UBUSHINJACYAHA v. MUGESERA

[Rwanda URUKIKO RW'UBUJURIRE – RP/GEN 00003/2019/CA (Rugabirwa, P.J, Kaliwabo na Tugireyezu, J.) 25 Nzeri 2020]

Itegeko Nshinga – Ubutegetsi bw'Ubucamanza – Ubwigenge bw'ubutegetsi bw'Ubucamanza – Ubutegetsi bw'Ubucamanza burigenga kuko butandukanye n'Ubutegetsi Nshingamategeko n'Ubutegetsi Nyubahirizategeko, kandi umurimo w'Ubucamanza, abacamanza bakurikiza amategeko, kandi bawukora mubwigenge kuko batajya bavugirwamo n'ubutegetsi cyanga ubuyobozi ubwo aribwo bwose – Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 140, igika cya 2; Itegeko Nº 10/2013 ryo ku wa 08/03/2013 rigena Sitati y'Abacamanza n'abakozi b'Inkiko, ingingo ya 33, igika cya mbere n'icya 2.

Itegeko Nshinga – Uburenganzira bwo kunganirwa mu Rukiko – Ntawukwiriye kwitwaza Uburenganzira bwo kunganirwa kugira ngo adindize imigendekere myiza y'iburanisha n'inyungu z'ubutabera.

Ibyaha mpuzamahanga – Ikurikiranacyaha – Ibyaha mpuzamahanga ntibigombera kuba biri mu mategeko y'ibihugu kugira ngo bikurikiranwe kandi bihanwe kuko biba bisanzwe bibujijwe n'umuco mpuzamahanga, bityo amategeko ateganya ibyaha byibasiye inyakomuntu ntakwiye gufatwa nk'ayashyizeho ibyaha bishya ahubwo yemeza ibyari bisanzwe biri mu muco mpuzamahanga.

Ibyaha mpuzamahanga – Ibyaha byibasiye inyoko muntu – Ibyaha by'ubugome n'ubunyamaswa ndengakamere – Ibyaha

by'ubugome n'ubunyamaswa ndengakamere cyangwa kuba ibyo byaha byakorewe abantu benshi nizo mpamvu zituma bifatwa nk'ibyaha byakorewe umuryango mpuzamahanga cyangwa byahonyanze indangagaciro za kimuntu.

Ibyaha mpuzamahanga – Icyaha cyo gushishikariza abantu guukora jenocide – icyaha cyo gutoteza – Icyaha cyo kubiba urwango – Iyo hamaze kugaragazwa icyaha cy'iremezo biba bitakiri ngombwa gufata nk'icyaha ibikorwa bitandukanye byatumye icyo cyaha gikorwa.

Amategeko agenga ibimenyetso – Agaciro k'ubuhamya – Ubuhamya butanzwe nyuma y'igihe kinini bureberwa mu ireme ryabwo kabone n'iyo ababutanga baba bakoresha amagambo yabo bwite mu gusobanura ibyo biyumviye cyangwa ibyo babwiwe.

Incamake y'ikibazo: Mu Rukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibe, uregwa yakurikiranyweho ibyaha bitandukanye birimo: Gushishikariza abandi umugambi wa jenocide; Gucura no gutegura umugambi w'icyaha cya jenocide; Ubufatanyacyaha mugukora icyaha cya jenocide; Gutoteza nk'icyaha cyibasiye inyoko muntu; Kubiba urwango kubaturage ashingiye ku bwoko, inkomoko cyangwa idini. Ibi byaha aregwa bikaba bikomoka ku ijambo yavugiwe muri mitingi y'ishyaka rya MRND yabereye mu cyahoze ari Perefegitura ya Gisenyi, Superefegitura ya Kabaya ku wa 22/11/1992, n'amagambo bivugwa ko yavugiye mu nama zitandukanye zabereye hirya no hino mu gihugu harimo amagambo. bivugwa ko yavugiye mu nama y'i Nyamyumba yo ku wa 06/07/1992. Urwo Rukiko rwaraciye urubanza rwemeza ko ahamwa n'ibyaha bikurikira; icyaha cyo kuba icyitso cy'abakoze

jenoside kubera gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside, icyaha cyo gutoteza nk'icyaha cyibasiye inyoko muntu n'icyaha cyo kubiba urwango rushingiye ku bwoko, kandi rumuhanaguraho icyaha cy'ubwumvikane bugamije gukora jenoside n'icyo kuba icyitso cy'abakoze jenoside kubera gutanga amabwiriza n'imbunda, maze rumuhanisha igifungo cya burundu

Uregwa yajuririye urwo rubanza mu Rukiko rw'Ikirenga, ariko nyuma y'ivugurura ry'inkiko, ubwo bujurire bwoherejwe mu Rukiko rw'Ubujurire kugira ngo rubusuzume, akaba yarajuriye avuga ko Urukiko Rukuru rwakoze amakosa yo mu rwego rw'ibyabaye (erreur des faits) n'amakosa yo mu rwego rw'amategeko (erreur de Droit) kuko rwirengagije ko atagombaga gukurikiranwaho ibyaha aregwa kuko bivugwa ko byakozwe atakiri mu Rwanda kuko yari yarahungiye muri Canada mu mwaka wa 1992, ko rwemeje ko rudafite ububasha bwo kumuburanisha, ariko rubirengaho ruramuburanisha, ko rwirengagije ko yagombaga gufatwa nk'umwere kugeza igihe urubanza rwe ruzacibwa burundu (violation du principe de la présomption d'innocence), ko rwirengagije kumva abatangabuhamya bamushinjura, ko rwamuvukije uburenganzira yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda bwo kwiregura mu iburanisha n'ubwo gusubiza ku bihano yari yasabiwe n'Ubushinjacyaha kuko atari yunganiwe na Avoka, ko rwaciye urubanza hashingiwe ku itegeko ritariho kuko rwishe ihame ry'uko itegeko mpanabyaha ritajya risubira inyuma, ko rwamuhamije ibyaha hashingiwe kuri kasete itari umwimerere, ko rwamuhamije ibyaha hashingiwe kuri disikuru bivugwa ko yavugiye ku Kabaya iri kuri iyo kasete, rwirengagiza ko iyo rutayicagaguramo ibice ngo runayishyire muri " *contexte general*" yayo, rwari gusanga uwayivuze atarakoze icyaha kuko yasabaga ko hakorwa amatora mu

gihugu, kandi ko rwanirengagije ko atakoze icyaha kuko disikuru yavugiye hirya no hino mu gihugu, yise amahembe ane ya shitani (Discours de quatre cornes de satan) idashishikariza gukora jenoside, ko ahubwo ikubiyemo ubutumwa bwo kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi, ndetse inakubiyemo n'intwaro umurwanashyaka wa MRND yagombaga kugendana buri munsi zirimo amatora, ubutwari n'urukundo, bityo agasaba ko yagirwa umwere.

Ubushinjacyaha buvuga ko ibyo uregwa avuga ko atakurikiranwaho ibyo byaha kuko byakozwe atakiri mu Rwanda, iyi mpamvu nta shingiro ifite kubera ko ibyaha akurikiranyweho byavuzwe haruguru byakozwe akiri mu Rwanda mu mwaka wa 1992, igihe yavugaga amagambo agize ibyaha aregwa.

Ku birebana nuko Urukiko rwavuzeko rudafite ububasha ariko rugakomeza rukamuburanisha, akaba nabyo ataribyo kubera ko Urukiko Rukuru rutavuze ko rudafite ububasha bwo kumuburanisha, ko ahubwo rwemeje ko rufite ububasha bwo kumuburanisha ku birebana n'ikirego yarezwe n'Ubushinjacyaha, ndetse ko rwasanze ikirego yarushyikirije ari ikirego kidateganyijwe mu mategeko y'u Rwanda kuko kitarebana n'ububasha bw'inkiko bushingiye ku kiburanwa, ku ifasi, ku gihe no ku muburanyi, ko kandi atari ikirego cyo kwihana abacamanza bw'urwo Rukiko kugira ngo bohereze urubanza rwe mu zindi nkiko z'u Rwanda.

Kwihame avuga ko Urukiko rwirengagije ko yagombaga gufatwa nk'umwere kugeza igihe urubanza rwe ruzacibwa burundu (violation du principe de la présomption d'innocence), Ubushinjacyaha buvuga ko ku bw'ibanze (*à titre principal*) iyo mpamvu takwakirwa kubera ko itari mu mbibi z'icyajuririwe bitewe n'uko itigeze iburanwaho ku rwego rwa mbere kuko

itagaragara mu nzitizi zasuzumwe n'urwo Rukiko nk'uko zivugwa muri kopi y'urubanza rujuririrwa. Bukomeza buvuga ko (*à titre subsidiaire*), nabwo nta shingiro ifite kubera ko nta kimenyetso yatanze kigaragaza ko amagambo yavuzwe n'Abayobozi, n'inyigisho zakozwe cyangwa «film » yerekanwe byavuzwe haruguru, byagize ingaruka ku rubanza rwajuririwe kuko atavuze ko byakozwe n'Urukiko Rukuru, ko ahubwo yivugiye gusa ko byakozwe n'abayobozi batandukanye, ibinyamakuru n'ama radio bitandukanye.

Ku yindi mpamvu y'uko yavukijwe uburenganzira yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda bwo kwiregura mu iburanisha n'ubwo gusubiza ku bihano yari yasabiwe kuko atari yunganiwe na Avoka, Ubushinjacyaha buvuga ko Urukiko Rukuru rwafashe icyemezo cyo gukomeza iburanisha atunganiwe kubera ko uregwa n'umwunganizi we bashakaga gutinza urubanza nkana ariko akaba ntacyo yashoboye kunenga icyo cyemezo. Bukomeza buvuga ko uregwa ataragize icyo avuga ku bihano yari yasabiwe, nabyo byatewe n'uko we n'umwunganira bagaragaje ubushake buke bwo kwitabira iburanisha, bituma Urukiko rusubika urubanza inshuro 13 zose mu gihe cy'amezi agera kuri atatu (3), ko rero nta kosa urwo Rukiko rwakoze kuko uregwa yahawe igihe gihagije cyo kugira ngo uburenganzira bwe bwubahirizwe ariko ntagikoreshe uko bikwiye, ko rero iyi mpamvu ye y'ubujurire nta shingiro yahabwa.

Ku byerekeranye n'impamvu ko Urukiko Rukuru rwirengagije kumva abatangabuhamya bashinjura uregwa, Ubushinjacyaha buvuga ko Urukiko rwasabye ababuranyi b'impande zombi gutanga imyirondoro y'abatangabuhamya babo, icyo bazatangaho ubuhamya, aho babarizwa n'uburyo buzakoreshwa babazwa kandi Urukiko rwabyibukije inshuro nyinshi cyane,

kuko uregwa yavugaga ko afite abatangabuhamya bamushinjura atari yashoboye kubahiriza ibyo yasabwaga kugeza ubwo yahabwaga umunsi ntarengwa nawo ntiyawubahiriza, bityo kuba ataratanze imyirondoro y'abatangabuhamya avuga ko bari kuza kumushinjura atabiryoza Urukiko kuko ari we wivukije ubwo burenganzira.

Ku mpamvu yindi uregwa avuga ko Urukiko rwaciye urubanza hashingiwe ku itegeko ritariho kuko rwishe ihame ry'uko itegeko mpanabyaha ritajya risubira inyuma, Ubushinjacyaha buvuga ko nta shingiro ifite kubera ko Amasezerano Mpuzamahanga yerekeranye no gukumira no guhana icyaha cya jenoside, arondora ibikorwa bigize icyaha cya jenoside, akanavuga ibikorwa bihanwa, ko kuba u Rwanda rwarifashe ku ngingo irebana n'imihanire bitagira ingaruka ku zindi ngingo zigize aya Masezerano, kandi ko ubwo u Rwanda rwashyiraga umukono ku Masezerano Mpuzamahanga akumira kandi ahana icyaha cya jenoside, icyo cyaha cyari giteganyijwe mu mategeko y'u Rwanda, bityo ibikorwa akurikiranyweho kuba yarakoze mu mwaka wa 1992, bikaba byari bisanzwe bigize icyaha cya jenoside hakurikijwe amategeko y'u Rwanda. Ubushinjacyaha buvuga kandi ko, icyaha cya jenoside, ari icyaha ndengakamere ku rwego Mpuzamahanga, ko u Rwanda rwashyizeho Itegeko rihana ibyaha by'itsembabwoko n'itsembatsemba byakozwe hagati y'itariki ya 01/10/1990 n'iya 31/12/1994, muri "*préambule"* y'iri Tegeko, Umushingamategeko akaba yarasobanuye ko mu mwaka wa 1975 u Rwanda rwashyize umukono ku Masezerano Mpuzamahanga akumira kandi ahana icyaha cya jenoside, bityo ko byari ngombwa gushyiraho itegeko rihana abakoze ibikorwa bigize icyo cyaha, akaba ari iryo mu 1996.

Naho ku mpamvu y’uko uregwa yahamijwe ibyaha hashingiwe kuri disikuru bivugwa ko yavugiye ku Kabaya iri kuri kasete akavuga ko iyo casete atari umwimerere, Ubushinjacyaha buvuga ko Urukiko rutakoze ikosa mu kwemeza ko kasete ikubiyemo disikuru uregwa yavugiye ku Kabaya, ari ikimenyetso gikwiye gushingirwaho muri uru rubanza kuko n’Urukiko rw’Ikirenga rwo muri Canada rwayishingiyeho mu rubanza rw’ubutegetsi igihe rwemezaga ko uregwa atemerewe gutura muri icyo gihugu kubera ibyaha akekwaho nk’uko byanemejwe n’umuhanga wemeje ko ijambo riri kuri iyo kasete ritahinduwe, nyamara ko nta kimenyetso Mugesera yatanze kigaragaza ko iryo jambo ryahinduwe, uretse kubivuga gusa; Ubushinjacyaha buvuga kandi ko Urukiko rwamuhamije ibyaha hashingiwe kuri iyo kasete n’ibindi bimenyetso biri muri dosiye birimo imvugo z’abatangabuhamya bari muri mitingi yo ku Kabaya biyumviye amagambo yahavugiye agize ibyaha aregwa, kandi ko ubuhamya bwabo bukwiye guhabwa agaciro kuko buhuje n’amagambo akubiye muri iyo kasete.

Incamake y’icyemezo: 1. Ubutegetsi bw’Ubucamanza burigenga kuko butandukanye n’Ubutegetsi Nshingamategeko n’Ubutegetsi Nyubahirizategeko, kandi mu murimo w’Ubucamanza, abacamanza bakurikiza amategeko, kandi bawukora mu bwigenge, bityo iyi mpamvu y’ubujurire ko uregwa atacirwa urubanza n’inkiko z’u Rwanda ngo kuko afitanye ibibazo na Leta y’u Rwanda nta shingiro ifite.

2. Ntawukwiriye kwitwaza Uburenganzira bwo kunganirwa kugira ngo adindize imigendekere myiza y’iburanisha n’inyungu z’ubutabera, bityo iyi mpamvu y’ubujurire y’uko uregwa yimwe uburenganzira bwo kunganirwa mu Rukiko nta shingiro ifite.

3. Ibyaha mpuzamahanga ntibigombera kuba biri mu mategeko y'ibihugu kugira ngo bikurikiranwe kandi bihanwe kuko biba bisanzwe bibujijwe n'umuco mpuzamahanga, bityo amategeko ateganya ibyaha byibasiye inyakomuntu ntakwiye gufatwa nk'ayashyizeho ibyaha bishya ahubwo yemeza ibyari bisanzwe biri mu muco mpuzamahanga, bityo impamvu y'ubujurire y'uko ibyaha aregwa atabihanirwa kuko bitari biteganijwe mu mategeko y'igihugu igihe icyaha cyakorwaga nta shingiro ifite.

4. Ibyaha by'ubugome n'ubunyamaswa ndengakamere cyangwa kuba ibyo byaha byakorewe abantu benshi nizo mpamvu zituma bifatwa nk'ibyaha byakorewe umuryango mpuzamahanga cyangwa byahonyanze indangagaciro za kimuntu, bityo impamvu y'ubujurire y'uko uregwa yahanwe hirengagijwe ihame ry'uko amategeko ahana atakoreshwa ku byaha byakozwe mbere y'uko ajyaho, nta shingiro ifite.

5. Iyo hamaze kugaragazwa icyaha cy'iremezo biba bitakiri ngombwa gufata nk'icyaha ibikorwa bitandukanye byatumye icyo cyaha gikorwa, bityo bikaba bitari bikwiye ko uregwa ahamwa na none n'icyaha cyo kubiba urwango rushingiye ku bwoko kandi urukiko rwanamuhamije icyaha cyo gushishikariza abantu gukora jenoside ndetse n'icyaha cyibasiye inyoko muntu cyo gutoteza.

6. Ubuhamya butanzwe nyuma y'igihe kinini bureberwa mu ireme ryabwo kabone n'iyo ababutanga baba bakoresha amagambo yabo bwite mu gusobanura ibyo biyumviye cyangwa ibyo babwiwe, bityo impamvu y'ubujurire ko uregwa yahamijwe ijambo ryavugiwe ku Kabaya rushingiye ku buhamya butavugisha ukuri, nta shingiro ifite.

Ubujurire nta shingiro bufite;
Amagarama y'urubanza aherereye kw'isanduku ya Leta.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 140 igika cya 2.

Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 94.

Itegeko – Ngenga Nº 08/2013 ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko – Ngenga Nº 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 5bis.

Itegeko - Ngenga N° 02/2013/OL ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko - Ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu (ryakoreshwaga icyo gihe), ingingo ya 18.

Itegeko - Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana (ryakoreshwaga icyo gihe), ingingo za 20, 83, 105, 120 agace ka 8, 121 n'iya 132 agace ka 3.

Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside, ingingo ya 3.

Statute of the International Criminal Tribunal for Rwanda, article 3.

Rome Statute of the International Criminel Court, article 7.2

Statut du Tribunal Militaire Internationa de Nuremberg, article 6

Itegeko N ° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, ingingo ya 18.

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 2,3, 62 ,5 na 66.

Itegeko -Teka Nº 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana (ryakoreshwaga icyo gihe) ingingo ya 393.
Itegeko – Teka 08/75 ryo ku wa 12/02/1975, iteganya icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside (ryakoreshwaga icyo gihe).

Imanza zifashishijwe:

Prosecutor v Ferdinand Nahimana et al., ICTR-99-52-A, rwaciwe na TPIR ku wa 28/11/2007.
Prosecutor v Muvunyi Tharcisse, ICTR-00-55A-T,11th February2010, para. 56, 58, 91-94.
Prosecutor v Ngeze Hassan, ICTR- 99-52-A
Prosecutor v Alfred Musema, ICTR-96-13-T rwaciwe na TPIR ku wa 27/01/2000, para 19, 20 na 21.
Prosecutor v Akayezu Jean – Paul, ICTR-96-4-T
Prosecutor v. Bikindi Simon, ICTR-2001-72-T, rwaciwe na TPIR kuwa 2/12/2008.
Prosecutor v Vujadin Popovic, ICTY-05-88-A
Mugesera v Canada (Minister of Citizenship and Immigration), Supreme Court of Canada, file Nº 30025, para. 68.
Croatia v. Serbia, International Court of Justice, Judgment of 03/02/2015, para 87.
Mugesera Léon v Canada Urubanza N° 2005 S.C.R. 40, rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005.
Prosecutor v Ntakirutimana Jean Claude, RPA 0197/10/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/11/2014.

Inyandiko z'Abahanga zifashishijwe:

Stanton, G. H. (2013). 10 Stages of Genocide. Retrieved April 22, 2016, from Genocide watch net:

http://www.genocidewatch.org/genocide/tenstagesofgenocide.html, Raporo yakozwe na Sena y'u Rwanda yo mu mwaka wa 2019 ku miterere y'ihakana n'ipfobya bya jenoside yakorewe Abatutsi bibera mu mahanga n'ingamba zo kubirwanya, pp 29-33.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'ijambo ryavugiwe muri mitingi (*meeting*) y'ishyaka rya MRND[1] yabereye mu cyahoze ari Perefegitura ya Gisenyi, Superefegitura ya Kabaya ku wa 22/11/1992, n'amagambo bivugwa ko yavugiye mu nama zitandukanye zabereye hirya no hino mu gihugu harimo amagambo bivugwa ko yavugiye mu nama y'i Nyamyumba yo ku wa 06/07/1992, Ubushinjacyaha bwakurikiranyeho Mugesera Léon ibyaha byo guhungabanya umudendezo w'igihugu, kubiba urwango muri rubanda, n'icyaha cyo gushishikariza abayoboke b'ishyaka rya MRND kwica abatutsi, ariko ntabwo yafashwe kuko yari yarahungiye mu gihugu cya Canada, aho yaburanye imanza zirebana n'uburenganzira bwo gutura muri icyo gihugu kubera ibyaha yakekwagaho birimo gukangurira kwica no gukora jenoside, kubiba urwango n'ibyaha byibasiye inyoko muntu, ariko bigeze mu mwaka wa 2012, yimwa ubwo burenganzira, bituma yoherezwa kuburanira mu Rwanda.

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[1] Muvoma Revolisiyoneri Iharanira Demokarasi n'Amajyambere y'u Rwanda (Mouvement Républicain National pour le Développement et la Démocratie).

[2] Mugesera Léon agejejwe mu Rwanda, Ubushinjacyaha bwamureze mu Rukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi[2], kuba yarakoze ibyaha bitandukanye bikubiye mu kirego cyavuzwe haruguru.

[3] Igihe cy'iburanisha ry'urubanza, urwo Rukiko rwasuzumye inzitizi zitandukanye zabyukijwe na Mugesera Léon, maze rufata ibyemezo ku birebana no kugenera Mugesera Léon igihe, ibikoresho n'ibyangombwa kugira ngo abashe gutegura urubanza, ndetse no ku burenganzira bwo kunganirwa. Urukiko rwasuzumye kandi inzitizi irebana n'ibyaha Mugesera Léon, nk'uwoherejwe n'ikindi gihugu agomba gukurikiranwaho, hemezwa ko akurikiranwaho n'ibyaha byakozwe mbere ya 1994 kubera ko atoherejwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR). Rwanasuzumye kandi inzitizi yo guhagarika iburanisha kubera imishyikirano Mugesera Léon yavugaga ko arimo kugirana na Minisiteri y'Ubutabera ku birebana n'ubufasha buhabwa abunganira abaregwa batishoboye, urwo Rukiko rwemeza ko rutahagarika iburanisha kuko nta cyagaragazaga ko iyo mishyikirano ihari.

[4] Urwo Rukiko rwasuzumye kandi inzitizi yari yabyukijwe na Mugesera Léon ijyanye no guhagarika iburanisha kubera ubujurire bw'imanza zibanziriza izindi, rwemeza ko ubwo bujurire butahagarika iburanisha, kuko izo manza zijuririrwa hamwe n'urubanza mu mizi, ku birebana no kwimura iburanisha ry'urubanza ku mpamvu z'uburwayi,

[2] Muri uru rubanza, mu rwego rwo guhina amagambo, harakoreshwa Urukiko Rukuru mu kuvuga Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi

hemezwa ko hagomba kugaragazwa icyemezo cy'ikiruhuko cy'uburwayi gitanzwe n'umuganga. Urwo Rukiko rwafashe kandi icyemezo ku nzitizi yerekeranye no kwanga cyangwa kwemera bimwe mu bimenyetso bitangwa mu rubanza nshinjabyaha, aho Ubushinjacyaha bwasabaga kubanza kwemeza niba ijambo bwashyikirije Urukiko Rukuru ari ryo Mugesera Léon yavugiye ku Kabaya ku wa 22/11/1992, no kuba hari ibitabo Mugesera Léon atakomeza kwifashisha mu rubanza, urwo Rukiko rwemeje ko gusuzuma no guha agaciro ibimenyetso bikorwa mu gihe cyo guca urubanza, ko kandi mu manza nshinjabyaha ibimenyetso byose bitabujijwe n'amategeko byemewe.

[5] Urukiko Rukuru rwasuzumye na none indi nzitizi yari yabyukijwe na Mugesera Léon yerekeranye n'uburenganzira bwo kuburanishwa n'umucamanza itegeko rigenera umuburanyi, hemezwa ko kuba umwe mu bacamanza batangiye urubanza yarashinzwe indi mirimo, inteko igahinduka, bitanyuranyije n'amategeko, ko no guhindura umucamanza watangiye urubanza bitavutsa Mugesera Léon uburenganzira bwo kuburanishwa n'umucamanza itegeko rimugenera kandi bidatuma urubanza rwongera gutangira bundi bushya kuko amategeko ateganya ko igihe umucamanza asimbuwe n'undi iburanisha rikomereza aho ryari rigeze.

[6] Urwo rukiko rwemeje kandi ko bamwe mu batangabuhamya barindirwa umutekano, hanakurwa ku rutonde rwemejwe n'urukiko bamwe mu batangabuhamya b'ubushinjacyaha ku mpamvu zinyuranye zirimo uburwayi, kutaboneka aho bari bavuze ko babarizwa, hanateshwa agaciro zimwe mu nyandiko mvugo zakozwe mu gihe cy'iperereza zitariho imikono. Urukiko rukuru rwemeje kandi ko kuba

mugesera léon adatanga ibisabwa kugira ngo abatangabuhamya bamushinjura bahamagazwe birimo imyirondoro yabo yuzuye, aho babarizwa n'icyo yifuza ko babazwaho, bitahagarika iburanisha ry'urubanza.

[7] Ku birebana n'urubanza mu mizi, Urukiko Rukuru rwaciye urubanza RP 0001/12/CCI ku wa 15/04/2016, rwemeza ko Mugesera Léon ahamwa n'icyaha cyo kuba icyitso cy'abakoze jenoside kubera gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside, icyaha cyo gutoteza nk'icyaha cyibasiye inyoko muntu n'icyaha cyo kubiba urwango rushingiye ku bwoko, rwemeza kandi ko adahamwa n'icyaha cy'ubwumvikane bugamije gukora jenoside n'icyo kuba icyitso cy'abakoze jenoside kubera gutanga amabwiriza n'imbunda, rumuhanisha igifungo cya burundu.

[8] Mugesera Léon yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwakoze amakosa yo mu rwego rw'ibyabaye *(erreur des faits*) n'amakosa yo mu rwego rw'amategeko (*erreur de droit*) kuko rwirengagije ko atagombaga gukurikiranwaho ibyaha aregwa kuko bivugwa ko byakozwe atakiri mu Rwanda kuko yari yarahungiye muri Canada mu mwaka wa 1992, ko rwemeje ko rudafite ububasha bwo kumuburanisha, ariko rubirengaho ruramuburanisha, ko rwirengagije ko yagombaga gufatwa nk'umwere kugeza igihe urubanza rwe ruzacibwa burundu (*violation du principe de la présomption d'innocence*), ko rwirengagije kumva abatangabuhamya bamushinjura, ko rwamuvukije uburenganzira yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda bwo kwiregura mu iburanisha ryo ku wa 14/10/2015 n'ubwo gusubiza ku bihano yari yasabiwe n'Ubushinjacyaha kuko atari yunganiwe na Avoka, ko rwaciye

urubanza hashingiwe ku itegeko ritariho kuko rwishe ihame ry'uko itegeko mpanabyaha ritajya risubira inyuma (*violation du principe de la non rétroactivité de la loi pénale*), ko rwamuhamije ibyaha hashingiwe kuri kasete itari umwimerere (*original*), ko rwamuhamije ibyaha hashingiwe kuri disikuru bivugwa ko yavugiye ku Kabaya iri kuri iyo kasete, rwirengagiza ko iyo rutayicagaguramo ibice (*charcuter*) ngo runayishyire muri « *contexte général* » yayo, rwari gusanga uwayivuze atarakoze icyaha kuko yasabaga ko hakorwa amatora mu gihugu, kandi ko rwanirengagije ko atakoze icyaha kuko disikuru yavugiye hirya no hino mu gihugu, yise amahembe ane ya shitani (*Discours de quatre cornes de satan*) idashishikariza gukora jenoside, ko ahubwo ikubiyemo ubutumwa bwo kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi, ndetse inakubiyemo n'intwaro umurwanshyaka wa MRND yagombaga kugendana buri munsi zirimo amatora, ubutwari n'urukundo. Asaba ko yagirwa umwere kuko nta cyaha yakoze, ariko nyuma y'ivugururura ry'ububasha bw'inkiko, ubwo bujurire bwoherejwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko[3] kugira ngo rubusuzume, bwandikwa kuri RPA/GEN 00003/2019/CA.

[9] Urubanza rwaburanishijwe mu ruhame inshuro cumi n'ebyiri (12), Mugesera Léon yunganiwe na Me Rudakemwa Jean – Félix, naho Ubushinjacyaha buhagarariwe na

[3] Ingingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko «Guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'Urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko

Dushimimana Claudine afatanyije na Habineza Jean - Damascène, Abashinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

A. KU BIREBANA N'IBIBAZO BY'IBANZE N'UBURENGANZIRA MUGESERA Léon AVUGA KO YAVUKIJWE:

1. Kumenya niba Mugesera Léon atakurikiranwaho ibyaha bifitanye isano na jenoside n'ibyaha byibasiye inyoko muntu kuko byakozwe mu mwaka wa 1994 atakiri mu Rwanda.

[10] Mugesera Léon avuga ko Ubushinjacyaha butagombaga kumukurikiranaho ibyaha bifitanye isano na jenosoide byavuzwe haruguru birimo icyaha cyo gushishikariza gukora jenoside kubera ko igihe jenoside yakorwaga mu Rwanda mu mwaka wa 1994 na Leta y'icyo gihe, atari mu Rwanda, ko ahubwo yari yarahungiye mu gihugu cya Canada mu mwaka wa 1992 kugira ngo arokore ubuzima bwe, ariko ko atakoraga politiki muri Canada kubera ko nta Shyaka rya Politiki na rimwe yigeze ajyamo agamije kugaruka ku butegetsi mu Rwanda, ko ahubwo yigishaga muri Kaminuza nk'uko byemejwe na Me Stanislas Mbonampeka wari Minisitiri w'Ubutabera icyo gihe. Avuga kandi ko atakurikiranwaho icyaha cya jenoside kubera ko atigeze agira uruhare mu myivumbagatanyo (*troubles*) yabaye mu cyahoze ari Perefegitura ya Gisenyi, Ruhengeri na Byumba kuko Guverinoma y'u Rwanda yari yaramwirukanye ku wa 03/02/1993.

[11] Avuga rero ko hashingiwe ku ngingo ya 111 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko gushidikanya birengera ushinjwa, no ku ngingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi[4], akwiye kugirwa umwere kubera ko Ubushinjacyaha butatanze ikimenyetso kigaragaza ko yari mu Rwanda mu mwaka wa 1994, igihe jenoside yakorewe Abatutsi yakorwaga.

[12] Uhagarariye Ubushinjacyaha avuga ko iyi mpamvu y'ubujurire ya Mugesera Léon nta shingiro ifite kubera ko ibyaha akurikiranyweho byavuzwe haruguru byakozwe akiri mu Rwanda mu mwaka wa 1992, igihe yavugaga amagambo agize ibyaha aregwa.

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[13] Dosiye y'urubanza igaragaza ko Mugesera Léon yatanze inzitizi mu Rukiko Rukuru avuga ko rudafite ububasha bwo kumuburanisha ku byerekeranye n'ibyaha akurikiranyweho byavuzwe haruguru, kubera ko bitari mu bubasha bw'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR)[5]

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[4] Ingingo ya 12 y'Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda

[5] Ingingo ya mbere ya Sitati ya "TPIR", iteganya ko Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rufite ububasha bwo kuburanisha ibyaha bibangamira amategeko mpuzamahanga (*violations graves du droit international humanitaire*) byakozwe kuva ku wa 01/01/1994 kugera ku wa 31/12/1994

bitewe n'uko bivugwa ko byakozwe mbere y'umwaka wa 1994, ni ukuvuga ku wa 22/11/1992, ku birebana n'ijambo bivugwa ko yavugiye ku Kabaya, no ku wa 06/07/1992, ku birebana n'inama bivugwa ko yakoresheje i Nyamyumba.

[14] Urukiko Rukuru rwafashe icyemezo kuri iyo nzitizi ku wa 24/12/2012, rwemeza ko inzitizi yatanzwe na Mugesera Léon ijyanye n'ububasha bw'urwo Rukiko bushingiye ku gihe (*compétence ratione temporis*) nta shingiro ifite, kuko rufite ububasha bwo kumuburanisha kubera ko atoherejwe na « TPIR », no kuba amasezerano yabaye hagati ya Leta y'u Rwanda na Canada atavuga ko azakurikiranwaho gusa icyaha cya jenoside n'ibindi byaha bibangamiye amategeko mpuzamahanga (*violations graves du droit international humanitaire*) byakozwe kuva ku wa 01/01/1994 kugeza ku wa 31/12/1994.

[15] Dosiye y'urubanza igaragaza kandi ko imbere y'uru Rukiko, Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, bavuze ko atakurikiranwaho ibyaha aregwa kubera ko igihe byakorwaga mu mwaka wa 1994, atari mu Rwanda, ko ahubwo yari yarahungiye muri Canada, aho yakoraga akazi ko kwigisha muri Kaminuza.

[16] Urukiko rurasanga, kuba amategeko y'u Rwanda ateganya ko Inkiko zo mu Rwanda zifite ububasha bwo kuburanisha icyaha cya jenoside n'ibyaha byibasiye inyoko muntu byakozwe kuva ku wa 01/10/1990 kugeza ku wa 31/12/1994, kandi ibyaha Mugesera Léon akurikiranyweho n'Ubushinjacyaha byavuzwe haruguru bikaba bivugwa ko byakozwe ku wa 22/11/1992, bigaragara ko nta kosa Urukiko Rukuru rwakoze ubwo rwemezaga ko rufite ububasha bwo kumuburanisha kuri ibyo byaha kuko bivugwa ko byakozwe

akiri mu Rwanda ku wa 22/11/1992, ni ukuvuga mu gihe giteganywa n'ayo mategeko[6].

[17] Urukiko rurasanga ariko, ikibazo cyo kumenya niba Mugesera Léon yarakoze cyangwa atarakoze ibyo byaha kigomba gusuzumwa mu bindi bice bigize uru rubanza.

2. Kumenya niba Urukiko Rukuru rwaremeje ko rudafite ububasha bwo kuburanisha Mugesera Léon, ariko rubirengaho ruramuburanisha.

[18] Mugesera Léon avuga ko yasabye Urukiko Rukuru, ko rutaburanisha urubanza RP 0001/12/CCI aburana n'Ubushinjacyaha kuko rutazamucira urubanza ruboneye kubera ko ari umwanzi wa Leta y'u Rwanda kuko yamaganye ingabo za Uganda igihe zateraga u Rwanda mu mwaka wa 1990, ariko ko ku wa 25/04/2013, urwo Rukiko rwafashe icyemezo, rwemeza ko nta bubasha rufite bwo kumuburanisha, nyamara ntirwahagarika iburanisha ngo runamugaragarize urundi Rukiko rufite ububasha bwo kumuburanisha nk'uko biteganywa n'ingingo ya 166 y'Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ko ahubwo rwemeje ko iburanisha rizakomeza ku wa 29/04/2013.

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[6] Itegeko Ngenga Nº 08/96 ryo ku wa 30 Kanama 1996 ryujujwe n'Itegeko Ngenga Nº 40/2000 ryo ku wa 26/01/2001 rishyiraho Inkiko Gacaca nk'uko ryavanweho rinasimburwa n'Itegeko Ngenga Nº 16/2004 ryo ku wa 19/06/2004 rishyiraho Inkiko Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenoside n'ibindi byaha byibasiye inyokomuntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994 nk'uko ryahinduwe kandi ryujujwe n'Itegeko Ngenga Nº 13/2008 ryo ku wa 19/05/2008, ndetse n'Itegeko Ngenga Nº 02/2013/OL ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko Ngenga Nº 51/2008 ryo ku wa 51/2008 ryo ku wa 09/09/2008

[19] Avuga kandi ko n'ubwo ntacyo apfa n'abacamanza b'u Rwanda, ariko asanga Inkiko z'u Rwanda ziramutse zimuciriye urubanza kandi Urwego rw'Ubucamanza ari rumwe mu nzego za Leta y'u Rwanda abereye umwanzi, Leta y'u Rwanda yaba ihindutse umucamanza n'umuburanyi mu rubanza rumwe, kandi ibyo binyuranyije n'ingingo ya 140, igika cya 4, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, iteganya ihame ry'uko ntawe ushobora kwicira urubanza ubwe (*Nemo debet esse judex in propia causa*).

