urugereko rwa Mbere rw'Iremezo « nta shingiro ufite kandi ko utumvikana muri uru rubanza », maze agasubiramo muri rusange ibyo yari yaravuze mbere kuri iyi ngingo mu myanzuro ye[103].

42. Muri iyi mpamvu y'ubujurire, kuri iki kibazo Athanase Seromba avuga ko Urugereko rwa Mbere rwemeje ko « kuba yaba yaranze [gusomera misa impunzi] ari ikintu kimwe mu bigize icyaha cya jenoside, akavuga ko icyo kintu ari ikigenderwaho gishya mu bigize igisobanuro cya jenoside, kandi ko uwo mwanzuro utajyanye na gato n'imitekerereze nyayo ishingiye ku mategeko, yumvikana kandi idahuzagurika, byanze bikunze wafatwa n'urukiko rushyira mu gaciro[104] ». Anenga kandi Urugereko rwa Mbere rw'Iremezo kuba rutaravuze ingaruka, ishingiye ku mategeko, kwanga gusomera impunzi misa byagombaga kugira ku buryozwacyaha bwe ku giti cye hashingiwe ku ngingo ya 6.1 ya Sitati[105].

43. Kuri iyi ngingo, Porokireri asubiza ko Urugereko rwa Mbere rw'Iremezo rwemeje ko hagaragajwe ko Athanase Seromba «yakoze ibikorwa byafashije mu buryo bwihariye, abagabye igitero, n'ababayoboye, bikabashishikaza ndetse bikanabatera akanyabugabo ko gukora ibyo bakoze[106] ». Porokireri ashimangira ko imyanzuro yafashwe kuri iki kibazo ituma umuntu yemeza ko Athanase

[102] Imyanzuro y'ubujurire ya Seromba, ibika 255, 258 na 259.
[103] Ni kimwe no haruguru, ibika 259.
[104] Ni kimwe no haruguru, ibika 95.
[105] Ni kimwe no haruguru, ibika 99.
[106] Imyanzuro y'ubujurire ya Porokireri, igika 194 (havugwa ibir mu rubanza mu rw'iremezo, ibika 326, 328, 334 na 335, n'Urubanza rwa *Vasiljević* mu bujurire, ibika 102.

Seromba « nibura » yateye inkunga kandi yashishikarije abantu gukora jenoside[107].

44. Urugereko rw'Ubujurire ruributsa, mbere na mbere, ko Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko Athanase Seromba aryozwa icyaha kubera gusa ko yatanze inkunga akanashishikariza abantu gukora icyaha cya jenoside, kuko atahamwe n'icyaha cyo gucura umugambi, guhamagarira abantu gukora icyaha, kubategeka kugikora, cyangwa gukora ubwe icyo cyaha[108]. Ruributsa kandi ko kugira ngo hagaragazwe igikorwa gifatika kigize icyaha cyo gutanga inkunga no gushishikaza giteganywa n'ingingo ya 6.1 ya Sitati, ni ngombwa kugaragaza ko uregwa yakoze ibikorwa bigamije by'umwihariko gutera inkunga, gushishikaza no guha akanyabugabo abantu kugira ngo bakore icyaha runaka, kandi ibyo bikaba kandi byaragize uruhare runini mu ikorwa ry'icyo cyaha[109].

45. Kubera ibimaze kuvugwa, Urugereko rw'Ubujurire rusanga ikibazo kigomba gusuzumwa atari ukumenya niba Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa rwemeza ko kuba Athanase Seromba yaranze gusomera misa impunzi z'abatutsi[110] - kubyanga bikaba byafatwa ukwabyo cyangwa bigakomatanywa no kubuza impunzi gushaka ibyo zirya mu rutoki, n'icyemezo yafashe cyo kwirukana abakozi b'abatutsi n'impunzi z'abatutsi bari bahungiye kuri paruwasi- ari « kimwe mu bintu bigize icyaha cya jenoside [111] ». Ikibazo kigomba gusuzumwa kandi si ukumenya niba ibyo bintu bigize igikorwa gifatika cyangombwa kigize icyaha cya jenoside. Ahubwo ikibazo ni ukureba niba Urugereko rwa Mbere rw'Iremezo rwari rufite ishingiro mu kwemeza ko igikorwa

[107] Ni kimwe no haruguru, igika 195.
[108] Urubanza mu rw'iremezo ibika 311, 312 na 322.
[109] Urubanza rwa Nahimana mu bujurire, ibika 482, Urubanza rwa Ntagerura mu bujurire, igika 370 n' Urubanza rwa Ntakirutimana mu bujurire, igika 530. Reba na none Urubanza rwa *Blagojević* mu bujurire, igika 127, Urubanza rwa *Vasiljević* mu bujurire, igika 102 n'Urubanza rwa *Blaškić mu bujurire,* igika 45.
[110] Nk'uko bivugwa by'umwihariko mu myanzuro y'ubujurire ya Seromba, igika 95. Urugereko rw'Ubujurire rusanga ariko, binyuranyijen'ibyo avuga, Urugereko rwa Mbere rw'Iremezo rutaranzuye ruvuga ko kuba Athanase Seromba yaranze gusomera misa impunzi z'abatutsi byaratumye byonyine hakorwa ibikorwa biteza abakorewe ibyaha, ububabare bukomeye bwo mu mutwe. Rwanzuye ruvuga ko « imyitwarire ye », irimo « kubuza […] impunzi gushaka ibyo zirya mu rutoki, kwanga gusoma misa mu kiliziya y'i Nyange, kwirukana abakozi n'impunzi z'abatutsi kuri paruwasi no mu gipadiri [byagize] uruhare mu bikorwa biteza impunzi z'abatutsi zari ku kiliziya y'i Nyange, ububabare bukomeye bwo mu mutwe. » (Urubanza mu rw'iremezo igika 326.)
[111] Imyanzuro y'ubujurire ya Seromba, igika 95.

gifatira cy'ibikorwa ba gatozi bakoze batera impunzi z'abatutsi zari ku kiliziya y'i Nyange ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe, kijyanye n'igikorwa cya jenoside cyangwa niba, mu gusuzuma uburyozwacyaha bwa Athanase Seromba, Urugereko rwaribeshye mu kwemeza ko ibikorwa yakoze bigize igikorwa gifatika cy'icyaha cyo gutera inkunga no gushishikariza abantu gukora icyo cyaha[112].

46. Inshoza yo « guteza abantu ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe » ntisobanurwa muri Sitati [113] kandi n'Urugereko rw'Ubujurire ntirwageregeje gusobanura ubwo bwoko bw'ububabare. Kugaragura, gusambanya ku gahato, n'ibikorwa by'urugomo byonona isura y'umuntu ukorewe icyaha cyangwa kumukomeretsa bikomeye urugingo, haba mu mubiri imbere cyangwa inyuma, ariko bitamuviriyemo urupfu, ni ingero z'ububabare bukomeye bw'umubiri[114]. Muri urwo rwego, gutera umuntu ububabare bukomeye bwo mu mutwe bisaba ko « haba harabaye guhungabanya byoroshye cyangwa by'igihe gito ubwenge bw'umuntu bitewe nk'urugero, n'ubwoba bwinshi yatewe, iterabwoba, n'ibikangisho yashyizweho[115]. » Mu by'ukuri, hafi y'abantu bose bahamwe n'icyaha cyo gutera abantu ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe bari barakoze ibikorwa byo gusambanya ku gahato cyangwa iby'ubwicanyi[116]. Kugira ngo bibe bigize icyaha cya jenoside, ibikorwa bitera ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe bikorerwa abagize

[112] Uburyo nk'ubwo bwakoreshejwe mu rubanza rwa *Krstić* mu bujurire (igika 135 n'ibikurikira), Urugereko rw'Ubujurire rwa TPIY rwabisuzumye ku ngano y'uburyozwacyaha bwa Radislav Krstić « mu bintu byagaragajwe uko bikwiye », ni ukuvuga nyuma kugaragarizwa ko abasirikare b'Abaseribe ba Bosiniya bakoze jenoside bashaka gutsemba igice cy'abayisilamu bo muri Bosiniya i Srebrenica. Bafashe uwo mwanzuro hashingiwe ku bwicanyi bwakorewe abagabo b'abayisilamu bafite imyaka yo kujya ku rugamba (Reba by'umwihariko, igika 137).

[113] Urubanza *Semanza*, igika 320.

[114] Ni kimwe no haruguru. (havugwa ibiri mu rubanza rwa *Kayishema* mu rw'iremezo, igika 109, n' Urubanza rwa *Ntagerura* mu rw'iremezo, igika 664).

[115] Urubanza rwa *Kajelijeli* mu rw'iremezo, igika 815 (havugwa ibiri mu rubanza rwa *Kayishema* mu rw'iremezo, igika 110, n'Urubanza rwa *Semanza*, igika 321). * Ndt : Mu rubanza rwa Kejelijeli hashizwemo ntera « nyagihe » kubera kwibeshya.

[116] Nk'urugero reba Urubanza rwa *Muhimana* mu rw'iremezo, ibika 512, 513 na 519, Urubanza rwa *Gacumbitsi* mu rw'iremezo, ibika 292 na 293, Urubanza rwa *Ntakirutimana* mu rw'iremezo, ibika 788-790, n'Urubanza rwa *Musema* mu rw'iremezo, ibika 889, 890.

itsinda bigomba kuba bikomeye ku buryo bishobora kurimbura abantu bose bagize iryo tsinda cyangwa igice cyabo[117].

47. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rutaratandukanyije igikorwa gifatika kigize icyaha cy'ibanze n'igikorwa gifatika kigize icyaha cyo gufasha no gushishikariza abantu gukora icyo cyaha cy'ibanze. Urugereko rwa Mbere rw'Iremezo rwavuze ko « kuba Seromba yarangiye impunzi gushaka ibyo zirya mu rutoki, byatumye mu buryo bugaragara, zibura agatege[118] ». Rwanavuze kandi ko « kuba Seromba yarabujije impunzi gushaka ibyo zirya mu rutoki, akanga kuzisomera misa mu kiliziya y'i Nyange, akanafata icyemezo cyo kwirukana abakozi n'impunzi z'abatutsi » byatumye izo mpunzi «zihangayika kandi ziheba[119] ». Uretse ayo magambo atumvikana neza, ahantu honyine mu rubanza havugwa ibikorwa by'ingenzi byateje abakorewe ibyaha ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe ni umwanzuro ukurikira wafashwe ku byari bigiye kuba ku batutsi bari bahungiye ku kiliziya y'i Nyange : «Nta wushobora guhakana ko mu gihe cy'ibyabaye muri Mata 1994 mu kiliziya y'i Nyange, abagabye ibitero n'indi mitwe y'Interahamwe yitwara gisirikare […] bateye abantu ububabare bukomeye bw'umubiri n'ubwo mu mutwe babaziza isanomuzi yabo, kandi bagamije kubarimbura bose cyangwa igice cyabo kubera ko bagize iyo sanomuzi[120]. »

48. Urugereko rwa Mbere rw'Iremezo ntirwasobanuye icyaha cy'ibanze ibikorwa bya Athanase Seromba byagizemo uruhare. Urugereko rwagombaga kandi kwerekana ibimenyetso bigaragaza ko hari icyaha cy'ibanze cyateje abantu bakorewe ibyaha, ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe, ariko usanga

[117] Urubanza rwa Kajelijeli mu rw'iremezo, igika [814], n'Urubanza rwa *Krajišnik* mu rw'iremezo, igika 862 ; Raporo ya Komisiyo ishinzwe amategeko mpuzamahanga ku mirimo y'inama yako ya 48, 6 Gicurasi–26 Nyakanga 1996, Inyandiko ya LONI A/51/10 (1996), urup. 112. Ku byaha byibasiye inyokomuntu, Urugereko rwa Mbere rw'Iremezo rwanze kwanzura ruvuga ko gukuraho igisenge cya kiliziya bityo ukabuza abatutsi kugira aho bihisha abashakaga kubatera, ari ugutera abakorewe ibyaha, ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe. Rwafashe uwo mwanzuro ruvuga « rutari rwaragarijwe neza ko icyo gikorwa gifite uburemere bugereranywa n'uburemere bw'ibindi bikorwa birondorwa mu ngingo ya Sitati ivugwa ». Urubanza rwa Ntakirutimana mu rw'iremezo, igika 855.
[118] Urubanza mu rw'iremezo igika 327.
[119] Ni kimwe no haruguru, igika 326.
[120] Ni kimwe no haruguru, igika 340.

rutarabikoze iyo urebye ibintu bike cyane rwabivuzeho. Ibyo bimenyetso bidahari, Urugereko rw'Ubujurire ntirushobora kuvuga ko igikorwa kidasobanutse cyo «guca intege » impunzi cyangwa gutuma « ziheba » ari ibyaha by'urukozasoni bigize, ku buryo bugaragara, kimwe no gusambanya ku gahato no kugaragura, ibikorwa byo guteza abantu ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe.

49. Urugereko rw'Ubujurire rusanze Urugereko rwa Mbere rw'Iremezo rutagaragaje icyaha cyo «gutera abantu ububabare bukomeye bw'umubiri cyangwa mu mutwe » ku buryo busobanutse neza, bityo umuntu akaba atakumva impamvu rwahamije Athanase Seromba icyaha cyo gufasha no gushishikariza abantu gukora icyo cyaha. Kubera iyo mpamvu, Urugereko rw'Ubujurire rwakiriye iki gice cy'impamvu y'ubujurire, bityo rukaba ruvanyeho umwanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ruvuga ko Athanase Seromba yateje abantu bakorewe ibyaha ububabare bukomeye bw'umubiri n'ubwo mu mutwe kubera ko yafashije kandi agashishikariza abantu gukora icyo cyaha.

b) Amakosa avugwa ku birebana n'iyicwa ry'abatutsi

50. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kuko rwashingiye ku myanzuro irwanywa maze rukemeza ko yakoze igikorwa gifatika kigize icyaha cyo gufasha no gushishikariza abantu kwica impunzi z'abatutsi[121]. Iyo myanzuro ni : Kuba ngo yarirukanye abakozi n'abatutsi bari kuri paruwasi[122], kwemera icyemezo cyo gusenya kiliziya, no gushishikariza umushoferi wa tingatinga gusenya kiliziya kandi akareka ubwe uwo mushoferi uruhande « rwa kiliziya rworoshye gusenya[123] ». Mu byo anenga, Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rutasobanuye ukuntu yari

[121] Imyanzuro y'ubujurire ya Seromba, ibika 264, 265 (hasubirwamo ibivugwa mu rubanza mu rw'iremezo, igika 335) ; Inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 59-64. Reba na none ibintu nk'ibyo bivugwa haruguru, imp. 23, 24, 26, 28 na 35- 38 (ibivugwa bisa n'ibi byatanzwe mu gusubiza ubujurire bwa Porokireri).
[122] Imyanzuro y'ubujurire ya Seromba, igika 262.
[123] Ni kimwe no haruguru, ibika 263 (hasubirwamo ibivugwa mu rubanza mu rw'iremezo, igika 334).

kumenya « uruhande rwa kiliziya rworoshye gusenya ». Avuga ko iyo kiliziya yubakwa atari ahari, ko atari arishitegite ntabe n'inzobere mu bwubatsi[124].

51. Byongeye kandi, Athanase Seromba asanga Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa ryo mu rwego rw'amategeko kubera ko rutagaragaje ko yari afite igitekerezo cyihariye cya ngombwa kugira ngo icyaha cya jenoside gikorwe[125]. Avuga ko kugira ngo habeho jenoside, hagomba kubaho igitekerezo cya ngombwa cyo kuyikora, kibanziriza ibikorwa biyigize. Avuga ariko ko Urugereko rwa Mbere rw'Iremezo rutagaragaje na rimwe ko yacuze uwo «mugambi » mbere y'uko impunzi z'abatutsi zigera ku kiliziya[126]. Avuga na none ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kuko rwemeje ko yari afite igitekerezo cyo gufasha no gushishikariza abantu kwica abatutsi bari bahungiye ku kiliziya y'i Nyange[127] rushingiye gusa ku « mitekerereze rwari rwifitiye mbere[128] ».

52. Porokireri asubiza ko Athanase Seromba asa n'aho yitiranyije igitekerezo cyo gukora icyaha cyo gufasha no gushishikariza abantu gukora jenoside n'igitekerezo cyo gukora jenoside we ubwe cyangwa atanze amategeko, kandi igitekerezo cyihariye cyo gukora icyaha gisabwa gusa ku cyaha cya jenoside[129]. Porokireri avuga ko atari ngombwa ko umuntu utera inkunga, agashishikariza gatozi gukora icyaha aba afatanyije nawe umugambi mubisha[130]. Byongeye kandi, kuba Athanase Seromba yararekanye neza cyangwa atarerekanye « uruhande rwa kiliziya rworoshye gusenya » si byo ngombwa: kwereka umushoferi wa tingatinga aho agomba guhera asenya kiliziya bigaragaza bihagije umugambi we n'uruhare yagize mu isenywa ry'iyo kiliziya[131].

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[124] Imyanzuro y'ubujurire ya Seromba, igika 265. Reba na none Inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 30, 31 (ibivugwa bisa n'ibi byatanzwe mu gusubiza ubujurire wba Porokireri). Kuko Athanase Seromba asa naho ashidikanya ku mpamvu zatumye Urugereko rwa Mbere rw'Iremezo rufata imyanzuro arwanya muri iyi ngingo y'ubujurire, Urugereko rw'Ubujurire rusanga rwarasuzumye kandi rukanga kwakira amakosa ku byabaye bivugwa mu ngingo ya 6 n'iya 7 z'ubujurire.
[125] Imyanzuro y'ubujurire ya Seromba, igika 260.
[126] Ni kimwe no haruguru, igika 261.
[127] Urubanza mu rw'iremezo igika 338.
[128] Imyanzuro y'ubujurire ya Seromba, igika 268.
[129] Imyanzuro isubiza ya Porokireri, igika 191.
[130] Ni kimwe no haruguru, igika 192.
[131] Ni kimwe no haruguru, ibika 203, 204.

i) Igikorwa kigize icyaha

53. Mu gihe rwasuzumaga mu rwego rw'amategeko uruhare rw'ingenzi Athanase Seromba yagize mu isenywa rya kiliziya y'i Nyange, Urugereko rwa Mbere rw'Iremezo rwemeje ko yabwiye umushoferi wa tingatinga amagambo yamushishikarije gusenya kiliziya. Rushingiye ku myanzuro rwafashe mbere, rwananzuye ruvuga ko Athanase Seromba yeretse uwo mushoferi «uruhande rwa kiliziya rworoshye gusenya[132] ». Iyo myanzuro igaragaza ko Urugereko rwa Mbere rw'Iremezo rwashakaga gushimangira ko amagambo Athanase yabwiye umushoferi wa tingatinga *yamushishikarije* gusenya kiliziya[133].

54. Ukurikije uko ibintu byari biteye, bivugwa ahanini n'umutangabuhamya wiswe CDL, biragaragara ko Urugereko rwa Mbere rw'Iremezo rutashingiye ku ngingo yo kuvuga ko Athanase Seromba yaba yari azi uruhande rwa kiliziya ruruhije gusenya[134]. Amaze kuvuga ko umushoferi wa tingatinga yabanje gusenya ahereye ku ruhande rwa kiliziya [rwariho umunara][135] », CDL yongeyeho ibi bikurikira: « Bagerageje gusenya kiliziya bahereye kuri urwo ruhande maze basanga guhera aho hantu bigoye, noneho Padiri Seromba agira inama abashoferi b'izo tingatinga kujya guhera ku ruhande rwo ku isakirisitiya[136]. » Iyo ufashe ubuhamya CDL yatanze mu Rukiko avuga ko Seromba « yerekenaga uruhande rworoshye bagombaga guheraho ngo bice abatutsi[137] », ukabuhuza n'ibindi bice by'ingenzi by'ubwo buhamya yatanze ku isenywa rya kiliziya, usanga amagambo ya Athanase Seromba yaragize uruhare rw'ingenzi kubera ko yashishikarije umushoferi wa tingatinga gukomeza gusenya kiliziya ahereye ku ruhande rwo ku isakirisitiya, aho kuvuga ko ayo magambo yerekanye neza uruhande rwa kiliziya rworoshye gusenya.

[132] Urubanza mu rw'iremezo igika 334 n'igisobanuro nomero 663.
[133] Reba urubanza mu rw'iremezo, igika 269. Reba na none urubanza mu rw'iremezo, ibika 218, 239.
[134] Urubanza mu rw'iremezo igika 218 (havugwa ibiri mu Nyandikomvugo y'iburanisha yo ku itariki ya 19 Mutarama 2005, imp. 28, 29) n'igika 239 (aho Urugereko rwa Mbere rw'Iremezo rwanzura ruvuga umugabo wiswe CDL yakwizerwa ku magambo Seromba yabwiye umushoferi wa tingatinga).
[135] Inyandikomvugo y'iburanisha , 19 Mutarama 2005, urup. 28.
[136] Ni kimwe no haruguru.
[137] Ni kimwe no haruguru, urup. 29.

55. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanga mu kwemeza ko Athanase Seromba yagize uruhare runini mu isenywa rya kiliziya, Urugereko rwa Mbere rw'Iremezo rwarashyize mu gaciro rushingira ku magambo yavuze yerekana « uruhande rwa kiliziya rworoshye gusenya », kubera ko rutitaye ku kibazo cyo kumenya niba yari azi, ku buryo bwihariye imyubakire y'iyo kiliziya. Ni yo mpamvu Urugereko rw'Ubujurire rwanze kwakira ibyo Athanase Seromba avuga arwanya icyo cyemezo. Naho kumenya niba Urugereko rwa Mbere rw'Iremezo rwari rufite ishingiro mu kuvuga ko Athanase Seromba yafashije kandi ashishikaza abantu, icyo kibazo kirigwa birambuye mu isuzuma ry'ubujurire bwa Porokireri.

ii) *Igitekerezo cyo gukora icyaha*

56. Urugereko rw'Ubujurire ruributsa ko Athanase Seromba yahamijwe ibyaha bivugwa kubera uruhare yabigizemo rwo gutera inkunga no gushishikariza abantu kubikora[138]. Igitekerezo cyo gukora icyaha cyo gufasha no gushishikaza abantu ni ukumenya ko ibikorwa byakozwe bifite uruhare mu ikorwa ry'icyaha cy'ibanze[139]. Nk'uko Urugereko rwa Mbere rw'Iremezo rwabivuze neza[140], iyo icyaha cy'ibanze gisaba ko uwagikoze aba afite igitekerezo cyihariye cyo kugikora, nk'uko bimeze ku cyaha cya jenoside, si ngombwa kugaragaza ko umuntu wafashije, akanashishikariza abandi kugikora aba ahuje n'abo umugambi. Ni ngombwa ahubwo kugaragaza ko yari azi uwo mugambi[141].

57. Urugereko rw'Ubujurire rusanga Athanase Seromba nta shingiro afite avuga ko Urugereko rwa Mbere rw'Iremezo rutagaragaje ko yari « yacuze umugambi

[138] Urubanza mu rw'iremezo ibika 311, 322, 342 na 366.
[139] Urubanza rwa Nahimana mu bujurire, ibika 482, Urubanza rwa Ntagerura mu bujurire, igika 370, Urubanza rwa *Blagojević* mu bujurire, igika 127, n'Urubanza rwa *Blagoje Simić* mu bujurire, igika 86, Urubanza rwa *Vasiljević* mu bujurire, igika 102, n'Urubanza rwa *Blaškić* mu bujurire, igika 46.
[140] Urubanza mu rw'iremezo igika 309 (havugwa nk'ibiri mu rubanza rwa Ntakirutimana mu bujurire , ibika 500-502, Urubanza rwa *Krstić* mu bujurire, ibika 134-140, n'Urubanza rwa *Krnojelac* mu bujurire, igika 52).
[141] Urubanza rwa Ntakirutimana mu bujurire, igika 500, 501, Urubanza rwa *Blagojević* mu bujurire, igika 127, Urubanza rwa *Blagoje Simić* mu bujurire, igika 86, Urubanza rwa *Krstić* mu bujurire, igika . 140, n'Urubanza rwa *Krnojelac* mu bujurire, ibika 51,52.

[uvugwa] mbere y'uko abatutsi bahungira ku kiliziya[142] ». Mbere na mbere, nk'uko bisobanurwa haruguru, kuba hari « umugambi » si ikintu cya ngombwa mu kugaragaza igitekerezo cyo gufasha no gushishikariza abantu gukora jenoside. Byongeye kandi, ntibyari ngombwa ko Porokireri atanga ikimenyetso kigaragaza ko Athanase Seromba yari afite uwo mugambi mbere y'uko abatutsi bahungira ku kiliziya. Igihe yatangaga iyo nkunga akanashishikaza abantu, kubera imyitwarire ifatwa nk'aho ari igitekerezo cy'ubwo buryo bwo gukora icyaha, ni bwo bigaragara ko yari azi ko ba gatozi bafite umugambi wihariye wo gukora icyaha[143].

58. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanze Athanase Seromba atagaragaza ikosa na rimwe Urugereko rwa Mbere rw'Iremezo rwakoze mu gusuzuma igitekerezo cya ngombwa cyo gukora icyaha, urwo Rugereko rukaba rwarasanze yari afite igitekerezo cyo gufasha no gushishikariza abantu gukora jenoside.

59. Ku byerekeye ibyo avuga arwanya imyanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ku birebana n'igitekerezo cyo gutera inkunga no gushishikariza abantu kwica impunzi zari ku kiliziya y'i Nyange, Urugereko rw'Ubujurire rusanga kuvuga gusa ko « uwo mwanzuro Urugereko rwafashe kubera ibyo rwatekerezaga mbere […] warangije gusenywa mu byo Ubwunganizi bwavuze mbere kuri iki kibazo[144] », Athanase Seromba atarashoboye kwerekana impamvu yatuma Urugereko rw'Ubujurire ruvanaho icyemezo Urugereko rwa Mbere rw'Iremezo rwafashe kuri iyi ngingo. Kubera iyo mpamvu, ibyo Athanase Seromba avuga yemeza ko atari afite umugambi wo gutanga inkunga no gushishikariza abantu kwica impunzi zari ku kiliziya y'i Nyange nta shingiro bifite kandi nta mpamvu yo kubisuzuma birambuye muri ubu bujurire.

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[142] Imyanzuro y'ubujurire ya Seromba, ibika 261.
[143] Urubanza rwa Ntakirutimana mu bujurire, ibika 500, 501, Urubanza rwa *Blagojević* mu bujurire, igika 127, Urubanza rwa *Blagoje Simić* mu bujurire, igika 86, Urubanza rwa *Krstić*, ibika 140, n'Urubanza rwa *Krnojelac* mu bujurire, ibika 51, 52.
[144] Imyanzuro y'ubujurire ya Seromba, ibika 268.

c) Amakosa avugwa ku bigize icyaha cya jenoside

60. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo « ntaho rwashingiye » rwemeza ko yafashije kandi agashishikariza abantu gukora jenoside, kubera ko ari Porokireri cyangwa abacamanza nta wigeze ashaka kureba inshingano yari afite ku baturage bo muri paruwasi ye[145]. Avuga kandi ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwanzura ko atashoboraga kuyoberwa umugambi w'abagabye igitero, kandi hataragarajwe isano ishingiye ku mategeko yari afitanye nabo[146]. Yanzura avuga ko nta mucamanza wo mu rw'iremezo ushyira mu gaciro wari kumuhamya icyaha cya jenoside kubera gufasha no gushyigikira abayikoze, maze agasaba Urugereko rw'Ubujurire kuvanaho icyemezo cyimuhamya icyo cyaha[147].

61. Porokireri asubiza ko ibivugwa na Athanase Seromba bitagomba kwakirwa niba byerekeranye n'uruhare rwe nk'umuntu ukuriye abandi, kubera ko yashinjwe akanahamwa icyaha hashingiwe gusa ku ngingo ya 6.1 ya Sitati[148]. Avuga kandi ko Urugereko rw'Ubujurire rugomba kwanga kwakira ibivugwa na Athanase Seromba rutagombye kubisuzuma kubera ko Uregwa adasobanura icyemezo Urugereko rwa Mbere rw'Iremezo rwafashe rwirengagije amategeko cyangwa ibyabaye, ahubwo akemeza gusa, nta bindi bisobanuro, ko icibwa ry'urubanza ryashingiye ku myanzuro irimo amakosa[149].

62. Urugereko rw'Ubujurire rusanga iyo Athanase Seromba avuga ko ari Urugereko rwa Mbere rw'Iremezo ari na Porokireri nta wagaragaje « uruhare yari afite nka Padiri […] ku baturage ba paruwasi ye[150] », bitumvikana niba aba ashaka kuvuga uburyozwacyaha bwe nk'umuntu ukuriye abandi kubera imyitwarire y'abaturage

[145] Ni kimwe no haruguru, ibika 269, 270 (havugwa ibiri mu rubanza mu rw'iremezo, ibika 341, 342).
[146] Ni kimwe no haruguru, igika 270.
[147] Ni kimwe no haruguru, igika 271. Ku byerekeye ibyo Athanase Seromba avuga ko hataba haragaragajwe ibyabaye bashingiweho mu kumuhamya icyaha cya jenoside kubera gufasha no gushishikaza abagikoze, Urugereko rw'Ubujurire ruvuga ko rwasuzumye kandi rukanga kwakira ibyo avuga, kuva ku ngingo ya 3 kugera ku ya 7 z'ubujurire, ko habaye amakosa ku byabaye.
[148] Imyanzuro isubiza ya Porokireri , igika 197.
[149] Ni kimwe no haruguru, ibika 199, 200.
[150] Imyanzuro y'ubujurire ya Seromba, igika 270.

ba paruwasi ye[151] cyangwa niba aba ashaka kuvuga uruhare rwihariye yagombaga kugira rwo kurengera abatutsi bo muri paruwasi ye. Icyo yaba ashaka kuvuga cyose muri ibyo byombi, ingingo atanga nta shingiro zifite.

63. Athanase Seromba yarezwe hashingiwe gusa ku buryozwacyaha bw'umuntu ku giti cye buvugwa mu ngingo ya 6.1 ya Sitati kandi yahamijwe icyaha hashingiwe gusa ku myitwarire ye hakurikijwe ibiteganywa n'iyo ngingo. Kubera ko atakurikiranyweho ibyaha hashingiwe ku ngingo ya 6.3 ya Sitati, ni ukuvuga nk'umuntu ukuriye abandi kandi ugenzura ibikorwa byabo, ntibyari ngomba ko Urugereko rwa Mbere rw'Iremezo rugira icyo ruvuga ku buryozwacyaha yari guhanirwa kubera ibikorwa by' « abantu bagabye ibitero n'abandi bari mu mitwe yitwara gisirikare[152] » ; by'umwihariko, ntibyari ngombwa ko Urugereko rwa Mbere rw'Iremezo rugira icyo ruvuga ku nshingano yari kuba afite, hashingiwe ku ngingo ya 6.3 ya Sitati, yo kuburizamo ibyaha cyangwa guhana "umuntu wese akuriye" wabikoze.

64. Imitekerereze nk'iyo yakoreshwa kandi hasuzumwa ibyo Athanase Seromba avuga ku ruhare cyangwa inshingano yashoboraga kugira ku mpunzi z'abatutsi. Icyaha cya jenoside yahamijwe kubera gutera inkunga no gushishikariza abantu kugikora, ntigisaba ko iyo nshingano iba iriho. "Inshingano" iyo ari yo yose Athanase Seromba ashobora kuba yari afite ku mpunzi z'abatutsi nta gaciro ifite mu isuzuma Urugereko rwa Mbere rw'Iremezo rwagombaga gukora, rureba niba yaritabiriye icyaha cya jenoside. Iyo nshingano yakwifashishwa gusa mu kureba niba hari impamvu zishobora kongera uburyozwacyaha bwe mu kumugenera igihano[153].

65. Urugereko rw'Ubujurire rusanga kandi Athanase Seromba nta shingiro afite mu kuvuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwanzura ko yari azi

[151] Ni uko Porokireri asa n'uwumvise ibyo Athanase Seromba avuga: Imyanzuro isubiza ya Porokireri, igika 197.
[152] Imyanzuro y'ubujurire ya Seromba, igika 270.
[153] Urugereko rw'Ubujurire rusanga mu kugena igihano rwakatira Athanase Seromba, Urugereko rwa Mbere rwarazirikanye umwanya Uregwa yari afite nka Padiri wa kiliziya gatolika ushinzwe Paruwasi ya Nyange no kuba yaratatiye icyizere abantu bari bamufitiye kubera uwo umwanya (urubanza, igika 390).

umugambi w'abagabye igitero, kandi ngo nta sano ishingiye ku mategeko yari afitanye nabo[154]. Nk'uko byavuzwe haruguru, igitekerezo cyo gukora icyaha cyo gutera inkunga no gushishikariza abantu gukora jenoside kigaragazwa n'uko uwakigize yari azi umugambi wa gatozi wo gukora jenoside[155]. Amategeko ntasaba ko hagomba kuba hari isano yihariye hagati y'umuntu n'abo atera inkunga, akanabashishikariza gukora icyaha. Urugereko rw'Ubujurire rusanga kandi Athanase Seromba atagaragaza ikosa na rimwe Urugereko rwa Mbere rw'Iremezo rwakoze rwanzura ruvuga ko « atashoboraga kuyoberwa ko abagabye igitero n'izindi Nterahamwe bari bafite umugambi wo gukora ibikorwa bya jenoside yibasiye impunzi z'abatutsi kuri Paruwasi ya Nyange[156] ». Urugereko rwa Mbere rw'Iremezo rwashyize mu gaciro rwanzura ko, urebye uko ibintu byari bimeze mu Rwanda icyo gihe, by'umwihariko ibitero Athanase Seromba yiboneye ubwe nk'uko byagaragajwe mu rw'iremezo[157], yari azi ko abagabye ibitero n'izindi Nterahamwe, bari bafite umugambi wo gukora jenoside.

3. Umwanzuro w'Urugereko rw'Ubujurire

66. Kubera iyo mpamvu, Urugereko rw'Ubujurire rwakiriye bimwe mu bigize iyi mpamvu y'ubujurire. Ruvanyeho umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko Athanase Seromba yafashije, akanashishikariza abantu guteza [abakorewe ibyaha] ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe. Urugereko rw'Ubujurire rurasuzuma uburyozwacyaha bwa Athanase Seromba buvugwa mu kirego cya mbere cya jenoside igihe ruraba rusuzuma ingingo ya mbere y'ubujurire bwa Porokireri.

[154] Imyanzuro y'ubujurire ya Seromba, igika 270.
[155] Urubanza rwa Ntakirutimana mu bujurire, ibika 500, 501, Urubanza rwa *Blagojević* mu bujurire, igika 127, Urubanza rwa *Blagoje Simić* mu bujurire, igika 86, Urubanza rwa *Krstić* mu bujurire, igika 140, n'Urubanza rwa *Krnojelac* mu bujurire, ibika 51,52.
[156] Urubanza mu rw'iremezo, igika 341.
[157] Ni kimwe no haruguru, Umutwe wa II, ibyiciro 6.7, 6.8.

D. <u>Amakosa avugwa ku mwanzuro uvuga ko Athanase Seromba yabujije impunzi z'abatutsi gushaka ibyo zirya mu rutoki rwa paruwasi akananga kuzisomera misa (Impamvu ya 3 n'iya 4 z'ubujurire)</u>

67. Urugereko rwa Mbere rw'Iremezo rwasanze haragaragajwe ko Athanase Seromba yabujije impunzi z'abatutsi kujya mu rutoki rwa paruwasi, akanga no kuzisomera misa kandi impunzi nyinshi zari zabimusabye[158]. Rushingiye ku myanzuro irimo n'iyo imaze kuvugwa, Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko Athanase Seromba yagize uruhare mu gutera izo mpunzi ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe maze rumuhamya icyaha cya jenoside gishingiye ku kuba yarateye inkunga kandi agashishikaza abayikoraga[159].

68. Athanase Seromba avuga ko imyanzuro y'Urugereko rwa Mbere rw'Iremezo irimo amakosa menshi[160]. Bitewe n'uko rwakiriye, kuri bimwe, impamvu ya 8 y'ubujurire bwa Athanase Seromba maze rukavanaho imyanzuro yose yerekeranye no gutera abantu ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe, Urugereko rw'Ubujurire ntiruribwongere gusuzuma amakosa yaba ari muri iyo myanzuro. Kubera iyo mpamvu, mu gihe ukwemerwa kwa bamwe mu batangabuhamya gushobora kugira ingaruka ku zindi ngingo z'ubujurire, nibiba ngombwa ibyo bibazo birasuzumwa mu byiciro bikurikira by'uru rubanza mu bujurire.

E. <u>Amakosa avugwa mu mwanzuro uvuga ko Athanase Seromba yirukanye abakozi bane b'abatutsi aho bari bahungiye, maze umwe muri bo akaza kwica (impamvu ya 5 y'ubujurire)</u>

69. Urugereko rwa Mbere rw'Iremezo rwasanze ku itariki ya 13 Mata 1994, mu gihe hari umutekano muke, Athanase Seromba yarirukanye kuri Paruwasi ya Nyange abakozi bane b'abatutsi[161]. Umwe muri abo bakozi witwa Patrice, yaragarutse

[158] Urubanza mu rw'iremezo, ibika 95, 107.
[159] Ni kimwe no haruguru, ibika 323, 326-331, 342 na 372.
[160] Inyandiko y'ubujurire ya Seromba, ibika 17-25 ; imyanzuro y'ubujurire ya Seromba, ibika 68-99.
[161] Urubanza mu rw'iremezo, ibika 114, 324.

ariko aza kwicwa n'abagabye igitero amaze kongera kwirukanwa mu gipadiri[162]. Rushingiye ku myanzuro irimo iyi imaze kuvugwa, Urugereko rwa Mbere rw'Iremezo rwemeje ko Athanase Seromba yateye inkunga abateje impunzi z'abatutsi ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe n'abazishe,[163], maze rumuhamya icyaha cya jenoside kubera ko yahaye inkunga kandi agashishikaza abayikora[164]. Athanase Seromba arwanya uwo mwanzuro[165]. N'ubwo rwavanyeho imyanzuro yose yerekeye guteza [abantu] ububabare bukomeye bw'umubiri cyangwa ubwo mu mutwe, Urugereko rw'Ubujurire rurasuzuma buri kintu Athanase Seromba avuga cyerekeranye n'icyaha cya jenoside yahamijwe cyo guha inkunga no gushishikaza abayikora, bitewe n'uruhare yagize mu bwicanyi burimo ubwakorewe Patrice. Rurasuzuma kandi buri ngingo mu zo yireguza zirebana n'igitekerezo cyo gukora jenoside ashinjwa kuba yari afite.

1. <u>Amakosa avugwa ku buhamya umugabo wiswe CBK yatanze mu Rukiko</u>

70. Nk'uko bivugwa muri make mu nyandiko y'urubanza mu rw'iremezo, umutangabuhamya wiswe CBK avuga ko abakozi bane b'abatutsi bakoreraga Paruwasi ya Nyange, ari bo Alex, Félicien, Gasore na Patrice, « bahagaritswe ku mirimo yabo » na Athanase Seromba maze bava aho bakoreraga[166]. CBK asobanura ko ku itariki ya 13 Mata 1994, abo bakozi bagarutse kuri paruwasi, maze Athanase Seromba akabirukana ababwira ko «bo nta buhungiro bashobora kubona » aho hantu[167]. Umutangabuhamya avuga ko hariho umutekano muke cyane ku buryo umututsi wese wari kwigerezaho agasohoka yashoboraga kwicwa[168]. Amaze kubona uwo Patrice mu gikari cy'amazu y'abapadiri, yakomeretse ku maboko no ku maguru[169], CBK yasabye Athanase Seromba

[162] Ni kimwe no haruguru.
[163] Ni kimwe no haruguru, ibika 324, 326, 328, 329, 331, 332, 335, 336 na 338.
[164] Ni kimwe no haruguru, ibika 342.
[165] Inyandiko y'ubujurire ya Seromba, ibika 26-30 ; imyanzuro y'ubujurire ya Seromba, ibika 100 -113.
[166] Urubanza mu rw'iremezo igika 108.
[167] Ni kimwe no haruguru, ibika . 109.
[168] Ni kimwe no haruguru.
[169] Ni kimwe no haruguru.

kumufasha ariko Padiri aranga abwira iyo nkomere kuva aho hantu[170]. CBK akomeza avuga ko abonye Patrice « atinze kuhava », Athanase Seromba yasabye abajandarume «kuhamuvana ku ngufu[171] ». Umutangabuhamya avuga ko nyuma yaje kubona «umurambo » wa Patrice mu gikari cy'amazu y'abapadiri[172].

71. Athanase Seromba avuga ibintu bitatu anenga ku buryo Urugereko rwa Mbere rw'Iremezo rwasuzumye ubuhamya CBK yatanze mu Rukiko. Avuga ko Urugereko rwa Mbere rw'Iremezo rwasuzumye ubwo buhamya rutazirikana ubwatanzwe n'umugabo ushinjura wiswe NA1, wari warashakiye akazi abo bakozi kandi ubazi neza[173].

72. Porokireri asubiza ko Urugereko rwa Mbere rw'Iremezo rutirengagije cyangwa se ngo ruhindure amagambo y'umutangabuhamya wiswe NA1 [174]. Avuga ko Seromba atagaragaza ibimenyetso Urugereko rwa Mbere rw'Iremezo rwirengagije n'ingaruka ibyo bimenyetso byari kugira ku myanzuro y'Urugereko anenga[175].

