UBUSHINJACYAHA vs TWAGIRAYEZU

[Rwanda URUKIKO RW'UBUJURIRE – RPA/GEN 00001/2024/CA (Rukundakuvuga P.J. Gakwaya na Mukamurenzi J.) 31 Nyakanga 2024]

Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Kuburanisha sinari mpari(Alibi) – Mu gihe umuburanyi aburanisha "sinari mpari" (alibi) by'umwihariko, Ubushinjacyaha nibwo bukomeza kugira inshingano yo gutanga ibimenyetso bidashidikanywaho byemeza ko ukurikiranywe yakoze icyaha, naho ukurikiranyweho icyaha uvuga ko atari ari aho icyaha cyakorewe mu gihe runaka ku buryo atari kubasha gukora ibyaha ashinjwa, akagira inshingano zo kugaragaza gusa ko atari ahakorewe icyaha.

Amategeko agenga ibimenyetso – Ibimenyetso mu manza nshinjabyaha – Ubuhamya – Agaciro k'ubuhamya – Kuba hari ibyo abatangabuhamya batavuga kimwe cyangwa bashobora kwibeshyaho mu buryo budakabije, cyangwa iyo ubuhamya bwatangiwe mu Rukiko budahuje n'ibyavuzwe mbere sibyo byatesha agaciro ubuhamya kuko bishobora kuba byaratewe n'igihe kirekire gishize icyaha gikozwe kugeza igihe ubuhamya butangiweho mu Rukiko.

Amategeko yerekeye imiburanishirize y'imanza nshinjabyaha – Ikurikirana ry'icyaha – Icyaha cya jenoside – Kuba uregwa ataravuzwe mu ikusanyamakuru ry'Inkiko Gacaca ntibivuzeko atakurikiranwa ku cyaha cya jenoside kuko kuba Urukiko rumwe ntacyo ruvuga ku muntu mu manza rukurikirana, bitavuze ko nta ruhare yagize mu byaha aregwa.

Amategeko yerekeye imanza nshinjabyaha – Impurirane y'ibyaha – Uburyozwacyaha – Icyaha cya jenoside n'icyaha cyibasiye inyokomuntu – Umuntu ashobora guhamwa n'icyaha cya jenoside n'icyaha cyibasiye inyokomuntu hashingiwe ku bikorwa bimwe kubera ko ibikorwa bigize buri cyaha bitandukanye, icyaha cya jenoside gikorwa mu mugambi wo kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, naho icyaha cyibasiye inyokomuntu kigakorwa mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivile.

Amategeko yerekeye imanza nshinjabyaha – Jenoside – Igihano – Impamvu nyoroshyacyaha n'impamvu nkomezacyaha – Nubwo uregwa yahamwa n'ibyaha bifite uburemere, kandi byagize n'ingaruka zikomeye ku muryango nyarwanda; kuba yarahamwe n'ibi byaha ntibihagije kugira ngo bibe impamvu nkomezacyaha zituma igihano yahanishijwe kiyongera mu gihe Ubushinjacyaha butagaragaje ko yabikoranye urwango n'ubugome birenze iby'abandi bakoze ibyaha mu gace byakorewemo.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi, Ubushinjacyaha bukurikiranye Twagirayezu ku cyaha cyo kwica nk'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu buvuga ko ibikorwa bigize ibi byaha uregwa yabikoreye mu Karere ka Rubavu mu cyahoze ari Komini Rwerere, Ubushinjacyaha bukaba bwaramureze hifashishijwe Ibimenyetso bigizwe n'imvugo z'abatangabuhamya batandukanye n'imvugo za Twagirayezu ubwo yabazwaga mu gihugu cya Denmark, bigaragaza ko igihe ibikorwa bigize ibyaha aregwa byakorwaga yari mu Rwanda kandi ko yabigizemo uruhare. Uregwa yaburanye avuga ko atari akwiye gukurikiranwaho icyaha cyo kwica nk'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu kuko amatariki Ubushinjacyaha buvuga ibi byaha byakoreweho n'uduce dutandukanye byakorewemo, mu cyahoze ari Perefegitura ya Gisenyi, we atashoboraga kuhagaragara kuko yari mu cyahoze ari Zaïre, ari yo Repubulika Iharanira Demokarasi ya Kongo (RDC). Imyiregurire ye ya"sinari mpari" (alibi) yayitangiye ibimenyetso birimo abatangabuhamya avuga ko bari kumwe cyangwa babonanye muri Congo hamwe n'inyandiko yiswe pétition yakozwe n'abantu bemeza ko bari kumwe icyo gihe, n'inyandiko yiswe décharge y'amafaranga y'amazayire yakiriye ubwo yari muri icyo gihugu.

Urwo Rukiko rwaciye urubanza rwemeza ko uregwa yashoboye gutanga ibimenyetso bigizwe n'inyandiko n'ubuhamya bigaragaza ugushidikanya ku bimenyetso by'Ubushinjacyaha bushingiraho buvuga ko yari mu Rwanda kuva ku wa 7 kugeza ku wa 9/04/1994. Urukiko rwemeje kandi ko Ubushinjacyaha bwo butabashije kugaragaza ibimenyetso bidashidikanywaho bigaragaza ko uregwa yakoze ibyaha aregwa ku matariki n'ahantu byavuzwe haruguru nuko rushingiye kuri iryo sesengura rwanzura ko uregwa adahamwa n'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu aregwa, rutegeka ko ahita arekurwa urubanza rukimara gusomwa. Umucamanza umwe (1) muri batatu (3) bagize inteko iburanisha uru rubanza yagaragaje igitekerezo kinyuranye n'icy'abandi.

Ubushinjacyaha ntibwishimiye imikirize y'urubanza, bujuririra Urukiko rw'Ubujurire, bunenga kuba Urukiko Rukuru rwaremeje ko Twagirayezu atari mu Rwanda ubwo ibyaha aregwa byakorwaga rwirengagije ubuhamya, ibimenyetso n'amategeko bwagaragaje, rukamugira umwere ku byaha akurikiranyweho. Kubyerekeye imiburanire ya sinari mpari(Alibi), buvuga ko Urukiko Rukuru rwakoresheje nabi umurongo ugaragara mu manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda no mu manza zaciwe mu bindi bihugu ku bijyanye n'imyiregurire ya sinari mpari, bituma rushyira ku Bushinjacyaha inshingano zo gutanga ibimenyetso bijyanye n'iyo myiregurire nk'aho ari uburyo busanzwe bwo kwiregura, Ubushinjacyaha buvuga ko habayeho ikosa ryo gucurika uburyo ibimenyetso bya ''sinari mpari'' bitangwa. Bukomeza buvuga ko bwatanze ibimenyetso bigaragaza ko uregwa yari mu Rwanda ubwo Abatutsi batangiraga kwicwa kuva ku wa 6 Mata 1994, birimo inyandiko zoherejwe n'inzego z'ubutabera za Denmark zikubiyemo amakuru yatanzwe n'uregwa ubwe ubwo yasabaga ubuhungiro mu gihugu cya Denmark no muri Polisi y'icyo gihugu. Ubushinjacyaha bunenga kandi ko Urukiko Rukuru rwahaye agaciro kadakwiye imyiregurire ya "sinari mpari" ishingiye ku nyandiko yiswe pétition et témoignages, pour l'innocence de Mr. Wenceslas Twagirayezu n'indi yiswe décharge. Kuri iyi mpamvu y'ubujurire uregwa yayiburanyeho avuga ko mu rubanza rujuririrwa nta kosa ryakozwe ku bijyanye n'amahame agenga itangwa ry'ibimenyetso ku myiregurire ishingiye kuri ''sinari mpari'' kuko mu isesengura ry'urubanza, Urukiko Rukuru rwerekanye imanza zitandukanye zaciwe n'Urukiko rw'Ubujurire n'izaciwe n'inkiko mpanabyaha mpuzamahanga rusanga zihuriza ku murongo uvuga ko uwireguza "sinari mpari" aba agomba gutanga ibimenyetso bifatika bituma habaho gushidikanya ku bivugwa n'Ubushinjacyaha.

Ubushinjacyaha bwajuriye buvuga kandi ko Twagirayezu yagizwe umwere hirengagijwe ibimenyetso n'amategeko bigaragaza ko ahamwa n'ibyaha aregwa, ko Urukiko Rukuru rwemeje ko abatangabuhamya bashinja Twagirayezu batamuzi ruvuga ko bavuguruzanya ku buryo bukabije ku cyo yakoraga, ku bijyanye n'umwanya yari afite mu bikorwa by'amashyaka ya politike cyangwa ubwamamare bwe muri rusange, ndetse no ku miterere imwe n'imwe y'umubiri we, nyamara icyo bose bahurijeho busanga ari cyo cy'ingenzi gikwiye kwitabwaho, ari uko yari umwarimu, akora mu nzego z'uburezi kandi nawe akaba abyiyemerera. Kuri iyi mpamvu y'ubujurire Twagirayezu yaburanye avuga ko ikibazo kijyanye n'uko abatangabuhamya b'Ubushinjacyaha babajijwe batamuzi yakigaragaje kuva akiri muri Denmark, kuko uburyo bamuvuga bagendeye ku murimo yakoraga w'ubwarimu n'aho yawukoreraga, imiterere ye ku mubiri, ubutunzi yari afite n'umwanya mu mashyaka ya politike, bigaragaza ko umuntu bavuga atari we cyangwa batamuzi, kuko iyo baba bamuzi neza, batari kuyoberwa ko yigishaga mu ishuri ryigenga kuri Gacuba II ku Gisenyi kuva muri Nzeri 1993 kugeza muri Nyakanga 1994. Avuga ko yemeranywa n'umwanzuro w'Urukiko Rukuru ugaragara mu gika cya 145 n'icya 146, kuko uburyo abatangabuhamya bivuguruza, bakanavuguruzanya bigaragaza ko batamuzi.

Ubushinjacyaha buvuga kandi ko Urukiko Rukuru rwivuguruje aho rwemeje ko kuba uregwa ataravuzwe mu ikusanyamakuru ry'Inkiko Gacaca bitabuza ko yakurikiranwaho icyaha cya jenoside, ariko ku bireba Twagirayezu ruvuga ko uburyo abatangabuhamya b'Ubushinjacyaha bamugaragaza nk'uwamamaye mu bikorwa n'inama zitegura jenoside, ndetse n'ibikorwa bya jenoside nyir'izina, atari kubura kuvugwa muri Gacaca mu duce twose Ubushinjacyaha buvuga yayoboyemo ubwicanyi. Busobanura ko iryo sesengura ntacyo rishingiyeho (objective criteria), kuko mu gihe cy'ikusanyamakuru ry'Inkiko Gacaca hari abantu benshi bagize uruhare muri jenoside batavuzwe bibagiranye kubera impamvu zitandukanye. Ko rero bitumvikana uburyo Urukiko Rukuru rwabonye ko Twagirayezu we atari kwibagirana ku buryo

uwagaragaza uruhare rwe muri jenoside yakorewe Abatutsi mu 1994, iki gihe yaba atavugisha ukuri. Kuri iyi mpamvu y'ubujurire uregwa yaburanye avuga ko mu nyandiko yo kumufata, Ubushinjacyaha bwavugaga ko yari umuntu w'igihangange, ufite imitungo n'ibindi byinshi, ndetse harebwe n'imvugo za bamwe mu batangabuhamya b'Ubushinjacyaha nta kuntu atari kuvugwa mu ikusanyamakuru rya Gacaca.

Incamake y'icyemezo: 1. Mu gihe umuburanyi aburanisha "sinari mpari" (alibi) by'umwihariko, Ubushinjacyaha nibwo bukomeza kugira inshingano yo gutanga ibimenyetso bidashidikanywaho byemeza ko ukurikiranywe yakoze icyaha, naho ukurikiranyweho icyaha uvuga ko atari ari aho icyaha cyakorewe mu gihe runaka ku buryo atari kubasha gukora ibyaha ashinjwa, akagira inshingano zo kugaragaza gusa ko atari ahakorewe icyaha.

2. Kugira ngo inyandiko ifatwe nk'ikimenyetso gihamya ko umuntu yari ahantu runaka ni uko haba hashobora kugaragazwa ikimenyetso gifatika cyerekana igihe iyo nyandiko yakorewe n'aho yakorewe kuko mu rwego rwo kwirengera umuntu ashobora kwandika inyandiko akabeshya aho yayikoreye n'igihe yakorewe. Bityo inyandiko yiswe décharge, ntiyaba gihamya yihagije ko Twagirayezu yari muri Congo mu gihe cyavuzwe kuko ubugenzuzi bwayikoreweho butabashije kugaragaza igihe yakorewe. Ku bijyanye n'inyandiko yiswe pétition yanditswe n'abantu bari muri Congo bahamya ko Twagirayezu yari kumwe nabo kuva tariki ya 6 kugeza ku ya 9 Mata 1994, kuba iyo nyandiko iriho amasano atariyo, bituma ikemangwa.

3. Kuba hari ibyo abatangabuhamya batavuga kimwe cyangwa bashobora kwibeshyaho mu buryo budakabije, cyangwa iyo ubuhamya bwatangiwe mu Rukiko budahuje n'ibyavuzwe mbere sibyo byatesha agaciro ubuhamya kuko bishobora kuba byaratewe n'igihe kirekire gishize icyaha gikozwe kugeza igihe ubuhamya butangiweho mu Rukiko.

4. Kuba uregwa ataravuzwe mu ikusanyamakuru ry'Inkiko Gacaca ntibivuzeko atakurikiranwa ku cyaha cya jenoside kuko kuba Urukiko rumwe ntacyo ruvuga ku muntu mu manza rukurikirana, bitavuze ko nta ruhare yagize mu byaha aregwa, kuko ikirebwa ari ibikorwa bye ku giti cye n'ibimenyetso, bityo Urukiko Rukuru rwarivuguruje kuko nyuma yo kugaragaza ko kuba umuntu ataravuzwe mu ikusanyamakuru rya Gacaca bitavuze ko nta ruhare yagize mu byaha aregwa, rukaba rutari kwemeza ko Twagirayezu (uregwa) byanze bikunze yari kuvugwa muri Gacaca.

5. Umuntu ashobora guhamwa n'icyaha cya jenoside n'icyaha cyibasiye inyokomuntu hashingiwe ku bikorwa bimwe kubera ko ibikorwa bigize buri cyaha bitandukanye, icyaha cya jenoside gikorwa mu mugambi wo kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, naho icyaha cyibasiye inyokomuntu kigakorwa mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivile. Bityo umuntu uri mu bakoze ibikorwa by'ubwicanyi byagambiriwe, bikozwe n'ibitero byibasira abantu bagize itsinda runaka rihuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bigamije kubarimbura bose cyangwa bamwe muri bo kubera icyo bari cyo, bikorewe abasivile, mu bihe bisanzwe cyangwa by'intambara, afatwa nk'uwakoze icyarimwe mu mpurirane mbonezamugambi icyaha cya jenoside n'icyaha cyibasiye inyoko muntu.

6. Nubwo uregwa yahamwa n'ibyaha bifite uburemere, kandi byagize n'ingaruka zikomeye ku muryango nyarwanda; kuba yarahamwe n'ibi byaha ntibihagije kugira ngo bibe impamvu nkomezacyaha zituma igihano ahanishijwe kiyongera mu gihe Ubushinjacyaha butagaragaje ko yabikoranye urwango n'ubugome birenze iby'abandi bakoze ibyaha mu gace byakorewemo, bityo kuba ibyaha bihama Twagirayezu bitamushyira mu rwego rw'abateguye cyangwa urw'abayoboye ibitero byishe abatutsi no kuba ari ubwa mbere ahamijwe icyaha, ahanishijwe igihano cy'igifungo cy'imyaka makumyabiri (20)\

Urubanza RP/GEN 00003/2019/HC/HCCIC rwaciwe n'Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibe ku wa 11/01/2024 ruhindutse mu ngingo zarwo zose;

Uregwa ahamwa n'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha kibasiye inyokomuntu;

Amategeko yashingiweho:

Itegeko N° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, Ingingo ya 2,53, 87
Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Ingingo ya 51 n'iya183.
Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ingingo ya 91 ,92,94,335.
Itegeko N° 47/2013 ryo ku wa 16/6/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, ingingo ya 18.
Ingingo ya 2 y'Amasezerano Mpuzamahanga yo ku wa 09 Ukuboza 1948 agamije gukumira no guhana icyaha cya jenoside yemejwe mu Rwanda binyuze mu Itegeko - Teka no 08/75 ryo ku wa 12/02/1975.
Itegeko Ngenga N° 04/2012/OL ryo ku wa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo, Ingingo ya 3.

Imanza zifashishijwe:
Ubushinjacyaha vs Sgt. Biziyaremye Jean Baptiste & Cpl. Ngabonziza Faustin, RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010, icyegeranyo cy'ibyemezo by'Inkiko, vol. II, 2011.
Ubushinjacyaha vs Bandora Charles, RPA/GEN 0001/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 22/03/2019.
Ubushinjacyaha vs Ntamaherezo Iryamukuru, RPAA 00141/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 31/05/2023.
Ubushinjacyaha vs Sezikeye François, RPAA 00371/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 15/12/2022.
Ubushinjacyaha vs Hategikimana Célestin, RPAA 00681/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/3/2023.
Ubushinjacyaha na Ntaganzwa Ladislas, RPA/GEN 00001/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 03/03/2023.
Ubushinjacyaha vs Birindabagabo Jean Paul, RPAA/GEN 00004/2020/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 08/04/2022.
Ubushinjacyaha vs Kabilimana Jean Damascène, RPAA/GEN00009/2019/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 16/10/2020.
Ubushinjacyaha vs Hategekimana Célestin, RPAA 00681/2021/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/3/2023.
Ubushinjacyaha vs Gatete Jean Baptiste, Case no ICTR-2000-61-T, para. 130.
Ubushinjacyaha vvs Callixte Kalimanzira, Case No. ICTR-05-88-T, para. 748-752.
Ubushinjacyaha vs Georges Anderson Nderubumwe Rutaganda, Case no. ICTR-96-3-A, para. 488.
Ubushinjacyaha vs Bikindi Simon, Case no ICTR-01- 62 T (2/12/2008), p.12, para. 32.
Ubushinjacyaha vs Kayishema & Ruzindana, Case, ICTR-95-1-A, para. 106.
Ubushinjacyaha vs Setako Ephrem, Case n° ICTR-04-81-A rwaciwe ku wa 28/9/2011.
Ubushinjacyaha vs Musema Alfred, Case n° ICTR-96-13-T rwaciwe ku wa 25/2/2014.
Simphiwe Raymond Shusha vs. Leta (Africa y'Epfo) rwaciwe n'Urukiko rw'Ikirenga rw'igihugu y'Africa y'Epfo.
Ubushinjacyaha vs Kamuhanda Jean de Dieu, Case N° ICTR-99-54 A
Ubushinjacyaha vs Zigiranyirazo Protais, Case N° ICTR-01-73-A
Ubushinjacyaha vs Nahimana et al. (Media case). Case N° ICTR-99-52-A
Ubushinjacyaha vs Nahimana na bagenzi be (Media case), Case No. ICTR-99-52-A, para. 417.

Ubushinjacyaha vs LUKIĆ & LUKIĆ, case No. IT-98-32/1-A, para. 362.

Inyandiko z'abahanga:
Association Henri Capitant, Vocabulaire juridique, 6e édition, Presses Universitaires de France, Paris, 1996, P. 612.

Ubujurire bw'Ubushinjacyaha bufite ishingiro;
Uregwa ahamwa n'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha kibasiye inyokomuntu;
Uregwa ahanishijwe igihano cy' igifungo cy'imyaka makumyabiri (20).

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'uko Twagirayezu Wenceslas yoherejwe n'igihugu cya Danmark kugira ngo aburanishwe n'Inkiko z'u Rwanda ku byaha bitandukanye yaketsweho gukora mu 1994, birimo ubwicanyi bwakorewe mu Karere ka Rubavu mu cyahoze ari Komini Rwerere kuva ku itariki ya 7 kugera ku ya 12 Mata 1994, by'umwihariko, kuri bariyeri yo hafi y'uwitwa Gacamena, kuri ISAR-Tamira, kuri Kaminuza ya Mudende, kuri Kiliziya ya Busasamana, ku Nyundo, ku Ishuri rikuru rya *Saint Fidèle* n'ahiswe *commune rouge*. Ubushinjacyaha bwamureze mu Rukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha Mpuzamahanga n'ibyaha byambuka imbibi (muri uru rubanza rwiswe Urukiko Rukuru), icyaha cyo kwica nk'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu.

[2] Twagirayezu Wenceslas yireguye ahakana ibyaha aregwa avuga ko ku matariki ya 7, iya 8 n'iya 9/04/1994 yari mu gihugu cya Zaïre, ubu cyitwa Repubulika Iharanira Demokarasi ya Congo (RDC) aho yari mu biruhuko bya Pasika kuva mu mpera z'ukwezi kwa Werurwe 1994 kugeza ku itariki ya 9 Mata 1994, ubwo yageraga iwabo mu ijoro. Iyo myiregurire ye ishingiye kuri "sinari mpari" (alibi) yayitangiye ibimenyetso birimo abatangabuhamya avuga ko bari kumwe cyangwa babonanye muri RDC hamwe n'inyandiko yiswe pétition yakozwe n'abantu bemeza ko bari kumwe icyo gihe, n'inyandiko yiswe décharge y'amafaranga y'amazayire yakiriye ubwo yari muri RDC. Kuri iyi myiregurire, Ubushinjacyaha nabwo bwatanze ibimenyetso birimo imvugo z'abatangabuhamya n'imvugo za twagirayezu Wenceslas ubwo yabazwaga ari muri Denmark, bigaragaza ko kuri ayo matariki igihe ibikorwa bigize ibyaha aregwa byakorwaga yari mu Rwanda kandi ko yabigizemo uruhare.

[3] Mu rubanza nº RP/GEN 00003/2019/HC/HCCIC rwaciwe ku wa 11/01/2024, Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamuhanga n'ibyaha byambuka imbibi rwemeje ko Twagirayezu Wenceslas yashoboye gutanga ibimenyetso bigizwe n'inyandiko n'ubuhamya bigaragaza ugushidikanya ku bimenyetso by'Ubushinjacyaha bushingiraho buvuga ko yari mu Rwanda kuva ku wa 7 kugeza ku wa 9/04/1994. Urukiko Rukuru rwemeje kandi ko Ubushinjacyaha bwo butabashije kugaragaza ibimenyetso bidashidikanywaho bigaragaza ko Twagirayezu Wenceslas yakoze ibyaha aregwa ku matariki n'ahantu byavuzwe haruguru. Urukiko Rukuru rushingiye kuri iryo sesengura rwanzura ko Twagirayezu Wenceslas adahamwa n'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu aregwa, rutegeka ko ahita arekurwa urubanza rukimara gusomwa. Umucamanza umwe (1) muri batatu (3) bagize inteko iburanisha uru rubanza yagaragaje igitekerezo kinyuranye n'icy'abandi.

[4] Ubushinjacyaha ntibwishimiye imikirize y'urubanza, bujuririra Urukiko rw'Ubujurire, urubanza ruhabwa no RPA/GEN 00001/2024/CA, iburanisha rishyirwa ku wa 13/05/2024, ruburanishwa kuva kuri uwo munsi kugeza ku wa 23/05/2024, Twagirayezu Wenceslas yunganiwe na Me BIKOTWA Bruce na

Me Gashema Félicien, naho Ubushinjacyaha buhagarariwe na Harindintwari Côme na NIYONZIMA Vincent, Abashinjacyaha ku rwego rw'Igihugu.

[5] Muri make, mu Rukiko rw'Ubujurire Ubushinjacyaha bunenga kuba Urukiko Rukuru rwaremeje ko Twagirayezu Wenceslas atari mu Rwanda ubwo ibyaha aregwa byakorwaga rwirengagije ubuhamya, ibimenyetso n'amategeko bwagaragaje, rukamugira umwere ku byaha akurikiranyweho. Twagirayezu Wenceslas avuga ko ibyo Ubushinjacyaha buvuga nta shingiro bifite kuko Urukiko Rukuru rwagaragaje impamvu, amategeko n'ibimenyetso rwashingiyeho rumugira umwere.

[6] Urukiko rw'Ubujurire rusanga ibibazo bikwiye gusuzumwa ari ibi bikurikira:

A. Kumenya niba Urukiko Rukuru rwarakoze ikosa mu kwemeza ko haba hari ugushidikanya ko Twagirayezu Wenceslas yari mu Rwanda mu gihe ibyaha aregwa byakorwaga.

B. Kumenya niba Twagirayezu Wenceslas yaragizwe umwere hirengagijwe ibimenyetso n'amategeko bigaragaza ko ahamwa n'ibyaha aregwa.

C. Ibyerekeye ibihano bisabwa n'Ubushinjacyaha.

ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

A. Kumenya niba Urukiko Rukuru rwarakoze ikosa mu kwemeza ko haba hari ugushidikanya ko Twagirayezu Wenceslas yari mu Rwanda mu gihe ibyaha aregwa byakorwaga.

A.1. Ku birebana n'ibivugwa n'Ubushinjacyaha ko mu isesengura ry'imyiregurire ishingiye kuri sinari mpari hakozwe amakosa yo kubushyiraho inshingano zo kuyitangira ibimenyetso.

[7] Abahagarariye Ubushinjacyaha bavuga ko mu gusesengura imyiregurire ya Twagirayezu Wenceslas uvuga ko atari mu Rwanda ku itariki ya 7, iya 8 n'iya 9 z'ukwezi kwa Mata 1994, guhera ku gika cya 36 cy'urubanza rujuririrwa, Urukiko Rukuru rwakoresheje nabi umurongo ugaragara mu manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda no mu manza zaciwe mu bindi bihugu ku bijyanye n'imyiregurire ya sinari mpari, bituma rushyira ku Bushinjacyaha inshingano zo gutanga ibimenyetso bijyanye n'iyo myiregurire nk'aho ari uburyo busanzwe bwo kwiregura. Bakomeza bavuga ko habayeho ikosa ryo gucurika uburyo ibimenyetso bya ''sinari mpari'' bitangwa, kuko, nk'uko uru Rukiko rwabisobanuye mu rubanza n° RPAA/GEN 00009/2019/CA rwaciwe ku wa 16/10/2020, haburana Kabirima Jean Damascène, uwireguza ''sinari mpari'' ni we ugomba gutanga ibimenyetso[1], ko rero Twagirayezu Wenceslas ari we ugomba gutanga ibimenyetso bifatika bigaragaza aho yari ari ubwo ibikorwa bigize ibyaha akurikiranyweho byakorwaga. Ubushinjacyaha busoza buvuga ko igihe hari ukunyuranya hagati y'umurongo watanzwe n'inkiko zo hanze n'uwatanzwe n'inkiko z'u Rwanda ku kibazo runaka, umurongo watanzwe n'inkiko z'u Rwanda ari wo ugomba gukurikizwa.

[8] Twagirayezu Wenceslas n'abamwunganira bavuga ko mu rubanza rujuririrwa nta kosa ryakozwe ku bijyanye n'amahame agenga itangwa ry'ibimenyetso ku myiregurire ishingiye kuri ''sinari mpari'' kuko mu isesengura ry'urubanza, Urukiko Rukuru rwerekanye imanza zitandukanye zaciwe n'uru Rukiko[2] n'izaciwe n'inkiko mpanabyaha mpuzamahanga rusanga zihuriza ku murongo uvuga ko uwireguza "sinari mpari" aba agomba gutanga ibimenyetso bifatika bituma habaho gushidikanya ku bivugwa n'Ubushinjacyaha. Bavuga ko rero Twagirayezu Wenceslas nk'uregwa yakoze inshingano ze kuko yatanze

[1] Igika cya 22 cy'urwo rubanza.
[2] Urubanza rwa Birindabagabo n'urwa Hategekimana n'urubanza rwa Sergent Biziyaremye Jean Baptiste na Cpl. Ngabonziza Faustin.

ibimenyetso bigaragaza ko atari mu Rwanda ku itariki ya 7, iya 8, n'iya 9 Mata 1994 kuko icyo gihe yari mu biruhuko bya Pasika mu gihugu cya Repubulika iharanira Demokarasi ya Congo (RDC).

UKO URUKIKO RUBIBONA

[9] Impaka kuri iki kibazo zishingiye ku kumenya niba Urukiko Rukuru rwaribeshye mu gushyira ku Bushinjacyaha ishingano yo gutanga ibimenyetso bijyanye n'imyiregurire ya ''sinari mpari'' yazamuwe n'uregwa. Mu yandi magambo, inshingano z'uwireguza sinarimpari mu gutanga ibimenyetso zigarukira he, iz'urega (Ubushinjacyaha) zo ni izihe mu miburanire ishingiye kuri "sinari mpari"?

[10] Ku birebana n'imyiregurire ya ''sinari mpari'', uru Rukiko rwaciye imanza zitandukanye, nk'urubanza n° RPAA/GEN 00004/2020/CA hagati y'Ubushinjacyaha na Birindabagabo Jean-Paul, aho rushingiye ku manza zaciwe n'Urukiko Mpanabyaha rwashyiriweho u Rwanda[3], rwasobanuye ko ku birebana n'ugomba gutanga ibimenyetso mu gihe umuburanyi aburanisha "sinari mpari" (alibi) by'umwihariko, Ubushinjacyaha ari bwo bukomeza kugira inshingano yo gutanga ibimenyetso bidashidikanywaho byemeza ko ukurikiranywe yakoze icyaha, naho ukurikiranyweho icyaha uvuga ko atari ari aho icyaha cyakorewe mu gihe runaka ku buryo atari kubasha gukora ibyaha ashinjwa, akagira inshingano zo kugaragaza gusa ko atari ahakorewe icyaha[4].

[11] Inshingano z'impande zombi mu rubanza rurimo uwireguza "sinari mpari" zasobanuwe neza n'Urugereko rw'Ubujurire rw'Inkiko Mpanabyaha Mpuzamahanga zashyiriweho u Rwanda n'icyahoze ari Yougoslavie[5]. Koko rero, mu manza zitandukanye, urugereko rw'Ubujurire muri izo nkiko zagiye zihura n'ikibazo cy'abaregwa baburanishije "sinari mpari" mu rwego rwa mbere, inkiko zikagaragaza ko ibimenyetso batanze bidahagije kugira ngo iyo "sinari mpari" yabo igire ishingiro, bakajurira bavuga ko amategeko agenga imiburanire ya sinari mpari yishwe kuko basabwe gutanga ibimenyetso bidashidikanywaho, kandi ibyo ubundi biri mu nshingano z'Ubushinjacyaha[6]. Urugereko rw'ubujurire akenshi zagiye zisubiza ko n'ubwo ubushinjacyaha bugumana inshingano yo gutanga ibimenyetso bidashidikanywaho bigaragaza ko uregwa atari aho avuga ko yari ari, uregwa na we wireguza "sinari mpari" agomba gutanga ibimenyetso ko atari aho icyaha cyakorerwe igihe cyakorwaga, ku rwego rutuma umucamanza yemera ko atashoboraga kuba yari ahari koko[7]. Muri make umurongo wagaragaye muri izo manza, ni uko ku byerekeye uregwa uburanisha sinari mpari, n'ubwo adasabwa ibimenyetso bidashidikanywaho (beyong reasonable doubt) nk'uko bisabwa ubushinjacyaha, kumusaba ibimenyetso bifatika bituma koko umucamanza yagira ugushidikanya ku bivugwa n'Ubushinjacyaha, si ukubusanya inshingano z'urega n'iz'uregwa.

