



Umuryango
w'Abibumbye

**Urukiko Mpanabyaha Mpuzamahanga
Rwashyiriweho u Rwanda**

URUGEREKO RWA MBERE RW'IREMEZO II

Urubanza N° ICTR-2001-77-T

Ikinyarwanda
Umwimerere: Igifaransa

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POROKIRERI

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Joseph NZABIRINDA

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INYANDIKO Y'URUBANZA

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1. Uru rubanza *Porokireri aburana na Joseph Nzabirinda* ruciwe n'Urugereko rwa Mbere rw'Iremezo, Inteko ya 2, rw'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda ("Urukiko") rugizwe n'Abacamanza Arlette Ramarason, Perezida w'Inteko, Wiliam H. Sekule na Solomy B. Bossa.

I. INTANGIRIRO

2. Joseph Nzabirinda ("Uregwa") yavukiye muri Segiteri ya Sahera, Komine ya Ngoma, Perefegitura ya Butare¹ mu mwaka wa 1957. Kuva mu mwaka wa 1976 kugera mu wa 1992, yari ashinzwe urubiruko (*encadreur*) muri Perefegitura ya Butare. Nyuma yaho, yabaye Umuyobozi Mukuru wa SECOBE i Kigali. Ni umwe kandi mu bashinze Ishyamba riharanira imibereho myiza y'abaturage na demokarasi ("PSD") mu mwaka wa 1990.
3. Ku itariki ya 21 Ukuboza 2001, Joseph Nzabirinda yafashwe n'abategetsi b'u Bubiligi i Buruseli, mu rwego rwo gushyira mu bikorwa icyemezo cyo kumufata cyatanzwe n'Umucamanza Navanethem Pillay². Icyo cyemezo cyari cyometse ku Nyandiko y'ibirego yo ku itariki ya 6 Ukuboza 2001, yari yaremejwe n'uwo Mucamanza ku itariki ya 13 Ukuboza 2001³. Iyo Nyandiko yari ikubiyemo ibirego bine⁴. Ku itariki ya 20 Werurwe 2002, Uregwa yimuriwe Arusha muri gereza y'Urukiko ("gereza"). Ku itariki ya 27 Werurwe 2002, Uregwa yitabye Urukiko bwa mbere na mbere maze ahakana ibyaha byose yaregwaga uko ari bine⁵.
4. Ku itariki ya 20 Ugushyamba 2006, Porokireri yatanze icyifuzo gisaba uruhushya rwo guhindura Inyandiko y'ibirego yo ku itariki ya 13 Ukuboza 2001⁶. Ku itariki ya 8

¹ Inyandikomvugo y'iburanisha, 14 Ukuboza 2006, urup. 7.

² icyemezo cyo gufata, kwimura no gufunga, 13 Ukuboza 2001.

³ icyemezo cyemeza Inyandiko y'ibirego, 13 Ukuboza 2001.

⁴ Ibyo birego bine ni: Jenoside, icyo cyaha cyaba kitamuhanye kuba icyitso cy'abakoze jenoside, itsembatsemba nk'icyaha cyibasiye inyokomuntu no gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu.

⁵ Inyandikomvugo y'iburanisha, 27 Werurwe 2002, imp.9 na 10.

⁶ icyifuzo cyiswe *Prosecutor's Request for Leave to Amend an Indictment Pursuant to Rules 72, 73, 50 and 51 of the Rules of Procedure and Evidence* [icyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego, hashingiwe ku ngingo za 72, 73, 50 na 51 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso] Urubanza No ICTR-2001-77-T

Ukuboza 2006, Urugereko rwakiriye icyo Cyifuzo maze rwemera ko Inyandiko y'ibirego ya mbere yahindurwa, hagatangwa indi ikubiyemo ikirego kimwe rukumbi cy'ubuhotozi nk'icyaha cyibasiye inyokomuntu⁷. Mu Nyandiko y'ibirego yahinduwe ku itariki ya 9 Ukuboza 2006 igatangwa ku itariki ya 11 Ukuboza 2006 ("Inyandiko y'ibirego"), Joseph Nzabirinda aregwa gusa ko yafashije akanashishikariza abantu gukora ubuhotozi nk'icyaha cyibasiye inyokomuntu, akaba ari icyitso cy'abateguye ikorwa ry'icyo cyaha kubera ko ntacyo yakoze cyo kuburizamo uwo mugambi wabo, nk'uko biteganywa n'ingingo 3 a) na 6.1) za Sitati y'Urukiko ("Sitati").

5. Mu nyandiko y'ibirego, havugwamo ko nyuma y'itariki ya 19 Mata 1994, Uregwa yagiye mu nama nyinshi « zo kugarura amahoro » muri Segiteri ya Sahera, kandi iza nama zitabirwaga gusa n'Abahutu n'abicanyi bo muri Segiteri ye⁸. Nyuma y'izo nama, ibitero biri kuri gahunda byagabwaga ku miryango y'Abatutsi bo ku murenge w'Uregwa. Muri kimwe muri ibyo bitero, Interahamwe ziciye Pierre Murara hafi y'ahantu haberaga « inama zo kugarura amahoro ». Icyo gihe, Joseph Nzabirinda yari ahari nk'indorezezi ishyigikiye ibyarimo kuba⁹.
6. Joseph Nzabirinda ashinjwa kandi urupfu rwa Joseph Mazimpaka, wiciwe hafi ya bariyeri yari ku muhanda w'i Kabuga. Nyuma y'itariki ya 19 Mata 1994, Uregwa yarinze iyo bariyeri inshuro ebyiri abisabwe n'abategetsu. Nk'uko bivugwa mu Nyandiko

cyatanze ku itariki ya 20 Ugushyungu 2006. Uwo munsu, Porokireri n'Ubwunganizi batanze icyifuzo bahuriyeho gisaba Urugereko gusuzuma amasezerano Joseph Nzabirinda yagiranye n'Iburo bya Porokireri yerekeranye n'Ubweracyaha. Ku itariki ya 27 Ugushyungu 2006, Urugereko rwafashe icyemezo cy'ibanga kigena ingengabihe y'iburanisha. Muri icyo Cyemezo, rwasabye Porokireri gutanga, bitarenze iminsi itatu, ibimenyetso bishyigikira ikirego gishya cy'ubuhotozi nk'icyaha cyibasiye inyokomuntu no gusobanura ibintu bimwe na bimwe bivugwa mu mushinga w'Inyandiko y'ibirego yahinduwe yo ku itariki ya 20 Ugushyungu 2006. Ku itariki ya 29 Ugushyungu 2006, Porokireri yasabye kongererwa igihe kugira ngo ashobore kubikora. Urugereko rwamwongereye igihe kugera ku itariki ya 4 Ukuboza 2006. Kuri iyo tariki, Porokireri yatanze ibimenyetso n'umushinga mushya w'Inyandiko y'ibirego yahinduwe.

⁷ *Decision on the the Prosecutor's Under Seal and Confidential Motion for Leave to Amend the Indictment* [Icyemezo ku Cyifuzo cya Porokireri cy'ibanga gisaba uruhushya rwo guhindura Inyandiko y'ibirego], 8 Ukuboza 2006.

⁸ Inyandiko y'ibirego, igika cya 14.

⁹ Ni kimwe no haruguru. Igika cya 15.

y'ibirego, Uregwa yashishikarije abantu kwica uwo umuntu kubera ko yari [Uregwa] kumwe n'abicananyi kuri iyo bariyeri nk' « indorerezi ishyigikiye ibyarimo kuba »¹⁰.

II. UBWEMERACYAHA

A. Uko byagenze

7. Ku itariki ya 12 Ukuboza 2006, impande zombi zatanze icyifuzo zihuriyeho gisaba Urugereko gusuzuma ubwemeracyaha bw'Uregwa n'amasezerano Joseph Nzabirinda yagiranye n'Iburo bya Prokireri yerekeranye n'ubwo bwemeracyaha. Muri icyo Cyifuzo, hasobanuwe ibikorwa bivugwa muri ayo masezerano n'imiterere, mu rwego rw'amategeko, y'icyaha Uregwa yemera.
8. Urugereko ruributsa ko ubwemeracyaha bugengwa n'ingingo ya 62 B) y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso ("Amategeko")¹¹, n'aho amasezerano yerekeranye na bwo akagengwa n'ingingo ya 62 bis y'ayo Mategeko.

¹⁰ Ni kimwe no haruguru, ibika 18,19.

¹¹ Ingingo ya 62: Kwitaba Urukiko bwa mbere k'Uregwa no kwemera cyangwa guhakana ibyaha ashinjwa.

1) Iyo Uregwa yemeye icyaha nk'uko biteganywa mu gika A) (v) cyangwa agasaba kwisubiraho ngo yemere icyaha yari arahakanye, Urugereko rugomba kugenzura niba ubwemeracyaha bwe:

- i) butanzwe nta gahato kandi ku bwende;
- ii) abutanze azi neza icyo yiyemeje ;
- iii) butarimo uguhuzagurika ; kandi
- iv) bushingiye ku bimenyetso bihagije mu kugaragaza icyaha n'uruhare Uregwa yagize mu ikorwa ryacyo, hashingiwe ku bimenyetso bigaragara, cyangwa hashingiwe ku kuba Uregwa na Porokireri batanyuranya cyane ku byerekeranye n'ibiburanwa mu rubanza;

Ingingo ya 62 bis: Ibikorwa iyo habaye amasezerano ku bwemeracyaha

A) Porokireri n'Ubwunganizi bashobora kumvikana ko nyuma y'uko Uregwa yemera ibyaha byose ashinjwa, cyangwa kimwe cyangwa bimwe mu byaha ashinjwa, Porokireri azakora ibintu bikurikira cyangwa bimwe muri byo mu Rugereko rwa Mbere rw'Iremezo:

- i) gusaba uburenganzira bwo guhindura Inyandiko y'ibirego kugira ngo ihuzwe n'ubwo bwemeracyaha;
- ii) gusabira Uregwa igihano iki n'iki cyangwa kuvuga ibihano ntarengwa abona bikwiriye;
- iii) kutarwanya icyifuzo cy'Uregwa cyo guhanishwa igihano iki n'iki cyangwa kutarengerezwa ibi n'ibi.

B) Urugereko rwa Mbere rw'Iremezo ntirutegetswe gukurikiza ibiri mu masezerano avugwa mu gika A).

C) Iyo abaturanyi bagiranye amasezerano y'ubwemeracyaha, Urugereko rwa Mbere rw'Iremezo rusaba ko ayo masezerano ashirwa ahagaragara, mu iburanisha mu ruhame cyangwa mu muhezo iyo hatanzwe

9. Ubwo yongeraga kwitaba Urukiko ku itariki ya 14 Ukuboza 2006, Joseph Nzabirinda yemeye icyaha cyo gufasha no gushishikariza abantu gukora ubuhotozi nk'icyaha cyibasiye inyokomuntu, kubera ko, bitewe n'ibyo yirengagije gukora, yabaye icyitso cy'abantu bateguye ikorwa ry'icyo cyaha¹². Urugereko rwasuzumye ireme ry'ubwemera-cyaha bw'Uregwa¹³.
10. Urugereko rwamenyesheje Uregwa ingaruka z'ubwemeracyaha bwe. Rwavuze ko iyo Uregwa ahakanye icyaha, afatwa nk'umwere kugeza igihe hagaragajwe, mu buryo budashidikanywaho na gato, ko ahamwa n'icyo cyaha. Uregwa uhakana icyaha afite rero uburenganzira bwo kuburanishwa mu buryo buboneye kandi ibyo bivuga ko afite, nk'urugero, uburenganzira bwo kunyomoza abatangabuhamyamba bashinja, guhamagaza abatangabuhamyamba bashinjura no gutanga ubuhamyamba ubwe yiregura. Urugereko rwabajije Uregwa niba yumva ko kwemera icyaha bituma atakaza ubwo burenganzira bumaze kuvugwa. Uregwa yashubije ko abyumva¹⁴.
11. Rushingiye ku ngingo ya 62 B) i), ii) na iii) y'Amategeko, Urugereko rwabanje kubaza Uregwa niba yaremeye icyaha ku bwende, nta gahato, ni ukuvuga niba yaremeye icyaha azi icyo akora, nta terabwoba ashyizweho kandi nta kintu bamusezeranyije. Uregwa yashubije ko yabikoze nta terabwoba ashyizweho kandi nta n'icyo bamusezeranyije¹⁵.
12. Icyakabiri, Urugereko rwabajije Uregwa niba yaremeye icyaha azi neza icyo akora, ni ukuvuga niba yumva neza imiterere y'ibyaha ashinjwa. Uregwa yashubije ko abizi¹⁶.

impamvu zumvikana, ari nabwo Uregwa yemera ibyaha hakurikijwe ibiteganywa n'ingingo ya 62 A) v), cyangwa agasaba kwisubiraho akemera ibyaha yari yarahakanye mbere.

¹² Inyandikomvugo y'iburanisha, 14 Ukuboza 2006, urup. 6.

¹³ Ni kimwe no haruguru

¹⁴ Inyandikomvugo y'iburanisha, 14 Ukuboza 2006, imp. 7, 8.

¹⁵ Ni kimwe no haruguru

¹⁶ Ni kimwe no haruguru

13. Icywa gatatu, Urugereko rwabajije Uregwa niba yaremeye icyaha nta guhuzagurika, ni ukuvuga niba yumva ko adashobora kugira igikorwa na kimwe ahakana mu bikubiye mu Nyandiko y'ibirego. Ushinjwa yashubije ko yemeye icyaha nta guhuzagurika¹⁷.
14. Mu cyemezo rwafashe mu magambo ku itariki ya 14 Ukuboza 2006, Urugereko rwavuze ko rusanga nta bintu bikomeye Uregwa na Porokireri batumvikanyeho ku bikorwa Uregwa yemeye kandi byashingiweho mu masezerano y'ubwemera icyaha. Urugereko rwavuze kandi ko ibyo bikorwa Uregwa yemeye bihagije mu kugaragaza ibyaha n'uruhare yabigizemo.

B. Amategeko akurikizwa

1. Uburyozwacyaha bw'umuntu ku giti cye kubera ko yafashije akanishishikariza abandi bantu gukora icyaha

15. Ingingo ya 6. 1) ikubiyemo ihame rivuga ko icyaha cyose giteganywa na Sitati kiryoza umuntu wagitsotsobye ndetse kikanaryozwa undi muntu wese wakigizemo uruhare cyangwa, mu buryo ubwo ari bwo bwose, akagira uruhare mu ikorwa ryacyo, nk'urugero afasha kandi ashishikaza gatozi w'icyo cyaha¹⁸.
16. Gukora icyaha cyo gufasha no gushishikaza bifatwa nko kuba icyitso cy'abatsotsobye icyaha cy'ibanze. Igikorwa gifatika kigize icyaha cy'ibanze ntikiba cyakozwe n'Uregwa ahubwo kiba cyakozwe n'undi muntu¹⁹. Uregwa ashobora kuba yaragize uruhare mu

¹⁷ Ni kimwe no haruguru

¹⁸ "Gufasha" bivuga gutera inkunga umuntu cyangwa kumushyigikira mu rwego rwo gukora icyaha. "Gushishikaza" ugutuma icyaha gikorwa cyangwa kugira inama umuntu ngo [...]. Kenshi aya magambo yombi akoreshwa hamwe ku buryo afatwa nk'aho afite inshoza imwe mu mategeko. (urubanza rwa Kajelijeli mu rw'Iremezo), igika cya 765; urubanza rwa Semanza mu rw'Iremezo, igika cya 384, hasubirwamo ibivugwa muri *Mewett & Manning, Criminal Law* (3eme éd. 1994) urup. 272 (aho avuga ko gufasha no gushishikaza "bisa n'aho buri gihe bikoreshwa hamwe).