73. Urugereko rwa Mbere rw'Iremezo rwemeje ko umutangabuhamya wiswe CBK ari uwo kwizerwa[176]. Rwasanze ari nta kwivuguruza kuri hagati y'ubuhamya bwe mu rukiko n'ubuhamya bwanditse yatanze mbere, kandi rusanga n'inkuru y'uwo mutangabuhamya ivuga uko Seromba yirukanye abakozi b'abatutsi « idahuzagurika » kandi « ishoboka », hakurikijwe uko ibintu byari byifashe kuri Paruwasi ya Nyange muri Mata 1994[177]. N'ubwo Seromba we abibona ukundi, mbere yo gufata imyanzuro[178] Urugereko rwa Mbere rw'Iremezo rwasuzumye neza ubuhamya bwa NA1 mu rukiko, maze rusanga ubwo buhamya butagenderwaho kubera ko uwo mutangabuhamya yageze kuri paruwasi ku itariki

[170] Ni kimwe no haruguru.
[171] Ni kimwe no haruguru.
[172] Ni kimwe no haruguru.
[173] Imyanzuro y'ubujurire ya Seromba, ibika . 100 à 103.
[174] Imyanzuro ya Porokireri isubiza, igika 147.
[175] Kimwe no haruguru.
[176] Urubanza mu rw'iremezo, igika 112.
[177] Kimwe no haruguru.
[178] Kimwe no haruguru, ibika 110 na 111.

ya 15 Mata 1994, ni ukuvuga nyuma y'ibyabaye bivugwa[179]. Urugereko rwa Mbere rw'Iremezo rwasanze kandi mu buhamya bwe mu rukiko NA1 abivuga gusa muri « rusange » kandi akaba yaraniyemereye ko « atashoboye kumenya abakozi bari bahari igihe yageraga ku kiliziya »[180]. Athanase Seromba ntiyagaragaje rero ikosa Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze.

74. Athanase Seromba anenga kuba Urugereko rwa Mbere rw'Iremezo rwaremeje ko umutangabuhamya wiswe CBK ari uwo kwizerwa, kandi akavuga ko umucamanza uburanisha ku byabaye ushyira mu gaciro atashoboraga gufata umwanzuro nk'uriya[181]. Kuri we, kubera ko nta ngingo zabonetse bashingiraho mu rwego rw'amategeko, uriya mwanzuro w'Urugereko rwa Mbere rw'Iremezo ushingiye gusa ku « gucishiriza» aho gushingira ku « bintu bidashidikanywaho », « kandi ubundi ari byo byonyine bigomba gushingirwaho mu manza nshinjabyaha[182] ». Seromba avuga ko kugira ngo Urugereko rwa Mbere rw'Iremezo rwemere uwo mutangabuhamya byasabaga ko yaba yatanze ubuhamya budashidikanywa ho na mba, kandi ko igihe cyose habaye gushidikanya byakagombye kurengera uregwa[183].

75. Porokireri asubiza ko Urugereko rwa Mbere rw'Iremezo rutagarukiye gusa ku «bishoboka[184]» mu mvugo ya CBK : rwafashe umwanzuro ko ari umutangabuhamya wakwizerwa rumaze kumva no gusuzuma ibaza rinyomoza rirerire, kandi rushingiye, muri rusange, ku buryo imvugo ze zidahuzagurika kandi ibyo avuga bishoboka[185].

76. Urugereko rwa Mbere rw'Iremezo rwasanze umutangabuhamya wiswe CBK ari uwo kwizerwa, n'imvugo ze « zidahuzagurika kandi ibyo avuga bishoboka » hakurikijwe

[179] Kimwe no haruguru, igika 113.
[180] Kimwe no haruguru.
[181] Imyanzuro y'ubujurire ya Seromba, igika 113.
[182] Kimwe no haruguru.
[183] Kimwe no haruguru, mu kwisobanura , Athanase Seromba yifashisha imvugo "*In dubio pro reo"* [Iyo hariho ugukeka, birengera uregwa].
[184] Imyanzuro ya Porokireri isubiza, igika 151.
[185] Kimwe no haruguru (ashingiye ku Rubanza mu rw'iremezo, igika cya 112).

uko ibintu byari byifashe kuri paruwasi ya Nyange muri Mata 1994[186]. Urugereko rw'Ubujurire rwemera ko ijambo « ibishoboka » rifashwe ukwaryo ryonyine nk'uko Athanase Seromba abivuga, rishobora gutuma umuntu yibwira ko Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro rutabanje gukurikiza amategeko agenga itangwa ry'ibimenyetso. Nyamara ariko, urebye uko Urugereko rwa Mbere rw'Iremezo rwabifashe muri rusange, usanga rutaritaye ku magambo ya CBK rushingiye gusa ko ibyo avuga byaba bishoboka.

77. Rumaze gusuzuma ubuhamya bwa CBK mu iburanisha, Urugereko rwa Mbere rw'Iremezo rwasanze butavuguruza ubuhamya bwanditse yatanze mbere[187]. Rumaze kandi gusuzuma ubuhamya bwa NA1 mu rukiko rwasanze, nk'uko byavuzwe haruguru, ibivugwa n'uwo mutangabuhamya bitagenderwaho ku bijyanye n'ibikorwa bisuzumwa hano[188]. Rumaze gusuzuma ubwo buhamya bwombi, Urugereko rwa Mbere rw'Iremezo rwasanze « ku buryo budashidikanywaho» Athanase Seromba yarasohoye abakozi bane b'abatutsi bakoreraga paruwasi, barimo Patrice waje no kugaruka bukeye bwaho, hanyuma akicwa n'abagabye igitero Seromba amaze kumusohora mu gipadiri[189]. Kuba Urugereko rwa Mbere rw'Iremezo rutarakoresheje neza ijambo « ibishoboka » ntacyo bihindura ku gaciro k'imyumvire n'umwanzuro byarwo[190]. Athanase Seromba ntagaragaza ko Urugereko rwa Mbere rw'Iremezo hari itegeko rwaba rwarishe mu gusuzuma ibimenyetso cyangwa se uburyo umucamanza usuzuma ibyabaye ushyira mu gaciro atashoboraga kwizera ubuhamya bwa CBK nk'uko rwabigenje

78. Mu gusoza, Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwanyuranyije n'ihame ryo mu rwego rw'amategeko rivuga ko « *Unus Testis, nullus testis »* [Nta buhamya bw'umugabo umwe] mu gihe rwashingiraga imyanzuro yarwo

[186] Urubanza mu rw'iremezo, igika 112.
[187] Kimwe no haruguru.
[188] Kimwe no haruguru, igika 113.
[189] Kimwe no haruguru, igika 114.
[190] Reba Urubanza rwa Kvocka mu bujurire, igika 472 (aho bavuga ko « ikosa mu guhitamo ijambo rikoreshwa bidakuraho imyumvire y' Urugereko rwa Mbere rw'Iremezo »)

ku buhamya bwa CBK kandi uyu mutangabuhamya ari we wenyine uvuga ibyo kuba Athanase Seromba yarirukanye abakozi mu gipadiri[191].

79. Urugereko rw'Ubujurire ruributsa ko umwanzuro w'Urugereko rwa Mbere rw'Iremezo utateshwa agaciro gusa n'uko ushingiye ku buhamya bw'umugabo umwe rukumbi. Si ngombwa ko ubuhamya bw'umugabo mu rukiko bushyigikirwa n'ubundi kugira ngo bugire agaciro[192] kandi Urugereko rwa Mbere rw'Iremezo rushobora gufata umwanzuro mu bwisanzure, bitewe n'imiterere y'urubanza.[193] Athanase Seromba ntagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu gushingira ku buhamya bwa CBK bwonyine.

2. Amakosa avugwa ku bijyanye n'ubuhamya mu rukiko bw'umugabo wiswe NA1

80. Nk'uko bivugwa mu ncamake y'urubanza, umutangabuhamya wiswe NA1 avuga ko yageze kuri paruwasi ya Nyange, aho yari yarigeze gukora hagati ya 1992 na 1993, ku itariki ya 15 Mata 1994[194]. Yavuze ko yasanze nta mukozi n'umwe wari warirukanywe[195]. Abajijwe mu rwego rw'ibazwa rinyomoza, NA1 yavuze ko ntacyo yari azi ku bakozi bari mu mpunzi, ko atarazi kandi abari abakozi n'abatari bo[196].

81. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rutahaye agaciro na mba « ubuhamya busobanutse, budahuzagurika, kandi butivuguruza » bwa NA1[197]. Avuga ko amagambo yavuzwe na NA1 mu ibazwa rinyomoza « rwayafashe uko

[191] Imyazuro y'ubujurire ya Seromba, igika 113.
[192] Reba Urubanza rwa Nahimana mu bujurire, igika 633 ; Urubanza rwa Muhimana mu bujurire, ibika 49,159 na 207 ; Urubanza rwa Gacumbitsi mu bujurire, igika 72 ; Urubanza rwa Kajelijeli mu bujurire, igika 170 ; Urubanza rwa Semanza mu bujurire, igika 153 ; Urubanza rwa Niyitegeka mu bujurire, igika 92 ; Urubanza rwa Rutaganda mu bujurire, igika 29 ; Urubanza rwa Musema mu bujurire, ibika 36-38, n'Urubanza rwa Kvocka mu bujurire, igika 576.
[193] Urubanza rwa Muhimana mu bujurire igika 49. Reba na none Urubanza rwa Kajelijeli mu bujurire, igika 170 (bifashishije Urubanza rwa Niyitegeka mu bujurire, igika 92).
[194] Urubanza mu rw'iremezo, igika 110.
[195] Kimwe no haruguru.
[196] Kimwe no haruguru, igika 111.
[197] Imyanzuro y'ubujurire ya Seromba, igika 110.

atari » ngo kuko « rutitaye ku rwego yavugiwemo[198] ». Avuga kandi ko hari amwe mu magambo y'uwo mutangabuhamya rwemeje ko yayavugiye mu ibazwa rinyomoza kandi ari ayo mu ibazwa ry'ibanze[199].

82. Urugereko rw'Ubujurire rusanga Athanase Seromba ashingira ku magambo akurikira mu gushyigikira igitekerezo cye kivuga ko Urugereko rwa Mbere rw'Iremezo rwafashe uko butari ubuhamya bw'umugabo wiswe NA1 :

« Ikibazo : Urakoze mutangabuhamya wiswe NA1 kubera ibyo bisobanuro uduhaye. Ariko mbwira, sinagombaga kubitindaho, ariko dukeneye kumenya ukuri. Wigeze umenya ko Seromba yaba yarirukanye abakozi bo mu gipadiri mu gipadiri abaziza ko bari abatutsi, wigeze umenya ibyo bintu ?

Igisubizo : Iyo ni inkuru nshya kuri njye. Nta mukozi n'umwe wa paruwasi ya Nyange wirukanywe. Alexis yari umututsi. Narahamusanze kandi namubonye mu mpunzi muri Mata. Yaranamusuhuje. Naho Papias, […] namusize kuri paruwasi umunsi mpava. Umushumba w'inka zacu namusanze kuri paruwasi, ariko icyo gihe inka ntizashoboraga gusohoka mu kigo cya paruwasi, ntibyari gushoboka. Ngarutse i Nyange rero muri Mata, nta mukozi n'umwe mushya wahawe akazi nabonye. Kandi nabonye ari nta mpinduka zari zarabaye mu bakozi ba paruwasi. Bose bari bagihari.

Ik. : Ndagushimiye. Mutangabuhamya wiswe NA1, igihe wageraga kuri paruwasi ku itariki ya 15 Mata hari umukozi wa paruwasi witwa Frodouard Maniraguha waba yararagiraga ihene wahasanze, cyangwa se waba warahamusize ?

Ig. : Ngera kuri paruwasi, nk'uko nabibabwiye, banyakiriye mu ruriro rwa paruwasi Wenda abashumba ba paruwasi bari bari mu mpunzi zari kuri paruwasi. Sinashoboraga kubatandukanya n'izindi mpunzi. Birashoboka ko izo mpunzi ...[abo bantu] bari mu bantu benshi cyane bari bahungiye

[198] Kimwe no haruguru, ibika 105 na106.
[199] Kimwe no haruguru, igika 107.

> kuri paruwasi, ariko sinitonze ngo mbarebe cyangwa mbabone, kubera ko ntari nshinzwe kubarura impunzi zo kuri Paruwasi[200].”

83. Urugereko rw’Ubujurire rwumva ko Athanase Seromba avuga ko ibyo byari ibisubizo by’umutangabuhamya ku bibazo bijyanye n’abashumba n’uwitwa Frodourd Maniraguha[201], ngo ariko Urugereko rwa Mbere rw’Iremezo rukaba rutarabyitayeho rukabishyira ku bandi bakozi aho rwagize ruti:

> “ Mu ibazwa rinyomoza, umutangabuhamya wiswe NA1 yasonabuye neza ko ntacyo yari azi ku bakozi bari mu mpunzi. Yongeyeho ko atari yazanywe no kubarura impunzi zo kuri paruwasi, kandi ko atanashoboraga kumenya abari impunzi n’abatari zo[202].”

Urugereko rw’Ubujurire ntirwemera uko Athanase Seromba asobanura ubuhamya bwa NA1. Biragaragara ko Urugereko rwa Mbere rw’Iremezo rwashingiye by’umwihariko ku gisubizo gikurikira nk’uko cyatanzwe n’umutangabuhamya wiswe NA1 mu ibazwa rinyomoza, uretse ko nyandiko y’urubanza urwo rugereko rwibeshye mu kwerekana aho rwakuye iyo mvugo[203]:

> “M. MOSES:
>
> Ikibazo: Ni byiza. Hari ibibazo nshaka kukubaza ukabinyemerera cyangwa ukabihakana. Mbifatiye ku byo wavuze ejo. Mbere na mbere, ku byerekeranye n’abakozi ba paruwasi, waba wemeranya na njye ko ubwo wahageraga ku itariki ya 15 Patrice, Alexis na Gasore batari bagikora kuri paruwasi? Ntibari bagikora kuri paruwasi?

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[200] Inyandikomvugo y’iburanisha , 7 Ukuboza 2005, urup.19 (Umuhezo).

[201] Imyanzuro y’ubujurire ya Seromba, ibika 106 na 107. Mu gihe cy’iburanisha (reba inyandikomvugo y’iburanisha yo ku wa 7 Ukuboza 2005, urup. 17 mu nyandiko y’icyongereeza), aho usemura mu cyongereza yafashe ijambo akavuga ko kubera ko uwunganira Uregwa atavuga amazina bwite mu nyuguti zose imwe ku yindi, bikomeye cyane kuvuga uko bayasoma, bikaba ari byo bishobora gusobanura impamvu hamwe handitse Frodouard Maniraguha, kandi mu cyongereza handitse “Froduald”.

[202] Urubanza mu rw’iremezo, igika 111 (hatarimo ibisobanuro byifashishijwe).

[203] Reba urubanza mu rw’iremezo, igika 111, ibisobanuro 206 (aho agace k’iyo mvugo kitiriwe ko kari mu nyandikomvugo y’iburanisha yo ku wa 7 Ukuboza 2005, urup.10 (mu muhezo), aho kuba inyandikomvugo y’iburanisha yo ku wa 8 Ukuboza 2005, urup.10 (mu muhezo).

Igisubizo: Ubwo navaga kuri paruwasi [...] abo bantu barayikoreraga, ubwo nagarukaga, sinashoboye kumenya ukorera cyangwa se udakorera paruwasi. Ariko ndahamya ko hari abo nasanze kuri paruwasi ubwo nahageraga, ...ngarutse kuri paruwasi[204].”

Kubera izo mpamvu, Urugereko rw’Ubujurire ntirwemera imvugo ya Athanase Seromba ihamya ko Urugereko rwa Mbere rw’Iremezo rwaba rwarafashe ubuhamya bw’umugabo wiswe NA1 uko butari. Ruremeranya kandi na Seromba ko Urugereko rwa Mbere rw’Iremezo rwashingiye na none ku byo uwo mutangabuhamya yari yavuze mu ibazwa ry’ibanze, uretse gusa ko urwo rugereko rwibeshye rukavuga ko yabivugiye mu ibazwa rinyomoza[205]. Ibyo ari byo byose, Athanase Seromba ntagaragaza uburyo iryo kosa ryagize ingaruka ku mwanzuro w’Urugereko rwa Mbere rw’Iremezo aho rwasanze ubuhamya bwa NA1 butakwizerwa.

84. Mu gusoza, Athanase Seromba avuga ko Urugereko rwa Mbere rw’Iremezo rwakoze ikosa mu gihe rutemezaga ko ubuhamya bw’umugabo wiswe NA1 “busobanutse, budahuzagurika kandi butavuguruzanya”[206]. Urugereko rw’Ubujurire rusanga Urugereko rwa Mbere rw’Iremezo rutaravuze ko ubuhamya bwa NA1 butakwizerwa, nk’uko Athanase Seromba abivuga, ahubwo rwasanze ubuhamya bwe mu rukiko butagenderwaho ku bijyanye no kumenya niba abakozi bane ba paruwasi barirukanywe mu gipadiri. Urugereko rwa Mbere rw’Iremezo rwasobanuye umwanzuro warwo muri aya magamabo:

> “ Umutangabuhamya wiswe NA1 yageze kuri paruwasi ku itariki ya 15 Mata 1994, bityo akaba atamenya neza ibijyanye n’ibikorwa atahagazeho., Na none kandi, ruvuga ko umutangabuhamya abivuga muri rusange, ubuhamya bwe bukaba bureba gusa ikibazo cy’ihinduka mu bakozi ba paruwasi hagati y’igihe yaviriye i Nyange mu wa 1993 n’igihe yahagarukiye muri Mata 1994. Hanyuma, nk’uko kandi

[204] Inyandikomvugo y’iburanisha , 8 Ukuboza 2005, urup.10 (mu muhezo).

[205] Reba Urubanza mu rw’iremezo, Igika 111, note 205 (ahavugwa inyandikomvugo y’iburanisha , 7 Ukuboza 2005, urup.19 (mu muhezo).

[206] Imyanzuro y’ubujurire ya Seromba, igika 110.

> umutangabuhamya nawe abyiyemerera, ntiyashoboraga gutandukanya abakozi bari bahari igihe yageraga ku kiliziya bitewe n'umubare munini cyane w'impunzi n'abagabye igitero bari bahari[207]."

Athanase Seromba rero ntagaragaza ikosa na rimwe riri muri iyo myumvire no mu mwanzuro by'Urugereko rwa Mbere rw'Iremezo, ku buryo rutari gushingira ku buhamya bwa NA1 mu gufata icyemezo ku bijyanye na bariya bakozi bane b'abatutsi birukanywe mu gipadiri, ndetse bikaza no kuviramo umwe muri bo gupfa.

3. Ikosa rivugwa mu mwanzuro w'Urugereko rwa Mbere rw'Iremezo wemeza ko Athanase Seromba yirukanye abakozi bane b'abatutsi kuri paruwasi

85. Athanase Seromba avuga ko umwanzuro w' Urugereko rwa Mbere rw'Iremezo uvuga ko yirukanye abakozi b'abatutsi kuri paruwasi, mu gihe kandi na none yakiraga impunzi z'abatutsi mu gipadiri, kandi yari no hafi yo kujya mu yindi paruwasi, ushingiye ku bintu "bidahuje n'ukuri kandi byo gucishiriza gusa"[208].

86. Mbere yo gufata umwanzuro unengwa, Urugereko rwa Mbere rw'Iremezo rwabanje gusuzuma rwitonze ubuhamya mu rukiko bw'abatangabuhamya biswe CBK na NA1. Athanase Seromba ntiyemera uburyo rwasesenguye ubwo buhamya. Ariko kubihakana ntacyo byatanze. Kubera ko nta kosa rigaragara mu mwanzuro w'Urugereko rwa Mbere rw'Iremezo, iyo ngingo ivuga ko Urugereko rubanza rwashingiye ku bintu byo gucishiriza nta gaciro ifite. Bityo rero, Urugereko rw'Ubujurire rusanze ibyo Athanase Seromba avuga kuri icyo kibazo bitakwakirwa.

4. Umwanzuro

87. Kubera iyo mpamvu Urugereko ntirwakiriye iyo mpamvu y'ubujurire yose uko yakabaye.

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[207] Urubanza mu rw'iremezo, igika 113 (hatarimo ibisobanuro byifashishijwe).
[208] Imyanzuro y'ubujurire ya Seromba.

F. Amakosa avugwa ku mwanzuro w'Urugereko rwa Mbere rw'Iremezo werekeranye n'urupfu rw'impunzi z'abatutsi (impamvu ya 6 y'ubujurire)

88. Urugereko rwa Mbere rw'Iremezo rwasanze Athanase Seromba yarirukanye impunzi nyinshi mu gipadiri, barimo Meriam waje kwicwa n'abagabye igitero[209]. Athanase Seromba anenga uwo mwanzuro[210]. N'ubwo rwavanyeho imyanzuro yose ijyanye n'ibyaha bikabije byo kwangiza umubiri cyangwa ubwenge, Urugereko rw'Ubujurire rwiyemeje gusuzuma ingingo zose Athanase Seromba atanga ku cyaha cyo gufasha no gushishikariza gukora jenoside kubera ko yahamwe n'icyo cyaha bitewe n'uruhare rwe mu iyicwa ry'abantu barimo na Meriam.

89. Athanase Seromba yiregura avuga ko atirukanye impunzi ahubwo yemeza ko yanazakiriye mu gipadiri harimo na Meriam kuva ibyabaye byatangira[211]. Avuga ko Urugereko rwa Mbere rw'Iremezo mu gufata uwo mwanzuro ko yirukanye impunzi, rwibeshye kuko rwagendeye ku buhamya rukumbi bwa CBJ " wari wibereye mu munara wa kiliziya nko muri metero 30 z'ubujyejuru, mu bantu bagera ku 5000 bagabye igitero n'abatutsi 1500 b'impunzi, ahantu hari urusaku rukabije bitewe n'ubwinshi bw'abagabye igitero, induru n'urusaku rw'imbunda[212] ". Na none, Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwirengagije ubuhamya bubiri: Ubw'umutangabuhamya wiswe NA1, uvuga ko "impunzi zari ahantu hose" mu kigo cya kiliziya, no mu gipadiri- ibyo bikaba bigaragaza ko ari nta muntu wabirukanye-, n'ubw'umutangabuhamya ushinjura wiswe FE55, bugaragaza ko Athanase Seromba nta muntu n'umwe yirukanye mu gipadiri[213].

90. Porokireri asubiza ko Athanase Seromba atagaragaza ikosa na rimwe mu cyemezo Urugereko rwa Mbere rw'Iremezo rwafashe kuri ubwo buhamya kandi ko

[209] Urubanza mu rw'iremezo, ibika 201 na 325.
[210] Inyandiko y'ubujurire ya Seromba, ibika 31-35 ; Imyanzuro y'ubujurire ya Seromba, ibika 144-151.
[211] Imyanzuro y'ubujujrire ya Seromba, igika 149.
[212] Kimwe no haruguru, igika 146 (biciyeho umurongo mu nyandiko y'umwimerere)
[213] Kimwe no haruguru, ibika 146 na 150.

atanagaragaza ukuntu byari kuba atari byo gushingira, nk'uko rwabikoze, kuri ubwo buhamya, by'umwihariko ubwa CBJ na CBK[214]. Ku bwa Porokireri, kuba Urugereko rwarasanze Athanase Seromba yarirukanye Meriam n'izindi mpunzi mu gipadiri, mu gihe ubwicanyi bwarimo bukorwa, bishimangirwa n'ibimenyetso kandi bihuye n'ibikorwa ndetse n'imyitwarire ya Athanase Seromba mu gihe cya jenoside[215]. Porokireri yemera ko Athanase Seromba yabanje gucumbikira Meriam n'izindi mpunzi mu gipadiri, ariko ahamya ko nyuma y'inama yo ku itariki ya 14 Mata 1994 yabasohoye, akanabirukana ubwo bari bagerageje kugaruka kuhikinga ibitero byo ku itariki ya 15 Mata 1994[216]. Porokireri yibutsa ubuhamya mu rukiko bw'umutangabuhamya wiswe CBJ aho avuga ko abagabye igitero bahise bica izo mpunzi zimaze kwirukanwa mu mbuga yo mu gipadiri[217].

91. Athanase Seromba ahakana icyemezo cy'Urugereko rwa Mbere rw'Iremezo kivuga ko yirukanye mu gipadiri impunzi nyinshi, zirimo Meriam waje no kwicwa nyuma yaho. Avuga ko Urugereko rwa Mbere rw'Iremezo rwafashe icyo cyemezo rugendeye ku buhamya bw'umutangabuhamya umwe gusa, *rwirengagije* ihame "*Unus testis, nullus testis*[218]" [Nta buhamya bw'umugabo umwe]. Usuzumye imikirize y'urubanza, ubona ko Urugereko rwa Mbere rw'Iremezo rwashingiye ku buhamya bubiri, ubwa CBJ na CBK, kugira ngo rwemeze ko Meriam yishwe amaze kwirukanwa mu gipadiri[219]. Rwemeye ibyo CBJ avuga ku rupfu rwa Meriam[220]. Hakurikijwe ibyo uwo mutangabuhamya avuga, uwitwa Muringanyi yakubitiye Meriam imbere y'ibiro by'umukarani, aramukurura amugeza ku kiliziya igihe Fulgence Kayishema we yari amufashe umutwe awuhonda hasi mu kibuga[221]. Na none rwemeye ibyo umutangabuhamya wiswe CBK avuga ko Fulgence Kayishema

[214] Imyanzuro ya Porokireri isubiza, ibika 153 na 162.
[215] Kimwe no haruguru, ibika 153, 154, 160 na 161.
[216] Kimwe no haruguru, igika 159
[217] Kimwe no haruguru
[218] Imyanzuro y'ubujurire ya Seromba, igika 148
[219] Urubanza mu rw'iremezo, ibika 193, 194 na 201. Urugereko rwa Mbere rw'Iremezo kandi rwanasanze abatangabuhamya biswe CBJ, CBK, CBT, BZ2, na FE 55 bemeza urupfu rwa Meriam (Urubanza mu rw'iremezo, igika 199)
[220] Kimwe no haruguru, igika 201.
[221] Kimwe no haruguru, ibika 193 na 201

yishe Meriam amuhonda umutwe ku matafari mu gihe Athanase Seromba, wari uhari, ntacyo yakoze ngo amubuze[222].

92. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarashinginye ku buhamya bw'umugabo umwe gusa ariwe CBJ maze rwemeza ko Athanase Seromba yirukanye mu gipadiri impunzi nyinshi harimo na Meriam[223]. Uwo mutangabuhamya yavuze ko uwo Meriam " yari mu itsinda ry'abatutsi bari bagize amahirwe" Athanase Seromba yari yarakiriye mu gipadiri, ko ariko nyuma yaje kuhamwirukana nyuma y'inama yo ku itariki ya 14 Mata 1994[224]. Yanavuze kandi ko Meriam yaje gusubira mu gipadiri nyuma bitewe n'ibitero byo ku itarikiya 15 Mata 1994, ariko Athanase Seromba akongera akahamwirukana[225]. Muri iyo mpamvu y'ubujurire, Athanase Seromba ntakemanga ubwizerwe bw'ibyo bimenyetso, ariko avuga ko Urugereko rwa Mbere rw'Iremezo rutagombaga kugendera kuri ubwo buhamya kubera ko bwatanzwe n'umuntu umwe gusa. Urugereko rw'Ubujurire ruributsa ako atari ngombwa ko ubuhamya bw'umugabo mu rukiko bushyigikirwa n'ubundi kugira ngo bugire agaciro[226] kandi ko Urugereko rwa Mbere rw'Iremezo rufata umwanzuro mu bwisanzure wo kureba niba ubuhamya bwo gushyigikira ubundi ari ngombwa, hakurikijwe uko ibintu biteye mu rubanza uru n'uru[227]. Urugereko rw'Ubujurire rusanga Ubwunganizi butaragaragaje ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu kwemeza ko Athanase Seromba yirukanye mu gipadiri impunzi zirimo Meriam, rushingiye ku buhamya mu rukiko bwa CBJ wenyine[228].

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[222] Kimwe no haruguru, ibika 194 na 201
[223] Kimwe no haruguru, ibika 193 na 201
[224] Kimwe no haruguru, igika 193.
[225] Kimwe no haruguru.
[226] Reba Urubanza rwa Nahimana mu bujurire, igika 633 ; Urubanza rwa Muhimana mu bujurire, ibika 49,159 na 207 ; Urubanza rwa Gacumbitsi mu bujurire, igika 72 ; Urubanza rwa Kajelijeli mu bujurire, igika 170 ; Urubanza rwa Semanza mu bujurire, igika 153 ; Urubanza rwa Niyitegeka mu bujurire, igika 92 ; Urubanza rwa Rutaganda mu bujurire, igika 29 ; Urubanza rwa Musema mu bujurire, ibika 36-38, n'Urubanza rwa Kvocka mu bujurire, igika 576.
[227] Urubanza rwa Muhimana mu bujurire, igika 49. Reba kandi Urubanza rwa Kajelijeli mu bujurire, igika 170 (bifashisha ibyo mu rubanza rwa Niyitegeka mu bujurire, igika 92).
[228] Athanase Seromba avuga ko n'Urukiko rw'ubujurire rwa Ruhengeri rwasanze ubuhamya bw'abagabo biswe CBS, CBJ na CBN butakwizerwa (Imyanzuro y'ubujurire ya Seromba,igika 88). Urugereko rw'Ubujurire rusanga icyo kibazo cyaragiweho impaka mu rubanza, kandi n'Inyandiko y'urubanza mu bujurire yo mu Rwanda yakiriwe nk'ikimenyetso (ikimenyetso gihamya D21 ; inyandikomvugo

93. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwibeshye mu gushingira ku buhamya mu rukiko bw'umugabo wiswe BCJ kandi ngo yararebaga ibyabaye ari mu munara wa kiliziya, mu metero 30 z'ubujyejuru, hari n'uruvuge rw'abagabye igitero bagera ku 5000 n'impunzi 1500, kandi aho hantu hari n'urusaku rwinshi. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo koko mu gusuzuma ubuhamya bwa CBJ rwaremeje ko yarebaga ibyabaye ari mu munara wa kiliziya [229] . Athanase Seromba ntiyagaragaje ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu kwemera ubuhamya bwa CBJ.

94. Athanase Seromba abona ko ari ikosa kuba Urugereko rwa Mbere rw'Iremezo rwaremeje ko yirukanye mu gipadiri impunzi nyinshi zirimo Meriam, bityo rukaba rwarirengagije ubuhamya bw'umugabo ushinjura wiswe NA1 aho avuga ko impunzi "zari ahantu hose", ndetse no mu gipadiri[230]. N'ubwo ari ukuri ko mu rubanza hatasuzumwe by'umwihariko ubuhamya mu rukiko bwa NA1 ku gikorwa cya Athanase Seromba cyo kwirukana impunzi mu gipadiri[231], ibyo ari byo byose Urugereko rwa Mbere rw'Iremezo ntirwagombaga kugaragaza buri kantu kose gashyigikira imyumvire ya rwo cyangwa se kugaragaza buri kimenyetso rwagendeyeho[232]. Urugereko rw'Ubujurire rusanga umutangabuhamya wiswe NA1 avuga ko "hari abantu benshi" ubwo yageraga mu gipadiri ku itariki ya 15 Mata

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y'iburanisha , 6 Ukwakira 2004, imp.50 na 51). Urugereko rw'Ubujurire rusanga iby'Urukiko rw'ubujurire rwa Ruhengeri rwavuze ku bijyanye n'ukwizerwa kw'abo batangabuhamya bitagira ingaruka ku buhamya bwabo imbere y'Urugereko rwa Mbere rw'Iremezo rwaburanishije urwo rubanza. Rushingiye ku buryo rwo ubwarwo rubibona, Urugereko rwa Mbere rw'Iremezo rufite uburenganzira busesuye bwo gufata imyanzuro yarwo ku bijyanye n'ukwizerwa kw'abagabo kimwe n'ukwemerwa k'ubuhamya bwabo mu rukiko. (Reba Urubanza rwa Niyitegeka mu bujurire, igika 168).

[229] Urubanza mu rw'iremezo, igika 234. Urugereko rwa Mbere rw'Iremezo rwasanze koko « umuntu uri mu munara adashobora kumva neza amagambo avugirwa ku biro by'umukarani wa paruwasi», maze rwemeza ko, rushingiye aho umutangabuhamya CBJ yari, ubuhamya bwe butagenderwaho ku bijyanye n'amagambo Seromba yabwiye umushoferi wa tingatinga. Nyamara ariko rwemeye ubuhamya bw'uwo mugabo ku bijyanye n'ibyo yabonye ari aho yari ari. Reba urubanza mu rw'iremezo ibika 201 na 234.

[230] Imyanzuro y'ubujurire ya Seromba, igika 146. Athanase Seromba yitsitsa ku buhamya bw'umugabo NA1 aho avuga ko hari impunzi mu gipadiri ; akaba ashingira ku nyandikomvugo y'iburanisha, 7 Ukuboza 2005, n'ubwo adatanga aho yabivanye ku buryo bwuzuye.

[231] Urubanza mu rw'iremezo, ibika 195-198.

[232] Reba, nk'urugero, Urubanza rwa Simba mu bujurire, igika 143 ; Urubanza rwa Gacumbitsi mu bujurire, igika 115.

1994[233]. Inyandikomvugo y'iburanisha ikubiyemo ubwo buhamya igaragaza kandi igisubizo uwo mutangabuhamya yatanze ubwo yabazwaga uko byagendekeye Meriam by'umwihariko:

> " Ku bijyanye na Meriam, ntacyo nabivugaho by'umwihariko, kubera ko igihe ntari i Nyange ntari nzi ibyahaberaga. Bityo rero ntacyo navuga kuri uwo Meriam[234]."

Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo ntacyarubuzaga kwemeza ko ubuhamya bwa NA1 butavuguruza ubwa CBJ, aho avuga ko Athanase Seromba yirukanye mu gipadiri impunzi nyinshi, harimo na Meriam.

95. Athanase Seromba avuga ko ubuhamya bw'umutangabuhamya ushinjura wiswe FE55 « bushimagira » ko atigeze ahinda impunzi nimwe mu kigo cy'abapadiri. Ibyo yifashisha mu gushimangira icyo gitekerezo tubisanga muri ubu buhamya[235] :

> Ikibazo : [...] Wavuze ibyerekeye Anicet Gatare na Myriam [sic] baba barishwe ku ya 15 mata 1994. Waba warumvise ko ari padiri Athanase Seromba wabahaye abari bagabye ibitero ?
>
> Igisubizo: […] bavuga ko Myriam [sic] we yari yasohotse ubwo gerenade zaterwaga. Abatutsi bikingiranye imbere Myriam [sic] ntiyabasha kwinjirana n'abandi. Bityo akaba yaragumye hanze ya kiliziya akaba ari naho yiciwe. Sinigeze numva bavuga ko ari padiri Athanase Seromba wari watanze abo bantu…[236]

Nta vuguruzanya riri hagati y'ubwo buhamya n'umwanzuroUrugereko rwa Mbere rw'Iremezo rwafashe rushingiye ku ngingo z'ubuhamya rwasanze zakwizerwa, zivuga yuko Athanase Seromba yirukanye impunzi zirimo Meriam mu kigo cy'abapadiri. Kuba umutangabuhamya FE55 « atarigeze yumva bavuga» ko ari Athanase Seromba "wahaye izo mpunzi abishi" ntibyatuma umuntu avuga ko abacamanza bo mu rugereko rwa

[233] Inyandikomvugo y'iburanisha , 7 Ukuboza 2005, urup.17 (mu muhezo).
[234] Kimwe no haruguru, urup.25 (mu muhezo).
[235] Inyandiko y'ubujurire ya Seromba, ig. 150.
[236] Inyandikomvugo y'iburanisha ryo ku wa 12 mata 2006, urup 44.

Mbere rw'Iremezo batagombaga kwanzura ko Athanase Seromba yirukanye Meriam n'izindi mpunzi mu kigo cy'abapadiri.

96. Byongeye kandi, Urugereko rw'Ubujurire ntirunyuzwe n'ibyo Athanase Seromba avuga ko nta mpamvu zari gutuma yirukana impunzi zirimo Meriam kandi yari yabanje kuzakira nta kujijinganya. Iyo myumvire ye ishingiye ku gupapira ikaba rero itatesha agaciro ubuhamya bwatanzwe n'umutangabuhamya wiswe CBJ Urugereko rwa Mbere rw'Iremezo rwashingiyeho.

97. Kubera ibimaze kuvugwa, Urugereko rw'Ubujurire rwemeje ko Athanase Seromba atagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa igihe rwemezaga ko yirukanye impunzi zari mu kigo cy'abapadiri zirimo Meriam waje kwicwa n'abagabye igitero. Kubera ibyo, iyo mpamvu y'ubujurire ntiyakiriwe.

G. <u>Amakosa avugwa ku byerekeranye n'uruhare Athanase Seromba yaba yaragize mw'isenywa rya kiliziya ya Nyange (impamvu ya 7 y'ubujurire)</u>

98 Urugereko rwa Mbere rw'Iremezo rwasanze hariho ibimenyetso bigaragaza ko Athanase Seromba "[yari] yaganiriye n'abayobozi akemera icyemezo bari bafashe cy'isenywa rya kiliziya [ya Nyange][237], ko yabwiye umushoferi wa tingatinga amagambo yamushishikarije gusenya iyo nzu, ko yamweretse uruhande rwayo "rudakomeye"[238] kandi ko iyo kiliziya yasenywe hakoreshejwe tingatinga ku itariki ya 16 mata 1994.[239] Urugereko rwa Mbere rw'Iremezo rukaba rwarasanze rero Athanase Seromba yaragize uruhare rukomeye mw'isenywa ry'iyo kiliziya kubera imyitwarire ye; iryo senywa rikaba ryarahitanye impunzi z'abatutsi zirenga 1 500.[240] Kubera ibyo, Urugereko rwa Mbere rw'Iremezo rukaba rwarahamije Athanase Seromba icyaha cya jenoside kuko yateye inkunga kandi agashishikariza kugikora; n'icyaha cy'itsembatsemba nk'icyaha cyibasiye

[237] Urubanza mu rw'iremezo, igika 364.
[238] Ni kimwe no haruguru.
[239]Ni kimwe no haruguru, ibika 283 - 284 .
[240] Ni kimwe no haruguru, ibika 334, 364 -365.

inyokomuntu kubera ko yateye inkunga kandi agashishikariza kugikora[241]. Muri iyo mpamvu y'ubujurire, Athanase yagaragaje ko habayeho inenge mu miterere y'inyandiko y'ibirego anerekana ko atanyuzwe n'agaciro Urugereko rwa Mbere rw'Iremezo rwahaye ubuhamya bwatanzwe[242]

1. Ibivugwa ko inyandiko y'ibirego ifite inenge mu miterere yayo

99. Athanase Seromba aranenga Urugereko rwa Mbere rw'Iremezo kuba rwarafashe umwanzuro wemeza ko abayobozi bari bamumenyesheje icyemezo bafashe cyo gusenya kiliziya ya Nyange ngo akacyemera kandi ibyo ntaho bivugwa mu nyandiko y'ibirego.[243] Ahamya nanone ko ibyo bivugwa ntaho biri mu mpinamyanzuro mbanzirizarubanza, mu myanzuro ya nyuma yanditse no mubyo Porokireri yavuze asabira uregwa igihano, bityo hakaba harabayeho ikosa igihe urugereko rwashingiraga kuri ibyo mu kumuhamya icyaha cy'itsembatsemba nk'icyaha cyibasiye inyokomuntu[244]. Athanase Seromba avuga ko atahawe umwanya wo gutanga imyanzuro ye kuri icyo kibazo bityo uburenganzira bwe bwo kubaranishwa mu "buryo butabogamye" bukaba butarubahirijwe[245].

100. Nk'uko byavuzwe haruguru, ibyaha uregwa ashinjwa n'ibikorwa bya ngombwa bibigaragaza bigomba gushyirwa mu nyandiko y'ibirego kandi bikaba bisobanutse ku buryo uregwa yumva neza imiterere y'ibyo ashinjwa[246]. Hakurikijwe ubukemuramanza bwo mu Rugereko rw'Ubujurire, iyo uregwa ashinjwa kuba yaracuze umugambi, akawushishikariza abandi, agategeka ikorwa ryawo, agafasha kandi agashyigikira kuwucura, akawutegura cyangwa akawukora, porokireri agomba gusobanura neza "ibyo yakoze" cyangwa

[241] Ni kimwe no haruguru, ibika 334, 335, 337, 338, 342, 364, 366 -368 na 371.
[242] Inyandiko y'ubujurire ya Seromba, ibika 34-37; Imyanzuro mu bujurire ya Seromba, ibika 152-212.
[243] Imyanzuro mu bujurire ya Seromba, ibika 154, 155, 158 -159.
[244] Inyandiko y'ubujurire ya Seromba, igika 37 ; Imyanzuro mu bujurire ya Seromba, ibika 154 -155.
[245] Inyandiko y'ubujurire ya Seromba, igika37.
[246] Urubanza rwa Simba mu bujurire, igika 63, n'Urubanza rwa Muhimana mu bujurire, ibika 76, 167 na 195. Reba kandi Urubanza rwa Gacumbitsi mu bujurire, igika 49, n'Urubanza rwa Ndindabahizi mu bujurire, igika 16.

imyitwarire yagize yatuma ibyo birego bibaho[247]. Inyandiko y'ibirego itarimo ibyo bisobanuro iba ifite inenge ariko zishobora gukosorwa iyo porokireri ahaye uregwa amakuru asobanutse, ayamuhereye igihe, ku buryo budahuzagurika kandi yerekana ku buryo burambuye ibikorwa yashingiyeho atanga ibirego bye[248].