[20] Asobanura ko ibimenyetso bigaragaza ko ari umwanzi wa Leta y'u Rwanda ku buryo itamucira urubanza ruboneye birimo urutonde (liste) rwakozwe muri Mutarama 1994, runasinywaho na Kanyarengwe, wahoze ari Perezida wa FPR[7], wavuze ko Mugesera léon ari umwanzi wa FPR kuko atavuga rumwe (*opposant*) nayo, ndetse ko Gérard Gahima, wahoze ari Umunshinjacyaha Mukuru, yanditse inyandiko ivuga ko atariwe wakoze urwo rutonde (*liste*) ku giti cye, ko ahubwo rwakozwe ku mpamvu za Politiki, ko Me Stanislas Mbonampeka wari Minisitiri w'Ubutabera nawe yavuze ko Mugesera Léon ari umwanzi wa FPR, binashimangirwa na Uwizeyimana Evode wari wanditse ibaruwa ivuga ko Mugesera Léon adashobora kubona ubutabera mu Rwanda, ndetse ko n'Umuryango w'Abibumbye wari wararegewe n'Abavoka bo muri Canada, utishimiye icyemezo cyafashwe n'icyo gihugu cyo kumwohereza mu Rwanda.

[21] Me Rudakemwa Jean Félix, umwunganira, avuga ko ubusanzwe Inkiko z'u Rwanda zifite ububasha bwo kuburanisha ikirego cyari cyatanzwe na Mugesera Léon cy'uko ataburanishwa n'Inkiko z'u Rwanda kandi ari umwanzi wa Leta

[7] Front Patriotique Rwandais

y’u Rwanda, ariko asanga Urukiko Rukuru rwarakoze amakosa kuko rwemeje ko nta bubasha rufite bwo kugisuzuma, ariko rubirengaho rukomeza kuburanisha urubanza RP 0001/12/CCI rujuririrwa, kandi rwaragombaga kugaragaza urundi Rukiko rufite ububasha bwo kuburanisha icyo kirego nk’uko biteganywa n’amategeko. Asaba uru Rukiko gutegeka ko uru rubanza rwoherezwa mu Rukiko Rukuru kugira ngo ruvuge Urukiko rufite ububasha bwo kuburanisha icyo kirego nk’uko biteganywa n’amategeko.

[22] Uhagarariye Ubushinjacyaha avuga ko Urukiko Rukuru rutavuze ko rudafite ububasha bwo kuburanisha Mugesera Léon ngo rukomeze rumuburanishe, ko ahubwo mu cyemezo cyarwo cyo ku wa 25/04/2013, rwemeje ko rufite ububasha bwo kumuburanisha ku birebana n’ikirego yarezwe n’Ubushinjacyaha runagaragaza ingingo z’amategeko rwashingiyeho rufata icyo cyemezo arimo Itegeko Nshinga rya Repubulika y’u Rwanda n’Itegeko - Ngenga rigena ububasha bw’Inkiko, ndetse ko rwasanze ikirego yarushyikirije ari ikirego kidateganyijwe mu mategeko y’u Rwanda kuko kitarebana n’ububasha bw’inkiko bushingiye ku kiburanwa, ku ifasi, ku gihe no ku muburanyi, ko kandi atari ikirego cyo kwihana abacamanza bw’urwo Rukiko kugira ngo bohereze urubanza rwe mu zindi Nkiko z’u Rwanda.

[23] Avuga kandi ko kuba nta tegeko riha Urukiko Rukuru ububasha bwo kohereza Mugesera Léon mu bindi bihugu kugira ngo bimuburanishe, bivuze ko urwo Rukiko rutari rufite inshingano zo kumugaragariza urundi Rukiko rufite ububasha bwo gusuzuma ikirego cyihariye (*requête*) yarushyikirije cyavuzwe haruguru cyangwa bwo kuburanisha urubanza rwe.

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[24] Ingingo ya 14 y’Itegeko - Ngenga N° 02/2013/OL ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko - Ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n’ububasha by’inkiko nk’uko ryahinduwe kandi ryujujwe kugeza ubu ryakurikizwaga igihe Mugesera Léon yaburaniraga mu Rukiko Rukuru, iteganya ko Urugereko rwihariye rw’Urukiko Rukuru rufite ububasha bwo kuburanisha ku rwego rwa mbere: icyaha cya jenoside n’ibyaha byibasiye inyoko-muntu.

[25] Inyandiko itanga ikirego iri muri dosiye, igaragaza ko Ubushinjacyaha bwareze Mugesera Léon mu Rukiko Rukuru busaba ko rwamuburanisha ku birebana n’ibyaha bitandukanye birimo icyaha cya jenoside, icyaha cyibasiye inyoko-muntu n’icyaha cyo kubiba urwango mu baturage, icyo kirego cyandikwa kuri RP 0001/12/CCI.

[26] Dosiye y’urubanza igaragaza ko igihe cy’iburanisha ry’urwo rubanza, Mugesera Léon yarushyikirije ikibazo cy’uko urubanza RP 0001/12/CCI rutaburanishwa n’inkiko z’u Rwanda kubera ko yabaye umwanzi wa Leta y’u Rwanda, ko ahubwo rwakoherezwa mu bindi bihugu kugira ngo acirwe urubanza rw’indakemwa kandi rutabogamye (*procès juste et équitable*).

[27] Mu cyemezo cyarwo cyo ku wa 25/04/2013, Urukiko Rukuru rwasobanuye ko ubusanzwe rufite ububasha bwo kuburanisha urubanza rw’Ubushinjacyaha na Mugesera Léon, ariko ko yarushyikirije ikibazo cyihariye kuko atari ikibazo cyihana abacamanza, kandi ko kidasaba kohereza urwo rubanza mu zindi nkiko z’u Rwanda, ndetse ko kitanagamije kugaragaza

ko urwo Rukiko rudafite ububasha bushingiye ku ifasi, ku kiburanwa, ku gihe no ku muburanyi, bwo kuburanisha urwo rubanza, ko ahubwo kirusaba kwemeza ko urwo rubanza rutaburanishwa n'inkiko z'u Rwanda kubera ko Urwego rw'Ubutabera ari rumwe mu nzego zigize Leta y'u Rwanda bafitanye ikibazo ku buryo yumva itamucira urubanza rw'indakemwa, maze rwemeza ko nta bubasha rufite bwo gusuzuma ikibazo cya Mugesera Léon kirebana n'uko urwo rubanza rutaburanishwa n'Inkiko za Leta y'u Rwanda kubera ko nta tegeko na rimwe[8], riha urwo Rukiko ububasha bwo gusuzuma ikibazo kirusaba kohereza urwo rubanza mu nkiko zitari iz'u Rwanda.

[28] Urukiko rurasanga, mu cyemezo cyarwo cyavuzwe haruguru, Urukiko Rukuru rutarigeze rwemeza ko rudafite ububasha bwo kuburanisha urubanza RP 0001/12/CCI rwa Mugesera Léon ku byerekeranye n'ibyaha aregwa, ko ahubwo icyo rwemeje rudafitiye ububasha, ari ugusuzuma ikibazo yarushyikirije kirebana n'uko urwo rubanza rwakoherezwa mu

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[8]Urukiko Rukuru rwasobanuye ko muri ayo mategeko harimo Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, mu ngingo yaryo ya 149 ; Itegeko - Ngenga Nº 11/2007 ryo ku wa 16/03/2007 rigena kwimurira muri Repubulika y'u Rwanda imanza zivuye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'izivuye mu bindi bihugu nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko - Ngenga nº 03/2009 ryo ku wa 26/05/2009, mu ngingo yaryo ya 2; Itegeko - Ngenga nº 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko - Ngenga nº 04/2009/OL ryo ku wa 29/07/2009, mu ngingo zaryo za 89, 90, 120, 171,176 na 178 ; n'Itegeko nº 13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko nº 20/2006 ryo ku wa 22/04/2004, mu ngingo yaryo ya 154.

zindi Nkiko zitari iza Leta y’u Rwanda nk’uko byasobanuwe haruguru.

[29] Urukiko rurasanga ariko, Urukiko Rukuru rutaragombaga kwemeza ko rudafite ububasha bwo gusuzuma ikibazo cya Mugesera Léon cyavuzwe haruguru, ko ahubwo rwagombaga kwemeza ko nta shingiro gifite kubera ko atarugaragarije uburyo ikirego cyatanzwe n’Ubushinjacyaha cyavuzwe haruguru, cyavanwa mu bubasha bw’Inkiko z’u Rwanda, kandi ibyaha aregwa biri mu bubasha bw’Urukiko Rukuru nk’uko biteganywa n’ingingo ya 14 y’Itegeko - Ngenga ryavuzwe haruguru.

[30] Urukiko rurasanga, kuba Inkiko z’u Rwanda zifite ububasha bwo kuburanisha urubanza RP 0001/12/CCI rw’Ubushinjacyaha na Mugesera Léon nk’uko n’Urukiko Rukuru rwabibonye, bigaragara ko urwo rubanza rujuririrwa rutateshwa agaciro kuko rwaciwe n’Urukiko rubifitiye ububasha, bivuze ko Mugesera Léon atakoherezwa kuburanira mu gihugu cya Canada nk’uko abyifuza.

[31] Byongeye kandi, Urukiko rurasanga imvugo ya Mugesera Léon y’uko Inkiko z’u Rwanda zitamucira urubanza ruboneye kubera ko afitanye ikibazo na Leta y’u Rwanda nta shingiro ifite, kubera ko hakurikijwe ibiteganywa n’ingingo ya 140, igika cya 2, y’Itegeko Nshinga rya Repubulika y’u Rwanda ryo mu 2003 ryavuguruwe mu 2015, Ubutegetsi bw’Ubucamanza bwigenga kuko butandukanye n’Ubutegetsi Nshingamategeko n’Ubutegetsi Nyubahirizategeko, kandi ko mu murimo wabo w’ubucamanza, abacamanza bakurikiza itegeko, kandi bawukora mu bwigenge busesuye kuko batajya bavugirwamo n’ubutegetsi cyangwa ubuyobozi ubwo ari bwo bwose nk’uko biteganywa n’ingingo ya 33, igika cya mbere

n’icya 2, y’Itegeko Nº 10/2013 ryo ku wa 08/03/2013 rigena Sitati y’Abacamanza n’abakozi b’Inkiko, bityo iyi mpamvu y’ubujurire ya Mugesera Léon ikaba nta shingiro ifite.

3. Kumenya niba ihame ry’uko Mugesera Léon agomba gufatwa nk’umwere mu gihe urubanza rutaracibwa burundu (principe de la présomption d’innocence) ryaraburanweho ku rwego rwa mbere ku buryo yarigira nk’impamvu y’ubujurire muri uru rubanza.

[32] Mugesera Léon avuga ko ihame ry’uko umuntu agomba gufatwa nk’umwere mu gihe icyaha aregwa kitaramuhama burundu (*principe de la présomption d’innocence*) riteganywa n’ingingo ya 19 y’Itegeko Nshinga rya Repubulika y’u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 7, igika cya mbere, b, y’Amasezerano Nyafurika yerekeye uburenganzira bw’ikiremwamuntu n’ubw’abaturage, ingingo ya 11 y’Itangazo mpuzamahanga ryerekeye uburenganzira bw’ikiremwamuntu, n’ingingo ya 14, igika cya 2, y’Amasezerano mpuzamahanga yerekeye uburenganzira mu by’imbonezamubano no mu bya politiki, ariko ko iryo hame ritubahirijwe n’Abayobozi batandukanye, ama Radio n’ibinyamakuru bitandukanye kubera ko barangije kumucira urubanza burundu nk’uwakoze icyaha cya jenoside mbere y’uko Urukiko rumucira urubanza, kandi hakurikijwe iryo hame, agomba gufatwa nk’umwere kugeza igihe urubanza rwe ruzacibwa burundu.

[33] Asobanura ko mu mwaka wa 2016 na 2019, Abayobozi batandukanye batanze ibiganiro na za « *déclarations* » zitandukanye bavuga ko Mugesera Léon yakoze icyaha cya jenoside kubera ko muri « *discours* » yavugiye ku Kabaya ngo yavuze ko Abatutsi bagomba kwicwa bakajugunywa muri Nyabarongo kugira ngo basubire iwabo muri Etiyopiya, aho

bavuye, ko muri abo Bayobozi harimo Umuyobozi wa Gereza ya Mpanga afungiyemo kuko yamwerekanye igihe yerekanaga « film » y'uwari Perezida Habyarimana Juvénal mu mwaka wa 2016, Senateri Tito Rutaremera, Madamu Mureshyankwano, wari Umuyobozi w'Intara y'Amajyepfo, Madamu Mukasonga Solange, wari Umuyobozi w'Akarere ka Nyarugenge, Umuyobozi w'Akarere ka Nyanza, Umuyobozi wa Komisiyo y'Igihugu yo kurwanya Jenoside, na Bwana Ngoga Martin wahoze ari Umunshinjacyaha Mukuru, kandi ko Radio Rwanda na KT Radio zagiye zivuga izina rye muri bene ibyo biganiro, ndetse ko n'izina rye ryagaragajwe ku rutonde rw'abakekwaho icyaha cya jenoside n'ubwo Gérard Gahima wari Umushinjacyaha Mukuru yavuze ko urwo rutonde rwakozwe ku mpamvu za politiki. Avuga kandi ko ku Rwibutso rwa Jenoside ruri ku Gisozi hari za disikuru ze, ndetse ko bajya bavuga izina rye mu nyigisho Abarimu bajya baha abanyeshuri babo.

[34] Avuga ko mu rubanza ICTR–2005–89-R 11 bis rw'Ubushinjacyaha na Munyagishari Bernard rwaciwe ku wa 06/06/2012, Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, mu bika byarwo bya 47, 50, 51, 54 na 55, rwashimangiye ihame ry'uko umuntu agomba gufatwa nk'umwere igihe atarahamwa n'icyaha burundu, ndetse ko n'Umwarimu wigisha muri Kaminuza yo muri Canada yavuze ko iyo ibitangazamakuru byikomye umuntu bikamuhindura umunyabyaha, icyo gihe ihame ry'uko umuntu ari umwere riba ritakiriho, bivuze ko n'umucamanza ashobora kubishingiraho akemeza ko uwo muntu yakoze icyaha koko.

[35] Yongeraho ko kuba Urukiko Rukuru rwarirengagije ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*), uru Rukiko rukwiye gutesha agaciro

urubanza rwajuririwe, rukamugira umwere, cyangwa rukamwohereza mu gihugu cya Canada kugira ngo kizamuburanishe kuko kitamwirukanye nk'umuntu utaragombaga kuba ku butaka bwacyo, ko ahubwo icyo gihugu cyamwohereje mu Rwanda hashingiwe ku masezerano yo ku wa 18/02/2009, akubiyemo za « *garanties* » u Rwanda rwahaye Canada ko ruzamucira urubanza rw'indakemwa, ariko ko atariko byagenze kuko Abayobozi batandukanye n'ibinyamakuru bitandukanye byo mu Rwanda byamufashe nk'uwakoze jenoside kandi atararangiza kuburana. Ikindi kandi amagambo bamuvuzeho yavuzwe haruguru akaba yaragize « influence » ku Bacamanza b'Urukiko Rukuru kuko bamuhamije icyaha bashingiye kuri « *paragraphes* » enye (4) ziri muri disikuru yo ku Kabaya.

[36] Urukiko rwabajije Mugesera Léon niba ikibazo kijyanye n'uko yagombaga gufatwa nk'umwere cyaraburanweho ku rwego rwa mbere ku buryo agomba kukigira impamvu y'ubujurire, avuga ko icyo kibazo cyaburanweho agitangira kuburana n'Umushinjacyaha Mukuru, Bwana Ngoga Martin, kuko yabanje gusomerwa « paragraphe » ya 18 ivuga ku ihame ry'uko agomba gufatwa nk'umwere, ndetse ko yanamwandikiye ibaruwa amubaza iby'iryo hame anaha Madamu Mukasonga Solange na Komisiyo y'Igihugu yo kurwanya Jenoside kopi y'iyo baruwa, bivuze ko afite ibimenyetso by'icyo aregera, uretse ko atabona ibimenyetso biri ku Rwibutso rwa Jenoside ruri ku Gisozi n'iby'inyigisho zagiye zitangwa hirya no hino mu gihugu zivuga izina rye nk'uwakoze jenoside.

[37] Me Rudakemwa Jean - Félix, umwunganira, avuga ko ihame ry'uko umuntu agomba gufatwa nk'umwere nk'uko

ryavuzwe mu rubanza rwa Munyagishari Bernard rwavuzwe haruguru, rituma umuntu atarenganywa, ko kuba Mugesera Léon yarangirijwe iryo hame nk'uko byasobanuwe haruguru, akwiye gusubizwa mu gihugu cya Canada kugira ngo kimuburanishe. Avuga kandi ko icyo kibazo cyaburanweho mu Rukiko Rukuru, ko kandi bibaye ngombwa, bazashyikiriza uru Rukiko inyandikomvugo zigaragaza aho cyaburanwe, uretse ko Urukiko Rukuru, rutagishyize muri kopi y'urubanza.

[38] Uhagarariye Ubushinjacyaha avuga ko ku bw'ibanze (*à titre principal*), impamvu y'ubujurire ya Mugesera Léon y'uko Urukiko Rukuru rwirengagije ihame ry'uko agomba gufatwa nk'umwere, itakwakirwa kubera ko itari mu mbibi z'icyajuririwe bitewe n'uko itigeze iburanwaho ku rwego rwa mbere kuko itagaragara mu nzitizi zasuzumwe n'urwo Rukiko nk'uko zivugwa muri kopi y'urubanza rujuririrwa.

[39] Avuga kandi ko « *à titre subsidiaire* », hashingiwe ku ngingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana", iyi mpamvu y'ubujurire ya Mugesera Léon nta shingiro ifite kubera ko nta kimenyetso yatanze kigaragaza ko amagambo yavuzwe n'Abayobozi bavuzwe haruguru, n'inyigisho zakozwe cyangwa «*film* » yerekanwe byavuzwe haruguru, byagize ingaruka ku rubanza rwajuririwe kuko atavuze ko byakozwe n'Urukiko Rukuru, ko ahubwo yivugiye gusa ko byakozwe n'Abayobozi batandukanye, ibinyamakuru n'ama Radio bitandukanye.

[40] Yongeraho ko uru Rukiko rutashingira ku rubanza rwa Munyagishari Bernard rwavuzwe haruguru kubera ko uyu yoherejwe mu Rwanda n'Urukiko Mpanabyaha Mpuzamahanga

rwashyiriweho u Rwanda, ariko ko Mugesera Léon atoherejwe n'urwo Rukiko, ko ahubwo yoherejwe n'igihugu cya Canada ubwo cyamwirukanaga ku butaka bwacyo.

UKO URUKIKO RUBIBONA

[41] Ingingo ya 18, igika cya mbere, y'Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, iteganya ko "Umushinjacyaha n'uregwa bafite bombi uburenganzira bwo kujuririra icyemezo icyo ari cyo cyose cyafashwe n'Urukiko Rukuru mu gihe hari imwe cyangwa zose mu mpamvu zikurikira: 1º ukwibeshya gushingiye ku ngingo y'itegeko gutuma icyo cyemezo gita agaciro; 2º ukwibeshya gushingiye ku byabaye kwatumye urubanza rucibwa nabi".

[42] Mu manza nyinshi zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR), n'Urugereko rw'Ubujurire rwa TPIY zirimo urubanza ICTR –96-13-A rwaciwe ku wa 16/11/2001, haburana Porokireri na Alfred Musema, urwo Rukiko rwasobanuye ko «Ujurira atagomba kubyutsa mu bujurire ingingo yagombye kuba yaratanze ku rwego rwa mbere kuko ubujurire butashyiriweho kuburanisha urubanza bundi bushya nk'uko byemejwe n'Urugereko rw'Ubujurire hakurikijwe ibiteganywa na Sitati yarwo[9], bivuze ko umuburanyi ufite ikibazo runaka agomba kugaragariza Urugereko rwa Mbere rw'Iremezo inzitizi ziriho hakiri kare kugira ngo urwo rugereko rurebe niba hari ibisubizo bitangwa

[9] Urubanza rwa Akayezu, inyandiko y'urubanza mu bujurire, igika cya 177, ahandukuwe imyanzuro y'Urugereko rw'Ubujurire rwa TPIY mu cyemezo rwafashe mu rubanza rwa Tadic, igika cya 41, no mu nyandiko y'urubanza rwa Furundzija yo mu bujurire, igika cya 40

n'Amategeko na Sitati kuri ibyo bibazo, ariko ko uwo muburanyi adashobora kwinumira, ngo nyuma y'aho azasabe kuburana bundi bushya mu bujurire[10]. Muri urwo rubanza, Urugereko rw'Ubujurire rwibukije umwanzuro rwafashe mu rubanza rwa Kambanda Jean, aho rwemeje ko kuba ujurira nta kibazo yabyukije imbere y'Urugereko rwa Mbere rw'Iremezo, bisobanura ko yivukije uburenganzira bwe bwo gutanga icyo kibazo nk'impamvu y'ubujurire yemewe, keretse haramutse hariho impamvu zihariye zabimubujije. Ko kubera ibivugwa haruguru, no kubera ko nta mpamvu zihariye ziriho zatuma rusuzuma iyi mpamvu y'ubujurire, Urugereko rw'Ubujurire rwemeje ko nta shingiro ifite»[11].

[43] Urukiko rurasanga, mu Rukiko Rukuru, Mugesera Léon atarigeze atanga inzitizi y'uko ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*) ritubahirijwe n'Abayobozi batandukanye cyangwa na rubanda, kuko iyo nzitizi itagaragara mu nzitizi yabyukije zafashweho ibyemezo n'urwo Rukiko nk'uko zigaragarira mu bika bya 6, 7 na 8, by'urubanza RP 0001/12/CCI rujuririrwa nk'uko byasobanuwe haruguru.

[44] Urukiko rurasanga, ahubwo igihe urwo Rukiko rwaburanishaga inzitizi yerekeranye no kumenya niba urubanza RP 0001/12/CCI rugomba kuburanishwa ku wa 19/11/2012 cyangwa gusubikwa, aribwo Mugesera Léon yavuze ko

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[10] Urubanza rwa Tadic, inyandiko y'urubanza mu bujurire, igika cya 55

[11] Urubanza rwa Kambanda, inyandiko y'urubanza mu bujurire, igika cya 25, n'inyandiko y'urubanza mu bujurire mu rubanza rwa Akayezu, igika cya 113. Ihame ryo kwivutsa uburenganzira ryemejwe kenshi n'Urugereko rw'Ubujurire rwa TPIY mu manza zikurikira: Urubanza rwa Celebici, inyandiko y'urubanza mu bujurire, igika cya 640; urubanza rwa Furundzija, inyandiko y'urubanza mu bujurire, igika cya 174.

impamvu Umushinjacyaha Mukuru, Bwana Ngoga Martin, n'Abashinjacyaha ayoboye, bamuhatira kuburana kuri iyo tariki, ari uko batahaye agaciro ihame ry'uko agomba gufatwa nk'umwere, ko ahubwo barangije kumucira urubanza burundu nk'uko bigaragazwa n'amagambo Mugesera Léon yasomye mu kinyamakuru kimwe, maze asaba ko Ubushinjacyaha bwakubahiriza iryo hame kugeza igihe urubanza rwe RP 0001/12/CCI ruciriwe burundu. Urwo Rukiko rwafashe icyemezo ku wa 20/11/2012, rwemeza ko iburanisha ry'urwo rubanza ryimuriwe ku wa 17/12/2012, ariko rukaba rutarafashe icyemezo kuri icyo cyifuzo cya Mugesera Léon cy'uko agomba gufatwa nk'umwere kugeza aciriwe urubanza burundu kuko rutigeze rugifata nk'ikibazo yarushyikirije rwagombaga gufatira icyemezo.

[45] Urukiko rurasanga, ku bw'ibanze (*à titre principal*), kuba Mugesera Léon atarigeze ashyikiriza Urukiko Rukuru, ikibazo cy'uko ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*) ryangijwe n'itangazamakuru n'Abayobozi b'Inzego zitandukanye bavuzwe haruguru, nk'ikibazo cyihariye rwagombaga gusuzuma no gufatira umwanzuro, bigaragara ko atagitanga nk'impamvu y'ubujurire muri uru rubanza kuko ntacyo anenga imikirize y'urubanza rujuririrwa, cyane cyane ko atagaragarije uru Rukiko impamvu yihariye yatumye adatanga icyo kibazo ku rwego rwa mbere.

[46] « *A titre subsidiaire* », n'ubwo uru Rukiko rwafata ko Mugesera Léon yagejeje ku Rukiko Rukuru ikibazo cyerekeranye n'uko ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*) ryangijwe n'Ubushinjacyaha cyangwa itangazamakuru (*médias*)

n'Abayobozi b'Inzego zitandukanye bavuzwe haruguru, ariko rwirengagiza kugifataho icyemezo, ntacyo byamumarira muri uru rubanza, kuko atagaragaza ingaruka amagambo yavuzwe n'izo Nzego yagize ku mikirize y'urubanza rujuririrwa rwaciwe n'Urukiko Rukuru.

[47] Byongeye kandi, Urukiko rurasanga imvugo ya Mugesera Léon y'uko Inkiko z'u Rwanda zitamucira urubanza rw'indakemwa kubera ko ihame ry'uko agomba gufatwa nk'umwere ryangijwe n'amagambo yavuzwe n'Inzego zitandukanye zavuzwe haruguru nta shingiro ifite, kubera ko nk'uko byasobanuwe haruguru, Abacamanza bigenga mu murimo wabo wo guca imanza kuko bazica mu bwigenge busesuye hashingiwe ku mategeko[12] no ku bimenyetso biri muri dosiye, ariko ko bataca urubanza hashingiwe ku magambo yavuzwe na rubanda (*public*) nk'uko Mugesera Léon ashaka kubyumvikanisha. Ibyo byashimangiwe kandi n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, mu rubanza ICTR -2005-89- R 11 bis rwaciye ku wa 06/06/2012, Porokireri aburana na Bernard Munyagishari, aho rwasobanuye ko ibyatangajwe n'intangazamakuru (*médias*) n'Abayobozi batandukanye, bitazagira ingaruka ku burenganzira bw'uregwa kubera ko Abacamanza (b'u Rwanda) bafite ubumenyi n'inararibonye bihagije ku buryo bafite ubushobozi bwo gutandukanya amagambo yavuzwe n'Abayobozi b'Inzego za Leta n'ibimenyetso bashyikirijwe igihe cy'iburanisha. Rwasobanuye kandi ko rufite icyizere cy'uko nta kizatuma

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[12] Ingingo ya 33, igika cya 2, y'Itegeko Nº 10/2013 ryo ku wa 08/03/2013 rigena Sitati y'Abacamanza n'Abakozi b'Inkiko, iteganya ko Mu murimo wabo w'ubucamanza, abacamanza bakurikiza itegeko, kandi bakawukora mu bwigenge batavugirwamo n'ubutegetsi cyangwa ubuyobozi ubwo ari bwo bwose

ihame rivugwa na Bernard Munyagishari ry'uko agomba gufatwa nk'umwere ritubahirizwa[13], maze rufata icyemezo (*ordonnance de renvoi*) kimwohereza kuza kuburanira mu Rwanda.

[48] Hashingiwe ku bisobanuro bivuzwe haruguru, Urukiko rurasanga, kuba Inkiko z'u Rwanda zifite ububasha bwo kuburanisha Mugesera Léon kuko zifite ubushobozi bwo kumucira urubanza ruboneye hashingiwe ku bimenyetso biri muri dosiye nk'uko byasobanuwe haruguru, bigaragara ko icyifuzo cye cy'uko agomba kujya kuburanira mu gihugu cya Canada nta shingiro gifite.

4. Kumenya niba Urukiko Rukuru rwaravukije Mugesera Léon uburenganzira bwo kunganirwa mu iburanisha ryo ku wa 14/10/2015 n'ubwo gusubiza ku bihano yari yasabiwe n'Ubushinjacyaha.

[49] Mugesera Léon avuga ko yavukijwe uburenganzira bwe bwo kunganirwa mu iburanisha ryo ku wa 14/10/2015 mu Rukiko Rukuru kuko rwafashe icyemezo cyo gupfundikira iburanisha, rukanavuga ko urubanza ruzasomwa ku wa 15/04/2016 kandi rubibona neza ko atunganiwe, ko rero rwirengagije ibiteganywa n'amategeko harimo Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu

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[13] *S'agissant des commentaires des médias et des autorités publiques, la Chambre est d'avis que les juges sont des professionnels qualifiés et expérimentés, capables de dissocier les déclarations de responsables publics des éléments de prevue présentés à l'audience. En conséquences, ces commentaires ne portent pas, en eux-mêmes, atteinte au droit de l'accusé. (...). A ce stade, la Chambre ne s'inqiète pas du non –respect éventuel de la présomption d'innocence de l'accusé, Affaire ICTR -2005-89- R 11 bis, Procureur c. Bernard Munyagishari, rendue par le TPIR, en date du 06/06/2012, para. 54 na 55*

2015, mu ngingo yaryo ya 18, ivuga ko kwiregura no kunganirwa ari uburenganzira budahungabanywa ahantu hose, n'iya 19, igika cya mbere, ivuga ko umuntu agomba gucirwa urubanza iyo rubereye mu ruhame kandi yahawe uburyo bwose bwo kunganirwa. Avuga kandi ko Urukiko Rukuru rutubahirije ingingo ya 150 na 153 z'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryo muri 2013 ryavugaga ko urubanza rugomba kubera mu ruhame no mu bwisanzure hubahirizwa uburenganzira bwo kunganirwa nk'uko binateganywa n'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki u Rwanda rwashyizeho umukono.

[50] Mugesera Léon asaba ko, kuba urubanza RP 0001/12/CCI rwaraciwe n'Urukiko Rukuru hirengagijwe uburenganzira bwe bw'ibanze bwo kunganirwa, ku bw'iyo mpamvu rugomba guteshwa agaciro nk'uko byemejwe mu rubanza RPA 0043/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/11/2011, haburana Ubushinjacyaha na Pte Habufite Vincent, aho rwasanze umuburanyi yaravukijwe uburenganzira bwo kunganirwa, maze rutegeka ko urwo rubanza rugomba kongera gusubirwamo n'Urukiko rw'Ikirenga, ariko we akaba asanga, aho kugira ngo urubanza rwe ruburanishwe n'Urukiko rw'Ubujurire, rwasubira mu Rukiko Rukuru, rukaburanishwa n'indi nteko kugira ngo atavutswa urwego rw'ubujurire.

[51] Avuga kandi ko yavukijwe uburengazira bwe bwo kugira icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, ubwo Urukiko Rukuru rwapfundikiraga mu buryo buhutiyeho iburanisha adahawe umwanya wo kugira icyo abivugaho nk'uko itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryariho ryabiteganyaga, ku bw'ibyo akaba asaba kurenganurwa.

[52] Ubushinjacyaha buvuga ko Urukiko Rukuru rwafashe icyemezo cyo gukomeza iburanisha Mugesera Léon atunganiwe kubera ko uyu na Me Rudakemwa Jean – Félix wamwunganiraga bashakaga gutinza urubanza nkana ariko akaba ntacyo yashoboye kunenga icyo cyemezo cy'Urukiko Rukuru, aho rwasobanuye ko Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, batinza iburanisha ku bwende, kugeza igihe Urukiko Rukuru rwafatiye icyemezo ku itariki ya 14/10/2015 cyo gukomeza iburanisha Mugesera Léon atunganiwe kubera ko rwasanze kuba Me Rudakemwa Jean – Félix atitabira iburanisha bitabangamiye uburenganzira bwa Mugesera Léon bwo kunganirwa no kwiregura.

[53] Ubushinjacyaha buvuga kandi ko kuba Mugesera Léon ataragize icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, nabyo byatewe n'uko we na Me Rudakemwa Jean – Félix, wamwunganiraga, bagaragaje ubushake buke bwo kwitabira iburanisha, bituma Urukiko Rukuru rusubika urubanza inshuro 13 zose mu gihe cy'amezi agera kuri atatu (3), ko rero nta kosa urwo Rukiko rwakoze kuko Mugesera Léon yahawe igihe gihagije cyo kugira ngo uburenganzira bwe bwubahirizwe ariko ntagikoreshe uko bikwiye, ko rero iyi mpamvu ye y'ubujurire nta shingiro yahabwa.

UKO URUKIKO RUBIBONA

[54] Dosiye igaragaza ko mu gika cya 6 cy'urubanza rwajuririwe, Urukiko Rukuru rwafashe icyemezo ku wa 14/10/2015 mu rubanza rubanziriza urundi ku birebana n'uburenganzira bwa Mugesera Léon bwo kunganirwa, maze ruvuga ko uburenganzira bwe bwo kunganirwa butagomba kuba

uburyo bwo kudindiza imikorere n'imigendekere myiza y'ubutabera.

[55] Dosiye igaragaza kandi ko amaburanisha yagiye yimurwa kuva urubanza rwatangira kuburanishwa ku wa 21/09/2012, maze bigeze mu iburanisha ryo ku wa 23/07/2015, Mugesera Léon amenyeshwa ko mu iburanisha rizakurikiraho azanzura ku rubanza rwe, akagira n'icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, ariko ku wa 30/07/2015, yitabye atunganiwe kubera ko Me Rudakemwa Jean – Félix, umwunganira, yanditse avuga ko arwaye, maze iburanisha ryimurirwa ku wa 03/08/2015, kuri uwo munsi nabwo Me Rudakemwa Jean – Félix ntiyitaba nta n'impamvu yagaragaje yatumye atitaba, iburanisha ryimurirwa ku wa 07/09/2015, uwo munsi na none iburanisha ryimurirwa ku wa 10/09/2015 bitewe n'uko Me Rudakemwa Jean – Félix yari yohereje icyemezo cya muganga kimuha ikiruhuko kigera ku wa 20/09/2015, maze Urukiko ruvuga ko rugiye gusuzuma ibirebana n'ibyo byemezo bya muganga bihora bigaragazwa (*repos médical*).

[56] Ku wa 10/09/2015, Mugesera Léon yongeye kwitaba atunganiwe, maze Urukiko Rukuru rumaze gukora iperereza, rusanga icyemezo Me Rudakemwa Jean – Félix ashingiraho asaba ikiruhuko cy'uburwayi yaragisabye mu rwego rwo gutinza urubanza[14], ariko ku bw'imigendekere myiza y'ubutabera, Urukiko rufata icyemezo cy'uko iburanisha rizakomeza ku wa 15/09/2015. Me Rudakemwa Jean – Félix yandikiye Urukiko Rukuru avuga ko rutagombaga gukomeza iburanisha rwirengagije icyo cyemezo kimwemerera ikiruhuko

[14] Reba icyemezo cyo ku wa 10/09/2015 ku bijyanye n'isubikwa ry'urubanza kubera ikiruhuko cy'uburwayi cyahawe Me Rudakemwa Jean- Félix (côtes 4415 -4416)

cy’uburwayi kigera ku wa 20/09/2015, avuga ko hirengagijwe uburenganzira bwa Mugesera Léon bwo kunganirwa no kwiregura buteganywa n’ingingo ya 25 y’Amasezerano mpuzamahanga yerekeye uburenganzira mu by’imbonezamubano no mu bya politiki hamwe n’ingingo ya 18, igika cya 3, y’Itegeko Nshinga rya Repubulika y’u Rwanda ryavuzwe haruguru.

[57] Ku wa 15/09/2015, Mugesera Léon yitabye yunganiwe na Me Rudakemwa Jean – Félix, ariko uyu avuga ko akirwaye, ko adashobora kuburana, ko ahubwo yitabye gusa kugira ngo asobanure ibirebana n’icyemezo cya muganga kimuha ikiruhuko cy’uburwayi, maze Urukiko Rukuru rushingiye ku ngingo ya15 igika cya 2, y’Itegeko Nº 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya igihano ku muburanyi wese utinza iburanisha ry’urubanza ku bushake, ruhanisha Me Rudakemwa Jean – Félix ihazabu y’amafaranga 500.000 Frw, kubera ko rwasanze Mugesera Léon na Me Rudakemwa Jean – Félix bagamije gutinza urubanza, bityo iburanisha ryimurirwa ku wa 21/09/2015 kugira ngo Mugesera Léon azaze gutanga umwanzuro ku rubanza.

[58] Ku itariki ya 21/09/2015, Mugesera Léon yitabye Urukiko yunganiwe na Me Rudakemwa Jean – Félix, maze asaba ko urubanza rusubikwa kubera ko arwaye, ariko Urukiko rufata icyemezo cyo gukomeza iburanisha kubera ko nta cyemezo cya muganga kimuha ikiruhuko yarugaragarije, yemera gukomeza kuburana ariko asaba na none ko Urukiko Rukuru rwategereza ko Urukiko rw’Ikirenga rufata icyemezo ku bujuririre yarugejejeho burebana n’umutangabuhamya yifuzaga

ko yabazwa, Urukiko Rukuru ruvuga ko ubwo bujurire butahagarika iburanisha rushingiye ku biteganywa n'ingingo ya 1[15] hamwe n'iya 162, igika cya 2, z'Itegeko Nº 21/2012 ryo ku wa 14/06/2012 rigenga imiburanishirize y'imanza z'imbonezamubano, iteganya ko kujuririra imanza zibanziriza izindi bikorwa gusa iyo urubanza rw'iremezo rwaciwe kandi bigakorerwa rimwe (…), maze na Me Rudakemwa Jean – Félix avuga ko adashobora kugira icyo avuga ku bihano uwo yunganira yasabiwe kubera ko atabonye umwanya wo kwicarana nawe kuko ikiruhuko cye cy'uburwayi cyakurikiwe n'ikiruhuko cy'abacamanza, iburanisha ryimurirwa ku wa 22/09/2015 kugira ngo hazasuzumwe niba icyifuzo cya Mugesera Léon cyo guhabwa igihe cyo kwanzura gifite ishingiro.