[12] Mu yandi magambo, ku birebana n'uru rubanza rujuririrwa, Ubushinjacyaha bwari bufite inshingano yo kugaragaza ku buryo budashidikanywaho ko igihe jenoside yakorewe Abatutsi yakorwaga ku Gisenyi, kuva ku itariki 07 kugeza ku ya 09 Mata 1994, Twagirayezu Wenceslas yari mu Rwanda, naho we akagaragaza ku buryo butuma urukiko rwemeranya na we ko ibyo Ubushinjacyaha buvuga nta shingiro bifite kuko yari mu mahanga nk'uko abyireguza[8]. Akaba ari no muri urwo rwego hagiye gusuzumwa mu bika bikurikiraho niba Urukiko Rukuru rwarakoresheje nabi izo nshingano z'impande ziburana mu itangwa

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[3] Izo manza ni urubanza n° ICTR-99-54 A rwa Kamuhanda Jean de Dieu ; urubanza n° ICTR-01-73-A rwa Zigiranyirazo Protais n'urubanza ICTR- 99-52-A rwa Nahimana et al. (Media case).

[4] Ibi ni ko byemejwe mu rubanza n° RPAA 00371/2020/CA rw'Ubushinjacyaha na Sezikeye François rwaciwe ku wa 15/12/2022 no mu rubanza n° RPAA 00681/2021/CA rw'Ubushinjacyaha na Hategikimana Célestin rwaciwe ku wa 24/3/202

[5] Reba urubanza rwaciwe mu bujurire habura Ubushinjacyaha na Nahimana na bagenzi be (Media case), Case No. ICTR-99-52-A, para. 417.

[6] Reba urubanza rwaciwe mu bujurire habura Ubushinjacyaha na Lukić & Lukić, case No. IT-98-32/1-A, para. 362.

[7] Reba urubanza rwaciwe mu bujurire habura Ubushinjacyaha na Georges Anderson Nderubumwe Rutaganda, Case No. ICTR-96-3-A, Para. 488.

[8] Reba urubanza rwaciwe mu bujurire habura Ubushinjacyaha na Kayishema & Ruzindana, Case, ICTR-95-1-A, para. 106.

ry'ibimenyetso, bigatuma rwemeza ko bishoboka ko Twagirayezu Wenceslas atari mu Rwanda ubwo jenoside yakorerwaga Abatutsi ku Gisenyi, mu matariki yavuzwe[9].

[13] Mu Rukiko Rukuru, ubushinjacyaha bwasobanuye ko Twagirayezu Wenceslas yari mu Rwanda ubwo ibyaha byavuzwe byakorwaga bushingiye ku mvugo ye bwite asaba ubuhungiro muri Denmark igaragaza ko yari mu Rwanda kuva muri Mutarama kugeza muri Nyakanga 1994; ku kuba nta kimenyetso na kimwe cyabugenewe (official) yatanze kigaragaza ko yigeze yambuka umupaka no ku nenge zigaragara mu nyandiko yiswe "pétition et témoignage pour l'innocence de Mr. Twagirayezu Wenceslas''" cyangwa indi yiswe "décharge". Twagirayezu Wenceslas we yasobanuye urwego yavuzemo ko atigeze ava mu Rwanda, agaragaza ko igihe yasubizaga ku kibazo cyo kumenya aho yari hagati ya Mutarama na Nyakanga 1994, yasubije ko yari mu Rwanda kuko kujya muri Congo atigeze abifata nko kujya mu mahanga; ko kujyayo bitagomberaga icyangombwa gitanzwe mu buryo buri official, ko yari asanzwe ajyayo muri ubwo buryo, kandi ko hari n'abatangabuhamya bo muri Congo bagaragaje mu nyandiko yabo yiswe pétition et témoignage pour innocence de Twagirayezu Wenceslas, bakanabihamya imbere y'urukiko ko muri icyo gihe bari kumwe nawe muri Congo, ndetse hakaba hari n'inyandiko yiswe décharge yakorewe aho muri Congo icyo gihe.

[14] Urukiko rw'Ubujurire rurasanga nk'uko bigaragara mu rubanza rujuririrwa kuva mu gika cya mirongo itatu na gatandatu (36) kugeza ku cya mirongo ine (40), Urukiko Rukuru rwatangiye rugaragaza ihame rikurikizwa ku birebana n'imyiregurire ya "sinari mpari" mu gutanga ibimenyetso biyishimangira; rusobanura ko ukurikiranyweho icyaha afite inshingano yo gutanga gusa ibimenyetso bishimangira ko atari ahakorewe icyaha aregwa, mu gihe Ubushinjacyaha bwo bukomeza kugira ishingano yo gutanga ibimenyetso bidashindikanywaho byemeza ko ukurikiranwe yakoze icyo cyaha aregwa, rubyemeza rushingiye ku manza zaciwe n'Inkiko z'u Rwanda[10], nazo zifashishije amategeko mpuzamahanga n'ibyemezo by'Inkiko Mpanabyaha Mpuzamahanga[11] n'iz'ibindi bihugu[12].

[15] Urukiko Rukuru ruhereye kuri ibyo, mu gika cya 53 cy'urubanza rujuririrwa, rwasobanuye ko ibimenyetso byatanzwe n'uregwa Twagirayezu Wenceslas bigaragaza ko bishoboka ko ku matariki ya 7, iya 8 n'iya 9 z'ukwezi kwa Mata 1994, yaba yari muri RDC, ahantu hatandukanye n'aho Ubushinjacyaha buvuga yakoreye ibikorwa bigize ibyaha akuriranyweho kuri aya matariki; maze mu gika cya 197 cy'urubanza rujuririrwa, urwo rukiko rwemeza ko uregwa yashoboye kugaragaza ibimenyetso bigizwe n'inyandiko n'ubuhamya bishyira ugushidikanya ku byo Ubushinjacyaha buvuga ko yari ari mu Rwanda kuva ku wa 7 kugeza ku wa 9/4/1994, nyamara Ubushinjacyaha bwo ntibwabashije kugaragaza ibimenyetso bidashidikanywaho bigaragaza ko ibimenyetso uregwa ashingiraho yerekana ko yari muri RDC kuri aya matariki atari ukuri.

[16] Ku bivugwa n'Ubushinjacyaha ko Urukiko rwabanje rwirengagije ibyasobanuwe mu rubanza n° RPAA/GEN 00009/2019/CA rwaciwe ku wa 16/10/2020 n'uru Rukiko, aho rwasobanuye ko uwireguza ''sinari mpari'' ari we ugomba gutanga ibimenyetso bifatika bigaragaza aho yari ari ubwo ibikorwa bigize ibyaha akurikiranyweho byakorwaga, bushaka kumvikanisha ko uwo murongo unyuranye n'uwatanzwe mu manza zitandukanye zaciwe n'inkiko mpuzamahanga kandi ariwo ugomba gukurikizwa, Urukiko rw'Ubujurire rurasanga atari byo, kuko urwo rubanza rutanyuranya n'imirongo yatanzwe mu zindi manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda. Icyo urwo rubanza rwasobanuye ni uko uregwa agomba kugaragaza ibimenyetso bifatika bishimangira imyiregurire ye ya

[9] Reba igika cya 53 cy'urubanza rujuririrwa.
[10] Urubanza n° RPAA/GEN 00004/2020/CA rwa Birindabagabo Jean-Paul rwaciwe ku wa 8/4/2022 n'urubanza n° RPAA 00681/2021/CA rwa Hategekimana Célestin rwaciwe ku wa 24/3/2023.
[11] Reba urubanza rwaciwe mu bujurire habura Ubushinjacyaha na SETAKO Ephrem, Case n° ICTR-04-81-A rwaciwe ku wa 28/9/2011 n'urubanza rw'Ubushinjacyaha na Musema Alfred, Case n° ICTR-96-13-T rwaciwe ku wa 25/2/2014.
[12] Urubanza rwa Simphiwe Raymond Shusha na Leta (Africa y'Epfo) rwaciwe n'Urukiko rw'Ikirenga rw'igihugu y'Africa y'Epfo.

‘’sinari mpari’’[13], bivuze ko agomba gutanga ibimenyetso bitera ugushidikanya ku bimenyetso byatanzwe n’Ubushinjacyaha bigaragaza ko yari aho icyaha cyakorewe.

[17] Nk’uko rero bigaragara mu gika kibanziriza iki, Urukiko Rukuru rwagumye mu murongo usanzweho mu mahame agenga itangwa ry’ibimenyetso ku bireba inshingano za buri mu buranyi mu iburana rishingiye kuri “sinari mpari”, kuko rwagumishije inshingano zo gutanga ibimenyetso bidashidikanywaho (beyond reasonable doubt) ku ruhande rw’Ubushinjacyaha naho uregwa akaguma mu murongo wo gutanga ibimenyetso bigaragaza ko atari ahari ku buryo butera gushidikanya.

[18] Ikibazo gisigaye gusuzumwa akaba ari ukumenya niba koko ibimenyetso byatanzwe n’Ubushinjacyaha byari ibimenyetso bitari ku rwego rw’ibimenyetso bidashidikanywaho, cyangwa niba ibimenyetso byatanzwe n’uruhande rwa Twagirayezu Wenceslas byari ku rwego ruhagije rutuma Urukiko Rukuru rushidikanya ku byemezwa n’Ubushinjacyaha ko Twagirayezu Wenceslas yari mu Rwanda ubwo jenoside yakorwaga ku Gisenyi kuva ku wa 07 kugeza ku wa 09/04/1994.

A.2. Ku birebana n’ibyo Ubushinjacyaha buvuga ko Urukiko Rukuru rwiregangije ibimenyetso bwatanze bihamya ko Twagirayezu Wenceslas yari mu Rwanda igihe ibyaha akurikiranweho byakorwaga

1. Inyandiko zoherejwe n’inzego z’ubutabera za Denmark zikubiyemo imvugo za Twagirayezu Wenceslas

[19] Abahagarariye Ubushinjacyaha bavuga ko batanze ibimenyetso bigaragaza ko Twagirayezu Wenceslas yari mu Rwanda ubwo Abatutsi batangiraga kwicwa kuva ku wa 6 Mata 1994, birimo inyandiko zoherejwe n’inzego z’ubutabera za Denmark zikubiyemo amakuru yatanzwe na Twagirayezu Wenceslas ubwe ubwo yasabaga ubuhungiro mu gihugu cya Denmark no muri Polisi y’icyo gihugu[14]. Basobanura ko muri izo nyandiko ku rupapuro rwa p-09-350, Twagirayezu Wenceslas yabajijwe na Polisi ya Denmark aho yari ari kuva muri Mutarama kugeza muri Nyakanga 1994, asubiza ko yari ku Gisenyi mu Rwanda, ku rupapuro rwa p-09-351 yavuze ko yari ashyigikiye ibikorwa by’interahamwe ariko atashyigikiye ibikorwa by’ubwicanyi, ubwo zatangiraga kubukora, ko basanga izo mvugo ze zigaragaza ko interahamwe zitangira guhiga no kwica Abatutsi yari ahari, kuko n’abakoze ubwicanyi bwibasiye Abatutsi bemeza ko babukoranye, ko rero ibyo avuga ko atari ahari igihe ibyo bikorwa by’ubwicanyi byakorwaga bitari bikwiye guhabwa agaciro n’Urukiko kuko atari kuvuga ko atashyigikiye ibikorwa by’interahamwe adahari.

[20] Abahagarariye Ubushinjacyaha banenga kuba Urukiko Rukuru, mu gika cya 48 cy’urubanza rujuririrwa, rwaremeje ko ibyo Twagirayezu Wenceslas yavuze ubwo yasabaga ubuhingiro muri Denmark ko yari mu Rwanda kuva muri Mutarama kugeza muri Nyakanga 1994, bidasobanura ko yavugaga ko atigeze ahava na rimwe muri icyo gihe, ko agaciro k’ibyo Twagirayezu Wenceslas yavuze kagomba gusesengurwa no kumvikana harebwe ibihe n’impamvu byavugiwe. Bavuga ko ibyo rwabivuze ntaho rubishingiye, ko bigaragaza ahubwo ko imyiregurire y’uregwa rwayigize ihame.

[21] Twagirayezu Wenceslas n’abamwunganira bavuga ko ibirebana n’imvugo ze asaba ubuhungiro, Urukiko Rukuru rwabivuzeho mu gika cya 48, agace ka mbere, cy’urubanza rujuririrwa, rugaragaza ko bidasobanura ko atigeze ava mu Rwanda na rimwe muri icyo gihe. Bakomeza bavuga ko ubwo yasabaga ubuhungiro, urwego rw’abinjira rwo muri Denmark rwamubajije aho yari ari hagati ya Mutarama na Nyakanga 1994, asubiza ko yari mu Rwanda, ko nta bindi yari kongeraho kuko nta n’ikindi bamubazaga. Naho ibyo yavuze ko yashyigikiye interahamwe, birebana n’ibyabaye mu mwaka wa 1997, ubwo abacengezi bateraga gereza yari afungiyemo muri komine Rwerere bakabafungura, akabasha guhungira muri Congo; ko ibyo yavuze ko yagendeye kure ari ubwicanyi bwakozwe n’interahamwe nyuma y’itariki

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[13]Reba igika cya 22 cy’urwo rubanza.
[14] Kuva ku rupapuro rwa p-09-310 kugeza ku rwa p-09-371.

ya 9/4/1994 ubwo yari yaraye agarutse mu Rwanda kuko mbere y'aho, kuva ku itariki ya 6 kugera ku ya 9/4/1994 atari ahari.

[22] Twagirayezu Wenceslas n'abamwunganira banavuga ko ubwo yasabaga ubuhungiro havuzwe ko yakoze ibyaha mu Rwanda, ahamagarwa na immigration ya Denmark imubaza ibirebana no gusaba ubuhungiro gusa, ko kuba mu ibazwa rye yaragaragaje ko yari mu Rwanda kuva muri Mutarama kugera muri Nyakanga 1994 atari ukwibeshyera kuko icyo bari bakeneye ari ukumenya aho yari ari, ko bitanavuze ko atigeze ajya muri Congo kandi ko atigeze abazwa na Polisi ya Denmark ku birebana n'ibyaha aregwa nk'uko Ubushinjacyaha bubivuga, ko ahubwo bateruye ibyo yavugiye muri immigration aba ari byo bashyira muri dosiye ye.

UKO URUKIKO RUBIBONA

[23] Impaka kuri iki kibazo zishingiye ku kumenya niba Urukiko Rukuru rwarasesenguye nabi uburemere bw'imvugo z'uregwa ubwo yasabaga ubuhingiro mu gihugu cya Denmark, zemeza ko yari ari mu Rwanda kuva muri Mutarama kugeza muri Nyakanga 1994, ko rero n'igihe ibyaha aregwa byakorwaga ku Gisenyi muri Mata 94 yari mu Rwanda, rugatesha agaciro icyo kimenyetso nta mpamvu ifatika rushingiyeho.

[24] Nk'uko byagaragajwe haruguru, hakurikijwe amahame agenga itangwa ry'ibimenyetso mu miburanire ishingiye kuri "sinari mpari", Ubushinjacyaha busabwa gutanga ikimenyetso kitagibwaho impaka mu kugaragaza ko uregwa yari mu Rwanda, naho uburanisha sinari mpari akaba agomba gutanga impamvu ifatika ituma umucamanza yemera ko ibyo avuga bifite ishingiro ku buryo bimutera gushidikanya ku byo Ubushinjacyaha buvuga.

[25] Nk'uko bigaragara mu nyandiko-mvugo ya Twagirayezu Wenceslas yo ku wa 28/8/2002 yakorewe imbere ya Servisi ya Denmark ishinzwe abinjira mu gihugu mu rwego rwo gusuzuma ubusabe bwe bw'ubuhungiro, nyuma yo kumenyeshwa ko ikigamijwe muri icyo kiganiro ari ugucukumbura isano iri hagati y'ibikorwa bye bya politiki, harimo by'umwihariko n'imikoranire ye n'interahamwe n'impamvu ituma asaba ubuhungiro muri rusange, yasobanuye ko nk'Umuhutu, yashyigikiye interahamwe, ko ariko nta bikorwa yigeze azikorera, ko atigeze ajya mu bikorwa bya gisirikare interahamwe zakoze mu gihe cy'intambara cyangwa ibyo zari zirimo gukora muri icyo gihe yabazwaga. Yasobanuye kandi ko yashyigikiye ibitekerezo byabo byo kubasubiza iwabo mu Rwanda, bakabaho nk'abaturage basanzwe mu gihugu kavukire cyabo, kandi bakabasha kugira uburenganzira bwo kugaragaza ibitekezo byabo, ndetse ko yafashije abantu guhunga bava mu Rwanda bajya muri RDC.

[26] Muri iyo nyandiko-mvugo ye, abajijwe aho yari ari hagati ya Mutarama na Nyakanga 1994, Twagirayezu Wenceslas yasobanuye ko yabaga muri Gisenyi mu Rwanda, aho yigishaga imibare mu ishuri ryisumbuye rya Collège y'Ababatisite ya Gacuba II, ko kuva mu mwaka wa 1994 kugeza mu wa 1996, yabaga mu nkambi y'impunzi ya Kibumba (UNHCR) muri région ya Kivu.

[27] Mu gika cya 48, agace ka mbere, cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko ibyo Twagirayezu Wenceslas yavuze asaba ubuhingiro muri Denmark by'uko yari mu Rwanda kuva muri Mutarama kugeza Nyakanga 1994, bidasobanura ko atigeze ava mu Rwanda na rimwe muri icyo gihe, cyane ko agaciro k'ibyo yavuze asaba ubuhingiro kagomba gusesengurwa no kumvikana harebwe ibihe n'impamvu byavugiwe.

[28] Ikibazo gihari, akaba ari ukumenya niba iri sesengura ry'Urukiko Rukuru ryarahaye agaciro gakwiye ibisobanuro yatanze ku birebana n'imvugo ze:

a) kuba yari mu Rwanda kuva muri Mutarama kugeza muri Nyakanga 1994 no

b) kuba yarashyigikiye ibikorwa by'interahamwe ;

byari bihagije ku buryo bitera umucamanza gushidikanya ku ireme ry'izo mvugo.

[29] Ku birebana no kuba yaravuze ko yari mu Rwanda kuva muri Mutarama kugeza muri Nyakanga 1994, Urukiko rw'Ubujurire rurasanga isesengura ribitesha agaciro ryakozwe n'Urukiko Rukuru rwemeza ko iyo mvugo itafatwa nk'aho yemeraga ko yari mu Rwanda ku itariki ya 7, iya 8 n'iya 9 z'ukwezi kwa Mata 1994 ngo kuko yayivuze asubiza ku bibazo yabazwaga muri rusange birebana n'ubusabe bwe bw'ubuhingiro, nta shingiro rifite kubera impamvu zikurikira:

a. Twagirayezu Wenceslas yiyemereye nta gahato ko yari mu Rwanda kuva muri Mutarama kugera muri Nyakanga 1994; bivuze ko n'igihe jenoside yakorerwaga Abatutsi yari ahari;

b. Kuba ibyo yarabivuze mu rwego rwo gusaba ubuhungiro, ntibyari kuba impamvu itesha agaciro ireme ry'ibyo yiyemereye kuko ahubwo bigaragaza ko ubwo yabyiyemereye ntacyo ashinjwa, nta nyungu yihariye abifitemo, ari byo bigaragaza ubuziranenge bw'iyo mvugo ye nk'ubuhamya. Ibindi yasobanuye mu Rukiko ku bijyanye n'icyatumye abivuga atyo muri immigration ya Denmark, akaba yarabikoze gusa mu rwego rwo kwirwanaho aho amariye kubona ko guhakana ko yari mu Rwanda aribyo afitemo inyungu ;

c. Naho ku birebana no kuba yarabajijwe ikibazo muri rusange, bityo akaba na we yaragombaga kugisubiza muri rusange, uru Rukiko rusanga nabyo nta shingiro byari bikwiye guhabwa, kuko kubazwa ikibazo muri rusange atari byo byari kumutera kwibeshyera cyane cyane imbere y'urwego asanzwe azi neza ko kurutangamo amakuru atariyo (kandi afite andi mahitamo) bishobora kumuviramo kubura ubuhungiro ;

d. Isesengura ry'Urukiko Rukuru rishingiye ku kuba atarabajijwe ibisobanuro byihariye biganisha ku gihe nyakuri jenoside yakorwaga ku Gisenyi, ngo akaba ari byo byaba byaratumye atavuga ko hari igihe atahabaye, uru Rukiko rusanga nabyo nta shingiro bifite, kuko ahubwo iyo bikorwa bityo byari gutuma ubuhamya bwe butakaza ubuziranenge bwo kutagira aho bubogamiye, kuko byari gutuma ashaka uburyo yatanga igisubizo kitazamuteza ibibazo.

[30] Ku bijyanye no kuba yaravuze ko yashyigikiye ibikorwa by'interahamwe, Ubushinjacyaha bwavuze ko ibyo atabivuga atari kumwe nazo mu Rwanda. Uru Rukiko rusanga iyi ngingo Urukiko Rukuru rutarayisubijeho by'umwihariko kuko rwayifatiye hamwe n'ubuhamya bwatangiwe muri immigration ya Denmark. Ariko nk'uko byumvikana, uru Rukiko rusanga imvugo yo gushyigikira umuntu cyangwa igikorwa, idasaba ko uba uri kumwe na we, cyangwa uri aho icyo gikorwa kibera. Bityo, ibyo Ubushinjacyaha buvuga kuri iyi mvugo yo gushyigikira interahamwe, yo bikaba nta shingiro bifite.

2**. Ku bijyanye no kuba Twagirayezu Wenceslas atarerekanye urwandiko rw'inzira yambukiyeho ajya muri Congo**

[31] Abahagarariye Ubushinjacyaha bavuga ko banenga isesengura ry'Urukiko Rukuru mu gika cya 49 kuko rigaragaramo kugenekereza. Urugero ni nk'aho Urukiko Rukuru ruvuga ko kuba Twagirayezu Wenceslas atabasha kugaragaza impapuro zigaragaza ko yagiye muri Congo bitavuze ko atagiyeyo. Bavuga ko n'ibyo kuba yaragendeye ku ikarita y'umunyeshuri atari cyo cyagaragajwe mu rubanza; bakaba basaba uru Rukiko kuzabisuzuma kuko mu kugaragaza ko yari muri Congo, yazanye abavandimwe be gusa n'inshuti ze bo muri Congo; bikaba bitumvikana impamvu nta bandi bantu bo mu Rwanda babimenye ko yagiyeyo bikamenywa nabo muri Congo gusa. Basanga rero yaragombaga kwerekana ibimenyetso bigaragaza ko yagiyeyo, ko Urukiko rutari kugendera ku byo avuga gusa ko yanyuze mu nzira zitemewe kandi rutagaragaje impamvu ituma ibyo bigomba kwemerwa bityo.

[32] Twagirayezu Wenceslas n'abamwunganira bavuga ko kwambuka umupaka bikorwa mu buryo butandukanye, ko hari abambuka nta byangombwa cyangwa se babifite. Bavuga ko we yambuka atanyuze ku mupaka kuko Komini yabo iri ku mupaka neza, hagati hakaba harimo ikibaya bambuka bitabaye ngombwa ko banyura ku mupaka ku Gisenyi. Basobanura kandi ko n'iyo babaga banyuze ku mupaka berekanaga indangamuntu gusa; ko rero nta kosa riri mu isesengura ry'Urukiko kuko n'Ubushinjacyaha butagaragaza itegeko ryishwe. Basoza bavuga ko kujya muri Congo byari ubuzima bwe bwite, ko nta nshingano yari afite yo kuvuga ko agiyeyo; ko ahubwo ikibazo yakigize mu kugaruka ku itariki ya 8 n'iya 9/4/1994 kubera ko jenoside yari yatangiye, umupaka urinzwe n'abasirikare benshi.

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[33] Mu gusobanura ko Twagirayezu Wenceslas yagiye muri Congo; nta byangombwa afite bigaragaza ko yambutse umupaka ajya muri Congo, ahubwo ikigaragara ni uko avuga ko yambukaga bitabaye ngombwa ko aca ku mupaka. Ikibazo gihari akaba ari ukumenya niba yaratanze ibimenyetso bifatika byagombye gutuma umucamanza agira ugushidikanya kwatumye Urukiko Rukuru rwemera ko bishoboka ko n'ubwo nta kigaragaza ko yambutse umupaka, yaba yari muri Congo ubwo jenoside yakorwaga ku Gisenyi hagati y'itariki ya 07 n'iya 09 Mata 1994.

[34] Nk'uko bigaragara mu gika cya 49 cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko imiburanire y'Ubushinjacyaha buvuga ko Twagirayezu Wenceslas atagaragaza urwandiko rw'inzira yambukiyeho ajya muri RDC n'urwo yagarukiyeho, cyangwa umuntu wabonye yambuka umupaka nta shingiro ifite, kuko kuba uregwa adashobora kugaragaza inyandiko yemewe n'Ubuyobozi y'uburyo yambutse bitavuze ko atagiye muri RDC kuko ashobora no kuba yo nta byangombwa afite, nk'uko uregwa yiyemerera ko kuva muri RDC yambuka mu Rwanda ku wa 9/4/1994 atanyuze ku mupaka.

[35] Urukiko rw'Ubujurire rurasanga ibi bisobanuro by'Urukiko Rukuru kuri iyi ngingo bidahagije kuko mu buryo busanzwe, ikimenyetso kamara kigaragaza ko umuntu yagiye mu kindi gihugu ari inyandiko z'inzira. Kuba utabifite rero kandi uhamya ko wabaye mu kindi igihugu si ibintu bisanzwe, Urukiko rwaheraho rwemeza mu buryo bworoshye ngo birashoboka ko umuntu yambutse umupaka. Uru Rukiko rusanga, mu gihe nta kimenyetso nk'iki kibonetse, uwireguza sinari mpari aba agomba gutanga ibimenyetso biri ku rwego rwatuma Umucamanza ashidikanya ku byo Ubushinjacyaha buvuga ko yari mu Rwanda koko, birebewe hamwe n'ibimenyetso byatanzwe n'Ubushinjacyaha. Ireme ry'ibyavuzwe n'abatangabuhamya kuri iyi ngingo rikaba ari ryo rigiye gusesengurwa mu bika bikurikira.

3. Ibyerekeye ibyo Ubushinjacyaha buvuga ko Urukiko Rukuru rutahaye agaciro gakwiye imvugo z'abatangabuhamya bemeza ko jenoside itangira Twagirayezu Wenceslas yari mu Rwanda.

[36] Abahagarariye Ubushinjacyaha banenga ko mu gika cya 48 cy'urubanza rujuririrwa, Urukiko Rukuru rutasuzumiye hamwe imvugo za Pasteur Kaberuka Théophile yavugiye mu Bushinjacyaha mu mwaka wa 2019 n'uwa 2021 n'ubuhamya yatangiye mu Rukiko, ngo rubone ko yivuguruza kandi adakwiye kwizerwa. Bavuga ko Kaberuka Théophile abazwa mu Bushinjacyaha yavuze ko Twagirayezu Wenceslas atigeze ajya muri Congo, akaba yari yanemeye kuzabitangamo ubuhamya ariko nyuma akaza mu Rukiko amushinjura, noneho yemeza ko yari yaramubwiye ko azajya muri Congo mu biruhuko bya Pasika. Bakaba banenga ko Urukiko Rukuru rutagize icyo ruvuga kuri izo nenge, ahubwo rukamuvugira ibyo atavuze, ngo "yagize urujijo ku ijambo amahanga"; ngo "yumvaga ko RDC itarimo".

[37] Ubushinjacyaha bwemeza ko iyo Urukiko ruza gusuzumira hamwe inyandikomvugo ya Twagirayezu Wenceslas n'iya Kaberuka Théophile mu iperereza, rwari kubona ko atigeze ajya muri Congo kuko mu mvugo z'uregwa yemezaga ko avuye muri Congo yakiriwe na Kaberuka Théophile, nyamara nyir'ubwite akaba yarahakanye ko yaba yarigeze amwakira, ko atanamubonye n'ubwo Twagirayezu yari yamuzanye mu Rukiko ngo yemeze ko yagiye muri Congo, akaba yaranamuherekeje kugera yambutse

umupaka. Ubushinjacyaha buvuga ko nyamara Kaberuka Théophile ageze mu Rukiko yivugiye ko ibyo kujya mu biruhuko bigeze kubiganira.

[38] Abahagarariye Ubushinjacyaha bavuga kandi ko isesengura ry'Urukiko mu gika cya 48, ku bireba imvugo za Nkezabera Paulin ryabogamiye ku ruhande rumwe kuko umutangabuhamya yavuze ko mu minsi ibiri (2) mbere y'uko jenoside yakorewe Abatutsi iba, Twagirayezu Wenceslas yaje kumutira gitari ariko ko aho jenoside itangiriye atongeye kumubona, ko Urukiko rwitiranyije iyo minsi ibiri n'impera z'ukwezi kwa gatatu bituma ruvuga ko harimo gukekeranya, rwirengagije ko iyo minsi ibiri ari tariki ya 4 n'iya 5 Mata 1994, bigaragaza ko jenoside itangira Twagirayezu Wenceslas yari mu Rwanda atari muri Congo nk'uko abivuga kandi ko Nkezabera Paulin ari umuntu usobanukiwe atari kwitiranya icyumweru n'iminsi ibiri.

[39] Banavuga ko umutangabuhamya Nahimana Emmanuel wari ushinzwe iby'iyobokamana ku kigo Twagirayezu Wenceslas yigishagaho, abazwa mu Bushinjacyaha yagaragaje ko nko kuva ku ya 2 kugeza ku ya 6 Mata 1994 na mbere yaho muri Werurwe 1994, Twagirayezu Wenceslas yari ahari na nyuma yaho kugera bahunze, ko akeka ko yabaga mu kigo kuko yari Préfet de discipline kuko bahamusangaga bakanahamusiga ndetse ko yasaga nk'umwana wo kwa Nkezabera Paulin. Bavuga ko izo mvugo ze zigaragaza ko baziranye ariko mu kuzisesengura Urukiko Rukuru rukaba rwaravuze ko zitashingirwaho kuko yemeza ko yari ahari abishingiye ku kuba yari asanzwe azi aho atuye, aho kugaragaza uburyo bwihariye yamubonyemo muri icyo gihe. Abahagarariye Ubushinjacyaha bakaba basanga isesengura ryakozwe n'Urukiko ritandukanye n'ibyo Nahimana Emmanuel yavuze. Banavuga ko banenga Urukiko Rukuru kuba rwaremeje ko imvugo ze zitashingirwaho mu rubanza kuko nta bundi buhamya bwatangiwe mu Rukiko buzishimangira nk'uko ingingo ya 8, igika cya 2 n'icya 3 y'Itegeko n° 47/2013 ryo ku wa 16/6/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda ibiteganya, nyamara atari byo kuko hari abatangabuhamya bakoranye ibyaha na Twagirayezu Wenceslas bemeza ko yari mu Rwanda.

[40] Twagirayezu Wenceslas n'abamwunganira bavuga ko Ubushinjacyaha buhindura imvugo ziri mu nyandikomvugo y'ibazwa rya Kaberuka Théophile kuko bwamubajije niba Twagirayezu Wenceslas yarigeze ajya mu mahanga arabihakana, kuko mu gace k'iwabo Congo batayifata nk'amahanga, bumva ko ugiye mu mahanga ari uwafashe indege. Bakavuga ko ntakwivuguruza kuri mu mvugo ze zo mu iperereza no mu buhamya yatangiye mu Rukiko, kuko Kaberuka Théophile mu Rukiko yavuze ko ubwo yabazwaga n'Ubushinjacyaha atumvise ko amahanga yavugwaga na RDC irimo, ko ariyo mpamvu yasubije ko yamenye ko yagiye mu mahanga mu mwaka wa 2000 bavuye mu ntambara y'abacengezi. Bongeraho ko kuba yaraje mu Rukiko nk'umutangabuhamya wa Twagirayezu bitaba impamvu ituma atizerwa cyangwa ngo ubuhamya bwe bushidikanyweho, kuko Ubushinjacyaha butanga urutonde rw'abatangabuhamya, Kaberuka Théophile atari aruriho, ko nta n'ikigaragaza ko yari yaremeye kumushinja, naho ibyo Ubushinjacyaha buvuga ko yavuze ko ubwo yari agarutse mu Rwanda atamwakiriye, ibyo batazi aho byaturutse ariko ko baturanye ku buryo atashoboraga kugera iwabo atahanyuze.