101. Inyandiko y'ibirego isuzumwe yonyine ntigaragaza ko Athanase Seromba yamenyeshejwe kandi akemera icyemezo cyafashwe n'abayobozi cyo gusenya kiliziya. Ikirego cya 4 n'ibikorwa gishingiyeho ni ibi bikurikira:

> "Porokireri w'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda arega Athanase Seromba **ICYAHA KIBASIYE INYOKOMUNTU** (***ITSEMBATSEMBA***) ashingiye ku ngingo ya 3)b) ya Sitati, kubera ko hagati y'italiki ya 7 n'iya 20 mata 1994 cyangwa se kuri ayo mataliki, muri perefegitura ya Kibuye (Rwanda), Athanase Seromba yishe cyangwa yicishije abantu mu gihe cy'ibitero rusange cyangwa biri kuri gahunda […] byagabwe ku baturage b'abasivili bazira ishyaka rya politiki barimo, cyangwa ubwoko "
>
> *Hashingiwe ku ngingo ya 6 1) ya Sitati*: Kubera ibikorwa bifatika uregwa yakoze acura umugambi, ashishikariza abandi kuwukora, abategeka kuwukora, awukora cyangwa mu bundi buryo ubwo aribwo bwose afasha kandi ashishikariza abandi gucura, gutegura cyangwa gushyira mu bikorwa icyaha aregwa.
>
> 48. Ahagana ku italiki ya 13 Mata 1994 cyangwa se kuri iyo taliki, interahamwe n'insoresore zari zitwaye gisirikare zagose paruwasi zigaba igitero ku bantu bari bahungiye muri kiliziya. Abari bateye bashubijwe inyuma hanze ya kiliziya bagera ahitwa "Ku ishusho ya Bikira Mariya". Bahise batera gerenade yahitanye abantu benshi mu mpunzi. Abarokotse bahise bihutira gusubira mu kiliziya ariko Padiri Athanase Seromba yategetse ko imiryango yose ya kiliziya ifungwa bityo impunzi nyinshi (nka 30) zikaba zarasigaye hanze kugirango zicwe.
>
> 49. Ahagana ku italiki ya 15 mata 1994 cyangwa se kuri iyo taliki, Padiri Athanase Seromba yategetse cyangwa se acura umugambi, afasha cyangwa ashishikariza gusenya kiliziya yari ifungiyemo abatutsi barenga 2 000 bituma bapfiramo.
>
> 50. Nyuma y'isenywa rya kiliziya, abenshi mu batutsi bo muri komini ya Kivumu barishwe ku buryo muri Nyakanga 1994, nta mututsi n'umwe wabarirwaga muri Komini Kivumu[249]".

102. Ibivugwa ko Athanase Seromba yari yamenyeshejwe icyemezo cyo gusenya kiliziya akanacyemera ni ibintu bikomeye Urugereko rwa Mbere rw'Iremezo

[247] Urubanza rwa Ntagerura mu bujurire, igika 25.
[248] Urubanza rwa Simba mu bujurire, igika 64 ; Urubanza rwa Muhimana mu bujurire, igika 76, reba na none ururbanza rwa Gacumbitsi mu bujurire, igika 49, n'Urubanza rwa Ntagerura mu bujurire, ibika 28 na 65.
[249] Inyandiko y'ibirego, ibika 48 -50.

rwashingiyeho rumuhamya itsembatsemba nk'icyaha cyibasiye inyokomuntu, nk'uko bikubiye mu kirego cya 4 cy'inyandiko y'ibirego[250]. Nyamara ariko, ibyo bivugwa ntabwo byaburanywe ku buryo bweruye mu kirego cya 4 cy'inyandiko y'ibirego, bityo iyo nyandiko ika ifite inenge kuri icyo kibazo.

103. Athanase Seromba abyutsa icyo kibazo mu bujurire ariko ntiyerekana ko yigeze akibyutsa na mbere hose. Nyamara, iyo uregwa atabashije kubyutsa ikibazo mu Rugereko rwa Mbere rw'Iremezo aba afite inshingano zo kugaragariza Urugereko rw'Ubujurire ko uburenganzira bwe bwo gutegura imyiregurire ye bwari bwabangamiwe ku buryo bukomeye[251]. Athanase Seromba ntabwo yubahirije iyo nshingano. Nta na hamwe mu nyandiko ye y'ubujurire hagaragara ko yaba yarabyukije mbere icyo kibazo cyerekeye inenge iri mu miterere y'inyandiko y'ibirego.

104. Uko byagenda kose, Urugereko rw'Ubujurire rusanga Porokireri yaratanze mu gihe gikwiye amakuru asobanutse kandi adahuzagurika ku buryo byatumye iyo nenge yo mu nyandiko y'ibirego ivaho. Koko rero, mu mugereka wa III w'imyanzuro mbanzirizarubanza ya Porokireri[252] harimo incamake y'ubuhamya bw'umugabo wiswe CDL ushinja watanze amakuru akurikira:

> "Ku ya 16 mata 1994, CDL yumvise Ndungutse, Kanyarugika [sic], Ndahimana na Kayishema babwira Seromba ko uburyo bwonyine bwagombaga gukoreshwa kugirango abatutsi bose bari muri kiliziya ya Nyange bicwe kwari ugusenya iyo kiliziya. CDL yumvise Seromba ababwira ko igomba gusenywa bahereye inyuma aho guhera ku munara kuko wari ukomeye[253]".

105 Ku birebana n'incamake igeretse kuri iyi nyandiko, Porokireri yasobanuraga ko ubuhamya bwagombaga gufasha kugaragaza ko mu bindi byaha yakoze, uregwa

[250] Urubanza mu rw'iremezo, ibika 364, 366 – 368.
[251] Urubanza rwa Gacumbitsi mu bujurire, igika 49; Urubanza rwa Niyitegeka mu bujurire, igika 200, n'Urubanza rwa Kvocka mu bujurire, igika 35.
[252] Imyanzuro mbanzirizarubanza ya Porokireri, 27 Kanama 2004.
[253] Ni kimwe no haruguru, Umugereka wiswe: "Incamake y'ubuhamya bw'abagabo", imp. 11-12 (d) 1339 bis – 1338 bis.

yakoze n'icyaha cy'itsembatsemba nk'icyaha cyibasiye inyokomuntu[254]. Bityo Atahanse Seromba yari yaramenyeshejwe ko ikirego cy'icyaha cyibasiye inyokomuntu cyari gishingiye ku gikorwa aregwa cy'uko yari azi icyemezo cyo gusenya kiliziya, kandi akacyemera kuko yemeye ko isenywa. Hakurikijwe ubukemuramanza bw'Urugereko rw'Ubujurire, imyanzuro mbanzirizarubanza ya Porokireri ishobora, mu bihe bimwe na bimwe, gukosora inenge igaragara mu nyandiko y'ibirego[255]. Urugereko rw'ubujurirre rusanga ariko bimeze muri uru rubanza. Amakuru yatanzwe na Porokireri mu ncamake y'ubuhamya bw'umugabo CDL bwari busobanutse neza kandi buhuza n'ibivugwa mu kirego cya 4 cyo mu nyandiko y'ibirego. Icyo kirego kivuga ko: "Padiri Atahanse Seromba yatanze itegeko kandi agapanga umugambi wo gusenya kiliziya". Kubera ko Porokireri yatanze imyanzuro mbanzirizarubanza ku itariki ya 27 Kanama 2004, ni ukuvuga hasigaye ibyumweru birenze bitatu kugira ngo urubanza rutangire[256], yatanze rero mu gihe gikwiriye amakuru yumvikana kandi atavuguruzanya ku kintu kimwe cy'ingenzi cyari kibuze, bityo inenge yari mu nyandiko y'ibirego akaba yari yayikuyemo. Ku bw'ibyo, icyo gice cy'impamvu y'ubujurire nticyakiriwe.

2. **<u>Amakosa yaba yarakozwe mu kugena agaciro k'ubuhamya</u>**

106 Athanase Seromba aravuga ko ko "atatanze itegeko ryo gusenya kiliziya ya Nyange, kandi ko atavuganye n'umushoferi wa tingatinga ngo amushishikarize gusenya kiliziya[257]". Ku bw'ibyo, abyutsa amakosa Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze mu kugena agaciro k'ubuhamya bwatanzwe kuri icyo gikorwa. Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo rwwemeje ko Porokireri atagaragaje ku buryo budashidikanywaho na

[254] Ni kimwe no haruguru, urup.12, igika (d.) 1339 bis.
[255] Urubanza rwa Muhimana mu bujurire, ibika 82, 201 na 223 (kifashisha Urubanza rwa Gacumbitsi mu bujurire, ibika 57-58), Urubanza rwa Naletilic mu bujurire, igika 45, n'Urubanza rwa Ntakirutimana mu bujurire, igika 48.
[256] Reba urubanza mu rw'iremezo, umugereka I, ibika 17 na 19.
[257] Imyanzuro y'ubujurire ya Seromba, igika160.

gato ko Athanase Seromba yaba yaratanze itegeko ryo gusenya kiliziya[258]. Urwo Rugereko rwemeje na none ko Athanase Seromba yari yamenyeshejwe icyemezo cyo gusenya kiliziya, akacyemera kandi agashishikariza umushioferi wa tingatinga gusenya iyo kiliziya[259].

a) <u>Umutangabuhamya wiswe CBJ</u>

107 Nk'uko bivugwa muri make mu nyandiko y'urubanza rwo mu rw'iremezo, umugabo ushinja wiswe CBJ yatanze ubuhamya ku kiganiro Athanase Seromba yagiranye n'umushoferi, akemeza ko yumvise uwo mushoferi abaza Padiri Seromba niba yemeye ko kiliziya isenywa[260]. Nk'uko bivugwa na CBJ, Athanase Seromba yahise akura ikintu mu mufuka we agiha uwo mushoferi, uyu nawe atangira gusenya kiliziya[261].

108 Athanase Seromba anenga ubuhamya bwa CBJ mubyo yemeza ko ari we watumye umushoferi wa tingatinga asenya kiliziya[262]. Naho ku bijyanye n'ibyo CBJ yemeza ko yakurikiranye ikiganiro cye n'umushoferi, Athanase Seromba avuga ko bitari gushobokera uwo mutangabuhamya kumenya neza[263] icyo baganiriye kandi yari mu munara wa kiliziya[264].

109 Porokireri asaba ko iyo myiregurire itakwakirwa[265]. Avuga ko abanenga ubuhamya bwa CBJ bashingira gusa ku mpamvu ko ngo yari mu munara wa kiliziya akaba atari gushobora kumva ibivugwa na Athanase Seromba[266], nyamara, Urugereko rwa Mbere rw'Iremezo ntirwashingiye ku buhamya bwa CBJ kuri icyo kibazo[267].

[258] Urubanza mu rw'iremezo, igika 267.
[259] Ni kimwe no haruguru, ibika. 268 na 269.
[260] Ni kimwe no haruguru, igika 210.
[261] Ni kimwe no haruguru, igika 211.
[262] Imyanzuro y'ubujurire ya Seromba, igika 171.
[263] Ni kimwe no haruguru, igika 170.
[264] Ni kimwe no haruguru, igika 169.
[265] Imyanzuro isubiza ya Porokireri, igika 168.
[266] Ni kimwe no haruguru.
[267] Ni kimwe no haruguru.

110 Urugereko rwa Mbere rw'Iremezo rwemeje ko umutangabuhamya CBJ akwiye kwizerwa ku bijyanye n'uko Athanase Seromba yari mu nama yo ku itariki ya 16 Mata 1994 [268] n'uko Athanase Seromba hari ikintu yahaye umushoferi wa tingatinga[269]. Mu ngingo ze z'ubujurire, Athanse Seromba ntacyo anenga kuri icyo cyemezo. Ahubwo, avuga ku kiganiro yaba yaragiranye n'umushoferi wa tingatinga mu kwemeza ko umutangabuhamya CBJ atagomba kwizerwa. Kuri iki kibazo, Urugereko rwa Mbere rw'Iremezo rwemeje ko ubuhamya bwa CBJ "butagomba kwizerwa ku byo avuga ku magambo Seromba yaba yarabwiye umushoferi wa tingatinga", kubera intera yari hagati y'umutangabuhamya wari mu munara wa kiliziya, n'ibiro by'umunyamabanga wa paruwasi, kandi akaba avuga ko ayo magambo yavugiwe hafi y'ibyo biro[270]. Bityo rero, Urugereko rwa Mbere rw'Iremezo ntirwashingiye kuri ubwo buhamya mu gufata icyemezo ku birebana n'icyo kiganiro. Ahubwo, ubuhamya bw'abagabo biswe CBK na CDL nibwo Urugereko rwa Mbere rw'Iremezo rwashingiyeho rwemeza ko Athanase Seromba yabwiye shoferi wa tingatinga amagambo yo kumushishikariza gusenya kiliziya[271]. Urugereko rw'Ubujurire ruributsa ko bitabujijwe ko umucamanza w'ibyabaye ashingira gusa ku gice kimwe cy'ubuhamya ibindi akabireka[272]. Ku bw'ibyo, Athanase Seromba ntagaragaza ikosa Urugereko rwa mbere rw'Iremezo rwakoze mu kugena agaciro k'ubuhamya bwa CBJ.

b) <u>Umutangabuhamya wiswe CBK</u>

111 Nk'uko bivugwa muri make mu nyandiko y'urubanza rwo mu rw'iremezo, umugabo wiswe CBK yatanze ubuhamya ku kiganiro cyabaye hagati ya Athanase Seromba n'umushoferi wa tingatinga [273]. Uwo mutangabuhamya yavuze ko

[268] Urubanza mu rw'iremezo, ibika 210 na 234
[269] Ni kimwe no haruguru, ibika 211 na 234.
[270] Ni kimwe no haruguru, igika 234.
[271] Ni kimwe no haruguru, ibika. 236, 239 na 269.
[272] Urubanza rwa Simba mu bujurire, igika 212, n'Urubanza rwa Kamuhanda mu bujurire, igika 248 (rwifashishije Urubanza rwa Kupreskic, igika 333).
[273] Urubanza mu rw'iremezo, igika 213.

umushoferi wa tingatinga yabajije niba agomba gusenya kiliziya, noneho Athanase Seromba aramusubiza ati: “Yisenye[274].”

112 Athanase Seromba yemeza ko Urugereko rwa Mbere rw’Iremezo rutashyize mu gaciro rwemera ubuhamya bwa BCK buvuga ko we -Athanase Seromba- yavuganye n’umushoferi wa tingatinga mbere y’uko kiliziya isenywa[275]. Athanase Seromba akomeza yemeza ko ubwo buhamya buvuga ko we n’umushoferi bari ku biro by’umunyamabanga wa paruwasi mu gihe kiliziya yasenywaga[276] kandi bukemeza ko yavuze amagambo akurikira: “Reka mpunge kiliziya itangwira[277]”. Kuri Athanase Seromba, ibyo bisobanuye ko yagombaga kuba ahagaze ahantu yashoboraga kuba yaganira n’uwo mushoferi wa tingatinga kandi akaba yagira icyo aba kiliziya isenywe[278]. Ariko, umutangabuhamya we avuga ko yari ku biro by’umunyamabanga wa paruwasi, mu ntera igera kuri metero 50 nibura uvuye kuri paruwasi[279]. Niyo mpamvu avuga ko inkuru y’umutangabuhamya BCK ntaho ihuriye n’ukuri[280].

113 Athanase Seromba kandi yemeza ko umutangabuhamya CBK yagombaga kutemerwa kubera ko yashubije umwunganizi ko “Atazi uwatanze itegeko ryo kuzana tingatinga[281]”, nyamara bamubajije impamvu mu buhamya bwe bwa mbere bwanditse bwo ku itariki ya 24 Ukwakira, iya 19 n’iya 20 Ugushyingo 2002” yari yaravuze ko ari Kayishema na Rushema[282] bafashe icyo cyemezo, “asubiza gusa” ko “kwibagirwa ari ibintu bibaho”.

[274] Ni kimwe no haruguru
[275] Imyanzuro y’ubujurire ya Seromba, igika 175.
[276] Ni kimwe no haruguru, igika 172.
[277] Ni kimwe no haruguru, (hifashishijwe iburanisha ryo ku wa 19 Ukwakira 2004, urup.29 (mu muhezo).
[278] Imyanzuro y’ubujurire ya Seromba, igika 173.
[279] Ni kimwe no haruguru, ibika 172 na 173.
[280] Ni kimwe no haruguru, igika 173.
[281] Ni kimwe no haruguru, igika 174.
[282] Ni kimwe no haruguru

114 Porokireri asubiza ko Athanase Seromba “afata amagambo y’umutangabuhamya BCK “uko atari”, ko rero ibyo avuga bidashobora gutuma ubwo buhamya anenga butakirwa[283].

115 Urugereko rwa Mbere rw’Iremezo rwasanze umutangabuhamya BCK ari uwo kwizerwa ku bijyanye n’ubuhamya yatanze ku kiganiro hagati y’umushoferi wa tingatinga na Athanase Seromba[284], hanyuma rwemeza ko uwo mushoferi yabajije Seromba inshuro eshatu niba agomba gusenya kiliziya[285]. Kureba niba umutangabuhamya BCK agomba kwizerwa bigomba gusuzumanwa n’ubundi buhamya buvuga ku bintu bimwe. BCK yasobanuye uko tingatinga yaje, hanyuma avuga ko umushoferi wayo yabajije “inshuro eshatu” Athanase Seromba agira ati: “Ese tugomba gusenya iyi kiliziya?[286]” umutengabuhamya

BCK yabivuze muri aya magambo:

> “Noneho [padiri Seromba] arasubiza ati: “Nimusenye kiliziya. Twe, abahutu, turi benshi bihagije, kandi mu nzu y’Imana hinjiyemo amashitani […] twe, Abahutu, turi benshi, tuzubaka indi[287]”

CBK yarongeye aravuga ati:

> “Umushoferi yatangiye gusenya kiliziya. Noneho Seromba abonye kiliziya igiye guhirima, aravuga ati: “Reka mve hano kiliziya itavaho ingwira. Reka nigireyo gato kiliziya itangwira[288].”

Bamubajije aho yari ari “mu gihe kiliziya yasenywaga”, CBK yasubije ko yari “imbere y’ibiro by’umunyamabanga wa paruwasi, aho Seromba yari ari[289]”. Ubwo buhamya busobanura neza ukuntu ibintu byagenze: Athanase Seromba yarabanje aganira n’umushoferi wa tingatinga, hanyuma, kiliziya itangiye gusenywa, avuga ko agomba kwigirayo. Umutangabuhamya yavuze ko igihe kiliziya yarimo gusenywa, Seromba yari hafi y’ibiro by’umunyamabanga wa paruwasi. Ingingo

[283] Imyanzuro isubiza ya Porokireri, igika 172.
[284] Urubanza mu rw’iremezo, igika 236.
[285] Ni kimwe no haruguru
[286] Inyandikomvugo y’iburanisha ryo ku wa 19 Ukwakira 2004 , urup. 28 (mu muhezo).
[287] Ni kimwe no haruguru, imp. 28-29 (mu muhezo).
[288] Ni kimwe no haruguru, urup. 29 (mu muhezo).
[289] Ni kimwe no haruguru

Athanase Seromba atanga ntizituma umuntu yavuga ko hari ikosa iryo ari ryo ryose Urugereko rwa Mbere rw'Iremezo rwakoze.

116 Athanase Seromba aravuga kandi ko CBK atagombaga kwizerwa kubera ukunyuranya kwe ku birebana n'uwatanze itegeko ryo kuzana tingatinga, kugaragara hagati y'ubuhamya yatangiye mu rukiko n'ubwo yatanze mbere yo kwitaba urukiko, kandi no kubera ko uwo mutangabuhamya atashoboye gusobanura uko kuvuguruzanya[290]. Urugereko rw'Ubujurire rusanga mu bibazo by'inyomoza kuri icyo kibazo, CBK yaratanze igisubizo gikurikira:

> Me MONTHÉ:
> […] Madamu Perezida, nagira ngo mubinyemereye, nsabe umutangabuhamya gusoma imvugo ye yo ku itariki ya 19 n'iya 20 Ugushyingo 2002. Ni ku mpapuro zifite nimero K0260224, K0260231. Kuri "K0260231", ni ku ntangiriro y'igika.
> […]
>
> Me MONTHÉ:
> […] Dore ibiri muri iyo mvugo: "Nari […] bake cyane muri bo – niko umutangabuhamya avuga – kandi nashoboraga kumva ibyo baganiraga. Nari nagiye kugaburira ihene kandi nta murimo wundi nariho uwo munsi. Nari mpagaze hafi y'urukuta, hafi y'ibiro by'umunyamabanga wa paruwasi. Noneho Kayishema abwira Rushema kubafasha kuzana tingatinga yo gusenya kiliziya. Nabonye Rushema, wari wungirije burugumesitiri, ava aho abandi bari bari ari mu modoka ya Rwamasirabo. Mbere yo kubwira Rushema ngo ajye kuzana tingatinga abo bantu bavugaga ku mubare w'abanyabwenge, …"
>
> Ikibazo: Mutangabuhamya, dore ikibazo cyanjye: Kuki uyu munsi ubwira abacamanza ko utazi uwatanze itegeko ryo kuzana tingatinga?
> Igisubizo: Dore impamvu navuze ko ntibukaga uwatanze iryo tegeko: Umva, biroroshye kwibagirwa. Abantu bose baribagirwa!
> Ik.: Impungenge mfite, njye ndabona wibagirwa gusa ibyo ushaka kwibagirwa.
> Ig.: Uko ubibona si ko bimeze.
> Ik.: Urakoze. Ariko nibura uremera ko Kayishema yohereje umuntu kuzana tingatinga; niko umuntu yavuga ashingiye ku mvugo yawe?
> Ig.: Nibyo[291]."

Hakurikijwe ubukemuramanza bw'Urugereko rw'Ubujurire, Urugereko rwa Mbere rw'Iremezo rufite uburenganzira bwo kwakira cyangwa kutakira ubuhamya

[290] Imyanzuro y'ubujurire ya Seromba, ibika 174-175.
[291] Inyandikomvugo y'iburanisha ryo ku wa 20 Ukwakira 2004, imp. 17-18 (mu muhezo).

bw'umugabo, iyo rumaze kubwumva no kumwitegereza igihe asubiza ibibazo by'inyomoza[292]. Kuri iyi ngingo, umutangabuhamya BCK yasobanuye ko mu rukiko atashoboye kwibuka umuntu watumye tingatinga iza. Ikindi kandi, bamweretse imvugo ye ya mbere, yemeye ko "Kayishema yatumye umuntu kuzana tingatinga" nk'uko yabivuze muri ubwo buhamya bwe bwa mbere. Ibi ntabwo byatuma umuntu avuga ko hari ukuvuguruzanya hagati y'imvugo ya mbere ya BCK n'ubuhamya yatangiye imbere y'abacamanza. Ibyo aribyo byose, Urugereko rwa Mbere rw'Iremezo rushobora kwakira ubuhamya bw'umugabo, kabone n'iyo haba hari ukuvuguruzanya hagati y'ubwo buhamya n'imvugo ze za mbere, mu gihe ari ngombwa kureba niba uko kuvuguruzanya guhagije kugira ngo umuntu abe yashidikanya ku byo uwo mutangabuhamya avuga[293]. Athanase Seromba ntiyagaragaje ukuntu Urugereko rwa Mbere rw'Iremezo rushyira mu gaciro rwari kwanga kwakira ibisobanuro byatanzwe na BCK n'aho rwari guhera ruvuga ko atari umutangabuhamya wo kwizerwa. Bityo rero, Athanase Seromba nta kosa agaragaza ryaba ryaratewe n'uko Urugereko rwa Mbere rw'Iremezo rwakiriye ubuhamya bwa BCK kandi rukabukoresha mu myanzuro yarwo.

c) **<u>Umutangabuhamya wuswe CDL</u>**

117. Nkuko bivugwa muri make mu nyandiko y'urubanza rwo mu rw'iremezo, umutangabuhamya wiswe CDL yavuze ko ku itariki ya 16 Mata 1994 yakurikiye ikiganiro Athanase Seromba yagiranye na burugumesitiri, ko nyuma y'icyo kiganiro burugumesitiri yavuganye n'abandi bategetsi, hanyuma bafata icyemezo cyo gukoresha tingatinga kugira ngo basenye kiliziya[294]. Umutagabuhamya akomeza vuga ko ako kanya abo bategetsi bagiye kureba Athanase Seromba ku kibazo cyo gusenya kiliziya. Yaba yarababwiye ati: "Nib nta bundi buryo mufite, nimuzane izo tingatinga musenye kiliziya[295]." CDL yavuze kandi ko Athanase Seromba yagiriye inama abashoferi ba za tingatinga ko mu gusenya kiliziya

[292] Urubanza rw'Akayesu mu bujurire, igika 147.
[293] Urubanza rwa Rutaganda mu bujurire, igika 443. Reba kandi Urubanza rwa Musema mu bujurire, igika 89, n'Urubanza rwa Celebici mu bujurire, igika156.
[294] Urubanza mu rw'iremezo, igika 217.
[295] Ni kimwe no haruguru

batangirira ku ruhande rwa sakiristiya, ababwira ko arirwo ruhande rwa kiliziya "rudakomeye"[296].

118. Athanase Seromba avuga ko CDL ari "umutangabuhamya ku bintu byabaye ukomeye", wavuze ko ari abategetsi batanze itegeko ryo gusenya kiliziya bakoresheje tingatinga[297]. Avuga ko uyu mutangabuhamya atamureze kuba yaratanze itegeko ryo gusenya kiliziya, ko yavuze gusa ko "[Seromba] yemeye icyemezo cyafashwe n'abategetsi[298]". Hejuru y'ibyo ariko, Atahanse Seromba ntiyemera ubuhamya bwa CDL ku bijyanye n'ikiganiro yaba yaragiranye n'umushoferi wa tingatinga amushishikariza gusenya kiliziya, no kubijyanye n'inama yaba yaramugiriye yo gutangira gusenya ahereye kuri sakiristiya. Avuga ko umuntu asuzumye ubwo buhamya, asanga ibiro by'umunyamabanga wa paruwasi ariho hantu honyine CDL yamubonye[299].

119. Urugereko rwa Mbere rw'Iremezo rwasanze CDL agomba kwizerwa kandi rwakira ubuhamya bwe ku bijyanye n'inama Athanase Seromba yakoranye n'abandi bantu ari nayo yemereyemo icyemezo cyo gusenya kiliziya, no ku bijyanye n'uko Athanase Seromba yeretse abashoferi ba za tingatinga "uruhande rudakomeye" rwa kiliziya[300].

120 Umutangabuhamya CDL yavuze ibi bikurikira:

> "Abashoferi rero bafite ukuntu bakoresha izo tingatinga. Bagerageje gusenya kiliziya baturutse kuri ruriya ruhande, hanyuma babona ko biruhije bahereye aho. Nibwo padiri Athanase Seromba yagiriye inama abashoferi b'izo tingatinga "kujya gutangirira ku ruhande rwa sakiristiya[301]."

Kandi mu buhamya bwe yakomeje kwemeza ibyo:

[296] Urubanza mu rw'iremezo, igika 218.
[297] Imyanzuro y'ubujurire ya Seromba, igika 182.
[298] Ni kimwe no haruguru, ibika183-184.
[299] Ni kimwe no haruguru, ibika 185-186.
[300] Urubanza mu rw'iremezo, igika 239.
[301] Inyandikomvugo y'iburanisha ryo ku wa 19 Mutarama 2005, urup. 28.

"Nkuko nabivuze, yerekanaga ahantu hadakomeye bagombaga gutangirira bica Abatutsi […]. Ntacyakorwaga atabyemeye. Ibyo aribyo byose, ntiyagaragaje ubushake bwo gutabara izo mpunzi[302]."

Athananase Seromba avuga ko "ubwo buhamya butagomba kwizerwa" kuko umutangabuhamya CDL atavuze mu buryo busobanutse ahantu yari [Athanase Seromba] ari atanga iyo nama, kuko bigaragara mu buhamya bwa CDL ko ibiro by'umunyamabanga wa paruwasi ariho hantu honyine yari yabonye Athanase Seromba[303]. CDL yavuze ko yabonye padiri aho hantu akigera ku kiliziya ku itariki ya 15 Mata 1994[304] ndetse na saa moya n'igice ku itariki ya 16 Mata 1994[305] . Ntiyabajijwe gusobanura neza aho Athanase Seromba yari ari mu kigo cya kiliziya ubwo yahaga umushoferi wa tingatinga inama yo gusenya kiliziya, kandi na we ubwe ntiyibwirije gusobanura neza aho Seromba yari ari[306]. Ibyo rero ntibihagije kugira ngo umuntu abe yavuga ko ubuhamya bwa CDL kuri icyo kibazo budakwiye kwizerwa cyangwa ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu kwaira ubwo buhamya kuri icyo kibazo.

d) <u>Umutangabuhamya wiswe CBR</u>

121. Nk'uko bivugwa muri make mu nyandiko y'urubanza rwo mu rw'iremezo, umutangabuhamya wiswe CBR yavuze koyabonye abategetsi bagirana inama na Athanase Seromba ku kiliziya ku itariki ya 16 Mata 1994 kandi ko igitero cyagabwe ku kiliziya cyatangiye nyuma y'iyo nama[307]. CBR yavuze kandi ko Athanase Seromba Atari we wayoboye ibitero, ko ariko abategetsi bagombaga kumureba mbere yo kugira amabwiriza ayo ariyo yose baha abagabaga ibitero[308].

[302] Ni kimwe no haruguru, urup. 29.
[303] Imyanzuro y'ubujurire ya Seromba, igika 186.
[304] Inyandikomvugo y'iburanisha ryo ku wa 19 Mutarama 2005, imp. 18-19(mu muhezo), na 48-49.
[305] Inyandikomvugo y'iburanisha ryo ku wa 19 Mutarama 2005, urup. 26.
[306] Reba inyandikomvugo y'iburanisha ryo ku wa 19 Mutarama 2005, imp. 3-73, 11-19 na 41- 44 (mu muhezo), n'iryo ku wa 20 Mutarama 2005, imp. 2- [65], 13-17 na 26-30 (mu muhezo).
[307] Urubanza mu rw'iremezo, ibika 219 na 240.
[308] Ni kimwe no haruguru, igika 219.

122. Athanase Seromba avuga ko ubuhamya bwa CBR butagaragaza ko yategetse isenywa rya kiliziya cyangwa ko yaganiriye n'umushoferi wa tingatinga ku itariki ya 16 Mata 1994[309]. Kuri we, ntihagaragajwe ku buryo budashidikanywaho ko yaganiriye n'umushoferi wa tingatinga maze akamushishikariza gusenya kiliziya[310].

123. Porokireri yemera koko ko CBR atigeze ahamya ko Athanase Serombna yari ayoboye abicanyi, akavuga ariko ko ibyo bitavuguruza ubuhamya bw'uwo mugabo bwemeje ko ko abategetsi bagombaga kuvugana na Athanase Seromba mbere yo guha abicanyi amabwiriza[311].

124. Ingingo ya Athanase Seromba ivuga ko CBR atigeze ahamya ko ariwe wasenye kiliziya nta shingiro ifite kuko Urugereko rwa Mbere rw'Iremezo rutemeje ko ariwe watanze itegeko ryo gusenya. Ahubwo, urwo rugereko rwemeje ko abategetsi bamumenyesheje icyemezo cyabo cyo gusenya kiliziya kandi ko yacyemeye[312].

125. Na none, ingingo ya Athanase Seromba ivuga ko ubuhamya bwa CBR buterekana ko yaganiriye n'umushoferi wa tingatinga nta shingiro ifite, kuko Urugereko rwa Mbere rw'Iremezo rutashingiye kuri ubwo buhamya mu gufata umwanzuro kuri icyo kibazo. Ahubwo, ku birebana n'ikiganiro hagati ya Athanase Seromba na shoferi wa tingatinga, rwashingiye ku buhamya bwa CBK na CDL[313]. Ku bw'ibyo rero, Athanase Seromba ntagaragaza ikosa iryo ariryo ryose ryaba ryarakozwe n'Urugereko rwa Mbere rw'Iremezo mu kugena agaciro k'ubuhamya bwa CBR cyangwa se mu kubushingiraho.

c) <u>Umutangabuhamya wiswe FE32</u>

[309] Imyanzuro y'ubujurire ya Seromba, igika 192.
[310] Ni kimwe no haruguru, igika 193.
[311] Imyanzuro isubiza ya Porokireri, igika 170.
[312] Urubanza mu rw'iremezo, igika 268
[313] Ni kimwe no haruguru, ibika 236 na 239.

126. Nk'uko bivugwa muri make mu nyandiko y'urubanza rwo mu rw'iremezo, umutangabuhamya ushinjura wiswe FE32, wari umushoferi wa tingatinga yashenye kiliziya, yavuze ko ari "Kayishema" wamutegetse gusenya kiliziya, ko atari Athanase Seromba, kandi ko "Vedaste Murangwabugabo na Anastase Rushema aribo bayoboraga ibikorwa ku itariki ya 16 mata 1994[314]". FE32 yavuze kandi ko Athanase Seromba yagiye kubwira Rushema "ko atishimiye" isenywa rya kiliziya kandi "ko nta cyo yashoboraga kubikoraho[315]".

127. Athanase Seromba anenga umwanzuro w'Urugereko rwa Mbere rw'Iremezo wemeje ko umutangabuhamya ushinjura wiswe FE32 atari uwo kwizerwa[316]. Athanase Seromba avuga ko ukunyuranya hagati y'ubuhamya mu rukiko n'ubwo yatanze mbere yo kwitaba urukiko byatewe n'uko mbere bari bamushyizeho agahato ndetse banamugize igikoresho[317].

128. Kuri iyo mpamvu y'ubujurire, Porokireri asubiza ko Athanase Seromba nta kindi akora uretse gusubiramo ibyo yageragaje kuburanisha mu rubanza ariko bikamubera impfabusa, ko atagaragaza aho Urugereko rwa Mbere rw'Iremezo rwaba rwaribeshye[318].

129. Urugereko rwa Mbere rw'Iremezo rwasanze umutangabuhamya wiswe FE32 atari uwo kwizerwa ku bijyanye n'ibikorwa byabaye ku itariki ya 16 Mata 1994, kubera ko ubuhamya yatanze mbere yo kwitaba urukiko burimo ukwivuguruza, ubwo yatangiye mu rukiko na bwo bukaba burimo ukwivuguruza, n'uko na none ubwo buhamya bwombi buvuguruzanya[319]. Kugira ngo rugere kuri uwo mwanzuro, Urugereko rwa Mbere rw'Iremezo rwabanje gusuzuma ku buryo bunononsoye ingingo Athanase Seromba yatanze muri ako gace k'impamvu y'ubujurire bwe.

[314] Ni kimwe no haruguru, igika 220.
[315] Ni kimwe no haruguru
[316] Imyanzuro y'ubujurire ya Seromba, igika 209.
[317] Ni kimwe no haruguru, ibika 199-208; Inyandikomvugo y'iburanisha mu bujurire ryo kuwa 26 Ugushyingo 2007, urup.[69].
[318] Imyanzuro isubiza ya Porokireri, igika 175.
[319] Urubanza mu rw'iremezo, igika 243.

Urugereko rwa Mbere rw'Iremezo kandi rwasanze FE32 nta gisobanuro na kimwe yatanze ku kwivuguruza gukabije kugaragara mu buhamya bwe[320], noneho rwanzura ruvuga ko Ubwunganizi butagaragaje ukuntu FE32 yatanze ubuhamya bwe bwa mbere yashyizweho agahato[321]. Urugereko rw'Ubujurire rusanze Athanase Seromba mu bujurire bwe, adasobanura ku buryo burambuye ibyo avuga ko FE3e yaba yaratanze ubuhamya bwe bwa mbere ashyizweho agahato, ahubwo avuga ako gahato muri rusange yitsitsa ku "ukuntu abantu bafunzwe muri za gereza zo mu Rwanda, n'umwuka w'iterabwoba uri mu gihugu[322]". Nyamara ariko, ibi ntibihagije kugaragaza ikosa iryo ariryo ryose ryaba riri mu mwanzuro w'Urugereko rwa Mbere rw'Iremezo.

130. Ku bw'ibyo, Urugereko rw'Ubujurire ntirunyuzwe n'ingingo Athanase Seromba atanga anenga Urugereko rwa Mbere rw'Iremezo kuba rwaremeje ko umutangabuhamya wiswe FE32 atari uwo kwizerwa.

3. Umwanzuro

131. Iyo mpamvu y'ubujurire ntiyakiriwe uko yakabaye.

H. Ibyerekeye amakosa yaba yarakozwe mu guhamya uregwa itsembatsemba nk'icyaha cyibasiye inyokomuntu (impamvu y'ubujurire ya 9)

132. Urugereko rwa Mbere rw'Iremezo rwasanze Athanase Seromba "yaravuganye n'abategetsi kandi akemera icyemezo bari bafashe cyo gusenya kiliziya" ya Nyange[323], yarashishikarije umushoferi wa tingatinga gusenya kiliziya kandi yaramweretse "uruhande rudakomeye rwa kiliziya[324]". Kubera iyo myifatire, rwasanze kandi yaragize uruhare rukomeye mu isenywa rya kiliziya ryahitanye

[320] Ni kimwe no haruguru, igika 254.
[321] Ni kimwe no haruguru, igika 255.
[322] Imyanzuro y'ubujurire ya Seromba, igika 208.
[323] Urubanza mu rw'iremezo, igika 364.
[324] Ni kimwe no haruguru

impunzi z'abatutsi 1500[325]. Rushingiye kuri iyo myanzuro, Urugereko rwa Mbere rw'Iremezo rwemeje ko Athanase Seromba ahamwa n'itsembatsemba nk'icyaha cyibasiye inyokomuntu[326], kuko yateye inkunga kandi agashishikariza kugikora. Athanase Seromba ntiyemera uyu mwanzuro w'abacamanza ushingiye ku mategeko[327].

1. <u>Ingingo zerekeye amategeko akurikizwa</u>

133. Mu myanzuro ye, Athanase Seromba asobanura uko yumva amategeko akurikizwa ku byerekeye itsembatsemba nk'icyaha cyibaseye inyokomuntu, hanyuma agasobanura ibyangombwa bigize icyo cyaha, kandi akemeza ko imyumvire ye ijyanye n'ubukemuramanza bwa TPIR na TPIY[328].

134. Porokireri asubiza ko ingingo za Athanase Seromba zisubiramo gusa mu magambo make amategeko akoreshwa, ariko ko ziterekana ikosa mu ma mategeko cyangwa ku byabaye ryatuma icyemezo cyamuhamije icyaha gihinduka[329].

135. Urugereko rw'Ubujurire rusanga Athanase Seromba atagaragaza ikosa iryo ariryo ryose ryashobora gutuma umuntu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoresheje amategeko nabi. Kuri iyi ngingo, ni byiza kwibutsa ko mu bujurire, impande ziburana zigomba gusa kuvuga ku makosa mu mategeko ashobora gutuma icyemezo cy'Urugereko rwa Mbere rw'Iremezo gita agaciro, n'amakosa ku byabaye ashobora gutuma urubanza rucibwa nabi. Izo ngingo zivugwa mu ngingo ya 24 ya Sitati kandi zikoreshwa igihe cyose imbere y'ingereko

[325] Ni kimwe no haruguru, ibika 364-365.
[326] Ni kimwe no haruguru, ibika 364, 366-368 na 371. Athanase Seromba yahamwe kandi n'icyaha cya jenoside kubera ko, hakurikijwe imyitwarire ye, yatanze inkunga kandi agashishikariza kugikora. Reba Urubanza mu rw'iremezo, ibika. 334-335, 337-338 na 342.
[327] Inyandiko y'ubujurire ya Seromba, ibika 38-39; Imyanzuro y'ubujurire ya Seromba, ibika 273-296.
[328] Imyanzuro y'ubujurire ya Seromba ibika 273-291.
[329] Imyanzuro isubiza ya Porokireri, ibika 183 na 188.

z'ubujurire za TPIR na TPIY[330]. Urugereko rw'Ubujurire rurasuzuma ibibazo Athanase Seromba yakomojeho mu gihe gusa bigaragaza ko urubanza rurimo amakosa aya n'aya ashobora gutuma imyanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ita agaciro.