[59] Ku wa 22/09/2015, Urukiko Rukuru rwasanze n'ubwo ingingo Mugesera Léon na Me Rudakemwa Jean – Félix bashingiragaho basaba ko bahabwa igihe cyo gutegura umwanzuro zidafite ishingiro, Mugesera Léon agomba kongererwa umwanya wo gutegura urubanza, iburanisha ryimurirwa ku wa 28/09/2015, uwo munsi ugeze, Urukiko Rukuru runatanga ingengabihe y'iburanisha igaragaza ko urubanza ruzakomeza kuburanishwa ku wa 29/09/2015, ku wa 01/10/2015, ku wa 05/10/2015 no ku wa 06/10/2015.

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[15] Urukiko Rukuru rwavuze ko ibivugwa mu ngingo ya 162 y'Itegeko nº 21/2012 ryo ku wa 14/06/2012 rigenga imiburanishirize y'imanza z'imbonezamubano bigomba gushingirwaho hakurikijwe ibiteganywa n'ingingo ya 1 y'iryo Tegeko nº 21/2012 ryo ku wa 14/06/2012, zivuga ko iri tegeko ari naryo rigenga imiburanishirize y'izindi manza mu gihe nta yandi mategeko yihariye agenga iyo miburanishirize kubera ko itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ntacyo rivuga ku manza zibanziriza izindi.

[60] Ku itariki ya 29/09/2015, Mugesera Léon yitabye atunganiwe avuga ko arwaye, naho Me Rudakemwa Jean – Félix wamwunganiraga, mu ibaruwa yanditse avuga ko atazagaruka mu rubanza imishyikirano arimo na Minisiteri y'Ubutabera ku byerekeranye n'ubufasha mu by'amategeko (aide légale) itararangira, maze mu iburanisha ryo ku wa 30/09/2015, Urukiko rufata icyemezo cyo kwimurira iburanisha ku wa 05/10/2015 ruhamagazamo Minisiteri y'Ubutabera ndetse runasaba Me Rudakemwa Jean – Félix kwitabira iburanisha, kuri uwo munsi hitaba Ubushinjacyaha, Minisiteri y'Ubutabera ihagarariwe na Me Umwari Marie Claire hamwe na Me Mbonera Théophile, naho Mugesera Léon yitaba yunganiwe na Me Rudakemwa Jean – Félix. Urukiko rumaze kumva ibisobanuro batanga ku kibazo kirebana n'ubufasha bukenewe ku birebana no kunganira Mugesera Léon, rwasanze nta mishyikirano iri hagati ya Minisiteri y'Ubutabera n'uwunganira Mugesera Léon, ahubwo atarubahirije ibisabwa kugira ngo ahabwe ubufasha mu bwunganizi mu by'amategeko, rwemeza ko urubanza ruzakomeza ku wa 12/10/2015.

[61] Ku wa 12/10/2015, Mugesera Léon yitabye atunganiwe kandi bigaragara ko Me Rudakemwa Jean – Félix, umwunganira, yasinye ku cyemezo kimenyesha umunsi iburanisha ryimuriweho, maze Urukiko rushingiye ku ngingo ya 15 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ruhanisha Me Rudakemwa Jean – Félix ihazabu mbonezamubano ya 500.000 Frw kubera gutinza urubanza nkana, urubanza rwimurirwa ku wa 14/10/2015 kugira ngo Urukiko ruzemeze niba iburanisha rigomba gukomeza, ariko na none kuri uwo munsi urubanza rwari rwimuriweho, Mugesera Léon yitaba atunganiwe, maze Urukiko rufata icyemezo cy'uko

iburanisha rigomba gukomeza kubera ko ukutitabira iburanisha kwa Me Rudakemwa Jean – Félix kutabangamiye uburenganzira bwo kunganirwa no kwiregura bya Mugesera Léon mu gihe yunganiwe mu yindi myiregurire ye yose.

[62] Urukiko rw'Ubujurire rurasanga n'ubwo uregwa afite uburenganzira bwo kunganirwa nk'uko biteganywa n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu mwaka wa 2015[16], no mu ngingo ya 14, d, y'Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano na politiki u Rwanda rwashyizeho umukono ku wa 12/02/1975[17,] ubu burenganzira ariko ntibugomba kuba uburyo bwo kudindiza imikorere n'imigendekere myiza y'ubutabera, kuko kuva ku wa 23/07/2015, ubwo Mugesera Léon yasabwaga kwanzura mu rubanza ngo anagire icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, urubanza rwasubitswe inshuro 13 zose ku mpamvu zimuturutseho n'umwunganizi we Me Rudakemwa Jean – Félix nk'uko zagiye zisobanurwa haruguru, inyinshi zikaba zari zigamije gutinza urubanza, ndetse Me Rudakemwa

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[16] Kwiregura no kunganirwa ni uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego zose z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo.

[17] Umuntu wese ukurikiranyweho icyaha afite uburenganzira bwo kuburanishwa ahibereye no kwiregura ubwe cyangwa kuburanirwa n'umwunganizi yihitiyemo, yaba atamufite akamenyeshwa ko afite uburenganzira bwo kumugira. Kubera inyungu z'ubutabera ashobora kumuhabwa ku buntu igihe adafite uburyo bwo kumuhemba: *"Toute personne accusée d'une infraction pénale a droit, en pleine égalité, au moins aux guaranties suivantes [….] à ệtre présente au procès et à se defendre elle-mệme ou à avoir l'asssistance d'un défenseur de son choix ; si elle n'a pas de défenseur, à ệtre informée de son droit d'en avoir un, et, chaque fois que l'intérệt de la justice l'exige, à se voir attribuer d'office un défenseur, sans frais, si elle n'a pas les moyens de le rémunérer[….]".*

Jean – Félix akaba yaragiye abihanirwa nk'uko nabyo byagaragajwe, nyamara ntahindure imyitwarire ye, bityo uru Rukiko rukaba rusanga Urukiko Rukuru ntakosa rwakoze, ubwo ku wa 14/10/2015, rwafataga icyemezo cyo gukomeza iburanisha Mugesera Léon atunganiwe, kuko umwunganizi we yari yamenyeshejwe iburanisha ryo ku wa 12/10/2015, ariko uwo munsi ntiyitaba ari nabwo iburanisha ryongeraga gusubikwa rigashyirwa ku wa 14/10/2015, nabwo ntiyitaba, icyemezo cyafashwe n'Urukiko Rukuru kikaba kitafatwa nk'icyavukije Mugesera Léon uburenganzira bwe bwo bwo kunganirwa no kwiregura ku bihano yasabiwe n'Ubushinjacyaha nk'uko abivuga, kubera ko uburenganzira bwe butagombaga kudindiza imikorere n'imigendekere myiza y'ubutabera nk'uko bimaze kuvugwa

[63] Urukiko rurasanga icyemezo nk'iki cyaranafashwe n'Urukiko rw'Ikirenga mu rubanza RPA 0197/10/CS rwaciwe ku wa 21/11/2014, haburana Ubushinjacyaha na Ntakirutimana Jean Claude, aho rwasanze Ntakirutimana Jean Claude ataravukijwe uburenganzira bwo kunganirwa kuko hashingiwe ku myitwarire ye na Avoka we bagaragaje umwete muke kugira ngo urubanza ruburanishwe nyuma yo gusubikwa inshuro 13 zose, bityo rukemeza ko uburenganzira bwo kwiregura butagomba kwitiranywa no kubangamira uburenganzira bw'abandi, ndetse no kudindiza imikorere n'imigendekere myiza y'inzego z'ubutabera[18]; iki gitekerezo kikaba kandi gihura n'ibyemejwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rw'Ubushinjacyaha na Alfred Musema, aho rwasobanuye ko imyitwarire y'uwunganira Alfred Musema irimo kutaboneka mu iburanisha no kudakorana

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[18] Urubanza RPA 0197/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 21/11/2014, haburana Ubushinjacyaha na Ntakirutimana Jean Claude.

neza n'Urukiko (*manque de coopération*) ibangamira imigendekere myiza y'iburanisha n'inyungu z'ubutabera, runavuga ko ku rwego urubanza rwari rugezeho rwo kuburana avuga ko yemera icyaha cyangwa atacyemera umwunganizi we adahari, bitabangamiye uburenganzira bwo kunganirwa, ko aramutse yanze kugira icyo avuga kubera ko umwunganira adahari urukiko ruzafata ko aburana atemera icyaha[19].

[64] Urukiko rurasanga kandi, kuba Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, bashingira ku rubanza RPA 0043/09/CS rw'Ubushinjacyaha na Pte Habufite Vincent rwaciwe n'Urukiko rw'ikirenga ku wa 18/11/2011, bagasaba ko urubanza RP 0001/12/CCI rwaciwe n'Urukiko Rukuru ruteshwa agaciro kubera ko rwirengagije uburenganzira bwe bw'ibanze bwo kunganirwa ahabwa n'amategeko bidafite ishingiro, kubera ko mu rubanza rwa Pte Habufite Vincent, Urukiko rw'Ikirenga[20] rwatesheje agaciro urubanza rwaciwe n'Urukiko Rukuru rwa Gisirikare kubera ko urwo Rukiko rwakoze ikosa ryo kwima Pte Habufite Vincent uburenganzira bwo gushaka umwunganira, bityo Urukiko rw'Ikirenga rutesha agaciro urwo rubanza, maze rusuzuma bundi bushya imiburanire ye ijyanye n'icyaha Pte Habufite Vincent yari akurikiranyweho, nyamara muri uru rubanza ho Mugesera Léon akaba ataravukijwe uburenganzira bwe bwo kunganirwa, ahubwo ari we n'umwunganizi we bakomeje kubangamira imigendekere myiza y'iburanisha n'inyungu z'ubutabera nk'uko byasobanuwe haruguru.

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[19] Case n° ICTR-96-13-T, Porokireri vs Alfred Musema rwaciwe na TPIR ku wa 27/01/2000, mu bika bya 19, 20 na 21.

[20] Icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri, 2012, nº 13, pp. 15-23.

[65] Urukiko rurasanga, na none imvugo ya Mugesera Léon y'uko yavukijwe uburengazira bwe bwo kugira icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, ubwo Urukiko Rukuru rwapfundikiraga mu buryo buhutiyeho iburanisha adahawe umwanya wo kugira icyo abivugaho nta shingiro ifite, kuko nk'uko byasobanuwe haruguru, Me Rudakemwa Jean – Félix, wamwunganiraga, yakomeje kubura mu maburanisha yo ku wa 13/07/2015, ku wa 30/07/2015, ku wa 03/08/2015 ku wa 07/09/2015, ku wa 10/09/2015, ku wa 29/09/2015, ku wa 30/09/2015, ku wa 06/10/2015, no ku wa 12/10/2015, kugeza igihe Urukiko Rukuru rwafatiye icyemezo ku wa 14/10/2015 cyo gukomeza iburanisha Mugesera Léon atunganiwe, kubera ko kuba Me Rudakemwa Jean – Félix ataritabiraga iburanisha bitabangamiye uburenganzira bwa Mugesera Léon bwo kunganirwa no kwiregura. Uru Rukiko narwo rukaba rusanga ari we ubwe wanze gukoresha uwo mwanya yari yahawe kugira ngo agire icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha.

[66] Hakurikijwe ibisobanuro bitanzwe haruguru, Urukiko rw'Ubujurire rurasanga impamvu y'ubujurire yatanzwe na mugesera Léon y'uko Urukiko Rukuru rwamuvukije uburenganzira bwe bwo kunganirwa mu iburanisha ryo ku wa 14/10/2015 n'ubwo gusubiza ku bihano yari yasabiwe n'Ubushinjacyaha nta shingiro ifite.

5. Kumenya niba Urukiko Rukuru rwarishe ihame ry'uko itegeko rihana ridashobora gukurikizwa ku bikorwa byabaye mbere y'uko rijyaho.

[67] Mugesera Léon, yunganiwe na Me Rudakemwa Jean - Félix, mu mwanzuro we kimwe no mu miburanire ye, avuga ko Urukiko Rukuru rwakoze ikosa ryo gushingira ku ngingo ya

mbere y’Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside, nyamara ngo iyi ngingo itarebana n’ibihano, kuko mu Itegeko - Teka ryo ku wa 12/02/1975, u Rwanda rwemeje ko ayo Masezerano, ari mu mategeko yarwo, ariko rwifata ku bijyanye n’ingingo yayo ya 9 irebana n’ibihano, bityo ko icyaha cya jenoside yakorewe abatutsi muri 1994 kitahanwa hashingiwe kuri ayo Masezerano Mpuzamahanga.

[68] Mugesera Léon avuga kandi ko Urukiko Rukuru rwashingiye ku Itegeko - Ngenga Nº 16/2004 ryo ku wa 19/06/2004 rigenga imiterere, imikorere n’ububasha by’Inkiko Gacaca kimwe n’Itegeko - Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy’amategeko ahana ibyaha, kandi ayo mategeko yarashyizweho nyuma y’uko ibyaha ashinjwa bikozwe, ibyo ngo bikaba binyuranyije n’ihame ry’uko itegeko mpanabyaha ridashobora kwifashishwa mu guhana icyaha cyakozwe mbere y’uko rijyaho, ko ibyo binyuranyije n’igika cya 6 cy’ingingo ya 130 y’Itegeko Nshinga rya Repubulika y’u Rwanda ryo mu 2003 ryavuguruwe mu 2015.

[69] Ubushinjacyaha buvuga ko iyi mpamvu y’ubujurire ya Mugesera Léon nta shingiro ifite kubera ko Amasezerano Mpuzamahanga yo ku wa 9/04/1948 yerekeranye no gukumira no guhana icyaha cya jenoside, mu ngingo yayo ya 2 arondora ibikorwa bigize icyaha cya jenoside, naho mu ngingo yayo ya 3 akavuga ibikorwa bihanwa, ko kuba u Rwanda rwarifashe ku ngingo ya 9 irebana n’imihanire bitagira ingaruka ku zindi ngingo zigize aya Masezerano. Buvuga kandi ko, kuva mu mwaka wa 1975, ubwo u Rwanda rwashyiraga umukono ku Masezerano Mpuzamahanga akumira kandi ahana jenoside,

icyaha cya jenoside giteganyijwe mu mategeko y’u Rwanda, bityo ibikorwa Mugesera Léon akurikiranyweho kuba yarakoze mu mwaka wa 1992, bikaba byari bisanzwe bigize icyaha cya jenoside hakurikijwe amategeko y’u Rwanda.

[70] Ubushinjacyaha buvuga ko, icyaha cya jenoside, ari icyaha ndengakamere ku rwego Mpuzamahanga, ko u Rwanda rwashyizeho Itegeko - Ngenga Nº 08/1996 ryo ku wa 30/08/1996 rihana ibyaha by’itsembabwoko n’itsembatsemba byakozwe hagati y’itariki ya 01/10/1990 n’iya 31/12/1994, muri « *préambule* » y’iri Tegeko, Umushingamategeko akaba yarasobanuye ko mu mwaka wa 1975 u Rwanda rwashyize umukono ku Masezerano Mpuzamahanga akumira kandi ahana icyaha cya jenoside, bityo ko byari ngombwa gushyiraho itegeko rihana abakoze ibikorwa bigize iki cyaha, akaba ari iryo mu 1996.

UKO URUKIKO RUBIBONA

a) Ku bijyanye n’icyaha cyo gushishikariza gukora jenoside.

[71] Urukiko rurasanga icyaha cyo gushishikariza gukora jenoside Mugesera Léon akurikiranyweho ari kimwe mu bikorwa bya jenoside biteganywa mu ngingo ya III, agace ka c) y’Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeye gukumira no guhana icyaha cya jenoside yemejwe mu Rwanda binyuze mu Itegeko - Teka No 08/75 ryo ku wa 12/02/1975, inkomoko yo gukurikirana no guhana icyaha cya jenoside ikaba ihera ku kumva ko, uretse kuba gutoteza ba nyamuke hashingiwe ku vanguraruhu, vangurabwoko, vangurabwenegihugu cyangwa vanguradini bihabanye n’indangagaciro za kimuntu bifite ingaruka mu rwego

rw'Amategeko. Urukiko rw'Ikirenga rwa Isiraheri mu rubanza Ubushanjacyaha bwaburanaga na Adolph Eichmann, rukaba rwarasanze ntawakwitwaza ko icyaha mpuzamahanga gikomeye yakoze kitari mu mategeko y'igihigu nk'impamvu yatuma atagikurikiranwaho kuko "mu gihe cyo guhana bene ibyo byaha, inkiko zikwiye gufata ko kuva kera byari ibyaha biryozwa gatozi bisanzwe bibujijwe n'umuco mpuzamahanga.[21]

[72] Urukiko rurasanga muri urwo rubanza, Urukiko rwarasobanuye ko mu rwego rwo gutanga ubutabera buboneye, bidakwiye ko hagira uhanirwa igikorwa kitari icyaha ubwo cyakorwaga, ariko ko iryo hame ridakwiye gukoreshwa ku byaha by'ubugome ndengakamere, kuko iyo hakozwe bene ibyo byaha indangagaciro zikubiye muri iryo hame zihita zita agaciro kazo bitewe n'uko uregwa atavuga ko, ubwo yakoraga bene ibyo byaha, atari azi ko ariguhonyanga izindi ndangagaciro zirutaho zashinze imizi kuva kera mu muco mpuzamahanga, ariyo mpamvu ihame rya nullum crimen nulla poena sine lege ridakwiye gukoreshwa kuri bene ibyo byaha,[22] by'umwihariko, Urukiko rwibukije ko Urukiko Mpuzamahanga rwa Gisirikare rwa Nuremberg rwanze gushingira ku ihame rya nullum crimen nulla poena sine lege kubera ko abakoze Holocaust batari bayobewe ko bari gukora ibyaha, ahubwo ko bari bizeye kuzihisha inyuma y'amategeko y'Aba Nazi nibaramuka batsinze urugamba kugira ngo batazakurikiranwa:

> "*in repudiating the relevance of the ethical content of the principle of nulla poena to the parallel crimes of*

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[21] *the crimes established in the Law of 1950, ...must be seen today as acts that have always been forbidden by customary international law - acts which are of a `universal' criminal character and entail individual criminal responsibility. Prosecutor v Adolphe Eichmann, Appeal Judgment, para 11*.

[22] Prosecutor v Adolphe Eichmann, Appeal Judgment, para 8.

which the major war criminals were convicted in Nuremberg is also apposite here: "...the ethical import of the maxim is confronted by the countervailing ethical principles supporting the courts and sentences. Killing, maiming, torturing and humiliating innocent people are acts condemned by the value-judgments of all civilized men, and punishable by every civilized municipal legal system.... All this was known to the accused when they acted, though they hoped, no doubt, to be protected by the law of a victorious Nazi state from punishment. If, then, the rules applied at Nuremberg were not previously rules of positive international law, they were at least rules of positive ethics accepted by civilized men everywhere, to which the accused could properly be held in the forum of ethics."[23]

[73] Urukiko rurasanga mu rubanza hagati ya Serbia na Crotia, Urukiko Mpanabyaha Mpuzamahanga rwaribukije ko kuva mu mwaka wa 1951 rwakomeje kwemeza ko Amsezerano Mpuzamahanga yo gukumira no guhana icyaha cya jenoside akubiyemo amahame asanzwe mu muco mpuzamahanga: "*The Court has also repeatedly stated that the Convention embodies principles that are part of customary international law. That was emphasized by the Court in its 1951 Advisory Opinion. "The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and the spirit and aims of the United Nations (resolution 96 (I) of the General Assembly,*

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[23] Prosecutor v Adolphe Eichmann, Appeal Judgment, para *8.*

11 December 1946). The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge' (Preamble to the Convention) »[24]

[74] Urukiko rurasanga uyu murongo warongeye kugarukwaho n'Urukiko rw'Ikirenga rw'Ubwongereza mu gika cya 17 cy'urubanza rwa Augusto Pinochet, aho rwasobanuye ko n'ubwo uregwa avuga ko nta kigaragaza ko iyicarubozo rikozwe na Leta ryari icyaha mbere y'uko Amasezerano Mpuzamahanga akumira iyicarubozo yemezwa mu mwaka wa 1984, nta gushidikanya guhari ko icyaha cy'iyicarubozo gikozwe na Leta cyari kimwe mu byaha bikomeye mu mategeko mpuzamahanga (I *[Lord Browne-Wilkinson] have no doubt that long before the Torture Convention of 1984 state torture was an international crime in the highest sense*…),[25] iki nacyo akaba ari ikigaragaza ko ibyaha mpuzamahanga bitagombera kuba biri mu mategeko y'ibihugu kugira ngo bikurikiranwe kandi bihanwe.

b) Ku bijyanye n'icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu (crimes contre l'humanité)

[75] Urukiko rurasanga icyaha cyo gutoteza gikorwa ahanini abantu babuzwa amahwemo kubera abo aribo, iryo vangura rigakorwa hagamijwe guhonyanga uburenganzira bw'ibanze

[24] Reba urubanza Croatia v. Serbia, International Court of Justice, Judgment of 03/02/2015, igika cya 87.
[25] Ex Parte Pinochet [1999] 2 All ER 97 at 17.

bw'ikiremwamuntu, Inkiko Mpanabyaha Mpuzamahanga zashiriweho u Rwanda n'icyahoze cyitwa Yugoslavia, zikaba zarasobanuye ko gutoteza ari kimwe mu byaha biteganywa n'umuco mpuzamahanga nk'ibyaha cyibasiye inyoko muntu.[26]

[76] Urukiko rurasanga inkiko zaremeje ko kuva kera ibyaha byibasiye inyoko muntu byari bibujijwe ndetse binahanwa n'umuco mpuzamahanga, by'umwihariko, mu rubanza rwa Erdomivic, Urukiko Mpanabyaha Mpuzamahanga rw'icyahoze cyitwa Yugoslaviya rwavuze ko ubugome n'ubunyamaswa ndengakamere cyangwa kuba ibyo byaha byarakorewe abantu benshi aricyo kibitandukanya n'ibindi byaha, izo mpamvu akaba arizo zituma bifatwa nk'ibyaha byakorewe umuryango mpuzamahanga cyangwa byahonyanze indangagaciro za kimuntu : '*Isolated offences did not fall within the notion of crimes against humanity. As a rule systematic mass action, particularly if it was authoritative, was necessary to transform a common crime . . . into a crime against humanity . . . Only crimes which by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied at different times and places, endangered the international community or shocked the conscience of mankind . . .*"[27]

[77] Urukiko rurasanga iki ari kimwe mu byatumye inkiko zemeza ko amategeko ateganya ibyaha byibasiye inyoko muntu uyu munsi, adakwiye gufatwa nk'ayashyizeho ibyaha bishya,

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[26] Reba Urubanza rwa Nahimana Ferdinand, 28/11/2007, igika cya 985, urubanza rwa Brdanin, 2/04/2007, igika cya 296, Urubanza rwa Simic, 28/11/2006, igika cya 177.

[27] *Joint Separate Opinion of Judge McDonald and Judge Vohrah, Erdemović Appeal Judgement, para. 22 (quoting History of the United Nations War Crimes Commission and the Development of the Laws of War, p. 179).*

ahubwo ko yaje yemeza ibyari bisanzwe biriho. Uyu murongo wongeye kwibutswa n'Urukiko rw'Uburayi rushinzwe kurengera uburenganzira bw'ikiremwa muntu mu rubanza Korbely yaburanaga na Hongrie, aho rwavuze ko « Ku bireba ibigize ibyaha byibasiye inyoko muntu, hakwiye gufatwa ko Amasezerano y'i Roma y'Urukiko Mpuzamahanga Mpanabyaha akwiye gufatwa nk'ayemeza ibisobanuro by'icyo cyaha byari bisanzwe biriho mu mategeko mpuzamahanga. »[28]

[78] Urukiko rursanga na none mu gusobanura ijambo aba sivili mu gihe cyo guhana ibyaha byibasiye inyoko muntu, Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze cyitwa Yugoslaviya, rwaravuze ko hashingiwe ku muco mpuzamahanga, abantu bafatwa ko batakiri abarwanyi *(personnes hors de combat*) bashobora gushyirwa mubakorerwa ibyo byaha, iyo ibigize ibyo byaha byuzuye kabone nubwo bene abo bantu batabarirwa mu ba sivili.[29] Ku bijyanye n'icyaha cyo gutotezwa, urwo Rukiko rukaba rwaravuze ko ari ugukora ikintu cyangwa kutagikora hashingiwe ku ivangura hagamijwe kwangira umuntu cyangwa guhonyanga uburenganzira bwe bw'ibanze buteganyijwe mu muco cyangwa mu masezerano mpuzamahanga, bigakorwa nkana, hagambiriwe kuvangura abantu ku bw'impamvu runaka, cyane cyane uruhu, idini

[28] "As regards the elements of the crimes against humanity, one may take the recent Rome Statute of the International Criminal Court as declaratory of the international law definition of this crime…" Reba Korbely v Hungary (App no 9174/02), 19/09/2008. Reba na Streletz, Kessler and Krenz v Germany (App. No 34044/96, 355532/97 na 44801/98) yo ku wa 22/03/2001.
[29] Reba urubanza rw'ubujurire rwa Mrkšić and Šljivančanin, Urubanza, igika cya. 35 (rwavuzemo urubanza rw'ubujurire rwa Blaškić, igika cya 113).

cyangwa ku mpamvu za politiki[30]. Urukiko rwabishimangiye mu rubanza rwa Krnojelac mu magambo akurikira: "*the crime of persecution consists of an act or omission which discriminates in fact and which: denies or infringes upon a fundamental right laid down in international customary or treaty law (the actus reus); and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the mens rea).*"[31]

[79] Rwongeye kandi kubigarukaho mu rubanza rwa Dorđević, aho rwagize ruti: *«the crime of persecutions requires that an act or omission – not a crime – which infringes upon a fundamental right laid down in customary international law, be committed with discriminatory intent…»*[32]

[80] Urukiko rurasanga rero nta gushidikanya guhari ko u Rwanda nk'igihugu, nacyo cyabarizwaga mu bigengwa n'umuco mpuzamahanga, ndetse n'amasezerano mpuzamahanga rwemeye cyangwa rwashyizeho umukono kuva rwabona ubwigenge, bivuze ko abakoze ibyaha bisanzwe biteganyijwe n'amategeko mpuzamahanga yaba umuco cyangwa amasezerano mpuzamahanga batakwihisha inyuma yo kuba inyito z'ibyaha bakoze zitari ziri mu Itegeko-Teka No 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga ibyaha bikorwa, kuko ku byumva utyo byaba ari ugupfobya ibyaha byakozwe, bikavanwa mu

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[30] Reba urubanza rwa Nahimana Ferdinand, igika cya 985; urubanza rwa Krnojelac, igika cya 184, urwa Kordić na Čerkez, ibika bya 101, 110 (mens rea), 671 (actus reus), 674 (mens rea).
[31] Reba urubanza rw'ubujurire rwa Krnojelac, ibika bya 184 na 185.
[32] Reba urubanza rw'ubujurire rwa Dorđević, ibika bya. 557, 693, 876.

matageko mpuzamahanga asanzwe abigenga bikitirwanywa n'ibyaha bisanzwe, bishyirwaho n'amategeko y'ibihugu.

[81] Urukiko rurasanga icyaha cyo gushishikariza abantu gukora jenoside ndetse n'icyaha cyibasiye inyoko muntu cyo gutoteza, ari ibyaha byombi bishingiye ku ivangura, bityo mu gihe Mugesera Léon amaze guhamwa n'ibyo byaha byombi nk'ibyaha mpuzamahanga bikaba bitari bikwiye ko Urukiko Rukuru ruvuga ko ahamwa na none n'icyaha cyo kubiba urwango rushingiye ku bwoko, giteganywa kandi gihanwa n'ingingo ya 393 y'Itegeko-Teka No 21/77 ryo ku wa 18/07/1977 rishyiraho igitabo cy'amategeko ahana, kuko ivangura cyangwa kubiba urwango rushingiye ku bwoko ari kimwe mu bigize gushishikariza abantu gukora jenoside no gutoteza nk'icyaha cyibasiye inyoko muntu. Uyu murongo ukaba uhura na none n'uwemejwe n'Urukiko Mpuzamahanga Mpanabyaha rw'icyahoze cyitwa Yugoslavia, aho mu rubanza rwa Kuranac na bagenzi be, rwavuze ko iyo hamaze kugaragazwa icyaha cy'iremezo, biba bitakiri ngombwa gufata nk'icyaha ibikorwa bitandukanye byatumye icyo cyaha gikorwa.[33]

[82] Urukiko rurasanga u Rwanda, rushingiye ku muco mpuzamahanga, ku Masezerano Mpuzamahanga yerekeye gukumira no guhana icyaha cya jenoside yo ku wa 09/12/1948 rwemeje mu Itegeko-Teka No 08/75 ryo ku wa 12/02/1975, rushingiye kandi ku Masezerano Mpuzamahanga arebana n'ukudasaza kw'ibyaha by'intambara n'ibyibasiye inyokomuntu yo ku wa 26/11/1968, rwemeje mu Itegeko Teka ryo ku wa 16/04/1975, rubinyujije mu Itegeko Shingiro ryo ku wa 18/01/1996, rwibukije mu ivugururwa ry'ingingo ya 12, igika

[33] Reba urubanza rw'ubujurire rwa Kuranac na begenzi be, igika cya 153.

cya kane, y'Itegeko Nshinga ryo ku wa 10 Kamena 1991, ko "ibikorwa bitahanwaga n'amategeko y'Igihugu mu gihe byakorwaga, bishobora gukurikiranwa mu nkiko iyo, igihe byakorwaga, amahame rusange y'amategeko yemewe n'amahanga yabifataga nk'ibyaha", icyo iryo vugurura ryazanye akaba ari ukwibutsa gusa ko ntawakwihisha inyuma y'amategeko y'igihugu ngo avuge ko atakurikiranwaho ndetse ngo ahanirwe ibyaha yakoze bisanzwe bibujijwe n'amategeko mpuzamahanga.

[83] Urukiko rurasanga, ku bijyanye n'ibihano, ingingo ya V y'Amasezerano Mpuzamahanga yo gukumira no guhana icyaha cya jenoside iteganya ko "ibihugu, bishingiye ku biteganywa n'amategeko nshinga yabyo, byiyemeje gushyiraho amategeko ya ngombwa azatuma aya masezerano ashyirwa mu bikorwa, by'umwihariko guteganya ibihano bikwiriye guhabwa abantu bazahamwa na jenoside cyangwa ikindi gikorwa giteganyijwe mu ngingo ya III.", iyi ngingo ikaba ari imwe mu mategeko mpuzamahanga yashingiweho, u Rwanda ruvugurura ingingo ya 12 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10 Kamena 1991[34], ndetse rushyiraho Itegeko-Ngenga No 08/96 ryo ku wa 30/08/1996 ryerekeye imitunganyirize y'ikurikiranwa ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba n'ibyaha byibasiye inyokomuntu byakozwe hagati y'itariki ya 1/10/1990 kugeza ku wa 31/12/1994, Itegeko ryasimbuwe n'Itegeko - Ngenga No 16/2004 ryo ku wa 19/06/2004 rigena imiterere, imikorere n'ububasha by'Inkiko Gacaca, iri naryo

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[34] Ingingo ya 12 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10/06/1991 yavuguruwe ku wa 18/01/1996 yongererwa igika cya 4 kivuga ko "« Ibikorwa bitahanwaga n'amategeko y'Igihugu igihe byakorwaga, bishobora gukurikiranwa mu nkiko iyo, igihe byakorwaga, amahame rusange y'amategeko yemewe n'amahanga yabifataga nk'ibyaha".

rikaba ryarasimbuwe n'Itegeko - Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, aho mu ngingo yaryo ya 762 ryemeje ko, uretse ibiteganijwe ukundi, abakurikiranyweho ibyaha bya jenoside n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'itariki ya 01 Ukwakira 1990 n'itariki ya 31 Ukuboza 1994, bazahanwa hakurikijwe ibihano biteganijwe muri iri Tegeko Ngenga, ibikubiye mu ngingo ya 762 y'iryo Tegeko Ngenga, bikaba aribyo byagarutsweho mu ngingo ya 335, igika cya 2, y'Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange[35], ari naryo rikurikizwa kuri uyu munsi.

[84] Urukiko rurasanga, uretse ko Urukiko Rukuru rwakoze ikosa ryo gushingira ku Itegeko – Ngenga Nº 16/2004 ryo ku wa 19/06/2004 rishyiraho Inkiko Gacaca mu guhana Mugesera, igifungo cya burundu Mugesera Léon yahanishijwe hashingiwe ku ngingo ya 5 bis y'Itegeko – Ngenga Nº 08/2013 ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko – Ngenga nº 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu, irebewe hamwe n'Itegeko - Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryavuzwe haruguru, ari nacyo cyasimbuye igihano cyo kwicwa cyateganywaga n'ingingo ya 312 y'Itegeko -Teka No 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, cyari giteganyirijwe ibikorwa by'ubwicanyi byabaye ingaruka z'amagambo yavugiye ku Kabaya n'i Nyamyumba

[35] Ingingo ya 12 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10/06/1991 yavuguruwe ku wa 18/01/1996 yongererwa igika cya 4 kivuga ko « Ibikorwa bitahanwaga n'amategeko y'Igihugu igihe byakorwaga, bishobora gukurikiranwa mu nkiko iyo, igihe byakorwaga, amahame rusange y'amategeko yemewe n'amahanga yabifataga nk'ibyaha".

ashishikariza abantu gukora jenoside nk'uko yabihamijwe n'Urukiko Rukuru, bityo imvugo ya Mugesera Leon y'uko Urukiko Rukuru rwamuhanishije igihano kitari gisanzwe giteganyijwe mu mategeko y'u Rwanda ikaba nta shingiro ifite.

[85] Urukiko rurasanga iki gitekerezo cy'uko ibihano ku cyaha cya jenoside byari bisanzwe biteganyijwe mu mategeko y'u Rwanda cyaranemejwe mu rubanza rwa Akayesu Jean Paul rwaciwe n'Urukiko Mpanabayaha Mpuzamahanaga rwashyiriweho u Rwanda[36].

[86] Imiburanire ya Mugesera Léon y'uko atahanirwa icyaha cya jenoside kubera ko u Rwanda rwifashe ku ngingo ya IX yerekeye ibihano biteganyirijwe icyaha cya jenoside, Urukiko rurasanga nta shingiro ifite kubera ko ingingo ya IX y'Amasezerano Mpuzamahanga yo gukumira no guhana icyaha cya jenoside avuga ko " Impaka hagati y'ibihugu ku bijyanye n'isesengura, ishyirwa mu bikorwa cyangwa iyuhabirizwa ryayo, harimo n'inshingano zibazwa ibihugu kubera ko byakoze jenoside cyangwa ibindi bikorwa biteganyijwe mu ngingo ya III, bizaregerwa Urukiko Mpuzamahanga (*International Court of Justice*) ku busabe bw'igihugu icyo aricyo cyose cyashyize umukono kuri ayo masezerano",[37] bikaba bigaragara ko iyo

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[36] *Affaiire No ICTR-96-4-T/peine, Le Procureur c/ Jean Paul AKAYEZU, décision du 2 Octobre 1998, para.16 "A cet égard, le Tribunal rappelle toutefois que le Rwanda a adheré par un décret-loi à la Convention sur le génocide le 12 Février 1975. Aussi comme la Chambre l'a rappelé dans son jugement, la répression pénale du crime de génocide existait au Rwanda en 1994, à l'époque des faits reprochés à AKAYESU, et leur auteur pouvait être traduit pour ce crime devant les tribunaux rwandais compétents".*

[37] *Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts*

ngingo ntaho ihuriye n'imihanire y'umuntu ukurikiranyweho icyaha cya jenoside cyangwa ibikorwa biteganywa mu ngingo ya III y'amasezerano, ahubwo irebana n'ikurikiranwa ry'igihugu ubwacyo mu gihe cyananiwe gukumira jenoside cyangwa bimwe mu bikorwa biteganywa mu ngingo ya III.