¹⁹ Urubanza rwa Kunarac na bagenzi be mu rw'Iremezo, ibika 391 na 392.

icurwa ry'umugambi, mu itegura cyangwa mu ikorwa ry'icyo cyaha cy'ibanze kandi ashobora kuba yaragize urwo ruhare kubera ibyo yakoze cyangwa ibyo yirengagije gukora mbere cyangwa nyuma y'icyaha gatozi aryozwa²⁰.

17. Ku byerekeye uburyozwacyaha bw'umuntu kubera ibyo yirengagije gukora, kuba byonyine yari ahantu icyaha cyakorewe bishobora kuba uburyo bwo gufasha no gushishikariza abantu gukora icyaha cy'ibanze iyo hagaragajwe ko kuba yari ahari byatumye gatozi w'icyo cyaha ashishikara byimazeyo, cyane cyane iyo umuntu warebereye yari akuriye uwo gatozi cyangwa iyo yarafatwaga nk'umutegetsi²¹. Icyo gihe, kwirengagiza kugira icyo ukora bishobora kuba igikorwa gifatika cy'icyaha cyo gufasha no gushishikaza, ariko uko kwirengagiza kugira icyo ukora kugomba kuba kwaratumye icyaha gikorwa²². Imiterere y'ubwo buryozwacyaha « ntituruka gusa k'ukuba Uregwa yarirengagije kugira icyo akora, ahubwo bunaturuka ku rukomatanye rwo kuba yarirengagije kugira icyo akora no kuba yarahisemo kuba ari aho hantu »²³.
18. Bitandukanye n'ubundi buryo bwo gufasha no gushishikaza, «umuntu wabaye indorerezi ishyigikiye ibirimo kuba » aryozwa icyaha gusa iyo koko yari ahantu cyakorewe cyangwa se nibura hafi y'aho, kandi kuba yari ahari bikaba byarafashwe na gatozi w'icyo cyaha nk'aho ari ugushyigikira imyitwarire ye²⁴.

²⁰ Urubanza rwa Kajelijeli mu rw'Iremezo igika cya 766; urubanza rwa Semanza mu rw'Iremezo, igika cya 385; urubanza rwa Rutaganira mu rw'Iremezo, igika cya 64; Porokireri agomba kugaragaza ko, mu buryo bugaragara, Uregwa, yafashije kandi agaha gatozi inkunga y'ibitekerezo cyangwa akamushishikariza gukora icyaha, bityo akaba yaratumye uwo muntu akora icyaha. (Urubanza rwa Kayishema na Ruzindana mu bujurire, igika cya 186; urubanza rwa Kamuhanda mu rw'Iremezo, igika cya 597; urubanza rwa Akayesu mu rw'Iremezo, ibika 473-475; urubanza rwa Rutaganda mu rw'Iremezo, igika cya 43). N' ubwo itagomba kuba ari kamara kugira ngo icyaha gikowe, iyo nkunga igomba kuba yarabaye ingirakamaro mu gutsotsoba igikorwa kibisha (Urubanza rwa Bagilishema mu rw'Iremezo, igika cya 33)

²¹ Urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 769; urubanza rwa Furundzija mu rw'Iremezo, ibika 34, 35; urubanza rwa Mpambara mu rw'Iremezo, igika cya 22.

²² Urubanza rwa Blaskic mu rw'Iremezo, igika cya 284; urubanza rwa Tadic mu rw'Iremezo, igika cya 686; urubanza rwa Akayesu mu rw'Iremezo, igika cya 705.

²³ Urubanza rwa Mpambara mu rw'Iremezo, igika cya 22.

²⁴ Urubanza rwa Kayishema na Ruzindana mu rw'Iremezo, igika cya 201; urubanza rwa Semanza mu rw'Iremezo, igika cya 386; urubanza rwa Bagilishema mu rw'Iremezo, ibika 34, 36; urubanza rwa Mpambara mu rw'Iremezo, igika cya 23.

19. Igitekerezo kibisha cy'umuntu ufasha akanashishikaza abandi gukora icyaha kiba gihari iyo hatanzwe ibimenyetso bigaragaza ko uwo muntu yari azi ko ibikorwa bye bizatuma gatozi atsotsoba icyaha.²⁵ Umuntu ufasha akandi agashishikariza abandi gukora icyaha agomba kuba azi igitekerezo cya gatozi kandi n'ubwo atari ngombwa ko amenya icyaha runaka gatozi arimo gukora, agomba kuba azi ibikorwa by'ingenzi bigize icyo cyaha²⁶.

2. Ubuhotozi nk'icyaha cyibasiye inyokomuntu

1. Ibisabwa kugira ngo hemezwe ko icyaha cyibasiye inyokomuntu cyabayeho

20. Kugira ngo kimwe mu bikorwa bivugwa mu ngingo ya 3 ya Sitati cyitwe icyaha cyibasiye inyokomuntu, ni ngombwa kugaragaza ko icyo cyaha cyakozwe mu rwego rw'igitero rusange [cyangwa] kiri kuri gahunda cyibasiye abaturage b'abasiviri abo ari bose, bazira ubwenegihugu bwabo, umutwe wa politiki barimo, ubwoko cyangwa idini byabo.
21. Icyamba mbere, Urugereko ruributsa ko « igitero » bivuga «igikorwa icyo ari cyo cyose cyangwa ibikorwa byinshi binyuranye n'amategeko, byo mu bwoko bw'ibiteganywa n'ingingo ya 3 ya Sitati, kuva ku gaka a) kugera kuri i)²⁷. Mu rubanza rwa Kajelijeli mu rw'Iremezo, Urugereko rwemeye ibisobanuro «by'igitero rusange» “cyibasiye abantu benshi²⁸” kandi “kiri kuri gahunda²⁹”.

²⁵ Urubanza rwa Blaskic mu bujurire, igika cya 49; Urubanza rwa Kayishema na Ruzindana mu bujurire, igika cya 186.

²⁶ Urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 768; urubanza rwa Semanza mu bujurire, igika cya 388; urubanza rwa Bagilishema mu rw'Iremezo, igikacya 32; urubanza rwa Kayishema na Ruzindana mu bujurire, igika cya 201; urubanza rwa Kayishema na Ruzindana mu bujurire, igika cya 186.

²⁷ Urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 867; urubanza rwa Semanza mu rw'Iremezo, igika cya 327.

²⁸ Urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 871.

²⁹ Ni kimwe no haruguru, igika cya 872.

22. icya kabiri, igitero kigomba kwibasira abaturage b'abasiviri abo ari bo bose³⁰. Nk'uko bivugwa mu rubanza rwa Semanza mu rw'Iremezo, «kuba abasiviri bari kumwe n'abantu batari abasiviri, ntibibabuzwa gufatwa nk'abasiviri³¹.
23. icya gatatu, igitero kigomba kuba cyaragabwe kubera impamvu z'ivangura. Urugereko ruributsa ko mu rubanza rwa Akayesu mu rw'Iremezo « impamvu z'ivangura » zafashwe nk'izerekeranye n'ibyaha Urukiko rufitiye ububasha bwo kuburanisha kubera ko, ukurikije izo mpamvu, ubwo bubasha bugarukira ku byaha byakorewe abantu bazira «ubwenehugu, umutwe wa politiki, ubwoko cyangwa idini byabo³². Cyakora, mu rubanza rwa Kajelijeli mu rw'Iremezo, Urugereko ruvuga ko:

Ibikorwa byakorewe abantu batari mu cyiciro cy'amatsinda arinzwe bishobora kujya mu byo Urukiko rufitiye ububasha bwo kuburanisha, iyo uwabikoze yari afite igitekerezo cyo gufasha mu ishyirwa mu bikorwa by'igitero cyibasiye abantu bavangurwa bazira imwe mu mpamvu zavuzwe³³.

24. Mu gusoza kuri iki kibazo, ku byerekeye igitekerezo cyo gukora icyaha cyibasiye inyokomuntu, uru Rugereko rwemeye imitekerereze y'Urukiko mu rubanza rwa Kajelijeli mu rw'Iremezo. Muri urwo rubanza, Urugereko rwavuze ko « Uregwa agomba kuba yari

³⁰ Nk'uko bivugwa mu rubanza rwa Blaskic mu rw'Iremezo, “aho kureba umwanya umuntu wakorewe icyaha yari afite igihe ibyaha byakorwaga hagomba kuzirikanwa imibereho ye bwite icyo gihe kugira ngo harebwe niba yari umusiviri (urubanza rwa Blaskic mu rw'Iremezo, igika cya 214 gisubirwamo mu gika cya 79 cy'inyandiko y'urubanza rwa Bagilishema mu rw'Iremezo, n'urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 974). Byongeye kandi, gukoresha ijambo “abaturage” ntibivugaga ko abaturage bose b'ifasi cyangwa abaturage bose b'ahantu igitero cyabereye bagomba kuba baribasiwe (urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 875; urubanza rwa Bagilishema mu rw'Iremezo, igika cya 80; urubanza rwa Tadic mu rw'Iremezo, igika cya 644). Mu rubanza rwa Semanza mu rw'Iremezo, Urugereko rwa Mbere rw'Iremezo rwongeyeho igisobanuro gikurikira: “Si ngombwa ko umuntu wakorewe cyangwa abantu bakorewe igikorwa kivugwa baba bahuriye ku bintu by'ingenzi n'abaturage b'abasiviri bibasiwe bibasiwe mu gitero, nko kuba bari ahantu hamwe, cyakora ibyo bintu bishobora gukoreshwa mu kugaragaza ko igikorwa kivugwa cyakozwe mu rwego rw'igitero (urubanza rwa Semanza mu rw'Iremezo, igika cya 330, gisubirwamo mu rubanza rwa Kajelijeli mu rw'Iremezo, igika cya 875).

³¹ Urubanza rwa Semanza mu rw'Iremezo, igika cya 330.

³² Urubanza rwa Akayesu mu bujirire, ibika 464 na 465, bisubirwamo na none mu rubanza rwa Kajelijeli mu rw'Iremezo, igika cya 877.

³³ Urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 878; urubanza rwa Rutaganda mu rw'Iremezo, igika cya 74 urubanza rwa Musema mu rw'Iremezo, igika cya 209; urubanza rwa Semanza mu rw'Iremezo, igika cya 331.

azi urwego rusange igitero cyagabwemo kandi akamenya ko ibikorwa bye bigize icyo gitero rusange cyibasiye abaturage b'abasiviri³⁴

2. Ubuhotozi

25. Ubuhotozi ni igikorwa cyo kwica umuntu ku bushake, atari ngombwa kandi nta mpamvu yemewe n'amategeko. Uregwa ashobora kuba yarakoze igikorwa cyo kwica umuntu cyangwa se yarirengagije kugira icyo akora bigatuma uwo muntu yicwa³⁵. Kuri gatozi, icyo gikorwa kiba kubera ko yateje umuntu ububabare bukomeye bw'umubiri kandi azi ko ubwo bubabare buhitana uwo muntu cyangwa atitaye ko uwo muntu ashobora gupfa³⁶. Kugira ngo umuntu aryozwe icyaha si ngombwa ko aba, byanze bikunze, yaragitsotsobye³⁷. Ubuhotozi buhanwa nk'icyaha cyibasiye inyokomuntu iyo bukozwe mu rwego rw'igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abasiviri kubera impamvu y'ivangura.
26. Kugira ngo hagaragazwe igitekerezo kibisha cy'umuntu ufasha cyangwa agashishikariza abandi bantu gukora ubuhotozi nk'icyaha cyibasiye inyokomuntu, ni ngombwa ko Uregwa aba azi ko gatozi afite umugambi mubisha wo gukora icyaha kandi akamenya ko ibikorwa bye cyangwa ibyo yirengagije gukora, bizafasha gatozi gukora icyaha³⁸.

C. Imyanzuro y'Urugereko

27. Urugereko rusanze ibikorwa bivugwa kuva mu gika cya 31 kugera ku cya 49 by'amasezerano y'ubwemeracyaha bihuje n'ibivugwa kuva ku gika cya mbere kugera ku cya 20 by'Inyandiko y'ibirego yakozwe ku cyaha cy'ubuhotozi.

³⁴ Urubanza rwa Kajelijeli mu rw'Iremezo, igika cya 880; urubanza rwa Semanza mu rw'Iremezo, igika cya 332; urubanza rwa Musema mu rw'Iremezo, igika cya 206; urubanza rwa Ntakirutimana n'uwo baregwa hamwe mu rw'Iremezo, igika cya 803; urubanza rwa Bagilishema mu rw'Iremezo, igika cya 94; urubanza rwa Kayishema na Ruzindana mu rw'Iremezo, igika cya 134; urubanza rwa Kunarec na bagenzi be mu bujurire, igika cya 102.

³⁵ Urubanza rwa Kvoocka na bagenzi be mu bujurire, igika cya 261; urubanza rwa Galic mu bujurire, igika cya 149.

³⁶ Urubanza rwa Akayesu mu rw'Iremezo, igika cya 586; urubanza rwa Ndindabahizi mu rw'Iremezo, igika cya 487.

³⁷ Urubanza rwa Galic mu bujurire, igika cya 149.

³⁸ Urubanza rwa Blaskic mu bujurire, igika cya 49; urubanza rwa Semanza mu rw'Iremezo, igika cya 388.

28. Urugereko rusanze ibyangombwa biteganywa n'ingingo ya 62 B) y'Amategeko byarujwe kandi ruhamije Uregwa icyaha cyo gufasha no gushishikariza abantu kwica Pierre Murara na Joseph Mazimpaka. Icyo cyaha kikaba ari ubuhotozi nk'icyaha cyibasiye inyokomuntu, nk'uko biteganywa n'ingingo 3 a) n'iya 6 1 za Sitati y'Urukiko³⁹.
29. Urugereko ruhamije Uregwa icyaha cyo gufasha no gushishikariza abantu gukora ubuhotozi nk'icyaha cyibasiye inyokomuntu, kubera impamvu zikurikira.
30. Uregwa yiyemerera ko nyuma y'inama Perezida Sindikubwabo yakoresheje kuri Perefegitura ya Butare ku itariki ya 19 Mata 1994, muri icyo perefegitura, nk'urugero muri Segiteri ya Sahera, hatangiye ubwicanyi bwibasiye imbaga bwakorewe Abatutsi n'abandi bantu batavugaga rumwe n'ubutegetsi bwariho⁴⁰.
31. Uregwa yiyemerera ko yagiye mu nama zimwe na zimwe ku biro bya Segiteri ya Sahera zitabirwaga gusa n'Abahutu n'abicyanyi yari azi nk'abaturanyi be. Yiyemerera ko yagiye muri izo nama nk'«indorerenzi ishyigikiye ibyarimo kuba»⁴¹. Yiyemerera kandi ko nyuma y'izo nama, ibitero biri kuri gahunda byagabwe ku miryango y'Abatutsi bo ku murenge we. Yemerera na none ko mu gitero kimwe, Pierre Murara yiciwe hafi y'ahantu izo nama zaberaga kandi ko yari ahari nk'« indorerenzi ishyigikiye ibyarimo kuba»⁴².
32. N'ubwo yamenye ko nyuma y'izo nama habaye ubwicanyi buri kuri gahunda, Uregwa ntiyaretse kuziyamo kandi yari azi ko zigamije gutegura ihigwa n'iyicwa ry'Abatutsi no gushishikariza abantu kubikora. Muri izo nama, nta na rimwe yigeze agaragaza mu ruhamwe ko adashyigikiye ubwo bwicanyi⁴³.