136. Urugereko rw'Ubujurire rusanga by'umwihariko ingingo Athanase Seromba atanga zirebana n'uko yahamwe n'itsembatsemba nk'icyaha cyibasiye inyokomuntu, ariko zidahakana ko ibyangombwa bituma icyo cyaha kibaho bihari nk'uko byemejwe n'Urugereko rwa Mbere rw'Iremezo[331]. Nk'uko byavuzwe haruguru, Athanase Seromba yerekana mu magambo arambuye uko we yumva ibyangombwa bigize ibyaha byibasiye inyokomuntu. Nyamara ariko, ingingo ze ntizivuga ku myanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ijyanye n'ibyangombwa rusange bituma icyaha kibaho, ahubwo zivuga ku myanzuro y'Urugereko rwa Mbere rw'Iremezo ivuga ku ruhare yagize mu cyaha. Urugereko rw'Ubujurire rurasuzuma gusa ikibazo cyo kumenya niba Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa aho rwasanze, nta gushidikanya na gato, Athanase Seromba yarateye inkunga kandi agashishikariza gukora itsembatsemba nk'icyaha cyibasiye inyokomuntu. Kugira ngo rusuzume icyo kibazo, rurita ku ngingo ya Athanase Seromba ivuga ko ibyangombwa bigize icyo cyaha, ari byo igikorwa gifatika n'igitekerezo cyo gukora icyaha, bitagaragajwe ku buryo bukwiye.

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[330] Urubanza rwa Simba mu bujurire, igika 8 ; Urubanza rwa Ndindabahizi mu bujurire, ibika 8-10 ; Urubanza rwa Ntagerura mu bujurire, ibika 11-12 ; Urubanza rwa Gacumbitsi mu bujurire, ibika 6-8 ; Urubanza rwa Kajelijeli mu bujurire, igika 5 ; Urubanza rwa Semanza mu bujurire, ibika 7-8 ; Urubanza rwa Musema mu bujurire, igika 15 ; Urubanza rwa Kayishema mu bujurire, igika 177 ; Urubanza rw'Akayesu mu bujurire, ibika 178-179. Ku byerekeye ubukemuramanza ku birebana n'ingingo ya 25 ya Sitati ya TPIY, reba : Urubanza rwa Blagojevic mu bujurire, igika 6 ; Urubanza rwa Brdanin mu bujurire, igika 8 ; Urubanza rwa Galic mu bujurire, igika 6 ; Urubanza rwa Blagoje Simic mu bujurire, igika 7 ; Urubanza rwa Stakic mu bujurire, igika 7 ; Urubanza rwa Kvocka mu bujurire, igika 14 ; Urubanza rwa Vasiljevic mu bujurire, igika 5 ; Urubanza rwa Kunarac mu bujurire, ibika 35- 48 ; Urubanza rwa Kupreskic mu bujurire, ibika 21- 41 ; Urubanza rwa Celebici mu bujurire, ibika 434-435 ; Urubanza rwa Furundzija mu bujurire, ibika 34-40.

[331] Urugereko rwa Mbere rw'Iremezo rwasanze igitero cyagabwe ku batutsi bo muri Komine ya Kivumu mu kwezi kwa Mata 1994, kikanasenya kiliziya ya Nyange, cyari igitero "rusange", "kiri kuri gahunda" kandi "cyibasiye impunzi z'abasivili b'abatutsi bari bahungiye kuri kiliziya ya Nyange, kubera impamvu z'ivangura" (Urubanza mu rw'iremezo, igika 369).

2. <u>Ibyerekeye amakosa yaba yarakozwe ku birebana n'igikorwa gifatika hamwe n'igitekerezo cyo gukora icyaha bigize itsembatsemba nk'icyaha cyibasiye inyokomuntu</u>

a) <u>Igikorwa gifatika</u>

137. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu kwemeza ko imyifatire ye igaraza ko hari ibikowa bifatika yakoze bihagije kugaragaza uruhare rwe mu cyaha cy'itsembatsemba, kivugwa mu ngingo ya 3 ya Sitati[332]. Agaruka ku ngingo yatanze mbere ku bijyanye n'amakosa Urugereko rwa Mbere rw'Iremezo rwakoze mu gufata umwanzuro wo kumuhamya icyo cyaha. By'umwihariko, avuga ko atigeze yemera itegeko rijyanye no gusenya kiliziya ya Nyange[333], ko atanigeze amenya ko iryo tegeko ryatanzwe[334]. Avuga kandi ko atashishikarije umushoferi wa tingatinga gusenya kiliziya, agashimangira ko atigeze anamuvugisha mbere ye gusenya kiliziya[335].

138. Prokireri asubiza ko muri iyo mpamvu y'ubujurire, Athanase Seromba asubiramo gusa ingingo yari yatanze mbere arwanya imyanzuro y'Urugereko rwa Mbere rw'Iremezo, atagaragaza ariko ikosa ryo mu rwego rw'amategeko urwo Rugereko rwakoze[336].

139. Urugereko rw'ubujurire ruributsa ko igikorwa gifatika cyo gufasha no gushishikariza itsembatsemba nk'icyaha cyibasiye inyokomuntu kigaragazwa n'ibikorwa bigamije by'umwihariko gutera inkunga, gushishikaza cyangwa se

[332] Imyanzuro y'ubujurire ya Seromba, ibika 292-294 (bifashishije Urubanza m rw'iremezo, ibika 364-365
[333] Urugereko rw'ubujurire rusanga hari ikosa rikurikira mu nyandiko yahinduwe mu Cyongereza, igika 294, Imyanzuro y'ubujurire ya Seromba : agace k'interuro « … Ujurira ntiyigeze na rimwe ahabwa itegeko n'umuntu uwo ari we wese ku bijyanye no gusenya kiliziya… » bitadukanye n'inyandiko y'umwimerere y'icyo gika mu Gifaransa (« Ujurira <u>ntiyigeze yemera itegeko</u> ry'uwo ari we wese…. »), ndetse n'inyandiko y'urubanza mu rw'iremezo mu cyongereza aho igika cya 364 gisomwa ku buryo bukurikira : « …anemera icyemezo bafashe cyo gusenya kiliziya… ». (Mu nyandiko z'umwimerere ntibiciyeho umurongo).
[334] Imyanzuro y'ubujurire ya Seromba, igika 294. Reba isuzuma ry'izo ngingo mu mutwe wahariwe impamvu ya 7 y'ubujurire, haruguru.
[335] Ni kimwe no haruguru.
[336] Imyanzuro isubiza ya Porokireri, ibika 187-188.

gutera akanyabugabo hagamijwe gukora icyo cyaha, mu gihe iyo nkunga yabaye ngombwa kugirango icyo cyaha gikorwe[337]. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwasanze Athanase Seromba yari yabonanye n'abategetsi maze akemera icyemezo abo bategetsi bari bafashe cyo gusenya kiliziya[338]. Rwasanze kandi yarashishikarije umushoferi wa tingantinga gusenya kiliziya akanamwereka "uruhande rworoshye rwa kiliziya"[339]. Mu gushyigikira iyo mpamvu ye y'ubujurire, Athanase Seromba asaba ko harebwa ingingo yatanze mbere anenga iyo myanzuro y'Urugereko[340]. Urugereko rw'ubujurire ruributsa ko rwasanze Urugereko rwa Mbere rw'Iremzo rwarashyize mu gaciro rushingira ku buhamya bwa CBJ, CBK, CDL na CBR[341] kandi ko rutanakoze ikosa rwanga ubuhamya bwa FE55 igihe rwafataga imyanzuro inengwa[342]. Urugereko rw'ubujurire rwamaze kugaragza ko ibyo Atahanse Seromba avuga kuri iyo myanzuro bidafite ishingiro[343].

140. Umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko imyitwarire ya Athanase Seromba yateye inkunga kandi igashishikariza itsembatsemba unengwa kandi na Porokireri. Ku bw'ibyo, birakwiye ko uwo mwanzuro usuzumwa mu gihe Urugereko ruraba rusuzuma ubujurire bwa Porokireri. Muri make, kubera ko Porokireri ari bwemererwe ibyo asaba kuri iyo ngingo, ingingo za Athanase Seromba nta cyo ziri butange. Bityo rero, Urugereko rw'Ubujurire ntirwakiriye icyo gice cy'impamvu y'ubujurire.

b) Igitekerezo cyo gukora icyaha

[337] Urubanza rwa Ntakirutimana mu bujurire, igika 530.
[338] Urubanza mu rw'iremezo, igika 364. Urugereko rw'ubujurire rwasanze Urugereko rwa Mbere rw'Iremezo rwarakoresheje amagambo akurikira ku buryo bumwe: « yashyigikiye », « yemeza » na « yemeye » mu kugaragaza imyitwarire y'Athanase Seromba. Reba Urubanza mu rw'iremezo, ibika 239, 268, 334, 364, 367, na 382.
[339] Urubanza mu rw'iremezo, igika 634. Urugereko rw'Ubujurire rusanga mu nyandiko y'urubanza mu gifaransa havugwa "kwereka" naho mu cyonereza hakavugwa "guha inama". "Seromba yahaye inama umushoferi wa tingatinga ku bijyanye n'uruhande rworoshye rwa kiliziya" (Mu nyandiko y'umwimerere ntibiciyeho umurongo). Reba kandi urubanza mu rw'iremezo, igika 294.
[340] Imyanzuro y'ubujurire ya Seromba, igika 294.
[341] Reba impamvu ya 7 y'ubujurire, haruguru.
[342] Kimwe no haruguru.
[343] Kimwe no haruguru.

141. Urugereko rw'Ubujurire rusanga mu bujurire bwe, Porokireri ashingira ku myanzuro Urugereko rwa Mbere rw'Iremezo rwafashe rwemeza ko Athanase Seromba yari afite igitekerezo cyo gukora itsembatsemba kubera ibikorwa bye byo gushishikaza no gutera inkunga. Urugereko rw' Ubujurire rero rurasuzuma ibyo Athanase Seromba avuga mu kunenga iyo myanzuro.

142. Athanase Seromba avuga ko kuba Urugereko rwa Mbere rw'Iremezo rwaremeje ko bidashidikanywaho ko yari afite igitekerezo cyo gukora itsembatsemba kubera ibikorwa bye byo gutera inkunga no gushishikaza, binyuranye "n'ibyo abatangabuhamya biswe PA1 na FE32 bavuze, kandi bikaba binanyuranye n'uko ibintu byagenze[344]". Anabona kandi ikosa mu rwego rw'amategeko mu kuba Urugereko rwa Mbere rw'Iremezo rwaramuhamije icyaha cyibasiye inyokomuntu kandi ari nta na rimwe yigeze atekereza cyangwa se ngo yemere " umugambi wo gusenya kiliziya[345]".

143. Porokireri asubiza ko Athanase Seromba asubira mo gusa ingingo yari yatanze ku bijyanye n'amakosa ku byabaye zavuzwe kandi zigasuzumwa, ariko ntagaragazae ikosa na rimwe mu rwego rw'amategeko ryatuma icyemezo gitakaza agaciro[346].

144. Urugereko rw'Ubujurire rwamaze kwemeza ko Urugereko rwa Mbere rw'Iremezo nta kosa rwakoze igihe rwemezaga ko Umutangabuhamya FE32 atari uwo kwizerwa[347], bityo rero ntirubona ikosa mu myanzuro y'abacamanza ba mbere yo kutemera ubwo buhamya no mu kwemeza ko Athanase Seromba yari afite igitekerezo cyo gukora itsembatsemba nk'icyaha cyibasiye inyokomuntu kubera ibikorwa bye byo gutera inkunga no gushishikaza.

[344] Imyanzuro y'ubujurire ya Seromba, ibika 295-296 (bifashishije urubanza mu rw'iremezo, ibika 367-368)
[345] Kimwe no haruguru, igika 296
[346] Imyanzuro isubiza ya Porokireri, ibika 187-188
[347] Reba impamvu y'ubujurire ya karindwi, haruguru.

145. Ku byerekeye Umutangabuhamya wiswe PA1, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarasanze adakwiriye kwizerwa bitewe no kwivuguruza kenshi biboneka hagati y'ubuhamya bwe mu rukiko n'ubuhamya yatanze mbere ku birebana n'ibyabaye ku itariki ya 13 Mata 1994[348]. Ariko kandi, no mu myanzuro ye y'ubujurire, Athanase Seromba ntanenga uwo mwanzuro wemeje ko umutangabuhamya PA1 atari uwo kwizerwa. Bityo rero, Urugereko rw'Ubujurire rusanga Athanase Seromba ataragaragaje aho Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze ikosa mu kutita ku buhamya bwa PA1 mu gusuzuma niba yari afite igitekerezo cyo gukora itsembatsemba nk'icyaha cyibasiye inyokomuntu kubera ibikorwa bye byo gutera inkunga no gushishikaza.

146. Naho ku birebana no kumenya niba Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa rwanzura ko Athanase Seromba yagize igitekerezo cyo gusenya kiliziya ya Nyange, Urugereko rw'Ubujurire ruributsa ko igitekerezo cya ngombwa (*mens rea*) cyo gufasaha no gushishikariza gukora icyaha cy'itsembatsemba kigizwe no kuba uwatanze inkunga mu ikorwa ry'icyo cyaha yari azi neza ko inkunga ye ifasha ba gatozi kugikora.[349]. Urugereko rwa Mbere rw'Iremezo rwakurikije iryo hame neza. Mbere na mbere, rwasanze Athanase Seromba atari kuyoberwa ko amagambo ye yari gutuma abayobozi ba komini n'uwari utwaye tingatinga bumva ko ibikorwa byabo binyuze mu kuri[350]. Hanyuma rwemeje ko Athanase Seromba yari azi neza ko gushyigikira icyemezo cyari cyafashwe n'abategetsi cyo gusenya kiliziya, ndetse n'amagamabo ashishikaza umushoferi wa tingatinga byari kuba intandaro ikomeye y'isenywa rya kiliziya n'iyicwa ry'impunzi nyinshi zari zayihungiyemo[351].

147. Iyo myanzuro yo mu rwego rw'amategeko yafashwe n'Urugereko rwa Mbere rw'Iremezo ijyanye kandi ishingiye ku myanzuro ku bikorwa rwafashwe,

[348] Inyandiko y'urubanza mu rw'iremezo, ibika 262-264.
[349] Urubanza mu bujurire Ntakirutimana, igika 530.
[350] Urubanza mu rw'iremezo, igika 367
[351] Kimwe no haruguru

Urugereko rw'Ubujurire rukaba rwamaze kwemeza ko ishyize mu gaciro[352]. Ni ukuvuga rero ko n'ubwo atari we watanze itegeko ryo gusenya kiliziya,[353] Athanse Seromba yemeye icyemezo cyafashwe n'abategetsi cyo kuyisenya[354], maze abishishikariza umushoferi wa tigantinga[355]. Urugereko rw'Ubujurire rusanga kandi ibyo Seromba yireguza avuga ko atari yemeye umugamabi wo gusenya kiliziya "ye", "ka ndi ari yo yari ishingiro ry'akazi ke"[356], bidashobora kuvuguruza iriya myanzuro. Amagambo Athanase Seromba yabwiye umushoferi wa tingatinga, avuga ko hazubakwa kiliziya nshya[357], agaragaza ko atari ababajwe n'isenywa ry'iyo nzu. Kubera iyo mpavu, Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko Athanase Seromba yijeje umushoferi wa tingatinga ko abahutu bari kuzubaka kiliziya nshya[358].

148. Na none kandi, ku birebana n'ibyo Seromba avuga, atanatangiye ibisobanuro birambuye, ko imyanzuro ku byabaye y'Urugereko rwa Mbere rw'Iremezo "inyuranyije[...] n'ukuntu ibintu byari bimeze"[359] kandi ikaba yaratumye hafatwa imyanzuro ifutamye mu rwego rw'amategeko, Urugereko rw'Ubujurire rusanga nta bimenyetso yabitangiye. Ikindi kandi, Urugereko rw'Ubujurire rusanze ibyo Athanase Seromba avuga ko imyanzuro yo mu rwego rw'amategeko yafashwe n'Urugereko rwa mbere rw'iremezo ifutamye, nta shingiro bifite, kubera ko Urugereko rw'Ubujurire rwamaze kwemeza ko imyanzuro ku byabaye Urugereko rwa Mbere rw'Iremezo rwashingiyeho rufata imyanzuro yo mu rwego rw'amategeko, ishyize mu gaciro, kandi ko urwo Rugereko nta kosa rwakoze mu gukoresha ihame ryo mu rwego rw'amategeko rishingirwaho mu gusuzuma niba uregwa yari afite igitekerezo cya ngombwa cyo gukora icyaha, rushingiye ku myanzuro rwari rwafashe ku byabaye.

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[352] Reba ingingo ya 7 y'ubujurire
[353] Urubanza mu rw'iremezo, igika 267
[354] Kimwe no haruguru , igika 268
[355] Kimwe no haruguru, igika 269
[356] Imyanzuro y'ubujurire ya Seromba, igika 296
[357] Reba urubanza mu rw'iremzo, igika 213, kivuga ubuhamya mu rukiko bw'umutangabuhamya wiswe CBK, inyandiko mvugo z'iburanisha, 19 Ukwakira 2004, imp. 28 na 29, n'iza 20 Ukwakira 2004, imp. 17 na 19 (umuhezo). Reba n'Urubanza mu rw'iremezo,igika 236.
[358] Urubanza mu rw'iremezo, igika 168
[359] Imyanzuro y'ubujurire ya Seromba, igika 296

149. Icya nyuma, Urugereko rw'Ubujurire ntirwemera ibyo Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amategeko ubwo rwamuhamyaga icyaha cy'itsembatsemba nk'icyaha kibasiye inyokomuntu kubera ko ngo atigeze ategura umugambi wo gusenya kiliziya cyangwa se ngo awushyigikire. Nk'uko Urugereko rw'Ubujurire rwabyemeye mu zindi manza, n'ubwo kuba hariho umugambi cyaba ikintu cyashingirwaho nk'ikimenyetso, nta bwo ari ingingo imwe yihariye yo mu rwego rw'amategeko mu zigize icyaha kibasiye inyokomuntu ; kandi, by'umwihariko, si ngombwa kugaragaza ko habayeho umugambi kugira ngo umuntu abe yahamwa n'icyaha cy'itsembatsemba.[360]

150 Kubera izo mpamvu rero, Urugereko rw'Ubujurire rusanze Athanase Seromba atarashoboye kwerekana ko hari ikosa Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze ubwo rwasuzumaga ibiteganywa n'amategeko ku birebana n'imitekerereze y'uwakoze icyaha maze rukemeza ko yari afite igitekerezo cyo gukora icyaha cyo gufasha no gushishikaza abakoraga itsembatsemba nk'icyaha kibasiye inyokomuntu. Bityo rero, iki gice cy'iyo mpamvu y'ubujurire nticyakiriwe. Ikibazo cyo kumenya niba hari ikosa Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze ubwo rwemezaga ko Athanase Seromba yari afite igitekerezo cyo gukora icyaha kubera gusa ko yari azi ibigiye gukorwa, kiri buvugweho ku buryo burambuye mu gihe cyo gusuzuma ubujurire bwa Porokireri.

3. Umwanzuro w'Urugereko rw'Ubujurire

151. Kubera izo mpamvu zivuzwe haruguru, iyi mpamvu y'ubujurire ntiyakiriwe yose uko yakabaye. Urugereko rw'Ubujurire ruri bugaruke ku buryozwacyaha bwa Athanase Seromba ku birebana n'icyaha cy'itsembatsemba nk'icyaha kibasiye

[360] Reba kandi Urubanza rwa Gacumbitsi mu bujurire, igika cya 84. Reba na none Urubanza rwa Semanza mu bujurire, igika cya 269 ; Urubanza rwa Kunarac na bagenzi be mu bujurire, igika cya 98 ; Urubanza rwa Krstić mu bujurire, igika cya 225 ; Urubanza rwa Blaškić mu bujurire, igika cya 120.

inyokomuntu kivugwa mu kirego cya kane cyo mu Nyandiko y'ibirego, ubwo ruza gusuzuma impamvu ya mbere y'ubujurire bwa Porokireri.

IV. UBUJURIRE BWA POROKIRERI

A. Amakosa avugwa ku birebana no gukora, gutegeka no gucura umugambi wa jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu (impamvu y'ubujurire ya mbere)

152. Athanase Seromba yahamijwe icyaha cya jenoside n'icy'itsembatsemba nk'icyaha cyibasiye inyokomuntu kubera ko yateye inkunga akanashishikaza abakoze ibyo byaha[361]. Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko

[361] Urubanza mu rw'iremezo, ibika 314-342 na 352-371. Urugereko rw'Ubujurire rusanga ibyanditse mu gika cya 371 cy'inyandiko y'urubanza iri mu rurimi rw'icyongereza ahavugwa ngo– « … *Athanase Seromba committed a crime against humanity (itsembatsemba*)… » (ntibishimangiwe mu nyandiko

Athanase Seromba aryozwa ibyo byaha kubera gusa ko yateye inkunga kandi agashishikaza ababikoze [362] . Urugereko rwatanze igitekerezo cyarwo mu magambo akurikira:

> « … Porokireri ntiyagaragaje, ku buryo budashidikanywaho ko Seromba yacuze umugambi cyangwa agakora ubwicanyi bwibasiye impunzi z'abatutsi. Ku byerekeye guhamagarira abantu cyangwa kubategeka gukora icyaha, Porokireri ntiyagaragaje ko Athanase Seromba yari afite umugambi wo gukora jenoside, ni ukuvuga igitekerezo cyihariye kandi cya ngombwa kugira ngo ahamwe uburyo bwombi bw'ubufatanyacyaha. By'umwihariko, ku byerekeye gutegeka abantu gukora icyaha, Urugereko rusanga Porokireri ataragaragaje ko Athanase Seromba, Uregwa, yagenzuraga nyabyo ba gatozi b'ibyo byaha[363]. »

Kubera iyo mpamvu, Urugereko rwa Mbere rw'Iremezo ntirwahamije Athanase Seromba icyaha cyo gukora, gutegeka cyangwa gucura umugambi wa jenoside cyangwa itsembatsemba nk'icyaha cyibasiye inyokomuntu. Ibyo ni byo Porokireri anenga muri iyi mpamvu y'ubujurire.[364]

153. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa ku byerekeye amategeko n'ibyabaye kubera ko rwemeje ko n'ubwo yagize uruhare mu bwicanyi bwakorewe kuri Paruwasi ya Nyange ku itariki ya 6 n'iya 20 Mata 1994, Athanase Seromba ntiyakoze cyangwa ngo ategeke abandi bantu gukora icyaha cya jenoside n'icy'itsembatsemba nk'icyaha cyibasiye inyokomuntu, cyangwa ngo acure umugambi wo gukora ibyo byaha[365].

154. Urugereko rw'Ubujurire rugiye gusuzuma buri gice muri ibi uko ari bitatu bigize iyi mpamvu y'ubujurire bwatanzwe ku myanzuro ishingiye ku mategeko Urugereko rwa Mbere rw'Iremezo rwafashe ku byerekeye uburyo bw'uburyozwacyaha Athanase Seromba yagizweho umwere. Ikibazo kirebana

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y'umwimerere) [Athanase Seromba yakoze icyaha cyibasiye inyokomuntu (itsembatsemba)] – ari ikosa ryaturutse ku isemura. Mu nyandiko y'urubanza y'umwimerere iri mu gifararansa, icyo gika kivuga uburyozwacyaha bwa Athanase Seromba ku cyaha cy'itsembatsemba nk' icyaha cyibasiye inyokomuntu, ariko ntigisobanura uburyo bw'imikorere y'icyo cyaha– « … Urugereko rusanga haragaragajwe ku buryo budashidikanywaho ko Uregwa, ari we Athanase Seromba, yakoze icyaha cy'itsembatsemba nk'icyaha cyibasiye inyokomuntu… »).

[362] Urubanza mu rw'iremezo, igika 311.

[363] Ni kimwe no haruguru, igika 312 (ibisobanuro ntibyongewemo).

[364] Inyandiko y'ubujurire ya Porokireri, ibika 1- 8 ; Imyanzuro y'ubujurire ya Porokireri, ibika 17-74.

[365] Imyanzuro y'ubujurire ya Porokireri, igika 17 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, urup. 5.

n'igihano cyatanzwe cyijyanye n'izi ngingo kirigwa mu isuzuma ry'impamvu y'ubujurire ya gatatu ya Porokireri.

1. Amakosa avugwa ku birebana n'ikorwa rya jenoside

155 Muri uru rubanza Urugereko rwa Mbere rw'Iremezo rwatanze igisobanuro gikurikira ku byerekeye gukora, nk'uburyo bw'ubufatanyacyaha:

> « […] « gukora » bivuga ko uregwa ubwe yitabiriye ikorwa ry'icyaha ku buryo butaziguye, cyangwa akirengagiza, bihanirwa, gukora igikorwa gisabwa hashingiwe ku mategeko ahana ibyaha [366]. »

Rwanzuye ruvuga ko Porokireri atagaragaje ku buryo budashidikanywaho ko Athanase Seromba yakoze ubwicanyi bwibasiye impunzi z'abatutsi[367].

156 Porokireri avuga ko uburyo Urugereko rwa Mbere rw'Iremezo bwafashe inshoza yo gukora ku buryo butaziguye ibikorwa bifatika bigize icyaha cya jenoside, butazirikana ko Athanase Seromba yakoze ibyo bikorwa yifashishije abandi bantu, ari byo bivuga ko yitabiriye, ku buryo butaziguye, ikorwa ry'icyo cyaha, bityo akaba « yaragikoze » nk'uko biteganywa n'ingingo ya 6.1 ya Sitati [368]. Porokireri avuga imyanzuro Urugereko rwa Mbere rw'Iremezo rwafashe kuri iyi ngingo itajyanye n'ubukemuramanza buherutse gushyirwaho n'Urugereko rw'Ubujurire rwemeje ko gukora icyaha cya jenoside bitavuga kwica umuntu gusa, ko ahubwo bivuga n'ibindi bikorwa nko kuba uregwa yari ahari ibintu biba, kugenzura no kuyobora ubwicanyi, no gushyira abatutsi ukwabo kugira ngo bicwe[369].

157. Porokireri avuga imyanzuro imwe yafashwe ku byabaye iri mu nyandiko y'urubanza mu rw'iremezo, yagombye kuba yarumvishije Urugereko rwa Mbere rw'Iremezo ko Athanase Seromba yagize uruhare rutaziguye mu itsotsobwa

[366] Urubanza mu rw'iremezo, igika 302.
[367] Ni kimwe no haruguru, igika 312.
[368] Imyanzuro y'ubujurire ya Porokireri, igika 30.
[369] Ni kimwe no haruguru, ibika 31-40 (hasubirwamo ibivugwa mu rubanza rwa *Gacumbitsi* mu bujurire, ibika 59-61) ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 9, 10.

ry'ibikorwa byihariye bigize icyaha cya jenoside[370], ndetse igatuma rwumva ko yari afite igitekerezo cyihariye cyo kurimbura itsinda ry'abatutsi abaziza icyo bari cyo[371]. Mu myanzuro y'Urugereko rwa Mbere rw'Iremezo Porokireri avuga, harimo iyerekeye kuba ubwicanyi bwarakozwe Athanase Seromba ahari [372], amabwiriza yahaye abajandarume yo kubuza impunzi z'abatutsi gutema ibitoki mu rutoki rwa paruwasi[373], n'amabwiriza yatanze yo guhagarika ubwicanyi, bugasubukurwa imirambo imaze kuvanwaho[374], kwemera icyemezo abategetsi bafashe cyo gusenya kiliziya hakoreshejwe tingatinga, kuyobora no kugenzura isenywa ry'iyo kiliziya[375], ubutegetsi yari afite muri paruwasi[376] n'icyemezo yafashe cyo kwirukana kuri paruwasi abakozi n'impunzi z'abatutsi, babiri muri bo bakaza kwicwa[377].

158. Porokireri avuga ko ufashe uburyo ibintu Athanase Seromba yagizemo uruhare byari biteye, ukabihuza n'ibikorwa n'amagambo bye, Urugereko rwa Mbere rw'Iremezo rwagombaga kwanzura ruvuga ko yari afite igitekerezo cyihariye kandi cya ngombwa cyo gukora icyaha cya jenoside[378]. Kuri iyi ngingo, Porokireri ashimangira ko, mu myanzuro yabo, abacamanza bo mu rw'iremezo basanze Athanase Seromba yaranze gusomera misa impunzi z'abatutsi [379], akazirukana ku kiliziya, kandi Meriam akicwa[380].

159. Athanase Seromba asubiza ko Porokireri yumva nabi imyanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ku ruhare yagize mu ikorwa ry'icyaha cya jenoside[381]. Avuga ko nta mugambi mubi yari afite mu byo yakoze ndetse ko

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[370] Imyanzuro y'ubujurire ya Porokireri, igika 42 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 9, 10.
[371] Imyanzuro y'ubujurire ya Porokireri, igika 45 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 7- 9.
[372] Imyanzuro y'ubujurire ya Porokireri, igika 42, agace. *a*.
[373] Ni kimwe no haruguru, agace *b*.
[374] Ni kimwe no haruguru
[375] Imyanzuro y'ubujurire ya Porokireri, igika 42, uduce *e* na *f*.
[376] Ni kimwe no haruguru, agace. *c*.
[377] Ni kimwe no haruguru, agace *d*.
[378] Ni kimwe no haruguru, ibika 27-29.
[379] Ni kimwe no haruguru, igika 45, agace *b*.
[380] Ni kimwe no haruguru, agace c.
[381] Imyanzuro isubiza ya Seromba, igika 49.

ibikorwa bye bitari jenoside[382]. Avuga kandi ko Porokireri agerageza guha inshoza « gukora icyaha » igisobanuro cyaguye, yifashishije mu buryo butari bwo ibivugwa mu rubanza rwa *Tadić* n'urwa *Gacumbitsi* mu bujurire[383]. By'umwihariko, avuga ko ibyemejwe mu rubanza rwa *Gacumbitsi* mu bujurire bidashobora kugenderwaho muri uru rubanza, kubera ko nta cyaha na kimwe yakoze[384].

160. Athanase Seromba arwanya kandi uburyo Porokireri asobanura ibintu bimwe byabaye ashingiraho mu bujurire bwe[385] maze agasanga Porokireri nta shingiro afite mu kuvuga ko yari afite igitekerezo cyo gukora jenoside kandi ko yakoze ibikorwa bigize icyaha cya jenoside[386].

161. Urugereko rw'Ubujurire ruributsa ibikurikira :

> Nyamara, ku byerekeye jenoside, inshoza yo « gukora icyaha mu buryo butaziguye kandi bufatika » ntihagararira, byanze bikunze, ku gikorwa ubwacyo cyo kwica; hashobora kuba ibindi bikorwa byo kwitabira, mu buryo butaziguye, itsotsoba ry'igikorwa gifatika kigize icyaha[387].

Ubukemuramanza rero burumvikana : « gukora » icyaha ntibivuga gusa gukora igikorwa kitaziguye kandi gifatika, kuko hashobora kuba ibindi bikorwa byo kwitabira, mu buryo butaziguye, itsotsobwa ry'ikorwa cyihariye kigize icyo cyaha[388]. Kumenya niba urewa ari gatozi, nko mu bwicanyi, si cyo kibazo cyonyine cy'ingenzi kigenderwaho mu isuzuma rikorwa kuri iyi ngingo[389]. Kubera iyo mpamvu, abacamanza bose bagize Urugereko rw'Ubujurire, uretse umucamanza Liu utemeranya nabo, banzura bavuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemeza ko «gukora » bivuga gusa gukora icyaha mu

[382] Ni kimwe no haruguru, ibika 47-49.
[383] Ni kimwe no haruguru, ibika 54-58 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 23, 24.
[384] Imyanzuro isubiza ya Seromba, igika 60.
[385] Ni kimwe no haruguru, igika 64.
[386] Ni kimwe no haruguru, igika 67.
[387] Urubanza rwa Gacumbitsi mu bujurire, igika 60.
[388] Reba Urubanza rwa Gacumbitsi mu bujurire, igika 60, n' Urubanza rwa Ndindabahizi mu bujurire, igika 123.
[389] « Gukora » icyaha ntibihagararira ku kugitsotsoba. Reba na none, R. Richardson, dir., *Archbold: Criminal Pleading, Evidence and Practice 2007*, Sweet & Maxwell, Londres, 2006, §18-7 ; *Bundesgerichtshof* [BGH] [*Cour fédérale de justice* (Allemagne)], 26 Nyakanga 1994, *Entscheidungen des Bundesgerichtshofs in Strafsachen* [BGHSt] 40, urup. 218 (236).

buryo butaziguye kandi bufatika. Kugira ngo iryo kosa rikosorwe, Urugereko rw'Ubujurire rurifashisha ikigenderwaho gikwiye maze rwibaze niba ibikorwa bya Athanase Seromba « byari bigize icyaha cya jenoside kimwe n'ubwicanyi ibyo bikorwa byateje[390] ». Muri iryo suzuma, Urugereko rw'Ubujurire rurareba niba, nk'uko Porokireri abivuga mu bujurire bwe, imyanzuro yagezweho n'Urugereko rwa Mbere rw'Iremezo n'ibimenyetso byashyizwe muri dosiye mu rw'iremezo, byatuma hafatwa umwanzuro uvuga ko Athanase Seromba yabaye gatozi w'icyaha kubera ko yemeye kandi agashyigikira icyemezo cyo gukora ubwicanyi buvugwa, bityo rurebe niba agomba guhamwa n'icyaha cyo gukora jenoside nka gatozi[391].

162. Urugereko rw'Ubujurire rusanga amategeko agomba gukoreshwa ku myanzuro y'Urugereko rwa Mbere rw'Iremezo, ishyizwe hamwe. Niyo mpamvu, ruri butafe icyemezo ku buryo bukwiye bwo gukora icyaha buteganywa n'ingingo ya 6.1 ya Sitati. Ni biba bidasobanutse neza, rushobora, nk'uko biteganywa n'ingingo ya 109 n'iya 118 A) z'Amategeko, kwifashisha ibikubiye muri dosiye y'Ubujurire.

163. Mu ikubitiro, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarahamije Athanase Seromba icyaha cya jenoside kuko yateye inkunga kandi agashishikaza abakoze ubwicanyi bwibasiye impunzi z'abatutsi. Urugereko rwa Mbere rw'Iremezo rwafashe icyo cyemezo rushingiye ku bikorwa bibiri bitandukanye ari byo: kwica impunzi z'abatutsi hakoreshejwe gusenya kiliziya ya Nyange, n'iyicwa ry'abantu bagize itsinda ry'abatutsi kubera kwirukana abakozi n'impunzi, barimo Patrice na Meriam. Urugereko rw'Ubujurire rurasuzuma ibyo Porokireri anenga kuri ibi byemezo bitandukanye byo guhamya Uregwa ibyaha.

[390] Urubanza rwa Gacumbitsi mu bujurire, igika 60.
[391] Reba Urubanza rwa *Blagojević* mu bujurire, igika 8, Urubanza rwa *Blagoje Simić* mu bujurire, igika 9, n'Urubanza rwa *Naletilić* mu bujurire, igika 10. Urugereko rw'Ubujurire ruributsa kandi ibiteganywa n'ingingo ya 118 A) y'Amategeko : « Urugereko rw'Ubujurire ruca urubanza rushingiye kuri dosiye y'urubanza mu bujurire, byaba ngombwa rukanashingira ku bimenyetso bishya rwashyikirijwe. » Rwibutsa kandi ibiteganywa n'ingingo ya 109 A) y'Amategeko : « Dosiye y'ubujurire igizwe na dosiye yo mu rw'iremezo, nk'uko yemejwe na Gerefiye. »

i) Guhamya Uregwa icyaha kubera ko yateye inkunga agashishikariza abantu gukora jenoside hakoreshejwe gusenya kiliziya

164. Ibitero byongeye kugabwa ku mpunzi z'abatutsi zari kuri Paruwasi ya Nyange mu gitondo ku itariki ya 16 Mata 1994, bitangizwa na Burugumesitiri wazirasheho[392]. Bamaze kubona ko badashobora gusenya kiliziya hakoreshejwe amasasu n'amagerenade, Kayishema, Ndahimana, Kanyarukiga, Habarugira n'abandi bantu bafashe icyemezo cyo gukoresha za tingatina[393]. Bavuganye na Athanase Seromba ngo bamusobanurire ko nta buryo buhagije bafite bwo gusenya kiliziya kugira ngo bagere ku mpunzi maze bamubwira ko hashobora gukoreshwa za tingatinga[394]. Athanase Seromba yarabashubije ati : «Niba nta bundi buryo mufite, muzane izo tingatinga musenye kiliziya[395]. »

165. Abategetsi rero batumije umushoferi wa tingatinga, ari we mutangabuhamya wiswe FE32, maze bamutegeka gusenya kiliziya[396]. Cyakora uyu mushoferi ntiyahise yubahiriza iryo tegeko kuko yarebye Athanase Seromba ngo amusabe amabwiriza[397]. Yamubajije inshuro eshatu niba agomba gusenya kiliziya, kandi kuri buri nshuro padiri yamubwiye kubikora, yongeraho ko «mu nzu y'Imana hajemo amashitani[398] » kandi ko «kiliziya igomba gusenywa iyo yajemo amashitani[399] ». Athanase Seromba yaneretse umushoferi wa tingatinga uruhande agomba gutangiriraho asenya kiliziya[400].

[392] Urubanza mu rw'iremezo, igika 238 ; Inyandikomvuzo z'amaburanisha, 19 Mutarama 2005, imp. 26, 69 (Umutangabuhamya wiswe CDL), na 20 Mutarama 2005, urup. 4 (Umutangabuhamya wiswe CDL).
[393] Urubanza mu rw'iremezo, ibika 217, 239.
[394] Inyandikomvugo y'iburanisha, 19 Mutarama 2005, imp. 26, 27 na 68 (Umutangabuhamya wiswe CDL).
[395] Urubanza mu rw'iremezo, ibika 217, 239.
[396] Umutangabuhamya wiswe CDL, Urugereko rwa Mbere rw'Iremezo rwasanze yakwizerwa, yabivuze muri aya magambo : «Burugumesitiri amaze kuganira na Padiri Seromba, amaze kubyemera nta gihe kinini cyashize, kubera ko Kayishema n'abandi bantu bari bagiye kuzana za tingatinga. Hashize umwanya muto, za tingatinga zageze ku kiliziya. » (inyandikomvugo y'iburanisha, 19 Mutarama 2005, urup. 27).
[397] Urubanza mu rw'iremezo, igika 269.
[398] Ni kimwe no haruguru, igika 213 (havugwa ibiri mu nyandikomvugo y'iburanisha, 19 Ukwakira 2004, imp. 28, 29 (mu muhezo) (umutangabuhamya wiswe CBK)).
[399] Ni kimwe no haruguru (havugwa ibiri mu nyandikomvugo y'iburanisha, 20 Ukwakira 2004, urup. 19 (mu muhezo) (umutangabuhamya wiswe CBK)).
[400] Urubanza mu rw'iremezo, igika 269. Urugereko rw'Ubujurire rwarangije gusuzuma kandi rwanga kwakira ibyoAthanase Seromba avuga ko atashoboraga kumenya « uruhande » rwa kiliziya « rworoshye gusenya ». Reba hejuru isuzuma n'imyanzuro ku ngingo ya munani y'ubujurire bwa Athanase Seromba.

166. Igika cya 213 cy'inyandiko y'urubanza mu rw'iremezo, gisubiramo, mu buryo bukurikira, ibice by'ingenzi by'ubuhamya umugabo wiswe CBK yatanze mu Rukiko:

> [Umushoferi wa tingatinga] yabajije Padiri Seromba inshuro eshatu ati : «Ese tugomba gusenya kiliziya ? » Nuko aramusubiza ati : « Musenye kiliziya. Twebwe abahutu turi benshi bihagije, byongeye kandi inzu y'Imana yajemo amashitani … twebwe, abahutu, turi benshi, tuzubaka indi. »
>
> Anastase yabajije Seromba ati: « Ese ngomba gusenya iyi kiliziya ? » Yamubajije iki kibazo inshuro eshatu, maze Seromba aramusubiza ati : « Nimuyisenye » [...] Yongeraho ati : « abahutu, turi benshi, tuzubaka indi kiliziya. »
>
> […] n'uko uwo mushoferi waje gusenya kiliziya yamubajije inshuro eshatu niba agomba gusenya kiliziya. Noneho akamusubiza ati: «Nimuyisenye ! »
>
> Anastase ni we wabajije Padiri Seromba niba agomba gusenya kiliziya, noneho Seromba aramusubiza ati : « Mushobora kuyisenya. Turi benshi, tuzubaka indi. Iyo kiliziya yajemo amashitani, igomba gusenywa[401]. »

167. Athanase Seromba amaze kumubwira ko ashyigikiye icyemezo cyo gusenya kiliziya, umushoferi yatangiye kuyisenya[402] kandi gusenya iyo kiliziya byahitanye abatutsi bageze ku 1500 bari bayihungiyemo, bizeye ko Athanase Seromba yari kubarindira umutekano[403].

168. Ku byerekeye ikiganiro Athanase Seromba yagiranye n'umushoferi wa tingatinga, ni ngombwa kwibutsa umwanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ruvuga ko muri Mata 1994, Athanase Seromba yari ashinzwe Paruwasi ya Nyange, kandi ko yari azwi, anubashywe mu muryango gatolika w'i Nyange[404]. Rushingiye ku bikorwa byagaragajwe, Urugereko rw'Ubujurire rusanga abaturage ba Paruwasi ya Nyange barubahaga abapadiri, kandi Athanase Seromba yubahwaga ndetse akumvirwa n'abaturage. Kuri iyo ngingo, dore igisubizo cya CBK ku bibazo yari abajijwe na Porokireri :

> IKIBAZO : […] Muri Komine ya Nyange, abaturage bafataga gute abapadiri?