[87] Urukiko rursanga uyu murongo ariwo Urukiko Mpanabyaha Mpuzamahanga rwashimangiye mu rubanza hagati ya Croatia na Bosnia,[38] aho rwavuze ko ingingo ya IX y'Amasezerano Mpuzamahanga yo gukumira no guhana icyaha jenoside igena ububasha bwarwo ku bijyanye no gusesengura, gushyira mu bikorwa no kubahiriza ayo masezerano, cyane cyane ku bireba inshingano z'ibihugu biregwa jenoside cyangwa ikindi gikorwa icyo aricyo cyose giteganyijwe mu ngingo ya III y'ayo masezerano, kandi ko, nk 'uko rwabyibukije mu rubanza hagati ya Bosnia na Herzegovina na Seribiya, mu mwaka wa 2007,[39] ingingo ya IX y'amasezerano ijyanye gusa n'ububasha bw'Urukiko Mpuzamahanga mu byerekeranye na jenoside, byumvikanisha ko ubwo u Rwanda rwifataga ku ngingo ya IX mu gihe cyo kwemeza ayo masezerano rwari rwanze ko nk'igihugu, ruzaregwa icyaha cya jenoside imbere y'Urukiko Mpuzamahanga[40], ibyo bikaba bitavanaho ko abantu ku giti cyabo bakoze jenoside mu Rwanda bakwiye gukurikiranwa no kugihanirwa kuko, nkuko byasobanuwe

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enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

[38] Reba urubanza hagati ya Croatia v Serbia, International Court of Justice, Judgment of 03/02/2015, igika cya 85.

[39] Reba urubanza Bosnia and Herzegovina v. Serbia and Montenegro, International Court of Justice, Judgment of 26/02/2007

[40] Reba Democratic Republic of Congo v Rwanda, International Court of Justice, Application of 28/05/2002, igika cya 72.

haruguru, imihanire yabo ishingiye ku biteganywa n'ingingo ya VI aho kuba ku ngingo ya IX y'ayo masezerano.

[88] Hashingiwe ku byasobanuwe haruguru, Urukiko rurasanga impamvu y'ubujurire ya Mugesera Léon y'uko yahanwe hirengagijwe ihame ry'uko amategeko ahanaatakoreshwa ku byaha byakozwe mbere y'uko ajyaho, nta shingiro ifite

6. Kumenya niba Urukiko Rukuru rwaranze kumva abatangabuhamya bashinjura Mugesera Léon.

[89] Mugesera Léon, mu mwanzuro we no mu miburanire ye, yavuze ko Urukiko Rukuru rwamuvukije ku buryo bukomeye uburenganzira bwo kwiregura buteganywa n'Itegeko Nshinga, rwanga kumva abatangabuhamya bamushinjura. Avuga ko muri abo batangabuhamya batumviswe harimo abatangabuhamya bazi ibyabaye (*témoins des faits*), abatangabuhamya b'imyitwarire (*témoins de caractère*), hamwe n'abatangabuyamya b'inzobere (*témoins experts*).

[90] Mugesera Léon avuga ko Ubushinjacyaha busanzwe bufite ubushobozi burenze ubw'ushinjwa, bwahawe igihe gihagije cyo gushaka abatangabuhamya bamushinja no kubajonjora, ariko we atahawe igihe n'uburyo bwo gushaka no kuvugana n'abantu yifuzaga ko baza kumutangira ubuhamya, ko ahubwo yasabwe urutonde no kuvuga ibyo bazaza gutangaho ubuhamya, hirengagijwe ko yagombaga kubanza kubonana n'abo yifuza ko bamutangira ubuhamya.

[91] Mugesera Léon yasabye uru Rukiko kuvanaho urubanza rujuririrwa no gusubizwa mu gihugu cya Canada kuko yaciriwe urubanza hirengagijwe ihame ryo kureshyeshya intwaro hagati

y'ababuranyi b'impande zombi (*égalité des armes*), hamwe n'uburenganzira bwo kubona ubutabera butabogamye (*droit fondamental à un procès équitable*) yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda kimwe n'Amasezerano Mpuzamahanga u Rwanda rwashyizeho umukono.

[92] Ubushinjacyaha buvuga ko Urukiko Rukuru rwasabye ababuranyi b'impande zombi gutanga imyirondoro y'abatangabuhamya babo, icyo bazatangaho ubuhamya, aho babarizwa n'uburyo buzakoreshwa babazwa, ko kandi Urukiko Rukuru rwabyibukije inshuro nyinshi cyane kuko Mugesera Léon wavugaga ko afite abatangabuhamya bamushinjura atari yashoboye kubahiriza ibyo yasabwaga kugeza ku wa 30/6/2014, ubwo yahabwaga umunsi ntarengwa nawo ntiyawubahiriza. Ubushinjacyaha buvuga ko, kuba Mugesera Léon ataratanze imyirondoro y'abatangabuhamya avuga ko bari kuza kumushinjura atabiryoza Urukiko Rukuru kuko ari we wivukije ubwo burenganzira.

UKO URUKIKO RUBIBONA

[93] Ingingo ya 66 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko « ibintu umuburanyi asaba gutangira abatangabuhamya agomba kubisobanura mu magambo afutuye kandi atarondogoye. Iyo Urukiko rusanze bikwiye, bifite ireme kandi bishobora kwemerwa, rushobora ku bwarwo gutegeka kubitangira abatangabuhamya ».

[94] Urukiko rurasanga Mugesera Léon wavuze ko afite abatangabuhamya bamushinjura yarasabwe n'Urukiko Rukuru mu ibarwa yo ku wa 06/11/2012, gutanga imyorondoro yuzuye

y'abatangabuhamya yifuza ko babazwa, aho babarizwa n'icyo yifuza ko bazatangaho ubuhamya, ibi kandi akaba yarabyibukijwe mu iburanisha ryo ku wa 18/01/2013, iryo ku wa 30/06/2014 n'iryo ku wa 14/01/2015, ariko ntiyubahiriza ibyo yasabwe kugeza urubanza rupfundikiwe ku wa 24/06/2020.

[95] Urukiko rurasanga, ingingo Mugesera Léon aburanisha y'uko yagombye guhabwa uburyo bwo kubanza gushaka no kwemeranywa n'abatangabuhamya bamushinjura mbere yo gutanga urutonde rwabo nta shingiro ifite kuko, ubwe yagombye kuba azi ingingo buri wese afite yamushinjura ho, Urukiko akaba arirwo rubatumiza mu gihe rusanze ari ngombwa, kandi ko ibyo bamushinjura bitagombera ko we abanza gukora « négociations » nabo, kuba atarigeze atanga urwo rutonde, uru Rukiko narwo rukaba rwemeranywa n'Urukiko Rukuru ko nta batangabuhamya bashinjura Mugesera Léon yigeze agaragaza, bityo ko nta n'uburenganzira bwo kubumva yigeze avutswa.

[96] Urukiko rurasanga Mugesera Léon utarujuje inshingano ze kugira ngo haboneke ikimenyetso kimushinjura adashobora kubyitwaza nk'ingingo y'ubujurire. Ibi ninako Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwabibonye mu rubanza rwa Ngeze Hassan ku ngingo y'umutangabuhamya atigeze asaba ko atumizwa ku rwego rwa mbere kandi yari asanzwe azi ko yamukenera, ruvuga ko atakoze ibisabwa n'amategeko agenga urwo Rukiko ku buryo butuma ibimenyetso yari akeneye biboneka.[41] Urukiko

[41] 41ICTR- 99-52-A, haburana Porokireri na Ngeze Hassan, aho "TPIR" yasobanuye ko: *However, with respect to the availability of the proffered evidence at trial, the Appeals Chamber agrees with the Prosecution that the Appellant failed to exercise the due diligence required for the evidence to be*

Mpanabyaha Mpuzamahanga rwashyiriweho Yougoslavie na rwo niko rwabibonye mu rubanza rwa Vujadin Popovic, wirengagije gukoresha inzira yemererwa n'amategeko kugira ngo urwo Rukiko rusuzume ibimenyetso avuga ko byari kumurengera.[42]

[97] Urukiko rurasanga, ibivuzwe mu bika bibanziriza iki byerekana ko Mugesera Léon atigeze avutswa uburenganzira bwe bwo kuzana abatangabuhamya bamushinjura, bityo iyi ngingo ye y'ubujurire ikaba nta shingiro ifite.

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admissible on appeal. (...) The Appellant must demonstrate that the "proffered evidence was not available to him at trial in any form" and that he had made use of all mechanisms of protection and compulsion available under the Statute and the Rules to bring the evidence before the Trial Chamber. In the present case, the Appellant has not shown why he could not call [Witness ABC1] [Redacted] as a Defence witness at trial in order to refute the evidence provided by Witness EB stating that, on the morning of 7 April 1994, he saw the Appellant go into the compound of Samvura's house together with many Interahamwe. Therefore, the Appeals Chamber is not satisfied that this evidence was unavailable at trial.

[42] ICTY-05-88-A, haburana Porokireri na Vujadin Popovic, aho urwo Rukiko rwasobanuye ko: *Dans la Requête, Popović n'offre aucun argument quant à la raison pour laquelle il n'a pas tenté de faire admettre le rapport par la Chambre de première instance, y compris par le biais d'une requête en réouverture de l'affaire comme suggéré par l'Accusation. (8) [...] La Chambre d'appel rejette l'argument de Popović selon lequel la décision du 22 juillet 2009 l'a catégoriquement empêché de déposer une nouvelle demande de réouverture du dossier et d'admission de nouveaux éléments de preuve au risque d'être sanctionné. La Chambre d'appel considère que Popović aurait pu explorer d'autres voies qui lui étaient encore ouvertes, notamment une demande de certification pour faire appel de la décision du 22 juillet 2009 ou une demande de réexamen avant ou après avoir reçu le rapport divulgué. [9] En ce sens, Popović n'a pas rempli son obligation de faire preuve de diligence raisonnable en tentant au moins de présenter les éléments de preuve devant la Chambre de première instance [10].*

7. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu kwemeza ko disikuru yiswe "amahembe ane ya shitani" atari ikimenyetso gishinjura Mugesera Léon.

[98] Mugesera Léon avuga ko Urukiko Rukuru rutagombaga guha agaciro ibyo aregwa n'Ubushinjacyaha, ko ahubwo rwagombaga kwita ku bikubiye mu ijambo yemera ko yavuze aho yajyaga hose, iryo yise amahembe ane ya shitani "Discours de quatre cornes de satan", kuko ubutumwa burikubiyemo aribwo yagendaga atanga ahantu hose yagiye muri mitingi, ko nta gikorwa kigize icyaha cyo gushishikariza gukora jenoside gikubiye muri iryo jambo yemera, ko ahubwo amagambo arivugwamo arebana no kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi (*le mépris, l'insolence, la vanité et ta traitrise*), ndetse rikanavugwamo intwaro umurwanashyaka wa MRND yagombaga kugendana buri munsi zirimo amatora, ubutwari, urukundo, ko rero iryo jambo ntaho rihuriye no kwanga ndetse no kwica abatutsi, ko ahubwo rigaragaza ko Mugesera Léon atari umwicanyi, kandi ko atanga abatutsi, ko ahubwo ari umuntu mwiza.

[99] Akomeza avuga ko iryo jambo atarifite, ko atariryo yavugiye ku Kabaya, ko ariko yarivugiye ahandi hose habereye mitingi, ko atazi aho yarivugiye ndetse n'igihe yarivugiye, ko kuba atarifite bitavuga ko ridahari, ko ahubwo rigomba kubazwa Ubushinjacyaha kuko aribwo bwaryohereje muri Canada ndetse rikaba ryaranakoreshejwe mu rubanza rwaciriwe muri Canada ku wa 08/09/2003, nk'uko bigaragara mu gika cya 155 kugera ku gika cya 162, ko kuba hari urundi rubanza rw'Urukiko rw'Ikirenga rwa Canada rwakuyeho icyemezo kibanza, bidakuraho kuba hari icyo kimenyetso cya disikuru kimushinjura.

[100] Ubushinjacyaha buvuga ko mu gika cya 109 cy'urubanza rujuririrwa, Urukiko Rukuru rwavuze ko ibisobanuro Mugesera Léon yatanze ku birebana na disikuru y'amahembe ane ya shitani nta shingiro bifite, kubera ko rwasanze hari irindi jambo yavugiye ku Kabaya n'i Nyamyumba rikangurira abanyarwanda gukora jenoside, ndetse ko nawe ubwe yiyemereye muri uru Rukiko ko iyo disikuru y'amahembe ane ya shitani atariyo yavugiye ku Kabaya, ko atazi igihe n'aho yayivugiye, bityo ko Urukiko rw'Ubujurire ntaho rwahera rusuzuma iyo ngingo ye y'ubujuirire yerekeranye na disikuru nawe ubwe adafite.

[101] Ubushinjacyaha buvuga kandi ko hari abatangabuhamya bamushinja kuba yaravugiye disikuru ku Kabaya n'i Nyamyumba zikangurira abanyarwanda gukora jenoside, ko rero Urukiko Rukuru rutakoze ikosa kuko rwashingiye ku ngingo ya 119 y'itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, maze ruha agaciro ibimenyetso rwashyikirijwe, ko ndetse n'Urukiko rw'Ubujurire rutagomba gushingira ku rubanza rwasuzumye disikuru y'amahembe ane ya shitani ku rwego rwa mbere mu gihe hari urubanza rw'Urukiko rw'Ikirenga rwa Canada rwaciwe ku wa 28/06/2005 rwakuyeho icyemezo kibanza.

UKO URUKIKO RUBIBONA

[102] Ingingo ya 3 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[103] Dosiye igaragaza ko mu gika cya 109 cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko nta kigaragaza ko

disikuru y'amahembe ane ya shitani ikubiyemo ubutumwa bwo kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi (*le mépris, l'insolence, la vanité et la traitrise*) ndetse n'intwaro umurwanashyaka wa MRND yagombaga kugendana buri munsi zirimo amatora, ubutwari, urukundo ariyo yavugaga aho yajyaga hose kuko rwasanze hari irindi jambo yavugiye ku Kabaya n'i Nyamyumba rikubiyemo ubutumwa bukangurira gukora jenoside.

[104] Dosiye igaragaza kandi ko mu iburanisha ryabereye mu Rukiko rw'Ubujurire ku wa 06/02/2020, Mugesera Léon yavuze ko iyo disikuru y'amahembe ane ya shitani atari yo yavugiye ku Kabaya, ko kandi atayifite, ko ndetse atazi n'aho yayivugiye cyangwa amatariki yayivugiyeho.

[105] Urukiko rurasanga disikuru yiswe "*amahembe ane ya shitani*" Mugesera Léon avuga ko ikubiyemo amagambo arebana no kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi (*le mépris, l'insolence, la vanité et la traitrise*), ndetse n'intwaro umurwanashyaka wa MRND yagombaga kugendana buri munsi zirimo amatora, ubutwari n'urukundo, atariryo yavugiye ku Kabaya n'ahandi hose habereye inama nk'uko nawe yabyemereye mu Rukiko rw'Ubujurire, ko kandi atayifite, ndetse ko atazi n'aho yayivugiye cyangwa amatariki yayivugiyeho, bityo ikaba itafatwa nk'ikimenyetso kimushinjura nk'uko abivuga kuko ntaho ihuriye n'ibimenyetso Urukiko Rukuru rwashingiyeho rumuhamya ibyaha birimo disikuru aregwa ko yavugiye ku Kabaya n'inama yakoresheje I Nyamyumba, ndetse akaba atagaragaza ko iyo disikuru ivuguruza ibyo bimenyetso.

[106] Urukiko rurasanga kandi iyo disikuru yiswe “amahembe ane ya shitani” ntacyo yamarira Mugesera Léon muri uru rubanza kuko atariyo yashingiweho n’Urukiko Rukuru mu kumuhamya ibyaha akurikiranyweho, ko ahubwo yakurikiranywe anahamwa ibyaha hashingiwe kuri disikuru yavugiye ku Kabaya n’inama yakoresheje i Nyamyumba nk’uko byasobanuwe haruguru.

B. KU BIREBANA N’URUBANZA MU MIZI

1. Kumenya niba Urukiko Rukuru rwarakoze ikosa mu kwemeza ko ari Mugesera Léon wavuze disikuru (discours) yo ku Kabaya ku wa 22/11/1992, no kumenya niba igomba gufatwa nk’ikimenyetso muri uru rubanza.

[107] Mugesera Léon avuga ko Urukiko Rukuru rutagombaga kumuhamya icyaha rushingiye kuri disikuru (discours) yo ku Kabaya yo ku wa 22/11/1992 kubera ko itari umwimerere (*original*) bitewe n’uko yahinduwe (*truqué*) nk’uko byemejwe na Peter Fraser muri «*contre-interrogatoire*» yo ku wa 23/06/1995. Asobanura ko u Rwanda rwashyikirije Madame Diane Clément wari Prokireri wa Minisitiri wo muri Canada ushinzwe Abimukira (*Citoyenneté et Immigration*) kasete (*Cassette*) iriho disikuru (*discours*) yo ku Kabaya, nawe ayiha umuhanga witwa Peter Fraser kugira ngo ayisuzume, uyu nawe amaze kuyishyira mu imashini kabuhariwe, yasanze itari umwimerere, ariko ko nyuma y’aho, yagiye muri Serivisi ya «*Citoyenneté et Immigration* », azana kasete nº 1 na kaseti nº 3, azihuriza hamwe mu imashini kabuhariwe yaguzwe muri Leta Zunze Ubumwe za Amerika, azikuramo kaseti imwe (1), amaze kuyihanagura avuga ko atari ikimenyetso yajyana imbere y’Urukiko kubera ko itari umwimerere.

[108] Avuga ko n'ubwo yibagiwe disikuru yavugiye ku Kabaya ku wa 22/11/1992, ariko ko afite uburenganzira bwo kugira icyo avuga kuri disikuru yaciriweho urubanza kuko ari ikimenyetso kimushinja icyaha cyatanzwe n'Ubushinjacyaha, kandi ko n'Urukiko Rukuru rwagishingiyeho rumuhamya icyaha atakoze, akaba yumva atabazwa niba ariwe wayivuze kubera ko ingingo ya 14, g, y'Amasezerano mpuzamahanga yo ku wa 16/12/1966 yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki, n'ingingo ya 14, 7º, y'Itegeko - Ngenga Nº 11/2007 ryo ku wa 16/03/2007 rigena kwimurira imanza muri Repubulika y'u Rwanda, ziteganya ko ntawe ugomba kwishinja icyaha, ko ahubwo Ubushinjacyaha bugomba gutanga ibimenyetso bigaragaza ko yakoze icyaha nk'uko biteganywa n'amategeko.

[109] Avuga kandi ko Urukiko Rukuru rutubahirije ingingo ya 122 y'Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igaragaza inkomoko y'ikimenyetso[43,] uburyo cyakozwe n'uburyo cyabonetse, ingingo ya 123 y'iryo Tegeko[44] ibuza guhindura ikimenyetso

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[43]Ingingo ya 122 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "Umuburanyi ushaka gutanga ikimenyetso gishingiye ku kintu gifatika agomba kwerekana inkomoko yacyo kugira ngo hagaragare aho gihuriye n'ikiburanwa, n'uregwa cyangwa n'icyaha. Kubera iyo mpamvu agomba kugaragaza ko icyo kimenyetso ari cyo cyafatiriwe cyangwa cyakomotse ku byabaye, kwerekana ko kitahindutse kubera kunyura mu ntoki nyinshi no gukorerwaho ubushakashatsi".

[44] Ingingo ya 123 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, iteganya ko "Mu gihe umuntu, ikintu, cyangwa ibimenyetso bigaragaza ibyakozwe atari byo bishyikirijwe urukiko ngo rubyitegereze, amashusho cyangwa amafoto abyerekana agomba kuba agaragaza ntacyo ahinduye ishusho byari bifite igihe ibiburanwa mu rubanza byabaga. Ni na

(*montage*), n'ingingo ya 124 y'Itegeko rimaze kuvugwa[45], iteganya ko hagomba kuba hari umuntu wafashe amajwi n'amashusho, kuko rwamuhamije icyaha hashingiwe kuri disikuru yo ku Kabaya yo ku wa 22/11/1992, kandi rutagaragaje uburyo iyo kasete yahererekanyijwe hagati y'abantu batandukanye (*chaine de possession du discours de Kabaya*) kuva ku Kabaya, aho yayivugiye bwa mbere, kugera muri Orinfor n'uburyo yahavuye ikagera ku Mushinjacyaha Mukuru wayohereje muri Canada.

[110] Asobanura ko yagejeje ku Rukiko Rukuru ikibazo cyo kumenya uwafashe kasete iriho disikuru yo ku Kabaya n'ihererekanwa ryayo, rusanga koko ari ikibazo, noneho rwandikira Orinfor ibaruwa yo ku wa 25/06/2014, ruyisaba kurumenyesha aho iyo kasete yaturutse n'uwayifashe, maze mu ibaruwa yayo yo ku wa 27/06/2014, Umuyobozi wa Orinfor yahindutse « RBA» yarusubije ko iyo kasete yabonetse mu bubiko bwayo, ariko ko atazi amazina y'uwayifashe n'uwayihagejeje, ko nta n'ijambo ry'amashusho ifite, ndetse ko yanemeje ko atari Murutampunzi Boniface wayifashe ngo anayizane muri Orinfor, ko ahubwo yayikuye mu bubiko bwayo (Orinfor) ayiha Nyirantabashwa Ange kugira ngo ayikorere kopi yaje koherezwa muri Canada. Avuga ko urwo Rukiko rwakoze amakosa yo kumuhamya icyaha hashingiwe kuri iyo kasete rutagaragaje uwayifashe n'amazina y'abantu yagiye inyura mu ntoki bakanasinya inyandikomvugo ko bayibonye kuva ku

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cyo gisabwa kugira ngo amajwi yafashwe hakoreshejwe uburyo bwo kumviriza atangweho ikimenyetso".

[45] Ingingo ya 124 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, iteganya ko "Kugira ngo bigaragare ko nta cyahinduwe, hagomba ubuhamya bw'umuntu wafashe ubwe amajwi cyangwa wafashe amafoto ari agenda cyangwa atagenda, cyangwa washushanyije ku buryo ubwo ari bwo bwose, cyangwa uwari ahari ibyo bikorwa.

Kabaya kugera ku Mushinjacyaha Mukuru, ko ahubwo asanga uruhererekane rwayo rugarukira ku Kabaya gusa.

[111] Mugesera Léon akomeza asobanura ko yari muri "meeting" y'ishyaka rya MRND yabereye ku Kabaya ku wa 22/11/1992, kandi ko yahavugiye disikuru (*discours*), ariko ko atari disikuru iri kuri kasete Urukiko Rukuru rwahawe n'Ubushinjacyaha yanaciriweho urubanza rujuririrwa kubera ko yahavugiye disikuru akuye mu mutwe we itari yanditse (*discours oral*) kuko yayivuze mu buryo butunguranye abisabwe na Perefe Banzi Wellars bari bicaranye. Avuga ko kuba yarabanje kuvuga ingingo z'ingenzi ari buze kuvugaho muri iyo « *meeting* », atari ikimenyetso kigaragaza ko yari yateguye iyo disikuru. Ikindi n'uko iryo jambo ritigeze rifatwa kuri kasete n'ishyaka rya MRND cyangwa we ubwe, uretse ko atakiryibuka kubera igihe kirekire gishize, bityo ko ibyo Ubushinjacyaha buvuga ko umwimerere wayo ubitse muri « Rwanda Broadcasting Agency » (RBA) (ex - Orinfor), atari ukuri kubera ko Peter Fraser yemeje ko disikuri iri kuri kasete yahawe ikomoka kuri kasete cyangwa «CD»[46] ibitse mu bubiko bwa RBA (Orinfor) itari umwimerere, ko ahubwo yahinduwe (*truqué*) nk'uko byasobanuwe haruguru.

[112] Asaba uru Rukiko ko rutamuhamya icyaha hashingiwe kuri disikuru yo ku Kabaya iri kuri kaseti itari umwimerere (*original*) kuko atari ikimenyetso kigaragaza mu buryo budashidikanywaho ko yakoze icyaha nk'uko bisabwa mu rubanza rw'inshinjabyaha, ko ahubwo mu rubanza rw'ubutegetsi yaburaniye muri Canada, ikimenyetso cyashingiweho kitari gikomeye cyane ukigereranyije n'igisabwa muri uru rubanza rw'inshinjabyaha.

[46] CD = Compact Disc

[113] Uhagarariye Ubushinjacyaha avuga ko Urukiko Rukuru rutakoze ikosa mu kwemeza ko kasete ikubiyemo disikuru Mugesera Léon yavugiye muri mitingi yo ku Kabaya tariki ya 22/11/1992, ari ikimenyetso gikwiye gushingirwaho muri uru rubanza kuko n'Urukiko rw'Ikirenga rwo muri Canada rwayishingiyeho mu rubanza rw'ubutegetsi igihe rwemezaga ko Mugesera Léon atemerewe gutura muri icyo gihugu kubera ibyaha akekwaho nk'uko byanemejwe n'umuhanga witwa Peter Fraser wemeje ko ijambo riri kuri iyo kasete ritahinduwe, nyamara ko nta kimenyetso Mugesera Léon yatanze kigaragaza ko iryo jambo ryahinduwe, uretse kubivuga gusa, bivuze ko atubahirije ibisabwa n'ingingo ya 3 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri k'ibyo aburana, n'ingingo ya 85, igika cya 3, y'Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko iyo icyaha cyamaze kubonerwa ibimenyetso, uregwa agomba gutanga ibimenyetso bigaragaza ko ari umwere.

[114] Avuga kandi ko Urukiko Rukuru rwahamije Mugesera Léon icyaha hashingiwe kuri iyo kasete n'ibindi bimenyetso biri muri dosiye birimo imvugo z'abatangabuhamya bari muri mitingi yo ku Kabaya biyumvиye amagambo yahavugiye agize ibyaha aregwa, kandi ko ubuhamya bwabo bukwiye guhabwa agaciro kuko buhuje n'amagambo akubiye muri iyo kasete, nyamara nta kimenyetso Mugesera Léon yatanze kivuguruza ibyo bimenyetso bimushinja.

[115] Ku bijyanye n'ihererekanya rya disikuru yo ku Kabaya iri kuri kasete, uhagarariye Ubushinjacyaha avuga ko mu gika cya 13 n'ibikurikiraho by'urubanza rwajuririwe, Urukiko

Rukuru rwasobanuye uburyo iyo kasete yahererekanyijwe, aho rwasobanuye ko Mugesera Léon akimara kuvuga iryo jambo ku wa 22/11/1992, nyuma y'iminsi ine (4) gusa, ni ukuvuga ku wa 26/11/1992, Ubushinjacyaha bwahise busohora inyandiko yo kumufata no kumufunga, maze bwandikira Orinfor buyisaba kasete ikubiyemo iryo jambo, maze iryohereza yemeza ko Radio Rwanda yarifashe ku wa 22/11/1992 mu rwego rwo gutara no gutangaza inkuru, kandi ko kasete y'umwimerere (*original*) ikubiyemo iryo jambo ibitse mu bubiko bwayo kuko ari umutungo wayo, uretse ko yahaye Ubushinjacyaha kopi yaryo mu rwego rw'ikurikiranacyaha. Avuga kandi ko ku wa 22/05/1995, Murutampunzi Boniface wari Umunyamakuru kuri Radio Rwanda yemeje ko ariwe wavanye iyo kaseti mu bubiko bwayo ayiha Nyirantabashwa Ange wari umutekinisiye kuri Radio Rwanda kugira ngo ayikorere kopi, ndetse ko n'Urukiko Rukuru rwasesenguye ibyo bimenyetso byose, rusanga ijambo Mugesera Léon yavugiye ku Kabaya ku wa 22/11/1992 riri kuri kasete cyangwa «CD», rikwiye gufatwa nk'ikimenyetso kuko ari umwimerere, ariko ko Mugesera Léon n'umwunganira batagaragaje inenge ziri muri ibyo bisobanuro kuko batigeze bagaragaza uburyo iryo jambo ryahinduwe (*montage*), ni ukuvuga ibyaryongewemo, ibyarikuwemo cyangwa ibyarihinduwemo n'uwarihinduye.

[116] Yongeraho ko Mugesera Léon atatunguwe no kuvuga ijambo ryo ku Kabaya, ko ahubwo yarivuze yabanje kuritegura nk'uko byumvikana kuri kasete cyangwa «CD» nk'uko n'Urukiko Rukuru rwabisobanuye, harebwe n'uburebure bwaryo, uburyo mu kuritangira yabanje kuvuga ko ari buvuge ku ngingo enye (4) z'ingenzi zirigize, n'uburyo nyuma y'aho, yagiye avuga ingingo ku yindi kugeza azirangije zose, ariko ko

n'ubwo Mugesera Léon yaba atari yariteguye, ataricyo cyamukuraho uburyozwacyaha.

UKO URUKIKO RUBIBONA

[117] Ingingo ya 119 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko « Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa ».

[118] Naho ingingo ya 121 y'Itegeko ryavuzwe haruguru, iteganya ko « Urukiko rushobora gushingira na none ku majwi yafashwe hakoreshejwe ibyuma byabugenewe ibyo ari byo byose cyangwa amashusho yafashwe hakoreshejwe icyuma gifata amashusho agenda ». Na none ingingo ya 127 y'iryo Tegeko, iteganya ko « Umuburanyi utanze ikimenyetso gishingiye ku biganiro byafashwe agomba gutanga umutangabuhamya wari uhibereye bafata ayo majwi, cyangwa se ushobora kumenya nyiraryo. Urukiko rushobora gushyiraho umuhanga ugenzura ko iryo jwi ari iry'uwo ryitirirwa ».

[119] Muri dosiye hari inyandiko – mvugo yo ku wa 17/01/1996, igaragaza ko Mugesera Léon yemereye imbere y'Umukemurampaka (*arbitre*) wo mu gihugu cya Canada ko

amagambo (*thèmes*) n'ijwi yumvise biri kuri kasete bihuje neza na disikuru yavuze[47].

[120] Dosiye igaragaza kandi ko mu gika cya 46 cy'urubanza 2005 S.C.R. 40, rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005[48], haburana mugesera Léon na Canada (M.C.I), urwo Rukiko rwasobanuye ko disikuru ya Mugesera Léon yafatiwenomero kuri kasete, yashyizwe mu rurimi rw'ikinyarwanda na Thomas Kamanzi wari wiyambajwe nk'umuhanga, ndetse ko mu iburanisha ryabereye imbere y'Umukemurampaka (*arbitre*) wo mu gihugu cya Canada ku wa 17/01/1996, hagaragajwe ko inyandukuro (*transcription*) y'iyo kasete (*composite nº 4)* yashyizwe muri dosiye, ihuje neza (*correspondait en tous points*) na disikuru (*discours, speech*) Mugesera Léon yavuze, nk'uko na Mugesera Léon ubwe yabyiyemereye mu Nama Ntegurarubanza (*Conférence préparatoire*) yo ku wa 30/01/1997 nk'uko binagaragarira mu rubanza rwaciwe na «Section d'Appel de l'Immigration (SAI), mu gika cyarwo cya 135.

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[47] Umukemurampaka yabajije M. Mugesera ikibazo gikurikira: (…) *étant donné le thème ou les thèmes que vous avez développé et tout ça, la voix qu'on a entendu, est-ce qu'on peut dire que ça reflète sensiblement le discours que vous avez prononcé?* Mugesera Léon amusubiza ati: "*Ah, oui, oui, ça reflète sensiblement le discours là, depuis le début on le voit bien".*

[48] *Le discours de* M. Mugesera *a été enregistré puis transcript. Lors de l'audience devant l'arbitre, il a été démontré que la transcription de la cassette (« composite nº 4») versée au dossier correspondait en tous points de vue au discours prononcé. M. Mugesera l'a reconnu officiellement au cours d'une conférence préparatoire tenue la 30 janvier 1997 (Jugement de la SAI, par. 135.). L'arbitre a retenu la version de* M. Kamanzi. *La question du choix de la traduction a été longuement débattue, mais lors des plaidories finales, les intimés ont convenu que celle de* M. Kamanzi *refletait fidèlement le texte en* Kinyarwanda*".*

[121] Ibisobanuro bimaze kuvugwa haruguru bigaragarira kandi mu gika cya [14] cy'urubanza rujuririrwa, aho Urukiko Rukuru rwasobanuye ko umuhanga Peter Fraser wari wiyambajwe n'Umukemurampaka (*arbitre*) wo mu gihugu cya Canada yagaragaje ko ijambo riri kuri iyo kasete ariryo Mugesera Léon yavugiye ku Kabaya kuko nta cyarihinduweho nk'uko byasobanuwe mu rubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada rwavuzwe haruguru.

[122] Na none mu gika cya [15] na [19] by'urubanza rujuririrwa. Urukiko Rukuru rwasobanuye ko rwagereranyije ijambo ryoherejwe muri Canada riri kuri kasete n'ijambo riri kuri « *compact disk* » (CD) n'inyandukuro yaryo rwashyikirijwe n'Ubushinjacyaha, ko hanashingiwe no ku manza zaciwe n'Inkiko zo muri Canada zavuzwe haruguru, rwasanze ijambo rwashyikirijwe n'Ubushinjacyaha ariryo MUGESERA Léon yavugiye muri "*meeting* » ya MRND yo ku wa 22/11/1992 nk'uko yanabyiyemereye mu Nkiko zo mu gihugu cya Canada, maze Urukiko Rukuru rwemeza ko iryo jambo ryafatiwe kuri kasete rikanashyirwa kuri « *compact disk* » (CD), ari ikimenyetso muri urwo rubanza kuko ryabonetse mu buryo butanyuranyije n'ibiteganywa n'ingingo ya 127 y'Itegeko ryavuzwe haruguru.

[123] Dosiye igaragaza na none ko muri uru Rukiko, Mugesera Léon yemeye ko yari muri "meeting » yabereye ku Kabaya ku wa 22/11/1992, kandi ko yahavugiye ijambo ari imbere y'abaturage benshi bari bateraniye muri iyo mitingi, maze mu iburanisha avuga ko n'ubwo atibuka ijambo yavuze, ashobora gusesengura ijambo ryashingiweho aregwa, aba aribyo akora ndetse arishyira muri « *contexte* » ryavugiwemo.

[124] Urukiko rurasanga, kuba umuhanga witwa Peter Fraser yaremeje ko ijambo riri kuri kasete (*composite nº 4*) rihuje neza na disikuru y'umwimerere Mugesera Léon yavuze, kandi na Mugesera Léon ubwe akaba yarabyemereye muri Canada ku wa 17/01/1996 no ku wa 30/01/1997, aho yemeje ko ijambo riri kuri kasete yumvise rihuje neza n'iryo yavugiye muri mitingi yabereye ku Kabaya ku wa 22/11/1992, ndetse n'imbere y'uru Rukiko, Mugesera Léon akaba yaremeye ko yari muri iyo mitingi, kandi ko yanayivugiyemo ijambo, ndetse akaba yaranasesenguye iryo jambo anarishyira muri « contexte » yaryo, bigaragara nta shiti ko iryo jambo ryafatiwe kuri kasete rikanashyirwa kuri « *compact disk* » (CD), ari ikimenyetso cy'uko iryo jambo ryavuzwe na Mugesera Léon nk'uko arikurikiranweho muri uru rubanza kuko ryabonetse mu buryo bukurikije amategeko yavuzwe haruguru nk'uko byemejwe n'Urukiko Rukuru.

[125] Urukiko rurasanga imvugo ya Mugesera Léon y'uko Urukiko Rukuru rutagombaga kumuhamya icyaha hashingiwe kuri kasete yavuzwe haruguru, kubera ko Peter Fraser yemeje ko atari umwimerere bitewe n'uko yahinduwe (*truqué)* nta shingiro ifite, kuko nta kuri kuyirimo, kuko muri « *contre-interrogatoire*» yo ku wa 23/06/1995, Peter Fraser yemeje ko ijambo riri kuri kasete (*composite nº 4*) rihuje na disikuru y'umwimerere Mugesera Léon yavuze[49] nk'uko byanashimangiwe n'uwo Mukemurampaka[50].

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[49] (…) *then tape number 4 would in all probability be what was given in the original speech. Probability. (...) It's my opinion that this and this would be the same.*

[50] *Nous avons ici un expert dans son domaine, qui a conduit certains examens, et qui nous dit que sur la balance des probabilités, le "tape" numéro 4 serait l'enregistrement original du discours».*

[126] Urukiko rurasanga kandi imvugo ya Mugesera Léon y'uko Urukiko Rukuru rutagombaga kumuhamya icyaha hashingiwe ku ijambo riri kuri kasete ryavuzwe haruguru kubera ko rutagaragaje uwarifashe n'uburyo ryagiye rihererekanwa kuva ku Kabaya kugeza ku Mushinjacyaha Mukuru nta shingiro ifite, kuko uretse no kuba Mugesera Léon yariyemereye ko ariwe warivuze nk'uko byasobanuwe haruguru, mu bika bya [17] na [18] by'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko iryo jambo rikimara kuvugirwa muri mitingi yo ku Kabaya ku wa 22/11/1992, iryo jambo ryafashwe na Radio Rwanda mu rwego rwo gutara no gutangaza inkuru, ko kandi iyo kasete iri mu bubiko bwayo, ndetse ko ku wa 27/11/1992, Orinfor yoherereje Ubushinjacyaha kopi y'iyo kasete, ibuha n'uburenganzira bwo kuyikoresha mu kazi kabwo. Urwo Rukiko rwasobanuye kandi ko ku wa 22/05/1995, Murutampunzi Boniface, wari Umunyamakuru kuri Radio Rwanda guhera mu kwezi kwa 11/1992, yemeje ko abisabwe n'Umuyobozi we hari n'uhagarariye « *Ambassade* » ya Canada mu Rwanda, i Kigali, yakuye mu bubiko bwa Orinfor kasete y'umwimerere yafatiweho iryo jambo, ayiha Nyirantabashwa Ange, wari umutekinisiye kuri Radio Rwanda, ayikorera kopi nk'uko n'uyu yabyemeje.