³⁹ Inyandikomvugo y'iburanisha, 14 Ukuboza 2006, igika cya 17.

⁴⁰ Amasezerano y'ubwemeracyaha, ibika 40 na 41.

⁴¹ Ni kimwe no haruguru, ibika 43 na 44.

⁴² Ni kimwe no haruguru, igika cya 45.

⁴³ Ni kimwe no haruguru, igika cya 45.

33. Uregwa yiyemerera ko nk'umuntu wahoze ashinzwe urubyiruko, umunyapolitiki, umunyabwenge n'umucuruzi wifashije, yari afite ijamba ku baturage ba Segiteri ye, cyane cyane urubyiruko, no ku baturage bari baturanye. Aniyemerera ko, kubera ko yubahwaga cyane n'abaturage, kuba yari ahari byashishikaje cyane abagizi ba nabi bitabiraga izo nama kandi ko, kubera ukuntu ibintu byari byifashe muri segiteri ye, yabaye « indorerezi ishyigikiye ibyarimo kuba ». Yari azi kandi ko abagabaga ibitero biyumvishaga ko kwicekera kwe byerekanaga ko ashigikiye itegurwa ry'ubwicanyi⁴⁴.
34. Uregwa yiyemerera na none ko nyuma y'itariki ya 19 Mata 1994, muri Segiteri ye hashyizweho za bariyeri kandi yari azi ko zashyiriweho kugenzura indangamuntu. Izo bariyeri zifashishijwe mu bwicanyi bwayogoje iyo segiteri⁴⁵. Yemera ko, abisabwe n'abategetsi, yarinze inshuro ebyiri bariyeri yari i Kabuga, ari kumwe n'Interahamwe zimwe zo muri Segiteri ya Sahera⁴⁶. Yemera ko yashishikarije abantu guhatora Joseph Mazimpaka wishwe na Mugenzi hafi ya bariyeri y'i Kabuga kandi ko yari aho hantu nk' « indorerezi ishyigikiye ibyarimo kuba »⁴⁷.
35. Uregwa yiyemerera kandi ko ibyaha byakorewe Joseph mazimpaka na Pierre Murara byakorewe muri Segiteri ye, hafi y'ahantu haberaga amanama n'ahari za bariyeri kandi ko yari ahari nk' « indorerezi ishyigikiye ibyarimo kuba »⁴⁸.
36. Rushingiye ku bikorwa Uregwa yiyemerera, Urugereko rusanze muri Segiteri ya Sahera, muri Mata 1994, haragabwe ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri kubera impamvu z'ivangura. Urugereko ntirushidikanya kandi ko umwanzuro rukumbi ushyize mu gaciro rwafata ku bikorwa Uregwa yiyemerera ari uko Pierre Murara na Joseph Mazimpaka bishwe muri ibyo bitero bazira ko ari Abatutsi.

⁴⁴ Ni kimwe no haruguru, ibika 39 na 46

⁴⁵ Ni kimwe no haruguru, igika cya 47

⁴⁶ Ni kimwe no haruguru, igika cya 48

⁴⁷ Ni kimwe no haruguru

⁴⁸ Amasezerano y'ubwemeracyaha, igika cya 49

37. Urugereko rusanze Joseph Nzabirinda yari azi ko inama za segiteri ye kandi yitabiraga na bariyeri yari i Kabuga yarinze inshuro ebyiri, byari bigamije ubwicanyi. Urugereko ntirushidikanya ko Pierre Murara na Joseph Mazimpaka bishwe mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri b'Abatutsi bazira ubwoko bwabo. Ntirushidikanya ko Uregwa yari azi umugambi mubisha w'abantu bahotoye abo banyakwigendera. Ntirushidanya na none ko kubera ijambo yari afite, Uregwa yari azi ko kujya muri ziriya nama za Segiteri ya Sahera no kuri bariyeri y'i Kabuga byari ugushishikariza abantu gutegura no gukora ubwo bwicanyi.
38. Rushingiye ku bikorwa Uregwa yiyemereye byerekeranye n'iyicwa cya Pierre Murara na Joseph Mazimpaka, Urugereko rusanze Uregwa agomba kuryozwa icyaha kubera ko yari ari muri izo nama zateguraga ubwicanyi, akanashishikaza abantu nk'« indorezezi ishyigiye ibyarimo kuba ». Rusanze kandi agomba kukiryoza kubera ko, nk'« indorezezi ishyigikiye ibyarimo kuba », yari hafi y'ahantu Pierre Murara na Joseph Mazimpaka biciwe.
39. Mu gusoza, Urugereko rusanze, hashingiwe kungingo ya 6.1 ya Sitati, Uregwa agomba kuryozwa icyaha kubera ko yafashije kandi agashishikariza abantu kwica Pierre Murara na Joseph Mazimpaka muri Segiteri ya Sahera muri Mata 1994.

III. GUSUZUMA NIBA IHAME RIVUGA KO NTA MUNTU UKURIKIRANWA KABIRI KU CYAHA KIMWE (*NON BIS IN IDEM*) RYAKURIKIZWA KU BIREGO BYAKUWE MU NYANDIKO Y'IBIREGO

40. Ku itariki ya 14 Ukuboza 2006, Urugereko rwemeje ko rugomba gusuzuma niba ihame rivuga ko nta muntu ukurikiranwa kabiri ku cyaha kimwe (*non bis in idem*) rishobora gukurikizwa ku birego byakuwe muri uru rubanza⁴⁹.

⁴⁹ Inyandikomvugo y'iburanisha, 14 Ukuboza 2006, imp. 21, 22.
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A. Amavu n'amavuko y'ikibazo

41. Ku itariki ya 20 Ugushyingo 2006, Porokireri yasabye uruhushya rwo gukuraho ibirego bya jenocide, kuba icyitso cy'abakoze jenocide n'ibyaha byibasiye inyokomuntu (gusambanya ku gahato n'itsembastemba), ku buryo Uregwa atakongera no kubikurikiranwaho na rimwe. Yasobanuye neza ko kuvana ibyo byaha mu Nyandiko y'ibirego bituma hubahirizwa ihame rivuga ko nta muntu ukurikiranwa kabiri ku cyaha kimwe⁵⁰.
42. Ku itariki ya 8 Ukuboza 2006, Urugereko rwemereye Porokireri gukuraho ibyo birego, ariko rivuga ko, urebye aho iburanisha ryari rigeze, hari hakiri kare cyane kwemeza ko kubikuraho byatuma hubahirizwa ihame rivuga ko nta muntu ukurikiranwa kabiri ku cyaha kimwe⁵¹.
43. Mu masezerano y'ubwemeracyaha, Porokireri yiyemeje kudasaba ko Nzabirinda yakoherezwa mu rundi rukiko, Urugereko ruramutse rwemeye ubwemeracyaha bwe⁵².
44. Ku itariki ya 14 Ukuboza 2006, Porokireri yibukije ko, mu Cyemezo rwafashe ku itariki ya 8 Ukuboza 2006, Urugereko rwemeye icyifuzo cyo gukuraho ibirego bya jenocide, kuba icyitso cy'abakoze jenocide n'ibyaha byibasiye inyokomuntu (gusambanya ku gahato n'itsembatsemba). Yanavuze ko, hakurikijwe ingingo ya 9 ya Sitati, Urugereko rwagombaga kwemeza ko ihame rivuga ko nta muntu ukurikiranwa kabiri ku cyaha kimwe ryakubahirizwa ku birego byakuweho n'ubwo hatabaye iburanisha mu mizi y'urubanza kuri ibyo byaha⁵³. Yavuze kandi ko nyuma y'imyaka itanu iperereza ryari rimaze, atashobora gutanga gihamya y'ibyo byaha byakuwe mu Nyandiko y'ibirego

⁵⁰ icyifuzo cya Porokireri cyiswe *Prosecutor's Request to Amend an indictment* [icyifuzo cya Porokireri gisaba uruhushyirwa rwo guhindura inyandiko y'ibirego], igika cya 4.

⁵¹ icyemezo cyiswe *Decision on the Prosecutor's Under Seal and Confidential Motion for Leave to Amend the Indictment* [icyemezo ku cyifuzo cya Porokireri cy'ibanga gisaba uruhushyirwa rwo guhindura Inyandiko y'ibirego], cyafashwe ku itariki ya 8 Ukuboza 2006, igika cya 13.

⁵² Amasezerano y'ubwemeracyaha, igika cya 58.

⁵³ Inyandikomvugo y'iburanisha, 14 Ukuboza 2006, imp. 13-15.

« kubera ko nta bimenyetso byabyo byariho»⁵⁴. Ubwunganizi bwashyigikiye icyifuzo cya Porokireri⁵⁵.

B. Imyanzuro y'Urugereko

45. Urugereko ruributsa ko ingingo ya 9.1 ya Sitati ivuga ko Uregwa adashobora gukurikiranwa ubwa kabiri ku bikorwa binyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara. Ihame rivuga ko nta muntu ukurikiranwa kabiri ku cyaha kimwe ryubahirizwa ku bantu baciriwe urubanza na TPIR (ingingo ya 9.1) cyangwa baciriwe urubanza n'inkiko z'ibihugu (ingingo ya 9.2) ku bikorwa binyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara⁵⁶.
46. Nk'uko Urugereko rw'Ubujurire rwabivuze, amagambo "gucirwa urubanza ashaka kuvuga ko iburanisha ryabaye mu rukiko rw'igihugu ryerekeranye n'ibikorwa bivugwa mu nyandiko y'ibirego Uregwa akurikiranyweho n'uru Rukiko kandi rwaciwe burundu⁵⁷. Kubera iyo mpamvu, bitewe n'imiterere yihariye y'uru rubanza, aho ibirego byakuweho urubanza rudaciwe burundu kuri byo, ihame rivuga ko nta muntu ukurikiranwa kabiri ku cyaha kimwe ntiryakwitabazwa mu kuburizamo ikurikiranwa ry'Uregwa mu rundi rukiko.
47. Muri uru rubanza, Urugereko ruributsa ko ibirego byakuweho igihe Porokireri yashakaga guhindura Inyandiko y'ibirego ashingiye ku ngingo ya 50 y'Amategeko kandi urubanza mu mizi yarwo rwari rutaratangira. Kubera iyo mpamvu, Urugereko ntirwakiriye icyifuzo cya Porokireri.

⁵⁴ Ni kimwe no haruguru, imp. 15 na 16.

⁵⁵ Kimwe no haruguru, imp 17 na 18.

⁵⁶ Umuntu wese waciwe urubanza n'urukiko rw'igihugu muri ubwo buryo ntashobora kongera gukurikiranwa na TPIR keretse mu bintu bimwe biteganywa mu duka a) na b) tw'ingingo ya 9.2 ya Sitati.

⁵⁷ Semanza aburana na Porokireri, icyemezo cyafashwe n'Urugereko rw' Ubujurire ku itariki ya 31 Gicurasi 2000, igika cya 74 (ibisobanuro byo hasi ku rupapuro ntibyongewemo)

IV. IBIBAZO BYEREKERANYE N'IGIHANO

48. Ku itariki ya 17 Mutarama 2007, imbere y'Urugereko habaye iburanisha ribanziriza igenabihano. Rwumvise ubuhamya bw'abagabo batanu ku myifatire y'Uregwa kandi rwemera ko inyandiko ebyiri z'ubuhamya bw'abagabo zishyirwa muri dosiye, hakurikijwe ingingo ya 92 bis A) y' Amategeko⁵⁸.

A. Amategeko n'amahame bikurikizwa

49. Urukiko rwashyiriweho gukurikirana no guhana abantu bakoze amarorerwa yabaye mu Rwanda, bityo umuco wo kudahana ugacika⁵⁹. Rwashyiriweho kandi kugira ngo rutange umuganda mu bwiyunge bw'abanyarwanda, mu kubungabunga amahoro, mu guhagarika

⁵⁸ Ku itariki ya 11 Ukuboza 2006, Ubwunganizi bwatanze icyifuzo gisaba Urugereko gushyiraho ingamba zo kurinda umutekano w'abagabo bari gutanga ubuhamya bushinjura ku myitwarire y'Uregwa (LZI, LBH, LBG, CAN na LDK). Urugereko rwakiriye, kuri bimwe, icyo Cyifuzo mu Cyemezo cyarwo cyiswe *Decision on the Nzabirinda Under Seal-Exteremely Urgent Motion for Protective Measures for Character Witness* [Icyemezo ku Cyifuzo cy'ibanga kandi cyihutirwa cyane cya Nzabirinda gisaba ko hafatwa ingamba zo kurinda umutekano w'abagabo bazatanga ubuhamya bushinjura ku birebana n'imyitwarire y'Uregwa], cyafashwe ku itariki ya 13 Ukuboza 2006. Ku itariki ya 9 Mutarama 2007, Ubwunganizi na Porokireri batanze imyanzuro bahuriyeho ibanziriza igenagihano. Iyo myanzuro yari yanditse mu gifaransa. Ku itariki ya 12 Mutarama 2007, Ubwunganizi bwatanze imyanzuro y'inyongera ibanziriza igenagihano. Ku itariki ya 12 Mutarama 2007, Ubwunganizi bwatanze icyifuzo gisaba ko hafatwa ingamba zo kurinda undi mugabo wiswe LZB2 wari gutanga ubuhamya ku myitwarire y'Uregwa. Ku itariki ya 16 Mutarama 2007, Urugereko rwakiriye icyo Cyifuzo kuri bimwe, mu Cyemezo cyiswe *Decision on the Defence's Extremely Urgent Confidential Motion for Protective Measures for Witness LBZ2* [Icyemezo ku Cyifuzo cy'ibanga kandi cyihutirwa cyane cy'Ubwunganizi gisaba ko hafatwa ingamba zo kurinda umutekano w'umutangabuhamya wiswe LZB2]. Ku itariki ya 16 Mutarama 2007, Ubwunganizi bwatanze icyifuzo cyiswe *Motion for the admission of Witness LBZ2's and Mr. Saidou Guindo's written statements in lieu of oral testimony under Rule 92 bis (A) and (B)* [Icyifuzo gisaba Urugereko kwemera gushyira muri dosiye ubuhamya bwanditse bw'umugabo wiswe LZB2 n'ubwa Bwana Saidou Guindo mu kigwi cy'ubwo bari gutanga mu magambo mu Rukiko nk'uko biteganywa n'ingingo ya 92 bis (A) na (B) z'Amategeko. Mu Cyemezo rwafashe mu magambo ku itariki ya 17 Mutarama 2007, Urugereko rwemeye icyo Cyifuzo kandi rwemera ko inyandiko y'ubuhamya bwa LBZ2 ishyingirwa muri dosiye kimwe n'icyemezo cy'imyitwarire myiza y'Uregwa cyatanzwe na Bwana Saidou Guindo, umuyobozi wa Gereza y'Urukiko. Ku itariki ya 17 Mutarama 2007, Jean Baptiste Nkulikiyungoma (mbere wari wariswe LBH), hamwe n'abiswe CAN, LZI, LDK na LBG batanze ubuhamya mu Rukiko. Muri iryo buranisha, Ubwunganizi bwashyirwa mu magambo uruhushya rwo guhindura lisiti yabwo y'abatangabuhamya, ku buryo umugabo wiswe LDK, uvugwa mu Cyemezo cyo ku itariki ya 13 Ukuboza 2006, asimbuza undi uzitwa iryo zina, ni ukuvuga LDK. Bwanasabye kandi ko hafatwa ingamba zo kubungabunga umutekano w'uwo mutangabuhamya. Urugereko rwemeye icyo Cyifuzo.