[41] Ku byerekeye imvugo za Nkezabera Paulin, Twagirayezu Wenceslas n'abamwunganira bavuga ko atigeze agaragaza itariki ya nyuma baherukaga kubonana ubwo yamutiraga gitari, ko ahubwo yakekeranyije akavuga "nko mu minsi ibiri mbere ya jenoside". Urukiko Rukuru rukaba rutaragarukiye mu kwerekana ko akekeranya, ahubwo rushingiye ku biteganywa n'ingingo ya 8 y'Itegeko n° 47/2013 ryo ku wa 16/6/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, rwanagaragaje ko imvugo ze zitashingirwaho kuko nta buhamya yatanze mu Rukiko. Bavuga kandi ko ubwo yabazwaga, aho yavuze ko yamwakiriye, yashakaga kuvuga ko yamwakiriye mu kazi ubwo yasubiraga muri paroisse kubera ko bo batigeze bafunga, ko nta n'icyo yari cyo ku buryo Nkezabera Paulin wari i Gisenyi na Kaberuka Théophile wari i Rwerere bombi bari kuza kumwakira agarutse mu Rwanda ku wa 09/04/1994. Bavuga ko ku itariki ya 9 yaje mu ijoro, bucya hari amateraniro ku itariki ya 10/04/1994, icyo gihe akaba aribwo yabonanye na Kaberuka Théophile kuko yari Pasteur, bikaba bishoboka ko Nkezabera Paulin we atamubonye kuko hari abantu benshi.

[42] Twagirayezu Wenceslas n'abamwunganira banavuga ko yakoranaga na Nahimana Emmanuel wari kontabure, ko ariko uyu atari kumenya icyo yakoraga umunsi ku munsi kuko icyo gihe hari mu biruhuko, ndetse n'amatariki avuga yamubonyeho yakekeranyaga, atavuga aho yamubonye, akaba ataranazanwe mu Rukiko ngo atange ubuhamya. Byongeyeye kandi ibyo Nahimana Emmanuel yavuze ko atazi aho yari acumbitse, ko ahubwo akeka ko yabaga mu kigo kubera ko yari Préfet de discipline, ko bamusangaga mu kigo bakanahamusiga, bitahabwa agaciro kuko yari asanzwe azi neza ko atashoboraga kuba mu kigo cy'abakobwa, dore ko abahungu bigaga batahaga; ko ibyo yavuze rero bigaragaza ko atari azi neza aho atuye, ko n'ibyabaye icyo gihe nta makuru yari abifiteho.

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[43] Impaka kuri iki kibazo zishingiye ku kumenya niba imvugo z'aba batangabuhamya (Kaberuka Théophile, Nkezabera Paulin na Nahimana Emmanuel) zari zifite ireme ku buryo zitera Urukiko Rukuru gushidikanya niba Twagirayezu Wenceslas yari mu Rwanda ubwo jenoside yabaga ku Gisenyi hagati y'itariki ya 7 kugera ku ya cyenda Nyakanga 1994.

[44] Urukiko rw'Ubujurire rurasanga, nyuma y'imvugo za Twagirayezu Wenceslas yiyemereye ko yari mu Rwanda kuva muri Mutarama kugeza muri Nyakanga muri immigration ya Denmark nk'uko byasobanuwe haruguru, na nyuma y'uko bigaragaye ko nta byangombwa by'inzira bigaragaza ko yigeze yambuka umupaka, ari ngombwa gusesengura buri mvugo y'aba batangabuhamya, kugira ngo rurebe niba hari ireme zifite ryari gutera Urukiko Rukuru gushidikanya ko koko Twagirayezu Wenceslas ashobora kuba yari ari muri DRC, mu gihe cyavuzwe.

a) Ku bireba ubuhamya bwa Kaberuka Théophile

[45] Nk'uko bigaragara mu gika cya mirongo ine n'umunani (48) cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko imvugo ya Kaberuka Théophile mu iperereza y'uko uregwa nta biruhuko yari kujyamo mu mahanga kuri Pasika y'umwaka wa 1994 kuko umwaka w'amashuri utangira mu kwezi kwa cyenda (9), ukarangira mu kwa gatandatu (6) k'undi mwaka, zitafatwa nk'ikimenyetso cy'uko atagiye muri RDC, kuko mu Rukiko yasobanuye ko uregwa yari yaramubwiye ko azaruhukira muri RDC kuri Pasika, ibi bigaragaza ko yagize urujijo ku ijambo ''amahanga'', ko amahanga yavugaga RDC itarimo.

[46] Dosiye y'urubanza igaragaza ko ku wa 17/12/2018 mu Bugenzacyaha, Twagirayezu Wenceslas yasobanuye ko mu bantu bazi ko yageze mu Rwanda ku wa 9/4/1994 harimo mama we, Pasteur Kaberuka Théophile, mukase, Buduye, Niwenshuti Ladislas na Nkezabera Paulin.

[47] Inyandikomvugo ya Kaberuka Théophile yo ku wa 8/7/2019 mu Bushinjacyaha igaragaza ko yabajijwe niba mbere y'uko jenoside iba, Twagirayezu Wenceslas yaba yarigeze ajya mu mahanga cyangwa ataragiyeyo, yasubije ko atagiyeyo, ko mbere ya 1994 yari mu Rwanda kuko icyo gihe umwaka w'amashuri watangiraga mu kwa cyenda ukarangira mu kwa gatandatu, bakajya muri grandes vacances, ko nta kuntu yari kugenda amashuri atarafunga. Yakomeje avuga ko Twagirayezu Wenceslas yagiye mu mahanga mu mwaka wa 2000 bavuye mu ntambara y'abacengezi, ko atamubonaga mu gihe cya jenoside, ko yumvise nyuma ya jenoside ko yagiye muri Congo. Naho mu nyandiko-mvugo ye yo ku wa 23/11/2021, Kaberuka Théophile yasobanuye ko yaturanye na Twagirayezu Wenceslas kuko kuva iwabo ujya iwe ari nk'iminota icumi (10), ko atigeze amubona kuva jenoside yakorewe Abatutsi itangira tariki ya 6/4/1994 kugeza ubwo abaturage bo mu gace kabo bahungaga, ko yongeye kumubona mu mwaka wa 2000 amubwira ko agiye kujya mu mahanga ya kure. Yanasobanuye ko atigeze amwakira avuye Congo ku wa 9/4/1994, ko yamuherukaga mu mwaka wa 1993 mbere ya jenoside yakorewe Abatutsi.

[48] Mu iburanisha ryo ku wa 22/4/2022, abajijwe n'Urukiko Rukuru n'Ubushinjacyaha ku birebana n'ikiruhuko cya Pasika cy'umwaka wa 1994, Twagirayezu Wenceslas avuga ko yafatiye muri Congo,

KABERUKA Théophile yasobanuye ko yagiye kumusura mu mpera z'umwaka wa 1993 aho yari acumbitse ku Kanyarutambi hafi na Gacuba, amubwira ko ibiruhuko bya Pasika azabiruhukira muri Congo, ko kuba icyo gihe ataramubonye iwabo, yumvise ko ariyo yagiye.

[49] Nk'uko biboneka, Kaberuka Théophile mu ibazwa rye rya mbere ku wa 8/7/2019 mu Bushinjacyaha, yemeje ko Twagirayezu Wenceslas atigeze ajya mu mahanga ndetse anabitangira ibisobanuro: ngo Twagirayezu Wenceslas ntiyashoboraga kugenda kuko umwaka w'amashuri watangiraga mu kwa cyenda ukarangira mu kwa gatandatu. Nyamara mu ibazwa rye ryo ku wa 23/11/2021, Kaberuka Théophile yavuze ko yaherukaga kumubona mu mwaka wa 1993; muri ayo mabazwa yombi, yanavuze ko mu gihe cya jenoside atigeze amubona. Naho mu iburanisha ryo ku wa 22/4/2022, Kaberuka Théophile yasobanuye ko yagiye kumusura mu mpera z'umwaka wa 1993 aho yari acumbitse ku Kanyarutambi hafi na Gacuba, amubwira ko ibiruhuko bya Pasika azabiruhukira muri Congo, ko kuba icyo gihe ataramubonye iwabo, yumvise ko ariyo yagiye. Byongeye kandi ibyo Twagirayezu Wenceslas yemeje ko Kaberuka Théophile ari mu bazi ko yagarutse mu Rwanda ku wa 09/04/1994 avuye muri Congo, mu nyandiko-mvugo yo ku wa 23/11/2021 Kaberuka Théophile yarabihakanye.

[50] Uru Rukiko rurasanga ubuhamya bwa Kaberuka Théophile bugaragaza ko ataherukanaga na Twagirayezu Wenceslas ndetse n'amakuru yamutanzeho ku bijyanye no kumenya niba yarigeze ava mu Rwanda mu gihe cya jenoside, bikaba biboneka ko ari ukugenekereza bikabije ku buryo bitari bikwiye ko byatera Urukiko Rukuru ugushidikanya ku bijyanye no kumenya niba Twagirayezu Wenceslas yari mu Rwanda ubigereranyije no kuba yariyemereye ko yari mu Rwanda kuva muri Mutarama kugeza muri Nyakanga 1994, akaba atanagaragaza inyandiko z'inzira zigaragaza ko yambutse umupaka.

b) Ku bijyanye n'ubuhamya bwa Nkezabera Paulin

[51] Ku bireba Nkezabera Paulin, mu nyandiko-mvugo ye yo ku wa 21/6/2020 mu Bushinjacyaha, yasobanuye ko Twagirayezu Wenceslas yamutiye gitari nko mu minsi ibiri mbere y'uko jenoside yakorewe Abatutsi itangira, ntibongera guhura. Abajijwe niba uregwa yari aho ku ishuri jenoside yakorewe Abatutsi iba, yasubije ko mbere y'uko iba, yabaga aho kuko yazaga mu rugo iwe, ko aza no gutwara gitari mbere gato y'uko jenoside itangira, yari aho ku ishuri.

[52] Urukiko Rukuru rwasobanuye ko iyi imvugo ye itashingirwaho hemezwa aho uregwa yari ari mu Rwanda kuko irimo gukekeranya, cyane ko iminsi ibiri (2) mbere y'uko jenoside iba avuga ko uregwa yaje kumutira gitari, yegeranye cyane n'impera za Werurwe 1994 nawe avuga ko yaviriye mu Rwanda. Rwanasobanuye ko uretse ko imvugo ya Nkezabera Paulin nta reme ifite, itanashingirwaho mu gihe idashyigikiwe n'ubuhamya bwatangiwe mu Rukiko, nk'uko biteganywa n'ingingo ya 8, igika cya kabiri (2) n'icya gatatu (3), y'Itegeko n° 47/2013 ryo kuwa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda[15].

[53] Uru Rukiko rurasanga, ubwo Urukiko Rukuru rwari rumaze kubona ko imvugo ya Nkezabera Paulin itashingirwaho nk'ubuhamya kuko itavugiwe mu Rukiko kandi ikaba idashyigikiwe n'ibindi bimenyetso, bitari na ngombwa gusesengura ireme ryayo ngo rwiriwe rujya gusobanura imvugo ze rushaka kumvikanisha ko bishoboka ko Twagirayezu Wenceslas ashobora kuba yaravuye mu gihugu. Rusanga kandi ku bw'ibyo, n'ibyo Ubushinjacyaha bunenga ku isesengura ryakorewe imvugo z'uyu mutangabuhamya nta shingiro bifite kuko atari ho ikibazo kiri.

c) Ku bijyanye n'ubuhamya bwa Nahimana Emmanuel

[15] Ingingo ya 8, igika cya kabiri (2) n'icya gatatu (3), y'Itegeko n° 47/2013 ryo kuwa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda iteganya ko Urukiko Rukuru rudashobora guhamya umuntu icyaha rushingiye gusa ku buhamya bwanditse bwatanzwe mbere n'abatangabuhamya batigeze batanga ubuhamya mu iburanisha. Icyakora, Urukiko Rukuru rushobora guhamya umuntu icyaha rushingiye ku gaciro k'ubwo buhamya bwanditse iyo ubwo buhamya bufite ubundi bubushyigikira.

[54] Mu nyandikomvugo ye yo ku wa 15/7/2020 mu Bushinjacyaha, Nahimana Emmanuel yasobanuye ko mbere ya jenoside yakorewe Abatutsi, nko mu matariki ya 2, 3, 4, 5, 6/4/1994, na mbere yaho nko mu kwa gatatu, mbere y'uko jenoside iba, Twagirayezu Wenceslas yari ahari akorera kuri Collège Baptiste Gacuba II, ko no mu gihe cya jenoside yari ahari kugeza igihe abantu bahungiye, ko indege ya Perezida Habyarimana Juvénal ihanuka ku wa 6/4/1994 yari i Gisenyi na Twagirayezu Wenceslas yari aho ku kigo kuko wabonaga asa n'umwana wa Nkezabera Paulin. Abajijwe uburyo yamubonaga n'aho yari, Nahimana Emmanuel yasubije ko yari ahari kuko yabaga mu kigo cya Collège Baptiste Gacuba II.

[55] Mu gika cya mirongo ine n'umunani (48) cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko Nahimana Emmanuel ibyo yavuze ko nko ku matariki kuva ku ya 2 kugeza ku ya 6 Mata 1994 na mbere yaho, nko mu kwezi kwa Werurwe 1994, uregwa yari ahari, ko kandi wabonaga asa nk'umwana wo kwa Nkezabera Paulin, bitashingirwaho kuko yabyemeje ashingiye gusa ku kuba yari asanzwe azi aho atuye, aho kugaragaza uburyo bwihariye yamubonyemo muri icyo gihe. Rwasobanuye kandi ko uretse no kuba nta reme bifite, bitashingirwaho muri uru rubanza kuko bidashyigikiwe n'ubuhamya bwatangiwe mu Rukiko.

[56] Uru Rukiko rurasanga, kuri ubu buhamya bwa Nahimana Emmanuel nabwo, ubwo Urukiko Rukuru rwari rumaze kubona ko imvugo ye itashingirwaho nk'ubuhamya kuko itavugiwe mu Rukiko kandi ikaba idashyigikiwe n'ibindi bimenyetso nk'uko biteganywa mu ngingo ya 8, igika cya kabiri (2) n'icya gatatu (3), y'Itegeko n° 47/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, bitari na ngombwa gusesengura ireme ryayo ngo runasobanure imvugo ze rushaka kumvikanisha ko bishoboka ko Twagirayezu Wenceslas ashobora kuba yaravuye mu gihugu muri icyo gihe. Rusanga kandi ku bw'ibyo, n'ibyo Ubushinjacyaha bunenga ku isesengura ryakorewe imvugo z'uyu mutangabuhamya nta shingiro bifite kuko atari ho ikibazo kiri.

[57] Muri make uru rukiko rurasanga Urukiko Rukuru rutarahaye agaciro gakwiye imvugo z'abatangabuhamya bemeza ko jenoside itangira Twagirayezu Wenceslas yari mu Rwanda kuko nk'uko byasobanuwe mu bika bibanza, ubuhamya bwa Kaberuka Théophile bugaragaza ko ataherukanaga na Twagirayezu Wenceslas ku buryo yagira icyo avuga gifite agaciro gatera Urukiko gushidikanya ku kuba Twagirayezu Wenceslas yaba atari mu Rwanda igihe ibyaha aregwa byakorwaga. Naho ubuhamya bwa Nkezabera Paulin na Nahimana Emmanuel bukaba butari bukwiye kugira icyo bwungura ku bijyanye n'impaka zigamije kumenya niba Twagirayezu Wenceslas yari mu Rwanda, kuko ubuhamya bwabo butatangiwe mu Rukiko cyangwa ngo bushimangirwe n'ibindi bimenyetso nk'uko Urukiko Rukuru rwari rwanabibonye.

A.3. Ibyerekeye agaciro kahawe inyandiko zatanzwe n'uregwa nk'ibimenyetso bya "sinari mpari".

[58] Ubushinjacyaha bunenga ko Urukiko Rukuru rwahaye agaciro kadakwiye imyiregurire ya "sinari mpari" ishingiye ku nyandiko yiswe pétition et témoignages, pour l'innocence de Mr. Wenceslas Twagirayezu n'indi yiswe décharge.

1. Ibyerekeye inyandiko yiswe pétition

[59] Ubushinjacyaha buvuga ko inyandiko yiswe pétition et témoignages, pour l'innocence de Mr. Wenceslas Twagirayezu itagombaga guhabwa agaciro nk'ikimenyetso mu rubanza kandi n'ibyo abatangabuhamya bayivuzemo bikaba bivuguruzanya ku buryo bitagombaga gushingirwaho hemezwa ko Twagirayezu Wenceslas ashobora kuba atari mu Rwanda ubwo ibyaha akurikiranweho byakorwaga.

a. Kuba pétition itaragombaga guhabwa agaciro nk'ikimenyetso mu rubanza

[60] Abahagarariye Ubushinjacyaha bavuga ko mu gika cya 50 cy'urubanza rujuririrwa, Urukiko Rukuru rwahaye agaciro inyandiko yiswe pétition et témoignages, pour l'innocence de Mr. Wenceslas

Twagirayezu rutagize icyo ruvuga ku nenge bagaragaje zituma itaragombaga gushingirwaho nk'ikimenyetso, zirimo kuba iyo nyandiko ari igitekerezo gihimbano cyanditswe n'umuntu umwe ari we Pasteur Senzoga Bihuri Patrick Ndeze, agasinyisha abandi; kuba mu bayigaragaraho hari abatarayisinye no kuba barahamije ibyo batazi. Ibyo bikaba bigaragaza ko yari igamije gusa kumukingira ikibaba no gushyira igitutu ku nzego z'ubutabera za Denmark, bityo hatitawe ku bayikoze, aho yakorewe n'amakuru ayikubiyemo aho yava hose, ikaba itaragombaga kwemerwa.

[61] Ku byerekeye kuba iyo nyandiko yaranditswe n'umuntu umwe, abahagarariye Ubushinjacyaha bavuga ko yanditswe na Pasteur Senzoga Bihuri Patrick Ndeze, agasinyisha inshuti za Twagirayezu Wenceslas ziba muri RDC, amakuru ayikubiyemo akaba ataranditswe cyangwa ngo ategurwe n'abo yitiriwe nk'uko babigaragaje ubwo bari bageze imbere y'Urukiko. Bavuga kandi ko abasinye kuri iyo pétition, nta ruhare bagize mu itegurwa ryayo, ko itegurwa batari bahari, ndetse ko batari bazi n'ibiyikubiyemo. Bavuga ko bahamagawe, bagasabwa gusinya ndetse bamwe bakemeza ko basinye batasomye ibiyigize.

[62] Abahagarariye Ubushinjacyaha bavuga ko abatangabuhamya nka Madingo Ndabundu Ignace na Lukando Manu alias Pasteur Dusabe bayisinye bayizaniwe na Kikwindi Kimende Stanislas kugira ngo bemeze ko Twagirayezu Wenceslas atakoze jenoside, bagasinya batazi ibiyikubiyemo; ko uwitwa Bakali Murefu Innocent we yivugiye ko yahamagawe na Pasteur Senzoga Bihuri Patrick Ndeze akamusanga iwe akamusaba kuyisinyaho amubwira ko ubuhamya bwe bushobora kuzagira akamaro, naho Maombi Muromba Estella we akaba yaravuze ko yazaniwe urupapuro na Pasteur Manirafasha wa CBCA ngo asinye ariko atazi ibirimo; ibyo akaba ari nako byagendekeye abandi benshi bayisinyeho.

[63] Abahagarariye Ubushinjacyaha bavuga kandi ko kuba iyo nyandiko igaragaho amazina y'abantu mirongo itatu n'umwe (31), muri bo hakaba harimo 5 batigeze bayisinyaho, ndetse batujurijweho nomero z'indangamuntu na telefone, bigaragaza ko n'abayiteguye batabashije kubageraho ngo babasinyishe.

[64] Ku nenge zagaragajwe n'abahagarariye Ubushinjacyaha, Twagirayezu Wenceslas n'abamwunganira bavuga ko pétition ari igitekerezo cy'umuntu umwe usaba abandi kucyemera, ko bashobora kuba bahari igihe cyo kuyitegura cyangwa badahari bagasabwa gusa kuyisinyaho, ko icya ngombwa ari uko bemera igitekerezo kiyigaragaramo. Ku bireba uru rubanza, bavuga ko byari kuba ikibazo iyo abatangabuhamya basinye kuri pétition baba barageze imbere y'Urukiko bagahakana ko ari bo basinye cyangwa bakagaragaza ko batigeze bamubona hagati y'itariki ya 6 n'iya 9/4/1994, ko rero kuba barayisinye ari uko hari amakuru bari bafite kuri Twagirayezu Wenceslas, banemera ko bamubonye nibura umunsi umwe muri ayo matariki.

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[65] Impaka kuri iki kibazo zishingiye ku kumenya niba Urukiko Rukuru rwarirengagije inenge ziri mu nyandiko yiswe pétition, Ubushinjacyaha buvuga ko bwarugaragarije, zari gutuma idafatwa nk'ikimenyetso, iri kosa ryakozwe n'urwo Rukiko rikaba ryaratumye hemezwa ishingiro ry'imyiregurire ya ''sinari mpari'' y'uregwa.

[66] Mu nyandiko yo ku wa 31/5/2018 ifite impamvu igira iti: ''pétition et témoignage pour l'innocence de Mr. Wenceslas Twagirayezu'', yashyizweho umukono n'abantu batandukanye, bandikira Ministre de la Justice du Royaume de Danemark, abo bantu basobanura ko bagiye kumuha amakuru kuri Twagirayezu Wenceslas agaragaza ko nta ruhare afite ku byo aregwa. Basobanura muri rusange ubuzima bwe kuva mu mwaka wa 1982 kugeza ku mu mwaka wa 2000, ariko bagaragaza cyane ibyo yakoze kuva mu mpera z'ukwezi kwa Werurwe 1994 kugeza ku wa 9/4/1994, umunsi bavuga ko yasubiye mu Rwanda. Muri iyo nyandiko basaba Minisitiri w'ubutabera w'igihugu cya Denmark kuza gukora iperereza iwabo aho Twagirayezu Wenceslas yari, mu biruhuko bya Pasika by'umwaka wa 1994, igihe ubwicanyi bwatangiye

mu Rwanda. Ku mugereka w'iyo nyandiko hagaragara urutonde rw'abantu mirongo itatu n'umwe (31) bemeza ko icyo gihe, babonye Twagirayezu Wenceslas iwabo muri Congo.

[67] By'umwihariko, ku birebana n'uru rubanza, muri iyo nyandiko bavuga ko Twagirayezu Wenceslas yageze muri Congo mu mpera z'ukwezi kwa gatatu ku mwaka wa 1994 mu bihuruko bya Pasika, agera i Luhanga aje mu materaniro y'ivugabutumwa (campagne d'évangélisation), arangiye, ku wa 6/4/1994, Nikuze na Maombi Muromba baramuherekeza kugeza Bweru-Muhongozi aho yaraye kuri Chapelle CBK Muhongozi. Ku wa 7/4/1994, abifashijwemo na Bokalos yabonye imodoka, akomeza ajya i Goma, aho yaraye kuri CBK Virunga. Ku wa 8/4/1994, Twagirayezu Wenceslas yagiye i Kibati, aho yabonanye na Kikwindi Kimende Stanislas wamuhaye amafaranga yo kohereza Pasteur Senzoga Bihuri Patrick Ndeze, asubira i Goma. Ku wa 9/4/1994, nyuma yo kubona ko gusubira mu Rwanda aciye kuri petite barrière bidakunze, yagiye i Kibati, ku mugoroba Bahati na Madingo Ndabundu Ignace baramuherekeza bamugeza i Cyabwato, akomereza mu Rwanda mu Mudugudu wa Gabiro kugera ageze iwabo Gacurabwenge-Rubikiro.

[68] Mu iburanisha ryo ku wa 19/4/2022 mu Rukiko Rukuru, ku birebana na pétition, Umutangabuhamya Maombi Nyiraromba Estella, bakunda kwita Muromba, yasobanuriye urwo Rukiko ko Pasiteri Manirafasha ariwe wamuzaniye urutonde rw'abantu bemeza ko Twagirayezu Wenceslas yari muri Congo ku matariki avugwa muri pétition, ko nyuma yo kubazwa niba yari kumwe na Twagirayezu Wenceslas ku matariki ya 3, 4, 5 na 6/4/1994, akemeza ko bari kumwe, yashyize umukono kuri urwo rutonde, anemera ko azatanga ubuhamya mu Rukiko.

[69] Muri iryo buranisha na none, Umutangabuhamya Madingo Ndabundu Ignace yasobanuye ko bamaze kumva ko Twagirayezu Wenceslas yafunzwe kubera ko aregwa kuba yarakoze jenoside, bashyize umukono kuri urwo rutonde kuko bari bazi ko yabaye iwabo, kandi yahamaze igihe, ko we ubwe yashyizeho umukono kuko yemezaga ko icyo gihe yabaye iwabo.

[70] Mu iburanisha ryo ku wa 20/4/2022, umutangabuhamya Lukando Manu yasobanuye ko umusaza Kikwindi Kimende Stanislas ariwe wamuzaniye iyo nyandiko, amusobanurira uko ikibazo giteye muri rusange, ko Twagirayezu Wenceslas yafunzwe azira itsembatsemba ry'Abatutsi, ko kubera ko yari azi ko yamuherukaga ku wa 9/4/1994, yashyize umukono kuri iyo nyandiko.

[71] Mu gika cya mirongo itanu (50) cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko kuba Pasiteri Senzoga Bihuri Patrick Ndeze ari we wasinyishije bagenzi be inyandiko yiswe pétition, atari inenge yatuma idafatwa nk'ikimenyetso muri uru rubanza kuko mubayisinyeho babajijwe mu Rukiko, bose bemeje ko bayisinye bazi ko igamije gushinjura uregwa; naho ku bijyanye n'abayiriho batayisinye, Pasiteri Senzoga Bihuri Patrick Ndeze yasobanuye ku buryo bwumvikana ko bitatewe no kutemera ibiyikubiyemo, ko ahubwo byatewe n'uko batabonetse.

[72] Isesengura ryakozwe n'Urukiko Rukuru ryumvikanisha ko kuba bamwe mu bashyize umukono kuri iyo nyandiko bumviswe nk'abatangabuhamya mu Rukiko, bose baremeye umukono wabo, ndetse banemera ko bazi ko igamije gushinjura uregwa no kuba abandi bagaragaramo batashoboye kuyishyiraho umukono kuko batabonetse, inenge zazamuwe n'Ubushinjacyaha zitayitesha agaciro nk'ikimenyetso.

[73] Urukiko rw'Ubujurire rurasanga Ubushinjacyaha burusaba gutesha agaciro nk'ikimenyetso pétition ivugwa muri uru rubanza kubera ko ari inyandiko yanditswe n'umuntu umwe, agasaba abandi gushyiraho umukono batazi ibyanditswemo no ku kuba bamwe mu bantu bagaragaramo batarayishyizeho umukono, ni ukuvuga abantu batanu (5) mu bantu mirongo itatu n'umwe (31).

[74] Urukiko rw'Ubujurire rurasanga inyandiko yiswe pétition itateshwa agaciro nk'ikimenyetso ku mpamvu y'uko yanditswe n'umuntu umwe gusa, agasaba abandi kuyishyiraho umukono, kuko muri kamere yayo n'ubusanzwe ari inyandiko yandikwa n'umuntu umwe cyangwa benshi, agashakisha cyangwa

bagashakisha n'abandi bayishyiraho umukono kuko bemeranya ku biyikubiyemo, basaba ubuyobozi runaka gukora cyangwa kugira ibyo bwemeza[16]. Icya ngombwa ni uko ibiyivuzwemo bisobanurwa n'abayanditse imbere y'Urukiko nk'uko biteganywa n'ingingo ya 8, igika cya kabiri, y'Itegeko n° 47/2013 ryo ku wa 16/6/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda.

[75] Naho ku bijyanye no kuba hari abagaragara kuri iyo nyandiko batayishyizeho umukono, aribo Masika Walire, Kambale Mangolopa, Muhindo Kangero, Rev. Ndakirande Ndayishimiye na Kaneza Bitwayiki, Urukiko rw'Ubujurire rurasanga ibyo atari ikibazo kuko ibiyikubiyemo bigomba kubazwa abayisinyeho akaba ari nabo bagomba kubyemeza imbere y'Urukiko; naho ku batarasinye, bikaba bivuze ko ibiri muri iyo nyandiko bitabareba, bakaba nta n'icyo babibazwaho.

[76] Ku birebana n'ibivugwa n'Ubushinjacyaha ko pétition itakwemerwa nk'ikimenyetso kuko abatangabuhamya nka Maombi Nyiraromba Estella, Madingo Ndabundu Ignace na Lukando Manu, bayishyizeho umukono batazi ibiyikubiyemo, Urukiko rw'Ubujurire rurasanga bitahabwa agaciro kuko, nk'uko byagaragajwe haruguru, abo batangabuhamya basobanuye neza imbere y'Urukiko Rukuru ko nyuma yo kubasobanurira ko Twagirayezu Wenceslas yafunzwe kubera ko aregwa jenoside yakorewe Abatutsi mu kwezi kwa Mata 1994, bashyize umukono kuri iyo nyandiko bahamya ko bari kumwe nawe icyo gihe, bivuze ko bari bazi neza ibiyikubiyemo. Rurasanga kandi ari nako Urukiko Rukuru rwabisobanuye mu gika cya mirongo itanu (50) cy'urubanza rujuririrwa, ariko Ubushinjacyaha bwagarutse ku miburanire yabwo ku rwego rwa mbere, butagaragaza amakosa yaba yarakozwe n'urwo Rukiko mu bisobanuro byarwo.

[77] Muri make, Urukiko rw'Ubujurire rurasanga inyandiko yo ku wa 31/5/2018 yiswe pétition muri uru rubanza, ubwayo idashobora gufatwa nk'ikimenyetso cyizewe mu rubanza gishimangira ko uregwa yari muri Congo igihe ibikorwa aregwa byakorwaga, kuko inyandiko nk'iyi igira akamaro k'ubuhamya bwemewe mu Rukiko iyo ba nyiri ukuyandika baje guhamya ibiyikubiyemo mu Rukiko. Kuba rero Urukiko Rukuru rwarayifashishije rugahamagara abayanditse mu Rukiko ngo basobanure ibiyikubiyemo nk'uko bigaragara mu gika cya mirongo itanu (50) cy'urubanza rujuririrwa, ubwabyo si ikosa, ahubwo ikigomba kugenzurwa ni ireme ryahawe ibyavuzwe n'abo batangabuhamya.

b. Kuba abatangabuhamya baranditse amasano bafitanye na Twagirayezu atariyo ku nyandiko yiswe pétition

[78] Abahagarariye Ubushinjacyaha banavuga ko mu Rukiko, abatangabuhamya bashinjura bagaragaje ko nta masano bafitanye na Twagirayezu Wenceslas, mu gihe muri pétition basinyiye ko bafitanye amasano atandukanye. Bavuga ko abatangabuhamya Bakari Murefu Innocent na Lukando Manu alias Pasteur Dusabe babwiye Urukiko ko nta sano bafitanye na Twagirayezu Wenceslas, nyamara muri pétition buri wese yaragaragaje ko ari mubyara we (son cousin). Banenga ko Urukiko Rukuru, mu gika cya mirongo itanu na rimwe (51) cy'urubanza rujuririrwa, rwavuze ko kuba abatangabuhamya basinye kuri pétition barageze mu Rukiko bagahakana amasano ari hagati yabo n'uregwa atari inenge yatuma iyo nyandiko idafatwa nk'ikimenyetso mu rubanza. Bo basanga atari byo, kuko iyo nyandiko ya pétition ari document officiel idashobora kwandikwaho ibintu bidahuje n'ukuri. Bavuga ko Urukiko rwagombaga kubona ahubwo ko ibyo bitesha agaciro iyo nyandiko.