[127] Hashingiwe ku bisobanuwe haruguru, Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze ubwo rwemezaga ko ijambo riri kuri kasete no kuri « compact disk » (CD) rwashyikirijwe n'Ubushinjacyaha nk'uko riri ku mugereka (annexe) w'uru rubanza rikwiye gufatwa nk'ikimenyetso mu rubanza kuko ryabonetse mu buryo bukurikije amategeko, kuko nta kimenyetso Mugesera Léon yatanze kibivuguruza, bityo iyi mpamvu ye y'ubujurire ikaba nta shingiro ifite.

2. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu guhamya Mugesera Léon ibyaha hashingiwe ku buhamya bumushinja ibinyoma.

2. 1. Ku birebana n'abatangabuhamya bamushinja ijambo yavugiye ku Kabaya.

[128] Mugesera Léon anenga ko Urukiko Rukuru rwashingiye ku batangabuhamya batavugisha ukuri no ku buhamya bwa bamwe badafite ubumenyi ku byo batangira ubuhamya, asobanura ibyo anenga abo yise abatangabuhamya basanzwe, n'ibyo anenga abangabuhamya b'inzobere.

[129] Ku byerekeye abatangabuhamya basanzwe (*témoins ordinaires*), Mugesera Léon anenga ko Urukiko Rukuru, rubyibwirije, rwahisemo kumva gusa abatangabuhamya 28 mu batangabuhamya 45 bashingiweho n'Ubushinjacyaha bumurega, ko yagombye guhabwa umwanya wo kuvuguruza imvugo z'abatangabuhamya bose kuko imvugo zose ziri muri dosiye zigira uruhare mu isesengura ry'urubanza hatitawe ku kuba abatangabuhamya barahamagawe mu Rukiko cyangwa batarahamagawe mu Rukiko.

[130] Mu kunenga imvugo z'abatangabuhamya bashingiweho n'Urukiko Rukuru, Mugesera Léon avuga ko bamwe muri bo bamushinja bibeshyera ko bari muri « *meeting* » yabereye ku Kabaya ku wa 22/11/1992, nyamara batarahageze, ko abandi bashyiramo amarangamutima bagakoresha amagambo ataboneka mu ijambo ashinjwa kuba yaravuze uwo munsi, ko hari n'abagambanye kumubeshyera babitewe n'idini bahuriyemo cyangwa amasano y'ubuvandimwe, abandi nabo ngo bakaba bamushinja ko ijambo yavuze ryabaye imbarutso yo kwica abatutsi bari muri ako karere, nyamara ngo badashobora

gutanga ikimenyetso cy'isano iri hagati y'abantu bishwe n'ijambo ashinjwa kuba yaravugiye ku Kabaya.

[131] Mugesera Léon avuga ko abatangabuhamya bavuze ko bumvise disikuru yo ku Kabaya kuri Radio Rwanda bamubeshyera kubera ko Higiro Jean Marie Vianney utaravugaga rumwe n'ubutegetsi bwariho icyo gihe, kandi wanakoraga kuri Radio Rwanda yavuze ko iyo disikuru itigeze inyura kuri Radio Rwanda.

[132] Mugesera Léon anenga ubuhamya bwatanzwe na Hategekimana Iddi uvuga ko yari mu nama yabereye ku Kabaya, kandi ko yiyumviye Mugesera Léon avuga ko agatutsi kose kagomba kunyuzwa muri Nyabarongo, nyamara ngo iri jambo ntaho riboneka muri « discours » ashinjwa, ko kandi uyu yavuze ko nyuma y'ijambo rya Mugesera Léon hari abagogwe bishwe, nyamara ibi ngo bikaba bivuguruzwa na Lt Ruzibiza Abdoul wasobanuye kuri Radio « Voice of America » ku wa 02/05/2004 ko abagogwe bishwe n'Inkotanyi, ndetse n'uwari Ministiri w'Ubutabera mu mwaka wa 1992 nawe ngo akaba yarahamije ko nta muntu wishwe kubera ijambo ryavuzwe na Mugesera Léon.

[133] Mugesera Léon anenga Gashikazi Rajhab kuba abeshya ko yari muri « *meeting* » yo ku Kabaya kandi ko yiyumviye ijambo rye, nyamara mu buhamya bwe akavuga ko atigeze yumva ijambo « amatora » mu gihe iri jambo rigaruka inshuro 17 muri « *discours* » ashinjwa.

[134] Mugesera Léon yakomeje anenga abandi batangabuhamya bamushinja amagambo ataboneka muri « *discours* » aregwa, nyamara bavuga ko bayiyumviye, abandi ko bayabwiwe n'abitabiriye « meeting » yo ku Kabaya. Abo ni

Nyirabagirishya uvuga ko yabwiwe ko Mugesera Léon yavuze ko abatutsi ari inyenzi, Uwimana Salama wavuze ko yumvise Mugesera Léon avuga ko nta mututsi ugomba kubacika avuye muri Selire na Segiteri, Ntawuruhunga Hassan wavuze ko Mugesera Léon yavuze ko abahutu bagomba kwikiza abatutsi muri za Segiteri na Komini.

[135] Mugesera Léon anenga kandi Urukiko Rukuru kuba rwarashingiye ku buhamya bw'abantu bari baraciriwe imanza zo gutanga ubuhamya bw'ibinyoma. Abo ni PME waciriwe urubanza Nº RP 320/R3/2001 n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi ku wa 13/09/2002, ku cyaha cy'ubwicanyi no kubeshya, na PMK waciriwe urubanza RP 0075/TGI/NYGE n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 16/11/2009, ku cyaha cyo kubeshya inkiko.

[136] Mugesera Léon yaburanye avuga ko ikigaragaza ko abatangabuhamya bamubeshyera, ari uko mu manza zitandukanye hari abandi bagiye batanga ubuhamya bw'ibinyoma, kandi ko baje kubyiyemerera bavuga ko babikoze kubera ko Ubushinjacyaha bwabijeje imbabazi ku bihano bakatiwe n'inkiko. Abo ngo ni Nyabyenda Jean Marie watanze ubuhamya mu rubanza rwa Mwigimba Jean Baptiste, na Baziga Emmanuel kimwe na Hakizimana De Gaulle bemeye ko batanze ubuhamya bubeshyera Bandora.

[137] Ku byerekeye abatangabuhamya b'inzobere, Mugesera Léon yanenze ubuhamya bwa Ruzindana Matthieu (ufite PhD mu ndimi mu bijyanye n'ubutinde bw'amajwi) na Ntakirutimana Evariste, bafashwe nk'inzobere mu guha ubusobanuro ijambo « inzoka » n'ijambo « inyenzi », ko uretse no kuba badafite ubumenyi mu byo bari bahamagariwe gusobanura (*ils n'ont pas les compétences académiques en*

Léxicologie), ko nta hantu na hamwe bashingira bavuga ko ijambo « inyenzi » cyangwa « inzoka » bisobanura abatutsi, ko ahubwo bamwe mu biswe inzobere bagiye Arusha kwishakira amaramuko. Anenga kandi ko Urukiko Rukuru rwashingiye ku buhamya bwabo, nyamara rutarigeze rubahamagaza ngo rubumve, bityo nawe abone uburenganzira bwo kugira ibyo ababaza.

[138] Mugesera Léon anenga kandi Urukiko Rukuru kuba rwarashingiye ku ibarwa yitiriwe umutangabuhamya Rumiya Jean, nyamara ngo uyu muhanga mu mateka akaba adashobora guhamya ibyabereye ku Kabaya atarahageze, ko kandi imbere y'Urukiko muri Canada, uyu yavuze ko mu gihe cya jenoside, Mugesera Léon yari yaravuye muri MRND, ko yibwiraga ko yagiye muri FPR, bityo ko inyandiko yitirirwa Rumiya Jean nta gaciro yagombye guhabwa.

[139] Mugesera Léon avuga ko Urukiko Rukuru rwagombye kwita ku byagezweho n'abahanga bigereye mu Rwanda kuko ibyo bavuga babifitiye ubumenyi buhagije aribo, Jenerali Romeo Dallaire wari imbere y'Inteko Rusange ya ONU ku wa 30/03/1994 ayibwira ko nta kibazo kiri mu Rwanda, bityo ko atari kubura kuvuga imvururu zatewe n'ijambo rya Mugesera Léon iyo biza kubaho, ndetse ngo no mu gitabo cye yise « *j'ai serré la main du diable* », ntaho yavuze ibya Mugesera Léon. Avuga kandi ko impuguke zirimo Eric Gillet na Alison Des Forges, bakoreye mu Rwanda iperereza rikomeye mu 1993, aba bombi ngo bakaba batarigeze bavuga ko ijambo Mugesera Léon yavugiye ku Kabaya ryaba ryarateje jenoside.

[140] Ubushinjacyaha buvuga ko nta kosa Urukiko Rukuru rwakoze mu guhamya Mugesera Léon ibyaha hashingiwe ku buhamya bwatanzwe n'abatangabuhamya kubera ko bahurije ku

ngingo z'ingenzi zigize ijambo Mugesera Léon yavugiye ku Kabaya ryashishikarije icyaha cya jenoside ari zo : Kwita abatutsi inyenzi (inzoka) no kuba ibyitso by'abateye i Gihugu ; kubakata amajosi ; kunyuza abatutsi iy'ubusamo muri Nyabarongo ; kuba ikosa ryakozwe mu 1959 ari uko baretse abatutsi bakagenda none abana babo akaba aribo bateye i Gihugu, kandi ko banahuriza ku kuba nyuma y'iryo jambo, ubwicanyi bw'abatutsi bari batuye muri ako karere bwarahise butangira.

[141] Ubushinjacyaha buvuga kandi ko Urukiko Rukuru rwashingiye ku ireme ry'ubuhamya bwatanzwe, n'ubwo ababutanze bashobora gukoresha amagambo atandukanye mu gusobanura ibyo biyumviye ubwabo cyangwa ibyo babwiwe, ko kandi nyuma y'imyaka irenga 20, umutangabuhamya adashobora gusubira mu nkuru akoresheje amagambo asa neza n'ayo Mugesera Léon yavuze, ibyo ngo Urukiko Rukuru rukaba rwarabihamije rushingiye no ku manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, busaba ko n'uru Rukiko rwabirebera muri uwo murongo.

[142] Ubushinjacyaha bwasobanuye ko Mugesera Léon adakwiye gushingira ku isano iri hagati y'abamushinja asaba ko ubuhamya bwabo buteshwa agaciro, kuko kuba bamwe muri bo bafitanye isano n'abishwe no kuba bamwe mu bamushinja barakatiwe n'inkiko, ko ahubwo yagombye kunenga ireme ry'ubuhamya bumutangwaho, kandi ko ibyo atabishoboye nk'uko byahamijwe n'Urukiko Rukuru, ndetse ko n'ubu atavuguruza ubuhamya bumutangwaho kuko ibyo bahamije bihura n'ibikubiye mu ijambo ashinjwa kuba yaravugiye ku Kabaya.

[143] Ku birebana n’abatangabuhamya Mugesera Léon yita inzobere, Ubushinjacyaha buvuga ko nta nzobere ziyambajwe mu rubanza rujuririrwa, ko ahubwo ubuhamya izi nzobere zatanze mu manza zitandukanye zaciwe n’Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (nko mu rubanza rwa Akayezu n’urwa Nyiramasuhuko Pauline na bagenzi be) n’ubwatanzwe mu rubanza Mugesera Léon yaciriwe mu gihugu cya Canada, ari bwo bwifashishijwe mu gusobanura amwe mu magambo akubiye mu ijambo Mugesera Léon yavugiye ku Kabaya ashishikariza abantu gukora jenoside. Buvuga ko amwe mu magambo yahawe ubusobanuro bwite hakurikijwe igihe yavugiwe ari « inyenzi », « ibyitso by’abateye i Gihugu », amagambo yakoreshwaga n’abashishikarije umugambi wa jenoside, ariko ko birindaga kwerura ngo bavuge ko ari ubwoko bw’abatutsi, ko kandi aya magambo ari yo aboneka mu ijambo Mugesera Léon ashinjwa, aho yavuze ko aba aribo bagomba gukatwa amajosi, bakicwa kandi bakanyuzwa iy’ubusamo muri Nyabarongo bagasubira iwabo muri « Ethiopie

UKO URUKIKO RUBIBONA

[144] Ingingo ya 18 y’Itegeko N^{o} 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y’u Rwanda, ivuga ko Umushinjacyaha cyangwa uregwa bafite uburenganzira bwo kujuririra icyemezo cyafashwe n’Urukiko Rukuru mu gihe habayeho ukwibeshya gushingiye ku ngingo y’Itegeko gutuma icyemezo gita agaciro cyangwa ukwibeshya gushingiye ku byabaye kwatumye rucibwa nabi.

[145] Naho ingingo ya 65 y’Itegeko N^{o} 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo,

ikavuga ko Urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa.

[146] Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze mu guhitamo kumva abatangabuhamya 28 mu mwanya wo kumva abatangabuhamya bose babajijwe n'Ubushinjacyaha kuko, Urukiko ari rwo rusuzuma imvugo zatanzwe n'abatangabuhamya rukamenya izihuje na kamere y'urubanza n'uko ibintu byagenze, bikaba bitari mu nyungu z'ubutabera n'iz'ababuranyi guhamagaza abatangabuhamya badafite ubumenyi ku kiburanwa, kandi batanashoboraga no gufasha Urukiko kugera ku kuri gukenewe nk'uko biteganywa mu ngingo ya 2[51] n'iya 65[52] z'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[147] Urukiko rurasanga ingingo Mugesera Léon ashingiraho anenga abatangabuhamya babajijwe ku bijyanye n'ijambo ashinjwa kuba yaravugiye ku Kabaya ku wa 22/11/1992 ari nazo zasuzumwe n'Urukiko Rukuru ku rwego rwa mbere nk'uko biboneka mu rubanza rwaciye, kuva ku gika cya 67 kugeza ku cya 69, aho yavuze ko abatangabuhamya bivuguruza ndetse bakavuguruzanya mu buhamya bwabo kuko bavuga ibyo batahagazeho, ko hari amagambo bamushinja ataboneka mu ijambo aregwa kuba yaravugiye ku Kabaya ndetse ntibagaruke ku magambo y'ingenzi aboneka mu

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[51] Ingingo ya 2 y'Itegeko ryavuzwe haruguru, iteganya ko "Ikimenyetso cyo mu rubanza ni uburyo bukoreshwa kugira ngo ukuri kw' ibyabaye kugaragare.

[52] Ingingo ya 65 y'Itegeko ryavuzwe haruguru, iteganya ko "Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa.

ijambo ryashyikirijwe Urukiko, kandi ko hari bamwe mu batangabuhamya bireze bakemera icyaha, bamushinja ibinyoma kubera kwigura, naho abandi ngo bakaba bamushinja ibinyoma kubera isano bafitanye n'abantu bishwe.

[148] Urukiko rurasanga, mu gika cya 71 cy'urubanza rujuririrwa, Urukiko Rukuru rwarasesenguye uko bikwiye aho rwahereye rushingira ku mvugo z'abatangabuhamya bavugwa muri uru rubanza, aho rwagaragaje ko ubuhamya bwabo bufite ireme, kuko n'ubwo babivuga mu magambo yabo, ibyo bavuga bihura n'ijambo Mugesera Léon yavugiye ku Kabaya nk'uko ryumvikana kuri « CD » no mu nyandukuro yarikorewe. Rwasanze kandi, uburyo abatangabuhamya bavuga ibyo biyumviye cyangwa bumvanye abandi, bigaragara ko bavuga ibyo bazi kuko bose bahuriza ku ngingo z'ingenzi zigaruka ku magambo ashishikariza gukora jenoside arimo kwita abatutsi inyenzi, ibyitso by'abateye igihugu, ko bagomba kubakata amajosi, kubanyuza iy'ubusamo muri Nyabarongo bagasubira muri Etiyopiya, aho baturutse, ko ikosa ryakozwe mu 1959, ari uko babaretse bakagenda none abana babo bakaba aribo bateye igihugu. Rwasanze kandi aba batangabuhamya bahuriza no kuba ijambo rya Mugesera Léon ryarabaye imbarutso y'ibitero byahitanye abatutsi benshi ku Gisenyi no mu nkengero zayo, abandi bagasenyerwa.

[149] Urukiko rurasanga na none ubuhamya bwashingiweho n'Urukiko Rukuru bwarasesenguwe neza, kuko uretse no kubugereranya n'ibyo rwiyumviye kuri « CD », mu gika cya 75 cy'urubanza rujuririrwa, rwasanze na none, amagambo yavuzwe n'abatangabuhamya ahuza n'ibyanditswe n'ibitangazamakuru byagarutse ku ijambo rya Mugesera Léon n'ingaruka ryagize,

birimo ikinyamakuru Umurangi No 14 cyo ku wa 10/12/1992, cyanditse ko Mugesera Léon yavugiye ku Kabaya ijambo rivuga ko bagomba gukata abatutsi amajosi bakabaroha muri Nyabarongo, ikinyamakuru Rwanda Rushya No 34 cyo mu Ukuboza 1992, cyanditse ko Mugesera Léon yavugiye muri « meeting » yo ku Kabaya ko hari abanyarwanda b'abanyetiyopiya bagomba kunyuzwa muri Nyabarongo kugira ngo bagereyo bwangu, ikinyamakuru Isibo cyo ku wa 24-31 Ukuboza 1992, cyavuze ko ibyo Mugesera Léon yavugiye ku Kabaya ku wa 22/11/1992 byashyizwe mu bikorwa n'Interahamwe n'Impuzamugambi muri Kibirira ku wa 28/12/1992, ikinyamakuru Kinyamateka No 387, cyasohotse muri Gashyantare 1993, cyanditse kuri disikuru Mugesera Léon yavugiye ku Kabaya asaba abanyagisenyi mu magambo ataziguye kwica abo batavugaga rumwe[53].

[150] Urukiko rurasanga na none, mu guha agaciro ubuhamya bwatanzwe, Urukiko Rukuru rwarasanze ibyo bavuze bihuza n'ibyo impuguke zemeje zirimo Komisiyo Mpuzamahanga ku burenganzira bwa muntu, aho muri raporo yayo yo ku wa 07-21/10/1993 yagarutse ku ijambo rya Mugesera Léon nk'umuntu washishikarije ku buryo bukomeye ubugizi bwa nabi, Rumiya Jean, umwalimu muri Kaminuza, wandikiye Mugesera Léon urwandiko rufunguye rwo ku wa 02/12/1992 rwamagana ijambo rye ryahamagariye kwica abatutsi n'abayoboke b'amashyaka ataravugaga rumwe na MRND na Philip Reyntjens, umwalimu muri Kaminuza, nawe wanditse avuga ko ijambo Mugesera Léon yavugiye ku Kabaya mu 1992 ryari rutwitsi, kuko rihamagarira kwica abatutsi n'abanyapolitike batavugaga rumwe n'ubutegetsi bwariho.

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[53] Reba igika cya 75 cy'urubanza rujuririrwa No RP 0001/12/CCI

[151] Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze mu isesengura rwakoze kuko rwasuzumye ireme ry'ubuhamya bwatanzwe rubugerereranya n'amagambo bavuze n'ibindi bimenyetso byariho mbere yuko ubuhamya butangwa nk'uko bisobanuwe mu bika bivuzwe haruguru, by'umwihariko amagambo bavuze akaba ahuje n'akubiye muri *cassette* yafatiweho ijambo Mugesera Léon akurikiranyweho agashyirwa no kuri CD », ndetse agakorerwa inyandukuro. Urukiko Rukuru na none, rwasobanuye ku buryo bwumvikana ko kuba bamwe mu batangabuhamya bafitanye isano, abandi bahuriye ku idini, abandi bashobora kuba baraganiriye hagati yabo mbere yo gutanga ubuhamya, bitabuza Urukiko gushingira ku buhamya bwabo kuko bufite ireme kandi bugahuza n'ibindi bimenyetso byatanzwe n'Ubushinjacyaha.

[152] Urukiko rurasanga kandi, nk'uko biboneka mu gika cya 72 cy'urubanza rujuririrwa, mu gutesha agaciro impamvu Mugesera Léon ashingiraho avuga ko Urukiko Rukuru rutagombaga gushingira ku buhamya bwa bamwe bavuze amagambo adahuza n'ijambo ashinjwa kimwe n'abandi batagarutse ku magambo yibanzweho muri iri jambo, Urukiko Rukuru rwarashingiye ku manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda zirimo urwa Bikindi Simon[54] n'urwa Muvunyi Tharcisse[55], zagaragaje ko ubuhamya butanzwe nyuma y'igihe kinini bureberwa mu ireme ryabwo kabone n'iyo ababutanga baba bakoresha amagambo yabo bwite mu gusobanura ibyo biyumviye cyangwa ibyo babwiwe.

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[54] ICTR-2001-72-T, The Prosecutor vs. BIKINDI Simon, 2nd December 2008, para.32.

[55] ICTR-00-55A-T, The Prosecutor vs. MUVUNYI Tharcisse, 11th February 2010, para. 56, 58, 91-94 .

[153] Urukiko rw'Ubujurire ruremeranywa n'umurongo uvuzwe haruguru kuko abatangabuhamya bumvise cyangwa babwiwe ijambo Mugesera Léon ashinjwa kuba yaravugiye ku Kabaya, buri wese, nyuma y'igihe kinini, yasigaranye mu mutwe we iryamukoze ku mutima, kandi mu kurisobanura akaba ashobora gukoresha amagambo ye, Urukiko akaba ari rwo rufite inshingano yo kwemeza ko ubuhamya butanzwe buhuje na kamere y'ikiburanwa kandi ko bukiranuye, ari byo Urukiko Rukuru rwakoze ubwo rwagereranyaga ubuhamya bwatanzwe n'ibindi bimenyetso rwashyikirijwe biri muri dosiye byavuzwe haruguru.

[154] Ku birebana n'imvugo ya Mugesera Léon y'uko hari abantu muri Gereza batanga ubuhamya bushinja ibinyoma kubera ko bijejwe kugabanyirizwa ibihano, aho atanga urugero rw'abemeye ko bashinje ibinyoma Bandora na Mwigimba, Urukiko rurasanga, uretse no kuba nta bimenyetso abitangira, aterekana isano bifitanye n'urubanza aburana.

[155] Urukiko rurasanga ku birebana n'abatangabuhamya b'inzobere, Mugesera Léon anenga ko Ntakirutimana Evariste na Ruzindana Mathias batanze ubusobanuro bw'ijambo « inyenzi » n'ijambo « ibyitso » babihuza n'ubwoko bw'abatutsi, nyamara ngo badafite ubumenyi buhagije ku bijyanye no gutanga ubusobanuro bw'amagambo. Urukiko rurasanga abahanga bavugwa muri iki gika barifashishijwe mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Muvunyi Tharcisse n'urwa Nyiramasuhuko Pauline[56], aho bagaragaje ko aya magambo yakoreshejwe n'abanyapolitike batifuzaga ko amahanga atahura umugambi bari bafitiye abatutsi.

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[56] ICTR- 98-42-2183/01 rwaciwe na TPIR ku wa 14/12/2015

[156] Urukiko rurasanga, mu miburanire ye mu Rukiko Rukuru, MUGESERA Léon yaraburanishije ibisobanuro byatanzwe n'umuhanga KAMANZI Thomas wavugiye mu Rukiko rwa Canada ko ijambo « inyenzi » rivuga « inyeshyamba », ko ijambo «ibyitso » ritavuga « abatutsi », ko ahubwo rivuga abemeye gufatanya n'abanzi bari bateye u Rwanda, naho ijambo « inzoka » ngo rikaba rishobora gusobanura umuntu w'indyadya Urukiko rurasanga kandi mu Rukiko Rukuru, MUGESERA Léon yaraburanye avuga ko amagambo atagira ibisobanuro, ko ahubwo agira uko akoreshwa (*les mots n'ont pas de sens, ils ont des emplois*)[57].

[157] Urukiko rurasanga, mu gika cya 42 cy'urubanza rujuririrwa, Urukiko Rukuru ari rwo rwahaye ubusobanuro amagambo « inyenzi n'ibyitso byazo », « inzoka », « abohereje abana babo mu Nkotanyi », « abemerewe gusohoka mu gihugu mu 1959 », ruhuje ayo magambo n'ibihe abatutsi barimo, bicwa bazira ko bafatanyije n'Inkotanyi zari zateye u Rwanda, rwemeza ko aya magambo yaganishaga ku batutsi, Urukiko rw'Ubujurire rukaba rwemeranywa n'umwanzuro wagezweho n'Urukiko Rukuru kuko rwasesenguye ayo magambo ruyashyize mu gihe yavugiwemo rukurikije n'ubuhamya bwatanzwe na Kadogo Hachim, Nyirabagirishya Raphaël, PME, Ngerageze Muhamudu, Ntawuruhunga Hassan, na Hategekimana Iddi, bemeza ko iri jambo barifashe nko gushishikariza kwica abatutsi kuko nyuma ya « *meeting* » hatangiye ubugizi bwa nabi bica, basahura, banasenyera abatutsi[58]. Rurasanga kandi, kuba ijambo « inyenzi » ryakoreshejwe muri disikuru Mugesera Léon ashinjwa, rivuga

[57] Reba igika cya 34 cy'urubanza rujuririrwa Nº RP 0001/12/CCI
[58] Reba igika cya 78 cy'urubanza rujuririrwa Nº RP 0001/12/CCI

umututsi, Urukiko rubihurizaho n'Umwanditsi Susan Benesch[59] wasesenguye imikoreshereze y'iri jambo mu bihe bitandukanye byaranze amateka y'u Rwanda.

[158] Urukiko rurasanga, ingingo Mugesera Léon ajuririsha anenga ko Urukiko Rukuru rwashingiye ku buhamya bw'inzobere zitabifitiye ubumenyi nta shingiro ifite, kuko Urukiko Rukuru rutigeze rubiyambaza nk'abatangabuhamya mu rubanza rwaciye, ko ahubwo rwikoreye isesengura ry'amagambo nk'uko byasobanuwe mu gika kibanziriza iki, rukaba rwarashimangiye ubusobanuro bwahaye amagambo yavuzwe haruguru rwifashishije ibisobanuro byatanzwe n'impuguke Ruzindana Mathias na Ntakirutimana Evariste bitabajwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, aho nabo basobanuye ko amagambo « inyenzi n'ibyitso byazo » yakoreshwaga havugwa abatutsi bakoresheje imvugo iziguye kugira ngo amahanga adatahura umugambi w'ubutegetsi bwariho mu gutoteza abatutsi.

[159] Rurasanga na none, Urukiko Rukuru mu gushimangira ubusobanuro bwahaye amagambo « inyenzi n'ibyitso byazo » n'ijambo « inzoka », rwarifashishije inyandiko yo ku wa 21/09/1992 yavuye mu Buyobozi Bukuru bwa Gisirikari,

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[59] *The term "inyenzi" was coined in the 1960s to refer to Tutsi rebel fighters who conducted nighttime attacks in Rwanda and then disappeared before daylight into neighboring countries. In the early 1990s the term referred to the Tutsi rebels of the RPF, but it also came to mean perceived enemies of the Hutu government, and later any Tutsi person, "inyenzi" was a leitmotif of Mugesera's speech. Since the meaning of the word changed dramatically over time, it cannot be understood without asking: what did it mean to a particular audience at a particular moment?*" (Susan Benesch: "Vile crime or inalienable right: Defining incitement to commit genocide" in Virginia Journal International Law, p. 486).

yagarutsweho muri raporo y'impuguke[60] nayo ivuga ko umwanzi wavugwaga icyo gihe yari umututsi uri mu Gihugu, hanze yacyo cyangwa umushyigikiye, ibi bikaba biha ireme ubusobanuro bw'amagambo bwagezweho n'uru Rukiko.

[160] Urukiko rurasanga kandi, ubusobanuro bwatanzwe na Ruzindana Mathias na Ntakirutimana Evariste ku magambo « inyenzi n'ibyitso byazo » buhuza n'ubwatanzwe n'Urukiko rw'Ikirenga rwa Canada rwasobanuye ko ijambo « inyenzi » ryakoreshejwe muri « discours » Mugesera Léon ashinjwa, rifite inkomoko mu bitero by'impunzi z'abatutsi zateraga u Rwanda mu 1960 zishaka gutaha, Mugesera Léon akaba yararisanishije n'ijambo « Inkotanyi», ubwo yavugaga ko abateye u Rwanda badakwiye izina ry'Inkotanyi, ko ahubwo bakwiye kwitwa inyenzi ndetse n'ubwo yavugaga ko ibyitso by'inyenzi bigomba kwicwa kugira ngo ikosa ryakozwe mu 1959 ryo kubareka bagasohoka ridasubira, Urukiko ruhuje aya magambo n'igihe yavugiwemo ubwo abatutsi basaga 2.000 bicwaga hagati ya 1990 na 1993, rwanzura ko inyenzi n'ibyitso byazo bivugwa ari abatutsi[61].

[161] Urukiko rurasanga, ubumenyi buke buvugwa na Mugesera Léon ku nzobere ziyambajwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ntaho abushingira kuko, ubusobanuro bahaye ijambo « inyenzi » buhura n'ibyanditswe n'izindi mpuguke Mugesera Léon adafite icyo anenga barimo Jenerali Romeo Dallaire, wayoboye ingabo mpuzamahanga zari zishinzwe kugarura amahoro mu Rwanda,

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[60] Rapport de la Commission Internationale d'enquête sur les violations des droits de l'homme au Rwanda depuis le1er Octobre 1990, p. 63.

[61] Supreme Court of Canada, file No 30025, Mugesera vs. Canada (Minister of Citizenship and Immigration), parag. 68.

ndetse Mugesera Léon yemera nk'impuguke zari mu Rwanda, uyu nawe akaba yaranditse avuga ko abategetsi b'abahutu n'ibitangazamakuru bagereranyaga abatutsi n'« inyenzi »[62]

[162] Urukiko, rushingiye ku bisobanuro bitanzwe mu bika bibanziriza iki, rurasanga ingingo Mugesera Léon ajuririsha avuga ko Urukiko Rukuru rwamuhamije ijambo ryavugiwe ku Kabaya rushingiye ku buhamya butavugisha ukuri, nta shingiro ifite.

2.2. Ku birebana n'abatangabuhamya bamushinja ijambo yavugiye mu nama y'I Nyamyumba.

[163] Mugesera Léon, yunganiwe na Me Rudakemwa Jean - Félix, avuga ko uretse no kuba atarigeze aboneka mu nama ashinjwa ko yabereye i Nyamyumba ku wa 06/07/1992, ko yacukumbuye agasanga abatangabuhamya Rwasubutare Callixte na Sinayobye André barakoze akagambane ko kumushinja ibinyoma, kuko yasanze ubuhamya bwanditse, aba bombi batanze busa mu miterere no mu myandikire yabwo, ndetse n'umukono uboneka ku buhamya bwitiriwe aba bombi ari uwa Rwasubutare Callixte kuko usa n'uboneka ku rwandiko rwe rwo ku wa 20/10/2008 yabonye muri Gereza, nyamara ngo mu Rukiko Rukuru aba bombi bakaba baravuze ko batari kumwe igihe batangaga ubwo buhamya.

[164] Mugesera Léon anenga kandi abamushinja kuba yari mu nama bivugwa ko yabereye I Nyamyumba avuga ko bamushinja ko yari kumwe n'uwari Umunyamabanga Mukuru wa MRND, Habimana Bonaventure, kimwe na Ngirumpatse Matthieu

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[62] (…) *for example, hutus leaders, editors and broadcasters famously described tutsi people as inyenzi or cockroaches* Romeo Dallaire: Shake the hand of the devil, 2005, p.142.

bavuga ko yari Perezida wa MRND, nyamara ngo kuri iyi tariki ivugwa aba bombi bakaba batari bari muri iyi myanya y'ubuyobozi bitirirwa. Byongeye kandi ngo iyo aza kuba ari kumwe n'aba bombi, ngo atari gufata ijambo hari abamukuriye mu ishyaka rya MRND ku rwego rw'igihugu.

[165] Ubushinjacyaha buvuga ko inama yabereye i Nyamyumba ku wa 06/07/1992, Mugesera Léon yayivugiyemo amagambo ashishikariza abahutu gutsemba abatutsi kuko ngo ari abagome bashaka kubica, ko ari inzoka, ko kandi basigiye ubumuga abasekuruza b'abahutu**,** bityo ko bagomba kubahiga, bakababafata, bakanyuzwa iy'ubusamo bagahinguka aho baturutse muri Abisiniya, bagashiraho kuko ababatera ari abana babo babyariye mu mahanga. Bukomeza buvuga ko Mugesera Léon abishinjwa na Sinayobye André na Rwasubutare Callixte babaye interahamwe kandi bavuga ko nyuma y'iyo nama, ubwabo bafatanyije n'abandi bishe abatutsi bari muri ako Karere.

[166] Ubushinjacyaha bwasobanuye kandi ko nta kagambane kabaye hagati y'aba batangabuhamya bombi kuko bavuze ibyo biyumviye mu nama ubwabo bari barimo kandi ko ibyo bavuze mu nyandiko ishinja Mugesera Léon babigarutseho mu iperereza, ariyo mpamvu Urukiko Rukuru rwahaye agaciro imvugo zabo.

UKO URUKIKO RUBIBONA

[167] Ingingo ya 62 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ubuhamya ari ibivugwa mu Rukiko bivuzwe

n’umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa, naho ingingo ya 71 y’iri Tegeko, ikavuga ko abatangabuhamya bose batuma urubanza rucibwa neza, bagira icyo baruvugaho.

[168] Urukiko Rukuru mu guha agaciro ubuhamya bwa Sinayobye André na Rwasubutare Callixte rwashingiye ku kuba aba bombi, n’ubwo buri wese abivuga mu magambo ye, ariko bahuriza ku kuba mu nama yabereye i Nyamyumba, Mugesera Léon yashishikarije abahutu kurwanya no kwica abatutsi abibutsa ubugome bagiriye ababyeyi babo, no kuba barasobanuye ku buryo burambuye nk’abantu bari bahibereye koko, ingaruka zakurikiye iri jambo. Urukiko rwasanze kandi kuba aba bombi baba barahuje ubuhamya bwanditse bidatesha agaciro ubuhamya bwabo kuko babugarutseho mu iperereza no mu ibazwa ryabo mu Rukiko Rukuru, kandi Mugesera Léon akaba atagaragaza icyo bamubeshyeraho.

[169] Urukiko rurasanga koko, Rwasubutare Callixte na Sinayobye André barasobanuye ku buryo bwimbitse ubuhamya bwabo imbere y’Ubushinjacyaha n’imbere y’Urukiko Rukuru, ndetse Mugesera Léon akaba yarahawe umwanya wo kubabaza ibibazo imbere y’urwo Rukiko, aba bakaba barasobanuye ibintu uko babibonye ndetse ubwabo bemera ko bagize uruhare mu gutoteza no kwica abatutsi bakimara kumva ijambo rya Mugesera Léon.

[170] Urukiko rurasanga nk’abantu bari mu nama, buri wese avuga amagambo yihariye mu byaranze disikuru ya Mugesera Léon, nk’aho Rwasubutare Callixte yavuze ko Mugesera Léon yababwiye ko ujya gusiga umuntu amurinda ndetse ngo akababwira ko kunyuza iy’ubusamo ari ugutsemba (côtes 111-112), naho Sinayobye André mu buhamya bwe avuga ko

yababajije niba batazi gutandukanya icyatsi n'ururo, kandi ngo akababwira gusobanukirwa intambara barimo n'inkomoko yayo, abibutsa amateka y'u Rwanda kuva mu 1959 n'ibitero byagabwe n'abatutsi mu 1963, mu 1973 no mu 1990. Sinayobye André yasobanuye uburyo interahamwe (na we arimo) zasabiwe « uniformes » na « bus » yo kubatwara ahabereye « meeting » ngo Habimana Bonaventure abemerera « bus » 2, ko mu gihe bajyaga mu nama yabereye i Budaha aribwo hakozwe ama lisiti y'interahamwe yakurikiwe no kubajyana ku ngoro ya muvoma (MRND) kuri Perefegitura, aho baherewe « uniformes n'ibikoresho byo guhiga abatutsi (côtes 116 - 121). Rurasanga ibisobanuro byatanzwe n'aba bombi byerekana ko bavuze ibyo bahagazeho ubwabo, ari yo mpamvu ubuhamya bwabo bukwiye guhabwa ishingiro nk'uko byemejwe n'Urukiko Rukuru.