⁵⁹ Urubanza rwa Serugendo mu rw'Iremezo, igika cya 31, hasubirwamo ibivugwa mu rubanza rwa Rutaganda mu rw'Iremezo, igika cya 455.

ikorwa ry'ibyaha binyuranyije n'amasezerano mpuzamahanga arengera abantu mu gihe cy'intambara, no mu kubonera umuti ingaruka zabyo⁶⁰. Urugereko rusanga urubanza ruciwe ku buryo buboneye, hamwe n'igihano gikwiye mu gihe Uregwa yemeye icyaha bishobora gufasha mu kugera kuri izo ntego. Amahame shingiro rugenderaho mu igenabihano ni uko igihano kigomba kuba kigamije kuburizamo ikorwa ry'ibyaha, kuba imponyano y'ibyaha no gutuma uwagikoze yakwikosora⁶¹.

50. Urugereko rugiyeye kugenera Joseph Nzabirinda igihano rushingiye ku ngingo ya 22 n'ya 23 za Sitati kimwe n'ingingo ya 100 n'ya 101 z'Amategeko. Urukiko rugena gusa ibihano by'igifungo. Nk'uko biteganywa n'ingingo y'i 101 A) y' Amategeko, igihano ntarengwa ni igifungo cya burundu. Sitati n'Amategeko ntibiteganywa igihano cyihariye kuri buri cyaha Urukiko rufitiye ububasha bwo kuburanisha.
51. Kubera iyo mpamvu, Urugereko rugena igihano uko rubyumva. Cyakora, nk'uko biteganywa n'ingingo ya 23.2 ya Sitati n'ya 101 B) y'Amategeko, mu gukoresha ububasha bw'ibintu bwo gusuzuma ibintu, Urugereko rugomba kuzirikana ibintu bimwe birimo uburemere bw'icyaha, impamvu zongera ububi bw'icyaha cyangwa impamvu nyoroshyacyaha, imibereho bwite y'umuntu uhamwe n'icyaha, n'urutonde rw'ibihano by'igifungo rukoreshwa n'inkiko zo mu Rwanda.
52. Urugereko ruzirikana neza inshingano rufite yo gukora ku buryo igihano kijyana n'imibereho bwite y'umuntu uhamwe n'icyaha⁶².
53. Urugereko ruributsa ko impamvu zongera ububi bw'icyaha zigomba kugaragazwa mu buryo budashidikanywaho na gato, naho impamvu nyoroshyacyaha zikagaragazwa hashingiwe ku bintu bishoboka kuruta ibindi⁶³.

⁶⁰ icyemezo cya 955 cy'Inama Ishinzwe Amahoro ku Isi, 8 Ugushyirye 1994.

⁶¹ Urubanza rwa Serugendo mu rw'Iremezo, igika cya 33; urubanza rwa Aleksovski mu bujirire, igika cya 185; urubanza rwa Mucic na bagenzi be mu bujirire, igika cya 806.

⁶² Urubanza rwa Mucic na bagenzi be mu bujirire, igika cya 717; urubanza rwa Muhimana mu rw'Iremezo, igika cya 594.

⁶³ Urubanza rwa Kajelijeli mu bujirire, igika cya 294.

B. Uburemere bw'icyaha

1. Ibivugwa n'ababuranyi

54. Porokireri avuga ko uburemere bw'icyaha ari ikintu cya mbere kigomba kwitabwaho mu kugena igihano gikwiye. Ubwo buremere bugomba gusuzumwa hazirikanwa imiterere yihariye y'urubanza, ndetse n'ingano y'uruhare abaregwa bagize mu ikorwa ry'icyaha n'uburyo urwo ruhare rwabo ruteye⁶⁴. Uburemere bw'icyaha n'ingaruka cyagize kubagikorewe nazo zigomba kuzirikanwa⁶⁵.

2. Imyanzuro y'Urugereko

55. Uburemere bw'ibyaha n'ingano y'uruhare rw'Uregwa mu ikorwa ry'ibyo byaha ni ibintu bigomba kuzirikanwa mu kugena igihano.

56. Jenocide n'ibyaha byibasiye inyokomuntu ubwa byo ni ibyaha bikomeye cyane by'agahomamunwa⁶⁶.

57. Urugereko rusanga kuba Joseph Nzabirinda yarafashije kandi agashishikariza abantu gukora ubuhotozi nk'icyaha cyibasiye inyokomuntu ari icyaha gikomeye cyane kandi kinyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara.

C. Impamvu zongera ububi bw'icyaha

1. Ibivugwa n'ababuranyi

58. Porokireri yavuze nta mpamvu n'imwe yongera ububi bw'icyaha azabyutsa uretse izumvikanyweho n'impande zombi mu masezerano y'ubwemeracyaha⁶⁷. Avuga ko kuba

⁶⁴ Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp. 59, 60.

⁶⁵ Ni kimwe no haruguru.

⁶⁶ Urubanza rwa Ruggiu mu rw'Iremezo, igika cya 48.

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Uregwa yari hafi y'aho ubwicanyi bwombi bwakorewe « nk'indorezezi ishyigikiye ibyarimo kuba » kandi azi ko harimo kugabwa ibitero rusange kandi biri kuri gahunda, ibyo bituma icyaha cy'ubuhotozi kiremera cyane.

59. Joseph Nzabirinda yemera ko ibivugwa mu gika cya 120 cyo mu nyandiko y'urubanza rwa Bisengimana mu rw'Iremezo bihuye n'ibye. Mu by'ukuri, yemera ko nawe ari umuntu wize bityo akaba yarashoboraga kumenya no kubahiriza agaciro k'ikiremhamuntu, ndetse akaba yari azi ko ari ngombwa kandi bifite akamaro ko abantu babana mu mahoro⁶⁸.

2. Imyanzuro y'Urugereko

60. Urugereko ruzirikana ko « rushobora kwita ku mpamvu yongera ububi bw'icyaha iyo iyo mpamvu itari kimwe mu bisabwa kugira icyaha kiburanishwa kibeho». Iyo bitameze gutyo iyo mpamvu ntiyitabwaho⁶⁹.
61. Ubukemuramanza bwa TPIR na TPIY bugaragaza neza ko n'ubwo kuba Uregwa yari afite ijambo mu baturage ubwabyo atari impamvu yongera ububi bw'icyaha, uburyo Uregwa yakoresheje ubwo bubasha bw'ubuyobozi cyangwa agakoresha nabi umwanya yari afite mu baturage bishobora gufatwa nk'impamvu yongera ububi bw'icyaha⁷⁰.
62. Urugereko rusanga Joseph Nzabirinda, wari ushinze uruburiko, akaba umunyabwenge n'umucuruzi wifashije, ndetse wubahwaga n'abaturage, yarakoresheje nabi ijambo yari

⁶⁷ Amasezerano y'ubwemeracyaha, igika cya 59.

⁶⁸ Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp. 64-66.

⁶⁹ Urubanza rwa Blaskic mu bujurire, igika cya 693, hasubirwamo ibivugwa mu rubanza rwa Ndindabahizi, igika cya 137

⁷⁰ Urubanza rwa Akayesu mu bujurire, ibika 414 na 415; urubanza rwa Kambanda mu rw'Iremezo, ibika 61 na 62, hasubirwamo ibivugwa mu rubanza rwa Kambanda mu bujurire, igika cya 119; urubanza rwa Aleksosvki mu bujurire, igika cya 183; urubanza rwa Kayishema na Ruzindana mu bujurire, ibika 357 na 358; urubanza rwa Ntakirutimana n'uwo baregwa hamwe mu bujurire, igika cya 563; urubanza rwa Kamuhanda mu bujurire, ibika 347 na 348; urubanza rwa Bisengimana mu rw'Iremezo, igika cya 120; urubanza rwa Serugendo mu rw'Iremezo, igika cya 48; urubanza rwa Ndindabahizi mu bujurire, igika cya 136.

afite ku buryo bugargara ku rubyiruko rwo muri Komine ye no ku baturage bo muri Segiteri ye. Urugereko rusanga kuba Joseph yarakoresheje nabi iryo jambo yari afite kuri abo bantu ari impamvu yongera ububi bw'icyaha.

63. Nk'uko Ubwunganizi bwabyiyemereye, Joseph Nzabirinda ni umuntu wize washoboraga kumenya no guha agaciro icyubahiro cy'ikiremnamuntu, kandi yari azi ko ari ngombwa kandi bifite akamaro ko imiryango yose ibana mu mahoro⁷¹. Urugereko rusanga iyo ari impamvu yongera ububi bw'icyaha.

D. Impamvu nyoroshyacyaha

1. Amategeko akurikizwa

64. Impamvu nyoroshyacyaha zishobora kuba zifitanye isano iziguye n'icyaha cyakozwe⁷².
65. Nk'uko bikubiye mu bukemuramanza bwa TPIR na TPIY, kwemera icyaha bishobora gutuma Uregwa agabanyirizwa igihano hazirikanwa ibintu bikurikira: ukwicuzwa⁷³, gusaba imbabazi⁷⁴, gutanga umuganda mu bwiyunge⁷⁵, kugaragaza ukuri⁷⁶, gushishikariza abandi bantu bakoze ibikorwa bibisha kwemera ibyaha byabo⁷⁷, gutuma hatabaho iperereza ndetse n'urubanza birebire, bityo hagakoreshwa igihe gito, imbaraga n'umutungo bike⁷⁸, no kuba abagabo bataza gutanga ubuhamya mu Rukiko.⁷⁹ Igihe Uregwa yemereye icyaha nacyo kirazirikanwa⁸⁰.

⁷¹ Urubanza rwa Bisengimana mu bujirire, igika cya 120.

⁷² Urubanza rwa Nikolic mu rw'Iremezo, igika cya 145; urubanza rwa Deronjec mu rw'Iremezo, igika cya 155.

⁷³ Urubanza rwa Plavsic mu rw'Iremezo, igika cya 73.

⁷⁴ Urubanza rwa Ruggiu mu rw'Iremezo, igika cya 55.

⁷⁵ Urubanza rwa Plavsic mu rw'Iremezo, ibika 80 na 81.

⁷⁶ Urubanza rwa Erdemovic (1998) mu rw'Iremezo, igika cya 21; urubanza Nikolic mu rw'Iremezo, igika cya 248; urubanza rwa Serugendo mu rw'Iremezo, igika cya 55.

⁷⁷ Urubanza rwa Erdemovic (1998) mu rw'Iremezo, igika cya 16; urubanza rwa Ruggiu mu rw'Iremezo, igika cya 55.

⁷⁸ Urubanza rwa Ruggiu mu rw'Iremezo, igika cya 53.

⁷⁹ Urubanza Kambanda mu rw'Iremezo, igika cya 54; Urubanza rwa Serugendo mu rw'Iremezo, ibika 52 na 57.

⁸⁰ Urubanza rwa Kambanda mu rw'Iremezo, ibika 52 na 53; urubanza rwa Sikirica na bagenzi be mu rw'Iremezo, igika cya 150; urubanza rwa Serugendo mu rw'Iremezo, igika cya 54.

2. Kwemera icyaha no kwicuza mu ruhame

a. *Ibivugwa n'ababuranyi*

66. Ababuranyi bavuga ibi bikurikira: kwemera icyaha byagombye gutuma igihano kigabanuka; kwemera icyaha ni ikintu cy'ingirakamaro mu kugaragaza ukuri; Uregwa yatumye Urukiko rukoresha igihe n'umutungo bike kubera ko yemeye icyaha mbere yo kuburana, bityo akaba yaratanze umuganda mu gukumira ipfobya rya jenocide no mu bwiye bw'Abanyarwanda⁸¹.
67. Ku itariki ya 14 Ukuboza 2006, ubwo yongeraga kwitaba Urugereko, Uregwa yafashe icyemezo cyo kwisubiraho maze “yemera icyaha”, nyuma y'igihe kirekire yari amaze abitekerezaho afunzwe. Yasabye imbabazi imiryango y'abishwe ari bo Pierre Murara na Joseph Mazimpaka, n'Abanyarwanda kubera ibyaha bye bikomoka ku byo yirengagije gukora, kandi arabyicuza cyane. Yanavuze ko yizeye ko kuba yariyemeje kwemera icyaha bizafasha kandi bigashishikariza abandi kwitabira kuvugisha ukuri⁸². Ibyo bikubiye no mu masezerano y'ubwemeracyaha, mu Cyifuzo gihuriweho n'impande zombi gisaba Urugereko gusuzuma amasezerano Joseph Nzabirinda yagiranye n'Iburo bya Porokireri yerekeranye n'ubwemeracyaha no mu nyandikomvugo y'iburanisha ryabanjirije igenabihano⁸³.

b. *Imyanzuro y'Urugereko*

68. Urugereko ruributsa ko kwemera icyaha bishobora kuba ikimenyetso kigaragaza ko umuntu wakoze icyaha avugisha ukuri, ko hari ikintu kigomba kugenerwa abantu bemeye ibyaha kugira ngo bishishikarize n'abandi kubikora. Rwongeraho ko kwemera icyaha bishobora kugira uruhare mu bwiye bw'Abanyarwanda⁸⁴.

⁸¹ Imyanzuro ihuriweho n'impande zombi, ibika 21-23.

⁸² Inyandikomvugo y'iburanisha, 14 Ukuboza 2006, imp. 9 na 10.

⁸³ Amasezerano y'ubwemeracyaha, ibika 2-22; Imyanzuro ihuriweho n'impande zombi, igika cya 33; Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp. 74-76.

⁸⁴ Urubanza rwa Bisengimana mu rw'Iremezo, igika cya 139.