[79] Ku bireba abatangabuhamya Bakari Murefu Innocent na Lukando Manu bageze imbere y'Urukiko Rukuru bagahakana amasano bafitanye n'uregwa kandi muri pétition bari bagaragaje ko bayafitanye, Twagirayezu Wenceslas n'abamwunganira bavuga ko bemeranya n'ibisobanuro by'Urukiko Rukuru ko

[16] Plus spécialement, demande adressée par un particulier ou groupe de particuliers à une autorité publique, la priant d'exercer sa compétence de telle façon (….), Association Henri Capitant, Vocabulaire juridique, 6e édition, Presses Universitaires de France, Paris, 1996, P. 612.

“kuba abatangabuhamya barahakanye aya amasano atari ikibazo cyatuma ubuhamya bwabo buteshwa agaciro”, cyane ko n’ubu, Ubushinjacyaha butagaragaza mu rwego rw’amategeko inenge irimo.

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[80] Mu gika cya mirongo itanu na rimwe (51) cy’urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko kuba abasinye iyi nyandiko bumviswe mu Rukiko barahakanye amasano hagati yabo n’uregwa agaragara muri iyi nyandiko, bitafatwa nk’inenge yatuma iyi nyandiko idafatwa nk’ikimenyetso muri uru rubanza, kuko basobanuye ko bitewe n’umuco wabo umuntu yita inshuti cyangwa umuturanyi, se cyangwa mubyara we (papa, cousin...) bitewe n’uko babanye n’uko bubahanye, ari nayo mpamvu mu nyandiko ya “décharge” Twagirayezu Wenceslas yanditse avuga ko yatumwe n’umubyeyi we Pasiteri Senzoga Bihuri Patrick Ndeze kandi atari we se umubyara.

[81] Urukiko rw’Ubujurire rurasanga kuba abatangabuhamya Bakari Murefu Innocent na Lukando Manu barabwiye Urukiko ko nta sano bafitanye na Twagirayezu Wenceslas, nyamara mu nyandiko yo ku wa 31/5/2018 (pétition) barandikiye Minisiteri y’ubutabera y’igihugu cya Denmark, buri wese agaragaza ko ari mubyara we, bitera gukemanga ukuri ku byo bahamya. Naho ibyavuzwe n’Urukiko Rukuru ko bisanzwe gukoresha imvugo ziha abantu icyubahiro gishingiye ku masano, uru Rukiko rusanga nta shingiro byahabwa kuko inyandiko igenewe urwego rw’igihugu (document officiel) hadashobora kwandikwamo ibibonetse byose kandi ubyandika azi neza abo igenewe n’icyo igamije.

c. Kuba ibyo abatangabuhamya bavuze mu Rukiko bitandukanye n’ibyo basinyiye muri pétition

- **Imiburanire y’Ubushinjacyaha**

[82] Abahagarariye Ubushinjacyaha banenga Urukiko Rukuru kuba rwarahaye agaciro ubuhamya bw’abantu basinye kuri “pétition” kandi bigaragara ko ibyo bavuze binyuranye n’ibyo basinye bemeza ko bazi ibyo Twagirayezu Wenceslas yakoze kuva ku itariki ya 6 kugeza ku itariki ya 9/4/1994 kandi batari bari kumwe. Ibyo babisobanura mu buryo bukurikira:

- Mu Rukiko Rukuru, Pasteur Senzoga Bihuri Patrick Ndeze yavuze ko yakiriye Twagirayezu Wenceslas ku itariki ya 1/4/1994, batandukana ku itariki ya 6/4/1994 agarutse mu Rwanda, ko kuva icyo gihe bongeye kubonana hashize imyaka ibiri (2). Ibyo bikaba binyuranye n’ibyo yavuze muri pétition kuko ho avuga ko yamugezeho mu mpera za Werurwe 1994, akaba azi n’ibyo yakoze kugera ku itariki ya 9/4/1994.

- Mvunabandi Kagabo we, mu Rukiko Rukuru, yavuze ko yaherukanaga na Twagirayezu Wenceslas ku itariki 7/4/1994 mu gitondo bari i Luhanga, kandi ko nyuma y’aho nta makuru ye yongeye kumenya. Ibi bitandukanye n’ibyanditse muri pétition ko Twagirayezu Wenceslas yahagurutse i Luhanga ku wa 6/4/1994, akaba yaranasinyiye ko azi ibye kugeza ku itariki ya 9/4/1994.

- Mu Rukiko Rukuru, Maombi Mulomba Estella yavuze ko yaherekeje Twagirayezu Wenceslas ubwo yavaga i Luhanga mu giterane ku itariki ya 6/4/1994, amugeza i Bweru, ko kuva batandukanye nta makuru ye yongeye kumenya, ariko muri pétition yasinye yemeza ko ku itariki ya 6, iya 7 n’iya 8/4/1994 nabwo yamubonye muri Congo.

- Kuri aba batangabuhamya bombi, abahagaririye Ubushinjacyaha banongeraho ko isesengura ryakozwe n’Urukiko mu gika cya mirongo ine na karindwi (47) cy’urubanza rujuririrwa rihabanye n’ukuri kw’ibintu, kuko rwagaragaje ko ibyo Mvunabandi Kagabo avuga ko yaherukanaga na Twagirayezu Wenceslas ku itariki ya 7/4/1994 bari i Luhanga bidakwiye gushingirwaho, nyamara ruha agaciro ibivugwa na Maombi Mulomba Estella wavuze ko yaherekeje Twagirayezu Wenceslas ku itariki ya 6/4/1994, ntacyo rushingiyeho.

- Madingo Ndabundu Ignace, mu Rukiko Rukuru, yavuze ko yaherukaga kubona Twagirayezu Wenceslas ku wa 9/4/1994 muri Congo, amucisha Kibati, Cyabwato aza mu Rwanda, ko nta bundi yongeye kumubona uretse imbere y'Urukiko, ariko muri pétition yasinye yemeza ko ku itariki ya 6, iya 7 n'iya 8/4/1994 nabwo yamubonye muri Congo.

- Umutangabuhamya Bakali Murefu Innocent atanga ubuhamya mu Rukiko yemeje ko yabonye Twagirayezu Wenceslas aje gufata amafaranga ya Pasteur Senzoga Bihuri Patrick Ndeze kwa Kikwindi Kimende Ladislas ku wa 8/4/1994, ariko muri pétition yasinye yemeza ko yanamubonye ku itariki ya 6, iya 7 n'iya 9/4/1994.

- Umutangabuhamya Lukando Manu ari mu Rukiko, yavuze ko yari kumwe na Twagirayezu Wenceslas ku wa 9/4/1994, ko yamugezeho aho yari atuye ku mupaka aza mu Rwanda, ariko nawe muri pétition yasinye yemeza ko yanamubonye ku itariki ya 6, iya 7 n'iya 8/4/1994.

[83] Abahagarariye Ubushinjacyaha banavuga ko ikindi banenga ari uko ntacyo Urukiko Rukuru rwavuze ku bijyanye n'uko bamwe mu batangabuhamya banyuranyije n'icyo Twagirayezu Wenceslas yabazaniye mu Rukiko. Bavuga ko:

- Twagirayezu Wenceslas yifuzaga ko Madingo Ndabundu Ignace[17] aza mu Rukiko guhamya ko ku wa 8/4/1994 bari kumwe muri Congo kwa Kikwindi Kimende Stanislas ubwo yafataga amafaranga y'amazayire magana atatu (300). Ibi nyamara Madingo Ndabundu Ignace yarabihakanye mu Rukiko, kuko ho yavuze ko Twagirayezu Wenceslas yamugezeho ku wa 9/4/1994 aho yakoraga kuri groupement i Kibati. Ikindi yavugiye mu Rukiko ni uko Twagirayezu Wenceslas amaze gufungwa aribwo Kikwindi Kimende Stanislas yamweretse décharge yamukoreye, akaba ari nabwo yamuzaniye pétition ngo ayisinye mu gihe Twagirayezu Wenceslas yashatse kumvisha Urukiko ko bari kumwe ku itariki ya 8/4/1994 asinya décharge.

- Twagirayezu Wenceslas yifuzaga ko umutangabuhamya Bakali Murefu Innocent aza guhamya ko ubwo yakoraga décharge y'amafaranga y'amazayire 300 igenewe Kikwindi Kimende Stanislas bari kumwe. Ibi nyamara Bakali Murefu Innocent ageze mu Rukiko sibyo yavuze, ahubwo avuga ko ku wa 8/4/1994 yabonye Twagirayezu Wenceslas ajya kwa Kikwindi Kimende Stanislas gufata amafaranga ya Pasteur Senzoga Bihuri Patrick Ndeze.

[84] Abahagarariye Ubushinjacyaha bavuga kandi ko bagaragaje ko ubuhamya bwa Lukando Manu alias Pasteur Dusabe, uri mu basinye pétition, budakwiye gushingirwaho, ariko Urukiko Rukuru rurabyirengagiza. Basobanura ko ibyo Lukando Manu alias Pasteur Dusabe avuga ko ku itariki ya 9/4/1994, Twagirayezu Wenceslas yamugezeho mu ma saa cyenda cyangwa saa kumi i Kanyanja aho yari atuye kandi akavuga ko hari hafi y'umupaka, hirya ye nta yandi mazu ahari; amuherekeza nk'isaha ari wenyine amugeza ku mupaka, mu gihe hari undi mutangabuhamya witwa Nirere Ndimukaga Jacqueline nawe wavuze ko afite inzu ya nyuma ku mupaka, avuga ko ku wa 9/4/1994 yaherekeje Twagirayezu Wenceslas ari wenyine aza mu Rwanda. Bagasobanura ko bitumvikana uburyo bavuga ko bombi bamuherekeje igihe kimwe ahantu hamwe ariko ntibabonane.

[85] Abahagarariye Ubushinjacyaha bavuga ko Twagirayezu Wenceslas yazanye mu Rukiko Musuba'o Mangalopa kugira ngo yemeze ko ku wa 31/3/94 ajya i Luhanga yaraye i Goma ku witwa Kanyere, nyirakuru wa Musuba'o Mangalopa, ko ku itariki ya 9/4/1994 yongeye kuharara ari kumwe n'uwo musuba'o Mangalopa avuye Kisangani, ariko Urukiko Rukuru rukaba ntacyo rwabivuzeho ngo rubone ko ibyo Twagirayezu Wenceslas avuga nta kuri kurimo. Ibyo babisobanura muri ubu buryo:

[85] - umutangabuhamya Musuba'o Mangalopa avuga ko azi neza Twagirayezu Wenceslas ariko akavuga ko, n'ubwo atibuka neza, ku itariki ya 31/3/1994 yari i Goma, ko yararaga kwa nyirakuru Kanyere.

[17] Inyandiko y'iburanisha yo ku wa 19/4/2022.

Abahagarariye Ubushinjacyaha bavuga ko ibyo uyu mutangabuhamya avuga bigaragaza ko ibyo Twagirayezu Wenceslas avuga atari byo kuko we avuga ko yakiriwe na Pasteur Senzoga Bihuri Patrick Ndeze ku itariki ya 1/4/1994 i Luhanga; ibyo bikaba bidashoboka ko mu gihe cy'umunsi umwe yaba yavuye i Goma akagera i Luhanga kuko kuva Luhanga ujya i Goma hari urugendo rw'iminsi 3.

- umutangabuhamya Musuba'o Mangalopa anavuga ko ku matariki ya 5 cyangwa iya 6/4/1994 yasize Twagirayezu Wenceslas i Goma we ari kwerekeza i Kisangani, ariko Twagirayezu Wenceslas we mu nyandikomvugo ye yo mu Bugenzacyaha ku wa 17/12/2018 akavuga ko ku wa 6/4/1994 yari i Luhanga. Abahagarariye Ubushinjacyaha bavuga ko nabyo bidashoboka.

- Na none umutangabuhamya Musuba'o Mangalopa avuga ko yari kumwe na Twagirayezu Wenceslas ku itariki ya 8 n'iya 9/4/1994 i Goma kandi yari i Kisangani mu gihe hari urugendo rw'iminsi 3 kuvayo uza i Goma. Ibyo bigaragaza ko ibyo avuga ko bari kumwe i Goma kuri ayo matariki bidashoboka, kuko atashoboraga kuba yavuye i Kisangani yagarutse i Goma.

- **Imyiregurire ya Twagirayezu Wenceslas**

[86] Twagirayezu Wenceslas n'abamwunganira bavuga ko kuba mu buhamya bwa Senzoga Bihuri Patrick Ndeze yaravuze ko yamwakiriye i Luhanga ku itariki ya 1/4/1994, ariko muri pétition hakaba handitse ko yahageze mu mpera z'ukwezi kwa Werurwe 1994 nta kwivuguruza kurimo, kuko ari cyo gihe yatangiriye ibiruhuko, kandi kuva i Goma ugera i Luhanga hakaba hatari urugendo rw'umunsi umwe. Banavuga ko ku byo abahagarariye Ubushinjacyaha bavuga ko yasinye pétition yemeza ko azi ibyo yakoze ku itariki ya 7, iya 8 n'iya 9/4/1994 atari byo, kuko mu buhamya bwe, Senzoga Bihuri Patrick Ndeze atigeze yemeza ko yamubonye kuri ayo matariki, ahubwo yasinye yemeza ko yamubonye igihe yageraga i Luhanga n'igihe batandukaniye ku itariki ya 6/4/1994. Naho ibya nyuma y'iyo tariki ariwe wabimubwiye ubwo yasubiraga muri Congo nyuma y'imyaka ibiri (2), akamubwira amakuru yose y'urugendo yakoze kuva batandukanye ku itariki ya 6/4/1994 kugeza agarutse mu Rwanda.

[87] Twagirayezu Wenceslas n'abamwunganira bakomeza bavuga ko umutangabuhamya Mvunabandi Kagabo nawe ativuguruza, kuko, nk'uko yabisobanuye mu buhamya bwe, ku itariki ya 6/4/1994 saa kumi n'ebyiri babonanye ari i Luhanga, bongera guhurira i Muhongozi mu gitondo cyo ku itariki ya 7/4/1994 bumva amakuru y'uko indege ya Perezida Habyarimana Juvénal yahanutse, ko asinya pétition ari byo yashakaga kwemeza, naho kuba igaragaramo n'andi matariki ya 8 n'iya 9/04/1994, byatewe n'uko pétition yagombaga gusinywa n'itsinda ry'abantu bemezaga ko bamubonye muri Congo kuva ku itariki ya 06 kugera ku ya 09/04/1994.

[88] Ku bireba ubuhamya bwa Maombi Mulomba Estella, Twagirayezu Wenceslas n'abamwunganira bavuga ko nabwo butavuguruzanya n'ibyo yasinyiye muri pétition, kuko, nk'uko yabisobanuye, igiterane cy'ivugabutumwa kirangiye ku wa 6/4/1994, abisabwe na Pasteur Senzoga, yamuherekeje bava i Luhanga, amugeza i Bweru, akaba yarasinye bitewe n'ayo makuru yari azi y'igihe baherukanaga muri Congo, ariko ibyo Ubushinjacyaha buvuga ko yasinyiye n'ibyabaye ku matariki ya 7, 8, n'iya 9/4/1994 bikaba atari byo.

[89] Twagirayezu Wenceslas n'abamwunganira banasobanura ko ubuhamya bwa Mvunabandi Kagabo butavuguruzanya n'ubwa Maombi Mulomba Estella, kuko uyu ari we wamuherekeje bava i Luhanga ku wa 6/4/1994, amugeza i Bweru, bamaze gutandukana we yakomeje urugendo ajya kurara ahitwa Muhongozi kugira ngo azakomeze ajya i Kitchanga, ko aho Muhongozi ari ho mu gitondo cyo ku itariki ya 7/4/1994 yahuriye na Mvunabandi Kagabo ajya mu isoko. Bavuga ko kuba mu gika cya 47 cy'urubanza rujuririrwa haranditswe ko Twagirayezu Wenceslas yabonaniye na Mvunabandi Kagabo i Luhanga ku itariki ya 6 n'iya 7/4/1994 ari ukudasobanukirwa ahantu n'inyito zaho ariko na Muhongozi iri muri Luhanga. Bongeraho ko ariko basanga Urukiko rutari gutesha agaciro ubuhamya bwa Mvunabandi Kagabo, kuko ibyo avuga bidahindura ukuri ko ku itariki ya 6 n'iya 7/4/1994 yari muri Congo.

[90] Twagirayezu Wenceslas n'abamwunganira bavuga ko Madingo Ndabundu Ignace na Lukando Manu basinya pétition bashakaga kwemeza gusa ko ku itariki ya 9/4/1994 babonanye ari muri Congo.

[91] Ku birebana n'ikibazo cy'amatariki cyazamuwe n'Ubushinjacyaha, Twagirayezu Wenceslas n'abamwunganira basoza basobanura ko kuba abatangabuhamya barageze mu Rukiko bakavuga ko bamubonye umunsi umwe hagati y'itariki ya 06 kugeza ku ya 9/4/1994, bitagaragaza ko banyuranya n'ibyo basinyiye muri pétition, ko byari kuba ikibazo iyo bagera imbere y'Urukiko bagahakana ko basinye cyangwa bakagaragaza ko batigeze bamubona muri Congo icyo gihe. Banasobanura ko kuba barasinye byatewe n'uko hari amakuru bari bamuziho, banemera ko umunsi umwe muri ayo matariki bamubonye. Bongeraho ko, nk'uko bigaragara muri pétition, basabye Ubuyobozi bwa Danemark ko mu gihe baba batanyuzwe n'ibiri muri iyo nyandiko bakwikorera iperereza kandi ko koko baje mu Rwanda kurikora. Ibi bivuze ko ibikubiye muri pétition atari ibitekerezo bahimbye nk'uko abahagarariye Ubushinjacyaha bashaka kubyumvikanisha.

[92] Ku byerekeye ibivugwa n'abagaharariye Ubushinjacyaha ko Madingo Ndabundu Ignace na Bakari Murefu Innocent batavuze ibyo bazaniwe mu Rukiko; ku birebana na Madingo Ndabundu Ignace, Twagirayezu Wenceslas n'abamwunganira bavuga ko ntaho bigeze bavuga ko bamuzaniye kugira ngo yemeze ko bari kumwe kwa Kikwindi Kimende Stanislas igihe yamuhaga amafaranga ya Pasteur Senzoga Bihuri Patrick Ndeze ku wa 8/4/1994, ko ahubwo bashakaga ko aza kwemeza ko kuri iyo tariki yamuciyeho gusa n'uko ku wa 9/4/1994 yamuherekeje agaruka mu Rwanda. Banavuga ko nta nyandikomvugo ye (Twagirayezu Wenceslas) yigeze avugamo ko akora décharge bari kumwe na Madingo Ndabundu Ignace, ahubwo uyu mutangabuhamya yabwiye Urukiko ko yamenye ko yayikoze abibwiwe na Kikwindi Kimende Stanislas, aranayimwereka. Bongeraho ko bagaragarije Urukiko Rukuru amakosa agaragara mu nyandikomvugo y'iburanisha ku byerekeye ubuhamya bwa Madingo Ndabundu Ignace, bagasaba ko akosorwa, ariko Urukiko rubabwira ko ari udukosa tutaremereye.

[93] Ku birebana n'inenge itangwa n'Ubushinjacyaha ijyanye n'ubuhamya bwa Lukando Manu bagereranya n'ubwa Nirere Ndimukaga Jacqueline ku birebana no kumuherekeza bakamugeza ku mupaka, Twagirayezu Wenceslas n'abamwunganira bavuga ko nta shingiro ifite, kuko ku itariki ya 9/4/1994, Twagirayezu Wenceslas yabanje kugera kwa Lukando Manu, baraganira nk'isaha, aramuherekeza byo kumurenza irembo, amugeza hafi yo kwa Nirere Ndimukaga Jacqueline baturanye naho arahaca, aba ari we umuherekeza amugeza mu Kibaya. Bongeraho ko Lukando Manu atigeze avuga ko yamugejeje mu Kibaya, ahubwo we yamubuzaga kugaruka mu Rwanda, kandi abazwa yagaragaje ko amuzi kuko yari asanzwe amubona anyura aho mu kibaya, anavuga ko yemeye gusinya pétition kubera ko yari amuzi kandi azi ko aho yabibazwa hose yabihamya. Ku byerekeye amasaha Lukando Manu na Nirere Ndimukaga Jacqueline bamuherekejeho, Twagirayezu Wenceslas avuga ko atayibuka neza ariko hari nyuma ya saa sita, ko isaha ya saa mbili Nirere Ndimukaga Jacqueline yavuze atari yo.

[94] Twagirayezu Wenceslas n'abamwunganira bavuga ko kuba Urukiko Rukuru rutarashingiye ku buhamya bwa Musuba'o Mangalopa ari uko rudategetswe gushingira ku buhamya bwose bwatanzwe. Bongeraho ko uwo mutangabuhamya bamutanze nk'umuntu watanga amakuru y'uko babanaga kwa nyirakuru, ariko ko amatariki yagiye avuga atari yo, kuko yagiye akekeranya ku buryo byagaragaye ko adafite ubumenyi ku byo yavugaga, cyane ko nyirakuru ari we wari wamubwiye ko yahanyuze, uretse ko no mu gutanga ubuhamya atashoboraga guhisha amarangamutima.

UKO URUKIKO RUBIBONA

[95] Impaka kuri iki kibazo zishingiye ku kumenya niba Urukiko Rukuru rwarakoze amakosa yo kutabona ko kuba abashyize umukono ku nyandiko yo ku wa 31/5/2018, bemera ko babonaga Twagirayezu Wenceslas buri munsi kuva mu mpera z'ukwezi kwa gatatu kugeza ku wa 9/4/1994, nyamara bamwe mu batanze ubuhamya mu Rukiko barivuguruje bemeza ahubwo ko bamubonye umunsi runaka. Ikindi ni

ukumenya niba kuba bamwe mu batangabuhamya baravuze amasano atariyo ku nyandiko yiswe pétition hari icyo bihindura ku ireme ry'ubuhamya bwabo no kumenya niba Urukiko Rukuru rwarirengagije ukwivuguruza n'inenge zagaragajwe mu mvugo z'abatangabuhamya, ndetse hagati y'ibyavuzwe n'uregwa na bamwe mu batangabuhamya, bikaba byari gutuma Urukiko Rukuru rubona ko ibikubiye mu nyandiko yo ku wa 31/5/2018 bidafite ireme ryatuma haba gushidikanya ku byemezwa ko Twagirayezu Wenceslas ko yari muri Congo ubwo ibyaha akurikiranwaho byakorwaga.

1. Ibyerekeye kuba abatangabuhamya baremeje amatariki amwe mu gihe inyandiko basinye ihamya ko bazi ko Twagirayezu Wenceslas yari muri Congo kuva ku wa 6 kugeza ku wa 9 Mata 1994

[96] Kimwe mu biranga inyandiko yo mu bwoko bwa "pétition" ni uko yandikwa n'umuntu umwe cyangwa itsinda ry'abantu, igamije gusobanura cyangwa gushyigikira igitekerezo runaka kigenewe urwego runaka, hanyuma hagashakwa abandi bagishyikiye, bose bagashyiraho umukono. Byumvikana ko abashyizeho umukono bose atariko baba bemeza buri kintu kiyikubiyemo ku rwego rumwe n'abayanditse. Muri ubwo buryo buri wese aba afite icyo ashaka kwemeza by'umwihariko muri icyo gitekerezo rusange; aka ari nacyo aba ashobora guhagararaho akagisobanura igihe abajijwe icyatumye ayisinyaho. Niyo mpamvu iyo guhamagarwa mu Rukiko biba ari uburyo bwo kumuha umwanya wo gusobanura neza ibyo yashakaga kumvikanisha mu nyandiko yasinye. Akaba ari nabyo bituma buri wese ashobora gutanga ibisobanuro bitandukanye n'iby'undi.

[97] Mu nyandiko yo ku wa 31/5/2018 yiswe "pétition et témoignage pour l'innocence de Mr. Wenceslas Twagirayezu'', yashyizweho umukono n'abantu batandukanye, bandikira Ministre de la Justice du Royaume de Danemark, hagaragaramo ko abayishyizeho umukono bari bagamije gutanga ubuhamya (amakuru) bafite kuri Twagirayezu Wenceslas bugaragaza ko ari umwere kubyo aregwa. Ku birebana n'amatariki akekwa kuba yarakozeho ibyaha aregwa, igaragaza ko bemeza ko Twagirayezu Wenceslas yageze i Luhanga muri Congo mu mpera z'ukwezi kwa Werurwe, umwaka wa 1994, ko ku wa 6/4/1994 yagiye i Bweru-Muhongozi, ku wa 7/4/1994 akomeza ajya i Goma, ku wa 8/4/1994 ajya i Kibati, agaruka i Goma aho yaraye. Igaragaza kandi ko bemeje ko ku wa 9/4/1994 yasubiye i Kibati, anyuze i Cyabwato, arambuka aza mu Rwanda.

[98] Mu gika cya mirongo ine na kane (44) n'icya mirongo ine na gatandatu (46) cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko bamwe mu basinye pétition bemereye Urukiko ko bayisinyeho buri wese yemeza icyo azi kuri Twagirayezu Wenceslas, uko bahuye nawe, ndetse n'umunsi byabereyeho n'ibyo bavuganye. Mu kubisobanura gutyo, Urukiko Rukuru rwashatse kumvikanisha ko abashyize umukono kuri iyo nyandiko, babikoze badashaka kuvuga cyangwa kugaragaza ko icyo gihe bamubonaga buri munsi kuva mu mpera z'ukwezi kwa gatatu kugeza ku wa 9/4/1994. Muri ibi bika, urwo Rukiko rwasobanuye ko imvugo z'abatangabuhamya (Pasteur Senzoga Bihuri Patrick Ndeze, Maombi Malomba Estella, Bakari Murefu Innocent, Nirere Ndimukaga Jacqueline, Madingo Ndabundu Ignace, Lukando Manu zemeza igihe Twagirayezu Wenceslas yari kumwe nabo muri RDC hagati y'itariki ya 6 n'iya 9 Mata 1994.

[99] Urukiko rw'ubujurire rukaba rusanga, nta kosa Urukiko Rukuru rwakoze mu kumva ibyo buri wese yashatse gusobanura muri iyo nyandiko. Mu bika bikurikira harasuzumwa ireme ry'ibisobanuro bya buri wese hagamijwe kureba niba byari ku rwego rutuma umucamanza agira ugushidikanya ku byo Ubushinjacyaha buvuga ko Twagirayezu Wenceslas yari mu Rwanda ubwo ibyaha akurikiranweho byakorwaga.

2. Ibyerekeye ireme ry'ubuhamya bw'abemeza ko bari kumwe na Twagirayezu Wenceslas muri Congo.

[100] Mu gusesengura ireme ry'ibyo abatangabuhamya bavuze ku majya n'amaza ya Twagirayezu Wenceslas muri Congo mu mpera za Werurwe kugera ku itariki ya 09 Mata 1994, Urukiko rw'Ubujurire rurita ku byavuzwe kuri buri tariki kuva ajya muri Congo kugera agaruka mu Rwanda.

[101] Ku wa 31/3/1994, nk'uko yabibwiye Urukiko Rukuru[18], umutangabuhamya Musuba'o Luc Mangalopa, n'ubwo yavuze ko atibuka neza, kuri iyo itariki Twagirayezu Wenceslas yamusanze i Goma kwa nyirakuru Kanyere avuye mu Rwanda. Nyamara, Pasteur Senzoga Bihuri Patrick Ndeze ndetse na Maombi Mulomba Estella[19] bo bavuze ko ku itariki ya 1/4/1994 kugeza ku wa 06/04/1994 bari kumwe na Twagirayezu Wenceslas i Luhanga[20]. Ariko Musuba'o Luc Mangalopa we yavuze ko mu matariki ya 5 cyangwa ya 6 Mata 1994, yagiye i Butembo yerekeza Kisangani amusize i Goma kwa nyirakuru, hanyuma agarutse amusanga na none i Goma ku itariki ya 8/4/1994 kwa nyirakuru ubwo yavaga i Masisi agiye mu Rwanda.

[102] Mu iburanisha ry'urubanza mu Rukiko Rukuru, umutangabuhamya Mvunabandi Kagabo we yavuze ko ku wa 6/4/1994 yari kumwe na Twagirayezu Wenceslas i Luhanga saa kumi n'ebyeri, bakongera kubonana ku wa 7/4/1994 mu gitondo saa kumi n'ebyiri n'igice (6h30), bumva mu amakuru kuri radio ko indege ya Perezida Habyarimana Juvénal yahanutse. Kuba bari kumwe kuri ayo matariki, binemezwa n'uwunganira Twagirayezu Wenceslas ubwo yasobanuraga impamvu bamuzanye nk'umutangabuhamya mu rubanza[21]. Umutangabuhamya Maombi Mulomba Estella we avuga ko Twagirayezu Wenceslas yavuye i Luhanga ku wa 6/4/1994, ko yamuherekeje ari kumwe n'uwitwa Nikuze bakamugeza Bweru aho yashoboraga kubona imodoka imugeza i Kitchanga, babisabwe na Pasteur Senzoga Bihuri Patrick Ndeze.

[103] Ku wa 08/04/1994, nk'uko yabibwiye Urukiko Rukuru, umutangabuhamya Bakali Mulefu Innocent[22] yavuze ko kuri iyo tariki nka saa tanu z'amanywa yabonye Twagirayezu Wenceslas ajya kwa Kikwindi Kimende Stanislas gufata amafaranga y'ibiti Pasiteri Senzoga Bihuri Patrick Ndeze yari yaragurishije, anandika "décharge". Uru Rukiko ruributsa ko Musuba'o Luc Mangalopa we yavuze ko kuri iyo tariki yamusanze i Goma avuye Kisangani.

[104] Ku wa 09/04/1994, nk'uko yabibwiye Urukiko Rukuru, umutangabuhamya Madingo Ndabundu Ignace yavuze ko yabonanye na Twagirayezu Wenceslas kuri iyo tariki nka saa tatu za mugitondo (9h00) ubwo yamusangaga kuri groupement, amubwira ko ashaka gutambukira i Kibati, nawe amunyuza i Cyabwato, Twagirayezu Wenceslas akomeza urugendo. Umutangabuhamya Lukando Manu nawe yemeje ko kuri iyo tariki yabonanye na Twagirayezu Wenceslas ku mugoroba hafi mu ma saa cyenda (15h00) cyangwa saa kumi (16h00), avuye Goma- Cyabwato, ko bamaranye nk'isaha yose, amubwira ko agiye mu Rwanda kureba nyina, aza kwambukira i Kanyanja. Umutangabuhamya Nirere Ndimukaga Jacqueline nawe yabwiye Urukiko Rukuru ko yari kumwe na Twagirayezu Wenceslas ku wa 9/4/1994 i Kanyanja, yarusobanuriye ko yamugezeho mu rugo mu ma saa mbiri za mugitondo (8h00) aturutse i Cyabwato, baganira nk'iminota mirongo itatu (30), hanyuma amuherekeza nk'amasaha abiri (2), ariko ntiyamugeza ku mupaka wari kure, asubira inyuma, we akomeza urugendo ajya mu Rwanda.