[401] Ni kimwe no haruguru, igika 213 (ibisobanuro ntibyongewemo).
[402] Ni kimwe no haruguru, igika 269.
[403] Ni kimwe no haruguru, ibika 284, 285. Muri urwo rwego, reba na none ubuhamya bwa CDL, inyandikomvugo y'iburanisha, 19 Mutarama 2005, urup. 68.
[404] Ni kimwe no haruguru, ibika 38, 390. Reba inyandikomvugo y'iburanisha, 19 Ukwakira 2004, imp. 45, 46 (mu muhezo).

IGISUBIZO : Padiri yari umuntu wubashywe cyane n'abakirisitu, n'abaturage bose. Yari umuntu wubashywe cyane kandi ukunzwe cyane n'abaturage. Muri make, ku giti cyanjye nubahaga… nshobora kubaha umupadiri kuruta uko nakubaha burugumesitiri. Ubwo rero nubaha Padiri kuruta uko nubaha burugumesitiri.

IK. : Kuki se wakubaha padiri kuruta burugumesitiri ?

IG. : Ndisobanura ntanga urugero : Burugumesitiri ashobora kumbwira ati « Ica umuntu », ariko ninica uwo muntu ndaba nziko ari icyaha. Maze gukora icyo cyaha nshobora kujya kucyicuza kwa padiri. Padiri ashobora kumbabarira kubera ububasha yahawe. Ariko niba padiri wagombye kumpa imbabazi ari we umbwiye kwica umuntu, icyo gihe, nzavuga ko igikorwa nakoze atari icyaha, kuko uwo nagombye kucyicuzaho ari we wantegetse kwica uwo muntu.

IK. : Mutangabuhamya, nakubajije ikibazo rusange nshaka kumenya uburyo abantu bafataga abapadiri muri Komine ya Nyange. Noneho ku buryo bwumvikana kurushaho, tubwire ukuntu muri Komine ya Nyange abantu bafataga Padiri Seromba mbere y'ubwicanyi ?

IG.: Ntiyari amaze igihe kinini muri paruwasi yacu. Cyakora twari twizeye ko ari padiri uje kutwigisha ijambo ry'Imana. Twibwiraga ko tubonye rwose umuntu ukomeye, usenga cyane, uje kudufasha gutera imbere mu iyobokamana.

IK.: Kubera iyo mpamvu, Mutangabuhamya, watubwira niba Seromba yari padiri abantu bashoboraga kubaha kandi bagatega amatwi?

IG.: Yego. Nsanga yari umuntu abaturage bashobora gutega amatwi kandi bakubahiriza ibyo avuze[405].

168. Byongeye kandi, umutangabuhamya wiswe CDL, Urugereko rwa Mbere rw'Iremezo rwasanze yakwemerwa, yavuze ko nta kintu cyakorwaga Athanase Seromba atacyemeye[406]. Muri urwo rwego, Urugereko rw'Ubujurire rwemeza umwanzuro Urugereko rwa Mbere rw'Iremezo rwafashe rushingiye ku buhamya bwatanzwe mu Rukiko n'umugabo wiswe FE13, rwasanze bwakwemerwa, buvuga ko mu nama abategetsi ba komine bakoze ku itariki ya 11 Mata 1994 basuzuma « ikibazo cy'umutekano » muri komine, abari bayitabiriye basomewe

[405] Reba inyandikomvugo y'iburanisha, 19 Ukwakira 2004, imp. 45, 46 (iburanisha mu muhezo).
[406] Urubanza mu rw'iremezo, igika 218.

ibaruwa Athanase Seromba[407] yandikiye burugumesitiri amumenyesha ko atari kuza muri iyo nama, ko ariko «yari kwemera ibyemezo bari gufata kubera ko yari yiteguye gufatanya n'abategetsi mu gukemura ikibazo cy'umutekano muri komine[408] ».

170. Biragaragara ko Urugereko rwa Mbere rw'Iremezo rwavuze neza, muri make, imyitwarire mibisha ya Athanase Seromba. Igika cya 239 n'icya 269 by'inyandiko y'urubanza mu rw'iremezo bigira biti :

> Urugereko rusanga umutangabuhamya wiswe CDL yanakwemerwa ku bintu bibiri byabaye: ikiganiro Athanase Seromba yagiranye na Kayishema, Ndahimana, Kanyarukiga, Habarugira n'abandi bantu. Muri icyo kiganiro Seromba yaba yaremeye icyemezo cyo gusenya kiliziya kandi ku ruhande rumwe akaba yaravuze ati: "Niba mudafite ubundi buryo, muzane izo tingatinga musenye kiliziya". Ku rundi ruhande Seromba yeretse umushoferi [wa tingatinga] uruhande rwa kiliziya rworoshye gusenya[409].
>
> […]
>
> Urugereko rusanga kandi Porokireri yaragaragaje, ku buryo budashidikanywaho ko Athanase Seromba yabwiye ayo magambo umushoferi wa tingatinga, ari we mutangabuhamya wiswe FE32 mu buryo bwo kumushishikariza gusenya kiliziya. Urugereko rwanzura ruvuga ko, abategetsi bamaze kumutegeka gusenya kiliziya, umushoferi wa tingatinga, ari we FE32, yabajije Seromba niba agomba kuyisenya, kandi ko Seromba yamushubije ngo nayisenye, avuga ko abahutu bazubaka indi. Byongeye kandi, Urugereko rwanzura ruvuga ko Seromba yeretse abashoferi ba tingatinga uruhande rwa kiliziya rworoshye gusenya[410].

[407] Ni kimwe no haruguru, ibika 74, 75.
[408] Reba na none inyandikomvugo y'iburanisha, 7 Mata 2006, urup. 22.
[409] Urubanza mu rw'iremezo, igika 239.
[410] Ni kimwe no haruguru, igika 269.

171. Rushingiye kuri iyi myanzuro ku byabaye imaze kuvugwa, Urugereko rw'Ubujurire rrusanga Athanase Seromba yaremeye kandi agashyigikira icyemezo cyafashwe na Kayishema, Ndahimana, Kanyarukiga, Habarugira n'abandi bantu, cyo gusenya kiliziya kugira ngo impunzi z'abatutsi zicwe. Kuba Athanase Seromba atari we watwaye tingatinga yashenye iyo kiliziya, nta cyo bihinduraho. Icy'ingenzi ni uko yakoresheje, bisesuye, ijambo yari afite akemerera uwo mushoferi wa tingatinga gusenya kiliziya, kandi nk'uko Urugereko rwa Mbere rw'Iremezo rwabyemeje, uyu mushoferi yabonye Seromba ari we ufite ububasha maze akurikiza amabwiriza ye. Ku bwiganze bw'amajwi, kubera ko Umucamanza Liu atemeranya na bagenzi be, Urugereko rw'Ubujurire rusanga ibikorwa bya Athanase Seromba bidashobora kwitwa ukundi, hashingiwe ku ngingo ya 6.1 ya Sitati, uretse kuvuga ko ari « gukora [icyaha] nka gatozi », bikaba rero byari bigize koko icyaha cya jenoside, kimwe n'ubwicanyi bwibasiye impunzi z'abatutsi [411]. Athanase Seromba ntiyafashije ngo anashishikaze gusa abakoze icyaha, ahubwo yabaye na gatozi w'icyo cyaha ubwacyo.

172. Ku bwiganze bw'amajwi, kubera ko Umucamanza Liu atemeranya na bagenzi be, Urugereko rwubujurire rusanga imyitwarire ya Athanase Seromba itarahagarariye gusa mu gutera inkunga, gushishikaza cyangwa gutera akanyabugabo ba gatozi b'icyaha, ku buryo byakwitwa gusa igikorwa gifatika cy'icyaha cyo gufasha no gushyigikira[412], ahubwo, hashingiwe ku byagaragajwe n'Urugereko rwa Mbere rw'Iremezo, umwanzuro umwe rukumbi ukwiye gufatwa ni uvuga ko imyitwarire ya Athanase Seromba imushyira muri ba gatozi b'ubwicanyi bwakorewe impunzi z'abatutsi zari ku kiliziya ya Nyange. Ni yo mpamvu Urugereko rw'Ubujurire rusanga imyitwarire ya Athanase Seromba yakwitwa gusa «gukora nka gatozi » ubwicanyi buvugwa.

173. Urugereko rw'Ubujurire ruributsa ko kugira ngo habeho igitekerezo cyo gukora icyaha, ibikorwa by'uregwa bigomba kugaragaza ko yashatse gukora icyo

[411] Reba Urubanza rwa Gacumbitsi mu bujurire, igika 60.
[412] Urubanza rwa *Blaškić* mu bujurire, igika 46.

cyaha[413]. Ibyo bitandukanye n'igitekerezo cyo gufasha no gushishikaza «gisaba ko igikorwa cyo kwitabira icyaha gikorwa umuntu azi ko icyo gikorwa kizafasha gatozi gukora icyaha[414] ».

174. Ku bwiganze bw'amajwi, kubera ko umucamanza Liu atemeranya na bagenzi be, Urugereko rw'Ubujurire rwemeza ko umwanzuro rukumbi ugomba gufatwa ari uko : akora ibyo yakoze, Athanase Seromba yashakaga ko impunzi z'abatutsi, zigeze ku 1500, zicwa. Bikaba rero bigaragara ko yari afite igitekerezo cyo gukora icyaha. Urugereko rw'Ubujurire rusanga, nta gushidikanya, Athanase Seromba yarakoze ibyo yakoze atagamije gusa gutera inkunga abakoze ubwicanyi bwibasiye impunzi.

175. Urugereko rw'Ubujurire rugiye noneho gusuzuma ibyo Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rwanzuye ruvuga ko Athanase Seromba atari afite umugambi wihariye kandi wa ngombwa ku buryo yaryozwa icyaha cya jenoside nka gatozi. Urugereko rw'Ubujurire ruributsa ko igitekerezo cyo gukora jenoside gisaba ko gatozi aba afite umugambi kandi azi ko agiye gutsotsoba ibikorwa bigize icyaha, kandi anafite umugambi wihariye wo kurimbura abantu bose, cyangwa igice cyabo, bagize itsinda ririnzwe bazira icyo bari cyo[415].

176. Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro uboneye uvuga ko jenoside ari icyaha gisaba ko ugikora aba afite igitekerezo cyihariye[416] kandi ko icyo gitekerezo gishobora kugaragarira mu bikorwa bimwe na bimwe n'ibintu bimwe na bimwe bivugwa mu rubanza[417]. Kuri iyi ngingo, Urugereko rwa Mbere

[413] Urubanza *Blagoje Simić*, igika 137.
[414] Urubanza rwa Kayishema mu bujurire, igika 186.
[415] G. WERLE, *Principles of International Criminal Law*, Cambridge University Press, Cambridge, 2005, urup. 207 (mu bivugwa harimo Urubanza rwa *Akayesu*, igika 497 n'ibikurikira, no mu rubanza rwa *Jelisić* mu bujurire, ibika 45, 50 n'ibikurikira).
[416] Urubanza mu rw'iremezo, igika 319.
[417] Ni kimwe no haruguru, igika 320. Nk'urugero, reba Urubanza rwa Nahimana mu bujurire, igika 524, Urubanza rwa Gacumbitsi mu bujurire, igika 40, Urubanza rwa Rutaganda mu bujurire, igika 525, n'Urubanza rwa Kayishema mu bujurire, igika 159.

rw'Iremezo rwavuze ibintu bikurikira, hashingiwe ku bukemuramanza bw'Urugereko rw'Ubujurire [418] :

> Igitekerezo cyo gukora jenoside gishobora kugaragarira mu bikorwa cyangwa ibimenyetso bimwe birimo : a) uko ibintu byari byifashe muri rusange igihe hakorwaga ibindi bikorwa bihanirwa kandi biri kuri gahunda byibasiye, abantu bagize itsinda rimwe, ibyo bikorwa bindi byaba byarakozwe n'uregwa cyangwa n'abandi bantu ; b) intera y'amarorerwa yakozwe ; c) kuba byari rusange ; d) kuba byarakorewe mu rwego rw'akarere cyangwa rw'igihugu ; e) kuba abahohotewe baratoranyijwe bigambiriwe kandi biri kuri gahunda, bazira ko bagize itsinda runaka ; f) guhereza ukwabo abagize andi matsinda ; g) ibitekerezo bya politiki byatumye hakorwa ibikorwa bivugwa ; h) gukora kenshi ibikorwa birimbura kandi bivangura no i) gukora ibikorwa bibangamiye ishingiro ry'itsinda, cyangwa ba nyiri ukubikora bafata gutyo [419].

177. Ku bwiganze bw'amajwi, uretse umucamanza Liu ubibona ukundi, Urugereko rw'Ubujurire rusanga n'ubwo rwasobanuye neza amategeko akoreshwa, Urugereko rwa Mbere rw'Iremezo rwaribeshye ruvuga ko Porokireri atagaragaje ko Athanase yari afite igitekerezo cya ngombwa cyo gukora icyaha. By'umwihariko, Urugereko rw'Ubujurire rusanga ku itariki ya 16 Mata 1994, nibura Athanase Seromba yaremeye kandi agashyigikira icyemezo cyafashwe na Kayishema, Ndahimana, Kanyarukiga, Habarugira n'abandi bantu cyo gusenya kiliziya, mu gihe nta bundi buryo bwari buhari bwo kwica abatutsi bari bahungiye muri iyo kiliziya[420]. Byongeye kandi, Athanase Seromba yeretse umushoferi wa tingatinga uruhande rwa kiliziya rworoshye gusenya kandi amubwira kuyisenya, amwizeza ko abahutu bazubaka indi[421]. Urugereko rw'Ubujurire ruvuga ko ibyo byakozwe hagamijwe kwica abatutsi bari imbere mu kiliziya. Athanase Seromba

[418] Ku ngero z'ibintu byabaye n'imiterere y'ibintu yerekeranye n'urubanza bishobora guherwaho ngo hemezwe ko hari umugambi wihariye, reba na none Urubanza rwa Gacumbitsi mu bujurire, ibika 40, 41, n'Urubanza rwa Rutaganda mu bujurire, igika 525.
[419] Urubanza mu rw'iremezo, igika 320.
[420] Ni kimwe no haruguru, igika 268.
[421] Ni kimwe no haruguru, ibika 239, 269.

yari azi ko harimo abatutsi bageze ku 1500 kandi ko gusenya kiliziya byagombaga byanze bikunze gutuma bapfa.

178. Byongeye kandi, na mbere y'uko kiliziya isenywa ku itariki ya 16 Mata 1994, Athanase Seromba yirukanye, inshuro ebyiri, abatutsi bari bahungiye mu gipadiri, babiri muri bo baza kwicwa[422]. Urugereko rwa Mbere rw'Iremezo rwafashe uwo mwanzuro rushingiye ku buhamya bwinshi. Umugabo wiswe CBJ, abacamanza bo mu rw'iremezo basanze yakwemerwa ku buhamya yatanze ku rupfu rwa Meriam[423], yavuze ibikurikira :

> Bigitangira, abantu batangira guhunga, yahungiye [Meriam] ku kiliziya nyuma y'urupfu rwa Habyarimana. Cyakora ku itariki ya 14, mbere y'itariki ya 14 Mata 1994, Padiri Seromba… hari abakobwa ba Meriam n'abantu bize, barimo abarimu. Padiri Seromba yari yacumbikiye abo bantu mu gipadiri. Ariko ku itariki ya 14, bakoze inama yo … yo kwiga uko batwica, yirukanye abo bantu yari yacumbikiye. Ubwo rero, Meriam n'umuryango we badusanze mu kiliziya. Nari hamwe na Meriam n'umuryango we mu kiliziya. Ku itariki ya 15, bafunguye imiryango, turasohoka. Ubwo twari hanze, habaye ibitero maze Meriam asubira aho yari acumbitse mbere n'uko Padiri Seromba Athanase arongera yirukana abantu bari mu gikari cy'abapadiri. Abo bantu basohotse barimo kubarasaho. Meriam we bamufashe padiri amaze kumwirukana. Baramukubise cyane ari imbere y'ibiro by'umukarani wa paruwasi kandi nabonye abantu bamujyana [imbere] ya kiliziya. Sinashoboye kubona neza ibyabaye ariko nyuma nabonye umurambo wa Meriam kandi bari bamukuyemo imyenda. Rwose sinavuga ukuntu bamukojeje isoni. Ni ibyo nabonye kuri Meriam[424].

179. Byongeye kandi, CBK, umwe mu batangabuhamya Urugereko rwa Mbere rw'Iremezo rwasanze yakwemerwa ku byerekeye ubuhamya yatanze ku rupfu rwa Gatare, yagize ati :

> Ig. : Gatare yari yihishe inyuma y'igipadiri n'uko Seromba, wari mu gice

[422] Ni kimwe no haruguru, ibika 193, 201 na 202. Nk'uburyo bw'inyongera bw'ukuntu Athanase Seromba yafataga abatutsi, Urugereko rw'Ubujurire rusanga ku itariki ya 13 Mata 1994, uwo mupadiri yarirukanye bane mu bakozi batandatu ba paruwasi barirukanywe kandi ko abo bane bari abatutsi, naho babiri basigaye bakaba abahutu. Reba Urubanza mu rw'iremezo, igika 114.
[423] Ni kimwe no haruguru, igika 201.
[424] Inyandikomvugo y'iburanisha, 12 Ukwakira 2004, urup. 10.

cyo hejuru cy'inzu y'abapadiri, aramubona maze aramubwira ngo nasohoke. Gatare yaranze nuko Seromba ategeka umuzamu we witwa Canisius kumusohora, maze yicirwa inyuma y'igikari cy'abapadiri.

[…]

Ik. : Watubwira aho Seromba yari igihe uwo mwarimu witwa Gatare yicwaga ?

Ig. : Padiri Seromba yari ahagaze mu gice cyo hejuru cy'inzu y'abapadiri.

Ik. : Ese hari ikintu Padiri Seromba yakoze kugira ngo Gatare aticwa ?

Ig.: Nta cyo nabonye. Nta cyo yakoze.

Ik.: Hari ikintu Padiri Seromba yakoze ngo Gatare, wari umukozi wa komine, aticwa ?

Ig.: Nta cyo yakoze. Gatare yasabye … yasabye imbabazi Padiri Seromba. Yaravugaga ati : « Rubanda rw'Umwami, rwose murampora iki ? ».

Ik. : Bwana Mutangabuhamya, watubwira aho wari uri igihe Gatare yavugaga ayo magambo ?

Ig. : Nari mu gikoni. Seromba yaje gusohora uwo Gatare.

Ik. : Tubwire neza ahantu Gatare yari igihe Seromba yazaga kumusohora ?

Ig. : Gatare yari amaze kuva mu gikari, yari mu gikoni nuko Gatare aravuga ati : « Rubanda rw'Umwami murampora iki? », maze Seromba ategeka ko bamusohora[425].

180. Urugereko rwa Mbere rw'Iremezo rwavuze kandi ku buhamya bw'umugabo wiswe CBR, rwasanze bwakwemerwa[426]. Uwo mutangabuhamya yavuze ko ku itariki ya 15 Mata 1994, buri buke ngo kiliziya isenywe, Athanase Seromba yari yategetse abantu gukuraho « umwanda[427] » wari wuzuye hasi kuri paruwasi. «Umwanda » Padiri yashakaga kuvuga ni imirambo y'impunzi z'abatutsi yari yishwe mu bitero byagabwe kuri iyo tariki ya 15 Mata 1994[428]. Ubwo buhamya

[425] Inyandikomvugo y'iburanisha, 19 Ukwakira 2004, imp. 33, 34 (iburanisha mu muhezo).
[426] Urubanza mu rw'iremezo, igika 179.
[427] Urugereko rw'Ubujurire rusanga iryo jambo ryarakoreshejwe cyane mu nyandiko y'urubanza y'umwimerere iri mu gifaransa, naho mu nyandiko yarwo yasemuwe mu cyongereza rimwe hagakoreshwa « *filth* » [amase, umwanda, n'ibindi], ubundi hagakoreshwa « *rubbish* » [ibisigazwa, umwanda, n'ibindi].
[428] Urubanza mu rw'iremezo, igika 164.

bwa CDR bwakiriwe n'Urugereko rwa Mbere rw'Iremezo, bwemejwe hafi ya bwose n'ubw'umugabo wiswe CNJ[429], na we Urugereko rwa Mbere rw'Iremezo rwasanze yakwizerwa [430] . Mu gika cya 191 cy'inyandiko y'urubanza mu rw'iremezo havugwa ibikurikira :

> Urugereko rwanzura ruvuga ko hagaragajwe ku buryo budashidikanywaho ko ku itariki ya 15 Mata 1994, Athanase Seromba yabwiye abagabye ibitero, bari biteguye gutera abatutsi mu gikari cy'abapadiri, guhagarika ubwicanyi, bakabanza gukuraho imirambo. Rwasanze kandi iyo mirambo imaze gukurwaho ibitero byibasiye impunzi z'abatutsi byarakomeje.

Muri uru rwego, birakwiye kwibutsa ubuhamya CBK yatanze mu Rukiko, Urugereko rwa Mbere rw'Iremezo rwashingiyeho – bukanemerwa mu bujurire[431] . CBK avuga ko Athanase Seromba yavuze amagambo akurikira : «Nimusenye kiliziya. Twebwe abahutu, turi benshi bihagije, byongeye kandi mu nzu y'Imana hajemo amashitani …[432] »

181. Rumaze gusuzuma imyanzuro y'Urugereko rwa Mbere rw'Iremezo n'inyandikomvugo z'ubuhamya bwatanzwe mu Rukiko iyo myanzuro ishingiyeho, Urugereko rw'Ubujurire rusanga nta mucamanza wo mu rw'iremezo ushyira mu gaciro uba waranzuye avuga ko Athanase Seromba atari afite umugambi wo gukora jenoside.

182. Ku byerekeye jenoside, Urugereko rw'Ubujurire rusanga uretse gutanga inkunga no gushishikariza abantu gukora icyo cyaha, Athanase Seromba na we yarabaye gatozi wacyo. Umwanzuro utandukanye n'uwo waba wirengagije amategeko akoreshwa, unashyira imbere ibintu bitari ngombwa. Kubera iyo mpamvu, Urugereko rw'Ubujurire rwanzura, ku bwiganze bw'amajwi, ruvuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo kudahamya Athanase

[429] Reba inyandikomvugo y'iburanisha, 24 Mutarama 2005, urup. 17 (« … Padiri Seromba yatubujije kwinjira atubwira kubanza gukuraho imirambo yari imbere y'ibiro by'umukarani [wa paruwasi]. […] Twahigaga abatutsi … »).
[430] Urubanza mu rw'iremezo, ibika 165, 180.
[431] Reba ibika 115, 116 hejuru.
[432] Inyandikomvugo y'iburanisha, 19 Ukwakira 2004, imp. 28, 29 (iburanisha mu muhezo) [ntibishimangiwe mu nyandiko y'umwimerere].

Seromba « icyaha » cya jenoside. Umucamanza Liu ntiyemeranya na bagenzi be kuri iyi ngingo.

b) Guhamya Uregwa icyaha cyo gutera inkunga no gushishikaza abakoze jenoside kubera kwirukana abakozi n'impunzi z'abatutsi, zirimo Patrice na Meriam

183. Urugereko rwa Mbere rw'Iremezo rwemeje ko Athanase Seromba yirukanye abakozi n'impunzi z'abatutsi kuri Paruwasi ya Nyange kandi ko akora atyo, yafashije abantu kwica impunzi nyinshi z'abatutsi, zirimo Patrice na Meriam[433]. Rwavuze ko kubera umutekano muke wari kuri Paruwasi ya Nyange, nta gushidikanya ko Athanase Seromba atari ayobewe ko yirukana abo bantu, yari agize uruhare runini mu iyicwa ryabo, ryakozwe n'abagabye ibitero[434]. Rwemeje kandi ko kubera iyo myitwarire, Athanase Seromba yafashije agashishikariza abantu kwica impunzi zari mu kiliziya ya Nyange[435], maze rumuhamya icyaha cya jenoside kuko yateye inkunga kandi agashishikariza abantu kugikora[436].

184. Urugereko rw'Ubujurire rusanga, urebye imyanzuro imaze kuvugwa, Urugereko rwa Mbere rw'Iremezo rwarashyize mu gaciro ubwo rwemeza ko Athanase Seromba yatanze inkunga kandi agashishikariza abantu kwica izo mpunzi, zirimo Meriam na Patrice, aho kumuhamya ko « yakoze icyo cyaha [cy'ubwicanyi] nka gatozi[437] ». Urugereko rw'Ubujurire rusanga imiterere y'uru rubanza isa n'iyo mu rubanza rwa *Gacumbitsi*, yatumye rwanzura ruvuga ko Sylvestre Gacumbitsi yafashije kandi agashishikariza abantu kwica abantu bari bacumbitse mu mazu ye, bishwe amaze kubirukana kandi yari « azi ko, kubera ubwoko bwabo, bashobora kwibasirwa n'abahutu bagabye ibitero [438] ». Ni yo mpamvu Urugereko rw'Ubujurire rwemeza umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko Athanase Seromba yatanze inkunga akanashishikariza abantu gukora jenoside

[433] Urubanza mu rw'iremezo, igika 332.
[434] Ni kimwe no haruguru, igika 336.
[435] Ni kimwe no haruguru, igika 338.
[436] Ni kimwe no haruguru, igika 342.
[437] Urubanza rwa Gacumbitsi mu bujurire, igika 124.
[438] Ni kimwe no haruguru.

ku byerekeye iyicwa rya Patrice na Meriam. Ibyo bikorwa bigomba gutandukanywa n'ubwicanyi bwabaye kubera isenywa rya kiliziya.

c) Umwanzuro w'Urugereko rw'Ubujurire

185. Rushingiye ku bimaze kuvugwa, Urugereko rw'Ubujurire rwakiriye, kuri bimwe, iki gice cy'impamvu y'ubujurire maze, ku bwiganze bw'amajwi kubera ko umucamanza Liu atemeranya na bagenzi be, rukanzura ko Athanase Seromba yakoze jenoside kuko yagize uruhare mu isenywa rya kiliziya ya Nyange. Ariko abacamanza bose barugize bemeza ko Athanase Seromba yatanze inkunga, akanashishikariza abantu gukora jenoside kubyerekeye iyicwa rya Patrice na Meriam.

2. Amakosa avugwa ku birebana n'itsembatsemba nk'icyaha cyibasiye inyokomuntu

186. Urugereko rwa Mbere rw'Iremezo rwemeje ko gusenya kiliziya ya Nyange, bigatuma hapfa impunzi z'abatutsi zigeze ku 1500, ari itsembatsemba nk'icyaha cyibasiye inyokomuntu [439]. Ku byerekeye uruhare rwa Athanase Seromba muri ibyo bikorwa, rwemeje ko, kubera imyitwarire ye, « yagize uruhare runini mu isenywa rya kiliziya ya Nyange[440] ». Urugereko rwavuze kandi ibikurikira :

> Athanase Seromba ntiyari ayobewe ko amagambo ye yari gutuma abategetsi ba komine n'umushoferi wa tingatinga bumva ko bafite uburenganzira bwo gukora ibyo bakoze. Urugereko rusanga kandi Athanase Seromba yari azi neza ko kwemera icyemezo cyo gusenya kiliziya ya Nyange cyafashwe n'abategetsi, ndetse n'amagambo yavuze ashishikaza umushoferi wa tingatinga, byari kugira uruhare runini mu isenywa rya kiliziya no mu iyicwa ry'impunzi nyinshi zari zayihungiyemo[441].

Byongeye kandi, Urugereko rusanga Athanase Seromba, Uregwa, yari azi ko icyo gitero ari rusange kandi kiri kuri gahunda, ndetse atanayobewe ko icyo gitero cyari gishingiye ku mpamvu z'ivangura. Ntirushidikanya kandi ko icyaha cy'itsembatsemba cyakorewe impunzi z'abatutsi cyari mu rwego rw'icyo gitero[442].

[439] Urubanza mu rw'iremezo, ibika 365, 369.
[440] Ni kimwe no haruguru, igika 364.
[441] Ni kimwe no haruguru, igika 367.
[442] Ni kimwe no haruguru, igika 370.

Kubera iyo mpamvu, Urugereko rwa Mbere rw'Iremezo rusanga haragaragajwe ko Athanase Seromba yari afite igitekerezo cyo gufasha, no gushishikaza abakoze itsembatsemba nk'icyaha cyibasiye inyokomuntu[443].

187. Porokireri avuga ko ingingo yatanze zirebana n'ikorwa ry'icyaha cya jenoside zanakoreshwa ku ikorwa ry'itsembatsemba nk'icyaha cyibasiye inyokomuntu[444]. Avuga ko, urebye umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko Athanase Seromba yari azi ko igitero cyibasiye abatutsi ari rusange cyangwa kiri kuri gahunda. Ku byerekeye imyitwarire ye, umwanzuro rukumbi ushoboka ni uko yitabiriye, ku buryo butaziguye, ibikorwa bifatika bigize icyaha cy'itsembatsemba kandi ko yari afite igitekerezo cya ngombwa cyo gukora icyaha[445]. Porokireri yifashisha Urubanza rwa *Ndindabahizi* mu bujurire aho yemeza ko Urugereko rw'Ubujurire rwashyigikiye, ntagisobanuro rutanze, umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko itsembatsemba rishobora gukorwa mu buryo buziguye[446].

188. Mu kurwanya ibyo Porokireri avuga ashaka kugaragaza ko yakoze itsembatsemba nk'icyaha cyibasiye inyokomuntu, Athanase Seromba avuga ko Urubanza rwa *Ndindabahizi* mu bujurire rutagenderwaho muri uru rubanza kubera ko Emmanuel Ndindabahizi atahamijwe icyaha cyo gufasha no gushishishikariza abantu gukora ibyaha by'ubugome[447].

189. Urugereko rw'Ubujurire ruributsa ko itsembatsemba nk'icyaha cyibasiye inyokomuntu, nk'uko giteganywa n'ingingo ya 3 b) ya Sitati, ari ugukora ubwicanyi bwibasiye abantu benshi [448] . Ariko avuga ko, hakurikijwe ubukemuramanza bwa TPIR na TPIY, igikorwa gifatika cyo gukora icyaha

[443] Ni kimwe no haruguru, ibika 368, 371.
[444] Imyanzuro y'ubujurire ya Porokireri, igika 50.
[445] Ni kimwe no haruguru, igika 51.
[446] Ni kimwe no haruguru, igika 37.
[447] Imyanzuro isubiza ya Seromba, igika 68. Urugereko rw'Ubujurire rusanga ibyo avuga ari ikosa. Emmanuel Ndindabahizi yahamijwe icyaha cyo gufasha no gushishikariza abantu gukora jenoside n'itsembatsemba n'ubuhotozi bigize ibyaha byibasiye inyokomuntu. Reba Urubanza rwa Ndindabahizi mu bujurire, ibika 4, 5.
[448] Urubanza rwa Ntakirutimana mu bujurire, igika 516. Urugereko rw'Ubujurire ruributsa ko ubwicanyi bugomba gukrowa mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byibasiye abaturage b'abasivili kubera ubwenegihugu bwabo, imitwe ya politiki barimo, isanomuzi, ubwoko cyangwa idini byabo.

cy'itsembatsemba ari igikorwa icyo ari cyo cyose, kwirengagiza kugira icyo ukora, cyangwa byombi, bigira uruhare ruziguye cyangwa rutaziguye, mu bwicanyi bwibasiye abantu benshi[449]. Ruvuga kandi ko kubera iyo mpamvu, nk'uko rwabivuze mu rubanza rwa *Ndindabahizi* mu bujurire, kugira ngo hagaragazwe ko icyo cyaha cyakozwe, birahagije kwerekana ko uregwa yagize uruhare mu ngamba zituma, mu buryo buziguye, abantu bapfa[450]. Urugereko rw'Ubujurire rugiye noneho kureba niba ibikorwa bya Athanase Seromba, nk'uko byagaragajwe n'Urugereko rwa Mbere rw'Iremezo, bituma umuntu yakwemeza ko yakoze itsembatsemba.

190. N'ubwo mu rubanza rwa *Gacumbitsi* mu bujurire hakoreshejwe uburyo bwihariye mu gusuzuma ikorwa ry'icyaha cya jenoside, Urugereko rw'Ubujurire rusanga, ku bwiganze bw'amajwi, nta cyabuza ko ubwo buryo bukoreshwa mu gusuzuma ikorwa ry'itsembatsemba. Umucamanza Liu we ariko ntiyemeranya na bagenzi be kuri iyi ngingo. Mu rubanza rwa *Gacumbitsi* mu bujurire, ikibazo cy'ingenzi cyari ukumenya ibindi bikorwa byashoboraga kuba uruhare rutaziguye mu itsotsobwa ry'igikorwa gifatika kigize icyaha. Nk'uko byavuzwe haruguru, Urugereko rw'Ubujurire ntirushidikanya ko imyitwarire ya Athanase Seromba, nk'uko ivugwa mu nyandiko y'urubanza mu rw'iremezo, ubwayo ari uruhare rutaziguye mu itsotsobwa ry'igikorwa gifatika kigize icyaha cy'itsembatsemba, hashingiwe ku buryo busobanurwa mu rubanza rwa *Ndindabahizi* mu bujurire buvugwa haruguru. Ku byerekeye igitekerezo cyo gukora icyaha gisabwa, Urugereko rw'Ubujurire ntirushidikanya ko uruhare Athanase Seromba yagize mu bikorwa byatumye kiliziya isenywa, kuba yari azi ko gusenya iyo kiliziya byagombaga, byanze bikunze, guhitana umubare munini w'abasivili b'abatutsi[451] no kuba yari azi ko mu gihe cy'ibyo bikorwa hariho igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abatutsi[452], bigaragaza ko yari afite igitekerezo cya ngombwa cyo gukora itsembatsemba. Bityo rero, ku bwiganze bw'amajwi, kubera

[449] Nk'urugero reba urubanza *Brđanin*, igika 389, n' urubanza *Blagojević*, igika 573. Reba na none Urubanza rwa *Ndindabahizi*, igika 479.
[450] Urubanza rwa Ndindabahizi mu bujurire, igika 123 n'igisobanuro 268.
[451] Urubanza mu rw'iremezo, igika 367.
[452] Ni kimwe no haruguru, igika 370.

ko umucamanza Liu atemeranya na bagenzi be, Urugereko rw'Ubujurire rusanze Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa ubwo rwemezaga ko Athanase Seromba adahamwa n'itsembatsemba nk'icyaha cyibasiye inyokomuntu[453].

191. Kubera iyo mpamvu, Urugereko rw'Ubujurire rwakiriye iki gice cy'impamvu y'ubujurire.

3. Amakosa avugwa ku birebana no gucura umugambi no gutegeka abantu gukora jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu

192. Ku byerekeye gucura umugambi nk'uburyo bw'imikorere y'icyaha, Urugereko rwa Mbere rw'Iremezo rwavuze ibikurikira :

> Gukora icyaha « ucura umugambi » bisaba ko umuntu umwe cyangwa benshi bategura gahunda yo gukora icyaha, bigakorwa mu gihe cyo kuwutegura no mu gihe cyo kuwushyira mu bikorwa. Ku byerekeye ubu buryo bwo gukora icyaha, Porokireri agomba kugaragaza ko uregwa yabigizemo uruhare runini kandi ko gucura umugambi byabaye ikintu cy'ingenzi mu ikorwa ry'icyaha[454].

Naho ku byerekeye gutegeka nk'uburyo bw'imikorere y'icyaha, Urugereko rwa Mbere rw'Iremezo rwavuze ibikurikira:

> Gukora icyaha « utegeka [abantu kugikora] » bisaba ko umutegetsi ategeka undi muntu gukora icyaha. Ubu buryo bw'imikorere y'icyaha busaba ko utanga itegeko aba akuriye ushyira mu bikorwa iryo tegeko. Cyakora si ngombwa ko iyo sano iba izwi mu mategeko. Iyo sano yo gukurira abandi igaragazwa herekanwa ko uregwa yari akuriye abandi mu buryo buteganywa cyangwa budateganywa n'amategeko ku buryo yagenzuraga nyabyo ba gatozi b'icyaha[455].

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[453] Reba Urubanza rwa *Stakić* mu bujurire, igika 59, aho Urugereko rw'Ubujurire rwa TPIY rugira ruti:

> Kugira ngo he kubaho ibyo bintu bidasobanutse ndetse hakoreshwe amategeko amwe kandi mu buryo bujyanye, Urugereko rw'Ubujurire rugomba kureba niba uburyo bw'uburyozwacyaha bwemejwe n'Urugereko rwa Mbere rw'Iremezo bujyanye n'ubukemuramaza bw'uru Rukiko. Nirusanga bitajyanye, Urugereko rw'Ubujurire rurareba niba imyanzuro y'Urugereko rwa Mbere rw'Iremezo ituma hashobora kuba ubundi buryo bw'uburyozwacyaha, bugaragazwa mu bukemuramanza bw'Urukiko, nk'ubuturuka ku kwitabira umugambi mubisha uhuriweho.

[454] Urubanza mu rw'iremezo, igika 303 (ibisobanuro ntibyongewemo).
[455] Ni kimwe no haruguru, igika 305 (ibisobanuro ntibyongewemo).

193. Urugereko rwa Mbere rw'Iremezo rwanzuye ruvuga ko Porokireri atagaragaje ko Athanase Seromba yacuze umugambi wo gukora ubwicanyi bwibasiye impunzi z'abatutsi.[456] Ku byerekeye gukora icyaha utegeka, Urugereko rwa Mbere rw'Iremezo rwavuze ko Porokireri atagaragaje ko Athanase Seromba yari afite igitekerezo cyihariye cyo gukora icyaha cya jenoside cyangwa ko yagenzuye nyabyo abantu batsotsobye ibyaha[457].

194. Porokireri avuga ko n'ubwo Urugereko rwa Mbere rw'Iremezo rwasobanuye neza inshoza yo « gucura umugambi », rwasuzumye nabi uburyozwacyaha bwa Athanase Seromba ku byerekeye gucura umugambi wo gukora jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu[458]. Avuga ko imyitwarire ya Athanase Seromba yakurikizaga «gahunda y'ibikorwa » yashyizweho ngo habe jenoside[459], kandi ko uwo mupadiri yagize uruhare runini mu gushyira mu bikorwa iyo gahunda[460]. Mu gushyigikira ibyo avuga, Porokireri avuga ko Athanase Seromba, Fulgence Kayishema n'abandi bategetsi bateguye kandi bagashyira mu bikorwa umugambi wo gusenya kiliziya yari yahungiyemo abatutsi bageze ku 1500[461], ko Fulgence Kayishema n'abandi bategetsi bari aho hantu ubwo Athanase Seromba yavugaga ko bagomba kuzana za tingatinga niba nta bundi buryo buhari maze agaha amabwiriza umushoferi wa tingatinga yo «gusenya kiliziya [ahereye ku ruhande rwayo rworoshye gusenya][462] ».

195. Athanase Seromba asubiza ko ibyo Porokireri avuga agamije kumushinja icyaha cyo gucura umugambi w'ibikorwa bya jenoside byabereye kuri Paruwasi ya Nyange, biterwa « gusa n'ibyo yitekerereza » no «gushishikazwa » gusa no kumushinja iyo « ngirwamugambi[463] ».

[456] Ni kimwe no haruguru, igika 312.
[457] Ni kimwe no haruguru.
[458] Imyanzuro y'ubujurire ya Porokireri, igika 68 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 10,11.
[459] Imyanzuro y'ubujurire ya Porokireri, igika 71.
[460] Ni kimwe no haruguru, igika 72.
[461] Inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 10,11.
[462] Ni kimwe no haruguru, urup. 10.
[463] Imyanzuro isubiza ya Seromba, igika 76.

196. Ibyo Porokireri avuga kuri iyo ngingo bihita bigaragara ko bitakwemerwa. Mu by'ukuri avuga ko hari « gahunda y'ibikorwa », nyamara mu myanzuro yose ashingiraho, nta n'umwe ugaragaza ko hari umugambi wo gukora jenoside Athanase Seromba yaba yaragiyemo. Byongeye kandi, nta kimenyetso na kimwe kiri muri dosiye yashingiyeho cyatuma Urugereko rw'Ubujurire rwanzura ruvuga ko abacamanza bo mu rw'iremezo basuzumye nabi ibimenyetso byatanzwe kuri iyo ngingo cyangwa ko bakoze ikosa banzura ko hatagaragajwe ku buryo budashidikanywaho ko Athanase Seromba yacuze umugambi wo kwica abatutsi.

197. Ku byerekeye uburyozwacyaha bwa Athanase Seromba, kubera ko yategetse abantu gukora jenoside n'itsembatsemba, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwashyize mu gaciro kubera ko rwasanze isano yo gukurira abandi isabwa kugira ngo hagaragazwe ubwo buryo bw'imikorere y'icyaha, itaragombaga, byanze bikunze kuba « izwi mu mategeko ». Cyakora arwanya icyemezo abacamanza bo mu rw'iremezo bafashe bavuga ko iyo sano igaragara gusa ari uko hatanzwe ibimenyetso byerekana ko umuntu ukuriye abandi «yagenzuraga nyabyo » abo akuriye[464]. Porokireri asanga iyo myumvire irimo ikosa ryo mu rwego rw'amategeko kubera ko ishingiye ku kwitiranya ingingo ya 6.1 na 6.3 ya Sitati [465].