69. Urugereko rwa Mbere rw'Iremezo rufata ukwicuza nk'impamvu nyoroshyacyaha iyo rudashidikanya ko umuntu wicujije abikoze abikuye ku mutima⁸⁵.
70. Rumaze kubisuzuma, Urugereko ntirushidikanya ko ibyaha Joseph Nzabirinda yakoze yabyicujije mu ruhame abivanye ku mutima.
71. Urugereko rusanga Joseph Nzabirinda yemera uburyozwacyaha bwe kuko yafashe icyemezo cyo kwemera icyaha kandi mbere yari yavuze ko ari umwere, ndetse akaba yaricujije mu ruhame. Kubera izo mpamvu, rusanga ibyo byaratumye Urukiko rukoresha igihe n'umutungo bike ndetse bikaba bishobora gutanga umuganda mu bwiyunge bw'Abanyarwanda. Bityo rero, Urugereko rusanga ubwirege bwa Joseph Nzabirinda bushobora gufatwa nk'impamvu yatuma abagabanyirizwa igihano.

3. Ubufatanye na Porokireri

a. *Ibivugwa n'ababuranyi*

72. Joseph Nzabirinda yavuze ko yiteguye gufatanya na Porokireri. Impande zombi zivuga ko ubwo bushake bwo gufatanya bwerekana ko ashaka kugira uruhare mu kugaragaza ukuri kandi bushobora gushishikariza abandi bantu kwemera ibyaha bakoze⁸⁶.

b. *Imyanzuro y'Urugereko*

73. Urugereko rwa Mbere rw'Iremezo ni rwo rusuzuma ubwo bufatanye, rukareba uburyo bwakozwemo⁸⁷ kandi "ubufatanye bw'Uregwa busuzumwa hashingiwe ku ngano n'akamaro k'amakuru Uregwa yatanze"⁸⁸.

⁸⁵ Urubanza rwa Banovic mu rw'Iremezo, igika cya 72 (ibisobanuro byo hasi ku rupapuro ntibyongewemo).

⁸⁶ Amasezerano y'ubwemeracyaha, igika cya 55; imyanzuro ihuriweho n'impande zombi, ibika 24, 25.

⁸⁷ Urubanza rwa Jelusic mu bujurire, igika cya 124.

⁸⁸ Urubanza rwa Blaskic mu rw'Iremezo, igika cya 774.

74. Nta gushidikanya ko Joseph Nzabirinda afite ubushake bwo kuzafatanyana na Porokireri. Cyakora, urebye aho urubanza rugeze, Urugereko rusanga ubwo bushake ubwabwo butafatwa nk'impamvu nyoroshyacyaha, cyane cyane ko, uretse ubwirege bwazusumwe, hatatanzwe ikindi kimenyetso kigaragaza akamaro ubufatanye bw'Uregwa buzagira, hakurikijwe ingingo ya 101 B) ii) y'Amategeko.

4. Kuba hari abantu Uregwa yagobotse

a. *Ibivugwa n'abaturanyi*

75. Ubwunganizi buvuga ko hari abantu Uregwa ubwe yarakoye⁸⁹, kandi Porokireri ntabihakana⁹⁰.
76. Ubwunganizi bwahamagaje abatangabuhamya biswe CAN⁹¹, LZI⁹² na LDK⁹³ ngo batange ubuhamya mu Rukiko ku ruhare Joseph Nzabirinda yagize mu gufasha impunzi z'Abatutsi mu mvururu zabaye mu mwaka wa 1994. Ubuhamya bwanditse bwa LBZ-2, bwashyizwe muri dosiye hakurikijwe ingingo ya 92 bis y'Amategeko, bushyigikira ubwatanzwe n'abandi batangabuhamya bamaze kuvugwa⁹⁴.

b. *Imyanzuro y'Urugereko*

77. Rumaze gusuzuma ubuhamya abagabo batanze mu Rukiko n'ubuhamya bwanditse bwashyizwe muri dosiye hakurikijwe ingingo ya 92 bis A) y'Amategeko, Urugereko rusanga hariho koko ibimenyetso bihagije bigaragaza ko mu mvururu zabaye mu mwaka wa 1994, Joseph Nzabirinda yafashije ubwe impunzi z'Abatutsi zo muri Segiteri ya Sahera, aziha inkunga y'amafaranga n'ibikoresho. Rusanga kandi yarafashije mu gutegura ukuntu impunzi zijya i Burundi. Ibimenyetso byatanzwe bigaragaza ko ibikorwa

⁸⁹ Amasezerano y'ubwemeracyaha, igika cya 50; imyanzuro ihuriweho n'impande zombi, imp. 26, 27.

⁹⁰ Amasezerano y'ubwemeracyaha, igika cya 60.

⁹¹ Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp. 19-22.

⁹² Ni kimwe no haruguru, imp. 26-28.

⁹³ Ni kimwe no haruguru, imp.39-42.

⁹⁴ Ikimenyetso gihamya gishinjura, D5.

bya Joseph Nzabirinda byatumye impunzi zimwe z'Abatutsi zirokoka. Kubera iyo mpamvu, Urugereko rusanze inkunga Joseph Nzabirinda yateye bamwe mu bantu bakorewe ibyaha ari impamvu nyoroshyacyaha.

5. Imibereho bwite y'Uregwa n'iy'umuryango we

a. Ivivugwa n'ababuranyi

78. Ababuranyi bombi bemera ko ubukemuramanza bw'Urukiko bufata nk'impamvu nyoroshyacyaha imibereho bwite y'Uregwa, hakubiyemo n'imibereho y'umuryango we yashingirwaho nk'ikimenyetso ko ashobora gusubira mu buzima busanzwe.⁹⁵
79. Ubwunganizi bwahamagaje umugabo wiswe LBG, watanze ubuhamya mu Rukiko buvuga neza ku mibereho bwite ya Joseph Nzabirinda n'iy'umuryango we.⁹⁶

b. Imyanzuro y'Urugereko

80. Urugereko rusanga kuba Uregwa afite umugore n'abana, hari igihe bishobora gufatwa nk'impamvu nyoroshyacyaha⁹⁷.
81. Muri uru rubanza, imibereho bwite y'umuryango w'Uregwa, ufite umugore n'abana, ituma Urugereko rwizera ko afite amahirwe yo gusubira mu buzima busanzwe amaze gufungurwa. Rusanga rero imibereho ye bwite ari impamvu nyoroshyacyaha.

⁹⁵ Imyanzuro ihuriweho n'impande zombi, ibika 28-31.

⁹⁶ Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp. 45-50.

⁹⁷ Urubanza rwa Kunaracc na bagenzi be mu bujurire, igika cya 362; urubanza rwa Vasiljevic mu rw'Iremezo, igika cya 300; urubanza rwa Serushago mu rw'Iremezo, igika cya 39; urubanza rwa Rutaganira mu rw'Iremezo, ibika 120 na 121.

6. Kuba atariroshye mu bikorwa by'ubwicanyi

a. Ingingo z'ababuranyi

82. Ababuranyi bombi bavuga ko icyo Uregwa yahamijwe cyo kudakora ibyo yagombaga gukora atari impamvu nyoroshyacyaha, ko ahubwo ari uburyo bwo kugira uruhare mu byaha yahamijwe. Cyakora, bashingiye ku rubanza rwa Bisengimana mu rw'Iremezo, ababuranyi bavuga ko hagombye kuzirikanwa imiterere yihariye y'uru rubanza, ku miterere y'uruhare rw'Uregwa mu buhotozi buvugwa n'uko rungana. Byongeye kandi, bavuga ko Joseph Nzabirinda atakoze igikorwa na kimwe cy'urugomo mu gihe cy'ubwicanyi ndetse ko atafatanyije ubwe n'abandi mu gukora icyaha yemera cy'iyicwa ry'abantu babiri. N'ubwo ubwo bwicanyi bwakorewe hafi y'ahantu yari hakorerwaga inama n'ahari bariyeri, Uregwa ntiyabonye ubwo bwicanyi bukorwa⁹⁸.
83. Uregwa avuga ko atari ahantu icyaha cyakorewe, ko ahubwo yari mu nama yateguriwemo ubwicanyi⁹⁹. Avuga rero ko atari ahantu ubuhotozi bwakorewe, ko ahubwo yari mu nama no kuri za bariyeri aho ibyo byaha byateguriwe¹⁰⁰.

b. Imyanzuro y'Urugereko

84. Urugereko ruzi neza akamaro ko kuzirikana imiterere yihariye y'urubanza, cyane cyane imiterere y'uruhare rw'Uregwa mu byo ashinjwa n'uko rungana¹⁰¹.
85. Ruributsa ko Joseph Nzabirinda atishe ubwe abo bantu babiri cyangwa ngo akore ikindi gikorwa icyo ari cyo cyose cy'urugomo gifitanye isano n'iyicwa ryabo. Cyakora, rusanga kubera ko yafashije, agashishikariza abandi bantu gutegura ubwo bwicanyi mu manama, akanabashishikariza kubukora aguma hafi y'aho bwakorewe, Uregwa yari azi neza ko

⁹⁸ Imyanzuro ihuriweho n'impande zombi, ibika 34-36.

⁹⁹ Inyandikomvugo y'iburanisha, 17 Mutarama 2007, urup. 63.

¹⁰⁰ Ni kimwe no haruguru, imp. 63-65.

¹⁰¹ Urubanza rwa Mucic na bagenzi be mu bujurire, igika cya 731, hasubirwamo ibivugwa mu rubanza rwa Kuprekic mu bujurire, igika cya 442; urubanza rwa Aleksovski mu rw'Iremezo, igika cya 243.

inama za Segiteri na bariyeri yari i Kabuga byari bigamije ubwicanyi bwaberaga muri Segiteri ya Sahera. Urugereko ntirwirengagiza ko Uregwa yari mu nama za Segiteri kandi akarinda bariyeri yari i Kabuga, azi ko kuba ahari byari ugushishikariza abicanyi kwica abantu, ko byari nk'ikimenyetso kigaragaza ko ashigikiye ubwo bwicanyi ndetse bikanashishikaza abantu bagabaga ibitero. Byongeye kandi, Urugereko rusanga Joseph Nzabirinda ataritandukaniye n'abateguye ibitero mu nama yagiyemo za segiteri, cyangwa ngo yitandukanye n'abagabaga ibitero biciye Joseph Mazimpaka hafi ya bariyeri yari [Uregwa] arinze. Urugereko ruributsa kandi ko Uregwa atigeze areka kujya mu “nama zitwaga ko zigamije kugarura amahoro”, kandi yari azi ko zigamije gutegura ihigwa n'iyicwa cy'Abatutsi mu buryo buri kuri gahunda.

86. Nk'uko bikubiye mu bukemuramanza bw'Urukiko, kugira ngo umuntu yitwe “indorezezi ishyigikiye ibirimo kuba” ni ngombwa ko uwo muntu [...] aba koko ari ahantu icyaha gikorera cyangwa se nibura hafi yaho”¹⁰². Kuri iki kibazo, Urugereko ruributsa ko Joseph Nzabirinda yemeye ko Pierre Murara yiciwe n'Interahamwe hafi y'ahantu inama zari zabereye, kandi ahari nk' “indorezezi ishyigikiye ibyarimo kuba”¹⁰³. Yemeye kandi ko kuba yari kumwe n'abicanyi kuri bariyeri yari arinze, byashishikariye Mugenzi kwica Joseph Mazimpaka hafi y'iyi bariyeri.¹⁰⁴ Rushingiye kuri ibyo bintu byabaye Uregwa yemera, Urugereko rusanga kuba Joseph Nzabirinda yari hafi y'ahantu ibyaha byakorewe, nk'“indorezezi ishyigikiye ibyarimo kuba”, byarashishikariye abantu gutegura iyicwa rya Pierre Murara na Joseph Mazimpaka. Kubera izo mpamvu, Urugereko ntirwemera ibivugwa n'Ubwunganizi ko kuba Joseph Nzabirinda atari yibereye ubwe ahantu ubwicanyi bwakorewe bikwiye gufatwa nk'impamvu nyoroshyacyaha. Mu by'ukuri, hagaragajwe ko yari hafi cyane y'aho hantu ndetse ko yari azi ko kuba ahari byashishikarizaga abantu gukora ibyo byaha.

¹⁰² Urubanza rwa Kayishema na Ruzindana mu rw'Iremezo, igika cya 201; urubanza rwa Semanza mu rw'Iremezo, igika cya 386; urubanza rwa Bagilishema mu rw'Iremezo, ibika 34 na 36; urubanza rwa Mpambara mu rw'Iremezo, igika cya 23.

¹⁰³ Amasezerano y'ubwemeracyaha, igika cya 44. Reba na none Inyandiko y'ibirego, igika cya 15.

¹⁰⁴ Amasezerano y'ubwemeracyaha, igika cya 48. Reba na none Inyandiko y'ibirego, igika cya 19.

87. Urugereko rusanze rero mu kugena igihano, imiterere y'urwo ruhare rwe idashobora gufatwa nk'impamvu nyoroshiyacyaha.

7. Imico myiza y'Uregwa, uko yafataga Abatutsi mu gihe ibivugwa byabaga na mbere yaho, kuba atarigeze akurikiranwaho icyaha mbere no kuba yaritwaye neza muri gereza

a. Ivivugwa n'ababuranyi

88. Ababuranyi bombi bavuga ko kugeza mu mvururu zo mu mwaka wa 1994, Joseph Nzabirinda yari umuntu witwara neza, utarigeze aba intagondwa¹⁰⁵. Byongeye kandi, bavuga ko mbere y'ibyabaye, Uregwa yafatwaga, n'abo babanaga, nk'umuntu mwiza, wumva abandi, ugira ubuntu kandi ushimwa mu kazi no mu buzima busanzwe.
89. Ababuranyi bavuga ko Uregwa atitaga ku by'amoko, ko atigeze avangura abantu kubera ubwoko bwabo ndetse ko yabanaga neza cyane n'Abahutu n'Abatutsi. Byongeye kandi, umugore we ni Umututsikazi kandi ukuntu yabanaga n'umuryango w'umugore we byari birenze ubuvandimwe busanzwe.
90. N'ubwo bitashobotse kubona icyemezo kigaragaza ko Uregwa atigeze akurikiranwa mu nkiko, Ubwunganizi bwemeza ko nta cyaha yigeze ahanirwa. Byongeye kandi, nk'uko byemezwa na Saidou Guindo, Umukuru wa Gereza y'Urukiko, Uregwa yitwaye neza mu myaka itanu amaze afunzwe¹⁰⁶.
91. Umutangabuhamyamba bashinjura ari bo Jean Baptiste Nkuliyingoma¹⁰⁷, abiswe LZI¹⁰⁸ na LBG¹⁰⁹, bemeza ko Joseph Nzabirinda yarangwaga n'imico myiza.

¹⁰⁵ Amasezerano y'ubwemeracyaha, igika cya 56.

¹⁰⁶ Ikimenyetso gihamya gishinjura D.6 cyashyizwe muri dosiye, hashingiwe ku ngingo ya 92 bis y Amategeko; Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp.53-56.

¹⁰⁷ Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp. 4-11.

¹⁰⁸ Ni kimwe no haruguru, imp. 22-30.

¹⁰⁹ Ni kimwe no haruguru, imp. 45-50.

b. Imyanzuro y'Urugereko

92. Rushingiye ku buhamya abagabo batanze mu Rukiko, Urugereko ntirushidikanya ko Joseph Nzabirinda yitwaraga neza mbere y'uko yitabira ibyaha byakorewe muri Segiteri ya Sahera muri Mata 1994. Rwemera kandi ko atigeze avangura amoko mbere y'ibyabaye. N'ubwo rudafite amakuru yuzuye neza, ntirunashidikanya ko Uregwa atigeze akatirwa n'inkiko. Mu gusoza, rusanga ubuhamya bw'Umuyobozi wa gereza y'Urukiko bugaragaza ko Joseph Nzabirinda yitwaye neza muri iyo gereza. Rusanga ibyo byose ari impamvu nyoroshyacyaha.