[105] Nk'uko bigaragara mu gika cya 44 cy'urubanza rujuririrwa, Urukiko Rukuru rwasesenguye ubuhamya bw'aba batangabuhamya bose ariko ntirwagira icyo ruvuga ku buhamya bwa Musuba'o Luc Mangalopa ngo rugaragaze impamvu ntacyo rumuvugaho, nyamara kandi nk'uko bigaragara ubuhamya bwe buvuguruzanya n'ubw'abandi cyane cyane ku byerekeye aho Twagirayezu Wenceslas yari ari igihe yari muri Congo, i Goma cyangwa i Luhanga. Ibyo Ubushinjacyaha bwabibonye nk'inenge ikomeye, mu gihe Twagirayezu Wenceslas we asanga kuba Urukiko rutaritaye ku byo avuga ari uko yasaga n'ufite

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[18] Reba inyandikomvugo y'iburanisha ryo ku wa 21/4/2022.
[19] MAOMBI MULOMBA Estella yemeje ko bari kumwe ku itariki ya 03/4/1994 amateraniro arangiye.
[20] Reba inyandikomvugo y'iburanisha yo ku wa 19/4/2022.
[21] Reba inyandikomvugo y'iburanisha yo ku wa 19/4/2022.
[22] Mu nyandiko yiswe pétition bigaragara ko Bakali Murefu atuye i Kibati kuri 8 km uvuye i Goma.

ikibazo mu gusobanura ibyo avuga, kandi ko Urukiko rudategetswe gushingira ku mvugo z'abatangabuhamya bose.

[106] Urukiko rurasanga koko Urukiko rudategetswe kugaragaza buri gihe impamvu rudashingira ku buhamya runaka. Ariko igihe bigaragara ko ubuhamya runaka bunyuranya ku buryo bugaragara n'ubw'abandi, Urukiko rwagombye kugira icyo rubivugaho. Kuba rutaragize icyo rubivugaho ni inenge ikomeye kuko ituma bigaragara nk'aho ibyo rwemeje bibogamiye ku ruhande rumwe. Uru Rukiko rurasanga ariko, kuba abatangabuhamya banyuranya ku matariki n'amasaha ari inenge nto itatuma muri rusange ubuhamya butakaza ireme ryabwo, harebwe igihe gishize ibyo batangaho ubuhamya bibaye.

2. Ku byerekeye inyandiko ya décharge

[107] Abahagarariye Ubushinjacyaha banenga ko mu bika bya mirongo itanu na kabiri (52) na mirongo itanu na gatatu (53) by'urubanza rujuririrwa, Urukiko Rukuru rwashingiye ku nyandiko yiswe décharge, rwemeza ko ari ikimenyetso kigaragaza ko Twagirayezu Wenceslas yari muri Congo ubwo iyo nyandiko yakorwaga. Bavuga ko ibyo atari byo kubera impamvu zikurikira:

- ntibyumvikana impamvu Twagirayezu Wenceslas yaba yarakoreye Kikwindi Kimende Stanislas décharge igihe yakiraga amafaranga amuhaye agenewe Pasteur Senzoga Bihuri Patrick Ndeze, ariko we ntakorerwe décharge na Muhindo Kandiro kugira ngo azayamuhere Pasteur Senzoga Bihuri Patrick Ndeze;

- abatangabuhamya bavuze ku bijyanye na décharge, Ubushinjacyaha bwari bwagaragaje ko atari abatangabuhamya bashobora kwizerwa bushingiye ku mvugo zabo zivuguruzanya ku bijyanye n'ibisobanuro byabo ku byo banditse muri pétition, ariko rurarenga rubiha agaciro;

- kuba isuzuma rya gihanga (forensic expertise) ryakorewe iyo décharge muri Denmark ryerekanye ko nta kigaragaza igihe yakorewe.

[108] Twagirayezu Wenceslas n'abamwunganira bavuga ko ibyo Ubushinjacyaha buvuga nta shingiro bifite kubera impamvu zikurikira:

- ibyereke kuba yarakoreye Kikwindi Kimende Stanislas décharge ariko we ntayikorerwe igihe yari ahaye Muhindo Kandiro amafaranga yo gushyikiriza Pasteur Senzoga Bihuri Patrick Ndeze, bavuga ko ibyo atari ikibazo kuko Muhindo Kandiro nta nshingano yari afite zo kuyikora kubera ko icyo yari akeneye kubona ari amafaranga yagombaga gushyikiriza Pasteur Senzoga Bihuri Patrick Ndeze, naho we akaba yarayikoze mu rwego rwo gushaka ikimurengera;

- ibyo abahagarariye Ubushinjacyaha bavuga bahuza pétition na décharge ari ugushaka gushyira Urukiko mu rujijo;

- hakozwe raporo y'abahanga yemeza ko umukono na sinyatire ari ibya Twagirayezu Wenceslas, ko icyo batabashije kumenya ari igihe yandikiwe ariko itariki yandikiweho ya 8/4/1994 igaragara, ko Ubushinjacyaha bubinenga bwagombye kwerekana ikibivuguruza.

UKO URUKIKO RUBIBONA

[109] Impaka kuri iki kibazo ni ukumenya niba Urukiko Rukuru rwarakoze amakosa yo kwemeza ko inyandiko yiswe décharge ari ikimenyetso gishimangira ko Twagirayezu Wenceslas yari muri Congo igihe havugwa ko yaba yarakoze ibyaha aregwa, rwirengagiza inenge bwagaragaje iyo nyandiko ifite zituma itagombaga gufutwa ityo.

[110] Kugira ngo inyandiko ifatwe nk'ikimenyetso gihamya ko umuntu yari ahantu runaka yemeza ko yari ari igihe iyo nyandiko yakorwaga, ni uko haba hashobora kugaragazwa ikimenyetso gifatika cyerekana igihe iyo nyandiko yakorewe n'aho yakorewe. Ibyo ni ngombwa kuko mu rwego rwo kwirengera umuntu ashobora kwandika inyandiko akabeshya aho yayikoreye n'igihe yakorewe. Gutanga inyandiko nk'ikimenyetso cy'uko wari ahantu igihe runaka wishingirikirije ko ari byo biyanditseho, ubwabyo ntibishobora guhamya ko ari cyo gihe yakorewe cyangwa ko ariho yakorewe, igihe bitunganiwe n'ikimenyetso gifatika.[23]

[111] Mu gika cya mirongo ine na gatanu (45) cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko inyandiko ya décharge Twagirayezu Wenceslas yanditse ku wa 8/4/1994 yakira amafaranga ya Pasiteri Senzoga Bihuri Patrick Ndeze ishimangirwa n'ubuhamya bwa Bakari Murefu Innocent wasobanuye ko yari kwa Kikwindi Kimende Stanislas ubwo Twagirayezu Wenceslas yayandikaga, ndetse n'ubuhamya bwa Madingo Ntabuntu Ignace wabwiye Urukiko ko ubwo bari bamaze kumenya ko Twagirayezu Wenceslas yafunzwe ashinjwa gukora jenoside, Kikwindi Kimende Stanislas yamweretse inyandiko yasinyiye iwe ku wa 8/4/1994.

[112] Mu gika cya 52 cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko ibivugwa n'Ubushinjacyaha ko inyandiko ya décharge yahimbwe mu rwego rwo gushaka ibimenyetso bishinjura Twagirayezu Wenceslas nta shingiro byahabwa kuko nta nenge n'imwe yaba ishingiye ku miterere cyangwa ku biyikubiyemo bugaragaza, yatuma iteshwa agaciro, uretse kuvuga gusa ko yahimbwe.

[113] Nk'uko bigaragara mu gika cya 28 cy'urubanza rujuririrwa, Ubushinjacyaha bunenga inyandiko yiswe décharge, bwavuze ko gushingira kuri iyo nyandiko yo ku wa 8/4/1994 mu guhamya ko Twagirayezu Wenceslas atari mu Rwanda kuri iyi tariki ari ukugenekereza, kuko nta cyabuza y'uko kuri iyo tariki umuntu yaba ari i Goma kandi akaba yanataha mu Rwanda, cyane ko nta kimenyetso simusiga cyerekana ko iyo décharge yabayeho mu gihe Twagirayezu Wenceslas atabasha kugaragaza inyandiko y'uwo yashyikirije ayo mafaranga n'icyo Kikwindi Kimende Stanislas yashingiyeho yemera kuyamuha.

[114] Nk'uko none bigaragara mu mwanzuro w'Ubushinjacyaha wo ku wa 31/5/2022 kuri défense ya alibi ya Twagirayezu Wenceslas, Ubushinjacyaha bwanengaga inyandiko ya décharge ku kuba atari umwimerere, ko ari kopi. Muri uwo mwanzuro, Ubushinjacyaha bwavuze kandi ko nta kimenyetso simusiga cyerekana ko décharge ivugwa yabayeho kuko bitumvikana impamvu mu gihe Twagirayezu Wenceslas yakiraga amafaranga yakoze décharge, nyamara akaba atabasha kwerekana ikimenyetso décharge cy'uko nawe afite uwo yayashyikirije ari we Muhindo Kangero.

[115] Muri dosiye y'urubanza harimo inyandiko yiswe ''Transcript from the record of judgments of the Eastern High Court'' havugwamo ko abahanga (The National forensic center) b'igihugu cya Denmark basuzumye inyandiko yiswe décharge yo ku wa 8/4/1994 kugira ngo bamenye niba koko umukono ugaragaramo ari uwa Twagirayezu Wenceslas, banzuye ko ari umukono we, ariko ko batashoboye kumenya igihe umuti w'ikaramu yakoresheje asinya, wakorewe[24]. Muri dosiye harimo kandi inyandiko ya National Enhed for Saerlig Kriminalitet (Police special crimes unit) yanditswe ku wa 21/5/2024 aho hagaragaramo ko ku wa 4/6/2018, abahanga basuzumye umwimerere w'inyandiko yo ku wa 8/4/1994

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[23]Reba urubanza mu bujurire haburana Ubushinjacyaha na Georges Anderson Nderubumwe Rutaganda, Case no. ICTR-96-3-A, para. 488.

[24] The National Forensic Center has conducted an examination of whether the signature on the receipt document produced during the proceedings, which indicates that it was issued in Goma on 8 April 1994, has been subscribed by Wenceslas Twagirayezu. In a statement dated 4 June 2018 it is concluded that "There is a probability bordering on certainty that the contested signature 'Wenceslas Twagirayezu' on KTI was subscribed by Wenceslas Twagirayezu." In addition, it has been stated about the examination that it is not possible to date the ballpoint pen pasta used for the contested signature''.

(décharge), bagasanga umukono uriho ari uwa Twagirayezu Wenceslas, ariko bikaba bitarashobotse kumenya igihe umuti w'ikaramu yakoreshejwe ashyira umukono kuri iyo nyandiko wakorewe[25].

[116] Ku birebana n'impamvu ya mbere n'iya kabiri Ubushinjacyaha bugaragaza bunenga urubanza rujuririrwa ku bijyanye na décharge, Urukiko rw'Ubujurire rurasanga ibyo Ubushinjacyaha bushingiraho bunenga iyo nyandiko yiswe décharge atari cyo kibazo ahubwo ikibazo kiri mu ireme ryayo nk'ikimenyetso kigaragaza aho Twagirayezu Wenceslas yari muri icyo gihe kuko nk'uko byagaragajwe mu bika bibanziriza iki, ibimenyetso bya gihanga byagaragajwe idashobora gutuma hamenyekana igihe nyakuri iyo nyandiko yakorewe n'aho yakorewe. Kuba rero nta kimenyetso gifatika kigaragaza igihe iyo nyandiko yakorewe kigeze gitangwa, Urukiko rw'Ubujurire rusanga iyo décharge idashobora kuba ikimenyetso cyizewe gihamya ko yakorewe igihe bayitirira.

[117] Muri rusange nk'uko byasobanuwe haruguru, uru Rukiko rwasanze ibyo Ubushinjacyaha buvuga ko Urukiko Rukuru rwakoze ikosa ryo kudaha agaciro ubuhamya bwa Nkezabera Paulin na Nahimana Emmanuel bwemeza ko Twagirayezu Wenceslas yari mu Rwanda mu biruhuko bya Pasika mu mwaka wa 1994, nta shingiro bifite kuko ubuhamya bwabo butagiweho impaka mu Rukiko; naho ku byerekeye ubuhamya bwa Kaberuka Théophile, uru Rukiko rwasanze Urukiko Rukuru rwarakoze ikosa mu kubuha agaciro kandi yaragaragaje ko ataherukanaga na Twagirayezu Wenceslas.

[118] Urukiko rw'ubujurire rwasanze kandi Twagirayezu Wenceslas yariyemereye ko kuva muri Mutarama kugeza muri Nyakanga 1994 yari mu Rwanda, nta cyangombwa kigaragaza ko yambutse umupaka, kandi inyandiko yiswe décharge, nayo itaba gihamya yihagije ko Twagirayezu Wenceslas yari muri Congo mu gihe cyavuzwe kuko ubugenzuzi bwayikoreweho butabashije kugaragaza igihe yakorewe. Ku bijyanye n'inyandiko yiswe pétition yanditswe n'abantu bari muri Congo bahamya ko Twagirayezu Wenceslas yari kumwe nabo kuva tariki ya 6 kugeza ku ya 9 Mata 1994, uru Rukiko rwasanze iriho amasano atariyo, ku buryo bituma ikemangwa.

[119] Urukiko rw'Ubujurire rwasanze kandi ibyo Ubushinjacyaha buvuga ko iyo nyandiko yiswe pétition itari ikwiye guhabwa agaciro, nta shingiro bifite kuko icyangombwa ari uko ibiyikubiyemo bigibwaho impaka imbere y'Urukiko. Rwanasanze kandi ko kuba mu Rukiko abatangabuhamya baremeje ibinyuranye n'ibyo bemeje mu nyandiko basinye, kuko buri wese yemeje ibijyanye n'itariki yaboneyeho Twagirayezu Wenceslas mu gihe cyavuzwe, nabyo nta shingiro bifite kuko mu nyandiko nk'iyo, buri wese aba ahagaze ku byo yemera, akaba ari nabyo aba agomba gusobanura igihe abibajijwe.

[120] Nyuma yo gusuzuma ireme ry'ibyo buri wese yasobanuye ku byo yasinyiye muri iyo nyandiko, uru Rukiko rwasanze hari abatangabuhamya banyuranya ku masaha n'amatariki, ariko rusanga ari ibintu bito bitatuma ubwabyo byonyine bitesha agaciro ubuhamya bwabo. Ibi ariko bikaba ubwabyo atari gihamya ko bishoboka ko Twagirayezu Wenceslas yari muri Congo nk'uko Urukiko Rukuru rwabyemeje[26], igihe hataragenzurwa ibijyanye n'ibyo ashinjwa ku ruhare yagize muri jenoside, binagereranyijwe n'izindi nenge zagaragajwe mu bika bibanziriza iki.

B. Kumenya niba Twagirayezu Wenceslas yaragizwe umwere hirengagijwe ibimenyetso n'amategeko bigaragaza ko ahamwa n'ibyaha aregwa.

B.1 Kumenya niba hari ikosa ryakozwe n'Urukiko Rukuru mu kwemeza ko abatangabuhamya b'Ubushinjacyaha batazi Twagirayezu Wenceslas.

- **Imiburanire y'Ubushinjacyaha**

[25] The 4th of june 2018 NKC stated tahat appendix X-02-01-001: - The original KT1 was examined.- It was no possible to date the ink used for signature. - There was a probality bordering on certainty that the signature was that of WT (Wenceslas Twagirayezu).

[26] Reba igika cya 53 cy'urubanza rujuririrwa.

[121] Abahagarariye Ubushinjacyaha banenga ko mu gika cya 145 n'icya 146 by'urubanza rujuririrwa, Urukiko Rukuru rwemeje ko abatangabuhamya bashinja Twagirayezu Wenceslas batamuzi ruvuga ko bavuguruzanya ku buryo bukabije ku cyo yakoraga, ku bijyanye n'umwanya yari afite mu bikorwa by'amashyaka ya politike cyangwa ubwamamare bwe muri rusange, ndetse no ku miterere imwe n'imwe y'umubiri we, nyamara icyo bose bahurijeho busanga ari cyo cy'ingenzi gikwiye kwitabwaho, ari uko yari umwarimu, akora mu nzego z'uburezi kandi nawe akaba abyiyemerera.

[122] Bakomeza basobanura ko, nk'uko Ubushinjacyaha bwari bwabigaragaje mu mwanzuro wo kwiregura mu Rukiko Rukuru ndetse n'umwe mu bacamanza akabigarukaho muri dissenting opinion, kuba abatangabuhamya badahuriza ku hantu Twagirayezu Wenceslas yakoreraga n'igihe yahakoreye atari inenge ikomeye yatuma hemezwa ko batamuzi kandi barerekanye uburyo bamuzi, ko bazi umuryango we, aho yize ndetse bamwe bakaba ari n'abaturanyi be. Bashimangira ko harebwe igihe gishize, jenoside yakorewe Abatutsi mu 1994 ikozwe, hanitawe ku bihe bikomeye abakoze jenoside n'abayikorerwaga barimo n'ubuzima banyuzemo kugeza ubu, kuba buri mutangabuhamya wese mu buryo bwe yaravuze ibyo yibuka, ariko bakabusanya ku tuntu duto, bidakwiye gutesha ireme ubuhamya bwabo.

[123] Ubushinjacyaha busobanura ko abatangabuhamya berekanye ko bazi Twagirayezu Wenceslas mu buryo bukurikira:

- Nsengiyumva Kanyamishoro Innocent atanga ubuhamya mu Rukiko yagaragaje ko azi Twagirayezu Wenceslas kuko yaragiraga inka hafi y'iwabo, ko yakundaga kumubona atwaye ibitabo;

- DTC abazwa mu Bugenzacyaha bwa Denmark yavuze ko Twagirayezu Wenceslas ari umugabo w'imibiri yombi, ufite umutwe umeze nk'uburungushuye, ko kandi atanga ubuhamya mu Rukiko yemeje ko amuzi;

- Biryamo Joseph mu Bugenzacyaha bwa Denmark yavuze ko Twagirayezu Wenceslas yari umugenzuzi w'amashuri yose yo muri Rwerere kuva mu mwaka wa 1986, ko amuzi ariko batigeze baba inshuti. Abazwa mu Bugenzacyaha bw'u Rwanda yavuze ko yari umwarimu mu ishuri ribanza rya Munanira. N'ubwo hari aho yajijinganyije ku izina rye, hamwe akavuga ko yitwa Nsengiyumva Wellars, yakongera kubazwa ahandi akavuga yitwa Twagirayezu Wenceslas, atanga ubuhamya mu Rukiko yavuze ko yari umwarimu usimbura ku ishuri rya Munanira. Abahagarariye Ubushinjacyaha bavuga ko Urukiko Rukuru rwafashe imvugo ya Biryamo Joseph uko itari, ruvuga ko mu Bugenzacyaha bwa Denmark yahamije ko Twagirayezu Wenceslas yari umugenzuzi w'amashuri muri Rwerere, nyamara atarabihamije ahubwo yaravuze ko ari ibyo yatekerezaga, ko ikigaragara ari uko Biryamo Joseph aho yabajijwe hose yakomeje gushimangira ko Twagirayezu Wenceslas yakoraga mu nzego z'uburezi.

- Umutangabuhamya Habinshuti Ruzibiza Jean abazwa mu Bugezacyaha bwa Denmark yavuze ko Twagirayezu Wenceslas yari umwarimu i Munanira. Mu Bugenzacyaha bw'u Rwanda avuga ko yari Diregiteri w'Ikigo cy'amashuri cya Munanira, naho atanga ubuhamya mu Rukiko yavuze ko yari umwarimu usimbura ku kigo cy'amashuri cya Munanira. Abahagarariye Ubushinjacyaha bavuga ko n'ubwo hari aho adahuza imvugo, ariko nawe agaragaza ko yakoraga mu nzego z'uburezi kandi ku kigo cy'ishuri rya Munanira, ko ibisobanuro yatanze mu Rukiko bigaragaza ko yari asanzwe amuzi kuko yavuze ko akomoka i Gacurabwenge, ko yamumenye kuko yanyuraga iwabo agiye gusura Pasiteri Munyankindi Seth.

- Umutangabuhamya Shyengo Joseph we yabwiye Urukiko ko nyuma ariho yaje kumenya ko yari mwarimu usimbura, bigaragaza ko yagerageje gushaka amakuru, bituma atanga ayizewe.

- Umutangabuhamya Munana Tatien mu ibazwa rye ryo ku wa 18/12/2013 mu Bugenzacyaha yagize ati: "Imyitwarire ya mbere ya jenoside, icyo muziho ni uko mu mwaka wa 1993, ntabwo nibuka ukwezi neza ariko hari hagati yo mu kwezi kwa 7 n'ukwa 8 twajyanye muri meeting yabereye mu Ruhengeri kuri stade yari iyobowe na Bucyana wari ukuriye CDR mu rwego rw'igihugu na Barayagwiza, twari twatumiwemo

mu rwego rw'amashyaka Gisenyi na Ruhengeri (...), (...) icyo batubwiye muri iyo nama, badukanguriraga kurwanya umututsi wese, bamwitaga inyenzi.

- **Ku byerekeye icyo Twagirayezu Wenceslas yakoraga**

[124] Abahagarariye Ubushinjacyaha bavuga ko abatangabuhamya batibeshye ku cyo Twagirayezu Wenceslas yakoraga, kuko mu iperereza bavugaga ko yari umwarimu, ntibahurize ku kigo yigishagaho n'urwego rw'ubuyobozi yari afite mu nzego z'uburezi, batanga ubuhamya mu Rukiko bemeza ko yari umwarimu usimbura ku ishuri ribanza rya Munanira. Bongeraho ko, n'ubwo Twagirayezu Wenceslas yari umukozi uhoraho kuri Collège Baptiste mu Mujyi wa Gisenyi guhera mu mwaka wa 1993 ubwo yari avuye kwiga, nta cyo banenga ibivugwa n'abatangabuhamya batanze bemeza ko mbere ya jenoside yari umwarimu usimbura ku ishuri ribanza rya Munanira[27].

[125] Abahagarariye Ubushinjacyaha banenga ko mu gushimangira ko abatangabuhamya bashinja batazi neza Twagirayezu Wenceslas, Urukiko Rukuru rwashingiye ku nyandikomvugo zo mu Bushinjacyaha za Kabera Samuel, Kanyabugoyi Théoneste na Nzabarankize Obed, ko ariko n'ubwo izo nyandikomvugo zabo ziri muri dosiye, Ubushinjacyaha butanga ikirego butabashyize mu batangabuhamya buzifashisha mu rubanza, nyamara Urukiko rubafata nk'aho aribwo bwabatanze, ndetse imvugo zabo zikoreshwa mu buryo budahura n'icyasuzumwaga. Bavuga ko mu gihe Urukiko rwabonaga ko rugomba gushingira ku mvugo z'abantu batatanze ubuhamya mu Rukiko, rwari kuvuga no ku mvugo za Munana Tatien wemeje ko yajyanye na Twagirayezu Wenceslas muri meeting ya CDR mu Ruhengeri, Maniragaba Théodomir, Ntaganda Claude na Gasasira Patrick, Ubushinjacyaha bwari bwashyize ku rutonde rw'abatangabuhamya bazaza mu Rukiko ariko ntibaze kubera ko batari bari mu gihugu, kuko imvugo zabo zirimo amakuru y'ingenzi yuzuzanya n'ubuhamya bwatangiwe mu Rukiko.

- **Ku birebana n'uko Twagirayezu Wenceslas asa (imiterere imwe n'imwe y'umubiri we)**

[126] Abahagarariye Ubushinjacyaha bavuga ko mu isesengura ry'ubuhamya buvuga uko Twagirayezu Wenceslas asa habayemo kubogama, kuko Urukiko rwafatiye hamwe ibivugwa n'abatangabuhamya bashinja, ruvuga ko batari bamuzi, nyamara ibyo bavuga bigaragaza ko na mbere ya jenoside bari basanzwe bamuzi, n'ibyo bavuga bihura n'ibivugwa n'abatangabuhamya batanzwe na Twagirayezu Wenceslas ubwe. Basobanura ko, nk'umutangabuhamya DTA abazwa mu Bugenzacyaha bwa Denmark yavuze ko yari afite amenyo asohoka imbere, ukuboko kuremaye ngo kuko yigeze guhanuka mu giti akiri umwana, afite umutwe usongoye, ariko rushingira ku bivugwa n'umutangabuhamya Kaberuka Théophile ushinjura, nyamara bamuvuga mu buryo bumwe.

[127] Bakomeza bavuga ko abandi batangabuhamya bagaragaje imiterere ya Twagirayezu Wenceslas ari uwitwa Shyengo Joseph wavuze ko amuzi nk'umusore uringaniye, utabyibushye, ufite agatwe kaza imbere[28], umutangabuhamya DTC avuga ko ari umugabo ufite imyaka 45, ufite 1m75, ukomeye, mu mpanga henda kuba nk'uruziga, ko ibindi atabyibuka kuko amuheruka kera[29], naho mu Rukiko avuga ko amuzi. Basoza bavuga ko Ubushinjacyaha bwatanze abatangabuhamya bazi neza uregwa, ko butumva uburyo Urukiko rwakwemeza ko batamuzi, rutagaragaje ku buryo burambuye aho ibyo bavuga bitandukanira n'abandi ruvuga ko bo bamuzi.

- **Ku byerekeye ubwamamare bwa Twagirayezu Wenceslas**

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[27] Abatangabuhamya bageze mu Rukiko bakavuga ko Twagirayezu Wenceslas yari umwarimu usimbura ni Habinshuti Ruzibiza Jean, Shyengo Joseph, Habingoma Théobald, Biryamo Joseph, DTA, DTB. Nsengiyumva Kanyamishoro Innocent, mu Rukiko yavuze ko umuntu wese babonaga afite ibitabo babaga bazi ko ari mwarimu.

[28] Inyandikomvugo yo ku wa 03/12/2013 mu Bugenzacyaha.

[29] Umutangabuhamya abazwa na Polisi ya Denmark, P-09-217

[128] Abahagarariye Ubushinjacyaha banenga ko mu gika cya 146, Urukiko Rukuru rwahaye ishingiro ibyo Twagirayezu Wenceslas n'umwunganizi we bavuga ko ashinjwa n'abatangabuhamya batamuzi, rushingiye ku kuba abatangabuhamya b'Ubushinjacyaha bamugaragaza nk'umuntu ukomeye w'umukire wari uzwi mu gace k'iwabo, wahembwaga neza n'ubutegetsi kandi ufite ubutaka bunini, wabaga ari kumwe kenshi na Bunani Jean wari umugenzuzi w'Akarere k'amashuri, wahagarariraga interahamwe muri za mitingi zateguraga jenoside, cyangwa wari ukuriye MRND na CDR ku nzego za Komini cyangwa Segiteri, wagendanaga na Munyagishari Bernard wari ukuriye interahamwe mu rwego rw'icyahoze ari Perefegitura ya Gisenyi na Ntamaherezo wari ukuriye interahamwe muri Gacurabwenge, ndetse na Bikindi Simon wamamaye muri jenoside. Abahagarariye Ubushinjacyaha bananenga ko Urukiko Rukuru rwavuze ko mbere ya Nyakanga 1991, Twagirayezu Wenceslas yari umunyeshuri mu mashuri yisumbuye muri RDC kandi ari ho yabaga, akaza rimwe na rimwe iwabo mu biruhuko, akaba yaranakomeje kuba muri RDC nyuma y'uko arangije kwiga kugeza agarutse mu Rwanda muri Kamena 1993.

[129] Abahagarariye Ubushinjacyaha banavuga ko basanga isesengura ry'urukiko ryarirengagije ibyo Twagirayezu Wenceslas yivugiye mu nyandiko yoherejwe n'Igihugu cya Denmark cyane izijyanye n'Ubugenzacyaha bw'Abinjira n'abasohoka ku rupapuro P-09-328-P-09-329, aho yagaragaje imirimo yakoze, y'uko yabaye umwarimu n'umubyobozi ushinzwe imyitwarire ku Ishuri ryisumbuye ry'Ababatisite rya Gacuba II, umuyobozi ushinzwe imyitwarire kuva mu mwaka wa 1993 kugeza mu 1994, umuyobozi w'urubyiruko rwa gikristu kuva mu 1991 kugeza 1994 mu ishami ry'akarere ka AEBR, Gisenyi, umwe mu bagize komite ishinzwe guhuza ibikorwa by'itorero n'imiryango itari iya Leta iharanira uburenganzira bwa muntu kuva mu mwaka wa 1993 kugeza mu mwaka 1994 i Gisenyi. Banavuga ko Twagirayezu Wenceslas mu ibazwa rye mu Bugenzacyaha ryo ku wa 17/12/2018 yavuze ko kuva mu mwaka 1991 kugeza mu 1994 ndetse na nyuma yaho atigeze aba umuyoboke w'ishyaka na rimwe rya politique, kuko yari mu murimo w'Imana muri Eglise Baptiste mu Rwanda muri Paroisse ya AEBR Kageshi, Segiteri Gabiro, Komini Rwerere, ko ari ho yakoreraga umurimo ari umwanditsi w'itorero, aza no kuba umuyobozi w'urubyiruko mu ntara ya AEBR Gisenyi.

[130] Abahagarariye Ubushinjacyaha bavuga ko ibyo bimenyetso byerekana neza ko Urukiko rwafashe ibintu uko bitari, ruha imyireguririre ya Twagirayezu Wenceslas ukuri ntayegayezwa, rwirengagiza nkana ibimenyetso bivuguruza imyiregurire ye kandi yitangiye bigaragaza ko kuva mu mwaka wa 1991 kugeza mu mwaka wa1994, Twagirayezu Wenceslas yabonekaga mu Rwanda aho yari atuye, ari mu mirimo y'itorero rya AEBR, ari no mu nzego zaryo, ayobora urubyiruko rwa AEBR mu Karere ka Gisenyi, ko ari nayo mpamvu Twagirayezu Wenceslas yafatwaga nk'umuyobozi ukomeye, uvuga rikijyana, kuko yayoboraga urubyiruko, kuba bamwita umuyobozi w'interahamwe nta kosa babibonamo, kandi ko yemeye ko yari ashyigikiye interahamwe, kandi abenshi mu nterahamwe bari urubyiruko rwari mu mashyaka ya politike yari yiganje muri ako gace. Banavuga ko kuba hari umutangabuhamya uvuga ko yari mu ishyaka rya MRND, undi akavuga ko yari mu rya CDR, atari inenge yatuma hemezwa ko batari bamuzi. Abahagarariye Ubushinjacyaha basoza bavuga ko isesengura ryakozwe n'Urukiko Rukuru atari ryo, kuko ugukomera kuvugwa kujyanye n'uwo yari we nyuma yo kurangiza amashuri; ari uko muri icyo gihe, umuntu warangije amashuri yisumbuye yabaga akomeye.

- **Imyiregurire ya Twagirayezu Wenceslas**

- ➢ **Ku byerekeye icyo yakoraga**

[131] Twagirayezu Wenceslas n'abamwunganira bavuga ko ikibazo kijyanye n'uko abatangabuhamya b'Ubushinjacyaha babajijwe batamuzi yakigaragaje kuva akiri muri Denmark, kuko uburyo bamuvuga bagendeye ku murimo yakoraga w'ubwarimu n'aho yawukoreraga, imiterere ye ku mubiri, ubutunzi yari afite n'umwanya mu mashyaka ya politike, bigaragaza ko umuntu bavuga atari we cyangwa batamuzi, kuko iyo baba bamuzi neza, batari kuyoberwa ko yigishaga mu ishuri ryigenga kuri Gacuba II ku Gisenyi kuva muri Nzeri 1993 kugeza muri Nyakanga 1994. Bavuga ko bemeranywa n'umwanzuro w'Urukiko

Rukuru ugaragara mu gika cya 145 n'icya 146, kuko uburyo abatangabuhamya bivuguruza, bakanavuguruzanya bigaragaza ko batamuzi.