198. Porokireri avuga kandi ko ibyabaye, bivugwa muri uru rubanza, bigaragaza ko Athanase Seromba yari afite ubutegetsi ku bantu bagabye ibitero ku mpunzi z'abatutsi [466] kandi ko ubwo butegetsi bwari buhagije ngo hemezwe ko uwo mupadiri yashobora, ku buryo bwumvikana, gutegeka abantu gukora ibikorwa bya jenoside birimo gusenya kiliziya no kwirukana impunzi z'abatutsi kuri paruwasi [467] . Porokireri avuga ko ubutegetsi bwa Athanase Seromba bwakomokaga ku mwanya yari afite nka padiri «ushinzwe Paruwasi ya Nyange »

[464] Imyanzuro y'ubujurire ya Porokireri, igika 58 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 6, 7. Porokireri yemeza ko Urugereko rw'Ubujurire rwanze iyo mikorere mu manza ebyiri (Imyanzuro y'ubujurire ya Porokireri, ibika 58-60 (hasubirwamo ibivugwa mu rubanza rwa Kamuhanda mu bujurire, igika 75, n'Urubanza rwa Gacumbitsi mu bujurire, igika 181)).
[465] Imyanzuro y'ubujurire ya Porokireri, igika 58 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, urup. 6.
[466] Imyanzuro y'ubujurire ya Porokireri, igika 64.
[467] Inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 6, 7.

no ku mwanya yari afite mu bantu[468]. Avuga kandi ko hashingiwe ku buhamya umugabo wiswe CDL yatanze mu Rukiko bukemerwa n'Urugereko rwa Mbere rw'Iremezo, nta kintu cyakorwaga Uregwa atabyemeye [469].

199. Mu gusoza kuri iyi ngingo, Porokireri ashimangira ko itegeko Athanase Seromba[470] yatanze ari ryo ryatumye ibintu biba uko byabaye maze akavuga ko umushoferi wa tingatinga yabanje kubaza Uregwa mbere yo gushyira mu bikorwa itegeko ry'abategetsi, kandi ko uwo mushoferi yatangiye gusenya kiliziya ari uko padiri amuhaye uburenganzira[471].

200. Athanase Seromba asubiza ko atigeze ategeka ko kiliziya ya Nyange isenywa kandi ko Porokireri ubwe yemeye icyo kintu[472]. Avuga ko ibyabaye bitangiye, ku itari ya 6 Mata 1994, yari yaroherejwe gukorera mu yindi paruwasi [473], ko nk'uwungirije padiri mukuru, yasimburaga gusa padiri mukuru wa Paruwasi ya Nyange[474] bityo akaba nta tegeko na rimwe yari gutanga kubera ko nta butegetsi na buke yari afite muri iyo paruwasi,[475]. Yongera ho atari azi abagabye ibitero, kuko batari abo muri iyo komine, bityo akaba atari gutegeka abantu atazi[476]. Athanase Seromba arwanya kandi ubukemuramanza buvugwa na Porokireri. Avuga ko imanza zivugwa zirebana n'ibyabaye bitandukanye n'ibyerekeranye n'urubanza rwe[477]. Mu gusoza kuri iyi ngingo, arwanya umwanzuro w'Urugereko rwa Mbere rw'Iremezo wemeza ko yeretse umushoferi wa tingatinga uruhande rwa kiliziya rworoshye gusenya. Avuga ko ibyo bintu bidashoboka kubera ko atari arishitegite kandi ko atari ahari igihe iyo kiliziya yubakwaga[478].

201. Urugereko rw'Ubujurire ruributsa ibikurikira :

[468] Ni kimwe no haruguru, urup. 41.
[469] Ni kimwe no haruguru, imp. 6, 7.
[470] Ni kimwe no haruguru, urup. 45.
[471] Ni kimwe no haruguru, urup. 43.
[472] Imyanzuro isubiza ya Seromba, igika 71. Reba na none ibika 73, 74.
[473] Inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 21, 22.
[474] Ni kimwe no haruguru, imp. 27, 30.
[475] Imyanzuro isubiza ya Seromba, igika 72. Athanase Seromba avuga kandi ko atari «umuyobozi » w'abantu bagabye ibiteron kuri paruwasi (inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, urup. 23).
[476] Inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 26, 34.
[477] Imyanzuro isubiza ya Seromba, igika 72.
[478] Inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 30, 31.

> Uburyozwacyaha bw'umuntu ukuriye abandi, buteganywa n'ingingo ya 6.3 ya Sitati, bwerekeye uburyo bw'uburyozwacyaha butandukanye n'uburyozwa-cyaha bw'umuntu ku giti cye kubera ko yategetse ko hakorwa icyaha runaka giteganywa n'ingingo ya 6.1 ya Sitati. Uburyozwacyaha bw'umuntu ukuriye abandi buteganywa n'ingingo ya 6.3 busaba ko uregwa aba « agenzura nyabyo » abantu akuriye, akaba ashobora kubabuza gukora ibyaha, cyangwa kubahana igihe babikoze. Cyakora, kugira ngo uregwa aryozwe icyaha, giteganywa n'ingingo ya 6.1 ya Sitati, kubera ko yategetse ikorwa ry'icyo cyaha, uwo muntu agomba gusa kuba yari afite ubutegetsi kuri gatozi w'icyaha, kandi itegeko rye rikagira uruhare runini, ndetse rutaziguye, mu ikorwa ry'icyaha[479].

202. Rushingiye ku bimaze kuvugwa, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa ryo mu rwego rw'amategeko kubera ko rwemeje ko kugenzura nyabyo ari ikintu cya ngombwa ngo hagaragazwe ko Athanase Seromba yagize uruhare mu byaha kubera ko « yategetse » ko bikorwa, nk'uko biteganywa n'ingingo ya 6.1 ya Sitati.

203. Urugereko rw'Ubujurire rugiye noneho gusuzuma ikibazo cyo kumenya niba Athanase Seromba yarategetse abantu gukora jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu. N'ubwo Urugereko rwa Mbere rw'Iremezo rwemeje ko Athanase Seromba « yabujije impunzi gushaka ibyo zirya mu rutoki rwa paruwasi ndetse agategeka abajandarume kurasa ku impunzi zari kujya muri urwo rutoki[480] », mu nyandiko y'urubanza biragaragara neza ko abacamanza bo mu rw'iremezo basanze iryo «tegeko» yahaye abajandarume ryo kurasa ku mpunzi zishaka ibyo kurya, ryari ingamba igamije gusa kuzibuza kujya gushaka ibyo zirya mu rutoki[481]. Urugereko rwa Mbere rw'Iremezo rwanze kandi kwakira ibintu bikurikira Porokireri yaregaga Athanase Seromba : kuba yarategetse ko «imiryango ya kiliziya ifungwa, bityo agaheza hanze impunzi zigeze kuri 30 zaba

[479] Urubanza rwa Kamuhanda mu bujurire, igika 75 (ibisobanuro ntibyongewemo).
[480] Urubanza mu rw'iremezo, igika 95.
[481] Ni kimwe no haruguru, igika 327.

zaraje kwicwa nyuma yaho[482] », kuba « yarategetse Interahamwe n'imitwe yitwara gisirikare kugaba ibitero ku mpunzi[483] », kuba yaratanze itegeko ryo gusenya kiliziya ya Nyange[484] no guhamba imirambo nyuma y'isenywa ry'iyo kiliziya[485].

204. Rushingiye ku myanzuro y'Urugereko rwa Mbere rw'Iremezo, itarahinduwe mu bujurire, Urugereko rw'Ubujurire rusanze Porokireri atagaragaje ko mu myitwarire ye, Athanase Seromba yakoze igikorwa gifatika gisabwa kugira ngo hemezwe ko yitabiriye jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu, ategeka ko ibyo byaha bikorwa. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanga nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze rwemeza ko Athanase Seromba atategetse abantu gukora jenoside cyangwa itsembatsemba nk'icyaha cyibasiye inyokomuntu.

205. Kubera iyo mpamvu, iki gice cy'impamvu y'ubujurire nticyakiriwe.

4. Umwanzuro w'Urugereko rw'Ubujurire

206. Rushingiye ku bimaze kuvugwa, Urugereko rw'Ubujurire rwakiriye, kuri bimwe, iyi mpamvu y'ubujurire maze rwanzura ruvuga ko Athanase Seromba yakoze jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu kubera uruhare yagize mu isenywa rya kiliziya ya Paruwasi ya Nyange, no mu iyicwa ry'impunzi z'abatutsi zigeze ku 1500 zari zahungiye muri iyo kiliziya. Bityo rero, Urugereko rw'Ubujurire rwemeje umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko Athanase Seromba yatanze inkunga kandi agashishikariza abantu gukora jenoside ku byerekeye iyicwa rya Patrice na Meriam. Ibyo bikorwa bikaba bigomba gutandukanywa n'ubwicanyi bwatewe n'isenywa rya kiliziya.

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[482] Ni kimwe no haruguru, igika 126.
[483] Ni kimwe no haruguru, igika 153.
[484] Ni kimwe no haruguru, igika 267. Urugereko rw'Ubujurire rwamaze gusuzuma kandi rwanga kwakira ibyo Athanase Seromba avuga ko atari kumenya « uruhande » rwa kiliziya « rworoshye gusenya". Reba ingingo ya munani y'ubujurire bwa Seromba, haruguru.
[485] Urubanza mu rw'iremezo, igika 290.

B. <u>Amakosa avugwa ku byerekeye ubwumvikane bugamije gukora jenoside (impamvu ya kabiri y'ubujurire)</u>

207. Athanase Seromba yarezwe icyaha cy'ubwumvikane bugamije gukora jenoside kubera ko, hagati y'itariki ya 6 n'iya 20 Mata 1994 cyangwa ahagana kuri ayo matariki, muri Perefegitura ya Kivumu, mu Rwanda, yumvikanye na Grégoire Ndahimana, wari Burugumesitiri wa Komine ya Kivumu, Fulgence Kayishema, wari umukuru w'abapolisi muri Komine ya Kivumu, Télesphore Ndungutse, Gaspard Kanyarukiga n'abandi bantu batazwi na Porokireri, ngo bice abaturage b'abatutsi cyangwa babateze ububabare bukomeye bw'umubiri cyangwa bwo mu mutwe, bagamije kurimbura abantu bose cyangwa igice cyabo bahuriye ku bwoko[486].

208. Urugereko rwa Mbere rw'Iremezo rwasanze Porokireri ataragaragaje, nta gushidikanya na gato, 1) ko Athanase Seromba yitabiriye amanama yarimo abategetsi ba komine ku itariki ya 11 n'iya 12 Mata 1994[487], 2) ko yakoranye amanama n'abategetsi ba komine ku itariki ya 10, iya 15 n'iya 16 Mata 1994 bagamije gucura umugambi wo gutsembatsemba impunzi z'abatutsi zari kuri paruwasi de Nyange[488] 3) n'uko yakoze lisiti y'abatutsi bagomba gushakishwa, agategeka cyangwa akagenzura ibitero byagabwe ku mpunzi ku itariki ya 15 Mata 1994 kandi ko yategetse ko kiliziya ya Nyange isenywa ku itariki ya 16 Mata 1994[489]. Urugereko rwa Mbere rw'Iremezo rwasanze kandi kuba Athanase Seromba yarabujije impunzi kujya gushaka ibyo zirya mu rutoki akanga no kuzisomera misa, bidahagije ngo hagaragazwe ko hari ubwumvikane bugamije gukora jenoside[490]. Kubera izo mpamvu, Urugereko rwa Mbere rw'Iremezo rwasanze Porokireri ataragaragaje, nta gushidikanya na gato, ko Athanase

[486] Urubanza, igika 344 ; Inyandiko y'ibirego , ikirego 3.
[487] Urubanza, igika 349 (havugwa ku biri mu Mutwe II, ibyiciro 4.3, 5.6).
[488] Ni kimwe no haruguru , igika 349 (hifashishijwe ibiri mu Mutwe II, ibyiciro 4.2, 6.4 na 7.4).
[489] Ni kimwe no haruguru , igika 350 (hifashishijwe ibiri mu Mutwe II, ibyiciro 3.4, 6.5, 6.7 na 7.4).
[490] Ni kimwe no haruguru , igika 350.

Seromba yumvikanye n'abandi bantu ngo bakore jenoside, nk'uko abimushinja mu kirego cya 3 cy'Inyandiko y'ibirego[491].

209. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ku mategeko no ku byabaye rwemeza ko Athanase Seromba adahamwa n'icyaha cy'ubwumvikane bugamije gukora jenoside[492]. Porokireri avuga ko mu byabaye byemewe n'Urugereko rwa Mbere rw'Iremezo, harimo nyamara ku buryo bugaragara ibikorwa bifatika bigize icyaha kimwe n'igitekerezo cyo kugikora[493].

210. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ku byabaye kuko « rutasuzumye neza ibimenyetso byose». Avuga ko umucamanza wese wo mu rw'iremezo ushyira mu gaciro, wari kuzirikana ibimenyetso byose byashyizwe muri dosiye atari kugira Athanase Seromba umwere ku cyaha cy'ubwumvikane bugamije gukora jenoside[494]. Avuga kandi ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ku mategeko no kubyabaye ubwo rwemezaga, rwirengagije imyanzuro rwagezeho, ko hatagaragajwe, nta gushidikanya na gato, ko Athanase Seromba yitabiriye amanama y'abategetsi ba komine ku matariki yavuzwe[495].

211. Mu gusoza kuri iki kibazo, Porokireri yifashisha ibivugwa mu rubanza rwa *Nahimana* n'urwa *Niyitegeka* mu rw'iremezo, maze akavuga ko uregwa ashobora guhamwa n'icyaha cya jenoside n'icy'ubwumvikane bugamije gukora jenoside hashingiwe ku bikorwa bimwe[496].

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[491] Ni kimwe no haruguru , igika 351.
[492] Inyandiko y'ubujurire ya Porokireri, igika 10 ; Imyanzuro y'ubujurire ya Porokireri, igika 75.
[493] Imyanzuro y'ubujurire ya Porokireri, igika 76.
[494] Ni kimwe no haruguru , igika 77.
[495] Ni kimwe no haruguru
[496] Imyanzuro y'ubujurire ya Porokireri, igika 97. Interuro ikurikira yo mu myanzuro y'ubujurire ya Porokireri irimo ikosa [rigaragazwa na « *sic* » mu nyandiko y'iyi myanzuro yashyizwe mu gifaransa] : « Muri urwo rwego, Urugereko rwa Mbere rw'Iremezo rwaburanishaga Urubanza rwa *Niyitegeka* rwahamije Uregwa icyaha cy'ubwumvikane [*sic*] n'icy'ubwumvikane bugamije gukora jenoside. » Iyo umuntu asomye igika cyose, asanga ari ikosa ry'imyandikire.

212. Urugereko rw'Ubujurire rugiye noneho gusuzuma buri kintu Porokireri avuga [muri iyi mpamvu y'ubujurire].

1. Amakosa avugwa ku birebana n'igikorwa gifatika kigize icyaha

a) Kwitabira amanama

213. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ku mategeko no ku byabaye ubwo rwemezaga, rwirengagije imyanzuro rwagezeho, ko hatagaragajwe, nta gushidikanya na gato, ko Athanase Seromba yakoranye amanama n'abategetsi ba komine ku matariki ya 10, 11, 12, 15 na 16 Mata 1994[497].

214. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarasanze Porokireri ataragaragaje, nta gushidikanya na gato, ko Athanase Seromba yitabiriye amanama y'abategetsi ba komine ku itariki ya 11 n'iya 12 Mata 1994[498]. Porokireri ntiyerekana ukuntu, rushingiye ku myanzuro rwafashe, Urugereko rwa Mbere rw'Iremezo, rwaba rwarakoze ikosa rwemeza ko Athanase Seromba atitabiriye ayo manama.

215. Urugereko rw'Ubujurire rusanga kandi n'ubwo Urugereko rwa Mbere rw'Iremezo rwasanze Athanase Seromba yari mu nama y'akanama ka paruwsi yabereye kuri Paruwasi ya Nyange ku itariki ya 10 Mata 1994[499], rwasanze ariko ubuhamya bw'umugabo wavuze ko habaye inama ya kabiri uwo munsi ari nayo yaba yarafatiwemo icyemezo cyo kwica abatutsi[500] butakwemerwa kuri icyo kibazo[501]. Ku byerekeye amanama yaba yarabaye ku itariki ya 15 Mata 1994, Urugereko rwa Mbere rw'Iremezo rwasanze haragaragajwe ko kuri iyo tariki Athanase Seromba n'abategetsi ba komine bagiranye «amanama cyangwa ibiganiro », ko ariko hatagaragajwe ko ayo manama cyangwa ibyo biganiro byari bigamije

[497] Imyanzuro y'ubujurire ya Porokireri, igika 77.
[498] Urubanza, igika 349 (hifashishijwe ibiri mu Mutwe II, icyiciro 4.3, ku nama yo ku itariki ya 11 Mata 1994 – n'icyiciro 5.6, ku nama yo ku itariki ya 12 Mata 1994).
[499] Ni kimwe no haruguru , igika 66.
[500] Ni kimwe no haruguru , igika 63.
[501] Ni kimwe no haruguru , igika 65.

gucura umugambi wo gutsembatsemba Abatutsi[502]. Mu gusoza kuri iki kibazo, ku byerekeye amanama yaba yarabaye ku itariki ya 16 Mata 1994, Urugereko rwa Mbere rw'Iremezo rwasanze kuri iyo tariki harabaye inama yahuje Athanase Seromba n'abandi bantu, kandi ko muri iyo nama padiri yamenyeshejwe icyemezo abategetsi bafashe cyo gusenya kiliziya, maze akacyemera [503] . Urugereko rw'Ubujurire rusanga Porokireri atarerekanye ukuntu Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rufata iyo myanzuro, ndetse ntiyanerekanye ukuntu rwibeshye rwemeza ko hatagaragajwe, nta gushidikanya na gato, ko Athanase Seromba n'abategetsi ba komine bakoranye amanama « agamije gucura umugambi wo gutsembatsemba impunzi z'abatutsi zari kuri Paruwasi ya Nyange[504] ».

b) **<u>Kugaragaza ko habayeho igikorwa gifatika kigize icyaha kubera ko uregwa yemeye ku buryo bweruye ibyo yabwiwe</u>.**

216. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rutemeje ko uregwa yemeye ku buryo bweruye ibyo yabwiwe kandi ibimenyetso rwakiriye bigaragaza ko yabyemeye koko[505]. Porokireri avuga ko imyanzuro y'Urugereko rwa Mbere rw'Iremezo igaragaza ko mu nama ya nyuma yagiranye n'abategetsi ku itariki ya 16 Mata 1994, Athanase Seromba yashyigikiye umugambi w'abandi bayobozi wo gusenya kiliziya hakoreshejwe tingatinga imwe cyangwa nyinshi [506]. Kuri iki kibazo, yibutsa ubuhamya CBK yatanze mu Rukiko, nk'uko bwasuzumwe n'Urugereko rwa Mbere rw'Iremezo mu gika cya 236 cy'inyandiko y'urubanza mu rw'iremezo, ariko by'umwihariko akavuga ibyo uwo mugabo avuga ku

[502] Ni kimwe no haruguru , igika 140. Uwo mwanzuro werekeye cyane cyane n'itariki ya 15 Mata 1994. Reba umutwe wiswe « Ibyabereye kuri Paruwasi ya Nyange ku itariki ya 14 n'iya 15 Mata », Urubanza, urup. 27.

[503] Ni kimwe no haruguru , igika 268. Reba igika 234 (umutangabuhamya wiswe CBJ yakwemerwa ku byo avuga ku « nama yabaye ku itariki ya 16 Mata 1994 ihuje Seromba n'abandi bantu »), 236 (umutangabuhamya wiswe CBK yakwemerwa ku byo avuga ku « nama yabaye mu gitondo cyo ku itariki ya 16 Mata 1994 yitabiriwe na Athanase Seromba n'abandi bantu kandi ko [muri iyo nama] Kayishema yaba yaravuze ko umunara wa kiliziya ugomba gusenywa kugira ngo […] abanyabwenge b'Abatutsi barimo bicwe »), 239 (umutangabuhamya wiswe CDL yakwizerwa ku byo avuga ku «kiganiro Athanase Seromba yagiranye na Kayishema, Ndahimana, Kanyarukiga, Habarugira n'abandi bantu […] . Muri icyo kiganiro Seromba yaba yaremeye icyemezo cyo gusenya kiliziya ») na 242 (umutangabuhamya wiswe CBR yakwemerwa ku byo avuga ku « biganiro n'amanama Athanase Seromba yagiranye n'abategetsi ku itariki ya 16 Mata 1994 »).

[504] Ni kimwe no haruguru , igika 349.

magambo ya Fulgence Kayishema[507]. Porokireri avuga ko Athanase Seromba yemeye byimazeyo « igitekerezo» cya Kayishema maze anonosora uko kwemera kwe avuga uburyo bwiza bwo gushyira mu bikorwa « umugambi » wari wacuzwe, kandi yereka umushoferi wa tingatinga «uruhande » rwa kiliziya « rworoshye gusenya » amubwira gutangira kuyisenya ahereye aho hantu [508].

217. Athanase Seromba ntasubiza iyi ngingo mu buryo butaziguye, ahubwo ashingiye ku rubanza rwa *Nahimana* Porokireri yifashishije, avuga ko nta «mugambi n'umwe uhuriweho » yari afitanye n'abagabye ibitero n'abategetsi[509].

218. Urugereko rw'Ubujurire ruributsa ko ubwumvikane bugamije gukora jenoside, nk'uko buteganywa n'ingingo ya 2.3 b) ya Sitati, busaba ko «abantu babiri cyangwa benshi baba barumvikanye ngo bakore jenoside[510] ». Kubyemera ni igikorwa gifatika cy'icyo cyaha[511]. Porokireri avuga ko ubwo bwumvikane busabwa, bugaragara mu myanzuro yagezweho n'Urugereko rwa Mbere rw'Iremezo. Kuri iyo ngingo, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarasuzumye ikibazo mu buryo bukurikira :

> Urugereko rusanga kandi umutangabuhamya wiswe CBK yakwemerwa, ku byerekeye inama yabaye ku itariki ya 16 Mata 1994 yari irimo Athanase Seromba n'abandi bantu. Muri iyo nama, Kayishema yaba yaravuze ko umunara wa kiliziya ugomba gusenywa kugira ngo hicwe abanyabwenge b'Abatutsi barimo. Urugereko rusanga kandi umutangabuhamya yakwemerwa ku byo avuga ku kiganiro umushoferi wa tingatinga yagiranye na Seromba amubaza, inshuro eshatu, niba agomba gusenya kiliziya. Seromba yaba

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[505] Imyanzuro y'ubujurire ya Porokireri, igika 85.
[506] Ni kimwe no haruguru.
[507] Imyanzuro y'ubujurire ya Porokireri, igika 85. Urugereko rw'Ubujurire rusanga iyo Porokireri yifashisha igika cya 236 cy'urubanza, ahavugwa ko « Kayishema yaba yaravuze ko umunara wa kiliziya ugomba gusenywa kugira ngo […] abanyabwenye b'abatutsi barimo bicwe », aba ashaka kuvuga, yibeshya, umutangabuhamya wiswe CBR aho kuvuga umutangabuhamya wiswe CBK.
[508] Imyanzuro [y'ubujurire] ya Porokireri, igika 86.
[509] Imyanzuro isubiza ya Seromba, igika 83.
[510] Urubanza rwa *Nahimana* mu bujurire, igika 894 (hifashiswa Urubanza rwa Ntagerura mu bujurire, igika cya 92). Reba na none Urubanza rwa *Kajelijeli* mu rw'iremezo, igika 787, Urubanza rwa *Niyitegeka* mu rw'iremezo, igika 423, Urubanza rwa *Ntakirutimana* mu rw'iremezo , igika 798, n'Urubanza rwa *Musema* mu rw'iremezo, igika 191.
[511] Urubanza rwa Nahimana mu bujurire, igika 894, Urubanza rwa Ntagerura mu bujurire, igika 92, Urubanza rwa *Kajelijeli* mu rw'iremezo, ibika 787-788, Urubanza rwa *Niyitegeka* mu rw'iremezo, igika 423, n'Urubanza rwa *Musema* mu rw'iremezo, igika 191.

> yaramwemereye. Ubuhamya bw'uyu mugabo bwakwizerwa kubera ko yari hafi y'Uregwa n'uwo mushoferi igihe ibyo bintu byabaga[512].

Rushingiye ku bimenyetso byose byatanzwe, abacamanza bo mu rw'iremezo basanze Athanase Seromba yaremeye icyemezo abategetsi bamumenyesheje cyo gusenya kiliziya[513]. N'ubwo Porokireri atari ko abibona, kuba Urugereko rwa Mbere rw'Iremezo rwaremeye ubuhamya CBK yatanze mu rukiko ku magambo ya Fulgence Kayishema, ntibivuga ko kubwemera byagombaga, byanze bikunze, gutuma rwanzura ruvuga ko hagati ya Fulgence Kayishema, abandi bategetsi na Athanase Seromba hari ubwumvikane bugamije kwica impunzi zari kuri Paruwasi ya Nyange. Urugereko rw'Ubujurire rusanga Porokireri atagaragaza ko ashingiye kuri ibyo bimenyetso, umucamanza wo mu rw'iremezo, ushyira mu gaciro, nta wundi mwanzuro yari gufata uretse kuvuga ko habaye ukwemera kugize igikorwa gifatika cy'icyaha cy'ubwumvikane bugamije gukora jenoside.

c) **<u>Kugaragaza igikorwa gifatika kigize icyaha hashingiwe ku bimenyetso bicukumbuwe</u>**

219. Porokireri avuga ko n'ubwo nta kimenyetso cyagaragajwe ko habayeho ukwemera ku buryo bweruye, ashingiye gusa ku bimenyetso byashyizwe muri dosiye, umucamanza wese wo mu rw'iremezo, ushyira mu gaciro, yari kwanzura avuga ko habayeho ubwumvikane[514]. Porokireri avuga ko imyitwarire ya Athanase Seromba n'ibintu byabereye kuri paruwasi hagati y'itariki ya 11 n'iya 16 Mata 1994 byari gutuma umucamanza wese wo mu rw'iremezo, ushyira mu gaciro, yanzura avuga ko hariho gahunda y'ibikorwa «yumvikanyweho kandi iteguwe[515] ». Porokireri yifashisha ibivugwa mu manza za *Nyiramasuhuko*, *Nahimana*, *Bagosora na Niyitegeka* mu gushyigikira ibyo yemeza ko kwemera bigize icyaha cy'ubwumvikane, bitagaragarira gusa mu bwumvikane bushyizwe

[512] Urubanza mu rw'iremezo, igika 236. Urugereko rw'Ubujurire rusanga mu nyandiko y'urubanza mu rw'iremezo iri mu cyongereza hakoreshwa, ku makosa, umugereka « *allegedly* » mu byabonywe n'Urugereko rwa Mbere rw'Iremezo (« *Kayishema allegedly said that*… »). [NdT. : nyamara mu nyandiko y'umwimerere iri mu rurimi rw'igifaransa, handitse ngo (« Kayishema yaba yaravuze ko … »), kenshi mu cyongereza bisemurwa hakoreshejwe umugereka « allegedly ».]
[513] Ni kimwe no haruguru , ibika 233-269.
[514] Imyanzuro y'ubujurire ya Porokireri, ibika 87-88.
[515] Ni kimwe no haruguru , igika 87.

ahagaragara cyangwa bweruye, ko ahubwo bishobora no kugaragarira mu bimenyetso bicukumbuwe[516].

220. Athanase Seromba asubiza ko imanza Porokireri ashingiraho zidashobora gushyigikira ibyo avuga kuko Urubanza rwa *Nahimana* rukiri mu bujurire[517], Urubanza rwa *Bagosora* rukaba rukiburanishwa mu rw'iremezo[518], kandi nta hantu na hato urubanza rwe ruhuriye n'urwa *Niyitegeka*[519].

221. Nk'uko byavuzwe haruguru, igikorwa gifatika kigize icyaha cy'ubwumvikane bugamije gukora jenoside ni icyemezo cyumvikanyweho n'abantu babiri cyangwa benshi bagamije gukora jenoside. N'ubwo icyo gikorwa gishobora kugaragazwa herekanwa ko habaye amanama ategura jenoside, gishobora no kugaragarira mu bindi bimenyetso[520]. Ariko, kimwe n'ahandi hose Porokireri ashaka kwifashisha ibimenyetso bicukumbuwe, kugira ngo agaragaze ikintu cyihariye cyabaye gishobora gutuma uregwa ahamwa n'icyaha, umwanzuro rukumbi ushyize mu gaciro kandi wafatwa hashingiye ku bimenyetso byose, ni uvuga ko habaye ubwumvikane bugamije gukora jenoside[521].

222. Urugereko rw'Ubujurire rugiye noneho kureba niba Porokireri yaragaragaje ko, hashingiwe ku bimenyetso byatanzwe mu rubanza, umwanzuro rukumbi ushyize mu gaciro wafatwa ari uwakwemeza ko Athanase Seromba yitabiriye ubwumvikane bugamije gukora jenoside.

223. Mu gushyigikira ibyo avuga ko Athanase Seromba yitabiriye ubwumvikane bugamije gukora jenoside, Porokireri yifashisha ibyabaye bikurikira[522] : 1) kuba Uregwa yari ahari mu gihe cy'ibitero, 2) kuba, abyumvikanyeho n'abategetsi, yarahaye abagabye ibitero amabwiriza yo gukora ibikorwa bya jenoside (kubuza

[516] Ni kimwe no haruguru , ibika 84, 87, 92-93.
[517] Imyanzuro isubiza ya Seromba, ibika 82, 92.
[518] Ni kimwe no haruguru , igika 92.
[519] Ni kimwe no haruguru , ibika 84-85.
[520] Urubanza rwa Nahimana mu bujurire, igika 896.
[521] Ni kimwe no haruguru, igika 896, Urubanza rwa Ntagerura mu bujurire, ibika 306, 399, Urubanza rwa *Stakić* mu bujurire, igika 219, Urubanza rwa *Krstić* mu bujurire, igika 41, Urubanza rwa *Vasiljević* mu bujurire, ibika 120, 128 na 131, n'Urubanza rwa *Čelebići* mu bujurire, igika 458.
[522] Imyanzuro y'ubujurire ya Porokireri, ibika 88-89.

impunzi kubona ibyo zirya, gukuraho « imyanda », kwirukana impunzi z'Abatutsi zakomeretse kandi zasaga « naho zifite umutekano aho zari ziri maze agatuma zicwa »), 3) kuba yari kumwe n'abategetsi ba komine nyuma y'inama yo ku itariki ya 16 Mata 1994 no kuba yaraganiriye n'abo bategetsi mbere yo kugira amabwiriza atanga[523], 4) kuba yarategetse abajandarume gukuraho imirambo mbere yo gukomeza igitero maze abajandarume bagakora ibyo ababwiye[524] no 5) kuba «yaremeye » isenywa rya kiliziya, uburyo n'impamvu iyo kiliziya yasenywe. Porokireri yongeraho ko imyitwarire ya Athanase Seromba igaragaza « ko yitabiriye umugambi w'igikorwa kigamije gukomeza ibitero kandi, aho byabaga ngombwa, [...] yagiraga ububasha bwo guhagarika ibitero, akanategeka ko bisubukurwa[525] ».

224. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rutaremeje ko Athanase Seromba yategetse cyangwa yagenzuye igitero cyagabwe ku mpunzi ku itariki ya 15 Mata 1994, kandi ko rutemeje ko ku itariki ya 16 Mata 1994, yategetse ko kiliziya ya Nyange isenywa[526]. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rwasanze ibikorwa byahamye Athanase Seromba, ari byo kuba yarabujije impunzi z'Abatutsi kujya mu rutoki gushaka ibyo zirya no kuba yaranze kuzisomera misa, bidahagije byonyine kugaragaza ko habayeho ubwumvikane bugamije gukora jenoside[527]. Urugereko rw'Ubujurire ntirwumva ko umwanzuro rukumbi wafatwa ku bindi bintu byabaye bivugwa muri dosiye, ari uko Athanase Seromba yumvikanye n'abategesti ba komine kugira ngo bakore jenoside. Urugereko rw'Ubujurire rusanga rero Urugereko rwa Mbere rw'Iremezo nta kosa rwakoze kuri icyo kibazo. Ku bw'ibyo, ntiruri busuzume ibyo Porokireri avuga ku gitekerezo cyo gukora icyo cyaha[528].

[523] Porokireri ashingira ku buhamya CBR yatanze mu Rukiko.
[524] Porokireri ashingira ku gika cya 164 n'icya 179 cy'inyandiko y'urubanza mu rw'iremezo.
[525] Imyanzuro y'ubujurire ya Porokireri, igika 89.
[526] Urubanza mu rw'iremezo, igika 350 (havugwa ku biri mu Mutwe II, ibyiciro 3.4, 6.5, 6.7 na 7.4).
[527] Ni kimwe no haruguru , igika 350.
[528] Imyanzuro y'ubujurire ya Porokireri, ibika 92, 93.

2. Umwanzuro w'Urugereko rw'Ubujurire

225. Porokireri ntiyagaragaje ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rudahamya Athanase Seromba icyaha cy'ubwumvikane bugamije gukora jenoside. Urugereko rw'Ubujurire ntirugomba rero gusuzuma ibyo Porokireri avuga ko uregwa ashobora guhamwa n'icyaha cya jenoside n'icy'ubwumvikane bugamije gukora jenoside hashingiwe ku bimenyetso bimwe[529]. Rushingiye ku bimaze kuvugwa, iyi mpamvu y'ubujurire ntiyakiriwe

[529] Imyanzuro y'ubujurire ya Porokireri, ibika 80, 94-97. Byongeye kandi, Porokireri ntiyabivuze mu nyandiko y'ubujurire.

V. IBYEREKEYE IGIHANO CYAGENWE

(Ingingo ya 10 y'ubujurire bwa Athanase Seromba

n'ingingo ya 3 y'ubujurire bwa Porokireri)

226. Urugereko rwa Mbere rw'Iremezo rwahamije Athanase Seromba icyaha cya jenoside (ikirego cya 1) n'icy'itsembatsemba (ikirego cya 4) kubera gufasha no gushishikariza abantu gukora ibyo byaha maze rumukatira igihano cy'igifungo cy'imyaka 15[530]. Athanase Seromba na Porokireri bombi bajuririye icyo gihano. Urugereko rw'Ubujurire rwakiriye, kuri bimwe, ingingo ya mbere y'ubujure bwa Porokireri maze rwemeza ko Athanase Seromba yakoze jenoside n' itsembatsemba nk'icyaha cyibasiye inyokomuntu kubera uruhare yagize mu isenywa rya kiliziya. Urugereko rw'Ubujurire rwemeje kandi icyemezo cy'Urugereko rwa Mbere rw'Iremezo gihamya Athanase Seromba icyaha cy'itsembatsemba kubera gutera inkunga no gushishikaza abagikoze ubwo yirukanaga abakozi n'impunzi z'abatutsi. Ruvanyeho umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko Athanase Seromba yateye inkunga kandi agashishikariza abantu guteza impunzi z'Abatutsi ububabare bukomeye bw'umubiri n'ubwo mu mutwe. Kubera ibimaze kuvugwa, Urugereko rw'Ubujurire rufashe icyemezo cyo kuvanaho igihano Uregwa yakatiwe n'Urugereko rwa Mbere rw'Iremezo maze rukamukatira ikindi gihano gishya. Bityo rero, Urugereko rw'Ubujurire ntiruza gusuzuma ubujurire bwatanzwe ku gihano cy'imyaka 15 Uregwa yakatiwe n'Urugereko rwa Mbere rw'Iremezo. Cyakora, Urugereko rw'Ubujurire rurasuzuma ibyavuzwe muri ubwo bujurire, by'umwihariko ibyerekeranye n'uburyo Urugereko rwa Mbere rw'Iremezo rwasuzumye impamvu zongera n'izoroshya ububi bw'icyaha ziri buzirikanwe mu kugena igihano gishya.

[530] Urubanza mu rw'iremezo, igika 372, « Imikirize y'urubanza ».

227. Porokireri avuga ko ingingo ya mbere n'iya kabiri z'ubujurire bwe ziramutse zakiriwe, Urugereko rw'Ubujurire rwagombye gukosora ikosa Urugereko rwa Mbere rw'Iremezo rwakoze rukatira Athanase Seromba igihano kidahuje, nk'uko bigaragara, n'uburemere bwihariye bw'ibyaha yakoze n'uburyozwacyaha bwe ku giti cye[531]. Avuga ko Athanase Seromba agomba gukatirwa igihano cy'igifungo cya burundu kuko nta mpamvu ziriho zoroshya ububi bw'icyaha zishobora gutuma ahabwa igihano gito kuri icyo[532]. Athanase Seromba asubiza, nta bindi bisobanuro atanze, ko « ibyo Porokireri yemeza ko igifungo cya burundu ari cyo cyonyine akwiye gukatirwa nta shingiro bifite[533] ».

228. Ingingo ya 22 n'iya 23 za Sitati no kuva ku ya 99 kugera ku ya 106 z'Amategeko nizo zirebana n'igenabihano. Ingingo ya 23 ya Sitati n'iya 101 y'Amategeko zirimo amabwiriza rusange agomba gukurikizwa n'Inteko z'Urugereko rwa Mbere rw'Iremezo. Muri izo ngingo, harimo ibintu bikurikira izo Nteko zigomba kuzirikana mu kugena igihano : uburemere bw'icyaha, imimerere bwite y'uhamwe n'icyaha, urutonde rusange rw'ibihano by'igifungo rukoreshwa n'inkiko zo mu Rwanda no kuba hariho impamvu zongera n'izoroshya ububi bw'icyaha[534]. Mu kugena igihano gikwiye, Inteko z'Urugereko rwa Mbere rw'Iremezo zifite ububasha busesuye. Ibyo biterwa n'inshingano zifite zo kugenera umuntu igihano ku giti cye, hashingiwe ku imimerere bwite y'uhamwe n'icyaha n'uburemere bw'icyaha[535].

229. Athanase Seromba avuga ko Urugereko rwa Mbere rw'Iremezo rwasuzumye nabi ikibazo cyo «gutatira icyizere[536] ». Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwaremeje ko «umwanya » Athanase Seromba yari afite

[531] Imyanzuro y'ubujurire ya Porokireri, igika 151.
[532] Ni kimwe no haruguru , igika 152.
[533] Imyanzuro isubiza ya Seromba, igika 142.
[534] Urubanza rwa *Čelebići* mu bujurire, igika 716, Urubanza rwa *Galić* mu bujurire, igika 392, Urubanza rwa *Bralo*mu bujurire, igika 7, n'Urubanza rwa *Blagojević* mu bujurire, igika 320. Byongeye kandi, nk'uko biteganywa n'ingingo ya 9.3 ya Sitati n'iya 101 B) iv) z'Amategeko, Inteko z'Urugereko rwa Mbere rw'Iremezo zigomba kuzirikana ukuntu umuntu uhamijwe icyaha yararangije igihano yaba yarahawe n'urukiko rw'igihugu iki n'iki kuri icyo cyaha.
[535] Urubanza rwa Nahimana mu bujurire, ibika 1037, 1046, Urubanza rwa Ndindabahizi mu bujurire, igika 132 (hifashishijwe ibiri mu rubanza rwa *Semanza* mu bujurire, igika 312).
[536] Inyandiko y'ubujurire bwa Seromba, igika 42.

n'«ukuntu yatatiye icyizere » impunzi z'abatutsi zari zimufitiye[537], byafatwa' nk'impamzu zongera ububi bw'icyaha. Urugereko rwa Mbere rw'Iremezo rwasobanuye igitekerezo cyarwo mu magambo akurikira :

> Mu gihe cy'ibyabaye bivugwa mu Nyandiko y'ibirego, Athanase Seromba, Padiri w'umugatolika, ari umuyobozi wa paruwasi ya Nyange. Yari azwi kandi yubashywe mu muryango gatolika w'i Nyange. [Urugereko] ruributsa ko hagaragajwe ko Abatutsi benshi bo muri Komine ya Kivumu bahungiye mu kiliziya ya Nyange kubera ibitero bagabwagaho. Kuba uregwa nta kintu na kimwe kigaragara yakoze kugira ngo adatererana abo bantu bari bahungiye kuri Paruwasi ya Nyange bizeye kuticwa, Urugereko rubifata nk'impamvu yongera ububi bw'icyaha[538].

230. Urugereko rw'Ubujurire ruributsa ko kurengera witwaje ijambo ufite muri rubanda cyangwa ubutegetsi ubafiteho bishobora gufatwa nk'impamvu yongera ububi bw'icyaha[539]. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwasanze haragaragajwe ko muri Mata 1994, Athanase Seromba yari padiri wa Paruwasi ya Nyange[540] kandi ko muri icyo gihe, Abatutsi bari barahungiye kuri iyo paruwasi[541]. Ni muri urwo rwego abacamanza bo mu rw'iremezo bazirikanye ibyo Porokireri yemeza ko Athanase Seromba yatatiye icyizere abaturage ba paruwasi ye bari bamufitiye[542] maze bemeza ko umwanya yari afite no «gutatira icyo cyizere » ari impamvu zongera ububi bw'icyaha[543]. Uwo mwanzuro ntiwafashwe hashingiwe k'umwanya w'ubupadiri uregwa yari afite, ahubwo wafashwe kubera ko yatatiye icyizere abantu bari bamufitiye. Urugereko rw'Ubujurire rusanga nta kosa riri muri uwo mwanzuro.

231. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu kuzirikana impamvu zihariye z'uru rubanza. Anenga ko urwo Rugereko rworoheje igihano Athanase Seromba yagombaga gukatirwa, rushingiye ku mpamvu zitajyanye n'uru rubanza kandi zitarufitiye akamaro, maze rugaha

[537] Urubanza, igika 390.
[538] Ni kimwe no haruguru (ibisobanuro ntibyongewemo).
[539] Urubanza rwa *Ndindabahizi* mu bujurire, igika 136. Reba na none Urubanza rwa *Akayesu* mu bujurire, ibika 414-415, Urubanza rwa *Ntakirutimana* mu bujurire, igika 563, n'Urubanza rwa *Kamuhanda* mu bujurire, ibika 347-348.
[540] Urubanza mu rw'iremezo, igika 38.
[541] Ni kimwe no haruguru , igika 54.
[542] Ni kimwe no haruguru , igika 387.
[543] Ni kimwe no haruguru , igika 390.

agaciro karenze impamvu zoroshya ububi bw'icyaha, nyamara ntiruhe agaciro gakwiye impamvu zongera ububi bw'icyaha[544]. Porokireri asanga kandi mu kugenera Athanase Seromba igihano, imimerere ye bwite n'imyitwarire ye myiza byari gufatwa nk'impamvu zongera ububi bw'icyaha aho gufatwa nk'impamvu nyoroshyacyaha[545]. Anenga kandi Urugereko rwa Mbere rw'Iremezo kuba rutarafashe, nk'impamvu yongera ububi bw'icyaha, « iyicwa ry'imbaga » y'abatutsi b'impunzi mu gihe kiliziya yasenywaga, no kuba rutarahaye agaciro gahagije kuba Athanase Seromba yarakoresheje nabi umwanya w'ubutegetsi yari afite muri paruwasi ya Nyange[546].

232. Athanase Seromba asubiza ko Inteko z'Urugereko rwa Mbere rw'Iremezo zagiye zifata imyitwarire myiza y'uregwa nk'impamvu nyoroshyacyaha[547]. Avuga ko kuba yarishyize mu maboko y'Urukiko ku bushake, ari impamvu nyoroshyacyaha yemerwa na Porokireri[548]. Yongeraho ko abacamanza bo mu rw'iremezo bari banyujije mu kuri bazirikana imyaka ye[549]. Asubiza kandi ko iyicwa ry'impunzi z'Abatutsi mu isenywa rya kiliziya ari byo byashingiweho mu kumugenera igihano, ko ariko icyo kintu cyabaye, kitagomba gufatwa nk'impamvu yongera ububi bw'icyaha[550]. Yongeraho ko Porokireri yiyibagiza ko « atigeze aba umuyobozi wa paruwasi ya Nyange[551] ».

233. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo, rushingiye ku mimerere bwite ya Athanase Seromba, rwarasanze « amashuri ye n'uburambe ku kazi muri kiliziya byagombye gutuma yumva ko yitwaye nabi mu gihe cy'ibyabaye[552]. » Abacamanza bo mu rw'iremezo basanze kandi uwo mupadiri yarageze kuri Paruwasi ya Nyange mbere gato y'ibyabaye, kandi ko we

[544] Imyanzuro y'ubujurire ya Porokireri, ibika 114-137.
[545] Ni kimwe no haruguru , ibika 119-121 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 2007, imp. 11-13.
[546] Imyanzuro y'ubujurire ya Porokireri, ibika 117,118 ; inyandikomvugo y'iburanisha mu bujurire, 26 Ugushyingo 200, imp. 11-12.
[547] Imyanzuro isubiza ya Seromba, igika 123.
[548] Ni kimwe no haruguru , ibika 125-126.
[549] Ni kimwe no haruguru , ibika 134-135.
[550] Ni kimwe no haruguru , ibika 117-118.
[551] Ni kimwe no haruguru , igika 120.
[552] Urubanza mu rw'iremezo, igika 385.

nk'umupadiri usanzwe mu gihe cy'ibyabaye, «yayoboye iyo paruwasi kubera gusa ko nta padiri mukuru wari uhari[553] ». By'umwihariko, Urugereko rwa Mbere rw'Iremezo rwemeje ko umwanya Athanase Seromba yari afite no kuba « yaratatiye icyizere » abantu bari bamufitiye[554], ari impamvu zongera ububi bw'icyaha. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rwasanze kuba Athanase Seromba yaritwaraga neza mbere[555], kuba yarishyize mu maboko y'Urukiko ku bushake[556] no kuba akiri muto[557] ari impamvu nyoroshyacyaha zigomba kuzirikanwa mu kumugenera igihano.

234. Urugereko rw'Ubujurire rusanga Porokireri adasobanura ibyo avuga ku mpamvu zongera ububi bw'icyaha. Avuga gusa ko ibintu bivugwa byahawe agaciro kadahagije, kandi ko iyicwa ry'impunzi z'Abatutsi mu isenywa rya kiliziya byagombaga gufatwa nk'impamvu yongera ububi bw'icyaha. Cyakora, ntatanga ikimenyetso kigaragara cyangwa igisobanuro cy'ibyo yemeza. Bityo rero, Porokireri ntagaragaza ko Urugereko rwa Mbere rw'Iremezo rwasuzumye nabi impamvu zongera ububi bw'icyaha.

235. Bitewe n'uko, ku byerekeye impamvu nyoroshyacyaha, Urugereko rwa Mbere rw'Iremezo rutasobanuye uburemere ruha imyitwarire myiza y'Athanase Seromba, Urugereko rw'Ubujurire rurongera kwemeza umwanzuro ukurikira rwafashe mu rubanza rwa *Semanza* mu bujurire :

> Urugereko rwa Mbere rw'Iremezo rwari rufite ububasha busesuye bwo gufata nk'impamvu nyoroshyacyaha, imyitwarire myiza yarangaga Ujurira […]. Urugereko rw'Ubujurire rusanga, kenshi, imyitwarire myiza y'uregwa mbere y'ibyabaye ifite agaciro gato mu kugena igihano yahabwa. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo ntirwavuze uburemere ruha, niba buhari, imyitwarire myiza y'Ujurira n'ibyo yakoze mbere y'ibyabaye. Urebye imiterere y'ibyaha, nta wakwemeza rero ko impamvu nyoroshyacyaha zagize ingaruka zidakwiye mu igenabihano. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanga nta kosa rigaragara Urugereko rwa Mbere rw'Iremezo rwakoze[558].

[553] Ni kimwe no haruguru , igika 386 (ibisobanuro ntibyongewemo).
[554] Ni kimwe no haruguru , igika 390.
[555] Ni kimwe no haruguru , igika 395.
[556] Ni kimwe no haruguru , ibika 396-398.
[557] Ni kimwe no haruguru , igika 399.
[558] Urubanza rwa *Semanza* mu bujurire, igika 398 (ibisobanuro ntibyongewemo).

236. Kubyerekeye noneho kuba Athanase Seromba yarishyize mu maboko y'Urukiko ku bushake, Urugereko rw'Ubujurire rusanga, mu myanzuro ye y'ubujurire, Porokireri adasobanura ibyo yemeza ko, mu gihe nta zindi mpamvu zivugwa, uko kwishyira mu maboko y'Urukiko bitahabwa agaciro mu kumugabanyiriza igihano[559]. Ibyo ari byo byose, Urugereko rw'Ubujurire rusanga ibyo Porokireri yemeza atari byo, kubera ko ahubwo, kwishyira mu maboko y'Urukiko ku bushake, bifashwe ukwabyo cyangwa bigahuzwa n'ibindi bintu, byafashwe nk'impamvu nyoroshyacyaha mu manza zaciwe na TPIR na TPIY[560]. Byongeye kandi, Urugereko rw'Ubujurire ntirushobora kwakira ibyo Porokireri avuga byerekeranye n'imyitwarire y'Uregwa nyuma yo kwishyira mu maboko y'Urukiko[561]. Mu gusuzuma niba ukwishyira mu maboko y'Urukiko ku bushake ari impamvu nyoroshyacyaha, si ngombwa kureba niba uregwa yaritabiriye cyangwa ataritabiriye ubufatanye mu miburanishirize[562]. Bityo rero, Porokireri ntagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoresheje nabi ububasha rufite bwo gusuzuma ibintu kubera ko rwemeje ko kuba Athanase Seromba yarishyize mu maboko y' Urukiko ku bushake, ari impamvu nyoroshyacyaha.

237. Na none, ku byerekeye imyaka Athanase Seromba yari afite mu gihe cy'ibyabaye, Urugereko rw'Ubujurire rusanga ibyo Urugereko rwa Mbere rw'Iremezo ruvuga kuri icyo kibazo[563] bishobora kumvikana uko bitari. Niyo mpamvu, kuri iki kibazo, ari ngombwa gusobanura ko kuba mu gihe ibyaha byakorwaga Athanase Seromba yari afite imyaka 31, bitafatwa nk'impamvu nyoroshyacyaha. Kubera rero ko ibivugwa kuri iki kibazo bitumvikana neza mu nyandiko y'urubanza mu rw'iremezo, nta kindi gisobanuro Urugereko rw'Ubujurire ruri butange kuri icyo kibazo. Bitewe n'uko Urugereko rw'Ubujurire ruri buhindure igihano cyatanzwe

[559] Imyanzuro y'ubujurire ya Porokireri, ibika 131-132.
[560] Reba Urubanza rwa *Rutaganira* mu rw'iremezo, igika 145, igenabihano mu rubanza rwa *Serushago*, igika 34, Urubanza rwa *Bralo* mu rw'iremezo, igika 61, Urubanza rwa *Deronjić* mu rw'iremezo, igika 266, Urubanza rwa *Babić*, igika 86, Urubanza rwa *Strugar*, igika 472, Urubanza rwa *Blaškić* mu bujurire, igika 701, Urubanza rwa *Miodrag Jokić* mu rw'iremezo, igika 73, Urubanza rwa *Blagoje Simić* mu rw'iremezo, igika 1086, Urubanza rwa *Plavsic* mu rw'iremezo, igika 84, n'Urubanza rwa *Milan Simić* mu rw'iremezo, igika 107.
[561] Imyanzuro y'ubujurire ya Porokireri, ibika 134-35.
[562] Reba Urubanza rwa *Blagoje Simić* mu bujurire, igika 258, *a contrario*.
[563] Urubanza mu rw'iremezo, igika 399.

n'Urugereko rwa Mbere rw'Iremezo rukagisimbuza igishya, ntirukeneye kuzirikana ingaruka ikosa ryaba ryarakozwe ryashoboraga kugira.

238. Urugereko rw'Ubujurire rusanga ibyaha Athanase Seromba yahamijwe bifite uburemere kandi birenze kamere muntu ku buryo bukomeye. Rushimangira kandi ko Athanase Seromba yari azi ko impunzi zigera ku 1 500 zari zahungiye mu kiliziya kandi ko, ibyo ari byo byose, abo bantu bari kwicwa cyangwa bagakomeretswa bikomeye aramutse yemeye ko kiliziya isenyeshwa tingatinga, kandi azirikana ko abari muri iyo kiliziya bari baje bahahungiye.

239. Urugereko rw'Ubujurire ruributsa ko rwemeye, kuri bimwe, impamvu ya mbere y'ubujurire ya Porokireri maze rugahamya Athanase Seromba jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu kubera uruhare yagize mu isenywa rya kiliziya. Runibutsa ko rwashyigikiye icyemezo cyo guhamya Athanase Seromba icyaha ku kirego cya jenoside kubera ko yateye inkunga kandi agashishikariza abantu kuyikora, yirukana impunzi n'abakozi b'abatutsi. Rumaze kandi kuzirikana uburemere budasanzwe bw'ibyaha n'impamvu zoroshya n'izongera ububi bwabyo, Urugereko rw'Ubujurire, ku bwiganze bw'amajwi, ruhanishije Athanase Seromba igihano cy'igifungo cya burundu. Umucamanza Liu ntiyemeranya n'abandi ariko kuri iki gihano.

V. IMIKIRIZE Y'URUBANZA

240. Kubera izo mpamvu, **URUGEREKO RW'UBUJURIRE** ,

RUSHINGIYE ku ngingo ya 24 ya Sitati n'iya 118 y'Amategeko,

RUSHINGIYE ku myanzuro yanditse n'iyo ababuranyi batanze mu magambo mu iburanisha ryo ku itariki ya 26 Ugushyingo 2007,

RUBURANISHIRIZA mu ruhame,

RWEMEJE, abacamanza bose babyumvikanyeho**,** icyemezo Urugereko rwa Mbere rw'Iremezo rwafashe cyo kutakira ikirego cya 2 cyo mu Nyandiko y'ibirego (kuba icyitso cy'abakoze jenoside) no kugira Athanase Seromba umwere ku kirego cya 3 cyo mu Nyandiko y'ibirego (ubwumvikane bugamije gukora jenoside) ;

RWAKIRIYE kuri bimwe, abacamanza bose bagize Urugereko babyumvikanyeho**,** ingingo ya munani y'ubujurire bwa Athanase Seromba, maze **RUVANAHO**, abacamanza bose babyumvikanyeho, umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko Athanase Seromba yafashije kandi agashishikariza abantu gukora jenoside kubera ko yagize uruhare runini mu bikorwa biteza impunzi z'Abatutsi ababarebare bukomeye bw'umubiri cyangwa ubwo mu mutwe, ababuza gushaka ibyo barya mu rutoki rwa paruwasi ya Nyange, akananga kubasomera misa;

NTIRWAKIRIYE ubujurire bwa Athanase Seromba ku bisigaye ;

RWAKIRIYE kuri bimwe, ku bwiganze bw'amajwi, ingingo ya mbere y'ubujurire bwa Porokireri. Umucamanza Liu ntiyemeranya n'abandi ariko kuri iyi ngingo. **RWEMEJE,** ku bwiganze bw'amajwi, kuko umucamanza Liu atemeranya n'abandi, ko Athanase Seromba yakoze jenoside n'itsembatsemba nk'icyaha cyibasiye inyokomuntu kubera uruhare yagize mu isenywa rya kiliziya ya paruwasi ya Nyange. Kubera iyo mpamvu **RWEMEJE**, abacamanza bose babyumvikanyeho, umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko Athanase Seromba yateye inkunga kandi agashishikariza abantu

gukora jenoside ku byerekeranye n'iyicwa rya Patrice na Meriam. Ibyo bikorwa **bitandukanye n'iyicwa** ry'abantu ryatewe no gusenya kiliziya ;

RUVANYEHO, abacamanza bose babyumvikanyeho, igihano cy'igifungo cy'imyaka 15 Athanase Seromba yakatiwe. Ku bwiganze bw'amajwi, **RUMUKATIYE** igihano cy'igifungo cya burundu, kigomba gukurwamo igihe amaze afunzwe kuva ku itariki ya 6 Gashyantare 2002, nk'uko biteganywa n'ingingo ya 101 D) y'Amategeko ; umucamanza Liu ariko ntiyemeranya n'abandi kuri icyo gihano.

NTIRWAKIRIYE ubujurire bwa Porokireri ku bisigaye ;

RWEMEJE ko uru rubanza mu bujurire ruhita rurangizwa, hakurikijwe ingingo ya 119 y'Amategeko ;

RUTEGETSE, nk'uko biteganywa n'ingingo ya 103 B) n'iya 107 z'Amategeko, ko Athanase Seromba aguma mu maboko y'Urukiko kugeza igihe azimurirwa mu gihugu azarangirizamo igihano cye.

Bikozwe mu Cyongereza n'igifaransa, ariko inyandiko y'icyongereza niyo izajya igenderwaho.

[Umukono]	[Umukono]	[Umukono]
Mohamed Shahabuddeen Perezida	Patrick Robinson Umucamanza	Liu Daqun Umucamanza

[Umukono]	[Umukono]
Theodor Meron	Wolfgang Schomburg
Umucamanza	Umucamanza

Kuri iyi nyandiko y'Urubanza, Umucamanza Liu yometseho igitekerezo gitandukanye n'icy'abandi kuri bimwe.

Bikorewe Arusha, Tanzaniya, uyu munsi tariki ya 12 Werurwe 2008

VII. IGITEKEREZO GITANDUKANYE N'ICY'ABANDI CY'UMUCAMANZA LIU

1. Ntabwo nemera icyemezo cyafashwe mu bwiganze bw'amajwi n'Ugereko rw'Ubujurire ("Ubwiganze") aho rusanga Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa mu kudahamya Athanase Seromba jenoside n'itsembatsemba. Bagenzi banjye bifashisha *Urubanza rwa Gacumbitsi mu bujurire* berekana ko "hakurikijwe ubukemuramanza, bigaragara ko "gukora icyaha" atari ukugikora ku buryo butaziguye kandi bufatika gusa, ko ibindi bikorwa bishobora gufatwa nk'aho umuntu yagize uruhare mu gukora icyaha"[1]. Ntabwo nemera icyemezo cyafashwe na bagenzi banjye kubera impamvu zikurikira.

2. Icya mbere, mu *rubanza rwa Gacumbitsi,* ntabwo Urugereko rw'Ubujurire rwavuze ko "gukora icyaha" *ubwabyo* atari ukugikora ku buryo butaziguye kandi bufatika gusa, ko ibindi bikorwa bishobora gufatwa nk'aho umuntu yagize uruhare mu gukora icyaha, nk'uko bagenzi banjye bashaka kuvuga, ahubwo rwavuze ko:

> "[*Ku birebana na jenoside*, […] atari ngombwa ko "gukora icyaha ku buryo butaziguye kandi bufatika" bivuga kwica; ibindi bikorwa bishobora gufatwa nk'aho umuntu yagize uruhare mu gukora icyaha "[2] .

Bityo, ku birebana no gukora itsembatsemba, bagenzi banjye baribeshya igihe basanga Urugereko rwa Mbere rw'Iremezo rwaragize ikosa mu gufata ihame rigenga jenoside bukarihindura ihame rusange, kugeza n'aho barikoresha ku itsembatsemba.[3]

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[1] Urubanza mu bujurire, igika 161.

[2] Urubanza rwa Gacumbitsi mu bujurire, igika 60 (havuyeho inyandiko iri hasi ku rupapuro, hari amagambo twongeyemo).

[3] Urubanza mu bujurire, igika 190. Nsanze mu gukoresha iryo hame ku "gukora itsembatsemba", bagenzi banjye bavuga batanasesenguye, ko " n'ubwo mu rubanza rwa *Gacumbitsi* mu bujurire icyemezo cyafashwe ku "gukora" jenoside gusa, Urugereko rw'Ubujurire ntirubona impamvu uburyo cyagezweho butakoreshwa ku cyaha cy'itsembatsemba. Ikibazo cy'ingenzi kibyutswa n'icyemezo cyafashwe mu

Ikindi kandi, hari ibyemezo byafashwe mbere n'Urugereko rw'Ubujurire rwa TPIR n'urwa TPIY bishobora gushyigikira igisobanuro cyo "gukora icyaha" cyatanzwe n'Urugereko rwa Mbere rw'Iremezo,[4] bitahinduwe hatanzwe impamvu zishyitse kandi bikozwe mu nyungu z'ubutabera, ariko muri uru rubanza bagenzi banjye bemeje ko icyo gisobanuro gifutamye. Ntibifatwe ko nsuzuguye Urugereko, ariko ubwo buryo bwo kubona ibintu ntibwabura gukemangwa.

3. Ku birebana na jenoside, Sylvestre Gacumbitsi yari yaraciriwe urubanza n'Urugereko rwa Mbere rw'Iremezo ko yakoze, yatanze amabwiriza yo gukora kandi yashishikarije gukora jenoside rushingiye ku byabaye[5]; ntabwo ari ko bimeze kuri Athanase Seromba. Mu gice cy'urubanza rwa *Gacumbitsi* mu bujurire kivugwamo iby'icyo kibazo, icyo Urugereko rw'Ubujurire rwasabwaga ni ukureba niba, iyo rureka ikirego kimwe cy'ubwicanyi, ibindi bivugwa ku Uregwa byarajyaga gutuma bagera ku mwanzuro ko yakoze icyaha cya jenoside.[6]

4. Uko jyewe mbibona, uru rubanza rukwiriye gutandukanywa n'Urubanza rw'ubujurire rwa *Gacumbitsi*. Nk'uko Urugereko rw'Ubujurire rwavuze mu *rubanza rwa Gacumbitsi*, Sylvestre Gacumbitsi yari aho ibyaha byakorewe agenzura, anayobora ubwicanyi, kandi yagize uruhare rugaragara mu bwicanyi igihe ashyira impunzi z'abatutsi ukwazo kugirango zicwe.[7] Urugereko rw'Ubujurire rwasanze Sylvestre Gacumbitsi yaragize "uruhare rukomeye" mu byaha byamuhamye.[8] Muri uru rubanza, uruhare AthanaseSeromba yagize rutandukanye n'urwa Gacumbitsi. N'ubwo yemeye icyemezo cy'ubutegetsi bwa komini cyo gusenya kiliziya, akavugana n'umushoferi wa tingatinga akamubwira amagambo yamushishikarije gusenya kiliziya, akanamubwira uruhande

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rubanza rwa *Gacumbitsi* mu bujurire n'icyo kumenya ibindi bikorwa bishobora gufatwa nk'aho umuntu yagize uruhare rutaziguye mu gukora icyaha".

[4] Urubanza rwa *Kayishema na Ruzindana* mu bujurire, igika 187; Urubanza rwa *Tadić* mu bujurire, igika 188; Urubanza rwa *Krstić* mu rw'iremezo, igika 601; Urubanza rwa *Kunarac* mu rw'iremezo, igika 390.

[5] Reba Urubanza rwa *Gacumbitsi* mu bujurire, ibika 280, 284, 285, 288.

[6] Urubanza rwa *Gacumbitsi* mu bujurire, *igika 59.*

[7] Urubanza rwa *Gacumbitsi* mu bujurire, igika 61.

[8] Urubanza rwa *Gacumbitsi* mu bujurire, igika 206.

rworoshye gusenya,[9] Athanase Seromba ntabwo "yagenzuye" cyangwa se ngo "ayobore" ubwicanyi kandi nta ruhare yagize mu kurobanura impunzi z'abatutsi ngo zicwe.

5. Ibikorwa by'Athanase Seromba ntibyagereranywa n'ibyahamye *Gacumbitsi* mu rubanza rwe, kubera ko Gacumbitsi yagenzuye, akayobora ubwicanyi, kandi akarobanura abatutsi kugirango bicwe. Bityo, jyewe mbona uruhare Sylvestre Gacumbitsi na Athanase Seromba bagize mu byaha rutandukanye cyane haba mu miterere haba no mu rwego byakozwemo. N'iyo umuntu yareba uko byari bimeze igihe byacikaga kuri paruwase ya Nyange [10] , jyewe mbona imyanzuro y'Urugereko rwa Mbere rw'Iremezo itagaragaza ko Uregwa yashishikariye kandi ku buryo butaziguye ibikorwa bya jenoside byakorerwaga kuri paruwase.

6. Icya kabiri, mu kubona ikosa mu gisobanuro cyo "gukora icyaha" cyatanzwe n'Urugereko rwa Mbere rw'Iremezo, bagenzi banjye bitiranya "gukora icyaha" bisanzwe no "gukora icyaha" mu bundi buryo harimo n'ubutemewe mu bukemuramanza bw'uru Rukiko. Muri ubwo buryo, navuga cyane cyane umugambi mubisha uhuriweho. Bagenzi banjye bagumya gusubiramo no gushimangira ko "gukora icyaha" bitavuga gusa kugikora nka gatozi, [11] ariko ntibagire icyo bavuga ku kibazo cy'ingenzi: ko muri uru Rukiko mu gihe nta gikorwa gifatika kigaragajwe, ibyerekeranye no gukora icyaha bitigeze bifatwa ku buryo butandukiriye uretse gusa ku birebana n'umugambi mubisha uhuriweho, kandi uwo mugambi ugomba nyine kuburanwa[12].

7. Mu rubanza rwa *Tadić* mu bujurire, Urugereko rw'Ubujurire rwavuze ko mu byerekeranye n'umugambi mubisha uhuriweho, umuntu ashobora kuryozwa icyaha ku giti cye iyo itsinda ry'abantu cyangwa bamwe muri iryo tsinda

[9] Urubanza mu rw'iremezo, igika 269.
[10] Reba Urubanza rwa *Gacumbitsi* mu bujurire, igika 61.
[11] Urubanza mu bujurire, igika 161, inyandiko iri hasi ku rupapuro ifite nº 389.
[12] Hakurikijwe ubukemuramanza bw'uru rukiko, "Gukora icyaha" ntibivuga gusa kuba gatozi kubera ko kwitabira umugambi mubisha uhuriweho bidasaba ko uregwa aba yakoze igikorwa gifatika kigize icyaha kivugwa muri Sitati.

bagikoze, abibateyemo inkunga kandi bafite umugambi mubisha bahuriyeho[13]. Imyumvire ya bagenzi banjye ishyigikira umwanzuro wabo mushya ijya kumera nk'iy'Urugereko rw'Ubujurire mu rubanza rwa *Tadić,* n'ubwo hatavugwamo umugambi uhuriweho. N'ubwo Athanase Seromba atarezwe kuba yarakoze ibyaha mu rwego rw'umugambi mubisha uhuriweho, kandi akaba atarigeze ahamywa kuba gatozi muri ibyo byaha, bagenzi banjye basuzuma niba, "kuba yaremeye icyemezo cyo gukora icyaha kandi icyo cyemezo akakigira icye, yarabaye gatozi ku buryo yahamwa n'icyaha cyo kuba yarakoze jenoside"[14]. Ikindi kandi, n'uko iyi myumvire yirengagiza ibyangombwa byihariye bigize icyaha cy'umugambi mubisha uhuriweho, kandi mu by'ukuri nta wamenya ibyangombwa bo bashingiyeho muri iyo myumvire yabo niba biriho.

8. Icya gatatu, birazwi kandi biremewe mu mategeko yo hirya no hino ko "gukora icyaha" bifatwa mu buryo bwinshi ku buryo hashobora kuba mu rwego rwo "gufatanya n'abandi" cyangwa se rwo "gukora icyaha mu buryo buziguye"[15]. Babyumvikanyeho ku buryo bweruye cyangwa buteruye, abafatanyacyaha bagomba kuba bagamije intego imwe, bakayigeraho bahurije hamwe imyitwarire yabo mibisha, kandi buri wese muri bo agomba gutanga umusanzu ugaragara mu ikorwa ry'icyaha.[16] Naho "ukora icyaha mu buryo buziguye", yitabaza gatozi uba nk'igikoresho cye kugira ngo agere ku ntego y'icyaha aba yiyemeje gukora. Icyo gihe, ukora icyaha ku buryo buziguye arabiryozwa kuko aba agenzura gatozi mu ikorwa ry'icyaha[17]. Bagenzi banjye basanga "kuba Athanase Seromba ubwe ataratwaye tingatinga yashenye kiliziya ntacyo bivuze". Bavuga ko icy'ingenzi

[13] Urubanza rwa *Tadić* mu bujurire*,* igika 191.
[14] Urubanza mu bujurire, igika 161.
[15] Urubanza rwa *Gacumbitsi mu bujurire*, Igitekerezo cy'umucamanza Schomburg gitandukanye n'icy'abandi, igika 16.
[16] Urubanza rwa *Gacumbitsi* mu bujurire, Igitekerezo cy'umucamanza Schomburg gitandukanye n'icy'abandi, igika 17 n'inyandiko yo hasi ku rupapuro ifite nº 31, yifashisha ibyanditswe na C. Roxin, *Täterschaft und Tatherrschaft,* icapwa rya 7 (2000), imp. 275-305. Reba na K. Ambos, muri: O. Triffterer (ed.) Commentary on the Rome Statute of the International Criminal Court (1999) [Ibisobanuro kuri Sitati y'Urukiko Mpanabyaha Mpuzamahanga ruhoraho], Ingingo ya 25 agace ka 8.
[17] Urubanza rwa *Gacumbitsi* mu bujurire, Igitekerezo cy'umucamanza Schomburg gitandukanye n'icy'abandi, igika 18 n'inyandiko yo hasiku rupapuro ifite nº 33, yifashisha ibyanditswe na C. Roxin, *Täterschaft und Tatherrschaft,* icapwa rya 7 (2000), imp. 142-274. Reba na K. Ambos, muri: O. Triffterer (ed.) Commentary on the Rome Statute of the International Criminal Court (1999), Ingingo ya 25 agace ka 9.

kugira ngo aryozwe icyaha cyo gukora jenoside", "ari uko yakoresheje ububasha bwe bwose ku mushoferi wa tingatinga wemeye ko Athanase Seromba ari we wenyine wari ufite ububasha bityo agakurikiza amabwiriza atanze, nk'uko imyanzuro y'Urugereko rwa Mbere rw'Iremezo ibyerekana".[18] Ikigaragara muri iyi myumvire n'uko uwo bita ko yakoze icyaha "yari yihishe inyuma ya gatozi"[19], nyamara hatagaragajwe ku buryo bwumvikana neza imyitwarire ya Athanase Seromba nk'umufatanyacyaha cyangwa se uwakoze icyaha ku buryo buziguye.

9. Birumvikana ko ukurikije imyumvire ya bagenzi banjye, byaba byoroshye rwose kugereka ibyaha bya ba gatozi ku bantu babikoze mu buryo buziguye, ibyo byaba rero binyuranye n'ubukemuramanza. Mu rubanza rwa *Stakić* mu bujurire, Urugereko rw'Ubujurire rwavuze ko Urugereko rwa Mbere rw'Iremezo rwibeshye mu gusuzuma uruhare ujurira yagize mu bufatanyacyaha. Ku bwumvikane b'wabacamanza bose barugize, kandi mu buryo busobanutse neza, urwo Rugereko rw'Ubujurire rwasanze uburyozwacyaha nk'ubwo, nk'uko bwasobanuwe kandi bukemezwa n'Urugereko rwa Mbere rw'Iremezo, budahuje n'amategeko mpuzamahanga ashingiye ku muco cyangwa ubukemuramanza budahindagurika bw'uru Rukiko, kandi Inteko zigize Urugereko rwa Mbere rw'Iremezo zikaba zigomba kubahiriza ubwo bukemuramanza" [20] . Bityo, Urugereko rw'Ubujurire rwafashe umwanzuro ko ubwo buryozwacyaha "budakubiye mu mategeko akurikizwa kandi ko Urukiko rudafite ububasha bwo kubusuzuma"[21].

10. Na none, hemejwe ko Sitati y'Urukiko Mpanabyaha Mpuzamahanga (CPI/ICC) ikubiyemo ibyerekeranye n'ubufatanyacyaha no gukora icyaha mu buryo

[18] Urubanza mu bujurire, igika 171.
[19] Urubanza rwa *Gacumbitsi* mu bujurire, Igitekerezo cy'umucamanza Schomburg gitandukanye n'icy'abandi, igika 20 n'inyandiko yo hasi ku rupapuro ifite nº 36 ("Kubera ko ukora icyaha mu buryo buziguye arangwa n'ububasha afite kuri gatozi, ubwo buryo bw'ubufatanyacyaha rimwe na rimwe bwumvikana ko gatozi agomba kuba afite "ikibazo kidasanzwe" gituma ataryozwa ibyaha yakoze".)
[20] Urubanza rwa *Stakić mu bujurire*, igika 62.
[21] Urubanza rwa *Stakić* mu bujurire, igika 62.

buziguye[22]. Nyamara ariko, nsanga Ingingo ya 25, igika cya 3 (a) ya Sitati ya ICC/CPI ivuga ko:

> "Umuntu aryozwa icyaha kandi Urukiko rushobora kumuhanira icyaha kiri mu bubasha bwarwo iyo: a) yakoze icyo cyaha we ubwe, *afatanyije n'undi, cyangwa akoresheje undi,* hatitaweho uburyozwacyaha bw'uwo wundi "[23].

Icyo iyi ngingo yerekana n'uko Sitati y'uru Rukiko idateganya ibyerekeye uburyo bwo "gukora icyaha" "hakoreshejwe undi", nk'uko Sitati y'Urukiko Mpanabyaha Mpuzamahanga ibiteganya. Ihame rero izo nkiko zombi zigenderaho kuri icyo kibazo riratandukanye kubera ko Sitati zazo zidahuye.

11. Icya kane, imyanzuro ku byabaye ya bagenzi banjye ntabwo yose ishingiye ku myanzuro yafashwe n'Urugereko rwa Mbere rw'Iremezo. Kugira ngo bagenzi banjye bagere ku mwanzuro w'uko Athanase Seromba yakoze jenoside n'itsembatsemba, bagenda bagira ibyo bongera ku myanzuro y'Urugereko rwa Mbere rw'Iremezo, bashingiye ku buhamya bw'abagabo, ngo kubera gusa ko "Urugereko rwa Mbere rw'Iremezo rwasanze abo batangabuhamya bakwiye kwemerwa". Ingaruka yabyo, n'uko inyandiko y'urubanza mu bujurire yuzuyemo ibikubiye mu nyandikomvugo z'iburanisha rwifashishije kandi Urugereko rwa Mbere rw'Iremezo rutarabifasheho umwanzuro wihariye. Iyo myumvire iteye ibibazo binyuranye, kimwe mu bibazo bikomeye iteye n'uko inyuranyije na rimwe mu mahame y'ishingiro agenga ubujurire, rivuga ko "Urugereko rwa Mbere rw'Iremezo ari rwo rufite mbere na mbere ishingano zo gusuzuma, guha agaciro, no kugena uburemere bw'ibimenyetso bitangwa mu rukiko". Bityo, Urugereko rw'Ubujurire rugomba kwemera imyanzuro Urugereko rwa Mbere rw'Iremezo rwagezeho" [24], kubera ko Urugereko rw'Ubujurire rudashobora

[22] Urubanza rwa *Gacumbitsi* mu bujurire, Igitekerezo cy'umucamanza Schomburg gitandukanye n'icy'abandi, igika 21, yifashisha *Urubanza rwa Porokireri na Thomas Lubanga Dyilo*, Icyemezo ku Mwanzuro mbanzirizarubanza w'Urugereko ntegurarubanza I, 10 Gashyantare 2006, n'Iyongerwa ry'Inyandiko muri dosiye N° ICC-01/04-01/06 y'urubanza Thomas Lubanga Dylo aregwa, 24 Gashyantare 2006, Umugereka I: Icyemezo ku Cyifuzo cya Porokireri gisaba ububasha bwo gufata, Ingingo ya 58, igika 96.

[23] (Nitwe twanditse amagambo mu nyuguti ziberamye).

[24] Urubanza rwa *Kupreskić* mu bujurire, igika 30. Reba Urubanza rwa *Stakić mu bujurire,* igika 10; Urubanza rwa *Galić* mu bujurire*,* igika 9.

gusuzuma imyitwarire y'umutangabuhamya hamwe n'ibimenyetso byose bitangwa [25] . Kuba bagenzi banjye biha kugira ibyo bongera ku myanzuro y'Urugereko rwa Mbere rw'Iremezo bibangamiye intego y'iryo hame, cyane cyane kubera ko Urugereko rw'Ubujurire rudashobora kumenya icyatumye Urugereko rwa Mbere rw'Iremezo rudafata imyanzuro kuri ibyo bice by'ubuhamya bwatanzwe mu rukiko[26].

12. Hari irindi hame ry'ishingiro mu bukemuramanza bwa TPIR na TPIY rivuga ko Urugereko rw'Ubujurire rushobora gusa gusimbuza imyanzuro rwifatiye iy' Urugereko rwa Mbere rw'Iremezo, iyo nta mucamanza w'ibyabaye ushyira mu gaciro washoboraga kwakira ibimenyetso Urugereko rwa Mbere rw'Iremezo rwashingiyeho, cyangwa se kugena agaciro k'ibyo bimenyetso kukaba kwarabayemo "ukwibeshya gusesuye" [27] . Muri uru rubanza, mbere yo guhindagura imyanzuro y'Urugereko rwa Mbere rw'Iremezo, Urugereko rw'Ubujurire ntirwabanje kugenzura ko nta mucamanza w'ibyabaye ushyira mu gaciro washoboraga kwemera iyo myanzuro cyangwa se ko habaye "ukwibeshya gusesuye" mu kugena agaciro k'ibyo bimenyetso.

13. Kugirango icyo kibazo kirusheho kumvikana, ngiye gutanga ingero nkeya zerekana uko bagenzi banjye bihaye guhindagura imyanzuro y'Urugereko rwa Mbere rw'Iremezo:

    a) Mu gika cya 165 n'icya 166, Urugereko rw'Ubujurire rurifashisha ubuhamya bw'umugabo wiswe CBK bwemeza ko Athanase Seromba yavuze ko "amashitani yari yageze mu kiliziya" [28] ko kandi ko "iyo

[25] Urubanza rwa *Stakić* mu bujurire, igika 206.
[26] Mu bukemuramanza bw'uru Rukiko n'ibintu bisanzwe bikorwa ko Urugereko rwa Mbere rw'Iremezo rushobora gusanga bumwe mu buhamya bwakwemerwa rukabushingiraho, rukareka ubwo rusanze butakwemerwa, Urubanza rwa *Ntakirutimana* mu bujurire, igika 184.
[27] Urubanza *rwa Stakić* mu bujurire, igika 10; Urubanza *rwa Kvočka na bagenzi be mu bujurire, igika 19,* yifashishije Urubanza rwa *Kupreškić na bagenzi be* mu bujurire, igika 30. Reba n'Urubanza rwa *Kordić na ^erkez* mu bujurire, igika 19, inyandiko yo hasi iri hasi ku rupapuro ifite n° 11; Urubanza rwa *Blaškić* mu bujurire, ibika 17-18.
[28] Urubanza mu rw'iremezo, igika 213, hifashishijwe inyandikomvugo y'iburanisha, 19 Ukwakira 2004 imp. 28-29 (mu muhezo) (Umutangabuhamya wiswe CBK).

amashitani yageze mu kiliziya igomba gusenywa"[29]. Ikibazo kiri aha n'uko, n'ubwo Urugereko rwa Mbere rw'Iremezo rwifashishije ubu buhamya mu ncamake y'ubuhamya bw'umugabo wiswe CBK, nta mwanzuro rwabifasheho. Kuri ibyo, hiyongeraho ko umutangabuhamya wiswe CBK atari we wari wemewe wenyine mu bandi batanze ubuhamya ku magambo Athanase Seromba yabwiye umushoferi wa tingatinga. Nk'umutangabuhamya wiswe CDL yumvise Athanase Seromba abwira umushoferi wa tingatinga gusenya kiliziya, ariko ntabwo yumvise avuga ko harimo amashitani.[30] Biragaragara ko Urugereko rwa Mbere rw'Iremezo rwifashe cyangwa se rwasanze atari ngombwa gufata umwanzuro kuri icyo kibazo. Biratangaje rero kubona bagenzi banjye barihaye kubifataho umwanzuro batabanje kugenzura niba nta mucamanza w'ibyabaye ushyira mu gaciro washoboraga kwemera imyanzuro y'Urugereko rwa Mbere rw'Iremezo cyangwa se ko habaye "ukwibeshya gusesuye" mu kugena agaciro k'ibyo bimenyetso.

b) Mu gika cya 168, bagenzi banjye basanze, "abapadiri barubahwaga cyane n'abaturage bo muri paruwase ya Nyange kandi Athanase Seromba yari umuntu abaturage bubahaga bakanamwumvira". Mu kwemeza ibyo, bagenzi banjye bifashishije ubuhamya umugabo wiswe CBK yatangiye mu muhezo nyamara Urugereko rwa Mbere rw'Iremezo rutarigeze rubwitaho. Urugereko rw'Ubujurire rwigiriye icyizere gikabije, rwiha gufata umwanzuro udasanzwe kandi udasobanutse na mba rushingiye ku bimenyetso, kandi rutarigeze rubona imyifatire y'umutangabuhamya wiswe CBK n'uburyo bwo kugenzura ibindi byose byatuma ubuhamya bwe kuri icyo kibazo bwemerwa. Ni muri urwo rwego Urugereko rw'Ubujurire rwafashe umwanzuro ko "Umutangabuhamya wiswe CDL Urugereko rwa Mbere rw'Iremezo rwasanze akwiye kwemerwa, yatanze ubuhamya ko ntacyashoboraga gukorwa Athanase Seromba

[29] Urubanza mu rw'iremezo, igika 213, hifashishijwe inyandiko y'urubanza, 20 Ukwakira 2004, urup. 19 (mu muhezo) (Umutangabuhamya wiswe CBK).
[30] Urubanza mu rw'iremezo, ibika 217, 238-239.

atabyemeye"[31]. Uretse n'uko Urugereko rwa Mbere rw'Iremezo rutafashe uyu mwanzuro, bagenzi banjye baratandukira bagakoresha ubwo buhamya uko butari hakurikijwe uko ibintu byari byifashe, bagamije gushyigikira umwanzuro wabo wemeza ko Athanase Seromba yari umuntu abaturage bubahaga bakanumvira, batabanje gusuzuma icyatumye umutangabuhamya wiswe CDL yaravuze ibyo.

c) Byongeye kandi, n'ubwo Urugereko rwa Mbere rw'Iremezo rwasanze Porokireri atarerekanye ku buryo budashidikanywaho ko Athanase Seromba yashyikirije Anicet Gatare abajandarume, [32] bagenzi banjye bagaruka ku birebana n'urupfu rw'Anicet Gatare bageragеza kwerekana ko habayeho igitekerezo cyo gukora jenoside, bashingiye gusa ku mpmavu ko umutangabuhamya wiswe CBK "yari umwe mu bagabo bashobora kwemerwa"[33]. Bagenzi banjye kandi bashingira ku buhamya bwatanzwe mu rukiko buvuga ko Athanase Seromba yise imirambo y'impunzi z'abatutsi "umwanda".[34] Na none, ntabwo byumvikana igituma bagenzi banjye biha gufata uyu mwanzuro ku byabaye utarafashwe n'Urugereko rwa Mbere rw'Iremezo.