8. Kuba Uregwa yaritabiriye ikorwa ry'ibyaha bitewe n'amaburakindi

a. Ibivugwa n'abaturanyi

93. Abaturanyi bavuga ko iyo Uregwa aza kurwanya, mu buryo butaziguye, ibintu byabereye muri Segiteri ya Sahera, we cyangwa umuntu wo mu muryango we wa hafi bashoboraga kugirirwa nabi. Mu by'ukuri, nk'umuyoboze w'ishyamba PSD, yari yugarijwe n'Interahamwe n'abasirikare bicaga abantu i Butare. Byongeye kandi, umugore we wari Umututsikazi, n'abana babo barahigwaga. Abaturanyi bavuga rero ko, mu kugena igihano, ibibazo Joseph Nzabirinda n'umuryango we bari bafite icyo gihe byagombye gufatwa nk'impamvu nyoroshyacyaha.
94. Umutangabuhamya wiswe LZI avuga ko Joseph Nzabirinda yashyizweho iterabwoba mu mvururu zo mu mwaka wa 1994¹¹⁰. Imbere y'Urugereko, Uregwa yavuze ko kubera inkeke yashyirwagaho yitabiriye kujya mu manama no kuri za bariyeri kugira ngo abantu bareke gukomeza kumva ko kuba umuyoboze w'ishyamba rya PSD bivugaga kuba icyitso cy'abanzi¹¹¹.

¹¹⁰ Ni kimwe no haruguru, imp. 22-25.

¹¹¹ Ni kimwe no haruguru, imp. 74-76.

b. Imyanzuro y'Urugereko

95. Urugereko rusanga ingingo ivuga ko Uregwa yitabiriye ibyaha kubera amaburakindi ivuguruzwa ibivugwa mu masezerano y'ubwemeracyaha. Muri ayo masezerano, Joseph Nzabirinda yemera ko yagiye mu nama nyinshi muri Segeteri ya Sahera, kandi ko yakomeje kuziyamo n' ubwo yari azi ko inama zazibanjirije zari zaratumye haba ubwicanyi buri kuri gahunda. Uregwa yemera ko muri izo nama atigeze na rimwe, cyangwa mu buryo ubwo ari bwo bwose, agaragaza ko adashyigikiye ubwicanyi, ko yari azi ko abicanyi bari kumva ko uguceceka kwe kuvuga ko yari ashigikiye mu buryo buteruye, itegurwa ry'ubwicanyi¹¹². Na none, Uregwa yemera ko yarinze inshuro ebyiri bariyeri y'i Kabuga abisabwe n'abayobozi, kandi ko yari azi ko izo bariyeri zari muri bimwe byifashishwaga mu bwicanyi bwaberaga muri Segiteri.
96. Urugereko rusanga mu masezerano y'ubwemeracyaha nta hantu ha hamwe havugwa ko Joseph Nzabirinda yitwaye nabi kubera agahato yaba yarashyizweho. Urugereko ntirwanyuzwe n'ubuhamya LZI yatanze mu Rukiko yemeza ko Joseph Nzabirinda nta kundi yari kubigenza uretse kujya mu manama no kuri bariyeri y'i Kabuga. Kubera izo mpamvu, rwanze kwakira icyo mpamvu Uregwa yitwaza ko ari nyoroshiyacyaha.

E. Ibisabwa n'ababuranyi ku gihano

97. Ababuranyi basabira Uregwa igihano cy'igifungo kiri hagati y'imyaka itanu n'umunani, kigakurwamo igihe amaze afunzwe by'agateganyo. Byongeye kandi, barasaba ko Uregwa yafungirwa mu gihugu cy'Uburayi, cyane cyane mu Bufaransa, kubera ko icyo gihugu kiri hafi y'Ububiligi aho umufasha we n'abana be baba. Kubera ko bazi neza ko Urugereko rufite ubwisanzure busesuye bwo gusuzuma ibintu maze rugafata ibyemezo¹¹³, ababuranyi bemera ko Urugereko rutagomba, byanze bikunze, kugendera ku byifuzo byabo¹¹⁴.

¹¹² Amasezerano y'ubwemeracyaha, imp. 45, 46.

¹¹³ Ni kimwe no haruguru, igika cya 60; Imyanzuro ihuriweho n'impande zombi, 48-53 na 12.

¹¹⁴ Amasezerano y'ubwemeracyaha, igika cya 64; imyanzuro ihuriweho n'impande zombi, igika cya 13.

98. Porokireri yibutsa ko mu kugena igihano Urugereko rwagombye kuzirikana intego yo gukatira Uregwa igihano kimukwiye ari yo: kuba impongano y'icyaha, guca abantu intege ngo badakora ibyaha no gusubiza abakatiwe mu buzima busanzwe¹¹⁵. Yongeraho ko igihano ababuranyi bumvikanyeho gishyize mu gaciro kandi ko gihuje n'ubukemuramanza bw'uru Rukiko n'ubwa TPIY. Mu rubanza rwa Furund'ija, Urugereko rwa Mbere rw'Iremezo rwakatiye Uregwa, wari umutegetsi, igihano cy'igifungo cy'imyaka umunani kubera ko yashishikariye abandi bantu gusambanya ku gahato no gutesha abantu agaciro, bitewe n'uko yari ahantu ibyo byaha byakorewe. Mu rubanza rwa Rutaganira, Ushinjwa yahamwe n'icyaha maze akatirwa igihano cy'igifungo cy'imyaka itandatu kubera ko yashishikariye abandi bantu gukora itsembatsemba nk'icyaha cyibasiye inyokomuntu, bitewe n'uko yari ahantu ibyo byaha byakorewe kandi akirengagiza gukora ibyo yagombaga gukora.
99. Ubwunganizi buvuga ko Uregwa atigeze yica umuntu, ko atari umutegetsi uzwi mu rwego rw'amategeko kandi ko ashinjwa gusa iyicwa ry'abantu babiri aho gushinjwa itsembatsemba, nk'uko byari bimeze mu rubanza rwa Bisengimana¹¹⁶.
100. Bwiyambaje urubanza mu bujurire rwaciwe ku itariki ya 29 Mata 2005 n'Urukiko Rukuru rwa Repubulika i Cyangugu, Ubwunganizi bunavuga ko Urugereko rwagombye gutanga igihano gito kiri mu myaka ntarengwa y'igifungo cyasabwe¹¹⁷. Muri urwo rubanza mu bujurire, Athanase Murwanashyaka, wari ukurikiranyweho ibyaha birimo ubuhotozi, itsembatsemba no gusambanya ku gahato, yahamwe n'icyaha cya jenocide. Cyakora, kubera ko yari yaremeye icyaha, yakatiwe igihano cy'igifungo cy'imyaka irindwi, hakurwamo igihe cy'imyaka itatu n'igice yari amaze afunzwe by'agateganyo. Ubwunganizi bushimangira ko ibyaha Athanase Murwanashyaka yari akurikiranweho ntaho bihuriye n'ibyo Uregwa akurikiranweho muri uru rubanza.

¹¹⁵ Inyandikomvugo y'iburanisha, 17 Mutarama 2007, imp. 57-59.

¹¹⁶ Ni kimwe no haruguru, imp. 63- 65.

¹¹⁷ Ni kimwe no haruguru, urup. 63.

101. Ubwunganizi buvuga ko ingingo ya 82 n'ya 83 z'Amategeko ahana ibyaha mu Rwanda ziteganyaga ko, iyo impamvu nyoroshyacyaha zemewe cyangwa iyo zishobora kwemerwa, igihano cyo kwicwa gitsimbuzwa igihano cy'igifungo cy'imyaka itari muni y'itanu, igihano cy'igifungo cya burundu, kigatsimbuzwa igihano cy'igifungo cy'imyaka itari muni y'ibiri, naho igihano cyose cy'igifungo gishobora kugera ku myaka 25 kigasimbuzwa igihano cy'igifungo kitarenze umwaka umwe¹¹⁸.

E. Uko Urugereko rubibona

1. Urutonde rw'ibihano rukurikizwa mu nkiko zo mu Rwanda

102. Urugereko ruributsa ingingo ya 23 ya Sitati n'ya 101 y'Amategeko zisaba Urukiko kuzirikana urutonde rusange rw'ibihano by'igifungo rukoreshwa n'inkiko zo mu Rwanda.
103. Mu gitabo cy'amategeko ahana ibyaha mu Rwanda, ibyaha bikomeye nk'ubuhotozi bihanishwa igihano cyo kwicwa cyangwa igifungo cya burundu, hakurikijwe imiterere y'uburyozwacyaha bw'Uregwa¹¹⁹. Ingingo ya 89 y'icyo gitabo iteganyaga, mu buryo butaziguye, ko umuntu wabaye icyitso mu cyaha ahanishwa igihano kimwe n'icya gatozi w'icyo cyaha.
104. Urugereko rusanga byagira akamaro kwifashisha Itegeko-Ngenga ry'u Rwanda rishyiraho "Inkiko Gacaca"¹²⁰, kugira ngo hakorwe igereranya, kuko iryo tegeko ryerekana ibikurikizwa ku bantu bemeye ibyaha byibasiye inyokomuntu. Muri izo nkiko, umuntu wese wafashije undi gukora icyaha¹²¹ iyo yemeye icyaha kandi yujuje ibisabwa¹²², ahanishwa igihano cy'igifungo kiri hagati y'imyaka irindwi na 12¹²³.

¹¹⁸ Ni kimwe no haruguru, imp. 73 na 74.

¹¹⁹ Igitabo cy'Amategeko ahana ibyaha mu Rwanda, Itegeko-teka N° 21/77 ryo ku itariki ya 18 Kanama 1977, ryahinduwe n'Itegeko-teka N° 23/81 ryo ku itariki ya 13 Ukwakira 1981, kuva ku ngingo ya 311 kugeza ku ya 317.

¹²⁰ Itegeko Ngenga N° 16/2004 ryo ku itariki ya 19 Kamena 2004, rigena imitunganyirize, ububasha n'imikorere y'Inkiko-Gacaca zishinzwe gukurikirana no kuburanisha abantu bakoze ibyaha bigize icyaha cya jenocide n'ibindi byaha byibasiye inyokomuntu hagati y'itariki ya 1 Ukwakira 1990 n'ya 31 Ukuboza 1994 (Itegeko Ngenga ryo ku itariki ya 19 Kamena 2004).

¹²¹ Ingingo ya 51 y'Itegeko Ngenga ryo ku itariki ya 19 Kamena 2004.

¹²² Ingingo ya 56 y'Itegeko Ngenga ryo ku itariki ya 19 Kamena 2004.

2. Umwanzuro w'Urugereko

105. Urugereko ntirwirengagiza ko rugomba gutakira Uregwa igihano rukigereranyije n'ibihano byakatiwe abantu bakoze ibyaha bisa n'ibyo Uregwa ashinjwa. Cyakora, runazirikana ko, mu rubanza rwa Kupreskic, Urugereko rw'Ubujurire ruvuga ko "Urugereko rwa Mbere rw'Iremezo rutagomba, byanze bikunze, kugereranya mu buryo butaziguye ikibazo cy'Uregwa runaka n'icy'undi muntu ushinjwa"¹²⁴. Urwo Rugereko rwavuze kandi ko "muri buri rubanza hari ibintu byinshi bidasa byerekeranye n'umubare w'ibyaha n'uburemere bwabyo ndetse n'imibereho bwite y'Uregwa"¹²⁵. Uru Rugereko runazirikana inshingano rufite yo gukora ku buryo igihano kijyana n'imibereho bwite y'umuntu wakoze icyaha.¹²⁶
106. Urugereko ruributsa ko rwasanze uruhare Joseph Nzabirinda yagize afasha kandi ashishikariza abantu gukora ubuhotozi bugize ibyaha byibasiye inyokomuntu, ari icyaha gikomeye cyane kandi kinyuranije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara.
107. Rusanga ijambo Joseph Nzabirinda yari afite ku baturage no kuba yarize ari impamvu yongera ububi bw'icyaha. Cyakora, rusanga ibi bikurikira bishobora gufatwa nk'impamvu nyoroshiyacyaha: ukwemera icyaha k'Uregwa gukurikiwe no kwicuza ku mugaragaro, imibereho ye bwite n'iy'umuryango we, kuba yaritwaraga neza mbere y'ibyabaye mu mwaka wa 1994, kuba atarigeze akatirwa n'inkiko mbere, kuba yaritwaye neza muri gereza no kuba yarafashije bamwe mu bantu bakorewe ibyaha.
108. Cyakora, n'ubwo imibereho bwite y'Uregwa n'iy'umuryango we, kuba atarigeze akora ibyaha mbere no kuba yaritwaye neza muri gereza bigomba kuzirikanwa mu igena

¹²³ Ingingo ya 73 y'Itegeko Ngenga ryo ku itariki ya 19 Kamena 2004.

¹²⁴ Urubanza rwa Kupreskic mu bujurire, igika cya 443.

¹²⁵ urubanza rwa Kvocka mu bujurire, igika cya 681.

¹²⁶ Urubanza rwa Mucic na bagenzi be mu bujurire, imp. 717- 719; urubanza rwa Muhimana mu rw'Iremezo, igika cya 594.

gihano, Urugereko rusanga, hakurikijwe amategeko mpuzamanga, izo mpamvu zidashobora koroshya cyane ibihano, bityo bikaba bigomba guhabwa agaciro gato¹²⁷.

109. Urugereko ruzirikana ko mu rubanza rwa Semanza mu bujirire havugwamo ko “Umuntu utegetse abandi gukora itsembatsemba ahanishwa igihano gisumbye igihanishwa umuntu wafashije akanashishikariza gusa abandi bantu gukora itsembatsemba¹²⁸. Rwibutsa kandi ko “imiterere y’uburyozwacyaha ishobora kongera uburemere bw’icyaha (nk’iyo icyaha gikoranywe igitekerezo cyihariye), cyangwa bukacyoroshya (nk’iyo Uregwa yafashije kandi agashishikariza gusa abandi bantu gukora icyaha azi neza ko icyo cyaha gishobora gukorwa)”¹²⁹.
110. Urugereko rusanga ubukemuramanza bw’uru Rukiko n’ubwa TPIY ku byerekeye igenabihano bugaragaza ko ba gatozi bahamwe n’ibyaha byibasiye inyokomuntu nk’ubuhotozi, bahanishijwe igihano cy’igifungo kiri hagati y’imyaka cumi n’igifungo cya burundu¹³⁰. Abantu bagize uruhare rutari urw’ingenzi mu ikorwa ry’icyaha bo bahanishwa ibihano bitaremereye cyane¹³¹. Urugereko ruzirikana ko igihano gitangwa hakurikijwe imyitwarire mibisha yose y’Uregwa¹³².