[132] Twagirayezu Wenceslas n'abamwunganira bakomeza bavuga ko ibivugwa n'Ubushinjacyaha ko Urukiko Rukuru rwabogamiye ku bivugwa n'abatangabuhamya bamushinjura kandi bahuza imvugo n'abamushinja, nta shingiro bifite kuko imvugo z'abatangabuhamya bamushinja zaranzwe no kwivuguruza no kuvuguruzanya. Icya mbere, babazwa mu Bugenzacyaha bwo mu gihugu cya Denmark no mu Bugenzacyaha cyangwa mu Bushinjacyaha bwo mu Rwanda bemezaga ko bamuzi neza, ariko mu kugaragaza icyo yakoraga bamwe bakavuga ko yari umwarimu ku kigo cy'amashuri abanza cya Munanira, abandi bakavuga ko yari umwarimu i Busasamana cyangwa umwarimu mu ishuri rya CERAI, hakaba n'abavuga ko yari diregiteri cyangwa insipegiteri w'ishuri ribanza rya Munanira. Icya kabiri, batanga ubuhamya mu Rukiko, abo batangabuhamya bose bahinduye imvugo, bahuriza ku kuvuga ko yari umwarimu w'umusimbura ku kigo cy'amashuri cya Munanira, kandi nabyo atari byo.

[133] Twagirayezu Wenceslas n'abamwunganira bavuga kandi ko nk'umutangabuhamya Shyengo Joseph yabajijwe impamvu yahinduye imvugo, avuga ko yabajije amenya ko yari umwarimu wajyaga asimbura, naho kuba umutangabuhamya Habimana Moïse yaravuze ko yari mwarimu ku Gisenyi, nabyo ntacyo byari kumarira Urukiko kuko ibyo yavuze nabyo bidasobanutse. Bongeraho ko kuba Urukiko Rukuru rwarashingiye ku mvugo z'abatangabuhamya Mpahatanye Mathieu na Kaberuka Théophile yatanze ari uko bagaragaje ko bamuzi neza; Mpahatanye Mathieu yahamije ko atari kuyoberwa ko yigeze yigisha ku ishuri ribanza rya Munanira kuko yabaye resiponsabule w'iryo shuri, akaba yarabihurijeho na Kaberuka Théophile.

[134] Twagirayezu Wenceslas n'abamwunganira bavuga kandi ko ku byerekeranye n'abatangabuhamya Kabera Samuel, Kanyabugoyi Théoneste na Nzabarankize Obed, Ubushinjacyaha buvuga ko imvugo zabo zakoreshejwe kandi bataratanzwe n'Ubushinjacyaha nk'abatangabuhamya babwo, basanga kuba zari muri dosiye nta mpamvu yari gutuma Urukiko Rukuru rutazishingiraho mu gihe rwazisuzumye rugasanga hari aho zihurira n'urubanza, cyane cyane ko mu iburanisha ry'urubanza ku rwego rwa mbere, Ubushinjacyaha butigeze buvuga ko atari ibimenyetso bigomba gushingirwaho, uretse ko byaba ari no guteshuka ku nshingano zabwo zirimo no gushinjura.

[135] Bavuga na none ko ibyo Ubushinjacyaha buvuga ko Urukiko Rukuru ntacyo rwavuze ku mvugo z'abantangabuhamya Munana Tatien, Maniragaba Théodomir, Ntaganda Claude na Gasasira Patrick bari ku rutonde rw'abatangabuhamya babo batabonetse mu Rukiko kuko bari bari mu mahanga, nta shingiro bifite kuko Ubushinjacyaha butigeze bugaragaza ko bari mu mahanga. Banavuga ko kuba Urukiko Rukuru rutarashingiye ku mvugo zabo ari uko rutazihaye agaciro, ko ahubwo icyo Ubushinjacyaha bwagombye kuba bunenga, ari uko zitashingiweho kandi zihura n'ubuhamya bwatangiwe mu Rukiko, nk'uko biteganywa n'ingingo ya 8 y'Itegeko rigena kwimurira imanza muri Repubulika y'u Rwanda, naho ubundi nta mpamvu ishingiye ku mategeko bagaragaza yari gutuma zishingirwaho.

- **Ku byerekeye uko Twagirayezu Wenceslas asa (imiterere imwe n'imwe y'umubiri we).**

[136] Twagirayezu Wenceslas n'abamwunganira banavuga ko ibyo Ubushinjacyaha buvuga ko Urukiko Rukuru rwirengagije ko abatangabuhamya bamuzi neza kuko bagaragaje uburyo bamuzi ngo kuko bari abaturanyi, bazi umuryango we n'imiterere ye nabyo nta shingiro bifite, kuko ibyo bavuze bijyanye n'imiterere ye, igihagararo cye, uko asa n' imyaka yari afite, bigaragaza ko atari we bavuga. Bashimangira ko uburyo abatangabuhamya bagiye bavuguruzanya mu kugaragaza ko bamuzi ari byo byashingiweho n'inzego za Denmark zijya kumuha ubwenegihugu, kuko iyo zisanga ibyo bavuga ari byo atari kubuhabwa.

[137] Basobanura ko nk'umutangabuhamya DTA abazwa mu Bugenzacyaha bwa Denmark yemeje ko azi Twagirayezu Wenceslas cyane, ariko avuga ko afite amenyo asohotse, umutwe w'inyuma usongoye n'akaboko k'iburyo karemaye kubera guhanuka mu giti. Ibyo yavuze bikaba atari ukuri kuko n'ubwo

akaboko ke gafite ikibazo bitatewe no guhubuka mu giti, ahubwo kavunitse kubera kukagwira acunga igicugutu. Banavuga ko umutangabuhamya Shyengo Joseph nawe yavuze ko azi uregwa neza, ko ari umugabo w'imyaka mirongo ine n'umunani (48), nyamara we mu mwaka wa 1994, yari afite imyaka makumyabiri n'umwe (21); yanavuze ko afite uburebure bwa metero imwe na mirongo irindwi na gatanu (1,75 M), ari umuntu w'imbaraga, mu gihe we ananutse.

[138] Ku byerekeye Biryamo Joseph, Twagirayezu Wenceslas n'abamwunganira bavuga ko yavuze ko ari umugabo w'imyaka mirongo itanu (50), ufite uburebure bwa metero imwe na mirongo itanu (1,50 M), ufite imbaraga, munini, ufite inda nini, umutwe wiburungushuye, umutwe w'inyuma usongoye, amenyo y'imbere asohotse, afite akaboko karemaye, anavuga ko amubonye yamumenya. Bavuga ko umutangabuhamya Maniragaba Théodomir we yavuze ko amuzi, ari umunyafurika ufite imbaraga, wa metero imwe na mirongo irindwi na gatanu (1,75 M), amenyo asohotse n'izuru rirerire, naho umutangabuhamya Nsabimana Léonidas we akaba yaravuze ko ari umugabo w'imyaka mirongo ine n'itanu (45) w'umunyembaraga, ufite mu maso harehare, ariko ko atamwibuka amubonye, ko no ku ifoto atamumenya. Bakomeza bavuga ko umutangabuhamya Habinshuti Jean Ruzibiza nawe yavuze ko ari umugabo wirabura, umunyafurika, ufite metero imwe na mirongo inani (1,80 M), anahamya ko amubonye atamwibuka; ko umutangabuhamya DTB yavuze ko ari umugabo w'umunyafurika wirabura wari hagati y'imyaka 27 na 30, ufite metero imwe na mirongo irindwi (1,70), yavuze ko amubonye yamwerekana, ariko bakaba batabimukoresheje kuko byakozwe gusa kuri Nsengiyumva Kanyamishoro Innocent wemezaga ko amuzi, ariko bamweretse amafoto icumi (10) arimo n'iya Twagirayezu Wenceslas ahitamo ifoto itari iye.

- **Ku byerekeye ubwamamare bwa Twagirayezu Wenceslas**

[139] Ku bijyanye n'umwanya yari afite mu mashyaka ya politiki, Twagirayezu Wenceslas n'abamwunganira bavuga ko abatangabuhamya b'Ubushinjacyaha bavuze ko yari Perezida wa CDR cyangwa uwa MRND, nyamara yaragaragarije Urukiko ko nta shyaka na rimwe yigeze abamo, kuko ubuzima bwe bwose yabukoreye muri Congo yiga amashuri yisumbuye, ko iyo aza kuba yarabaye umuyobozi w'ishyaka ari byo aba yarakoresheje asaba ubuhungiro nk'umunyapolitiki.

[140] Banavuga ko ibivugwa n'Ubushinjacyaha ko yari umuntu ukomeye, nta shingiro bifite kuko iwabo bari abantu baciriritse, batari abatunzi bafite amasambu, akaba ataragiye kwiga muri Congo kuko abikunze, ko hajyagayo umuntu ushyizwe hasi cyane (mwene ngofero) kuko n'uwaharangizaga amashuri kubona akazi bitamworoheraga, ko ishuri ryigenga ry'aba Baptiste ari ryo ryonyine ryamuhaye akazi.

UKO URUKIKO RUBIBONA

[141] Impaka kuri iyi ngingo y'ubujurire zishingiye ku kumenya niba Urukiko Rukuru rwarakoze ikosa ryo kuvuga ko kuba abatangabuhamya bivuguruza, bakanavuguruzanya ku cyo Twagirayezu Wenceslas yakoraga mbere no mu gihe cya jenoside, umwanya yari afite mu mashyaka ya politike, ubutunzi no ku miterere imwe n'imwe y'umubiri we bigaragaza ko batamuzi neza.

[142] Ingingo ya 18 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 aricyo 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;

2° ukwibeshya gushingiye ku byabaye kwatumye urubanza rucibwa nabi.

[143] Ingingo ya 183, agace ka 5o n'aka 6o, y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa n'ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko.

[144] Ingingo ya 2 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, mu gace kayo ka (i), (i), iteganya ko "ikimenyetso gishingiye ku buhamya ari amagambo avugiwe imbere y'urwego[30] rufite ububasha cyangwa yarushyikirijwe mu nyandiko n'umuntu wabonye cyangwa wumvise ibyerekeranye n'ikibazo kiri mu mpaka, naho ingingo ya 53 y'iryo Tegeko igateganya ko "Urwego rufite ububasha rusuzuma ukwemerwa cyangwa ukutemerwa n'agaciro by'ikimenyetso gishingiye ku buhamya, ko rutitsitsa ku mubare w'abatangabuhamya, ahubwo rwita cyane ku bumenyi bw'ibyabaye no ku budakemwa bw'ubuhamya batanga".

[145] Ingingo ya 87 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 ryavuzwe iteganya ko "mu rubanza nshinjabyaha, ikimenyetso gishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwanya wo kubijyaho impaka".

[146] Mu gika cya 132 n'icya 136 by'urubanza rujuririrwa, Urukiko Rukuru rwibukije umurongo w'Urukiko rw'Ikirenga wafashwe mu rubanza rw'Ubushinjacyaha na Ngurinzira, aho rwasobanuye ko mu gusuzuma ireme ry'ubuhamya, urukiko rushingira ku bumenyi bw'ababutanga n'uburyo basobanura ibyo biboneye cyangwa bumvise, rukabigereranya n'ibindi bimenyetso[31]. Urukiko Rukuru rwibukije kandi umurongo uri mu rubanza rw'Ubushinjacyaha na Nikomeze Chantal, aho Urukiko rw'Ikirenga rwasanze ubuhamya budashobora gushingirwaho igihe bwaranzwe no kwivuguruza mu nzego zitandukanye uwabutanze yagiye abazwamo[32] n'uwatanzwe mu rubanza rw'Ubushinjacyaha na Gatera Célestin, aho Urukiko rw'Ikirenga rwasanze ukwivuguruza gukabije kw'abatangabuhamya gutera gushidikanya ku cyo batangira ubuhamya[33].

[147] Naho mu gika cya 134 cy'urubanza rujuririrwa, Urukiko Rukuru rwagaragaje urubanza rwa POPOVIĆ na bagenzi be rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze ari Yugosilaviya, rwasobanuye ko mu gukoresha ubushishozi bwarwo mu isesengura ry'imvugo z'abatangabuhamya, Urukiko rushingira ku bintu binyuranye harebwe umwihariko wa buri rubanza, harimo imyitwarire y'umutangabuhamya mu rukiko, uruhare yagize mu byabaye atangaho ubuhamya, kuba ibyo avuga bishoboka kandi bisobanutse, kuba hari ukwivuguruza cyangwa guhindagura imvugo mu ibazwa rye cyangwa hagati y'ubuhamya bwe n'ikindi kimenyetso, kuba hari impamvu yatuma abeshya, uko yasubije ibibazo yabajijwe n'uruhande rw'uregwa mu rukiko, kandi ko ingaruka nziza cyangwa mbi ugushingira kuri ibi bintu bigira ku buhamya, binyurana bitewe n'imiterere yihariye ya buri rubanza[34].

[148] Urukiko Rukuru rwanagarutse ku rubanza rwa Simba Aloys n'Ubushinjacyaha rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda aho muri urwo rubanza hasobanuwe ko urukiko rufite ububasha bwo gusuzuma ukwivuguruza uko ari ko kose k'umutangabuhamya, gusuzuma niba ikimenyetso, uko kiri, gishobora kwizerwa no gufatwaho ukuri, rukagira n'ububasha bwo kwemera cyangwa kudaha agaciro ingingo z'ingenzi zikigize[35].

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[30] Ingingo ya 2, agace ka (cc), y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso isobanura ko "urwego rufite ububasha" bivuga urukiko cyangwa urwego rwakira ikibazo kiri mu bubasha bwarwo cyangwa rugifataho icyemezo, rushingiye ku bimenyetso".
[31] Urubanza no RPAA 0118/11/CS rwaciwe ku wa 13/11/2015 rw'Ubushinjacyaha na Ngurinzira
[32] Urubanza no RPA 0003/15/CS rwaciwe ku wa 29/12/2017 rw'Ubushinjacyaha na Nikomeze Chantal
[33] Urubanza no RPA 0084/10/CS rwaciwe ku wa 09/05/2014 rw'Ubushinjacyaha na Gatera Céléstin.
[34] Urubanza rwo mu bujurire rw'Ubushinjacyaha na POPOVIC Vujadin na bagenzi be, Case no IT-05-88-A, ICTY, para.132.
[35] Urubanza rwo mu bujurire rw'Ubushinjacyaha na Simba Aloys, Case no ICTR- 01-76 – A (27/11/2007), para. 103.

[149] Nk'uko bigaragara mu gika cya 145 n'icya 146, Urukiko Rukuru rwasanze ibyo Twagirayezu Wenceslas avuga ko ashinjwa n'abantu batamuzi neza bifite ishingiro kubera impamvu zikurikira:

- kuba abatangabuhamya bamushinja bemeza ko bamuzi neza, bavuguruzanya ku buryo bukabije ku cyo yakoraga kuko mu nzego z'iperereza bamwe bavuga ko yari umwarimu usanzwe, abandi bakavuga ko yari umwarimu usimbura, abandi bakavuga ko yari umuyobozi (diregiteri, insipegiteri), abandi bakavuga ko yari umwarimu ku mashuri abanza cyangwa ko yigishaga mu ishuri rya CERAI, ariko bagera mu Rukiko bose bakavuga ko baje kumenya ko yari umwarimu usimbura, imvugo zihabanye kandi n'ibyo Gasenge Etienne avuga by'uko Twagirayezu Wenceslas yasimburaga abarimu akiri umunyeshuri mu mashuri abanza kubera ubwenge yagiraga;

- Kuba abatangabuhamya bavuguruzanya ku bijyanye n'umwanya uregwa yari afite mu bikorwa by'amashyaka ya politiki, aho bamwe bavuga ko yari akuriye MRND, CDR n'interahamwe ku rwego rwa segiteri cyangwa rwa Komini, abandi bakavuga ko yari umuyoboke wa MRND gusa;

- kuba bamugaragaza nk'umuntu ukomeye w'umukire wari uzwi mu gace k'iwabo, wahembwaga neza n'ubutegetsi kandi ufite ubutaka bunini, wabaga ari kumwe kenshi na Bunani Jean wari umugenzuzi w'Akarere k'amashuri, Munyagishari Bernard wari ukuriye interahamwe mu rwego rw'icyahoze ari Perefegitura ya Gisenyi na Ntamaherezo wari ukuriye interahamwe muri Gacurabwenge, ndetse na Bikindi Simon wamamaye muri jenoside, nyamara bigaragara ko mbere ya Nyakanga 1991 Twagirayezu Wenceslas yari umunyeshuri mu mashuri yisumbuye muri RDC kandi ari yo aba, wazaga rimwe na rimwe iwabo mu biruhuko, kandi wanakomeje kuba muri RDC nyuma y'uko arangije kwiga kugeza agarutse mu Rwanda muri Kamena 1993.

[150] Urukiko rw'Ubujurire rusanga ibyerekeye imiterere y'ibice bimwe na bimwe by'umubiri wa Twagirayezu Wenceslas, bitari mu mpamvu zashingiweho n'Urukiko Rukuru mu kwemeza ko abatangabuhamya bashinja batamuzi neza. Ku bw'ibyo, hashingiwe ku biteganywa n'ingingo ya 18 y'Itegeko n° 47/2013 ryo ku wa 16/06/2013 ryavuzwe n'ingingo ya 183, agace ka 5o n'aka 6o y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, uru Rukiko rusanga itagomba gusesengurwa muri uru rubanza. Mu bika bikurikira, uru Rukiko rukaba rugiye gusuzuma gusa impamvu zashingiweho n'Urukiko Rukuru zagaragajwe haruguru:

1. Kumenya niba Urukiko Rukuru rwarirengagije ko batangabuhamya batibeshye ku kazi k'ubwarimu Twagirayezu Wenceslas yakoze.

[151] Nk'uko bigaragara mu gika cya 145 cy'urubanza rujuririrwa, Urukiko Rukuru rwasanze abatangabuhamya bashinja bavuguruzanya ku buryo bukabije ku cyo Twagirayezu Wenceslas yakoraga, kuko mu nzego z'iperereza bamwe bavuga ko yari umwarimu usanzwe, abandi bakavuga ko yari umwarimu usimbura, abandi bakavuga ko yari umuyobozi (diregiteri, insipegiteri), abandi bakavuga ko yari umwarimu ku mashuri abanza, abandi ko yigishaga muri CERAI, ariko bagera mu Rukiko, bose bagahuriza ku mvugo y'uko yari umwarimu usimbura, izo mvugo zikaba zihabanye n'ibyo Gasenge Etienne avuga by'uko Twagirayezu Wenceslas yasimburaga abarimu akiri umunyeshuri mu mashuri abanza kubera ubwenge yagiraga.

[152] Kuri iyi ngingo ijyanye n'akazi Twagirayezu Wenceslas yakoze ku kigo cy'amashuri cya Munanira n'umwanya w'ubuyobozi yari ahafite, Urukiko rw'Ubujurire rwemeranywa n'isesengura ry'Urukiko Rukuru ku kuba abatangabuhamya bashinja bavuguruzanya ku bijyanye n'umwanya yari afite mu rwego rw'uburezi n'aho yawukoreraga, ariko uru Rukiko rurasanga kuba abatangabuhamya bashinja barahuzaguritse kuri ibyo, bitari kuba impamvu ituma Urukiko Rukuru rwemeza ku buryo budasubirwaho ko batamuzi, kuko uko kwibeshya ku mwanya w'umurimo n'aho yawukoreraga ari ikintu gito[36].

[36] Reba urubanza ruburanwamo Ubushinjacyaha na BIKINDI Simon, Case no ICTR-01- 62 T (2/12/2008), p.12, para. 32.

2. Kumenya niba Urukiko rwarirengagije ko abatangabuhamya bagaragaje ko bamuzi kubera ko bahuriraga mu bikorwa by'amashyaka ya politiki.

[153] Urukiko Rukuru rwemeje ko abatangabuhamya bashinja Twagirayezu Wenceslas batamuzi rushingiye ku kuba bavuguruzanya ku bijyanye n'umwanya yari afite mu bikorwa by'amashyaka ya politiki, aho bamwe bavuga ko yari akuriye MRND, CDR n'interahamwe ku rwego rwa segiteri cyangwa rwa Komini, abandi bakavuga ko yari umuyoboke wa MRND gusa, kuba bamugaragaza nk'umuntu ukomeye w'umukire wari uzwi mu gace k'iwabo, wagendanaga n'abantu bamamaye mu bwicanyi n'abari bakuriye interahamwe muri Gisenyi, nyamara mbere ya Nyakanga 1991, Twagirayezu Wenceslas yari umunyeshuri mu mashuri yisumbuye muri RDC kandi ari yo aba, akaba yarazaga rimwe na rimwe iwabo mu biruhuko, anakomeza kuhaba nyuma y'uko arangije kwiga, agaruka mu Rwanda muri Kamena 1993[37].

[154] Bamwe mu batangabuhamya b'Ubushinjacyaha batanga ubuhamya mu Rukiko Rukuru baragaragaje ko Twagirayezu Wenceslas yabaga mu ishyaka rya MRND. Nka Gasenge Etienne atanga ubuhamya yavuze ko Twagirayezu Wenceslas yabaga muri MRND, ko mu gihe cy'amashyaka menshi mu mwaka wa 1991 n'uwa 1992 bahuriraga muri za mitingi muri Mutura na Busasamana, DTC yavuze ko yabaga muri CDR na MRND, kuko byasaga n'aho ari umutwe umwe wa politike, Nsengiyumva Kanyamishoro Innocent yavuze ko Twagirayezu Wenceslas na Ntamaherezo bari mu bantu bazaga kubigisha muri meeting bakabaha amakarita ya MRND jenoside itaratangira, Shyengo Joseph yavuze ko yamenye Twagirayezu Wenceslas avuye muri meeting agiye kumukubita.

[155] Urukiko Rukuru rwasanze mu Bugenzacyaha bwa Denmark, DTC na Shyengo Joseph bavuga ko yari umukuru w'interahamwe muri Gacurabwenge, akanayobora bariyeri z'aho zose, Ndagijimana Théoneste we avuga ko yari umukuru w'interahamwe muri Rwerere. Mu Bugenzacyaha bw'u Rwanda, Habingoma Tonny Théobald yavuze ko Twagirayezu Wenceslas yari umukuru w'interahamwe muri Rwerere, mu gihe Nsengiyumva Kanyamishoro Innocent yavuze ko yari ahagarariye MRND ku rwego rw'Akarere, Shyengo Joseph na Gasenge Etienne bakavuga ko yari umuyoboke wa MRND gusa, Rwasibo Alphonse we akavuga ko Twagirayezu yari akuriye CDR muri Segiteri Gacurabwenge[38].

[156] Urukiko rw'Ubujurire rusanga, n'ubwo bigaragara ko abatangabuhamya b'Ubushinjacyaha bahuzagurika mu kugaragaza uwo Twagirayezu Wenceslas yari we mu bikorwa by'amashyaka ya politike, ntibahurize ku mwanya yari afite mu mashyaka, hakaba hatanagaragazwa ikimenyetso kidashidikanywaho kigaragaza ko yari umuyoboke wa MRND cyangwa CDR, cyangwa yari umukuru w'interahamwe, bitaba impamvu ituma hemezwa ko abatangabuhamya batamuzi.

[157] Muri rusange, ku birebana n'iyi ngingo y'ubujurire, Urukiko rw'Ubujurire rusanga Urukiko Rukuru rwarakoze amakosa yo kwemeza ko abatangabuhamya b'Ubushinjacyaha batazi Twagirayezu Wenceslas kuko ibyo rwabyemeje rubishingiye ku tuntu duto duto kandi iyo akaba atari impamvu yatuma ubuhamya buteshwa agaciro nk'uko byasobanuwe haruguru.

B.2. Kumenya niba hari ikosa ryakozwe n'Urukiko Rukuru mu kwemeza ko Twagirayezu Wenceslas atakoze ibyaha aregwa

- **Imiburanire y'Ubushinjacyaha**

[158] Ubushinjacyaha buvuga ko isesengura ry'Urukiko Rukuru mu gika cya 175, icya 177 n'icya 179 by'urubanza rujuririrwa ririmo ukwivuguruza gukomeye ku bijyanye n'imvugo z'abatangabuhamya. Basobanura ko Urukiko Rukuru ubwarwo rwivuguruje, kuko nyuma yo kugaragaza ko ukuvuguruzanya kw'abatangabuhamya ku tuntu duto mu rubanza bidatesha agaciro ireme ry'ubuhamya batanga,

[37] Reba igika cya 146.
[38] Reba igika cya 141.

rwanyuranyije n'uwo murongo, rutesha agaciro ubuhamya bw'abatangabuhamya b'Ubushinjacyaha rushingiye ku kuba ukwivuguruza ku tuntu duto byaragiye biba incuro nyinshi, ku batangabuhamya benshi, bagenda bivuguruza mu buryo bumwe kandi ku bintu bisa, ndetse no kuba hari ukwivuguruza gukabije ku bindi bice by'ubuhamya bwabo. Bavuga ko basanga ibyo atari impamvu yari gutuma rutesha agaciro ubuhamya bwatanzwe, kubera ko kudahuriza ku matariki n'amasaha ibitero byabereyeho, intwaro zakoreshejwe cyangwa zari zifitwe na Twagirayezu Wenceslas n'abantu bishwe, bitavuga ko ibyo bitero bitabayeho cyangwa ko uregwa atabigizemo uruhare.

- **Kuba abatangabuhamya banyuranya ku matariki n'amasaha ibitero byabereyeho**

[159] Abahagarariye Ubushinjacyaha banenga ko mu gusesengura ubuhamya bwatanzwe, Urukiko Rukuru rwibanze ku kugaragaza ko abatangabuhamya bashinja badahuriza ku matariki ibitero byakoreweho mu duce dutandukanye, rwirengagiza ko amatariki bavuga bayahurizaho n'abatangabuhamya bashinjura Twagirayezu Wenceslas, ntirwanasuzuma mu buryo bumwe ubuhamya bwatanzwe n'abatangabuhamya b'impande zombi, kuko rutagize icyo ruvuga ku kunyuranya kugaragara mu buhamya bw'abatangabuhamya batanzwe n'uregwa.

[160] Ku byerekeye amatariki ubwicanyi bwatangiriyeho, abahagarariye Ubushinjacyaha bavuga ko umutangabuhamya Bufono Silas wari umuzamu kuri Kaminuza ya Mudende watanzwe na Twagirayezu Wencenslas yabwiye Urukiko Rukuru ko igitero cyagabwe kuri Kaminuza ya Mudende ku itariki ya 06/04/1994 nka saa sita z'ijoro, ko ku ya 07/04/1994 haje interahamwe nyinshi, abazungu bari bahari babashyira mu nzu imwe, bamazemo nk'ibyumweru bibiri, ko ibyakorwaga yabibonaga. Naho umutangabuhamya Ugwaneza Christophe nawe watanzwe na Twagirayezu Wenceslas avuga ko ubwicanyi bwababaye kuva ku itariki ya 07 kugeza ku ya 12/04/1994. Abahagarariye Ubushinjacyaha bavuga ko ubuhamya bwabo buhura n'ubwa Habingoma Théobald n'ubwa Biryamo Joseph nabo bemeza ko ubwicanyi bwo kuri Kaminuza ya Mudende kimwe n'ubwa Busasamana butabaye umunsi umwe, ko bwatangiye ku wa 07/04/1994, bukomeza ku matariki ya 8, iya 10 n'iya 12/04/1994, ko batabona aho Urukiko Rukuru rwahereye ruvuga ko abatangabuhamya b'Ubushinjacyaha bivuguruza, ko basanga ahubwo byerekana ko Urukiko Rukuru rwibanze gusa ku myiregurire y'uregwa, rwirengagiza iy'Ubushinjacyaha iyinyomoza. Naho kuba abatangabuhamya bashinja barageze mu Rukiko bagahuriza ku kuba ubwicanyi bwaratangiye ku itariki ya 08/04/1994, bidakwiye gutesha agaciro ubuhamya bwabo, kuko kunyuranya ku munsi bidakuraho ibikorwa by'ubwicanyi byahakorewe.

[161] Abahagarariye Ubushinjacyaha banenga kandi isesengura ryakozwe n'Urukiko Rukuru ku byerekeye igihe Twagirayezu Wenceslas yagaragaye mu bwicanyi bwo kuri Kiriziya ya Busasamana, aho rwagaragaje ko DTC mu Bugenzacyaha bwa Denmark yavuze ko ku wa 07/04/1994 mu gitondo, nyuma y'uko kuri bariyeri yo kwa Gacamena hiciwe Abatutsikazi 2 n'umugabo umwe, bakomereje i Busasamana; akavuga ko yabonye Twagirayezu Wenceslas saa saba (13h00) kuri bariyeri ariko mu Rukiko avuga ko ubwicanyi bwo ku Kiriziya ya Busasamana bwabaye ku wa 08/04/1994 saa yine za mu gitondo (10h00). Bavuga ko igihari ari uko nta gushidikanya ko kuri bariyeri yo kwa Gacamena no kuri Kiriziya ya Busasamana habereye ubwicanyi kandi buba mbere ya saa sita, ariko kuba umutangabuhamya yakwitiranya iminsi cyangwa amasaha, atari inenge yatuma ubuhamya bwe buteshwa agaciro mu gihe ntacyo ahindura cyangwa ngo agoreke ku bwicanyi bwahabareye.

- **Ku bijyanye n'abantu bishwe n'aho biciwe**

[162] Abahagarariye Ubushinjacyaha bavuga ko babona ikosa mu isesengura ry'urubanza mu gika cya 174 cy'urubanza rujuririrwa, aho mu mpamvu rwashingiyeho rutesha agaciro ubuhamya bwatanzwe, rwaranashingiye ku kuba abatangabuhamya bivuguruza ku birebana n'abishwe n'aho biciwe; ko batabona icyo abishwe bakora muri iryo sesengura. Basobanura ko muri jenoside yakorewe Abatutsi habayeho ibitero byagabwe ku mbaga y'Abatutsi ahantu hatandukanye bitsemba hafi ya bose, ko mu byo Twagirayezu Wenceslas aregwa harimo kuba yaragiye mu bitero binyuranye byateye muri Kaminuza ya

Mudende, ku Kiriziya gatolika ya Busasamana, Commune rouge no ku Nyundo, ndetse no kuba yaragiye kuri bariyeri n'ahandi, ko basanga icy'ingezi ari ukwerekana ko yagize uruhare muri ibyo bitero n'uko byaguyemo abantu, hakanerekanwa bamwe mu bakiguyemo agomba kuryozwa kimwe n'abandi bari bari kumwe, kubera ko bose bari bafite umugambi wo kwica Abatutsi bagabwagaho ibitero.

[163] Bakomeza bavuga ko Ubushinjacyaha bwerekanye amwe mu mazina y'Abatutsi baguye muri ibyo bitero Twagirayezu Wenceslas yarimo. Bwerekanye ko kuri Kaminuza ya Mudende haguye umuryango wa Mucyahangugu n'abana be batatu, umuryango wa Segafura ugizwe n'abantu barenga makumyabiri (20), umuryango wa Barinda, Ngarara n'umugore we, Munyakabera, Mukamurenzi, Kabogi, Hanyurwimfura Emmanuel n'abandi benshi batabashije kumenyakana; ku kiriziya ya Busasamana haguye Abatutsi barimo umuryango w'Abakwejo, umuryango wa Mazeze, Rwamidende, Kanyarutoki Mathias, Mudahuga, Buyayiya, Agnès, ko hari n'uwitwa Rupiya nawe wishwe n'igitero cyarimo Twagirayezu Wenceslas.