[171] Urukiko rurasanga kandi, Rwasubutare Callixte na Sinayobye André bahuriza ku ngingo z'ingenzi zaranze inama yabereye i Nyamyumba, aho bombi bavuga ko yabereye ku ishuri rya Trinité Kivumu, ko mu bayobozi bayitabiriye harimo Mugesera Léon, Habimana Bonaventure na Ngirumpatse Matayo, Habiyambere Cosima, Banzi Wellars, Colonel Gahimano na Karemera Egide, ko Mugesera Léon yabasobanuriye amateka y'ubugome bw'abatutsi n'uburyo bakwiye kubasubiza iwabo muri Abisiniya, ko urubyiruko rwari muri iyo nama rwasabwe guhiga abatutsi, kandi ko bahise batera abari batuye hafi aho. Rurasanga kuba bavuga ibijya guhura nk'abantu bari mu nama imwe, ku munsi umwe, waranzwe n'ibikorwa byihariye, bidakwiye gufatwa nk'inenge nk'uko Mugesera Léon ashaka kumvikanisha ko ari akagambane, ahubwo bikwiye guha ireme ubuhamya bwabo kubera ko bufite agaciro kuko kuba bavuga ibihuye bidaterwa n'akagambane, ahubwo biterwa n'uko babonye ibintu kimwe.

[172] Urukiko rurasanga, ingingo Mugesera Léon aburanisha avuga ko abatangabuhamya bamubeshyera kubera ko ku wa 06/07/1992, Habimana Bonaventure atari Umunyamabanga Mukuru wa MRND kimwe na Ngirumpatse utari Perezida wa MRND, ko ndetse atashoboraga gufata ijambo mu nama yitabiriwe n'abamukuriye ku rwego rw'Igihugu, iyi ngingo nta shingiro ifite, kuko Mugesera Léon wenyine yemera ko Habimana Bonaventure na Ngirumpatse Matayo bari mu nzego z'Ubuyobozi bw'ishyaka rya MRND, kandi abatangabuhamya bakaba bavuga ko babamenye hashingiwe ko buri wese mu bashyitsi bakuru yibwiye abari bitabiriye inama n'imirimo akora, kuba abatangabuhamya badahuza neza ku muyobozi n'imirimo yari afite muri iryo shyaka, bitagize inenge yatesha agaciro ubuhamya bwe hashingiwe ku gihe kinini cyari gishize, uhereye igihe igikorwa cyabereye kugeza ku munsi wo gutanga ubuhamya. Rurasanga kandi, Mugesera Léon wari Umuyobozi wa MRND muri Perefegitura ya Gisenyi, kandi nawe ubwe akaba yemera ko muri icyo gihe yagiye hirya no hino mu Gihugu aho yaremeshaga inama zari zatumijwe n'ishyaka rya MRND ngo yigisha « amahembe ane ya satani », adashobora kuvuguruza ubuhamya bumushinja ko yageze i Nyamyumba kandi akahavugira ijambo rishishikariza abahutu kwica abatutsi.

[173] Urukiko rurasanga Rwasubutare Callixte na Sinayobye André, nka bamwe mu bari bagize umutwe w'interahamwe wabarizwaga mu ishyaka rya MRND, mu buhamya batanze kuri Mugesera Léon nabo ubwabo barasobanuye uruhare bagize mu byaha byakozwe ku wa 06/07/1992, aho bemera ko basahuye ndetse bakica bamwe mu batutsi bari batuye i Nyamyumba no mu nkengero zayo, rukaba rutabona inyungu bari kugira yo gushinja ibinyoma Mugesera Léon ku byaha nabo bagizemo uruhare kandi bamaze guhanirwa.

3. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu kwemeza ko Mugesera Léon yakoze icyaha cyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside.

[174] Mugesera Léon avuga ko iyo Urukiko Rukuru rusesengura disikuru yo ku Kabaya rukanayishyira muri « contexte » yayo, rwari gusanga uwayivuze atarakoze icyaha, ariko ko urwo Rukiko rwakoze amakosa yo kumuhamya icyaha cyo gushishikariza gukora jenoside, rwirengagije ko iyo disikuru yavuzwe igihe u Rwanda rwari rwatewe n'Igihugu cya Uganda (guerre d'aggression) nk'uko na Perezida Yoweri Museveni wa Uganda yabyiyemereye ku wa 10/10/1990, ubwo yavugaga ko ingabo z'u Rwanda zitazashobora ingabo ze z'imena mu kurwana zingana na 400.000 nk'uko byanashimangiwe n'umutangabuhamya w'Umuholande watanze ubuhamya muri Canada wemeje ko ingabo za Uganda zateye u Rwanda, ko na Remigius Kintu mu gitabo yanditse, yavuze ko Perezida Paul Kagame yari afite « numéro matricule » 00007 icyo gihe, ndetse ko hari na « télégramme » yavuye muri « Ambassade » y'Ababirigi muri Otawa ku wa 16/07/1987, yavugaga ko hari aba « Experts » b'Abanyamerika n'abo muri Canada bangana na 300 barimo gutoza ingabo za FPR b'Abatutsi kugira ngo bazatere u Rwanda.

[175] Avuga kandi ko ikindi kimenyetso kigaragaza ko Igihugu cy'u Rwanda cyari cyatewe n'Igihugu cya Uganda, ari uko abasirikare baturutse muri Uganda, bari baracengeye mu baturage b'abasivile badafite intwaro (*contexte d'infiltration*) nk'uko byavuzwe na Senateri Tito Rutaremara igihe u Rwanda rwaterwaga nk'uko byanashimangiwe na Philippe Reyntjens, mu gitabo cye yanditse mu mwaka wa 1994, aho yasobanuye uburyo iyo ntambara yabayeho, bivuze ko u Rwanda

rwagombaga kwitabara (*Légitime défense*) nk'uko bigaragarira mu magambo amwe ari muri iyo disikuru ajyanye no « kutavogerwa », cyangwa « ntabwo nemera ko tuzemera kuraswa » cyangwa ko « abantu bitwa Inyenzi bafashe inzira baradutera, ariko ko bazisubije hanze y'umupaka», ariko ko ijambo Inyenzi », ritavuze Inkotanyi.

[176] Avuga ko Urukiko Rukuru rwirengagije ko iyo disikuru yavuzwe igihe abaturage benshi bari baravanywe mu byabo n'intambara (déplacés de guerre) bari i Byumba, ndetse ko hari n'abanyerezaga imfashanyo yabo bituma « *Croix Rouge* » iyihagarika nk'uko byanditswe na Philippe Reyntjens, mu gitabo cyavuzwe haruguru, ariko ko Mugesera Léon atashakaga intambara, ko ahubwo yasabaga ko yahagarikwa mu bwumvikane kuko yasabye Perezida Museveni ko yayihagarika akareka gutera u Rwanda, ndetse ko yanasabye Leta Zunze Ubumwe za Amerika na Canada ko bashyira ingabo zabo ku mupaka w'u Rwanda na Uganda kugira ngo zihagarike intambara, ariko birananirana.

[177] Akomeza asobanura ko Urukiko Rukuru rwirengagije na none ko iyo disikuru yavuzwe igihe kibanziriza amatora y'amashyaka menshi (*pré – campagne électorale*) yari ashyushye cyane, kuko iyo ruyisuzumana ubushishozi, rukanayishyira muri «*contexte*» yaryo yo muri 1992, aho kurishyira muri «*contexte*» yo muri 1994 no muri 2020, rwagombaga kubona ko uwayivuze atakoze icyaha kuko atari agamije gushishikariza gukora jenoside, ko ahubwo yari agamije amatora (*esprit démocratique*), kuko ijambo amatora » ariryo ryagarutsweho inshuro nyinshi zigera kuri 17, kandi ko ariryo jambo abaturage batahanye mu mitwe yabo kuko ariryo

yarangirijeho disikuru ye nk'uko bigaragarira ku rupapuro rwa 17 rwa kopi y'urubanza.

[178] Avuga na none ko Urukiko Rukuru rwakoze amakosa yo gucagaguramo (charcuter) disikuru yo ku Kabaya, kuko hari aho rwagiye rusimbuka amagambo amwe n'amwe y'ingezi, nk'ahanditse « *point de suspension* » (…) rukayishyiramo andi magambo atabaho « *interpolation d'un texte inéxistant* », rukanifatira ayo hagati, rugamije kumuhamya icyaha atakoze, rukirengagiza ko Itegeko nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, riteganya ko ikimenyetso kitagomba guhindurwa, ko ahubwo iyo ruyifatira hamwe rukanayishyira muri «*contexte général*» yayo, rwagombaga kubona ko uwayivuze yavugaga amatora nk'uko byasobanuwe haruguru.

[179] Akomeza asobanura ko Urukiko Rukuru rwirengagije amategeko «*application de la loi*» kuko iyo rutayirengagiza rwagombaga kubona ko uwavuze disikuru yo ku Kabaya atakoze icyaha cyo gushishikariza gukora jenoside, kuko ama « *listes* » avugwa muri iyo disikuru, atari ama « *listes* » y'abantu bagombaga kwicwa, ko ahubwo yari ay'abagombaga gushyikirizwa Ubucamanza kugira ngo bubacire imanza kubera ibyaha bakoze, nk'aho yavuze ko « azahanishwa igihano cy'urupfu umuntu wese uzafata abasore ashatse mu giturage akabaha ingabo z'amahanga zitera Repubulika y'u Rwanda » kubera ko abakoze ibyo bikorwa bagombaga kubihanirwa n'Ubucamanza kuko byari ibikorwa bibujijwe n'Itegeko Nshinga ryo muri 1991, bikanahanwa n'Igitabo cy'amategeko ahana cyo muri 1977.

[180] Avuga na none ko Urukiko Rukuru rutagombaga kumuhamya icyaha hashingiwe kuri disikuru yo ku Kabaya

kuko uwayivuze yakoresheje imvugo y'inziganyo (*conditionnel*), bivuze ko icyo yavugaga cyashoboraga kuba cyangwa ntikibe, nk'aho yavuze ngo « niba, nibakora, nimumara, nihashira, azahanishwa, nibagukupita urushyi ku itama rimwe uzabatere ebyiri ku rindi biture hasi ubutazanzamuka », kuko mu gihe batagukubise urushyi, nawe ntawe warukubita, ko hari n'aho yakoresheje amagambo y'inzagihe (*futur)* nk'aho yavuze ngo « Azahanishwa», ndetse ko hari n'aho yagiye avuga cyangwa asubira mu magambo yavuzwe n'abandi (*citation*) nk'aho yavuze ko «Mwumvise ibyo Minisitiri w'Intebe yivugiye ngo : « Bagiye gushoka ibishanga », «Mwumvise », « mumaze iminsi mwumva », ndetse ko hari n'aho yatanze « *pétition comme un acte démocratique* », nk'aho yavuze ngo «mwakwandikira », «Mwamwandikira mukamumenyesha ».

[181] Yongeraho ko Urukiko Rukuru rutagombaga kwemeza ko yashishikarije gukora jenoside kubera ko ijambo yavugiye ku Kabaya ritakurikiwe n'ubwicanyi bwakorewe Abatutsi nk'uko byemejwe na Me Mbonampeka Stanislas wari Minisitiri w'Ubutabera mu mwaka wa 1992, binashimangirwa na Eric Gillet na madame Alison Des Forges mu rubanza yaburanye muri Canada, ndetse ko na Professeur Filip Reytjens yemeje ko Nsanzuwera, wari Porokireri wa Repubulika i Kigali icyo gihe, yamubwiye ko mu rwego rw'amategeko, atari kumenya aho yahera arega Mugesera Léon.

[182] Me Rudakemwa Jean – Félix, wunganira Mugesera Léon, avuga ko uru Rukiko rukwiye gukosora amakosa yakozwe n'Urukiko Rukuru yavuzwe haruguru, maze rukemeza ko Mugesera Léon ari umwere.

[183] Uhagarariye Ubushinjacyaha avuga ko ku bw'ibanze (*à titre principale*), mu gihe Mugesera Léon atemera ko ariwe wavuze disikuru yo ku Kabaya yaciriweho urubanza, nta bubasha afite bwo kuyisobanura no kuvuga ko yahinduwe (*truqué*), ko ahubwo yagombye kwemera ko ariwe wayivuze, nyuma y'aho, akabona gusobanura uburyo Urukiko Rukuru rwayicagaguyemo runayivugisha ibyo atashakaga kuvuga binatuma rugera ku mwanzuro umurenganya, ariko ko atavuga ko iyo disikuru yacagaguwemo ibice inavugishwa icyo itavuga mu gihe atibuka disikuru yavuze. Ikindi n'uko atabwiye uru Rukiko ko iyo Urukiko Rukuru ruyigumishamo interuro (*extraits*) rwayikuyemo, zari kubyara umwimerere wa disikuru yavuze, kuko hatarezwe disikuru, ko ahubwo harezwe Mugesera Léon kubera ijambo yavugiye ku Kabaya.

[184] Avuga ko « à titre subsidiaire », mu gihe uru Rukiko ruhisemo gusesengura disikuru yo ku Kabaya, ruzasanga nta kosa Urukiko Rukuru rwakoze mu guhamya Mugesera Léon icyaha cyo gushishikariza gukora jenoside hashingiwe kuri disikuru yavugiye muri mitingi yo ku Kabaya tariki ya 22/11/1992 iri kuri kasete no kuri « CD », kuko muri kopi y'urubanza rwajuririwe, urwo Rukiko rwasesenguye iyo disikuru rusanga ariwe wayivuze, rugaragaza ko amagambo yavuze agize ibyaha birimo icyo gushishikariza gukora jenoside, runagaragaza ingingo z'amategeko rwashingiyeho rumuhamya ibyo byaha, kandi ko mu nama ntegurarubanza yo ku wa 30/01/1997, Mugesera Léon yemereye muri Canada ko ijambo rikubiye kuri iyo kaseti nk'uko ryashyizwe mu nyandiko n'umuhanga rihuje neza n'iryo yavugiye ku Kabaya, ko kandi arinaryo ryatumye igihugu cya Canada kimwirukana ku butaka bwacyo bigatuma kimwohereza mu Rwanda, ndetse ko n'imbere y'uru Rukiko, yaniyemereye ko yari ku Kabaya, kandi

ko yanahavugiye ijambo ngo uretse ko atakiryibuka, nyamara nta kimenyetso yatanze kivuguruza ibyo Urukiko Rukuru rwashingiyeho rumuhamya ibyaha, ko kandi atagaragaje ingingo z'amategeko rwishe.

[185] Asobanura ko Mugesera Léon atagombye kuvuga ko Urukiko Rukuru rwirengagije gushyira ijambo ryo ku Kabaya muri « contexte » yaryo kuko avuga ko atakiryibuka, ko uretse n'ibyo, urwo Rukiko rutabyirengagije kuko mu bika bya 42 kugeza ku cya 46, no mu bika bya 115 na 165 by'urubanza rwajuririwe, urwo Rukiko rwahuje ijambo Mugesera Léon yavugiye ku Kabaya na « contexte » y'igihe cy'intambara igihugu cy'u Rwanda cyarimo kuva mu mwaka wa 1990, rusanga Mugesera Léon yarakoze ibyaha hashingiwe ku magambo akubiye muri iryo jambo y'uko Abahutu bagombaga gutsemba inyenzi n'ibyitso byazo, bakanabasubiza muri Etiyopiya babanyujije muri Nyabarongo, kandi ko iryo jambo ryabaye intandaro ya jenoside yakorewe Abatutsi kuko akimara kurivuga mu 1992, Abatutsi batangiye kwicwa.

[186] Avuga ko ikindi kimenyetso kigaragaza ko urwo Rukiko rwashyize ijambo ryo ku Kabaya muri « *contexte* » yaryo, ari uko rwahamije Mugesera Léon ibyaha rushingiye kuri raporo ya « *Commission Internationnale d'Enquête* » yo muri Werurwe 1993, igaragaza *contexte général* yari mu gihugu cy'u Rwanda kuva mu mwaka wa 1990 kugeza ku wa 22/11/1992, igihe MUGESERA Léon yavugaga iryo jambo, ikanagaragaza ko icyo gihe hakorwaga ibikorwa byari byibasiye Abatutsi.

[187] Avuga na none ko kuba igihugu cy'u Rwanda cyari kiri mu ntambara igihe Mugesera Léon yavugaga iyo disikuru, bitamukuraho uburyozwacyaha bw'icyaha cyo gushishikariza gukora jenoside yakoze, kuko ingingo ya mbere y'Amasezerano

Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside, ivuga ko jenoside ishobora gukorwa mu gihe cy'amahoro cyangwa mu gihe cy'intambara, ariko ko Mugesera Léon atagaragaje ko amagambo yavugiye ku Kabaya ku wa 22/11/1992 y'uko bakoze amakosa yo kureka Abatutsi bagasohoka mu gihugu bakajya hanze », yayabwiraga Abagande, ko kandi aribo bagombaga gucibwa amajosi.

[188] Yongeraho ko nta kosa Urukiko Rukuru rwakoze ubwo rwagendaga rusesengura buri gice kigize ijambo Mugesera Léon yavugiye ku Kabaya, kuko mu iburanisha ryo ku wa 10/02/2020, yivugiye ko disikuru yavugiye ku Kabaya yari igizwe n'ibice bine (4) by'ingenzi bikurikira : Kwirinda umugeri wa MDR, kutavogerwa, uko bagombaga kwifata kugira ngo birinde abagambanyi n'uko bagombaga kwifata mu matora, ko kandi ibyo bice byayo byose bitavuga amatora kuko bivuga ibintu bitandukanye birimo amagambo afitanye isano na jenoside nk'inzoka, kugura imipanga yo gutema amajosi y'Abatutsi no kubanyuza muri Nyabarongo bagasubira iwabo muri Etiyopiya, ndetse ko hari n'aho yahamagariye abafite amafaranga kuyazana kugira ngo bayakoreshe, ko ahubwo iyo urwo Rukiko rwita ku nshuro amagambo yagiye agarukwaho (*fréquence des mots*), rwagombaga kwemeza ko Mugesera Léon yashishikarije gukora jenoside nk'uko rwabikoze kuko ijambo Inyenzi » aririyo ryagarutsweho inshuro nyinshi zingana na 27 ugereranyije n'ijambo amatora » Mugesera Léon yitwaza ko aririyo ryagarutsweho inshuro nyinshi zigera kuri 15.

[189] Urukiko rwabajije uhagarariye Ubushinjacyaha niba Urukiko Rukuru rwarakoze amakosa cyangwa rutarayakoze mu kwemeza ko Mugesera Léon yabaye icyitso cy'abakoze jenoside, avuga ko Mugesera Léon akwiye guhamwa n'icyaha

cyo gushishikariza abandi gukora jenoside, aho kuba icyaha cyo kuba icyitso cy'abakoze jenoside, kuko ari ibyaha bibiri bitandukanye, ko kandi uru Rukiko rufite ububasha bwo guhindura inyito y'icyaha aho urubanza rwaba rugeze hose nk'uko byemejwe mu rubanza RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010.

[190] Asobanura ko Urukiko Rukuru rutagombaga guhamya Mugesera Léon icyaha cyo kuba icyitso cy'abakoze jenoside, ko ahubwo rwagombaga kumuhamya icyaha cyo gushishikariza abandi gukora jenoside kubera ko ari icyaha cyihariye, gitandukanye n'icya mbere, kuko giteganyijwe mu ngingo ya 3 y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside yashyizwe mu mategeko ahana y'u Rwanda, ni ukuvuga mu Itegeko - Ngenga ryo ku wa 30/08/1996 ryahanaga icyaha cya jenoside, mu Itegeko - Ngenga ryagengaga Inkiko Gacaca ryo mu 2000, mu 2004 no mu 2008 yavanweho, ndetse no mu Itegeko - Ngenga rishyiraho igitabo cy'amategeko ahana ryo mu mwaka wa 2012 ryakurikizwaga igihe Mugesera Léon yaburaniraga mu Rukiko Rukuru.

UKO URUKIKO RUBIBONA

[191] Ingingo ya 18, igika cya mbere, y'Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, iteganya ko "Umushinjacyaha n'uregwa bafite bombi uburenganzira bwo kujuririra icyemezo icyo ari cyo cyose cyafashwe n'Urukiko Rukuru mu gihe hari imwe cyangwa zose mu mpamvu zikurikira: 1° ukwibeshya gushingiye ku ngingo y'itegeko gutuma icyo cyemezo gita

agaciro; 2º ukwibeshya gushingiye ku byabaye kwatumye urubanza rucibwa nabi".

[192] Iyo ngingo yumvikanisha ko ujurira agomba kugaragariza Urukiko rw'Ubujurire amakosa yo mu rwego rw'ibyabaye n'amakosa yo mu rwego rw'amategeko yatumye urubanza rucibwa nabi akanatanga ingingo zishyigikira ibyo avuga nk'uko byanemejwe mu rubanza nomero ICTR–96–4-A rwa Akayezu Jean – Paul rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ku wa 01/06/2001[63].

[193] Ingingo ya 3 c) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside, u Rwanda rwashyize mu mategeko yarwo n'Itegeko – Teka 08/75 ryo ku wa 12/02/1975, iteganya icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside.

[194] Na none ingingo ya 132, 3º y'Itegeko – Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe MUGESERA Léon yacirwaga urubanza ku rwego rwa mbere, iteganya ko

[63] Mu gika cya 17 cy'urubanza n° ICTR– 96–4– A, rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ku wa 01/06/2001, haburana Porokireri na Akayezu Jean – Paul, urwo Rukiko rwasobanuye ko "Urugereko rw'Ubujurire rukosora gusa amakosa yakozwe mu rwego rw'amategeko yatuma icyemezo giteshwa agaciro cyangwa amakosa ku byabaye yatumye urubanza rucibwa nabi" nk'uko biteganywa n'ingingo ya 24 ya Sitati irugenga yerekana aho isuzumwa ry'ubujurire ritangirira n'aho rigarukira, igira ati: Urugereko rw'Ubujurire rwakira ubujurire butanzwe n'abakatiwe n'inteko z'Urugereko rwa Mbere rw'Iremezo, cyangwa butanzwe na Porokireri, kubera impamvu zikurikira: a) Ukwibeshya ku ngingo z'itegeko bituma icyemezo giteshwa agaciro, cyangwa b) Kwatumye urubanza rucibwa nabi.

“Gushishikariza abantu gukora icyo cyaha n’ubwo bitashyirwa mu bikorwa, wifashishije amagambo, amashusho cyangwa inyandiko, ari igikorwa gihanwa nk’icyaha cya jenoside. Naho ingingo ya 114 y’iryo Tegeko – Ngenga, igateganya ko icyaha cya Jenoside ari kimwe mu bikorwa bikurikira cyakozwe mu buryo bwateguwe kigamije kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry’uruhu cyangwa ku idini, bazira icyo bari cyo, haba mu bihe bisanzwe cyangwa mu bihe by'intambara: 1° kwica abo bantu n’ibindi (..).

[195] Ku bijyanye n’icyaha cyo gushishikariza gukora jenoside, Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda rwasobanuye ko icyo cyaha gishingiye ahanini ku mbwirwaruhame yagejejwe ku bantu benshi, ku bantu bahuriye hamwe, ku butumwa bwatanzwe hakoreshejwe itangazamakuru cyangwa amagambo yabwiwe abantu benshi bari bahuriye hamwe, ikigomba kwitabwaho akaba ari amagambo yakoreshejwe kabone n’ubwo, iyo avanwe aho yavugiwe cyangwa ashyizwe mu rundi rwego, yakumvikana ukundi,[64] by’umwihariko, Urukiko ruvuga ko mu bigomba kugenderwaho hashobora kubamo ibikurikira :

a. Umuco, harimo n’imvugo yakoreshejwe mu rurimi rw’ikinyarwanda kugira hamenyekane niba imbwirwaruhame yumvikanye kubo yari igenewe n’icyari kigenderewe n’uwayivugaga ;[65]

b. Gusuzuma niba uwayivuze ari umuyobozi cyangwa uvuga rikumvikana kugira ngo hamenyekane niba yari azi cyangwa

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[64] Reba urubanza rw’ubujurire rwa Nahimana Nahimana Ferdinand, igika cya. 701

[65] Reba urubanza rw’ubujurire rwa Nahimana Ferdinand, igika cya 700.

ashobora guteganya ingaruka z'amagambo yavuze ku baturage yabwiraga;[66]

c. Icyari kigambiriwe mu mbwirwaruhame nk'ishingiro ryo gushishikariza abantu mu ruhame guhita bakora jenoside;[67]

d. Kuba inkurikizi z'iyo mbwirwaruhame zarabaye gukora jenoside bikwiye gufatwa nk'ikimenyetso cy'uko icyari kigenderewe n'uwavuze iyo mbwirwaruhame ari ugushishikariza abantu gukora jenoside, kandi n'ubwo amagambo hari aho yaba ateye urujijo nta kibuza ko afatwa nk'ayari agamije gushishikariza abantu gukora jenoside.[68]

[196] Ku birebana n'uru rubanza, dosiye igaragaza ko mu bika bya [38] kugeza ku cya [49], no mu bika bya [110], [114], [117] na [118] by'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko Mugesera Léon yakoze icyaha cyo gushishikariza mu ruhame kandi ku buryo butaziguye gukora jenoside giteganywa n'ingingo z'amategeko zavuzwe haruguru, kubera ko « *discours* » yavugiye ku Kabaya ku wa 22/11/1992 igaragaramo amagambo yakanguriraga abayoboke b'ishyaka rya MRND bayumvaga kwica abatutsi bose cyangwa bamwe muri bo, ko urugero ari nk'aho Mugesera Léon yavuze ko hari inyenzi ziri mu gihugu zafashe abana bazo zibohereza ku rugamba kujya gufatanya n'inkotanyi, maze yibaza impamvu abo babyeyi badafatwa ngo babatsembe, anibaza impamvu badafata abajyana abo bana ngo babatsembe, aho gutegereza ko bazaza kubatsemba. Yasabye kandi ko abo bantu bose

[66] Reba urubanza rw'Ubujurire rwa Bikindi Simon, ibika bya 136-137.
[67] Reba urubanza rw'ubujurire rwa Nahimana Ferdinand, igika cya 706.
[68] Reba urubanza rw'ubujurire rwa Nahimana Ferdinand, ibika bya . 703 na 709.

bashyirwa kuri lisiti bakabashyira imbere y'ubucamanza, butabacira imanza, abaturage bagatsemba izo ngegera.

[197] Urukiko Rukuru rwasobanuye kandi ko muri iyo disikuru, hari aho Mugesera Léon yasabye Abaserire kwishyira hamwe kugira ngo bakande icyitso cyinjiye muri Selire kugira ngo kitayisohokamo, ko yanasabye abarwanashyaka ba MRND kwishyira hamwe bagatanga amafaranga kugira ngo babakate amajosi, kuko uwo batazakata ijosi ari we uzaribakata, ndetse ko yanabwiye umuntu wari umwiraseho wo muri PL[69] ko iwabo ari muri Ethiopiya, ko ikosa bakoze muri 59 n'ubwo yari akiri umwana, ari uko babaretse bagasohoka, ko bazabanyuza muri Nyabarongo bakagerayo bwangu.

[198] Mu gika cya [43] na [114] by'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko n'ubwo muri mitingi yo ku Kabaya, Mugesera Léon ateruraga ngo avuge ko bagomba gutsemba abatutsi, ariko ko harebwe amagambo yakoreshaga icyo gihe nko gutsemba inyenzi n'ibyitso by'abateye igihugu, hakanarebwa n'uburyo ayo magambo yumvikanaga icyo gihe, bigaragara ko Mugesera Léon yashishikarizaga ku mugaragaro kandi mu buryo butaziguye kwica abatutsi bose cyangwa bamwe muribo, kuko amagambo « Inkotanyi », « Inyenzi » cyangwa « ibyitso » yakoreshaga, yashakaga kuvuga « abatutsi » nk'uko byasobanuwe na Mathias Ruzindana wiyambajwe nk'impuguke n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR), mu rubanza rwa Akayezu Jean Paul[70].

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[69] PL = Parti Libéral

[70] Case N° ICTR -96-4 -T, Porokireri v Akayezu Jean - Paul, rwaciwe na TPIR ku wa 02/09/1998, para. 147-150.

[199] Ku birebana n'ubushake bwo gukora icyaha cyo gushishikariza gukora jenoside, mu gika cya [118]cy'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko ubushake bwihariye bwa Mugesera Léon bwo gukora icyaha cyo gushishikariza gukora jenoside, bugaragarira mu magambo yakoresheje yavuzwe haruguru nk'aho yavuze ko atumva impamvu badatsemba ababyeyi bohereje abana babo mu Nkotanyi n'ababajyana, no kuba yaribukije umuntu wo muri PL (bikaba byumvikana ko yari umututsi) ko iwabo ari muri Ethiopiya, ko ikosa bakoze muri 59, ari uko babaretse bagasohoka, ariko ko bazabanyuza muri Nyabarongo bakagerayo bwangu, no kuba abo yabwiraga barashoboraga kumwumva bakanashyira ayo magambo mu bikorwa kubera ko Mugesera Léon yayavugiye muri Perefegitura ya Gisenyi, aho yavukiye, akaba yari na Visi-Perezida w'ishyaka rya MRND, akaba yari Umwarimu muri Kaminuza n'Umujyanama muri Minisiteri.

[200] Urukiko rurasanga, kuba Mugesera Léon yarafashe ijambo muri « meeting » yabereye ku Kabaya ku wa 22/11/1992, akabwira abayoboke b'ishyaka ba MRND bamwumvaga ko atumva impamvu badatsemba inyenzi ziri mu gihugu, ni ukuvuga ababyeyi bohereje abana babo mu Nkotanyi n'ababajyana, kuba yarasabye ko hakorwa ama lisiti yabo kugira ngo babashyikirize Ubucamanza kugira ngo bubacire imanza, ko nibutazibacira, abaturage bazakora inshingano yo kwiha ubutabera babatsemba, kuba yarasabye aba Selire kujya bakanda icyitso cyinjiye muri Selire kugira ngo kitayisohokamo, kuba yarasabye ko abafite amafaranga bayazana kugira ngo babakate amajosi, kuba yarabwiye umuntu wo muri PL ko iwabo ari muri Ethiopiya, ko ikosa bakoze muri 59, ari uko babaretse bagasohoka, ko bazabanyuza muri

Nyabarongo kugira ngo bagereyo bwangu, no kuba Mugesera Léon nk'umuntu wari Visi - Perezida w'ishyaka rya MRND, akaba n'Umwarimu muri Kaminuza n'Umujyanama muri Minisiteri, yaravuze ayo magambo kandi azi neza ko Abatutsi yitaga Inyenzi bicwaga muri Kigali no hirya no hino mu gihugu, no kuba yari azi neza ko abaturage arimo kubwira ayo magambo bayafata nk'abahamagarira kwica abatutsi kuko bamufataga nk'umuntu ujijutse w'umunyabwenge unafite inararibonye muri Politiki nk'uko byasobanuwe haruguru, bigaragara ko Mugesera Léon yakoze icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside kubera ko yashishikarije abaturage kurimbura Abatutsi bose cyangwa bamwe muri bo abaziza ubwoko bwabo nk'uko biteganywa n'ingingo ya 3 c) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside, u Rwanda rwashyizeho umukono ku wa 12/02/1975, aho kuba icyitso cy'abakoze jenoside nk'uko byemejwe n'Urukiko Rukuru.

[201] Urukiko rurasanga ikindi kimenyetso kigaragaza ko Mugesera Léon yakoze icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside, ari uko ubuhamya bwa Sinayobye André na Rwasubutare Callixte bwavuzwe haruguru, bugaragaza ko mu nama yabereye i Nyamyumba ku wa 06/07/1992, Mugesera Léon yashishikarije abahutu kurwanya no kwica abatutsi nk'aho yababwiraga ko bagomba kurwanya no gutsemba abatutsi kuko bakandamije ababyeyi babo bashaka kubatwara Igihugu cyabo, kandi ko iryo jambo ryakurikiwe n'ingaruka zirimo kwica, gukubita no gusahura abatutsi nk'uko byasobanuwe n'Urukiko Rukuru, mu gika cya [89] cy'urubanza rujuririrwa.

[202] Urukiko rurasanga imvugo ya Mugesera Léon y'uko iyo Urukiko Rukuru rudacagagura (charcuter) ijambo yavugiye ku Kabaya ku wa 22/11/1992, ahubwo rukaba rwarayifatiye hamwe muri « *contexte* » yayo muri rusange (*contexte général*), rwari gusanga yarasabaga ko hakorwa amatora, kuko aririyo jambo ryavuzwe inshuro nyinshi zigera kuri 17, iyi ngingo nta shingiro ifite, kuko mu gika cya [80] cy'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko Ubushinjacyaha bwasesenguye ijambo ryose bwashingiyeho burega Mugesera Léon icyaha cyo gushishikariza gukora jenoside, ko kuba Ubushinjacyaha bwaragiye bwibanda ku nteruro zimwe na zimwe zumvikanisha ko yakoze icyo cyaha, nta kosa bwakoze kuko mu rwego rw'amategeko, bitabujijwe ko hafatwa ibice bimwe by'ijambo bigaragaza ubutumwa uvuga ijambo ashaka gutanga, kandi Mugesera Léon akaba atagaragaza icyo anenga ibi bisobanuro.

[203] Byongeye kandi, Urukiko rurasanga n'ubwo muri disikuru ye, Mugesera Léon yavuze amagambo yerekeranye n'amatora, kutavogerwa, no kwirinda imigeri yaterwaga n'amashyaka nka MDR na PSD ataravugaga rumwe na MRND, bidakuraho amagambo yavuzwe haruguru yashishikarizaga abarwanashyaka ba MRND gutsemba Abatutsi nk'uko byasobanuwe haruguru, kuko muri iyo disikuru ye, Mugesera Léon yakomeje kwita Abatutsi bari imbere mu gihugu, n'abayobozi b'andi mashyaka ataravugaga rumwe na MRND, Inyenzi n'ibyitso by'Inkotanyi zateye igihugu, n'ubwo Mugesera Léon ateruraga ngo avuge ko bagomba kwica Abatutsi.

[204] Urukiko rurasanga, kandi imvugo ya Mugesera Léon y'uko ijambo abaturage batahanye mu mitwe yabo ari ijambo «

amatora » kuko aririyo yasorejeho nta shingiro ifite, kuko nk'uko n'Urukiko Rukuru rwabisobanuye mu gika cya [81] cy'urubanza rujuririrwa, uwabwiwe ijambo adatahana byanze bikunze iryasorejweho, ko ahubwo ashobora no gutahana iryamukoze ku mutima, iryamuteye ubwoba, iryamushimishije, iryamubabaje n'irindi iryo aririyo ryose, kandi Mugesera Léon ntagaragaza icyo anenga ibi bisobanuro. Byongeye kandi, Urukiko rurasanga ijambo « amatora » atariryo Mugesera Léon yavuze inshuro nyinshi, kuko yarivuze inshuro zitarenze 17, ko ahubwo ijambo « Inyenzi » aririyo ryavuzwe inshuro nyinshi zigera kuri 30.

[205] Urukiko rurasanga imvugo ya Mugesera Léon y'uko ama lisiti avugwa muri iyo disikuru, atari ay'abantu bagombaga kwicwa, nta shingiro ifite, kuko muri iyo disikuru, yasabye ko hakorwa ama lisiti y'inyenzi cyangwa ababyeyi bohereje abana babo mu Nkotanyi n'ababajyana, kugira ngo Ubucamanza nibutabacira imanza, abaturage babatsembe, kandi MUGESERA Léon yemereye Umunyamakuru wa « Quotidien Le Soleil[71]» ko abajyanaga abo bana mu Nkotanyi, ari intagondwa z'Abatutsi, bivuze ko ari Abatutsi bagombaga gushyirwa ku ma lisiti kugira ngo bicwe.

[206] Urukiko rurasanga ibyo Mugesera Léon aburanisha by'uko Urukiko Rukuru rwirengagije ko disikuru yo ku Kabaya yavuzwe ku wa 22/11/1992, igihe igihugu cy'u Rwanda cyari cyatewe n'igihugu cya Uganda ku buryo abasirikare bari baracengeye mu baturage b'abasivile badafite intwaro (*contexte de guerre d'aggression et d'infiltration*), no ku buryo abaturage

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[71] Bivugwa mu gika cya 70 cy'urubanza n° 30025 rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, Mugesera Léon vs Ministère de la Citoyenneté et de l'Immigration de Canada (MCI).

benshi bari baravanywe mu byabo n'intambara (*déplacés de guerre*), nta shingiro bifite, kuko mu gika cya [82] cy'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko Mugesera Léon atavuze iryo jambo nk'uhagarariye igihugu cy'u Rwanda, ko ahubwo yarivuze gusa mu rwego rw'ishyaka rya MRND, kuko nta wundi mwanya w'ubuyobozi yari afite wamuheshaga ububasha bwo kuvuga iryo jambo nk'uhagarariye igihugu, bivuze ko mu rwego rw'amategeko, iryo jambo ritafatwa nko kwitabara kuko nta gikorwa Mugesera Léon yari yakorewe cyari gutuma yitabara nk'uko biteganywa n'ingingo ya 105[72] y'Itegeko – Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe Mugesera Léon yaburaniraga mu Rukiko Rukuru, nyamara Mugesera Léon akaba atagaragaza icyo anenga ibyo bisobanuro byatanzwe n'Urukiko Rukuru.