¹²⁷ Urubanza rwa Banovic mu rw’Iremezo, igika cya 76 (ibisobanuro byo hasi ku rupapuro ntibyongewemo); urubanza rwa Ntakirutimana mu rw’Iremezo, igika cya 898; urubanza rwa Bisengimana mu rw’Iremezo, igika cya 175.

¹²⁸ Urubanza rwa Semanza mu bujirire, igika cya 388.

¹²⁹ Urubanza rwa Ndingabahizi mu bujirire, igika cya 122 (ibisobaburo byo hasi ku rupapuro ntibyongewemo).

¹³⁰ Urubanza rwa Muhimana mu rw’Iremezo, igika cya 618; urubanza rwa Ntakirutimana n’uwo baregwa hamwe mu rw’Iremezo, ibika 922, 924.

¹³¹ Laurent Semanza yakatiwe igihano cy’igifungo cy’imyaka 8 kubera ko yahamagariye abandi kwica abantu batandatu, ubwo bwicanyi bukaba bwafashwe nk’icyaha cyibasiye inyokomuntu (urubanza rwa Semanza mu rw’Iremezo, igika cya 588); Vincent Rutaganira yakatiwe igihano cy’igifungo cy’imyaka 6 amaze kwemera icyaha cyo kuba icyitso, kubera ibyo yirengagije gukora, mu itsembatsemba nk’icyaha cyibasiye inyokomuntu (urubanza rwa Rutaganira mu rw’Iremezo); Elizaphan Ntakirutimana yakatiwe igihano cy’igifungo cy’imyaka 10 kubera ko yafashije akanashishikariza abantu gukora jenocide (urubanza rwa Ntakirutimana n’uwo baregwa hamwe mu rw’Iremezo, igika cya 570); Paul Bisengimana yakatiwe igihano cy’igifungo cy’imyaka 15 amaze kwemera icyaha cyo gufasha no gushishikariza abandi bantu gukora itsembatsemba nk’icyaha cyibasiye inyokomuntu (urubanza rwa Bisengimana mu rw’Iremezo, igika cya 203); Joseph Serugendo yakatiwe igihano cy’igifungo cy’imyaka 6 amaze kwemera icyaha cyo guhamagarira abandi bantu ku mugaragaro kandi mu buryo butaziguye gukora jenocide, n’itoteza nk’icyaha cyibasiye inyokomuntu (urubanza rwa Serugendo mu rw’Iremezo, Umutwe wa VI).

¹³² Urubanza rwa Mucic na bagenzi be mu bujirire, igika cya 772.

111. Cyakora, Urugereko ruributsa ko muri uru rubanza, rutemeye gufata nk'impamvu nyoroshyacyaha, uburyo Joseph Nzabirinda yitabiriye ikorwa ry'ibyaha. Ruvuga ko kuba Uregwa yari ahantu hakorewe ibyaha ari uburyo bukomeye cyane bwo gukora icyaha kubera ko yari ahari abishaka kandi yabigambiriye. Rusanga Uregwa ataritandukanije n'abateguraga ibitero mu nama za Segiteri yajyamo cyangwa ngo yitandukanye n'abagabaga ibitero biciye Joseph Mazimpaka hafi ya bariyeri yari arinze [Uregwa]. Rwanzura ruvuga ko Joseph Nzabirinda yari azi ko kuba ahari n'ijambo yari afite byari ugushishikariza abicanyi gukora ibyo byaha.

3. Gukura mu gihano igihe Uregwa amaze afunzwe by'agateganyo

112. Nk'uko biteganywa n'ingingo ya 101 D) y'Amategeko, « Igihe uwahamwe n'icyaha yamaze afunze ategereje gushyikirizwa Urukiko, gucirwa urubanza n'Urugereko rwa Mbere rw'Iremezo cyangwa n'Urugereko rw'Ubujurire gikurwa mu gihe cy'igifungo cyose ».
112. Urugereko rusanga Joseph Nzabirinda yarafunzwe by'agateganyo kuva ku itariki ya 21 Ukuboza 2001, kuko ari bwo yafashwe agafungwa. Rwemera kandi ko Uregwa afite uburenganzira bwo gukurirwa mu gihano cyose yakatiwe, igihe amaze afunzwe kuva kuri iyo tariki, hamwe n'igihe cy'inyongera ashobora kumara afunzwe ategereje icyemezo cy'Urugereko rw'Ubujurire.

V. ICYEMEZO CY'URUGEREKO

113. Rwibutsa icyemezo kimuhamya icyaha rwafashe ku itariki ya 14 Ukuboza 2006;
114. Rumaze gusuzuma Sitati n'Amategeko, urutonde rusange rw'ibihano rukurikizwa mu Rwanda, ibyavuzwe n'ababuranyi mu iburanisha ribanziriza igenagihano n'ibimenyetso byatanzwe;

115. Rumaze gusuzuma uburemere bw'icyaha, impamvu zongera ububi bw'icyaha n'impamvu nyoroshyacyaha, Urugereko rukatiye Joseph Nzabirinda

Igihano cy'igifungo cy'imyaka 7

ku cyaha kimwe rukumbi cy'ubuhotozi nk'icyaha cyibasiye inyokomuntu, giteganywa n'ingingo ya 3 a) ya Sitati.

116. Urugereko rwemeje ko Joseph Nzabirinda afite uburenganzira bwo gukurirwa muri iki gihano igihe amaze afunzwe by'agateganyo, ni ukuvuga kuva ku itariki ya 21 Ukuboza 2001 kugeza kuri iyi tariki urubanza rusomeweho.
117. Nk'uko biteganywa n'ingingo ya 102 A) y'Amategeko, igihano cy'igifungo gitangira kurangizwa kuva ku itariki y'isomwa ry'uru rubanza.
118. Nk'uko biteganywa n'ingingo ya 103 y'Amategeko, Joseph Nzabirinda azaguma muri gereza y'Urukiko ategereje ko hafatwa icyemezo ku hantu azarangiriza igihano cye, nk'uko biteganywa n'ingingo ya 26 ya Sitati n'iya 103 A) y'Amategeko. N'ubwo rwumvise icyifuzo cy'ababuranyi ku gihugu bifuzaga ko Uregwa yarangirizamo igihano, Urugereko ruributsa ko Perezida w'Urukiko azagena icyo gihugu amaze kuvugana n'abategesi bacyo. Gerefiye azabimenyeshya Leta y'u Rwanda n'igihugu cyagenwe.
119. Hakurikijwe ingingo ya 102 A) y'Amategeko, iyo habaye ubujurire, kurangiza urubanza birasubikwa kugeza igihe Urugereko rw'Ubujurire rufatiye icyemezo. Hagati aho Uregwa aba agumye muri gereza.

Bikorewe Arusha, ku itariki ya 23 Gashyantare 2007

[umukono]
Arlette Ramarson
Perezida w'Inteko

[umukono]
William H. Sekule
Umucamanza

[umukono]
Solomy B. Bossa
Umucamanza

[Kashe y'Urukiko]

IMIGEREKA

A. UBUKEMURAMANZA N'IBISOBANURO BY'AMAGAMBO AMWE YAKORESHEJWE

1. TPIR [Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda]

1. Porokireri aburana na Akayesu mu rw'Iremezo, urubanza n° ICTR-96-4-T, 2 Nzeri 1998 (« Urubanza rwa Akayesu mu rw'Iremezo »).
2. Porokireri aburana na Akayesu mu bujurire, urubanza n° ICTR-96-4-A, 1 Kamena 2001 (« Urubanza rwa Akayesu mu bujurire »).
3. Porokireri aburana na Bagilishema mu rw'Iremezo, urubanza n° ICTR-95-1A-T, 7 Kamena 2001 (« Urubanza rwa Bagilishema mu rw'Iremezo »).
4. Porokireri aburana na Bisengimana mu rw'Iremezo, urubanza n° ICTR-00-60-S, Urubanza ku gihano, 13 Mata 2006 (« Urubanza rwa Bisengimana mu rw'Iremezo »).
5. Porokireri aburana na Kajelijeli mu rw'Iremezo, urubanza n° ICTR-99-44-T, 1 Ukuboza 2003 (« Urubanza rwa Kajelijeli »).
6. Porokireri aburana na Kajelijeli mu bujurire, urubanza n° ICTR-99-44-A, 23 Gicurasi 2005 (« Urubanza rwa Kajelijeli mu bujurire »).
7. Porokireri aburana na Kambanda mu rw'Iremezo, urubanza n° ICTR-97-23-S, 4 Nzeri 1998 («Urubanza rwa Kambanda mu rw'Iremezo»).

8. Porokireri aburana na Kambanda mu bujurire, urubanza n° ICTR-97-23-A, 19 Ukwakira 2000 (« Urubanza rwa Kambanda mu bujurire »).
9. Porokireri aburana na Kamuhanda mu rw'Iremezo, urubanza n° ICTR-95-54-T, 22 Mutarama 2004 (« Urubanza rwa Kamuhanda mu rw'Iremezo»).
10. Porokireri aburana na Kamuhanda mu bujurire, urubanza n° ICTR-95-54-A, 19 Nzeri 2005 (« Urubanza rwa Kamuhanda mu bujurire »).
11. Porokireri aburana na Kayishema na Ruzindana mu rw'Iremezo, urubanza n° ICTR-95-1-T, 21 Gicurasi 1999 (« Urubanza rwa Kayishema mu rw'Iremezo»).
12. Porokireri aburana na Kayishema na Ruzindana mu bujurire, urubanza n° ICTR-95-1-A, 1 Kamena 2001 (« Urubanza rwa Kayishema mu bujurire »).
13. Porokireri aburana na Mpambara mu rw'Iremezo, urubanza n° ICTR-01-65-T, 11 Nzeri 2006 (« Urubanza rwa Mpambara mu rw'Iremezo»).
14. Porokireri aburana na Muhimana mu rw'Iremezo, urubanza n° ICTR-95-1B-T, 28 Mata 2005 (« Urubanza rwa Muhimana mu rw'Iremezo »).
15. Porokireri aburana na Musema mu rw'Iremezo, urubanza n° ICTR-96-13-T, 27 Mutarama 2000 (« Urubanza rwa Musema mu rw'Iremezo»).
16. Porokireri aburana na Ndindabahizi mu rw'Iremezo, urubanza n° ICTR-2001-71-I, 15 Nyakanga 2004 (« Urubanza rwa Ndindabahizi mu rw'Iremezo »).
17. Porokireri aburana na Ndindabahizi mu bujurire, urubanza n° ICTR-2001-71-A, 16 Mutarama 2007 (« Urubanza rwa Ndindabahizi mu bujurire »).

18. Porokireri aburana na Ntagerura na bagenzi be mu rw'Iremezo, urubanza n° ICTR-99-46-T, 25 Gashyantare 2004 (« Urubanza rwa Ntagerura mu rw'Iremezo »).
19. Porokireri aburana na Ntakirutimana na mugenzi we mu rw'Iremezo, urubanza n° ICTR-96-10-T na ICTR-96-17-T, 21 Gashyantare 2003 (« Urubanza rwa Ntakirutimana mu rw'Iremezo »).
20. Porokireri aburana na Ntakirutimana na mugenzi we mu bujirire, urubanza n° ICTR-96-10-A na ICTR-96-17-A, 13 Ukuboza 2004 (« Urubanza rwa Ntakirutimana mu bujirire »).
21. Porokireri aburana na Ruggiu mu rw'Iremezo, urubanza n° ICTR-97-32-T, 1 Kamena 2000 (« Urubanza rwa Ruggiu mu rw'Iremezo »).
22. Porokireri aburana na Rutaganda mu rw'Iremezo, urubanza n° ICTR-96-3-T, 6 Ukuboza 1999 (« Urubanza rwa Rutaganda mu rw'Iremezo »).
23. Porokireri aburana na Rutaganira mu rw'Iremezo, urubanza n° ICTR-95-1C-T, 14 Werurwe 2005 (« Urubanza rwa Rutaganira mu rw'Iremezo »).
24. Porokireri aburana na Semanza mu rw'Iremezo, urubanza n° ICTR-97-20-T, 15 Gicurasi 2003 (« Urubanza rwa Semanza mu rw'Iremezo »).
25. Porokireri aburana na Semanza mu bujirire, urubanza n° ICTR-97-20-A, 20 Gicurasi 2005 (« Urubanza rwa Semanza mu bujirire »).
26. Porokireri aburana na Serugendo mu rw'Iremezo, urubanza n° ICTR-2005-84-I, Urubanza ku gihano, 12 Kamena 2006 (« Urubanza rwa Serugendo mu rw'Iremezo »).
27. Porokireri aburana na Serushago mu rw'Iremezo, urubanza n° ICTR-98-39-T, 5 Gashyantare 1999 (« Urubanza rwa Serushago mu rw'Iremezo »).

2. TPIY [Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze ari Yugoslaviya]

1. Porokireri aburana na Aleksovski mu rw'Iremezo, urubanza n° IT-95-14/1-T, 25 Kamena 1999 (« Urubanza rwa Aleksovski mu rw'Iremezo »).
2. Porokireri aburana na Aleksovski mu bujurire, urubanza n° IT-95-14/1-A, 24 Werurwe 2000 (« Urubanza rwa Aleksovski mu bujurire »).
3. Porokireri aburana na Banovic mu rw'Iremezo, urubanza n° IT-02-65/1S, 28 Ukwakira 2003 (« Urubanza rwa Banovic mu rw'Iremezo »).
4. Porokireri aburana na Blaskic mu rw'Iremezo, urubanza n° IT-94-14-S, 3 Werurwe 2000 (« Urubanza Blaskic mu rw'Iremezo »).
5. Porokireri aburana na Blaskic mu bujurire, urubanza n° IT-94-14-A, 29 Nyakanga 2004 (« Urubanza rwa Blaskic mu bujurire »).
6. Porokireri aburana na Deronjic mu rw'Iremezo, urubanza n° IT-02-61-S, 30 Werurwe 2004 (« Urubanza rwa Deronjic mu rw'Iremezo »).
7. Porokireri aburana na Erdemovic mu rw'Iremezo, urubanza n° IT-96-22-Tbis 5 Werurwe 1998 (« Urubanza rwa Erdemovic mu rw'Iremezo »).
8. Porokireri aburana na Furundzija mu rw'Iremezo, urubanza n° IT-95-17/1-T, 10 Ukuboza 1998 (« Urubanza rwa Furundzija mu rw'Iremezo »).
9. Porokireri aburana na Galic mu bujurire, urubanza n° IT-98-29-A, 30 Ugushyingo 2006 (« Urubanza rwa Galic mu bujurire »).