[164] Abahagarariye Ubushinjacyaha bavuga ko uruhare rwa Twagirayezu Wenceslas mu ikorwa ry'icyaha cya jenoside, rushingiye ku kuba yari mu mugambi mubisha yari ahuriyeho n'abagenzi be (joint criminal entreprise), ko bivuze ko n'iyo hatagaragazwa umuntu runaka yishe ubwe, bitamukuraho uburyozwacyaha kuko buri wese mu bahuriye muri uwo mugambi mubisha, afatwa nk'uwafatanyije n'abandi gukora icyaha n'iyo ibikorwa bifatika byo kugitsotsoba byakozwe gusa na bamwe muri bo ; ko ibi byasobanuwe mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha rwashyiriweho u Rwanda n'urwashyiriweho icyahoze ari Yugoslavia[39] ndetse n'abahanga mu mategeko.

- **Ku byerekeye intwaro Twagirayezu Wenceslas yakoreshaga**

[165] Abahagarariye Ubushinjacyaha bavuga ko mu gika cya 165 n'icya 166 by'urubanza rujuririrwa, Urukiko Rukuru rwatesheje agaciro ubuhamya bwatanzwe rugendeye ku kuba abatangabuhamya badahuriza ku ntwaro Twagirayezu Wenceslas yari afite n'izicishijwe Abatutsi kuri bariyeri, rugaruka cyane ku mutangabuhamya DTC, wavuze ko ku itariki ya 7/04/1994, kuri bariyeri yo kwa Gacamena hiciwe abagore 2 n'umugabo umwe, ko Twagirayezu ntacyo yakoze, ko kuri iyo bariyeri yari kumwe n'abasore 5 afite imbunda ya kalachinikov, ahandi akavuga imbunda ya R4, ko basanga kuba hamwe DTC yaravuze imbunda ya Kalachinikov ahandi akavuga iya R4 atari ikibazo, kuko atanga ubuhamya mu Rukiko[40] yasobanuye ko yari yibeshye, yibuka ko mu makomine hatangwaga imbunda za R4, ko rero Urukiko Rukuru rwagombaga kubona ko kwibeshya ku bwoko bw'imbunda byumvikana kubera ko atari azobereye iby'imbunda.

- **Imyiregurire ya Twagirayezu Wenceslas**

[166] Twagirayezu Wenceslas n'abamwunganira bavuga ko ibivugwa n'abahagarariye Ubushinjacyaha ko isesengura ry'urubanza ryabayemo kwivuguruza bituma Urukiko Rukuru rutesha agaciro imvugo z'abatangabuhamya rushingiye ku kuba bivuguruza ku tuntu duto nta shingiro bifite, ko ahubwo bavugisha icyemezo cy'Urukiko Rukiko ibyo kitavuze. Basobanura ko mu gika cya 175 n'icya 177 by'urubanza rujuririrwa, Urukiko Rukuru rwagaragaje ko kwivuguruza ku tuntu duto bidatesha agaciro ireme ry'ubuhamya, ariko ruvuga ko abatangabuhamya bashinja bagiye bivuguruza ku tuntu duto kandi kenshi, rubihuza n'uko bagiye bivuguruza ku bintu bikomeye, bituma rutesha agaciro ubuhamya bwabo.

[167] Twagirayezu Wenceslas n'abamwunganira banavuga ko ibyo abahagarariye Ubushinjacyaha bavuga ko Urukiko Rukuru rutatandukanyije utuntu duto n'ibikomeye abatangabuhamya bagiye bavuguruzanyaho atari byo, ko ahubwo ikigaragara ari uko bagaragaza ibintu bimwe ibindi bakabireka.

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[39] Reba urubanza ruburanwamo Ubushinjacyaha na Nizeyimana Ildephonse, Case no ICTR-2000-55C-T, ICTR, p. 406, para. 1455.

[40] Inyandikomvugo y'iburanisha yo ku wa 18/04/2022 mu Rukiko Rukuru.

Bavuga ko mu gika cya 165 n'icya 166 by'urubanza rujuririrwa, Urukiko Rukuru rwagaragaje aho abatangabuhamya bivuguruje ku bintu bikomeye, nka Nsengiyumva Kanyamishoro Innocent, Gasenge Etienne, DTB, DTA na DTC, rusanga ubuhamya bwabo burimo kwivuguruza gukabije mu buryo bukurikira:

- Nsengiyumva Kanyamishoro Innocent yavuze ko kuri bariyeri yo kwa Gacamena hiciwe abagabo babiri n'umukobwa, yongeye kubazwa avuga ko Twagirayezu Wenceslas yavumbuye Abatutsi abicisha imbunda;

- Gasenge Etienne abazwa bwa mbere, yavuze ko atigeze yumva ko hari Abatutsi biciwe kuri bariyeri kwa Gacamena, ahandi avuga ko hari umugore n'umwana bishwe na Bunani Jean, Twagirayezu Wenceslas ahari;

- DTC yavuze ko atajyanye na Twagirayezu Wenceslas mu bitero, ariko nyuma avuga ko yishe abantu 16.

Bavuga ko ibi byose bigaragara mu bisobanuro by'Urukiko Rukuru kandi atari ukuvuguruzanya ku tuntu duto, ko ahubwo rwatesheje agaciro ubuhamya bwabo nyuma yo kubona ko abo batangabuhamya bivuguruza ku buryo bukabije ku tuntu duto no ku bintu bikomeye inshuro nyinshi.

- Kuba abatangabuhamya banyuranya ku matariki n'amasaha ibitero byabereyeho

[168] Twagirayezu Wenceslas n'abamwunganira bavuga kandi ko ubuhamya bwatanzwe ku bitero byabereye kuri Kaminuza ya Mudende, kuri kiriziya ya Busasamana, kuri Commune rouge no kuri bariyeri yo kwa Gacamena, bugaragaza ko abatangabuhamya b'Ubushinjacyaha badahuriza ku matariki ibitero byakoreweho no ku bikorwa byabayemo, ko habajijwe umuntu wari uhari, avuga ko ku wa 7/04/1994 hahise hicwa Abatutsi kuva kuri kaminuza ya Mudende bikomereza ku kiriziya ya Busasamana, ariko uwo munsi abatangabuhamya bamwe bavuga ko yari kuri Kaminuza ya Mudende, abandi bakavuga ko yari ku kiriziya ya Busasamana.

[169] Bavuga kandi ko n'ibyo abahagarariye Ubushinjacyaha bavuga ko habayeho kudafata kimwe abatangabuhamya bashinja n'abashinjura nabyo nta shingiro bifite, kuko abatangabuhamya Ugwaneza Christophe na Bufono Silas bamushinjura, ubuhamya bwabo bwahurije ku kuba ubwicanyi bwaratangiye ku itariki ya 07/04/1994, mu gihe Urukiko Rukuru rwagaragaje ko abatangabuhamya b'Ubushinjacyaha bavuguruzanya kuko nka BIRYAMO Joseph adahuza n'abandi. Bongeraho ko nyuma ya jenoside habaye ikusanyamakuru, habaho kwibukiranya amatariki y'ibitero, ubwicanyi bwababye n'ababugizemo uruhare, ko rero byaba bitumvikana uburyo Ubushinjacyaha bwavuga ko kwibagirwa amatariki ibitero byakoreweho ari ibintu bisanzwe.

UKO URUKIKO RUBIBONA

[170] Impaka kuri iyi ngingo zishingiye ku kumeya niba Urukiko Rukuru rwarirengagije ko ibyo abatangabuhamya bavuguruzanyaho byerekeye amatariki ibitero byakoreweho, intwaro zari zifitwe na Twagireyezu Wenceslas n'izo yicishije abantu no ku bantu bishwe mu bitero ari utuntu duto tutagombaga gutesha agaciro ubuhamya batanze ku bikorwa bigize ibyaha Twagirayezu Wenceslas aregwa.

[171] Ingingo ya 2 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso, mu gace kayo ka (i), (i), iteganya ko "ikimenyetso gishingiye ku buhamya ari amagambo avugiwe imbere y'urwego[41] rufite ububasha cyangwa yarushyikirijwe mu nyandiko n'umuntu wabonye cyangwa wumvise ibyerekeranye n'ikibazo kiri mu mpaka, naho ingingo ya 53 y'iryo Tegeko igateganya ko "Urwego rufite ububasha

[41] Ingingo ya 2, agace ka (cc), y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 rigenga ibimenyetso isobanura ko "urwego rufite ububasha" bivuga urukiko cyangwa urwego rwakira ikibazo kiri mu bubasha bwarwo cyangwa rugifataho icyemezo, rushingiye ku bimenyetso".

rusuzuma ukwemerwa cyangwa ukutemerwa n'agaciro by'ikimenyetso gishingiye ku buhamya, ko rutitsitsa ku mubare w'abatangabuhamya, ahubwo rwita cyane ku bumenyi bw'ibyabaye no ku budakemwa bw'ubuhamya batanga".

[172] Ingingo ya 87 y'Itegeko n° 062/2024 ryo ku wa 20/06/2024 ryavuzwe iteganya ko "mu rubanza nshinjabyaha, ikimenyetso gishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwanya wo kubijyaho impaka".

[173] Urukiko rw'Ubujurire rusanga mu gika cya 176 cy'urubanza rujuririrwa, Urukiko Rukuru rwaribukije umurongo ugaragara mu manza zaciwe n'Inkiko z'u Rwanda no mu manza zaciwe n'Inkiko Mpanabayaha Mpuzamahanga uhuriza ku kuba ukwivuguruza ku tuntu duto bidatesha agaciro ireme ry'ubuhamya. Mu rubanza rw'Ubushinjacyaha na Sgt. Biziyaremye Jean Baptiste na Cpl. Ngabonziza Faustin, Urukiko rw'Ikirenga rwasanze ku birebana n'ubuhamya bwatanzwe, ukwivuguruza kudafatirwa gusa ku magambo umutangabuhamya akoresha, cyangwa kudahuza neza imvugo mu gusobanura imigendekere y'ibyo atangira ubuhamya, ko icya ngombwa ari uko ireme(substance) ry'ibyo avuga ridahinduka[42]. Mu rubanza rw'Ubushinjacyaha na Ntamaherezo Iryamukuru, Urukiko rw'Ubujurire rwasobanuye ko ukuvuguruzanya kw'abatangabuhamya ku tuntu duto mu rubanza bidatesha agaciro ireme ry'ubuhamya batanga[43]. Naho umurongo wagendeweho mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda nko mu rubanza rwa Bikindi Simon, Urukiko rwasanze bitewe n'igihe kinini kiba gishize, hagati y'igihe umutangabuhamya atangiye ubuhamya n'igihe ibikorwa atangiye ubuhamya byakorewe, ukwivuguruza ku tuntu dutoya k'umutangabuhamya cyangwa hagati y'abatangabuhamya bidashobora gutesha agaciro ubuhamya[44].

[174] Urukiko rw'Ubujurire ruributsa ko uyu murongo ugaragara mu manza zaciwe n'Urukiko Mpuzamahanga rwashyiriweho u Rwanda wakurikijwe n'uru Rukiko mu rubanza rw'Ubushinjacyaha na Ntaganzwa Ladislas[45], urw'Ubushinjacyaha na Birindabagabo Jean-Paul[46] n'urw'Ubushinjacyaha na Kabilima Jean Damascène[47]. Muri izo manza, Urukiko rw'Ubujurire narwo rwasanze kwivuguruza cyangwa ivuguruzanya ry'abatangabuhamya ku birebana n'amatariki, amasaha, imyambaro, aho umuntu yari ahagaze cyangwa iyo ubuhamya umutangabuhamya yatangiye mu Rukiko budahuje n'ibyo yavuze mbere kutafatwa nk'inenge ikabije yatesha agaciro ubuhamya, ko ahubwo, harebwe igihe kinini kiba gishize hagati y'igihe ibikorwa by'ubwicanyi byakoreweho n'igihe ubuhamya bwatangiwe, izo ari inenge ntoya ku buryo zitatesha agaciro ireme ryabwo kuko bishoboka ko umutangabuhamya atakwibuka neza ibyo atangira ubuhamya.

[175] Nk'uko bigaragara mu gika cya 175 cy'urubanza rujuririrwa, Urukiko Rukuru rwasanze, uretse ukwivuguruza gukabije kugaragara mu mvugo z'abatangabuhamya bashinja, hari na none ukwivuguruza kwagiye kugaragara ku tuntu duto na duto nko kwibeshya ku itariki cyangwa isaha, ku ntwaro zakoreshejwe cyangwa zari zifitwe na Twagirayezu Wenceslas, aho bamwe mu batangabuhamya bavuga ko imbunda yakoresheje ari Kalachinikov, ahandi bakavuga ko ari R4, cyangwa kuvuga ko yari afite imbunda n'ubuhiri, ubundi bakavuga ko yari afite imbunda gusa, cyangwa imbunda na gerenade, cyangwa kwibeshya ko uwishwe yari umugore cyangwa umugabo.

[42] Urubanza no RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 17/09/2010, Ubushinjacyaha buburana na Sgt. Biziyaremye Jean Baptiste na Cpl. Ngabonziza Faustin, icyegeranyo cy'ibyemezo by'Inkiko, vol. II, 2011, n0 9, urupapuro rwa 60, igika cya 14

[43] Urubanza no RPAA 00141/2022/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 31/05/2023 habuburana Ubushinjacyaha na Ntamaherezo Iryamukuru, igika cya 33.

[44] urubanza rw'Ubushinjacyaha na Bikindi Simon, Case no ICTR-01- 62 T, (2/12/2008), p.12, para 32.

[45] Reba igika cya 27 cy'urubanza Nº RPA/GEN 00001/2021/CA rwaciwe ku wa 03/03/2023 haburana Ubushinjacyaha na Ntaganzwa Ladislas

[46] Reba igika cya 125 cy'urubanza Nº RPAA/GEN 00004/2020/CA rwaciwe ku wa 08/04/2022 haburana Ubushinjacyaha na Birindabagabo Jean Paul.

[47] Reba igika cya 71 cy'urubanza No RPAA/GEN00009/2019/CA rwaciwe ku wa 16/10/2020 haburana Ubushinjacyaha na Kabilimana Jean Damascène.

[176] Naho mu gika cya 177 cy'urubanza rujuririrwa, Urukiko Rukuru rwasanze, harebwe umwihariko w'uru urubanza, uburyo ukwivuguruza ku tuntu duto kwagiye kuba inshuro nyinshi, ku batangabuhamya benshi, kandi bagenda bivuguruza mu buryo bumwe kandi ku bintu bisa, bikanahuzwa n'ukwivuguruza gukabije kugaragara ku bindi bice by'ubuhamya, bitesha agaciro ireme ry'ubuhamya n'imvugo byabo. Ibi Urukiko Rukuru rukaba rwarabibonye mu mvugo n'ubuhamya bya bamwe mu batangabuhamya nka Habingoma Théobald wavuze mu Bugenzacyaha bwa Denmark ko ubwicanyi bw'i Busasamana n'i Mudende bwabaye hagati yo ku wa 8 na 12 Mata 1994, mu Bugenzacyaha bwa Denmark n'u bw'u Rwanda Biryamo Joseph akavuga ko bwabaye ku wa 7/4/1994; DTC akavuga ko bwabaye ku wa 7/04/1994, nyamara bose bageze mu Rukiko bavuga ko ubu bwicanyi bwabaye ku wa 8/4/1994.

[177] Mu kugenzura niba Urukiko Rukuru rwarivuguruje kuko rwemeje ko abatangabuhamya b'Ubushinjacyaha bivuguruje ku tuntu duto, ariko nyuma rukadushingiraho rutesha agaciro ubwo buhamya ruvuga ko bivuguruje ku tuntu duto inshuro nyinshi kandi ku buryo bukabije. Urukiko rw'Ubujurire rurasuzuma ubuhamya bwatanzwe hagendewe ku bitero bivugwa Twagirayezu Wenceslas yagizemo uruhare.

a. Igitero cyo kuri kaminuza ya Mudende n'icyo ku kiriziya ya Busasamana.

[178] Nk'uko bigaragara mu gika cya 153 n'icya 154 by'urubanza rujuririrwa, Urukiko Rukuru rwemeje ko ukwivuguruza no kuvuguruzanya bikabije biri mu buhamya bwa Nsengiyumva Kanyamishoro Innocent, Habingoma Théobald, Habinshuti Ruzibiza Jean, Biryamo Joseph, bitesha agaciro ireme ryabwo ku buryo butashingirwaho nk'ibimenyetso bidashidikanywaho bihamya uruhare rwa Twagirayezu Wenceslas mu bwicanyi bwabereye kuri Kaminuza ya Mudende kubera impamvu zikurikira:

- imvugo n'ubuhamya bihera ku kwemeza ko nta ruhare Twagirayezu Wenceslas yagize mu bikorwa aregwa, bigakomereza ku gukekeranya ko rwaba rwabayeho, bikarangira umutangabuhamya yemeza ko yiboneye uregwa akora icyaha bifite inenge iremereye ishingiye ku guhindura imvugo no kwivuguruza bituma bitashingirwaho nk'ibigaragaza ukuri kw'ibyabaye;

- Ubuhamya buhindagurika ku kintu gikomeye cy'uko ibitero umutangabuhamya avuga yarimo hamwe n'uwo ashinja byagenze, harebwe uko agenda yivuguruza ku kijyanye n'aho byatangiriye, aho byakomereje n'aho byasoreje n'uko bagiye babihuriramo, bituma izi imvugo n'ubuhamya bitagaragaza ukuri kw'ibyabaye.

[179] Nk'uko na none bigaragara mu bika bya 159 n'icya 160 by'urubanza rujuririrwa, Urukiko Rukuru rwemeje ko ukwivuguruza mu mvugo no mu buhamya bya Shyengo Joseph, Habingoma Théobald, DTC na Biryamo Joseph, haba kuri buri mutangabuhamya ukwe, haba no kuvuguruzanya hagati yabo ku byerekeye uburyo n'igihe uregwa yagaragaye mu bikorwa bigize ibyaha akurikiranweho byakorewe kuri Paruwasi ya Busasamana gukabije ku buryo bitesha agaciro ireme ryabwo; bityo ko imvugo n'ubuhamya byabo bitashingirwaho hemezwa ko Twagirayezu Wenceslas yagize uruhare mu bwicanyi bwabereye kuri kiliziya ya Busasamana.

1. Nsengiyumva Kanyamishoro Innocent

[180] Ku byerekeranye n'ubuhamywa bwatanzwe na Nsengiyumva Kanyamishoro Innocent, isesengura ry'Urukiko Rukuru ryagaragaje ko abanza kuvuga ko atazi Twagirayezu Wenceslas mu bwicanyi, ariko yakongera kubazwa agahindura akavuga ko bari kumwe mu bwicanyi.

[181] Nsengiyumva Kanyamishoro Innocent abazwa mu iperereza ryakozwe na Polisi ya Denmark, hamwe avuga ko atigeze abona Twagirayezu Wenceslas mu gitero cyo kuri kaminuza ya Mudende, ahandi akavuga ko ashobora kuba yari ahari, yanavuze ko atazi niba yaragize uruhare muri jenoside, ariko akomeje kubazwa arahindura avuga ko azi Twagirayezu Wenceslas ko yari umuyobozi wa bariyeri yari i

Gacurabwenge, ko yanagize uruhare mu iyicwa ry'Abatutsi kuri kiriziya ya Busasamana no kuri Kaminuza ya Mudende, yanavuze ko atashakaga kubivuga kubera ko ari se wabo w'umugore we[48].

[182] Abazwa n'Ubugenzacyaha bwo mu Rwanda yavuze ko ibitero byose yabijyanagamo na Twagirayezu Wenceslas na Ntamaherezo ari bo bagendaga imbere bafite imbunda abandi bafite amahiri[49].

[183] Nsengiyumva Kanyamishoro Innocent atanga ubuhamya mu Rukiko, yavuze ko mu bwicanyi bwo kuri kaminuza ya Mudende yari kumwe na Twagirayezu Wenceslas wazanye na Ntamaherezo n'abandi benshi, abo bombi bari imbere hicwa abantu benshi, ko Twagirayezu Wenceslas yarashe, akanatera gerenade, ko ubu bwicanyi bwabaye mbere y'ubwo kuri bariyeri yo kwa Gacamena, ko ibi bitero byombi ari byo bakoranye gusa[50].

[184] Urukiko rw'Ubujurire rusanga Urukiko Rukuru rwarakoze amakosa mu kwemeza ko ubuhamya bwa Nsengiyumva Kanyamishoro Innocent buvuguruzanya mu buryo bukabije, rubyemeza nyuma yo gusuzumira hamwe ibyo yavugiye mu iperereza ryakozwe na Polisi ya Denmark n'ibyo yavugiye mu Bugenzacyaha no mu Rukiko atanga ubuhamya. Nyamara Urukiko Rukuru ntirwagombaga gushingira ku byo yabwiye Polisi ya Denmark kuko abivuga atarahiye, n'uwamusemuriraga nawe atarahiye mbere yo gutangira akazi, ndetse umutangabuhamya akaba ataranasabwe gushyira umukono ku nyandiko yakozwe. Ku bw'ibyo inyandiko ikubiyemo ibyo yavugiye muri Polisi ya Denmark ikaba itujuje ibyangombwa bituma igira agaciro nk'ikimenyetso cyemewe mu Rukiko[51]; ikaba rero itaragombaga gushingirwaho[52].

[185] Urukiko rw'Ubujurire rurebye imiterere y'inyandikomvugo yakozwe ku itariki ya 11/12/2013 mu Bugenzacyaha n'ibyo yavuze mu Rukiko, rusanga nta kwivuguruza kuri mu mvugo za Nsengiyumva Kanyamishoro Innocent kuko mu Bugenzacyaha yagaragaje ko mu gitero bajyanyemo na Twagirayezu Wenceslas yari afite imbunda, kuba mu Rukiko yarongeyeho ko mu gitero cyo kuri kaminuza ya Mudende yarashe, anatera gerenade, ari uko yabajijwe ku buryo bwihariye icyo Twagirayezu Wenceslas yakoresheje intwaro yari afite muri icyo gitero.

2. Habingoma Théobald bita Simpamanuka

[186] Nk'uko bigaragara mu gika cya 153 n'icya 159 by'urubanza rujuririrwa, Urukiko Rukuru rwatesheje agaciro ubuhamya bwa Habingoma Théobald ruvuga ko ahuzagurika mu kuvuga uko ubwicanyi bwagenze, kuko rimwe avuga ko ubwicanyi yabonyemo uregwa bwatangiriye i Busasamana bukomereza i Mudende, yakongera kubazwa agahindura avuga ko bwatangiriye i Mudende bugakomereza i Busasamana, ko hari naho avuga ko ubwo bari mu gitero kuri kiriziya ya Busasamana Twagirayezu Wenceslas yahabasanze, mu gihe ahandi avuga ko yavanye na Twagirayezu Wenceslas mu gitero cyo kuri kaminuza ya Mudende bajyana mu gitero cyo kuri Paruwasi ya Busasamana.

[187] Umutangabuhamya Habingoma Theobald, wabajijwe na Polisi ya Denmark yitwa Simpamanuka Théobald, yavuze ko jenoside itangira hagati y'itariki ya 07 -12/04/1994, yoherejwe hamwe n'abandi basirikare kuri kiriziya ya Busasamana muri Komini Rwerere, ahahurira na Twagirayezu Wenceslas n'interahamwe nyinshi, ko bahajya bari bafite amabwiriza yo kwica Abatutsi bari bahahungiye bagera ku gihumbi (1000), ko nko mu ma saa munani, Twagirayezu Wenceslas ari bwo ayoboye agatsiko k'interahamwe ku rwego rwa Segiteri kagizwe n'abagabo bagera kuri 600, benshi bafite intwaro gakondo, bake bafite imbunda, Twagirayezu Wenceslas afite grenade eshatu n'imbunda, ko bavuganye kubera ko bari basanzwe baziranye, baninjirana mu kiriziya, ko bakiri aho bahawe amakuru n'abandi basirikare ko

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[48] P-09-263.
[49] Inyandikomvugo y'ibazwa ryo ku wa 11/12/2013.
[50] Igika cya 89 cy'urubanza rujuririrwa.
[51] Ingingo ya 51 y'Itegeko no 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.
[52] Uretse no kuba iyi nyandiko itarasinywe n'uwayibajijwemo, nta n'ubwo yahawe umwanya mu Rukiko wo gusobanura ibyo yazivuzemo.

hari hakiri impunzi z’Abatutsi zari zihishe kuri kaminuza ya Mudende, bahita bajyayo bari kumwe na Twagirayezu Wenceslas[53].

[188] Ubwo yabazwaga mu Bugenzacyaha ku itariki ya 13/12/2013, Habingoma Théobald yavuze ko hagati y’itariki ya 8 n’iya 12/04/1994, bari kumwe na Twagirayezu Wenceslas mu gitero cyishe Abatutsi bari bahungiye kuri kiriziya ya Busasamana ari we ukuriye interahamwe za Komine Rwerere, anafite imbunda ya R4 na grenade, ko ikindi gitero bajyanyemo ari icyateye muri kaminuza ya Mudende, ko uwo munsi bavuye kuri kiriziya ya Busasamana bajya no kwica Abatutsi bari bahungiye kuri dispensaire ya Mudende bahagera mu ma saa saba n’igice (13h30).

[189] Umutangabuhamya Habingoma Théobald atanga ubuhamya mu Rukiko Rukuru yavuze ko yabaga ari kumwe na Twagirayezu Wenceslas mu bitero afite imbunda ya R4, ko ku itariki ya 08/04/1994 igitero cyatangiriye kuri Kaminuza ya Mudende bica Abatutsi bari bahahungiye, barangije bajyana kwica abari bahungiye kuri Paruwasi ya Busasamana.

[190] Urukiko rw’Ubujurire rusanga, ku mpamvu zagaragajwe haruguru, Urukiko Rukuru rutaragombaga gushingira ku mvugo za Habingoma Théobald yavugiye imbere ya Polisi ya Denmark. Urukiko rw’Ubujurire rusanga kandi kuba mu Bugenzacyaha umutangabuhamya yari yavuze ko hagati y’itariki 8 n’iya 12/04/1994 yari kumwe na Twagirayezu Wenceslas mu gitero cyatangiriye ku kiriziya ya Busasamana kihavuye kijya kuri kaminuza ya Mudende, naho mu Rukiko akaza kuvuga ko ku itariki ya 08/04/1994 yajyanye na Twagirayezu Wenceslas mu gitero cyatangiriye kuri kaminuza ya Mudende gikomereza kuri kiliziya ya Busasamana, ari utuntu duto duto ndetse harebwe igihe gishize ibikorwa bitangwaho ubuhamya bibaye, nta gitangaza kuba umutangabuhamya atakwibuka neza itariki byabereyeho n’aho igitero cyatangiriye.

3. Habinshuti Ruzibiza Jean

[191] Nk’uko bigaragara mu gika cya 153 cy’urubanza rujuririrwa, Urukiko Rukuru rwatesheje agaciro ubuhamya bwa Habinshuti Ruzibiza Jean ruvuga ko hamwe avuga ko kuri kaminuza ya Mudende haterwa ku wa 08/04/1994, yihishe aza kuhava nyuma y’iminsi mike yerekeza ku kiriziya ya Busasamana ari nabwo yahuye n’interahamwe zirimo Twagirayezu Wenceslas, nyamara yongeye kubazwa avuga ko yamubonye ku wa 8/04/1994, umunsi kuri kaminuza ya Mudende haterwa.

[192] Habinshuti Ruzibiza Jean abazwa na Polisi ya Denmark yavuze ko mu bantu bagabye igitero cya kabiri muri Kaminuza ya Mudende ku wa 8/04/1994, yamenyemo Twagirayezu Wenceslas, anavuga ko ku musozi witwa Rwagare yahahuriye n’interahamwe 30, abona Twagirayezu Wenceslas afite imbunda na grenade, ko yanamubonye arasa umwana w’umukobwa. Hari n’aho yageze avuga ko yavuye kuri Kaminuza ya Mudende agahungira kuri kiriziya ya Busasamana nyuma yo guhindura imvugo bitewe n’uko uwamubazaga yari amaze kumubwira ko abandi bavuga ko mu gitondo cyo ku itariki ya 8 Mata 1994, Twagirayezu Wenceslas ashobora kuba yari kuri kiriziya ya Busasamana, maze nawe ahita avuga ko bishoboka ko atari ari mu gitero cya kabiri cyo kuri kaminuza ya Mudende, yanavuze ko yagerageje kuva kuri kaminuza ya Mudende yiruka agana kuri kiriziya ya Busasamana ashaka kujya muri Congo, ko ari mu nzira, ahura n’interahamwe zigeze nko kuri mirongo itatu (30) ku musozi witwa Rwagare[54].

[193] Abazwa n’Ubugenzacyaha yavuze ko yabonye Twagirayezu Wenceslas ku wa 8/4/1994 mu gitero cyaje kuri kaminuza ya Mudende, ko ubwo yahunganga yanamubonye kuri bariyeri ya Gacurabwenge, aho yari atuye afite imbunda. Umutangabuhamya Habinshuti Ruzibiza Jean atanga ubuhamya mu Rukiko Rukuru, yavuze ko ku itariki ya 7/4/1994, bahungiye kuri Kaminuza ya Mudende, ku wa 08/4/1994 saa mbili za mu gitondo haza ibitero birimo icyaturutse Rwagare muri Rwerere Twagirayezu Wenceslas

[53] Urupapuro rwa P-09-160-164.
[54] P- 09-222

akirimo afite imbunda n'inkoni yitwa ntampongano y'umwanzi, ari imbere y'abandi. Yanavuze ko bageze muri Congo, Shyengo Joseph yamubwiye ko no ku kiriziya ya Busasamana Twagirayezu Wenceslas yahageze.

[194] Urukiko rw'Ubujurire rusanga, ku mpamvu zagaragajwe haruguru, Urukiko Rukuru rutaragombaga gushingira ku mvugo Habinshuti Ruzibiza Jean yavugiye imbere ya Polisi ya Denmark ruzigereranya n'izo yavugiye mu nzego z'iperereza no mu Rukiko Rukuru. Urukiko rw'Ubujurire rusanga kandi nta kuvuguruzanya kuri mu byo Habinshuti Ruzibiza Jean yavugiye mu Bugenzacyaha no mu Rukiko Rukuru kuko hose yemeje ko kuri kaminuza ya Mudende hatewe ku itariki ya 8/4/1994 kandi ko Twagirayezu Wenceslas yari mu gitero afite imbunda. Ku bw'ibyo Urukiko Rukuru rwakoze amakosa yo kwemeza ko Habinshuti Ruzibiza Jean yivuguruje ku buryo bukabije.

4. Biryamo Joseph

[195] Nk'uko bigaragara na none mu gika cya 153 n'icya 159 by'urubanza rujuririrwa, ubuhamya bwa Biryamo Joseph bwateshejwe agaciro bitewe n'uko yavuze ko nyuma y'ibitero byo kaminuza ya Mudende na kiriziya ya Busasamana byo ku wa 8/4/1994 bagiye kwihemba kuri Komini Rwerere bari kumwe na Twagirayezu Wenceslas, mu gihe Habingoma Théobald we avuga ko nyuma y'ubwicanyi bw'i Mudende na Busasamana bakomereje ku Ishuri rya Saint Fidèle, "Commune rouge" no ku Nyundo bari kumwe na Twagirayezu Wenceslas, naho DTC akavuga ko ubwicanyi bwo ku kiriziya ya Busasamana bwabaye ku wa 8/4/1994, bukomereza kuri Duwani Kabuhanga aho bita i Kinyogo. Bwanateshejwe agaciro kubera ko hari aho yavuze ko mu gitero cy'i Busasamana ku wa 7/4/1994, Twagirayezu Wenceslas wari witwaje umuhoro yishe abagore batatu (3) n'abana babiri (2) abatemaguye mu gihe DTC we avuga ko mu gitero cy'i Busasamana ku wa 7/4/1994, Twagirayezu Wenceslas yakoresheje imbunda yica abari imbere mu kiriziya ya Busasamana.