[207] Urukiko rurasanga imvugo ya Mugesera Léon y'uko Urukiko Rukuru rwirengagije ko uwavuze disikuru yo ku Kubaya yasabaga ko amategeko yubahirizwa kugira ngo abohereje abana babo mu Nkotanyi n'ababajyanye, uwatanze ubutaka bw'igihugu n'uwaciye integer ingabo z'igihugu mu gihe cy'intambara bahanishwe igihano cy'urupfu nk'uko byateganywaga mu gitabo cy'amategeko ahana nta shingiro ifite, kuko atakwitwaza ko yasabaga ko amategeko yubahirizwa mu gihe muri iyo disikuru, yanahamagariye abaturage gutsemba Abatutsi n'ibyitso byabo nk'uko byasobanuwe haruguru.

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[72] Ingingo ya 105 y'Itegeko – Ngenga ryvuzwe haruguru, iteganya ko « Umuntu afatwa ko yitabara igihe: 1° yirukana nijoro uwinjiye ahantu hatuwe aciye urugi, yakoresheje ingufu cyangwa uburiganya; 2° ahanganye n'abajura cyangwa abandi bagizi ba nabi ».

[208] Urukiko rurasanga kandi imvugo ya Mugesera Léon y'uko Urukiko Rukuru rwirengagije ko ijambo ryo ku Kabaya ridakangurira kwica Abatutsi kubera ko ibisabwa byose (*toutes les conditions*) bitari byuzuye kubera ko uwarivuze yakoresheje imvugo y'inziganyo (*conditionnel*) n'iy'inzagihe (*futur*), nta shingiro ifite, kuko muri disikuru ye, Mugesera Léon yagaragarije abayoboke ba MRND bamwumvaga ko ibisabwa byose byuzuye (*conditions sont réalisées*) kugira ngo batsembe abo yitaga Inyenzi n'ibyitso byazo, anabakangurira kubikora, urugero ni nk'aho yibajije impamvu badakora ama lisiti y'ababyeyi bari mu gihugu bohereje abana babo kwifatanya n'Inkotanyi kugira ngo babatsembe, cyangwa aho yabasabaga ubufatanye bagatanga amafaranga kugira ngo babakate amajosi, kuko nibatayabakata aribo bazaza kuyabakata, cyangwa aho yasabye abayobozi b'ama Selire ko bagomba gukanda (kwica) ibyitso by'Inyenzi byinjiye mu ma Seliri bayobora kugira ngo bitayasohokamo nk'uko byasobanuwe haruguru.

[209] Urukiko rurasanga na none imvugo ya Mugesera Léon y'uko Urukiko Rukuru rutagombaga kwemeza ko yashishikarije gukora jenoside kubera ko ijambo yavugiye ku Kabaya ritakurikiwe n'ubwicanyi bwakorewe Abatutsi nta shingiro ifite, kubera ko gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside ubwabyo ari icyaha kabone n'ubwo ababishishikarijwe batabishyira mu bikorwa nk'uko biteganywa n'ingingo ya 3 c) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yavuzwe haruguru, hamwe n'ingingo ya 132, 3º y'Itegeko – Ngenga byavuzwe haruguru, bivuze ko Ubushinjacyaha budategetswe gutanga ikimenyetso kigaragaza ko disikuru Mugesera Léon yakurikiwe n'ubwicanyi bwakorewe Abatutsi cyangwa ibikorwa by'ihohotera.

[210] Ibimaze kwemezwa mu gika kibanziriza iki, bihuje kandi n'ibyemejwe mu rubanza nomero 2005 S.C.R. 40, rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, mu gika cyarwo cya 85, aho rwasobanuye ko kubera ko Mugesera Léon aregwa kuba yarashishikarije gukora jenoside, Minisitiri adategetswe kugaragaza ko hari isano ritaziguye hagati ya disikuru Mugesera Léon yavuze n'igikorwa cy'ubwicanyi cyangwa cy'ihohoterwa, ndetse ko atanategetswe kugaragaza ko abantu bumvise iyo disikuru bishe cyangwa bagerageje kwica abagize itsinda yari yibasiye[73]. Ibyo byemejwe kandi mu rubanza n° ICTR-99-52-T, rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, ku wa 03/12/2003, mu gika cyarwo cya 1029, haburana Porokireri na Ferdinand Nahimana, Jean-Bosco Barayagwiza na Hassan Ngeze, aho rwasobanuye ko ugushishikariza gukora jenoside ubwabyo bigize icyaha[74].

[211] Urukiko rurasanga ikindi kimenyetso kigaragaza ko imvugo ya Mugesera Léon y'uko ijambo yavugiye ku Kabaya ritakurikiwe n'ubwicanyi bwakorewe Abatutsi idafite ishingiro,

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[73] *"Comme il allègue l'incitation au génocide, le ministre n'a pas à démontrer l'existence d'un lien de causalité direct entre le discours et un meurtre ou un acte de violence. Vu son caractère inachevé, l'incitation est punissable en elle-même, sans égard au résultat. Elle constitue un crime qu'elle produise ou non l'effet escompté. (...) Le ministre n'est donc pas tenu de prouver que les personnes ayant assisté au discours de M. Mugesera ont tué ou tenter de tuer les membres d'un groupe identifiable".*

[74] *"En ce qui concerne le lien de causalité, la Chambre rappelle que l'incitation est un crime, quel que soit l'effet vers lequel elle tend. En recherchant si tel ou tel discours manifeste l'intention de commettre le génocide et, par la suite, caractérise l'incitation, la Chambre considère que le fait qu'il y a bel et bien eu génocide est un élément important. Que les médias aient eu l'intention de créer cet effet ressort en partie de ce que leurs actes ont effectivement eu cet effet*".

ari uko abatangabuhamya babajijwe n'Urukiko Rukuru bemeje ko Mugesera Léon akimara kuvuga iryo jambo, Abatutsi batangiye kwicwa, gusahurwa no gutwikirwa amazu nk'uko bigaragarira mu gika cya [71] na [167] by'urubanza rujuririrwa.

4. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu guhamya ko Mugesera Léon yakoze icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu

[212] Mugesera Léon avuga ko Urukiko Rukuru rwakoze amakosa mu rwego rw 'amategeko (*erreur de droit*) no ku birebana n'ibyabaye (*erreur des faits*) kubera ko rwamuhamije icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu, kandi atarigeze yibasira abantu ku giti cyabo cyangwa amashyaka ya Politiki ataravugaga rumwe n'ishyaka rya MRND, ko ahubwo yibasiye abari barateye u Rwanda baturutse mu gihugu cya Uganda.

[213] Avuga kandi ko urwo Rukiko rwamuhamije icyo cyaha, rwirengagiza ko disikuru yo ku Kabaya yavuzwe igihe gishyushye cy'ipiganwa ry'amashyaka menshi, aho buri shyaka ryafataga Minisiteri imwe rikayigira akarima karyo kubera ko ryirukanaga abayoboke b'ayandi mashyaka, bigatuma nabo birukana abakozi badahuje ishyaka muri Minisiteri yabo (réciprocité), urugero n'aho uwavuze iyo disikuru yavuze ngo « birinde imigeri MDR, PL, FPR, PSD na PDC bitera muri iki gihe», ariko ko atigeze avuga ko Uwiringiyimana yavanwa muri Minisiteri y'Uburezi akajyanwa iwabo.

[214] Avuga na none ko Urukiko Rukuru rwirengagije amategeko kuko iyo rutayirengagiza rwagombaga kubona ko uwavuze iyo disikuru atakoze icyaha, urugero ni nk'aho yavuze ko « azahanishwa igihano cy'urupfu umuntu wese uzaca intege

ingabo z'u Rwanda ziri ku rugamba » nk'uko byavuzwe na Nsengiyaremye, wari Minisitiri w'Intebe, cyangwa ko « azahanishwa igihano cy'urupfu umuntu wese uzatanga igice cy'igihugu » nk'uko byakozwe na Twagiramungu watanze Perefegitura ya Byumba icyo gihe, kubera ko Nsengiyaremye na Twagiramungu bagombaga kubihanirwa n'Ubucamanza kuko ibikorwa bakoze byari bibujijwe n'Itegeko Nshinga ryo muri 1991, bikanahanwa n'Igitabo cy'amategeko ahana cyo muri 1977, ndetse ko no muri iki gihe bibujijwe kuko umuntu wese waca intege ingabo z'u Rwanda cyangwa wavuga ko ahaye FDRL imwe mu Ntara z'u Rwanda, cyangwa watera u Rwanda n'uwafatanya nawe babihanirwa n'amategeko nk'uko byemejwe mu rubanza RP 0009/14/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 12/03/2015, aho abayoboke ba FDLR bahaniwe kuba barateye u Rwanda.

[215] Yongeraho ko uwavuze disikuru yo ku Kabaya atakoze icyaha kuko aho yavuze ngo « babandi bifuje ubutegetsi bagiye mu mishyikirano mu Bubiligi nka MDR, PL na PSD, basezerana ko bazatanga Perefegitura ya Byumba, bakanaca intege abasirikare bacu », ayo magambo yerekeranye n'icyiswe « *complot de Bruxelles* », ko kandi atabeshye kuko iyo mishyikirano yabayeho koko nk'uko byasobanuwe na Philippe Reyntjens, mu gitabo cye yanditse mu mwaka wa 1994, aho yasobanuye uburyo intambara yo gutera u Rwanda yabayeho koko n'uburyo amashyaka menshi nka MDR, PL na PSD atari afite ububasha (*mandat*) bwo kujya muri iyo mishyikirano, ko ahubwo ubwo bubasha bwari bufitwe na Guverinoma y'u Rwanda nk'uko byanashimangiwe na Pierre Payant, mu gitabo yanditse mu mwaka wa 2005, ariko ko Mugesera Léon atatanze iki gitabo nk'ikimenyetso kimushinjura muri uru rubanza kuko

cyafatiriwe n'Umuyobozi wa Gereza ngo kuko kivuga nabi Ubutegetsi bw'u Rwanda buriho ubu.

[216] Uhagarariye Ubushinjacyaha, avuga ko nta kosa Urukiko Rukuru, rwakoze mu guhamya Mugesera Léon icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu, kuko nk'uko byasobanuwe haruguru, urwo Rukiko rwasesenguye disikuru yavugiye ku Kabaya, runayishyira muri « contexte » yayo, rusanga amagambo yavuze ayikubiyemo nk'aho yise Minisitiri w'Uburezi, umushizi w'isoni, yaratumye abanyepolitiki batavugaga rumwe n'ishyaka rya MRND batangira kwibasirwa no kwicwa hirya no hino mu gihugu, nyamara muri uru rubanza, nta kimenyetso Mugesera Léon yatanze kivuguruza ibimenyetso byashingiweho n'Urukiko Rukuru mu kumuhamya icyo cyaha birimo imvugo z'abatangabuhamya bamushinja na « *Rapport final de la Commission Internationnale d'Enquête sur les violations des droits de l'Homme au Rwanda depuis le 1er Octobre 1990*» yanditswe muri Werurwe 1993 n'abahagarariye amashyirahamwe atandukanye aharanira uburenganzira bwa muntu arimo CLADHO (*Comité de Liaison des Associations de Défence des Droits de l'Homme*).

UKO URUKIKO RUBIBONA

[217] Ingingo ya 18, igika cya mbere, y'Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda ryavuzwe haruguru, iteganya ko Umushinjacyaha n'uregwa bafite uburenganzira bwo kujuririra icyemezo cyafashwe n'Urukiko Rukuru, kandi ko uwajuriye agomba kugaragariza Urukiko rwajuririwe ko habaye "1º ukwibeshya gushingiye ku ngingo y'itegeko gutuma icyo cyemezo gita agaciro", cyangwa ko habaye "2º ukwibeshya

gushingiye ku byabaye kwatumye urubanza rucibwa nabi", kugira ngo ubujurire bwe bugire ishingiro.

[218] Ku birebana n'uru rubanza, icyaha cyibasiye inyokomuntu ni kimwe mu byaha umuco mpuzamahanga (La Coutume Internationale) wemera nk'ibikorwa bibangamira ku buryo bukomeye uburenganzira bw'ibanze bwa muntu nk'uko n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwabyemeje mu rubanza rwa AKAYESU Jean Paul[75], kandi bikaba bigomba guhanwa n'ibihugu byose byo ku isi kabone n'ubwo ibyo bikorwa bidateganyijwe mu mategeko yabyo nk'uko ibihugu n'Inkiko Mpanabyaha Mpuzamahanga byaje kubishyira mu mategeko mpanabyaha yabyo, urugero ni nk'aho biteganyijwe mu ngingo ya 7. 2. (g) ya Sitati y'i Roma ishyiraho Urukiko Mpanabyaha Mpuzamahanga yatangiye gukurikizwa ku wa 01/07/2002 nk'ibikorwa bikabije bikozwe ku bushake bibangamiye uburenganzira bw'ibanze kubera impamvu z'ivangura rishingiye ku biranga itsinda umuntu arimo hirengagijwe amategeko mpuzamahanga[76]. Icyaha cyibasiye inyokomuntu giteganyijwe kandi mu ngingo ya 6,c) ya Sitati ya Nuremberg[77], no mu ngingo ya 3 ya Sitati y'Urukiko

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[75] *De l'avis de la Chambre, aussi bien le crime contre l'humanité, déjà puni par les juridictions de Nuremberg et de Tokyo, que le génocide, crime dont le concept même n'a été défini qu'ulterieurement, sont des crimes qui choquent particulièrement la conscience de l'humanité*, Affaire No ICTR-96-4-T/Peine/leg/fra, Procureur c/ Akayezu Jean - Paul, p.6.

[76]Article 7.2. (g) of Rome Statut of the International Criminel Court: "*Persecution means the international and severe deprivation of fundamental rights to international law by reason of the identity of the group or collectivity"; "Par «persécution», on entend le déni international et grave de droits fondamentaux en violation du droit international, pour des motifs liés à l'identité du groupe ou de la collectivité qui en fait l'objet*.

[77] Article 6 (c) du Statut du Tribunal Militaire Internationa de Nuremberg : « *Les Crimes contre l'Humanité : c'est-à-dire l'assassinat, l'extermination, la*

Mpanabyaha rwashyiriweho u Rwanda nka kimwe mu bikorwa byibasira inyokomuntu bikorwa mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivile bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko cyangwa idini[78], nk'uko byasobanuwe n'Urukiko Rukuru, mu gika cya [158] cy'urubanza rwajuririwe.

[219] Ingingo ya 120 y'Itegeko – Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe urubanza rujuririrwa rwacibwaga, iteganya ko «Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko, cyangwa idini: 1° kwica; 2° kurimbura; (…) 8° gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiye ku rindi vangura iryo ari ryo ryose; (…)[79]».

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réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime ».

[78] Article 3, h, du Statut du TPIR, stipule que *"Le Tribunal international pour le Rwanda est habilité à juger les personnes responsables des crimes suivants lorsqu'ils ont été commis dans le cadre d'une attaque généralisée et systématique dirigée contre une population civile quelle qu'elle soit, en raison de son appartenance nationale, politique, ethnique, raciale ou religieuse: Persécutions pour des raisons politiques, raciales et religieuses*".

[79] Iyo ngingo ihuje kandi n'ingingo ya 94 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare: 1º

[220] Ku birebana n'uru rubanza, Urukiko Rukuru rwasobanuye mu gika cya [160] cy'urubanza rwajuririwe, ko amagambo Mugesera Léon yavugiye muri « meeting » yo ku Kabaya agize icyaha cyo gushishikariza gukora jenoside anagize icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu kuko atesha agaciro abatutsi kubera ubwoko bwabo, akanahamagarira kubahohotera ku buryo bukomeye bamburwa uburenganzira bwabo bw'ibanze, kuko uguhamagarira guhohotera abatutsi kwaje gushyirwa mu bikorwa bicwa, basahurwa, batwikirwa nk'uko byemejwe n'abatangabuhamya babajijwe n'urwo Rukiko n'ibindi bimenyetso biri muri dosiye birimo ibinyamakuru n'izindi nyandiko z'abahanga zagaragajwe zivuga ku ngaruka zakurikiye ijambo Mugesera Léon yavugiye ku Kabaya.

[221] Urukiko Rukuru rwasobanuye kandi mu gika cya [161] cy'urubanza rwajuririwe, ko rusanga mu ijambo Mugesera Léon yavugiye muri « meeting » yo ku Kabaya, yaribasiye abanyapolitiki bo mu yandi mashyaka nka MDR, PSD, PL na FPR ataravugaga rumwe n'ishyaka rya MRND, abita ibyitso by'inyenzi cyangwa abateye igihugu akanahamagararira

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kwica; 2º kurimbura; 3º gushyira mu bucakara; 4º gutwara bunyago cyangwa kubimura ku ngufu aho bari batuye; 5º gufunga umuntu cyangwa kumwambura uburenganzira bwe bwo kujya aho ashaka mu buryo bunyuranyije n'amategeko; 6º kwica urubozo; 7º gusambanya ku gahato, ubucakara bushingiye ku gitsina, gukoresha uburaya ku gahato, guhagarika urubyaro ku gahato cyangwa ikindi gikorwa icyo ari cyo cyose cy'ihohotera rishingiye ku gitsina risa n'ibimaze kuvugwa; 8º gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiye ku rindi vangura iryo ari ryo ryose; 9º kurigisa abantu; 10º ivangura rishingiye ku ibara ry'uruhu; 11º ibindi bikorwa birenze kamere-muntu bisa n'ibimaze kuvugwa bikozwe ku bushake bigamije kubabaza cyangwa kwangiza bikabije umubiri cyangwa ubwenge".

kubatsemba no kubakatira urwo gupfa no kubica, ko ubundi yakoresheje amagambo yo kubatesha agaciro kuko hari uwo yise igisambo, undi amwita umushizi w'isoni, naho undi amwita nsengashitani, ndetse ko yanakoresheje n'amagambo abambura uburenganzira bwo gukora politiki mu bwisanzure nko kuvuga ko batagomba kongera gukorera politiki ku Gisenyi, ko ahubwo bagomba kujya kuyikorera iwabo.

[222] Na none mu gika cya [163] cy'urubanza rujuririrwa, Urukiko Rukuru rwasanze ibyo Mugesera Léon yakoze byo kwibasira abaturage b'abasivile bo mu bwoko bw'Abatutsi n'Abanyapolitiki batavugaga rumwe na MRND byari mu rwego rw'ibitero rusange cyangwa simusiga kuko yavuze ayo magambo mu gihe hirya no hino mu gihugu kwica abatutsi, kubafunga no gutoteza abanyepolitiki byari byaratangiye mu Rwanda guhera m'Ukwakira 1990 nk'uko byanemejwe mu rubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005[80].

[223] Ku birebana n'ubushake bwo gukora icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu, mu gika cya [165]

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[80] 80Mu gika cya 160 na 163 by'urubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, urwo Rukiko rwasobanuye ko "*Selon* M. Duquette*, l'année 1990 avait marqué le début d'une série de massacres que les dirigeants du MRND et les militaires avaient encourages ouvertement et auxquels ils avaient parfois participé. (...) Les Tutsi et les Hutu modérés, deux groupes identifiables en raison de leurs caractéristiques ethniques et politiques, costituaient une populations civile au sens du droit international coutumier. Les conclusions de* M. Duquette *ne laissent aucun doute sur le fait que des attaques systématiques étaient menées contre eux. Pour ces raisons, nous reconnaissons qu'une population civile faisait l'objet d'une attaque systématique au Rwanda au moment où* M. Mugesera *a prononcé son discours".*

cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko harebwe amagambo Mugesera Léon yavugiye muri mitingi yo ku Kabaya ubwo yibasiraga abaturage b'Abatutsi cyangwa abanyapolitiki batavugaga rumwe na MRND mu gihe igihugu cyari mu ntambara, n'igihe abaturage bicwaga hirya no hino mu gihugu, abandi bagafungwa cyangwa bakagiririrwa ubundi bugizi bwa nabi nko gutwikirwa amazu, gusahurwa, gukubitwa, kandi ababikoraga bakaba barabitaga ibyitso by'abateye igihugu nk'uko byasobanuwe haruguru, bigaragara ko igihe Mugesera Léon yavugaga ayo magambo, yari afite ubushake bwo kubatoteza kubera impamvu zishingiye ku bwoko no kuri politiki.

[224] Urukiko rurasanga, nk'uko n'Urukiko Rukuru rwabibonye, kuba muri « *meeting* » yo ku Kabaya, Mugesera Léon yaribasiye abaturage b'Abatutsi b'abasivile abaziza ubwoko bwabo ubwo yahamagaririraga abayoboke ba MRND kubatoteza no kubica kubera ko ari ibyitso by'Inyenzi zateye igihugu nk'uko byasobanuwe haruguru, kandi uko kubibasira kukaba kwarakozwe mu rwego rw'ibitero rusange cyangwa bya simusiga kuko yavuze ayo magambo igihe Abatutsi bagera ku bihumbi bibiri (2.000) bari bamaze kwicwa guhera ku wa 01/10/1990 kugera ku wa 22/11/1992, umunsi yavugaga iyo disikuru, ndetse n'igihe ubwo bwicanyi bwari bugikomeje hirya no hino mu gihugu kubera ko bwari bushyigikiwe ku mugaragaro na Guverinema y'u Rwanda ku buryo hari abayobozi ba MRND n'abasirikare babugizemo uruhare[81], kandi

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[81] Mu gika cya 159 na 160 by'urubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada rwavuzwe haruguru, urwo Rukiko rwasobanuye ko "*Au sujet de la question du caractère généralisé de l'attaque,* M. Duquette *(arbitre) a relevé que près de 2.000 Tutsi avaient été massacrés au Rwanda entre le 1er Octobre 1990 et le 22 Novembre 1992. (...) Selon* M. Duquette*, l'année 1990*

ayo magambo akaba yaratumye abaturage b'abasivile bo mu bwoko bw'Abatutsi bicwa, basahurwa, banatwikirwa nk'uko byemejwe n'abatangabuhamya babajijwe n'urwo Rukiko, bigaragara ko Mugesera Léon yakoze icyaha cyibasiye inyokomuntu kubera ko ibyo bikorwa byo gutoteza (*persécution*) no kwica Abatutsi b'aba sivile byakozwe mu rwego rw'ibitero rusange cyangwa bya simusiga kandi byari byibasiye Abatutsi kubera ubwoko bwabo nk'uko byasobanuwe n'Urukiko Rukuru.

[225] Urukiko rurasanga kandi, nk'uko n'Urukiko Rukuru rwabibonye, kuba muri « *meeting* » yo ku Kabaya, Mugesera Léon yaribasiye abayobozi b'amashyaka ataravugaga rumwe n'ishyaka rya MRND nka MDR, PSD, PL na PDC, ubwo yabitaga ibyitso by'Inyenzi zateye igihugu, kandi akaba yaranabatesheje agaciro ubwo yitaga Minisitiri w'Intebe Nsengiyaremye, Nsengashitani, naho Twagiramungu, Perezida w'ishyaka rya MDR, akaba yaramwise igisambo, Minisitiri w'Uburezi akaba yaramwise umushizi w'isoni, kandi akaba yarahamagariye kwica Minisitiri w'Intebe Nsengiyaremye na Twagiramungu kuko yibajije impamvu batarabica ngo kuko Minisitiri w'Intebe yaciye intege ingabo zari ku rugamba, ngo no kuba Twagiramungu yaratanze Perefegitura ya Byumba,

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avait marqué le début d'une série de massacres que les dirigeants du MRND et les militaires avaient encouragés ouvertement et auxquels ils avaient parfois participé. Nous avons vu précédement que l'existence d'un type de comportement attentatoire, surtout lorsqu'il est cautionné ou adopté par le gouvernement et les militaires, suffira souvent à établir que l'attaque a eu lieu conformément à une politique ou à un plan et q'elle était de ce fait systématique. Il est indubitable qu'une politique d'attaque, de persécution et de violence était menée contre les Tutsi et les Hutu modérés au Rwanda lorsque M. Mugesera *a prononcé son discours. L'acte de persécution s'inscrivait donc dans le cadre d'une attaque systématique*".

ndetse akaba yarakoresheje n'amagambo abambura uburenganzira bwo gukora politiki mu bwisanzure kuko yavuze ko batagomba kongera gukorera politiki muri Perefegitura ya Gisenyi, no kuhashinga ibyahi byabo ngo ni amabendera, ko ahubwo bagomba kujya kuyikorera iwabo cyangwa bakajya guturana n'Inyenzi, kandi ibikorwa by'itotezwa by'Abahutu batavugaga rumwe n'ishyaka rya MRND (*modérés*) bikaba byarakorwaga hirya no hino mu Rwanda, igihe Mugesera Léon yavugaga iyo disikuru, bigaragara ko Mugesera Léon yakoze icyaha cyibasiye inyokomuntu, aho kuba icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu nk'uko byemejwe n'Urukiko Rukuru, kubera ko abayobozi b'amashyaka ataravugaga rumwe na MRND batotejwe (*persécutés*) mu rwego rw'ibitero rusange cyangwa bya simusiga byabibasiye kubera ibitekerezo byabo bya Politiki nk'uko byasobanuwe n'Urukiko Rukuru.

[226] Byongeye kandi, Urukiko rurasanga ikindi kimenyetso kigaragaza ko Mugesera Léon yakoze icyaha cyibasiye inyokomuntu, ari uko abatangabuhamya Sinayobye André na Rwasubutare Callixte bemeje ko mu nama yabereye i Nyamyumba ku wa 06/07/1992, Mugesera Léon yibasiye abaturage b'Abatutsi igihe Igihugu cyari mu ntambara, bituma bamwe muribo bicwa, abandi barafungwa, abandi batwikirwa amazu, baranasahurwa nk'uko byasobanuwe n'Urukiko Rukuru mu gika cya [165] cy'urubanza rujuririrwa.

[227] Urukiko rurasanga nk'uko n'Urukiko Rukuru rwabisobanuye mu gika cya [164] cy'urubanza rujuririrwa, ijambo ribiba urwango rikanahamagarira abayoboke ba MRND guhohotera abantu kubera ivangura rishingiye ku bwoko cyangwa ibitekerezo bya politiki rigize icyaha cyibasiye inyoko-muntu nk'uko byasobanuwe mu manza nyinshi zaciwe

n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR) zirimo urubanza N° ICTR-99-52-A rwaciwe n'urwo Rukiko ku wa 28/11/2007, haburana Porokireri na Ferdinand NAHIMANA na bagenzi be, aho urwo Rukiko rwasobanuye mu bika byarwo bya 983 – 988, ko amagambo abiba urwango, akanahamagarira kwibasira Abatutsi ubwayo agize ibikorwa byo gutoteza bigize icyaha cyibasiye inyoko muntu[82]. Ibyo byemejwe kandi mu rubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, aho rwasobanuye ko ijambo Mugesera Léon yavugiye ku Kabaya ribiba urwango, rikanahamagarira abamwumvaga guhohotera, kwica no gutsemba Abatutsi n'abataravugaga rumwe n'ubutegetsi, kandi rikaba ryaranatumye abamwumvaga bashaka kwirwanaho no kubahohotera bitewe n'uko bumvaga bugarijwe n'ibitero bya simusiga, rigize igikorwa cy'ihototera (la persécution) kigize icyaha cyibasiye inyoko muntu[83].

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[82] *En l'espèce, les discours haineux tenus après le 6 avril 1994 étaient accompagnés de discours appelant au génocide contre le groupe tutsi et tous ces discours s'inscrivaient dans le contexte d'une vaste campagne de persécution dirigée contre la population tutsie du Rwanda, cette campagne étant également caractérisée par des actes de violence (meurtres, sévices physiques, viols…) et de destruction de propriété. En particulier, les discours de la RTLM incriminés – qui ont tous été tenus par des subordonnés de l'Appelant* Nahimana, *lorsque considérés ensemble et dans leur contexte, sont, de l'avis de la Chambre d'appel, d'une gravité équivalente aux autres crimes contre l'humanité".*

[83] Mu gika cya 148 cy'urubanza n° 2005 S.C.R. 40, rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, MUGESERA Léon vs Canada (M.C.I), urwo Rukiko rwasobanuye ko "Selon M.Duquette, *le discours de* M. Mugesera *incitait à la haine contre les Tutsi et ses opposants politiques, notamment en encourageant des actes de violences extrêmes, telle l'extermination. (…) Une allocution comme celle considérée en l'espèce, où M. Mugesera a encouragé activement la haine, l'assassinat et l'extermination, et fait naître chez son auditoire le sentiment d'une menace*

[228] Urukiko rurasanga imvugo ya Mugesera Léon y'uko iyo Urukiko Rukuru rushyira disikuru yo ku Kabaya muri « *contexte* » yayo rutari kumuhamya icyaha kuko rwari gusanga iyo disikuru yaravuzwe mu gihe gishyushye cy'ipiganwa ry'amashyaka menshi, nta shingiro ifite, kuko n'ubwo iyo disikuru yavuzwe icyo gihe, bidakuraho kuba yarahamagariraga abayoboke b'ishyaka rya MRND bamwumvaga kwica, gutoteza, no guhohotera Abatutsi b'abasivile babaziza ubwoko bwabo n'abayobozi b'amashyaka ataravugaga rumwe n'iryo shyaka kubera ibitekerezo byabo bya Politiki nk'uko byasobanuwe haruguru.

[229] Urukiko rurasanga kandi imvugo ya Mugesera Léon y'uko iyo Urukiko Rukuru rutirengagiza amategeko rwari gusanga uwavuze disikuru yo ku Kabaya atarakoze icyaha kuko yasabaga ko amategeko yubahirizwa, maze Minisitiri w'Intebe Nsengiyaremye waciye ingabo intege igihe cy'intambara na Twagiramungu watanze Perefegitura ya Byumba bagahanishwa igihano cy'urupfu nk'uko amategeko yabiteganyaga nta shingiro ifite, kuko iby'uko Mugesera Léon yasabaga ko amategeko yubahirizwa bitamukuraho uburyozwacyaha mu gihe yanahamagariraga iyicwa rya Nsengiyaremye na Twagiramungu kuko yibazaga impamvu batarabica.

5. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu guhamya ko MUGESERA Léon yakoze icyaha cyo kubiba urwango rushingiye ku bwoko

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imminente et le besoin de recourir à la violence contre la minorité ethnique et des opposants politiques, porte la marque d'un acte manifeste ou flagrant de discrimination équivalant en gravité aux autres actes sous-jacents énumérés au par. 7(3.76) du Code criminel du crime contre l'humanité. L'exigence d'un acte criminel sous-jacent, la persécution, se trouve donc remplie".

[230] Mugesera Léon avuga ko Urukiko Rukuru rwakoze amakosa yo mu rwego rw'ibyabaye (*erreur des faits*) n'amakosa yo mu rwego rw'amategeko (*erreur de droit*) kuko rwamuhamije icyaha cyo kubiba urwango rushingiye ku bwoko, kandi ataragikoze. Asaba uru Rukiko ko rwashishoza rukamugira umwere kuko atakoze icyaha. Avuga kandi ko yatewe agahinda n'uko izina rye ryandujwe n'abantu batandukanye bavuzwe haruguru kuko bamuhinduye nk'inyamaswa n'uwakoze jenoside (Le *faux* Mugesera), kandi Mugesera Léon nyawe (*Le vrai* Mugesera) ari umuntu mwiza cyane ukunda Abatutsi kuko igihe yashyingirwaga, yifotoje ari kumwe na Musenyeri Bigirumwami wari Umututsi ari kumwe n'abandi Basenyeri babiri (2), kandi ko uru Rukiko ruramutse rubishatse yazarushyikiriza iyo foto ariko rukabigira ibanga. Yongeraho ko n'Abacungagereza bazi ko ari umuntu mwiza kuko Umuyobozi wabo yaje muri Gereza ya Mpanga amubaza niba ntacyo yafasha u Rwanda, aho kwirirwa ategura imanza ze gusa, maze yandika inyandiko (*document*) izagirira Abanyarwanda akamaro, arayimuha, ndetse ko anafite igitabo azaha Me Rudakemwa Jean – Félix, umwunganira, kugira ngo akimushyikirize.

[231] Me Rudakemwa Jean – Félix, umwunganira, avuga ko Urukiko Rukuru rwahamije MUGESERA Léon ibyaha bitatu (3) birimo icyaha cyo kubiba urwango rushingiye ku bwoko rumurenganyije kubera ko nta rwango yigeze agirira Abatutsi. Asaba uru Rukiko ko rwahindura icyo cyemezo kigaragaramo akarengane rukamugira umwere.

[232] Uhagarariye Ubushinjacyaha avuga ko imikirize y'urubanza rwajuririwe itahinduka kubera ko Mugesera Léon atatanze ibimenyetso bivuguruza ibyo Urukiko Rukuru

rwashingiyeho rumuhamya icyaha cyo kubiba urwango rushingiye ku bwoko.

[233] Asobanura ko Mugesera Léon akwiye guhamwa n'icyaha cyo kubiba urwango rushingiye ku bwoko kuko gitandukanye n'icyaha cyo gushishikariza gukora jenoside kubera ko iki cyaha giteganyijwe nk'icyaha cyihariye mu mategeko, kandi ko kibaho kabone n'ubwo abashishikarijwe gukora jenoside batayikoze kuko gisaba ubushake bwihariye bwo kurimbura abantu cyangwa igice kimwe cyabo hashingiwe ku bwoko bwabo, ku ibara ry'uruhu, cyangwa ku idini, ariko ko icyaha cyo kubiba urwango cyateganywaga nk'icyaha cyihariye mu ngingo ya 393 y'Itegeko -Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, n'ubwo nacyo kijya gikorwa hashingiwe ku bwoko, inkomoko cyangwa ku idini. Yongeraho ko ikindi kigaragaza ko ibyo byaha byombi bitandukanye, ari uko abahanga mu mategeko basobanura ko icyaha cyo gushishikariza abandi gukora jenoside kibaho iyo hari uwahamagariye abandi kugira icyo bakora, naho icyo kubiba urwango kiba gikozwe igihe umuntu avuze amagambo abiba urwango gusa.

UKO URUKIKO RUBIBONA

[234] Mu gika cya [176] na [178] by'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko hashingiwe ku ngingo ya 393 y'Itegeko -Teka No 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, Mugesera Léon agomba guhamwa n'icyaha cyo kubiba urwango mu baturage kubera ko amagambo yakoresheje muri disikuru yavugiye muri "meeting" yo ku Kabaya n'i

Nyamyumba agaragaza urwango yari afitiye Abatutsi ubwo yabitaga inyenzi, ibyitso by'abateye igihugu n'ibindi nk'uko byemejwe n'abatangabuhamya babajijwe n'urwo Rukiko, bityo ko ayo magambo agaragaza ko yari afite ubushake bwo kwanga Abatutsi no gushishikariza abandi kurubagirira, bityo ko Mugesera Léon yakoze icyaha cyo kubiba urwango mu baturage rushingiye ku bwoko nk'uko biteganywa n'ingingo ya 393 y'iryo Tegeko –Teka.

[235] Raporo yakozwe na Sena y'u Rwanda mu mwaka wa 2019 ku birebana n'imiterere y'ihakana n'ipfobya ya jenoside yakorewe Abatutsi, isobanura ko Umwanditsi witwa Gregory Stanton wasobanuye byimbitse uko Jenoside itegurwa ikanashyirwa mu bikorwa, yerekanye ko jenoside yakorewe Abatutsi mu Rwanda yateguwe mu byiciro icumi (10) mu buryo bukurikira[84]: 1) kuvangura abantu no kubaremamo ibice (*Classification*), 2) kubaha ibibaranga (*Symbolization*), 3) ivangura (*Discrimination*), 4) kubambura ubumuntu (*Déshumanisation/ Dehumanization*), 5) gushyiraho gahunda (*Organisation/ Organization*), 6) guhanganisha abagomba kwicwa n'abazabica (*Polarisation/ Polarization*), 7) imyiteguro ya nyuma *(Préparation/Preparation*), 8) gutoteza bikomeye (*Persécution/Persecution*), 9) kurimbura (Extermination), 10) guhakana no gupfobya Jenoside (*Déni/Denial; Révisionisme/ Revisionism*).