10. Porokireri aburana na Jelisic mu bujuriye, urubanza n° IT-95-10-A, 5 Nyakanga 2001 (« Urubanza rwa Jelisic mu bujuriye »).
11. Porokireri aburana na Kunarac na bagenzi be mu rw'Iremezo, urubanza n° IT-96-23-T na 96-23/1-T, 22 Gashyantare 2001 (« Urubanza rwa Kunarac mu rw'Iremezo »).
12. Porokireri aburana na Kunarac na bagenzi be mu bujuriye, urubanza n° IT-96-23-A na 96-23/1-A, 12 Kamena 2002 (« Urubanza rwa Kunarac mu bujuriye »).
13. Porokireri aburana na Kupreskic na bagenzi be mu bujuriye, urubanza n° IT-95-16-A, 23 Ukwakira 2001 (« Urubanza rwa Kupreskic mu bujuriye »).
14. Porokireri aburana na Kvocka mu bujuriye, urubanza n° IT-98-30-A, 28 Gashyantare 2005 (« Urubanza rwa Kvocka » mu bujuriye).
15. Porokireri aburana na Mucic na bagenzi be (« Celebici ») mu rw'Iremezo, urubanza n° IT-96-21-T, 16 Ukwakira 1998 (« Urubanza rwa Mucic mu rw'Iremezo »).
16. Porokireri aburana na Mucic na bagenzi be (« Celebici ») mu bujuriye, urubanza n° IT-96-21-A, 20 Gashyantare 2001 (« Urubanza rwa Mucic mu bujuriye »).
17. Porokireri aburana na Dragan Nikolic mu rw'Iremezo, urubanza n° IT-02-60/1-S, 18 Ukuboza 2003 (« Urubanza rwa Nikolic mu rw'Iremezo »).
18. Porokireri aburana na Plavsic mu rw'Iremezo, urubanza n° IT-00-39 & 40/1-S, 27 Gashyantare 2003 (« Urubanza rwa Plavsic mu rw'Iremezo »).
19. Porokireri aburana na Sikirica na bagenzi be mu rw'Iremezo, urubanza n° IT-95-8-T, 13 Ugushyamba 2001 (« Urubanza rwa Sikirica mu rw'Iremezo »).

20. Porokireri aburana na Dusko Tadic mu rw'Iremezo, urubanza n° IT-94-1, 7 Gicurasi 1997 (« Urubanza rwa Tadic mu rw'Iremezo»).

21. Porokireri aburana na Vasiljevic mu rw'Iremezo, urubanza n° IT-98-32-S, 29 Ugushyingo 2002 (« Urubanza rwa Vasiljevic mu rw'Iremezo»).

3. Ibisobanuro by'amagambo amwe yakoreshejwe

Amasezerano y'ubwemeracyaha

Porokireri aburana na Nzabirinda, urubanza n° ICTR-2001-77-I, Amasezerano yerekeranye no kwemera icyaha Joseph Nzabirinda yagiranye n'Iburo bya Porokireri. Inyandiko y'ayo masezerano yatanze ku itariki ya 12 Ukuboza 2006.

Inyandiko y'ibirego

Porokireri aburana na Nzabirinda, urubanza n° ICTR-2001-77-I, Inyandiko y'ibirego yahinduwe, yatanze ku itariki ya 11 Ukuboza 2006 mu cyongereza no mu gifaransa.

Urugereko

Urugereko rwa Mbere rw'Iremezo, II [Inteko ya kabiri]

Urubanza

Porokireri aburana na Nzabirinda, urubanza n° ICTR-2001-77-T, Inyandiko y'urubanza, 23 Gashyantare 2007.

Imyanzuro ihuriweho n'impande zombi

Porokireri aburana na Nzabirinda, urubanza n° ICTR-2001-77-T, Imyanzuro ihuriweho na Joseph Nzabirinda n'Iburo bya Porokireri yabanjirije igenagihano, yatanze ku itariki ya 9 Mutarama 2007.

Icyifuzo cya Porokireri gisaba uruhushya rwo guhindura inyandiko y'ibirego

Porokireri aburana na Nzabirinda, urubanza n° ICTR-2001-77-I, *Prosecutor's Request for Leave to Amend an Indictment Pursuant to Rules 72, 73, 50 and 51 of the Rules of Procedure and Evidence* [Icyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego hashingiwe ku ngingo za 72, 73, 50 na 51 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso], cyatanzwe ku itariki ya 20 Ugushyingo 2006.

4. Igisobanuro

Uretse igihe byakwerekanywe ukundi, ibivugwa byose mu nyandikomvugo y'iburanisha byakuwe mu nyandiko iri mu gifaransa.

B. INYANDIKO Y'IBIREGO YAHINDUWE**PORIKIRERI**

Aburana na

JOSEPH NZABIRINDA

INYANDIKO Y'IBIREGO YAHINDUWE
hashingiwe ku cyemezo cyo ku itariki ya 8 Ukuboza 2006

Inyandiko y'ibanga

- I.** Ashingiye ku bubasha ahabwa n'ingingo ya 17 ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda (« Sitati y'Urukiko »), Porokireri w'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda ararega :

JOSEPH NZABIRINDA

UBUHOTOZI NK'ICYAHA CYIBASIYE INYOKOMUNTU, hashingiwe ku ngingo ya 3 a) n'iyi 6.1 za Sitati y'Urukiko, nk'uko bigiye gusobanurwa:

II. UREGWA

1. Joseph Nzabirinda, bahimba Biroto, yavukiye mu Rwanda, muri segiteri ya Sahera (Komine ya Ngoma, Perefegitura ya Butare) ku itariki ya 1 Nyakanga 1957. Arangije amashuri yisumbuye ndetse n'amahugurwa yakoreye mu Kigo cy'amahugurwa y'abashinzwe urubyiruko [*encadreur*s] (Centre de formation des cadres de la jeunesse), yashinzwe urubyiruko n'imikino muri Komine y'umugi ya Ngoma, i Butare mu mwaka wa 1976. Mu mwaka wa 1984, yazamuwe mu ntera ashingwa urubyiruko n'amashyirahamwe muri Perefegitura ya Butare. Nyuma yaho, yabaye Umuyobozi Mukuru w'isosiye yitwa SECOBE i Kigali aho yagiye kuba mu mwaka 1992.

2. Nk'umuntu ushinzwe urubyiruko muri komine, Joseph Nzabirinda, bahimba Biroto, yari ashinzwe urubyiruko rwo muri komine ye. Mu nshingano ze harimo kwigisha urubyiruko imyuga, kurwigisha gusoma no kwandika no kurukangurira kwibumbira mu « mashyirahamwe agamije kwiteza imbere mu by'imbonezamubano n'ubukungu». Yari anashinzwe inyigisho z'uburere mboneragihugu, imikino, imyidagaduro n'umuco. Mu rwego rwa perefegitura, yari akuriye abashinzwe urubyiruko mu makomine.
3. Kuva mu mwaka wa 1990, Joseph Nzabirinda, bahimba Biroto, yabaye umwe mu bantu bashinze ishyaka rya PSD. Ibyo byatumye asubira kenshi mu karere avukamo gukoresha amanama ya politiki no gukangurira abaturage amatwara y'ishyaka rye.
4. Nk'umuyobozi mukuru w'isosiyete yitwa SECOBE, Joseph Nzabirinda, bahimba Biroto, yari afite imitungo mu Rwanda mu mwaka wa 1994. Kubera iyo mpamvu, yafatwaga nk'umukire.
5. Ubwo yasubiraga i Sahera ku itariki ya 12 Mata 1994, Joseph Nzabirinda, bahimba Biroto, yafatwaga n'abaturage nk'umuntu ushinzwe urubyiruko ndetse n'umwe mu bantu batavugaga rumwe n'ubutegetsi bwariho, bwari buhagarariwe muri segiteri na Pascal Habyarimana, wari Konseye, kandi bari bahanganye muri politiki.
6. Nk'umuntu wahoze ashinzwe urubyiruko n'umunyapolitiki, Joseph Nzabirinda, bahimba Biroto, yafatwaga n'abaturage bo muri segiteri ye, barimo urubyiruko yari yarigeze gushingwa, nk'umuntu ufite ijamba ku baturage. Nk'umucuruzi, umunyabwenge n'umukire uciriritse, Joseph Nzabirinda, bahimba Biroto, yari afite ububasha ku bantu bo ku murenge akomokamo.

III. IKIREGO ASHINJWA

UBUHOTOZI NK'ICYAHA CYIBASIYE INYOKOMUNTU, hashingiwe ku ngingo ya 3 a) n'iya 6.1 za Sitati y'Urukiko,

Porokireri w'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda ararega Joseph Nzabirinda, bahimba Biroto, kuba yarafashije, akanashishikariza abantu gukora UBUHOTOZI nk'icyaha cyibasiye inyokomuntu, giteganywa n'ingingo ya 3 a) n'iya 6.1 za Sitati y'Urukiko. Icyo cyaha akiregwa kubera ibyo yirengagije gukora, bityo akaba yarabaye icyitso cy'abateguye kugikora.

7. Mu gihe icyaha kivugwa muri iyi Nyandiko y'ikirego cyakorwaga, Abatutsi, Abahutu n'Abatwa bafatwaga nk'abantu bagize amoko atandukanye.
8. Nyuma y'urupfu rwa Juvénal Habyarimana wari Perezida w'u Rwanda rwabaye ku itariki ya 6 Mata 1994, u Rwanda rwabasiye isibanuro ry'ibitero rusange kandi biri kuri gahunda byibasiye igice kimwe cy'abaturage b'abasiviri, cyane cyane Abatutsi n'Abahutu batari intagondwa, bazira umutwe wa politiki barimo cyangwa ubwoko bwabo. Ibyo bitero byahitanye abantu ibihumbi n'ibihumbi mu gihugu cyose, kandi benshi muri bo bari abasiviri.
9. Kuva ku itariki ya 7 Mata kugera hagati muri Nyakanga 1994, ubwicanyi bwakorewe abaturage b'abasiviri bwibasiye ahanini Abatutsi bari mu Rwanda. Mu by'ukuri, hibasiwe, nta kurobanura, abantu badafite intwari - abagore, abana, abasore n'abasaza-biciwe kuri za bariyeri cyangwa ahantu bari bahungiyeye, nko ku biro bya perefegitura n'ibya komine, ku mashuri, kuri za kiliziya no ku bibuga by'imikino byo muri Perefegitura ya Butare.
10. Ku itariki ya 12 Mata 1994, Joseph Nzabirinda, bahimba Biroto, n'abana be barahunze bava i Kigali kubera ubwicanyi bwahaberaga. Uregwa yagiye muri Segiteri ya Sahera, Komine ya Ngoma, Perefegitura ya Butare. Umuntu witwa Antoine Mbarushimana bitaga Bernier, n'umusirikari witwa Eugène, nabo bavuye i Kigali bamusanga muri Segiteri ya Sahera.
11. Ku itariki ya 19 Mata 1994, muri Perefegitura ya Butare, Théodore Sindikubwabo wari Perezida w'agateganyo, yakoranye inama n'abategetsu bo muri ako karere barimo Perefegitura ya

Sylvain Nsabimana na Joseph Kanyabashi wari Burugumesitiri wa Komine ya Ngoma. Muri icyo nama, abategetsi bo muri ako gace bije Perezida ko bazubahiriza ibyifuzo bye.

12. Nyuma y'icyo nama, muri Perefegitura ya Butare, nko muri Segiteri ya Sahera aho Joseph Nzabirinda yari, hatangiye ubwicanyi bw'abantu benshi bwibasiye Abatutsi n'abantu batavugaga rumwe n'ubutegetsi bwariho. Mbere y'icyo nama, muri Perefegitura ya Butare hari ituze.
13. Kuva ku itariki ya 6 Mata 1994, Pascal Habyarimana wari Konseye wa Segiteri, yakoresheje inama nyinshi «zo kubungabunga umutekano».
14. Nyuma y'itariki ya 19 Mata, Joseph Nzabirinda, bahimba Biroto, yagiye mu nama zitabirwaga gusa n'Abahutu bo muri segiteri ye n'abantu bakoraga ubwicanyi muri Sahera. Joseph Nzabirinda yari azi abo bicanyi kuko bari abaturanyi be, barimo Yacinthe Rurangirwa, Jean Baptiste Ntawangaha, Joseph Ufiteyezu, Eugène n'abandi.
15. Nyuma y'izo nama, hagiye hagabwa ibitero biri kuri gahunda byibasiye imiryango y'Abatutsi bo ku murenge umwe n'uw'Uregwa. Mu bantu bahitanywe n'ibyo bitero harimo Pierre Murara, wishwe n'*Interahamwe* hafi y'ahantu izo nama zaberaga, kandi Joseph Nzabirinda, bahimba Biroto, yari ahari nk' «indorezezi ishyigikiye ibyarimo kuba».
16. Uregwa ariwe Joseph Nzabirinda, bahimba Biroto, yitabiriye inama nyinshi zakoreshejwe na Konseye wa Sahera ku biro by'icyo Segiteri. Kuba atararetse kuzijyamo kandi yari azi ko inama za mbere yari yaragiyemo zatumye haba ubwicanyi buri kuri gahunda, bigaragaza neza ko ibikorwa byategurirwaga muri izo nama byitwa ko ari byo kubungabunga amahoro, byari bigamije, mu by'ukuri, gutegura ihigwa n'iyicwa ry'Abatutsi no gukangurira abantu kubikora. Muri ayo manama, nta gihe na kimwe cyangwa, mu buryo ubwo ari bwo bwose, Uregwa yigeze agaragaza ku mugaragaro ko adashyigikiye ubwo bwicanyi.

17. Kubera ko Joseph Nzabirinda, bahimba Biroto, yubahwaga n'abaturage, kuba yaritabiriye izo nama byashishikaje cyane abagizi ba nabi bari bazirimo bitewe n'ukuntu ibintu byari byifashe muri Segiteri ya Sahera. Mu by'ukuri, Joseph Nzabirinda, bahimba Biroto, yagaragaye nk'«indorezezi ishyigikiye ibyarimo kuba » kandi yari azi ko guceceka kwe byari gufatwa nk'uburyo buteruye bwo gushyigikira ibikorwa byateguraga ubwicanyi.
18. Ku itariki ya 19 Mata 1994, abategetsu bo muri ako karere bashyize za bariyeri muri Segiteri yose ya Sahera, twavugaga nk'i Kabuga. Izo bariyeri zakoreshejwe mu kugenzura imyirondoro y'abantu ndetse zifashishwa mu bwicanyi bwakorewe muri Segiteri ya Sahera, kandi Joseph Nzabirinda yari abizi.
19. Abisabwe n'abategetsu, muri icyo gihe Joseph Nzabirinda, bahimba Biroto, yagiye inshuro ebyiri kurinda bariyeri yari i Kabuga. Yarinze rero iyo bariyeri inshuro ebyiri zose ari kumwe n'Interahamwe zimwe zo muri Segiteri ya Sahera. Kubera ko yari kumwe na zo ndetse anahari nk'«indorezezi ishyigikiye ibyarimo kuba », Joseph Nzabirinda, bahimba Biroto, yashishikariye abandi bantu kwica Joseph Mazimpaka, wishwe na Mugenzi hafi ya bariyeri Uregwa yari arinze.
20. Byongeye kandi, Joseph Mazimpaka na Pierre Murara biciwe muri segiteri ya Joseph Nzabirinda, bahimba Biroto, hafi y'ahantu haberaga amanama ndetse hari za bariyeri kandi Uregwa hari ahari nk'«indorezezi ishyigikiye ibyarimo kuba»

Ibikorwa byose Joseph Nzabirinda, bahimba Biroto, aregwa bikubiye muri iyi Nyandiko y'ibirego yahinduwe, bihanwa hashingiwe ku ngingo ya 22 n'ya 23 za Sitati y'Urukiko.

Bikorewe Arusha, ku ya 9 Ukuboza 2006

Porokireri

Hassan Bubacar Jallow