14. Mu gusoza, ni ngombwa kuvuga uko bagenzi banjye bakoresha ibyabaye. Basanga kuba Athanase Seromba yaremeye icyemezo cyafashwe cyo gusenya kiliziya[35], no kuba yarashishikarije umushoferi wa tingatinga gusenya kiliziya byaramugize gatozi[36]. Ntabwo nemeranywa na bagenzi banjye kuri iki kibazo. Nk'uko nabo babyemera, biremewe mu bukemuramanza budahindagurika bwa

[31] Urubanza mu bujurire, igika 169 (hifashishijwe urubanza mu rw'iremezo, igika 218).
[32] Urubanza mu rw'iremezo, igika 179.
[33] Urubanza mu bujurire, igika 179.
[34] Urubanza mu bujurire, igika 180.
[35] Urubanza mu bujurire, igika 171. N'ubwo ku bwiganze bw'amajwi abacamanza bavuga ko Seromba "yatanze uruhushya" rwo gushyira mu bikorwa icyemezo cyari cyafashwe cyo gusenya kiliziya, ndabona mu gufata imyanzuro ku byabaye, Urugerorwa Mbere rw'Iremezo rwarasanze "yaremeranyije n'abandi" gusenya kiliziya (Reba ibika 268 na 334). Ibi bihuje n'ubuhamya bwatanzwe mu rukiko n'umugabo wiswe CDL buvuga ko "Padiri Seromba yemeye iby'abandi bari bumvikanyeho" (Reba inyandikomvugo y'iburanisha, 19 Mutarama 2005, urup. 25).
[36] Urubanza mu bujurire, igika 171.

TPIR n'ubwa TPIY ko ibikorwa byo gufasha, gushishikariza cyangwa gutera akanyabubugabo ba gatozi, byitwa icyaha cyo gufasha no gushishikaza [37]. Nyamara ariko muri uru rubanza, hagomba kuba hari impamvu ituma bagenzi banjye bahitamo kwemeza ko ibikorwa by'Athanase Seromba "Hakurikijwe ingingo ya 6(1) ya Sitati, bidashobora kwitwa ukundi uretse "gukora icyaha", mu gihe "byari bigize icyaha cya jenoside kimwe no kwica impunzi z'abatutsi"[38]. Ntibyumvikana neza niba bagenzi banjye bashaka kuzana ubundi buryo bushya bwo gusobanura "gukora icyaha", ariko n'iyo byaba ari ibyo, ntabwo byaba bishyigikiwe n'ubukemuramanza – ndetse n'ibyemejwe mu rubanza rwa *Gacumbitsi* ntibishobora gukirikizwa hano nk'uko nabivuze haruguru -, kandi bwaba ari uburyo bow gutanga ubusobanuro " busakuma hirya no hino" bushobora gukurikizwa mu bufatanyacyaha ubwo ari bwo bwose. Biragaoye gutekereza ko haba hariho ubufatanyacyaha, n'iyo uruhare rwaba rutoya gute, budakubiye mu cyaha ubwacyo, cyane cyane ko hafashwe umwanzuro ko "yatanze inkunga igaragara" mu gukora icyaha.

15. Byongeye kandi, bagenzi banjye ntabwo bavuga niba umwanzuro bafashe ushingiye ku bikorwa bikomatanyije by'Athanase Seromba cyangwa se kuri buri gikorwa ukwacyo kugira ngo bagere ku mwazuro uvuga ko icyemezo cyo gusenya kiliziya "yacyemeye kandi akakigira icye"[39]. Uko mbibona, kuba nta bisobanuro byeruye bitangwa bishobora kuba ar'uko ibyo bikorwa ubifashe kimwe ukwacyo nta na kimwe cyakwitwa ubufatanyacyaha ku bundi buryo uretse gufasha no gushishikaza, naho kubikomatanyiriza hamwe ni uburyo bwo kugira ngo hakurikizwe ibyerekeye umugambi mubisha uhuriweho cyangwa ubundi buryozwacyaha nk'uko bagenzi banjye babikoze kandi bidakurikizwa muri uru Rukiko. Kuba nta mpamvu zashingiweho bigaragaza ko ubwo buryo bwo "gukora icyaha" budateganyijwe mu mategeko mpuzamahanga ashingiye ku muco.

[37] Urubanza mu bujurire, igika 172.
[38] Urubanza mu bujurire, igika 171 (hifashishijwe Urubanza rwa *Gacumbitsi* mu bujurire, igika 60).
[39] Urubanza mu bujurire, igika 171.

16. Ku byerekeye igitekerezo cyo gukora icyaha, bagenzi banjye ntibasobanura imyumvire yabo yatumye bagera ku mwanzuro ko habayeho igitekerezo cyihariye cyo gukora jenoside. Mu kwerekana ko Athanase Seromba yari afite igitekerezo cyihariye cyo gukora jenoside, bagenzi banjye bitwaza ko yemeye icyemezo cyafashwe cyo gusenya kiliziya,[40] ko yabwiye umushoferi wa tingatinga uruhande rwa kiliziya rudakomeye, hanyuma banzura bavuga ko ibi byerekana ko "yari azi ko mu kiliziya harimo abatutsi bagera ku 1 500 kandi ko gusenya kiliziya byagombaga byanze bikunze kubahitana"[41]. Muri iyi myumvire harimo ikiburamo cy'ingenzi: kumenya gusa ko gusenya kiliziya bigomba guhitana byanze bikunze impunzi z'abatutsi zigera ku 1500 ntabwo bihagije kwemeza ko hariho "igitekerezo cyo kwica abatutsi bose cyangwa igice cyabo". Byongeye kandi, bagenzi banjye bavuga ko Athanase Seromba yirukanye impunzi z'abatutsi zari zahungiye mu gipadiri, abantu babiri muri izo mpunzi bakicwa, ibi bikaba bishyigikira umwanzuro, uko byamera kose, w'uko habayeho icyaha cyo gufasha no gushishikaza mu gukora jenoside[42].

17. Nyuma yo kwerekana aho ntemeranya na bagenzi banjye, ndemera ko Urugereko rwa Mbere rw'Iremezo rwakoresheje nabi ububasha bwarwo bwo kugena igihano gikwiye. Athanase Seromba yahamwe n'icyaha cyo gufasha no gushishikaza mu gukora jenoside n'itsembatsemba, bikaba ari byo rwose ko ibi byaha ubwabyo bikomeye cyane. Nk'uko bagenzi banjye babibona, ibyabaye bierebana n'uru rubanza birakomeye cyane kubera ko nk'umupadiri muri paruwase ya Nyange, Athanase Seromba yafatwaga nk'umuntu wizewe cyane igihe abatutsi bahungiraga kuri paruwase[43]. Ntabwo Athanase Seromba yatatiye icyo cyizere gusa, ahubwo yararengeje. Iyo haza gusesengurwa ku buryo bunononsoye

[40] Urubanza mu bujurire, igika 177. Ndabona Urugereko rw'Ubujurire rwifashisha urubanza mu rw'iremezo, igika 268, rukavuga ko, "Athanase Seromba *yemeye* icyemezo cyo gusenya kiliziya cyari cyafashwe na Kayishema, Ndahimana, Kanyarukiga, Habarugira n'abandi kandi *akifatanya nabo* kubera ko nta bundi buryo bwari buhari bwo kwica abatutsi bari bahungiyemo" (Nitwe twanditse mu nyuguti ziberamye), nyamara icyo gika mu by'ukuri kigira kiti: "Urugereko rusanze Porokireri yarerekanye ku buryo budashidikanywaho ko abategetsi bamenyesheje Athanase Seromba icyemezo bafashe cyo gusenya kiliziya kandi ko *yacyemeye*." (Nitwe twanditse mu nyuguti ziberamye).
[41] Urubanza mu bujurire, igika 177.
[42] Uurubanza mu bujurire, igika 184.
[43] Urubanza mu bujurire, igika 230.

ibikorwa haba haragarajwe ko ibyaha yakoze, bikaba byarahitanye abantu bagera ku 1500, biremereye cyane. N'ubwo Urugereko rwa Mbere rw'Iremezo ariko rwabyemeje[44], biragaragara ariko ko icyo kibazo rutagihaye uburemere cyari gikwiye. Ndemera rero ko igihano cyagenewe Athanase Seromba cyakongerwa ariko kikaba hasi y'igifungo cya burundu.

18. Mu gusoza, ntabwo nemeranya na bagenzi banjye ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu gufata umwanzuro uvuga ko uruhare rw'Athanase Seromba muri jenoside n'itsembatsemba ari ukuba yarafashije kandi agashishikaza abakoze icyo cyaha. Bagenzi banjye batanga ubusobanuro butandukiriye bw'amagambo "gukora icyaha" bunyuranyije n'ubukemuramanza bwa TPIR na TPIY, kandi ubwo busobanuro bakabushingiraho nta tegeko cyangwa ikindi berekanye bifashishije. Uru rubanza ruhinduye byinshi mu bukemuramanza bw'uru Rukiko. Rutumye uregwa ashobora guhanirwa icyaha nta gikorwa gifatika kandi kitaziguye cy'icyo cyaha kigaragajwe, kandi nta ngingo z'ingenzi zerekana umugambi mubisha uhuriweho zatanzwe mu rukiko kandi zatangiwe ibimenyetso na Porokireri, kubera ko ibikorwa by'uregwa byaba bikubiye mu gisobanuro gishya cyo "gukora icyaha". Ibi ntibibabaje gusa ku uregwa, ahubwo biranahubanganya uburenganzira afite bwo kumenya neza amategeko akoreshwa mu rubanza rwe, cyane cyane ugereranyije aho uru Rukiko rugejeje imirimo yarwo. Ngizo impamvu zatumye ndahuza ibitekerezo na bagenzi banjye.

Byanditswe mu ndimi z'icyongereza n'igifaransa, ariko inyandiko yo mu cyongereza ni yo igenderwaho.

Bikozwe ku itariki ya 12 Werurwe 2008, Arusha, Tanzaniya

Liu Daqun
Umucamanza [Umukono]

[44] Urubanza mu rw'iremezo, igika 382.

[Kashe y’Urukiko]

Liu Daqun

Umucamanza

[Ikirangantego cy’Urukiko]

VIII. UMUGEREKA A : UKO IMIBURANISHIRIZE YAGENZE

A. Inyandiko n'imyanzuro by'ubujurire

1. Muri make, dore iby'ingenzi byabaye mu miburanishirize yo mu mu bujurire:

2. Urugereko rwa Mbere rw'Iremezo III rwasomye urubanza ku itariki ya 13 Ukuboza 2006 maze rutanga inyandiko y'urwo rubanza ku itariki ya 19 Ukuboza 2006. Ababuranyi bombi barajuriye.

1. Ubujurire bwa Athanase Seromba

3. Athanase Seromba yatanze inyandiko ye y'ubujurire ku itariki ya 19 Mutarama 2007.[1] Ku itariki ya 22 Werurwe 2007, Urugereko rw'Ubujurire rwemeje ko ubujurire bwe butanzwe mu buryo bukurikije amategeko.[2] Ku itariki ya 3 Mata 2007 Athanase Seromba yashyikirije Urugereko imyanzuro y'ubujurire ye mu nyandiko y'ibanga.[3] Yanashyikirije kandi Urugereko Icyifuzo yemeramo ko inyandiko y'Imyanzuro y'Ubujurire ye itakurikije amabwiriza ku birebana n'uko ireshya anasaba Urugereko rwa mbere rw'Iremezo kwemera iyo nyandiko y'Imyanzuro y'Ubujurire bwe.[4] Porokireri ntiyashubije icyi Cyifuzo ahubwo na we yashyikirije Urugereko icyifuzo kindi kirwanya Imyanzuro y'Ubujurire y'Uregwa avuga ko itakurikije amategeko ngo kubera ko yari irimo impamvu nsyha n'ibice by'impamvu bishya Uregwa atari yarashyize mu nyandiko y'ubujurire ye. Porokireri yanengaga kandi iyo myanzuro kuba yari itandukanye cyane n'inyandiko y'ubujurire, mu buryo

[1] Inyandiko y'ubujurire ya Athanase Seromba, 19 Mutarama 2007.
[2] Itegeko ryerekeranye no gushyikiriza inyandiko y'ubujurire, 22 Werurwe 2007. Urugereko rw'Ubujurire rwatanze iryo tegeko rusubiza icyifuzo Athanase Seromba yarushyikirije ku itariki ya 16 Gashyantare 2007 (Imyanzuro y'Ubujurire y'Inyongera ya Athanase Seromba hashingiwe ku Ngingo ya 7 ter y'amategeko Agenga Iburanisha n'Itangwa ry'Ibimenyetso no ku gika cya 11 cy'Ibwiriza rirebana n'ibyubahirizwa mu rw'Ubujurire iyo umuntu ajuririra urubanza, 16 Gashyantare 2007).
[3] Imyanzuro y'Ubujurire, 3 Mata 2007.
[4] Icyifuzo giherekeje imyanzuro y'ubujurire bwa Padiri Athanase Seromba, 5 Mata 2007.

yari iteye ku birebana n'uko iteguye, inomero z'impamvu, uko yanditse ndetse n'ibikubiyemo.[5] Ku itariki ya 6 Kamena 2007, Urugereko rw'Ubujurire rwemereye Seromba bimwe mu byo yasabaga mu Cyifuzo cye. Rwemereye kandi Porokireri ibyo yasabaga mu nzitizi yari yazamuye mu Cyifuzo kirebana n'Imyanzuro y'Ubujurire ya Seromba maze rukura imitwe ya 3, 5 na 6(2)(I.D) muri iyo Myanzuro runategeka Athanase Seromba kurushyikiriza Imyanzuro y'Ubujurire itagizwe ibanga.[6] Ku itariki ya 20 Kamena 2007 Athanase Seromba yashyikirije Urugereko Imyanzuro y'Ubujurire bwe ihinduye kandi itari ibanga .[7] Ku itariki ya 28 Kamena Athanase Seromba yashyikirije Urugereko Icyifuzo gisaba guhindura inyandiko y'ubujurire ye kugira ngo ashyiremo impamvu n'ibice by'impamvu z'ubujurire Urugereko rw'Ubujurire rwari rwakuye mu Myanzuro y'ubujurire ye.[8] Ku itariki ya 26 Nyakanga 2007, Urugereko rw'Ubujurire rwasanze icyo cyifuzo nta shingiro gifite.[9]

[5] Icyifuzo cya Porokireri kihutirwa gisaba kutakira imyanzuro y'ubujurire ya Athanase Seromba, 20 Mata 2007. Athanase Seromba yashubije kuri icyo Cyifuzo ku itariki ya 14 Gicurasi 2007 (Ubwunganizi busubiza Icyifuzo cya Porokireri gisaba ko ubujurire bwa Athanase Seromba butakwakirwa, 14 Gicurasi 2007), amaze guhabwa uruhushya rumwongerera igihe cyo gusubiza (Icyemezo ku 'Cyifuzo cy'Ubwunganizi gisaba kongererwa igihe cyo gusubiza Icyifuzo cya Porokireri yise 'Icyifuzo cya Porokireri kihutirwa gisaba kutakira imyanzuro y'ubujurire ya Athanase Seromba hashingiwe ku Ngingo ya 116 y'Amategeko Agenga Iburanisha n'Itangwa ry'Ibimenyetso n'iya 20.4 ya Sitati by'Urukiko", 8 Gicurasi 2007). Ku itariki ya 16 Gicurasi 2007 Porokireri yashyikirije Urugereko igisubizo cye (Igisubizo cya Porokireri ku "Cyifuzo cy'Ubwunganizi gisubiza Icyifuzo cya Porokireri gisaba kutakira imyanzuro y'ubujurire ya Athanase Seromba", 16 Gicurasi 2007).

[6] Icyemezo ku « Cyifuzo giherekeje Ubujurire bwa Athanase Seromba » no ku « Cyifuzo cya Porokireri Kihutirwa gisaba kutakira imyanzuro y'ubujurire ya Athanase Seromba", 6 Kamena 2007, igika cya 17. Urugereko rw'Ubujurire rwasanze icyo cyemezo cyarwo kitabuza Athanase Seromba gutanga icyifuzo gisaba guhindura inyandiko y'ubujurire bwe ashingiye ku biteganywa n'Ingingo ya 108 y'Amategeko (igika cya 13).

[7] Imyanzuro y'ubujurire bwa Padiri Athanase Seromba ihinduye nk'uko byategetswe n'Icyemezo cy'Urugereko rw'Ubujurire cyo ku itariki ya 6 Kamena 2007 cyamenyeshejwe Ubwunganizi ku itariki ya 7 Kamena 2007, 20 Kamena 2007. Padiri Athanase Seromba yavanye muri iyi myanzuro, impamvu n'ibice by'impamvu ajuriririsha byahanaguwe mu myanzuro y'ubujurire ye ya mbere n'ubwo atigeze abitegekwa. Inyandiko ikosora amakosa ari mu nyandiko y'Imyanzuro y'Ubujurire ihinduye mu rurimi rw'icyongereza yashyikirijwe Urugereko ku itariki ya 13 Kanama 2007, ikosora itariki y'imyanzuro iri muri iyo myanzuro nk'uko yahinduwe mu cyongereza (Imyanzuro y'Ubujurire bwa Padiri Athanase Seromba Ihinduye nk'uko byategetswe n'Icyemezo cy'Urugereko rw'Ubujurire cyo ku itariki ya 6 Kamena 2007 cyamenyeshejwe Ubwunganizi ku itariki ya 7 Kamena 2007 – Inyandiko ikosora,13 Kanama 2007).

[8] Icyifuzo cy'Ubwunganizi kihutirwa gisaba guhindura impamvu z'ubujurire zikubiye mu nyandiko y'ubujurire ye ya mbere ashingiye ku ngingo ya 2 y'amabwiriza yerekeye imikorere arebana n'ubujurire, ingingo ya 108 y'Amategeko Agenga Iburanisha n'Itangwa ry'Ibimenyetso n'ingingo ya 20.4 A) ya Sitati, 29 Kamena 2007.

[9] Icyemezo ku Cyifuzo cy'Ubwunganizi cyihutirwa cyane gisaba guhindura impamvu z'ubujurire zikubiye mu Nyandiko y'ubujurire yabwo, 26 Kamena 2007.

4. Ku itariki ya 12 Kamena 2007, Porokireri yashyikirije Urugereko Imyanzuro ye isubiza iyatanzwe na Athanase Seromba.[10] Uyu na we ku itariki ya 25 Ukwakira 2007 yashyikirije Urugereko indi Imyanzuro isubiza iyo Porokireri yatanze ku itariki ya 12 Kamena 2007,[11] amaze kwemererwa kongererwa igihe cyo gusubizamo cy'iminsi cumi n'itanu uhereye igihe aherewe imyanzuro ya Porokireri yahinduwe mu rurimi rw'igifaransa.[12]

2. Ubujurire bwa Porokireri

5. Porokireri yashyikirije Urugereko Inyandiko y'ubujurire ye ku itariki ya 11 Mutarama 2007 maze arushyikiriza Imyanzuro y'Ubujurire ye ku itariki ya 26 Werurwe 2007.[13] Athanase Seromba yashyikirije Imyanzuro ye isubiza iya Porokireri ku itariki ya 2 Nyakanga 2007.[14] Ku itariki ya 16 Nyakanga 2007 Porokireri yashyikirije Urugereko Imyanzuro ye ku gisubizo cyatanzwe na Athanase Seromba.[15]

6. Ku itariki ya 31 Nyakanga 2007 Athanase Seromba yashyikirije Urugereko inyandiko ikosora amakosa yari mu Myanzuro isubiza ubujurire bwa Porokireri.[16] Ku itariki ya 28 Kanama 2007 Umucamanza utegura urubanza mu rw'ubujurire

[10] Imyanzuro ya Porokireri isubiza , 12 Kamena 2007.
[11] Imyanzuro y'Ujurira isubiza iya Porokireri, 25 Ukwakira 2007.
[12] Icyemezo ku Cyifuzo gisaba kongererwa igihe cyo gushyikiriza Urugereko imyanzuro y'ubwunganizi isubiza Porokireri, 12 Nyakanga 2007. Inyandiko ihinduye mu gifaransa y'Imyanzuro ya Porokireri asubiza iy'ujurira yashyikirijwe Ubwunganizi ku itariki ya 9 Ukwakira 2007 (Inyandiko yitwa: Kumenyesha Urugereko rw'Ubujurire ko Uwunganira uregwa yahawe "Imyanzuro ya Porokireri isubiza Uregwa", yarushyikirijwe na Gerefiye ku itariki ya 11 Ukwakira 2007. Gerefiye yaribeshye avuga ko byakozwe ku itariki ya 9 Ukwakira 2006. Nyamara imigereka ya C na D y'ingingo za Gerefiye yerekana ko Ubwunganizi bwahawe inyandiko ihinduye mu gifaransa ku itariki ya 9 Ukwakira 2007).
[13] Inyandiko y'ubujurire ya Porokireri, 11 Mutarama 2007; Imyanzuro y'Ubujurire ya Porokireri, 26 Werurwe 2007.
[14] Imyanzuro y'ubujurire y'Uregwa Athanase Seromba isubiza Porokireri, 2 Nyakanga 2007. Ku itariki ya 12 Nyakanga 2007 Urugereko rw'Ubujurire rwemeje ko uregwa Athanase Seromba yarushykirije imyanzuro ye asubiza Porokireri mu buryo buteganyijwe (Icyemezo ku Cyifuzo cy'Ubwunganizi gisaba kongererwa igihe cyo gutanga Imyanzuro ye asubiza Porokireri, 12 Nyakanga 2007).
[15] Imyanzuro ya Porokireri asubiza "Imyanzuro y'uregwa Athanase Seromba" [Ingingo ya 113 y'Amategeko Agenga Iburanisha n'Itangwa ry'ibimenyetso], 16 Nyakanga 2007.
[16] Ibigomba gukosorwa mu Myanzuro y'Uregwa Athanase Seromba asubiza iya Porokireri, 31 Nyakanga 2007. Porikireri yashyikirije Urugereko igisubizo cye ku itariki ya 6 Kanama 2007 (Igisubizo cy'Ujurira 'ku bigomba gukosorwa mu Myanzuro y'Uregwa Athanase Seromba' byo ku itariki ya 30 Nyakanga 2007, 6 Kanama 2007).

yategetse ko ibyahindiwe bikubiye muri iyo nyandiko bizemerwa gusa ari ibikosora amokosa y'ikibonezamvugo, ayerekeranye n'imyandikire cyangwa se inyandiko zifashishijwe.[17]

B. <u>Igenwa ry'abacamanza</u>

7. Ku itariki ya 14 Gashyantare 2007, Abacamanza bakurikira bashyizweho kuzaburanisha ubwo bujurire : Mohammed Shahabuddeen, Mehmet Guney, Liu Daqun, Umucamanza Theodor Meron na Wolfgang Schomburg.[18] Ku itariki ya 12 Werurwe 2007, Umucamanza Mohammed Shahabuddeen wari watorewe kuba Perezida w'iyo nteko y'iburanisha, yashyizeho itegeko rimugira umucamanza ushinzwe gutegura imiburanishirize y'uru rubanza mu bujurire.[19] Ku itariki ya 7 Ugushyingo 2007 Umucamanza Patrick Robinson yasimbuye Umucamanza Mehmet Güney muri urwo Rugereko.[20]

C. <u>Iburanisha mu bujurire</u>

8. Hakurikijwe itegeko ryagennye gahunda y'iburanisha ryo ku itariki ya 26 Ukwakira 2007[21], Urugereko rw'Ubujurire rwumvise ingingo z'ababuranyi mu iburanisha ryo ku itariki ya 26 Ugushyingo 2007 ryabereye Arusha muri Tanzaniya. Iburanisha rirangira, Athanase Seromba yahawe umwanya maze agira icyo abwira Urugereko rw'Ubujurire.

[17] Itegeko ryerekeye"Ibigomba gukosorwa mu Myanzuro y'Uregwa Athanase Seromba isubiza iya Porokireri", 28 Kanama 2007.
[18] Itegeko rigena Abacamanza bazaburanisha Urubanza mu Rugereko rw'Ubujurire, 14 Gashyantare 2007.
[19] Itegeko rigena Umucamanza utegura imiburanishirize y'urubanza mu bujurire, 12 Werurwe 2007.
[20] Itegeko risimbura Umucamanza wari wagenwe kuburanisha urubanza mu Rugereko rw'Ubujurire, 7 Ugushyingo 2007. Reba kandi Itegeko rigena by'agateganyo umucamanza mu Rugereko rw'Ubujurire, IT/253, 7 Ugushyingo 2007.
[21] Itegeko rigena gahunda y'iburanisha, 26 Ukwakira 2007.

IX. UMUGEREKA B : INYANDIKO ZIFASHISHIJWE, UBUSOBANURO N'IMPINAMAGAMBO

A. Ubukemuramanza

1. ICTR

Urubanza rw'Akayesu

Urubanza Porokireri aburana na Jean-Paul Akayesu, ICTR-96-4-T, Inyandiko y'urubanza mu rw'iremezo, 2 Nzeri 1998

Urubanza Porokireri aburana na Jean-Paul Akayesu, ICTR-96-4-A, Inyandiko y'urubanza mu bujurire, 1 Kamena 2001

Urubanza rwa Bagilishema

Urubanza Porokireri aburana na Ignace Bagilishema, ICTR-951A-A, Impamvu z'urubanza mu bujurire, 3 Nyakanga 2002

Urubanza rwa Gacumbitsi

Urubanza Porokireri aburana na Sylvestre Gacumbitsi, ICTR-2001-64-T, Inyandiko y'urubanza mu rw'iremezo, 17 Kamena 2004

Urubanza Porokireri aburana na Sylvestre Gacumbitsi, ICTR-2001-64-A, Inyandiko y'urubanza mu rw'iremezo, 7 Nyakanga 2006

Urubanza rwa Kajelijeli

Urubanza Porokirri aburana na Juvénal Kajelijeli, ICTR-98-44A-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 1 Ukuboza 2003

Urubanza Porokireri aburana na Juvénal Kajelijeli, ICTR-98-44A-A, Inyandiko y'urubanza mu bujurire, 23 Gicurasi 2005

Urubanza rwa Kamuhanda

Urubanza Porokireri aburana na Jean de Dieu Kamuhanda, ICTR-95-54-A-A, Inyandiko y'urubanza mu bujurire, 19 Nzeri 2005

Urubanza rwa Kayishema na Ruzindana

Urubanza Porokireri aburana na Clément Kayishema na Obed Ruzindana, ICTR-95-1-T, Inyandiko y'urubanza mu rw'iremezo, 21 Gicurasi 1999

Urubanza Porokireri aburana na Kelementi Kayishema na Obedi Ruzindana, ICTR-95-1-A, Impamvu z'urubanza mu bujurire, 1 Kamena 2001

Urubanza rwa Muhimana

Urubanza Porokireri aburana na Mikaeli Muhimana, ICTR-95-IB-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 28 Mata 2005

Urubanza Porokireri aburana na Mikaeli Muhimana, ICTR-95-IB-1, Inyandiko y'urubanza mu bujurire, 21 Gicurasi 2007

Urubanza rwa Musema

Urubanza Porokireri aburana na Alfred Musema, ICTR-96-13-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 27 Mutarama 2000

Urubanza Porokireri aburana na Alfred Musema, ICTR-96-13-A, Inyandiko y'urubanza mu bujurire, 16 Ugushyingo 2001

Urubanza rwa Nahimana na bagenzi be

Urubanza Porokireri aburana na Ferdinand Nahimana, Jean-Bosco Barayagwiza na Hassan Ngeze, ICTR-99-52-A, Inyandiko y'urubanza mu bujurire, 28 Ugushyingo 2007

Urubanza rwa Ndindabahizi

Urubanza Porokireri aburana na Emmanuel Ndindabahizi, ICTR-01-71-I, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 15 Nyakanga 2004

Urubanza Porokireri aburana na Emmanuel Ndindabahizi, ICTR-01-71-A, Inyandiko y'urubanza mu bujurire, 16 Mutarama 2007

Urubanza rwa Niyitegeka

Urubanza Porokireri aburana na Eliézer Niyitegeka, ICTR-96-14-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 16 Gicurasi 2003

Urubanza Porokireri aburana na Eliézeri Niyitegeka, ICTR-96-14-A, Inyandiko y'urubanza mu bujurire, 9 Nyakanga 2004

Urubanza rwa Ntagerura na bagezi be

Urubanza Porokireri aburana na André Ntagerura, Emmanuel Bagambiki na Samuel Imanishimwe, ICTR-99-46-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 25 Gashyantare 2004

Urubanza Porokireri aburana na André Ntagerura, Emmanuel Bagambiki na Samuel Imanishimwe, ICTR-99-46-A, Inyandiko y'urubanza mu bujurire, 7 Nyakanga 2006

Urubanza rwa Ntakirutimana

Urubanza Porokireri aburana na Elizzphan Ntakirutimana na Gérard Ntakirutimana, ICTR-96-10-T na ICTR-96-17-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 21 Gashyantare 2003

Urubanza Porokireri aburana na Elizaphan Ntakirutimana na Gérard Ntakirutimana, ICTR-96-10-A na ICTR-96-17-A, Inyandiko y'urubanza mu bujurire, 13 Ukuboza 2004

Urubanza rwa Rutaganda

Urubanza Porokireri aburana na Georges Anderson Nderubumwe Rutaganda, ICTR-96-3-A, Inyandiko y'urubanza mu bujurire, 26 Gicurasi 2003

Urubanza rwa Rutaganira

Urubanza Porokireri aburana na Vincent Rutaganira,ICTR-95-1C-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 14 Werurwe 2005

Urubanza rwa Semanza

Urubanza Porokireri aburana na Laurent Semanza, ICTR-97-20-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 15 Gicurasi 2003

Urubanza Porokireri aburana na Laurent Semanza, ICTR-97-20-A, Inyandiko y'urubanza mu bujurire, 20 Gicurasi 2005

Urubanza rwa Serushago

Urubanza Porokireri aburana na Omar Serushago, ICTR-98-39-S, Igenabihano, 5 Gashyantare 1999

Urubanza rwa Simba

Urubanza Aloys Simba aburana na Porokireri, ICTR-01-76-A, Inyandko y'Urubanza mu bujurire, 27 Ugushyingo 2007

2. ICTY

Urubanza rwa Babić

Urubanza Porokireri aburana na Babić, IT-02-72-S, Inyandiko y'urubanza n'igenabihano mu rw'iremezo rugena 29 Kamena 2004

Urubanza rwa Blagogejević na Jokić

Urubanza Porokireri aburana na Vidoje Blagogejević na Dragan Jokić, IT-02-60-T, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 17 Gicurasi 2005
Urubanza Porokireri aburana na Vidoje Blagogejević na Dragan Jokić, IT-02-60-A, Inyandiko y'urubanza mu bujurire, 9 Gicurasi 2007

Urubanza rwa Blaškić

Urubanza Porokireri aburana na Tihomir Blaškić, IT-95-14-A, Inyandiko y'urubanza mu bujurire, 29 Nyakanga 2004

Urubanza rwa Bralo

Urubanza Porokireri aburana na Miroslav Bralo, IT-95-17-S, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 7 Ukuboza 2005

Urubanza Porokireri aburana na Miroslav Bralo, IT-95-17-A, Inyandiko y'urubanza n'igenabihano mu bujurire, 2 Mata 2007

Urubanza rwa Brdanin

Urubanza Porokireri aburana na Radoslav Brdanin, IT-99-36-T, Inyandiko y'urubanza mu rw'iremezo, 1 Nzeri

Urubanza Porokireri aburana na Radoslav Brdanin, IT-99-36-A, Inyandiko y'urubanza mu bujurire, 3 Mata 2007

Urubanza rwa Čelebići

Urubanza Porokireri aburana na Zejnil Delalić na bagenzi be, IT96-21-A, Inyandiko y'urubanza mu bujurire, 20 Gashyantare 2001

Urubanza rwa Deronjić

Urubanza Porokireri aburana na Miroslav Deronjić, IT-02-61-S, Inyandiko y'urubanza n'igenabihano mu rw'iremezo rwa Deronjić, 30 Wererwe 2004

Urubanza rwa Furundzija

Urubanza Porokireri aburana na Furundzija, IT-9517/1-A, Inyandiko y'urubanza mu bujurire, 21 Nyakanga

Urubanza rwa Galić

Urubanza Porokireri aburana na Stanislav Galić, IT-98-29-A, Inyandiko y'urubanza mu bujurire, 30 Ugushyingo 2006

Urubanza rwa Jelisić

Urubanza Porokireri aburana na Goran Jelisić, IT-95-10-A, Inyandiko y'urubanza mu bujurire, 5 Nyakanga

Urubanza rwa Miodrag Jokić

Urubanza Porokireri aburana na Miodrag Jokić, IT-01-42/1-S, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 18 Werurwe 2004

Urubanza rwa Kordić na Cerkez

Urubanza Porokireri aburana na Dario Kordić na Mario Cerkez, IT-95-14/2, Inyandiko y'urubanza mu bujurire, 17 Ukuboza 2004

Urubanza rwa Krajišnik

Urubanza Porokireri aburana na Momčilo Krajišnik, IT-00-39-T, Inyandiko y'urubanza mu rw'iremezo, 27 Nzeri 2006

Urubanza rwa Krnojelac

Urubanza Porokireri aburana na Milorad Krnojelac, IT-97-25-A, Inyandiko y'urubanza mu bujurire, 17 Nzeri 2003

Urubanza rwa Krstić

Urubanza Porokireri aburana na Krstić, IT-IT-98-33-A, Inyandiko y'urubanza mu bujurire, 19 Mata 2004

Urubanza rwa Kunarac na bagenzi be

Urubanza Porokireri aburana na Dragoljub Kunarac na bagenzi be, IT-96-23/1-A, Inyandiko y'urubanza mu bujurire, 12 Kamena 2002

Urubanza rwa Kupreškić na bagenzi be

Urubanza Porokireri aburana na Zoran Kupreškić na bagenzi be, IT-95-16-A, Inyandiko y'urubanza mu bujurire, 23 Ukwakira 2003

Urubanza rwa Kvoćka na bagenzi be

Urubanza Porokireri aburana na Miroslav Kvoćka na bagenzi be, IT-9830/1-A, Inyandiko y'urubanza mu bujurire, 28 Gashyantare 2005

Urubanza rwa Limaj na bagenzi be

Urubanza Porokireri aburana na Fatmir Limaj na bagenzi be, IT-03-66-T, Inyandiko y'urubanza mu rw'iremezo, 30 Ugushyingo 2005
Urubanza Porokireri aburana na Fatmir Limaj na bagenzi be, IT-03-66-A, Inyandiko y'urubanza mu bujurire, 27 Nzeri 2007

Urubanza rwa Naletelić na Martinović

Urubanza Porokireri aburana na Mladen Naletelić na Vinko Martinović, IT-98-34-A, Inyandiko y'urubanza mu bujurire, 3 Gicurasi 2006

Urubanza rwa Plavsić

Urubanza Porokireri aburana na Plavsić, IT-98-34-A, Inyandiko y'urubanza n'igenabihano mu rw'iremezo, 27 Gasyantare 2003

Urubanza rwa Blagoje Simić (na bagenzi be)

Urubanza Porokireri aburana na Blagoje Simić, Miroslav Tadić na Simo Zarić, IT-95-9-T, Inyandiko y'urubanza mu rw'iremezo, 17 Ukwakira 2003

Urubanza Porokireri aburana na Blagoje Simić, Miroslav Tadić na Simo Zarić, IT-95-9-A, Inyandiko y'urubanza mu bujurire, 28 Ugushyingo 2006

Urubanza rwa Milan Simić

Urubanza Porokireri aburana na Milan Simić, IT-95-9/2-S, Inyandiko y'urubanza n'igenabihano mu rw'iremezo rugena ibihano, 17 Ukwakira 2002

Urubanza rwa Stakić

Urubanza Porokireri aburana na Milomir Stakić, IT-97-24-A, Inyandiko y'urubanza mu bujurire, 22 Werurwe 2006

Urubanza rwa Strugar

Urubanza Porokireri aburana na Pavle Strugar, IT-01-42-T, Inyandiko y'urubanza mu rw'iremezo, 31 Mutarama 2005

Urubanza rwa Tadić

Urubanza Porokireri aburana na Duško Tadić (uzwi kw'izina rya "Dule"), IT-94-1-A, Inyandiko y'urubanza mu bujurire, 15 Nyakanga 1999

Urubanza rwa Vasiljević

Urubanza Porokireri aburana na Mitar Vasiljević, IT-98-32-A, Inyandiko y'urubanza mu bujurire, 25 Gashyantare 2004

B. Ubusobanuro n'impinamagambo

Inyandiko y'ubujurire ya Seromba

Inyandiko y'ubujurire ya Seromba, yashyikirijwe mu Gifaransa Ibiro bya Gerefiye ku itariki ya 19 Mutarama 2007

Inyandiko y'ubujurire ya Porokireri

Inyandiko y'ubujurire ya Porokireri, yashyikirijwe mu Cyongereza Ibiro bya Gerefiye ku itariki ya 11 Mutarama 2007

Imyanzuro ya nyuma yanditse y'Ubwunganizi

Imyanzuro yo kwiregura ya padiri Athanase Seromba, yashyikirijwe mu Gifaransa Ibiro bya Gerefiye ku itariki ya 22 Kamena 2006, n'Inyandiko ikosora imyanuzro ya nyuma

y'Ubwunganizi, yashyikirijwe mu Gifaransa Ibiro bya Gerefiye ku itariki ya 26 Kamena 2006.

Amabwiriza yerekeye ubujurire

Amabwiriza yerekeye imihango igomba gukurikizwa mu kujuririra urubanza, 4 Nyakanga 2005

Inyandiko y'urubanza mu rw'iremezo

Urubanza Porokireri aburana n'Athanase Seromba, ICTR-2001-66-T, Inyandiko y'urubanza mu rw'iremezo mu Gifaransa, 13 Ukuboza 2006

Imyanzuro y'ubujurire ya Seromba

Imyanzuro y'ubujurire, yashyikirijwe mu Gifaransa Ibiro bya Gerefiye ku itariki ya 3 Mata 2007

Imyanzuro y'ubujurire ya Porokireri

Imyanzuro y'ubujurire, yashyikirijwe mu Cyongereza Ibiro bya Gerefiye ku itariki ya 26 Werurwe 2007

Imyanzuro isubiza ya Seromba

Imyanzuro isubiza y'uregwa, yashyikirijwe mu Gifaransa Ibiro bya Gerefiye ku itariki ya 2 Nyakanga 2007

Imyanzuro isubiza ya Porokireri

Imyanzuro isubiza ya Porokireri, yashyikirijwe mu Cyongereza Ibiro bya Gerefiye ku itariki ya 12 Kamena 2007

Ibyo Seromba avuga ku myanzuro isubiza ya Porokireri

Iby'uwajuriye Seromba avuga ku myanzuro isubiza ya Porokireri, byashyikirijwe mu Gifaransa Ibiro bya Gerefiye ku itariki ya 22 Ukwakira 2007

Ibyo Porokireri avuga ku myanzuro isubiza ya Seromba

Ibyo Porokireri avuga ku myanzuro isubiza ya Seromba (Ingingo ya 113 y'Amategeko), byashyikirijwe mu Cyongereza Ibiro bya Gerefiye ku itariki ya 16 Nyakanga 2007

Imyanzuro mbanzirizarubanza ya Porokireri

Imyanzuro mbanzirizarubanza ya Porokireri, yashyikirijwe mu Cyongereza Ibiro bya Gerefiye ku itariki ya 27 Kanama 2004, n'imyanzuro ikosora yashyikirijwe mu Cyongereza Ibiro bya Gerefiye ku itariki ya 7 Nzeri 2007.

Urup.

Urupapuro

Imp.

Impapuro

Ikimenyetso gihamya D

Ikimenyetso gihamya cyatanzwe n'Ubwunganizi

Ikimenyetso gihamya P

Ikimenyetso gihamya cyatanzwe na Porokireri

Amategeko

Amategeko agenga imiburanishirize n'Itangwa ry'ibimenyetso

Sitati

Sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda, hakurikijwe Icyemezo 955 cy'Inama Ishinzwe Amahoro ku Isi.

TPIR

Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda

TPIY

Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze ari Yugosilaviya [Yougoslavie]

Mur construit sur les ruines de l'église de Nyange, avril 2002 (pièce à conviction P2-07)