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[84] Stanton, G. H. (2013). 10 Stages of Genocide. Retrieved April 22, 2016, from Genocide watch net: http://www.genocidewatch.org/genocide/tenstagesofgenocide.html, in Raporo yakozwe na Sena y'u Rwanda yo mu mwaka wa 2019 ku miterere y'ihakana n'ipfobye bya jenoside yakorewe Abatutsi bibera mu mahanga n'ingamba zo kibirwanya, pp 29-33.

[236] Mu gusobanura ibyiciro bimaze kuvugwa haruguru, iyo raporo ivuga ko mu Rwanda, abateguye jenoside babanje gucamo Abanyarwanda ibice, maze buri tsinda rihabwa izina ryihariye, ni ukuvuga “Abahutu n’Abatutsi”, binashimangirwa n’inyigisho z’urwango zarushijeho gutandukanya ayo matsinda yombi, kugeza ubwo itsinda ryibasiwe ry’Abatutsi ryafashwe nk’umwanzi ku buryo buhoro buhoro bagiye bamburwa ubumuntu binyujijwe mu itangazamakuru n’icengezamatwara ry’urwango, ndetse ko n’indangamuntu bahawe zatumaga bamenyekana, kandi ko bahawe n’amazina menshi yabamburaga ubumuntu nk’aho biswe inyenzi, inzoka n’andi, ndetse ko politiki y’iringaniza yatumye bamburwa uburenganzira bwabo bw’ibanze mu gihugu kuko yatumye batiga cyangwa batajya mu mirimo ya Leta ari benshi. Ikindi n’uko buri jenoside igira gahunda ikorwamo na Leta ku buryo inakoresha imitwe yitwara gisirikare kugira ngo uruhare rwayo rutagaragara, ko mu Rwanda hakoreshejwe Interahamwe, Impuzamugambi na «Hutu Power», banigishwa kwikiza umwanzi banahabwa ibikoresho bitandukanye bizifashishwa (imipanga, amahiri ...), ko nyuma y’aho hakurikiyeho imvugo n’ingengabitekerezo ivuga ngo “utari kumwe natwe araturwanya”, bigakurikizwa, bikanasakazwa mu bagomba gushyira mu bikorwa uwo mugambi, ko mu Rwanda, habayeho gusobanura ko umwanzi ari Umututsi w’imbere mu gihugu cyangwa uwo hanze yacyo, ko nyuma y’aho hakurikiyeho kwica no gutoteza Abatutsi bikomeye, guhakana no gupfobya Jenoside yakorewe Abatutsi.

[237] Urukiko rurasanga, ku birebana n’uru rubanza, ibikorwa byo kubiba urwango mu baturage rushingiye ku bwoko Mugesera Léon yakoze harebwe amagambo yavugiye ku Kabaya n’i Nyamyumba nk’uko byasobanuwe haruguru, ari

imwe mu ntambwe (*les étapes*) ziganisha kuri jenoside Mugesera Léon yakoresheje agamije kugera ku cyaha cyo gushishikariza abandi gukora jenoside nk'uko byasobanuwe muri raporo ya Sena yavuzwe haruguru, bivuze ko Urukiko Rukuru rutagombaga kubifata nk'icyaha cyihariye cyo kubiba urwango cyateganywaga n'ingingo ya 393 y'Itegeko-Teka ryavuzwe haruguru, kuko kuba Mugesera Léon yarabibye urwango mu baturage ubwo yitaga Abatutsi inyenzi n'ibyitso by'abateye igihugu, ari uko yashakaga ko nabo barubagirira bagatsemba Abatutsi.

6. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu guhanisha Mugesera Léon igifungo cya burundu

[238] Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, bavuga ko Urukiko Rukuru rutagombaga kumuhanisha igifungo cya burundu hashingiwe kuri disikuru yo ku Kabaya kuko yahinduwe (*truqué*), ko ahubwo rwagombaga kumugira umwere kubera ko atakoze ibyaha aregwa.

[239] Uhagarariye Ubushinjacyaha avuga ko Mugesera Léon akwiye guhanishwa igifungo cya burundu yahawe n'Urukiko Rukuru kubera ko yakoze ibyaha yahamijwe n'urwo Rukiko nk'uko byasobanuwe haruguru.

UKO RUKIKO RUBIBONA

[240] Ingingo ya 132, 3º y'Itegeko – Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe Mugesera Léon yacirirwaga urubanza ku rwego rwa mbere, iteganya ko "Ibindi bikorwa bihanwa nk'icyaha cya jenoside, ari ugushishikariza abantu gukora icyo cyaha n'ubwo bitashyirwa mu bikorwa, wifashishije amagambo,

amashusho cyangwa inyandiko. Naho ingingo ya 115 y'iryo Tegeko – Ngenga, igateganya ko icyaha cya Jenoside gihanishwa igifungo cya burundu cy'umwihariko.

[241] Ingingo ya 120, agace ka 8º, y'Itegeko – Ngenga ryavuzwe haruguru, iteganya ko «Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko, cyangwa idini: gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiye ku rindi vangura iryo ari ryo ryose; (…). Naho ingingo ya 121 y'iryo Tegeko – Ngenga, igateganya ko «Umuntu wese ukora icyaha cyibasiye inyokomuntu nk'uko biteganywa mu gace ka 8º k'ingingo ya 120 y'iri Tegeko – Ngenga, ahanishwa igifungo kuva ku myaka icumi (10) kugeza ku myaka makumyabiri n'itanu (25) ».

[242] Na none ingingo ya 83, 2º, a, y'Itegeko – Ngenga ryavuzwe haruguru, iteganya ko haba impurirane y'imbonezamugambi iyo igikorwa kimwe ubwacyo gishobora kubyara ibyaha byinshi (...)». Naho ingingo ya 84 y'iryo Tegeko – Ngenga, igateganya ko « Iyo ku gikorwa kimwe gusa cyangwa byinshi, uwakoze icyaha yari guhanishwa ibihano byinshi byo gufungwa cyangwa by'ihazabu, umucamanza amuhanisha igihano kiruta ibindi yongera igihe cyangwa umubare bitewe n'uburyo ibyaha byakozwe ariko ntarenze urugero ntarengwa wongeyeho icya kabiri (1/2) cy'icyo gihano kirushije ibindi gukomera ».

[243] Mu bika bya [189] na [192] by'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko ibyaha Mugesera Léon yakoze byo kuba icyitso cy'abakoze jenoside kubera gushishikariza ku

mugaragaro kandi ku buryo butaziguye gukora jenoside, icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu n'icyaha cyo kubiba urwango rushingiye ku bwoko, byakozwe mu mugambi umwe wo gukora jenoside no kugirira nabi abo yitaga ibyitso by'abateye igihugu, bityo ko agomba guhanishwa igifungo cya burundu giteganyirijwe icyaha cyo kuba icyitso cy'abakoze jenoside nk'uko byasobanuwe haruguru.

[244] Urukiko rurasanga ibikorwa byo kubiba urwango mu baturage rushingiye ku bwoko MUGESERA Léon yakoze bitaragombaga gufatwa nk'icyaha cyihariye, ko ahubwo byagombaga gufatwa nk'imwe mu ntambwe (*les étapes*) ziganisha kuri jenoside Mugesera Léon yakoresheje agamije kugera ku cyaha cyo gushishikariza abandi gukora jenoside nk'uko byasobanuwe haruguru, bivuze ko Mugesera Léon agomba guhamwa n'icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside n'icyaha cyibasiye inyokomuntu (gutoteza), bityo kuba ibyo byaha byombi byarakozwe mu mugambi umwe wo gukora jenoside no kugirira nabi abo yitaga Inyenzi n'ibyitso by'abateye igihugu, agomba guhanishwa igifungo cya burundu giteganyirijwe icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside kuko aricyo kiremereye kurusha ikindi nk'uko biteganywa n'ingingo ya 84 y'Itegeko – Ngenga ryavuzwe haruguru, ariko ko Mugesera Léon atahanishwa igifungo cya burundu cy'umwihariko giteganywa n'ingingo ya 132, 3º y'Itegeko – Ngenga ryavuzwe haruguru, kuko yoherejwe n'igihugu cya Canada nk'uko biteganywa n'ingingo ya 5 bis y'Itegeko – Ngenga Nº 08/2013 ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko – Ngenga Nº 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe

kandi ryujujwe kugeza ubu,[85] nk'uko n'Urukiko Rukuru rwabibonye.

[245] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga nta kosa n'Urukiko Rukuru rwakoze mu guhanisha Mugesera Léon igifungo cya burundu, bityo iyi mpamvu ye y'ubujurire ikaba nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[246] Rwemeje ko ubujurire bwa Mugesera Léon nta shingiro bufite;

[247] Rwemeje ko imikirize y'urubanza RP 0001/12/CCI rwaciwe n'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi, ku wa 15/04/2016, ihindutse gusa ku birebana n'ibyaha Mugesera Léon ahamijwe;

[248] Rwemeje ko Mugesera Léon ahamwa n'icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenoside n'icyaha cyibasiye inyokomuntu;

[249] Ruhanishije Mugesera Léon igifungo cya burundu;

[250] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

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[85] Ingingo ya 5 bis y'Itegeko – Ngenga ryavuzwe haruguru, iteganya ko "Uregwa wahamwe n'icyaha mu rubanza rwimuriwe mu Rwanda ruvuye mu Rukiko Mpanabyaha rwashyiriweho u Rwanda cyangwa mu kindi gihugu, ntashobora guhanishwa igifungo cya burundu cy'umwihariko».

UMUGEREKA W'URUBANZA RP/GEN 00003/2019/CA

Ijambo rikurikira niryo Ubushinjacyaha buvuga ko MUGESERA Léon yavugiye muri *meeting* y'ishyaka rya MRND yabereye ku Kabaya kuwa 22/11/1992*:*

Muvoma yacu, ramba...

Perezida Habyalimana, narambe...

Abarwanashyaka ba Muvoma turi hano twese, turambe...

Barwanashyaka ba Muvoma yacu, twese uko duteraniye hano, ngirango ijambo ndi buvuge muranyumva, ndababwira ibintu bine gusa: mu minsi ishize nababwiye ko twanze agasuzuguro, n'ubu turacyakanga! Ibyo ntabwo mbigarukaho!

Uko nitegereje imbaga nyamwinshi twese duteraniye hano, biragaragara ko icya mbere nari kuvuga nari nkwiye kukireka: kuko nari ngiye kubabwira ngo mwirinde umugeri wa MDR irimo gusamba! Icyo ni icya mbere.

Icya kabiri, ngirango tujyeho inama: twivogerwa! Haba hano turi, haba no mu gihugu; icyo ni icya kabiri.

Icya gatatu, ngira ngo mbabwire, nacyo ni ikintu gikomeye, ni ukuntu tugomba kwifata kugira ngo twirinde abagambanyi n'abashaka kutumerera nabi.

Hanyuma rero icyo ndi busozerezeho nyine, ni uburyo tugomba kwifata.

Icya mbere rero ngira ngo mbagezeho, icyo kintu gikomeye ndagira ngo mukimenye... Kuko imigeri MDR na PL, na FPR, hamwe na rya shyaka ryitwa PSD na PDC ndetse bitera muri iki gihe, mumenye impamvu ritera imigeri. Rikayitera rero rishaka ko urwara rwagera kuri perezida wa repubulika bikanga, ari we perezida wa Muvoma yacu. Rikayitera ku barwanashyaka bacu... Mumenye impamvu iyo migeni irimo guterwa: Burya ujya gupfa aba afite indwara!!!

Igisambo Twagiramungu yagiye kuri Radiyo kuko ari perezida w'ishyaka, ariwe wayihamagariye ngo agiye kuhicira CDR, irahamutsinda! Imaze kuhamutsinda, mu matagisi hose i Kigali, abarwanashyaka ba MDR, PSD n'ibyobyitso by'inyenzi, barakonje pe! benda guhwera na we ubwe ararigita, ntiyasubira no mu biro yakoreragamo, ndababwira ko uwo muntu, ishyaka rye ryataye isaro, bose bagira ubwoba bahita bapfa !

Kubera rero ko iryo shyaka hamwe n'andi bafatanyije kuko ari ibyitso by'inyenzi, umugabo uririmo witwa Murego ageze i Kibungo afata ijambo aravuga ati: Twe dukomoka ku Bahutu kandi turi abahutu." Bati: "Urakavuna umuheto! Shahu ibyo by'Abahutu urabivuga ubibwiwe na nde? Bararakara ubwo barahwera!

Noneho Minisitiri w'intebe witwa ngo niba ari Nsengashitani cyangwa iyaremye simbizi, afata inzira n'i Cyangugu ngo agiye kubuza Abahutu kwirwanaho, Abatutsi babatega za mines, mwabyumvise kuri radiyo, maze bamuha urw'amenyo, namwe mwarabyiyumviye ata umutwe n'abarwanashyaka be bose n'amashyaka bafatanyije.

Ubwo rero murumva abo bantu bimaze kugenda gutyo...Mwiyumviye Perezida w'ishyaka ryacu, Nyakubahwa Jenerali-Majoro Habyalimana Juvénal, ageze mu Ruhengeni, avuze, Ikinani kiragaragara, babandi bahita bajya mu mva, murumva rero umugeri w'abo bantu ko bahwereye, bateye umugeri bumvise u Rwanda rwose n'abo mu yandi mashyaka barimo kuyavamo bagaruka mu ishyaka ryacu, kubera ijambo ry'umukuru wacu.

Umugeri wabo rero urindwa mubi, icyakora uko tungana dutya ndabona turi benshi, nta n'aho bawunyuza barata igihe.

Ibyo rero ni icya mbere, MDR n'amashyaka bifatanyije birimo gusamba, umugeri wabyo, muwirinde, ariko uko nabibonye n'urwara ntiruzabageraho!

Icya kabiri nagennye kubabwira: ni ukutavogerwa. Muve aha rwose mujyanye iryo jambo rivuga kutavogerwa.

Mbe wa mugabo we, nawe wa mubyeyi we muri hano, harya umuntu azaza yicare mu rugo rwawe,

ahannye, wongere wemere ko ahagaruka koko? Uwo ni umuziro rwose!

Mumenye ko ikintu gikomeye cya mbere... hano mwabonye abavandimwe bacu b'i Gitarama; amabendera ni jye wayatanze nkora mu biro by'ishyaka ryacu, yose i Gitarama barayashinga ariko iyo uturutse i Kigali ukaza ugatambuka, ukinjira muri Kibirira nta bendera rya MRND rikihatamba barayamanuye!

Ibyo aribyo byose namwe murabyumva, abapadiri batwigishije byiza na Muvoma yacu ni Muvoma y'amahoro, ariko bamenye ko natwe amahoro yacu nta kuntu umuntu ashobora kuyagira nawe atirwanyeho.

Hari abaciye umugani ngo: "Ushaka amahoro ahora yiteguye intambara". Maze rero, muri perefegitura yose yacu ya Gisenyi, ni ubwa kane cyangwa ubwa gatanu mbivuga, ni bo babanje. Mu Ivanjiri biranditse ngo: "Nibagukubita urushyi ku itama rimwe uzategе irindi bakubiteho". Njye mbabwiye ko iyo vanjili yahindutse muri Muvoma yacu: nibagukubita urushyi ku itama rimwe, uzabatere ebyiri ku rindi hanyuma biture hasi ubutazazanzamuka!

Aha rero, nta kantu kitwa ibendera ryabo, nta cyitwa ingofero yabo, nta cyitwa n'umurwanashyaka wabo ugomba kongera kuza ku butaka bwacu kuhavugira: ndavuga Gisenyi yose uko yakabaye!

Ngo: "Kirya abandi bajya kukirya kikishaririza" !Bamenye ko umugabo ari nk'undi, natwe urugo

rwacu ntiruvogerwa. Kuvogerwa rero mumenye ko ari umuziro!

Ikindi kintu ngira ngo mbabwire ku byerekeranye no kuvogerwa, mugomba kwanga, ni ibintu biteye ubwoba; mukuru wacu, Munyandamutsa, amaze kubabwira uko byifashe. Ati: "Ba ensipegiteri bacu, ubu mu gihugu hose ni 59 birukanye". Muri perefegitura yacu ya Gisenyi ni 8 !

Maze se mwa babyeyi mwe muteraniye hano, mwari mwabona niba akiri umutegarugori simbizi ariko mwari mwabona uwo mugore uyobora Minisiteri y'uburezi ari we uza kumenya ko abana banyu bavuye mu ngo, bakajya kwiga cyangwa bagasubira mu ishuri? !? Ntimwumvise ko yavuze ndetse ngo ntihakagire uwongera no kwiga? None rero yahutse no mu barezi! Ndagira ngo mbamenyeshe ko yabahamagaye i Kigali, akababwira ngo: "Ntihakagire umuntu n'umwe yumva ko ngo ensipegiteri, umurezi, wagiye mu ishyaka" !

Baramushubije bati: "Banza urivemo nawe kuko uri minisitri kandi uri mu ishyaka, natwe tuzagukurikira" ! Aracyaririmo, kandi mwumvise no kuri radiyo ukuntu asigaye atuka na perezida wacu. Hari umubyeyi wagiye gukoronga ku gasozi? !? Maze rero icyo ngira ngo mbabwireho, ni amanyakuri ntabwo ari ugukeka ngo byaba ari ibi, ngo hari ababa barakubaganye muri bo. Icyo bazira ni uko bari muri MRND none bazaza kutuvogera ... muri MRND, badukuremo abantu twemere?

Mbasabye ibikorwa bibiri bikomeye cyane: icya mbere ni uko mwakwandikira uwo mushizi w'isoni utukana riva no kuri radiyo yacu twese y'Abanyarwanda, mwamwandikira mukamumenyesha ko abo barezi bacu ari indakemwa mu mico no mu myifatire kandi badufatiye abana neza, ko abo barezi bakomeza kurera abana, ko yisubiraho. Icyo ni icya mbere mbasabye.

Maze mwese mugasinya pe! Impapuro ntabwo zizabura rwose! Maze rero nimumara iminsi mikeya adashubije, nk'irindwi gusa, kuko ibaruwa muzayohereza ijyane umuntu ayigezeyo, abimenye ko yayibonye, maze nihashira iminsi irindwi adashubije... maze rero nihashira iminsi irindwi adashubije... Kandi akiha kugira ngo hagire undi muntu uza gusimbura ba ensipegiteri bari mu myanya, icyo mugifate, akibwira ko hari uza kumusimbura, uwonguwo uzaza rero aho minisitiri akomoka ni ahantu bita i Nyaruhengeri ku nkengero z'u Burundi i Butare, muzabwire uwo muntu afate inzira yikorere impamba ye ajye kuba ensipegiteri i Nyaruhengeri!

Bazakoranireyo bose abo azashyiraho bose bajye i Nyaruhengeri kurera abana be naho abacu bazakomeza barerwe n'abacu. Icyo ni ikintu na none gikomeye tugomba gufatira ibyemezo ni ukutavogerwa pe! Ni umuziro!

Ikindi cyitwa kutavogerwa mu gihugu murabizi: abantu bitwa inyenzintimukongere kuvuga Inkotanyi:

ni inyenzi pe!Abantu bitwa inyenzi bafashe inzira baradutera.

Jenerali-Majoro Habyarimana Yuvenali afatanyije dore Serubuga, mwamubonye Koloneli ari hano yari umwungiriza we mu ngabo icyo gihe duterwa barahaguruka barahagarara, inyenzi bazijugunya hanze y'umupaka zisubira iyo zaturutse. Maze rero reka mbasetse: reka hazaze babandi bifuje ubutegetsi, nibamara kubushyikira, bafate inzira bajye i Buruseli. Bamaze ngo abasirikare bacu bagomba kubaca intege!

Mwumvise ibyo minisitri w'intebe yivugiye ngo: "Bagiye gushoka ibishanga" kandi urugamba rushyushye! Icyo gihe abari bafite umutima woroshye muri bo bavuye mu birindiro inyenzi zirinjira mu by'ukuri zijya hariya i Byumba nabo bajya gusahura amaduka, bacuza abacuruzi bacu b'i Byumba, Ruhengeri na Gisenyi, ubungubu ni na Leta igomba kwishyura ibyo bintu kuko niyo yateye ibyo. Ntabwo ari umucuruzi wacu, nta n'umwenda ashaka: umwenda w'iki se? Maze rero abo bantu batuma tuvogerwa. Igihanishwa abo bantu nta kindi rero: "Azahanishwa urupfu umuntu wese uzaca intege ingabo z'igihugu ku rugamba" biranditse mu mategeko. Kuki uwo batamwica?

Nsengiyaremye agomba gushyikirizwa ubucamanza agacirwa urubanza, amategeko arahari aranditse, bakamucira urubanza rwo gupfa nk'uko byanditse. Ibyo ntibibakange ngo ni uko ari minisitri w'intebe, mumaze iminsi mwumva ku maradiyo ko n'abaminisitri b'u Bufaransa basigaye

bahamagarwa mu bucamanza! “Azahanishwa urupfu mu gihe cy’intambara, umuntu uzatanga ubutaka bw’igihugu, n’agatanyu”. Twagiramungu yabivugiye kuri radiyo, na CDR imutsinda kuri Radiyo. Abarwanashyaka be bata umutwe, namwe mwiyumvire rero. Ndagira ngo mbamenyeshe ko uwo muntu watanze Byumba kuri radiyo twese twumva, n’Abanyanvanda n’amahanga bumva, yacirwa urubanza; azahanishwa urupfu biranditse mubaze abacamanza babereke aho biri ntabwo mbabeshya, azahanishwa urupfu umuntu uzatanga n’agatanyu k’u Rwanda. None uwo muntu aracyakora iki?

Kutavogerwa rero murabizi mwa babyeyi mwe, murabizi, muzi y’uko hari inyenzi ziri mu gihugu, zafashe abana bazo zibohereza ku rugamba kujya gufatanya n’inkotanyi. Ibyo n’ibintu mwiyumvira, muzi. Ejo navuye muri Nshili ku Gikongoro ku mupaka w’u Burundi, nyura n’i Butare hose bagiye bambwira umubare w’abana bagiye, bakambwira bati: “Aho banyura, n’ubajyana kuki badafatwa, n’iyo miryango”? None rero mbabwire: biranditse mu mategeko ngo mu gitabo cy’amategeko ahana ngo:

“Azahanishwa urupfu umuntu wese uzafata abasirikare ashatse mu giturage hose ashaka abana abaha ingabo z’amahanga zitera Repubulika”. Biranditse. Kuki abo babyeyi bohereje abana batabafata ngo babatsembe? Kuki badafata abo babajyana nabo bose ngo babatsembe? Ubu mutegereje ko bazaza kudutsemba koko?

Maze rero ndagira ngo mbabwire iki: ni uko ubu dusabye ko abo bantu bose babashyira kuri lisiti bakabashyira imbere y'ubucamanza, bakabacira urubanza tukabumva; nibaramuka biyangiye rero mu itegeko-nshinga biranditsemo ngo "ubutabera bubera abaturage" mu gifaransa biravuga ngo: "La justice est rendue au nom du peuple". Igihe rero ubucamanza butagikorera rubanda nk'uko byanditse mu itegeko-nshinga ryacu twishyiriyeho, icyo gihe ni ukuvuga ko twebwe abaturage bwagombye gukorera tugomba kwikorera, izo ngegera tukazitsemba.

Ibi mbibabwiye mu manyakuri nk'uko byanditse mu ivanjiri: igihe muzemera ko inzoka iza kubarya mukayireka ikabagumamo, ni mwebwe muzashira.

Ndabamenyesha ko hashize umunsi umwe n'ijoro rimwe, sinzi ko rigezeho, i Kigali, agatsiko k'abantu bafite imbunda bagiye mu kabari, baravuga ngo: "amakarita muyerekane". Aba MDR babashyira hariya, aba PL murabizi, babashyira hariya n'aba PDC, ba bandi biyise abakiristu, bajya hariya. Uwa MRND agaragaje ikarita bahita bamurasa urufaya, simbabeshya bazabibabwire no kuri radiyo, barashe uwo muntu barigitira mu bishanga by'i Kigali baratoroka, bamaze kuvuga ngo ni Inkotanyi. None mumbwire rero abo bana baragenda bafite ikarita y'indangamuntu yacu, bakagaruka bafite imbunda ari inyenzi n'ibyitso byazo, bakaza kuturasa.

Ntabwo rero nemera ko tuzemera kuraswa. Umuntu uhagarariye MDR hano uhavugira ntakongere kuba muri iyi komini no muri iyi perefegitura... kuko ni icyitso. Abahagarariye ariya mashyaka afatanya

n'inyenzi, abahagarariye... ndabibabwiye simbabeshya, ni ukugira ngo... bashaka kudutsemba! Bashaka kudutsemba! Nta kindi bagamije kandi tugomba kubabwiza ukuri; ntabwo njye mbahisha rwose! Icyo bagamije ni icyo.

Ndagira ngo mbabwire rero ko abahagarariye ya mashyaka afatanya n'inyenzi ari iyo MDR, ari iyo PSD, ari yo PL, ari iyo PDC n'utundi tw'intarutsi tugenda tuyegera, ayo mashyaka n'abayahagarariye bagomba kujya gutura i Kayenzi kwa Nsengiyaremye tukamenya abo turasana aho bari!

Bavandimwe, barwanashyaka ba Muvoma yacu, ibi mbabwira ntabwo ari ibikino, ni ukubabwiza ukuri kugira ngo hatazagira uwumva bamurashe mukazatubwira ngo twe duhagarariye ishyaka ngo ntitwababwiye. Ubwo rero ndababwiye mubimenye, n'ufite umwana yohereje mu nyenzi azisange n'umuryango we n'umugore we hakiri kare, kuko igihe kirageze ko natwe twirwanaho, kugira ngo... Ntabwo tuzemera gupfa amategeko yanze gukora!

Ndabamenyesha ko umunsi bakoze imyigaragambyo, kuwa kane, bakubise abantu bacu, bagahungira no mu kiriziya iri munsi ya Rond Point, abo bantu ngo bitwa abakiristu ba PDC nabo bakabirukaho bakajya kubakubitira mu kiriziya. Abandi bahungiye muri Centre culturel y'Abafaransa rwose!

None ndagira ngo mbabwire ko batangiye kwica, nta kindi ni uko bimeze, batera mu ngo bakica ubu uwumviswe ko ari MRND bakica, bagakubita, ni uko bimeze. None rero ni uko, abo bahagarariye

amashyaka muri prefegitura yacu nibafate inzira bajye gutura hamwe n'inyenzi! Ntabwo dushaka abantu batubamo ngo bazaturase baturi impande.

Ikindi kintu gikomeye nagira ngo mbabwire kugira ngo tudakomeza kuvogerwa: mwumva bavuga ngo imishyikirano ya Arusha! Simbivugaho kuko... umwanya munini kuko ngira ngo uhagarariye umunyamabanga mukuru wa Muvoma araza kubivuga ku buryo burambuye. Ariko icyo nababwira ni uko intumwa mwumva ngo ziri Arusha, ntabwo zihagarariye u Rwanda... Ibyo bajya kuvuga Arusha mbabwije amanyakuri! Intumva z'u Rwanda zitwa iz'u Rwanda ziyobowe n'inyenzi! Ikagenda ikajya kuvugana n'inyenzi!Nk'uko babivuga mu ndirimbo mujya mwumva ngo "Ni Imana yavuye ku Mana", nabo ni inyenzi yavuye ku nyenzi ivugira inyenzi !

Ibyo bajya kuvuga Arusha ni ibyo ibyo byitso by'inyenzi birimo byagiye i Buruseli, bajya gukorera Arusha ngo byitirirwe u Rwanda, nta na kimwe kitari icy'i Buruseli gikorerwa aho; n'ikivuye mu Rwanda, ntabwo ari ikiba kivuye muri guverinoma yacu: ni icy'i Buruseli bagenda bikoreye bakajyana Arusha! Ni inyenzi rero ivugana n'indi, ibyo bita imishyikirano ntitwanga gushyikirana ndagira ngo mbabwire ko atari iy'u Rwanda: ni inyenzi zivugana n'inyenzi! Mubimenye rwose! Kandi ntabwo tuzemera ibyo bintu bizava ahongaho.

Ikindi nababwiye rero ni uko tugomba kwirwanaho. Bimwe nabinyuzemo, ariko ndababwiye ngo: duhaguruke! Banyongoreye mu kanya ngo ni

ababyeyi bagomba guhaguruka hamwe n'abarimu kuri cya kibazo cy'aba ensipegiteri bacu. Ariko n'udafite umwana mu ishuli, nawe yabashyigikira, kuko nawe ejo azamugira, cyangwa ejo bundi yaramwigeze. Maze twese duhagurukire icyarimwe dusinye pe!

Icya kabiri nababwira ni ikingiki: ni uko dufite abaminisitiri 9 muri iyi guverinoma. Uko bahagurutse ngo birukane ba ensipegiteri bacu bagendeye kuri minisiteri yabo, bagahaguruka ngo birukane abarimu bigisha mu mashuri yisumbuye mumaze iminsi mwumva wa mugore azunguruka mu mashuri, nta kiba kimujyanye ni ukwirukana ba diregiteri n'abarimu bayarimo batari mu ishyaka rye. Mwumvise ibikorwa muri MINITRAPE: si ubujura gusa, n'abakozi bacu barabahagurukiye. Mwumvise ibikorerwa kuri radiyo, n'ikiganiro banyonze cy'i Byumba; mwumvise uko byifashe.

Ndagira ngo mbabwire rero dusabe abaminisitiri bacu nabo, hari abakora mu mashyaka yabo bari muri minisiteri zacu. Mwumvise nk'umurwanashyaka minisitiri Ngirabatware utari hano kubera ko igihugu cyamutumye ahakomeye. Minisiteri ye rero nayigezemo kuwa kane harimo utuntu duke si uko nisuzugura ngo ndi muri MRND twa MRND, abarimo ni inyenzi nsa, bari muli PL na MDR ni bo bari muri minisiteri rwose y'imigambi ya Leta! Murumva uwo mu minisitiri avuze ati: "Nimukora ku ba ensipegiteri bacu namwe abanyu ndabakunkumura" byagenda gute? Abaminisitiri

bacu nabo nibakunkumure isaho ingegera ziri iwabo zigende zijye muri minisiteri za bene wabo!

Ikintu mbasabye gikomeye na none abantu bari ku mirimo bose bari muri MRND ni ubufatanye. Uri ku kigega cy'amafaranga, nk'uko bayakoresha nawe nayazane tuyakoreshe. Uyafite ku giti cye ni uko MRND yayamuhaye imufasha imushyigikira, nawe akirwanaho kuko ari umugabo; kuko na we bateze kumukata ijosi, nayazane tubakate amajosi.

Mwibuke Muvoma yacu ko ishingiye muri serire, Muvoma yacu igashingira muri segiteri no muri komine, Perezida yababwiye ko igiti gifite amashami kikagira amababi ntikigire imizi, gipfa! Imizi yacu ni aho ishingiye. Nimusubire hamwe n'ubwo nta mafaranga bakibahemba abaserire bacu nimujye hamwe: uwinjiye muri selire mumubone, mumukande, niba ari icyitso, ye kuyisohokamo. Ye kuyisohokamo!

Mperutse kubwira umuntu wari unyiraseho ngo ni za PL. Ndamubwina nti "ikosa twakoze muri 59 n'ubwo nari umwana ni uko twabaretse mugasohoka". Mubaza niba atarumvishe inkuru y'aba Falasha, *basubiye iwabo muri Isiraheri bavuye muri Ethiopiya ambwira ko atayizi, nti: Ntabwo uzi kumva no gusoma? Jye ndakumenyesha ko iwanyu ari muri Ethiopia, ko tuzabanyuza muri Nyabarongo mukagerayo bwangu"!*

Maze rero icyo mbabwiye cyo kugira ngo duhaguruke, tugomba guhaguruka koko. Icyo ngiye gusozerezaho rero... Icyo ngiye gusozerezaho ni

ikintu gikomeye: ejo nari muri Nshiri. Mwumvise ko Abarundi batubeshyeye, nari nagiye kureba uko kuri. Mu kujyayo abantu barankanga ngo simvayo, ngo ndapfirayo. Ndavuga nti: "Nimpfa sinzaba mbaye igitambo cya mbere''.

Maze rero muri Nshiri bavanyeho burugumesitiri wahozeho, ngo kuko ngo ashaje da! Ngo yatangiye muri za 60, n'ejo naramubonye aracyari umusore! Ngo kuko ari MRND, avaho! Bajya gushyiraho igisambo, nabyo biranga! Hagiyeho umunyamurava, baramwanga! Ubu iyo komini yitwa Nshiri iyoborwa n'umukonseyeye nawe byayobeye uko abigenza. Aho hantu rero muri Nshiri dufiteyo ingabo z'igihugu zirinda umupaka. Hari abantu bitwa aba JDR...

Kubera ko ingabo zacu zitonda zitarasana, cyane cyane ntizirasa Umunyarwanda kereka ari inyenzi, abasirikare ntibakamenye ko n'abantu bo muri MDR bose babaye inyenzi, ntibababimenye, barabagota badufatira abajandarume ku buryo umuturage utari no mu ishyaka ryacu yanyibwiriye ati: "Icyo twifuza, uwazana amatora, tugatora burugumesitiri; biti ihi se, igihe ataraza, bakaba bashubijeho uwahozeho, kuko aho ibintu bigeze, n'uzaza ntazashobora kugarura abaturage mu nzira'.

Maze rero babyeyi, bavandimwe, nagira ngo mbabwire ikintu gikomeye: amatora agomba kuza tugomba gutora pe! Ubu uko duteraniye aha mbese, hari uwariye undi urwara ra? Ngo umutekano!... Ngo ntitwatora...Ntimujya mu misa ku cyumweru ra? Ntimwaje hano muri mitingi ra? Muri MRND ntimwatoye abayobozi b'inzego zose ra? Abo

babivuga se bo si ko babigenza ntibatoye? Icyo kintu bitwaza barabeshya nta mpamvu yatuma tudatora ngo kubera umutekano, kuko na bo ubwabo bagenda mu gihugu, n'imvururu ziriho ni bo bazikurura; icyo ni icya mbere nagira ngo mbabwire: banatubeshya: twese nk'aha turi dushobora no gutora.

Icya kabiri: bitwaza abavanywe mu byabo n'iyi ntambara bari i Byumba. Ndagira ngo mbamenyeshe ko nta wagiye kubaza abo bantu ko badashaka gutora, njye banyibwiriye ko bahoranye abakonseye bamwe baba abanebwe, ndetse ngo bamwe mu ba burugumesitiri babo babaye abanebwe. Kubera ko ya minisiteri ibajyanira ibiryo icungwa n'Inkotanyi... nako inyenzi Lando, yafashe abantu bitwa inyenzi n'ibyitso ziri mu gihugu aba ari bo aha kujyanira ibiryo abo bantu; aho kubijyanayo rero bakabicuruza bikajya kugura amasasu bashyira za nyenzi ziturasa! Ndagira ngo mbabwire rero y'uko baravuze bati: "Namwe muratwo... turaraswa inyuma, mukaturasa n'imbere mutwoherereza izo ngegera kutuzanita ibiryo"?

Nabuze icyo mbabwira. Baravuga rero bati: "Icyo twifuza ni uko muri twe twakwitoreramo abayobozi, abakonseye, abaselire, burugumestiri, tukamenya ko turi hamwe hano muri camp, akaturwanaho, akadushakira ibiryo". Murumva ko icyo abo bagabo bambwiye n'abo bagore bahungiye mu bintu hirya iriya ibyo mujya mwumva, barifuza nabo amatora; igihugu cyose kirifuza amatora, kugira ngo kiyoborwe n'intwari nk'uko gisanzwe kiri. Umva

rero natwe twese icyo twakora ni icyo: ni ugusaba ayo matora.

Maze rero kugira ngo nsoze, ndagira ngo mbibutse ibintu maze kubabwira bikomeye: icy'imena, ni ukutavogerwa, kugira ngo n'abasamba batagira uwo bahitana muri mwe. Ntimugatinye: mumenye ko uwo mutazakata ijosi ari we uzaribakata! Nkababwira rero ko abo batangira kugenda hakiri kare, bakajya gutura muri bene wabo, bakajya no mu nyenzi, aho kuduturamo ngo babike imbunda, nidusinzira baturase! Maze rero mubahambirize, bafate inzira bagende, ntihakagire n'ugaruka kuvugira aha, uzana n'ibyahi ngo n'amabendera!

Ikindi gikomeye n'uko tugomba guhaguruka, tugahaguruka icyarimwe, ukoze ku wacu tukaba umwe, akabura aho anyura! Ba ensipegiteri bacu ntaho bazajya, abo bazashyiraho bazafata inzira bajye i Nyaruhengeri, iwabo wa minisitiri Agatha kurera abana be! Icyo mugifate!

Icyo nshojerejeho ni ikintu gikomeye: ni amatora. Maze ndabashimira kuba munteze amatwi, kandi nkaba mbashimiye ubutwari mufite mu maboko yanyu no mu mutima wanyu, nzi ko muri abagabo, mukaba n'inkumi n'ababyeyi batavogerwa, banga agasuzuguro. Murakaramba !

Perezida Habyalimana, ramba!

MURAKARAMA!"