[196] Biryamo Joseph abazwa na Polisi ya Denmark yavuze ko ku wa 7/4/1994 yabonye Twagirayezu Wenceslas mu gitero cyo kuri kiliziya ya Busasamana ayoboye agatsiko k'interahamwe karimo na Bikindi Simon na DTC bafite pistolet n'izindi mbunda ariko Twagirayezu Wenceslas we afite umuhoro kandi yanawukoresheje yica abagore batatu (3) n'abana (2) abatemaguye.

[197] Abazwa mu Bugenzacyaha bw'u Rwanda, Biryamo Joseph yavuze ko igitero cyo kuri Kaminuza ya Mudende cyabaye ku wa 12/4/1994, ko kandi bakivuyemo bagiye kuri kiriziya ya Busasamana bahasanga Twagirayezu Wenceslas.

[198] Biryamo Joseph atanga ubuhamya mu Rukiko Rukuru yavuze ko ku itariki ya 8/4/1994 saa mbiri bari kumwe n'interahamwe, burugumesitiri n'abasirikare bayobowe na Nguyeneza bagiye kwica i Mudende bahageze bahasanga umugenzuzi Bunani Jean na Twagirayezu Wenceslas wari ufite imbunda, hari n'itsinda ry'abantu benshi barimo konseye, aba resiponsabule, abasirikare n'abapolisi, ko barangije saa sita zuzuye (12h00) bakajya Busasamana, kandi ko aho hose Twagirayezu Wenceslas yari afite imbunda ari na yo yicishije Gasanduku na Kanyarutoki bari mu mpunzi zari ku kiriziya ya Busasamana .

[199] Urukiko rw'Ubujurire rusanga, ku mpamvu zagaragajwe haruguru[55], Urukiko Rukuru rutaragombaga gushingira ku mvugo Biryamo Joseph yavugiye imbere ya Polisi ya Denmark ruzigereranya n'izo yavugiye mu nzego z'iperereza no mu Rukiko Rukuru, kandi ko rutagombaga no kuzigereranya n'iza DTC nawe yavugiye muri urwo rwego.

[200] Ku byerekeye aho mu buhamya bwe, Biryamo Joseph avuga ko ku wa 8/4/1994 bavuye mu bitero byo kuri kaminuza ya Mudende no ku kiriziya ya Busasamana bagiye kuri komine Rwerere kwihemba bari kumwe na Twagirayezu Wenceslas, naho Habingoma Théobald we akavuga ko ku wa 8/4/1994 nyuma

[55] Reba igika cya 184 cy'uru rubanza.

y'ubwicanyi bakomereje ku ishuri rya Saint Fidèle, "Commune rouge" no ku Nyundo bari kumwe na Twagirayezu Wenceslas, mu gihe DTC yavuze ko nyuma y'ubwicanyi bwo ku kiriziya ya Busasamana bwo ku wa 8/4/1994 bakomereje kuri douane Kabuhanga aho bita i Kinyogo, Urukiko rw'Ubujurire rusanga kuba badahuza ku byo bakoze nyuma y'ibitero babaga bavuyemo ari ibintu bidatangaje urebye igihe gishize nk'uko byasobanuwe mu rubanza rwa Bikindi Simon rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda no mu manza zaciwe n'uru Rukiko zibukijwe haruguru, kuko icy'ingenzi ari uko abatangabuhamya bose bahuriza ku kuba bari kumwe na Twagirayezu Wenceslas mu bitero byo kuri kaminuza ya Mudende n'ibyo ku kiriziya ya Busasamana.

5. Shyengo Joseph

[201] Nk'uko bigaragara na none mu gika cya 159 cy'urubanza rujuririrwa, Urukiko Rukuru rwatesheje agaciro ubuhamya bwa Shyengo Joseph kubera ko hamwe avuga ko iby'uruhare rwa Twagirayezu Wenceslas mu bwicanyi bw'i Busasamana yabibwiwe na DTC, nyamara yongeye kubazwa avuga ko yamwiboneye muri icyo gitero.

[202] Umutangabuhamya Shyengo Joseph abazwaga na Polisi ya Denmark yavuze ko iby'uko ko Twagirayezu Wenceslas yagize uruhare mu bwicanyi bwabereye ku kiriziya ya Busasamana yabibwiwe na DTC, ko we ubwe atari yarigeze yumva avugwa mu bundi bwicanyi.

[203] Abazwa n'Ubugenzacyaha bw'u Rwanda, Shyengo Joseph yavuze ko ku itariki ya 8/4/1994 mu gitondo nka saa tatu (9h00), ubwo yari yahungiye kuri kiriziya ya Busasamana yabonye Twagirayezu Wenceslas mu gitero afite imbunda, interahamwe zirimo kumusaba kuzitiza ngo zirase, zimwita mwarimu, ko ariko atamenye abantu we yishe ku giti cye.

[204] Umutangabuhamya Shyengo Joseph atanga ubuhamya mu Rukiko, yavuze ko ku itariki ya 8/4/1994 yahungiye kuri paruwasi ya Busasamana, ko yabonye Twagirayezu Wenceslas afite imbunda ariko atabonye ayirashisha, hari n'aho avuga ko yabanje guhungira kuri kaminuza ya Mudende, igitero kije nka saa kumi n'ebyiri za mugitondo, ahava yiruka ahungira kuri kiriziya ya Busasamana, ahagera nka saa mbili na mirongo ine.

[205] Urukiko rw'Ubujurire rusanga, ku mpamvu zagaragajwe haruguru[56], Urukiko Rukuru rutaragombaga gushingira ku mvugo Shyengo Joseph yavugiye imbere ya Polisi ya Denmark ruzigereranya n'izo yavugiye mu Bugenzacyaha no mu Rukiko.

[206] Urukiko rw'Ubujurire rurebye ubuhamya bwe mu Rukiko, rusanga buhura n'imvugo ze mu Bugenzacyaha kuko hose yemeje ko ku wa 8/4/1994 yiboneye Twagirayezu Wenceslas mu gitero cyo ku kiriziya ya Busasamana afite imbunda. Bityo Urukiko Rukuru rukaba rwarakoze amakosa yo kwemeza ko imvugo ze zivuguruzanya mu buryo bukabije.

6. Umutangabuhamya DTC

[207] Nk'uko bigaragara na none mu gika cya 159 cy'urubanza rujuririrwa, Urukiko Rukuru rwatesheje agaciro ubuhamya bwa DTC kubera ko hamwe avuga ku wa 7/4/1994 hagati ya saa tatu (9h00) na saa munani (14h00) yagiye mu gitero cy'i Busasamana ari mu modoka atwaye Twagirayezu Wenceslas; ahandi akavuga ko kuri iyi tariki nka saa saba (13h00), ari kuri bariyeri, yabonye Twagirayezu Wenceslas aje mu gitero i Busasamana ari muri bisi ya ONATRACOM. Indi mpamvu rwashingiyeho ni uko yavuze ko ubwicanyi bw' i Busasamana bwabaye ku wa 8/4/1994, bukomereza kuri douane Kabuhanga aho bita i Kinyogo; mu gihe Biryamo Joseph avuga ko nyuma y'igitero cyo ku wa 8/4/1994 i Busasamana n'i Mudende bakomereje kuri Komini Rwerere kwihemba, naho Habingoma Théobald we akavuga ko ku wa

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[56] Reba igika cya 184 cy'uru rubanza.

8/4/1994 nyuma y'ibitero by'i Mudende na Busasamana bakomereje Saint Fidèle, ku Nyundo no kuri "commune rouge" hose bari kumwe na Twagirayezu Wenceslas.

[208] Umutangabuhamya DTC abazwa na Polisi ya Denmark yavuze ko ku itariki ya 7/4/1994 bagiye ku kiriziya cya Busasamana atwaye Twagirayezu Wenceslas mu modoka, mu nzira bahura n'abasirikare 10 n'interahamwe zirenga 100, interahamwe zimena urugi rwa kiriziya zica abantu bari hagati ya 200 na 300, ko muri ubwo bwicanyi bwo ku Kiriziya Twagirayezu Wenceslas yabugizemo uruhare akoresheje imbunda ye.

[209] Abazwa mu Bugenzacyaha yavuze ku wa 7/4/1994, mu ma saa sita cyangwa saa saba, yamubonye muri bisi ya ONATRACOM bavuye Gacurabwenge bari kumwe n'abantu benshi bavuye muri Segiteri zitandukanye, bamusanga kuri bariyeri yariho hamwe n'abandi, baje mu gitero cya Busasamana aho bishe Abatutsi benshi barenga 200, ko muri icyo gitero Twagirayezu Wenceslas yari afite imbunda. Naho DTC atanga ubuhamya mu Rukiko Rukuru, yavuze ko ku wa 8/4/1994 saa ine (10h00) mu bwicanyi bwabereye i Busasamana, yari kumwe na Twagirayezu Wenceslas wari ufite imbunda ya R4, nyuma bakomereza kuri douane Kabuhanga aho bita Kinyogo nko mu ma saa saba, naho ku wa 9/4/1994 bajya mu bwicanyi bw'i Mudende Twagirayezu Wenceslas afite imbunda.

[210] Urukiko rw'Ubujurire rusanga, ku mpamvu zagaragajwe haruguru, Urukiko Rukuru rutaragombaga gushingira ku mvugo za DTC yavugiye imbere ya Polisi ya Denmark ruzigereranya n'izo yavugiye mu Bugenzacyaha no mu Rukiko.

[211] Urukiko rw'Ubujurire rusanga, uretse kunyuranya ku matariki igitero cyo kuri kiriziya ya Busasamana cyabereyeho kuko mu Bugenzacyaha yaravuze ku itariki ya 7/4/1994, mu Rukiko akavuga ko cyabaye ku itariki ya 8/4/1994, bitari gutuma ubuhamya bwe buteshwa agaciro ku mpamvu y'uko buvuguruzanya ku byerekeye amatariki ibitero byabereyeho kuko, nk'uko byasobanuwe, ari utuntu duto harebwe igihe gishize ibyo atangaho ubuhamya bibaye.

[212] Urukiko rw'Ubujurire rusanga nk'uko byasobanuwe haruguru, kuba yaravuze ko ku wa 8/4/1994 bavuye Busasamana bagakomereza kuri douane ya Kabuhanga aho bita i Kinyogo, hatandukanye n'aho Biryamo Joseph avuga ko nyuma y'igitero cyo ku kiriziya ya Busasamana n'icyo kuri kaminuza ya Mudende bakomereje kuri Komini Rwerere kwihemba, naho Habingoma Théobald we akavuga ko bakomereje ku ishuri Saint Fidèle, ku Nyundo no kuri "commune rouge", hose bari kumwe na Twagirayezu Wenceslas, atari impamvu ihagije yatesha agaciro ubuhamya bwe, kuko icy'ingenzi bahurizaho bose ari uko bari kumwe mu gitero cyo ku kiriziya ya Busasamana n'icyo kuri kaminuza ya Mudende.

[213] Urukiko rw'Ubujurire rurebye ko ibikorwa batangaho ubuhamya byabaye mu kwezi kwa kane 1994, bakaba barabitanzeho ubuhamya mu Rukiko mu kwezi kwa kane 2022 hashize imyaka 28 bibaye, biroroshye ko hari ibyo bashobora kutibuka neza igihe byabereye, uko byakurikiranye cyangwa bakagira ibyo bibagirwa cyangwa ntibavuge kimwe uko ibintu byagenze. Icy'ingenzi, nk'uko byasobanuwe mu bika bibanziriza iki, akaba ari uko abatangabuhamya bashinja bahuriza ku kuba bari kumwe na Twagirayezu Wenceslas mu bitero byo kuri kaminuza ya Mudende no ku kiriziya ya Busasamana byishe Abatutsi bari bahahungiye, kandi kuri ibyo hakaba nta kuvuguruzanya kuriho.

[214] Urukiko rugasanga rero Urukiko Rukuru rwarakoze ikosa ryo kwemeza ko nta ruhare Twagirayezu Wenceslas yagize mu gitero cyo kuri Kaminuza ya Mudende n'icyo kuri Kiriziya ya Busasamana rushingiye ku kuba ubuhamya bumushinja buvuguruzanya, kuko uru Rukiko rwasanze ibyo badahurizaho ari utuntu duto tutagomba gutesha agaciro ireme ry'ubuhamya bwabo.

b. Bariyeri yo kwa Gacamena

[215] Nk'uko bigaragara mu gika cya 166 cy'urubanza rujuririrwa, Urukiko Rukuru rwagaragaje ko isesengura ry'imvugo zatanzwe ku byerekeranye n'uruhare rwa Twagirayezu Wenceslas kuri bariyeri yiswe iyo kwa Gacamena rigaragaramo ukwivuguruza no kuvuguruzanya bikabije mu buryo bukurira:

- Nsengiyumva Kanyamishoro Innocent, yabanje kuvuga ko ku wa 9/4/1994 yasanze abagabo babiri (2) n'umukobwa umwe (1) biciwe kuri bariyeri yo kwa Gacamena, ariko atamenye ababishe, nyamara yongeye kubazwa avuga ko kuri iyi tariki Twagirayezu Wenceslas yavumbuye Abatutsi abicisha imbunda;

- Gasenge Etienne, hamwe avuga ko atigeze yumva ko hari Abatutsi biciwe kuri bariyeri yo kwa Gacamena, yongeye kubazwa avuga ko hari umugore wari uhetse umwana wiciwe kuri iyi bariyeri na Bunani Jean, Twagirayezu Wenceslas na we ahari;

- DTB yabanje kuvuga ko atavuga ko Twagirayezu Wenceslas yishe kanaka kuko nta gitero bajyanyemo, ahandi akavuga ko yagiye mu bitero hirya no hino ndetse ko ku wa 8/4/1994, kuri bariyeri yo kwa Gacamena hicirwa abantu cumi na batandatu (16), Twagirayezu Wenceslas yari ahari, afite intwaro gakondo yitwa ntampongano y'umwanzi;

- Ku bijyanye n'Abatutsi batatu (3) biciwe kuri bariyeri, Kanyamishoro Nsengiyumva Innocent avuga ko ari abagabo babiri (2) n'umukobwa umwe (1); DTA akavuga ko ari abagore babiri (2) n'umusore, ahandi akavuga ko ari umugore, umugabo n'umwana; DTC we avuga ko ari abagore babiri (2) n'umugabo umwe (1);

- Ku bijyanye n'uburyo aba Batutsi batatu (3) bishwe, Nsengiyumva Kanyamishoro Innocent avuga ko atamenye ababishe, ahandi akavuga ko bicishijwe imbunda; DTA na DTC bo bavuga ko bicishijwe amahiri.

[216] Urukiko rw'Ubujurire rusanga mu gutesha agaciro ubuhamya bwatanzwe ku ruhare rwa Twagirayezu Wenceslas kuri bariyeri yo kwa Gacamena, Urukiko Rukuru rwaragereranyije ubuhamya bwantangiwe mu Rukiko, imvugo z'abatangabuhamya mu Bushinjacyaha, mu Bugenzacyaha n'ibyo bavuze babazwa na Polisi ya Denmark, ibyo bavuga ku bantu bahaguye, umubare wabo, kuba bari abagore cyangwa abagabo cyangwa abana, uruhare rwa Twagirayezu Wenceslas mu iyicwa ryabo, intwaro bicishijwe, ndetse no ku matariki byabereyeho.

[217] Mu bika bikurikiyeho, Urukiko rw'Ubujurire rurasuzuma ibivugwa n'abatangabuhamya bashinja ku byabaye kuri bariyeri yo kwa Gacamena.

1. Nsengiyumva Kanyamishoro Innocent

[218] Urukiko Rukuru rwatesheje agaciro ubuhamya bwa Nsengiyumva Kanyamishoro Innocent, ruvuga ko ubwo yabazwaga na Polisi ya Denmark yabanje kuvuga ko ku wa 9/4/1994 yasanze abagabo babiri (2) n'umukobwa umwe (1) biciwe kuri bariyeri yo kwa Gacamena ariko atamenye ababishe, nyamara atanga ubuhamya mu Rukiko Rukuru avuga ko kuri iyo tariki Twagirayezu Wenceslas yavumbuye Abatutsi abicisha imbunda.

[219] Dosiye y'urubanza igaragaza ko Nsengiyumva Kanyamishoro Innocent abazwa na Polisi ya Denmark yabanje kuvuga ko nta ruhare rwa Twagirayezu Wenceslas azi, ariko nyuma arahindura avuga ko hari ibyaha yakoze muri jenoside ariko ko atashakaga kubivuga kuko Twagirayezu Wenceslas ari se wabo w'umugore we. Yakomeje avuga ko Twagirayezu Wenceslas yari umuyobozi wa bariyeri yari i Gacurabwenge, yanavuze ko we yagiye kuri bariyeri inshuro nyinshi ku nzu y'umucuruzi witwa Gacamena nko ku itariki ya 9/4/1994, yariho abantu bari hagati ya 20 na 30 bafite imihoro, amahiri n'izindi ntwaro za gakondo, afite imbunda ye. Yanavuze ko yamenye Twagirayezu Wenceslas, kuko ari we wari ufite ijambo kuri iyo bariyeri; ko yahageze nko mu ma saa sita abona imirambo itatu y'abagabo babiri n'umukobwa

umwe w'imyaka 18 irambaraye hasi nko kuri metero 20 uvuye kuri bariyeri, ko atamenye uwabishe, ariko yumvaga ko bishwe n'abantu bari kuri iyo bariyeri.

[220] Uyu mutangabuhamya abazwa mu Bugenzacyaha bw'u Rwanda yavuze ko yajyanaga na Twagirayezu Wenceslas kwica, ko mu kwezi kwa 4/1994 ari ku wa kane hari abantu batatu (3) barimo umukobwa umwe n'abagabo babiri yiciye kuri bariyeri ya Gacurabwenge akoresheje imbunda.

[221] Umutangabuhamya Nsengiyumva Kanyamishoro Innocent atanga ubuhamya mu Rukiko yavuze ko ku itariki ya 9/4/1994 saa munani z'amanywa (14h00) Twagirayezu Wenceslas "yavumbuye" Abatutsi, ahandi avuga ko "bavumbuye" Abatutsi kuri Rwagare aho bita kwa Gacamena babirukaho, Twagirayezu Wenceslas aba ari we ubicira aho akoresheje imbunda y'urukara atazi ubwoko, ko Abatutsi baguye kuri iyo bariyeri ari benshi.

[222] Ku byerekeye amakuru yatangiye kuri Polisi ya Denmark aho avuga ko yabonye imirambo y'abantu batatu (3), ariko ko atamenye uwabishe, Urukiko rw'Ubujurire rusanga ayo makuru adakwiye gushingirwaho kuko afite inenge nk'uko zakomeje kugarukwaho zijyanye no kuba inyandiko akubiyemo zitarasinywe n'umutangabuhamya, ndetse yaba umutangabuhamya, yaba n'abasemuzi bakaba batararahiye. Bityo, Urukiko Rukuru rukaba rutaragombaga kuyashingiraho mu gutesha agaciro ubuhamya yatangiye mu Bugenzacyaha, ndetse akanabisobanura imbere y'u Rukiko.

[223] Urukiko rw'Ubujurire rusanga mu buhamya bwe mu Rukiko no mu Bugenzacyaha, Nsengiyumva Kanyamishoro Innocent yaragaragaje ko hari abantu Twagirayezu Wenceslas yarasiye kuri bariyeri yo kwa Gacamena, ibyo bikaba byari bikwiye guhabwa agaciro n'ubwo hamwe avuga ko ari kuri bariyeri yo kwa Gacamena ku itariki ya 9/4/1994, ahandi akavuga kuri bariyeri ya Gacurabwenge mu kwezi kwa kane 1994, ariko atibuka itariki. Nk'uko byasobanuwe no ku bandi batangabuhamya, kutibuka amatariki cyangwa kuvuga ku buryo butandukanye aho ibintu byakorewe si inenge ikomeye yatuma ubuhamya butakaza ireme ryabwo, kuko icyangombwa ari uko Nsengiyumva Kanyamishoro Innocent yahamije ko hari abantu Twagirayezu Wenceslas yiciye kuri bariyeri yo kwa Gacamena mu Gacurabwenge, ndetse mu Rukiko Rukuru agasobanura neza itariki byabereyeho[57].

2. Gasenge Etienne

[224] Urukiko Rukuru rwasanze Gasenge Etienne, hamwe avuga ko atigeze yumva ko hari Abatutsi biciwe kuri bariyeri yo kwa Gacamena, yongeye kubazwa avuga ko hari umugore wari uhetse umwana wiciwe kuri iyi bariyeri na Bunani Jean, Twagirayezu Wenceslas na we ahari.

[225] Gasenge Etienne, abazwa na Polisi ya Denmark, yavuze ko yari azi ko i Gacurabwenge hari bariyeri, ariko ko atari yarigeze yumva havugwa iyicwa ry'Abatutsi kuri iyo bariyeri; abazwa n'Ubushinjacyaha ku wa 22/5/2020, yavuze ko nta ruhare rwa Twagirayezu Wenceslas azi nyuma y'urupfu rwa Perezida Habyarimana mu mwaka wa1994, ko kuri bariyeri yo kwa Gacamena ari Bunani Jean wari ufite imbwa yahigishaga Abatutsi, ko atazi niba Twagirayezu Wenceslas yari ayiriho, ariko yongeye kubazwa mu Bushinjacyaha ku wa 23/11/2021 avuga ko kuri iyo bariyeri yo kwa Gacamena, Bunani Jean yaharasiye umugore amuca ibere ariha imbwa, Twagirayezu Wenceslas ahari.

[226] Gasenge Etienne atanga ubuhamya mu Rukiko Rukuru yavuze ko Twagirayezu Wenceslas n'umugenzuzi w'amashuri witwaga Bunani Jean babaga kuri bariyeri yo kwa Gacamena, ko ku wa 8/4/1994 yamubonye ahagaze nk'umuyobozi avugana na Bunani Jean, ko ariko atumvise icyo bavuganaga, yanavuze ko mu bicanyi yibuka bari kuri iyo bariyeri barimo Bunani Jean wahigishaga abantu imbwa, Munyarwerere na Twagirayezu Wenceslas, ko ndetse Bunani Jean yahiciye umugore, amuca ibere ariha imbwa.

[57] Reba inyandiko y'iburanisha yo ku ku wa 18/04/2022.

[227] Nk'uko bigaragara mu mvugo ze, Gasenge Etienne abazwa mu Bushinjacyaha, yavuze ko nta ruhare rwa Twagirayezu Wenceslas azi, yongeye kubazwa avuga ko kuri bariyeri yo kwa Gacamena, Bunani Jean yaharasiye umugore amuca ibere ariha imbwa, Twagirayezu Wenceslas ahari, naho atanga ubuhamya mu Rukiko yavuze ko mu bicanyi yibuka bari kuri bariyeri yo kwa Gacamena barimo Bunani Jean wahigishaga abantu imbwa, Munyarwerere na Twagirayezu Wenceslas.

[228] Umutangabuhamya Gasenge Etienne abazwa mu Bushinjacyaha ku wa 23/11/2021, ntacyo yavuze ku bijyanye n'akazi, ahubwo yavuze ko azi Twagirayezu Wenceslas, ko ari mwene Semugeshi Naason naho nyina yitwa Ntawukazi Rose, ababyeyi be bari batuye muri komine Rwerere[58]. Ku kibazo cyo kumenya niba azi Twagirayezu Wenceslas, yasubije ko amuzi kuko yabaye kuri Munanira ari umwarimu kandi nawe yahize, ahavuye ajya kwiga muri Zaïre, avuye yo ajya kwigisha mu mashuri y'ababaptiste kuri Gacuba ya kabiri, yanavuze ko baziranye, ko n'ikimenyimenye yeretse ubushinjacyaha cyangwa ubutabera ifoto ye[59]. Muri iri bazwa yerekanye ifoto ya Twagirayezu Wenceslas avuga ko yayihawe n'umuhungu wabo wabanaga na nyina muri Congo, barikumutereta kugirango azamushinjure, abasaba ifoto ababeshya ko atamwibuka barayimuha, ariko ko yayisabye kugira ngo azayerekane mu butabera nk'umuntu yari asanzwe azi.

[229] Uru Rukiko rusanga umutangabuhamya Gasenge Etienne adakwiye kwizerwa kuko haba mu Rukiko Rukuru, haba no mu Bushinjacyaha yabazwaga afite ifoto ya Twagirayezu Wenceslas, avuga ko ari ikimenyetso cy'uko amuzi kandi ko yayihawe n'abo mu muryango we kugira ngo azamushinjure. Uru Rukiko rusanga uko kugendana ifoto y'uwo ashinja bigaragaza ahubwo ko atari amuzi neza kuko yayifashishaga kugira ngo ijye imwibutsa uwo avuga no kwemeza abo abwira ko amuzi.

3. DTA

[230] Uyu mutangabuhamya abazwa na Polisi ya Denmark yavuze ko hagati y'itariki ya 10 n'iya 12/4/1994, kuri bariyeri yari imbere y'umucuruzi witwa Gacamena yariho abantu benshi bafite intwaro gakondo, yabashije kumenyamo Twagirayezu Wenceslas, Rukara na Claver, hafatiwe umugabo, umugore n'umwana, Twagirayezu Wenceslas abaka indangamuntu, maze yegera Bunani Jean wari umuyobozi wa bariyeri amubwira ko abo bantu ari Abatutsi, Bunani Jean ahita atanga amabwiriza yo kubica uko ari batatu, babajyana kure ya bariyeri munsi y'igiti babakubita amahiri kugeza bapfuye.

[231] Abazwa mu Bugenzacyaha, DTA yavuze ko hagati y'itariki ya 9 n'iya 15/4/1994, mu ma saa ine cyangwa saa saba, yabonye Twagirayezu Wenceslas kuri bariyeri yo kwa Gacamena ari kumwe na Bunani Jean, Ntamfura na Claver bafashe abagore babiri b'Abatutsikazi n'umwana w'umusore uri hagati y'imyaka 14 na 17, babajyana kwa Munyazogeye Alphonse wari umunyamakuru nko muri metero 60 uvuye kuri bariyeri, babicisha amahiri babahamba munsi y'igiti cy'avoka.

[232] Umutangabuhamya DTA atanga ubuhamya mu Rukiko yavuze ko Twagirayezu Wenceslas yagize uruhare mu iyicwa ry'Abatutsikazi babiri n'umusore ubwo bari bageze kuri bariyeri yo kwa Gacamena bashaka kwambuka bajya muri RDC, akabahagarika ababaza ibyangombwa, babibuze atangira kubakubita, afatanya n'abandi kubica, babahamba munsi y'avoka yo kwa Munyazogeye, ko agenekereje yibuka ko ubu bwicanyi bwabaye ku wa 10/4/1994. Yanasobanuye ko bicishijwe inkoni, kandi ko bafatanyije kubica, ko barasaga uwirukanse; yongeraho ko Twagirayezu atakoresheje imbunda ya R4 yari afite, yakoresheje amahiri.

[233] Urukiko rw'Ubujurire rusanga nk'uko byavuzwe no ku bandi batangabuhamya imvugo DTA yavugiye muri Polisi ya Denmark zitaragombaga gushingirwaho mu gutesha agaciro ubuhamya DTA yatangiye mu Rukiko no mu Bugenzacyaha kubera inenge zavuzwe. Naho ibyo yavugiye mu

[58] Inyandiko y'ibazwa rya Gasenge Etienne mu Bushinjacyaha ku wa 23/11/2021.
[59] Reba inyandikomvugo yok u wa 22/05/2020, ikibazo cya 13.

Bugenzacyaha no mu Rukiko bigaragara ko nta kwivuguruza kurimo kuko haba mu Rukiko, haba no mu Bugenzacyaha yagaragaje ko Twagirayezu Wenceslas yagize uruhare mu iyicwa ry'Abatutsikazi babiri n'umusore umwe kuri bariyeri yo kwa Gacamena akoresheje amahiri hagati y'itariki ya 9 n'iya 15/04/1994.

4. DTB

[234] Urukiko Rukuru rwatesheje agaciro ubuhamya bwa DTB rushingiye ku kuba yarabanje kuvuga ko atavuga ko Twagirayezu Wenceslas yishe kanaka kuko nta gitero bajyanyemo, ahandi akavuga ko yagiye mu bitero hirya no hino, ndetse ko ku wa 8/4/1994, kuri bariyeri yo kwa Gacamena hiciwe abantu cumi na batandatu (16), Twagirayezu Wenceslas ahari, afite intwaro gakondo yitwa ntampongano y'umwanzi.

[235] DTB, abazwa na Polisi ya Denmark, yavuze ko muri jenoside hari bariyeri hafi yo kwa Gacamena, ko yayigiyeho inshuro eshatu (3), kandi ko muri izo nshuro zose yahabonye Twagirayezu Wenceslas, ko hari umunsi umwe yabonye imirambo y'abantu nk'icumi (10) cyangwa cumi na babiri (12) hafi y'iyo bariyeri hari insoresore nyinshi zirimo na Twagirayezu Wenceslas.

[236] Uyu mutangabuhamya ubwo yabazwaga n'Ubugenzacyaha yavuze ko Twagirayezu Wenceslas yakoraga kuri bariyeri yari imbere yo kwa Gacamena hafi y'aho yatahaga kwa mushiki we witwa Ukwitegetse Léoncie, ko yabaga afite intwaro gakondo y'impiri bitaga ntampongano y'umwanzi, ko iyo bariyeri yari yarashyizweho kuva mu mwaka wa 1992 kugeza mu mwaka wa 1994 n'ubuyobozi bwa Segiteri Gacurabwenge kugira ngo bajye bahiga Abatutsi n'abo bitaga ibyitso byabo, ko atavuga ko hari umuntu Twagirayezu Wenceslas yishe kuko nta gitero yigeze ajyanamo nawe, ko icyo azi ari uko yakoraga kuri iyo bariyeri.

[237] Umutangabuhamya DTB atanga ubuhamya mu Rukiko yavuze ko bariyeri yo kwa Gacamena yashinzwe kuva mu mwaka wa 1992 mu gihe cy'ibyitso, ko mu mwaka wa 1994 hari umusaza witwa Rusesa wayikubitiweho Twagirayezu Wenceslas ahari, arengerwa n'abaturage ariko bamujyana ku cyahoze ari Komini arafungwa, ko Twagirayezu Wenceslas yayibayeho kugeza igihe cya jenoside aho yagiye mu bwicanyi kimwe n'abandi, kuko ku wa 8/4/1994 yayimubonyeho, kandi ko uwo munsi mu gitondo yagize uruhare mu iyicwa ry'abantu cumi na batandatu (16) bahiciwe, ko icyo gihe kuri iyo bariyeri hari imbunda ebyiri (2),Twagirayezu Wenceslas we yari afite intwaro gakondo yitwa ntampongano y'umwanzi.

[238] Urukiko rw'Ubujurire rusanga nk'uko byavuzwe no ku bandi batangabuhamya imvugo DTB yavugiye muri Polisi ya Denmark zitaragombaga gushingirwaho mu gutesha agaciro ubuhamya yatangiye mu Rukiko no mu Bugenzacyaha kubera inenge zavuzwe.

[239] Urukiko rw'Ubujurire rusanga icyo ubuhamya DTB yatanze mu Rukiko n'imvugo ze mu Bugenzacyaha bihurizaho ari uko Twagirayezu Wenceslas yabaga kuri bariyeri yo kwa Gacamena afite ubuhiri, mu Rukiko asobanura neza ko ku itariki ya 8/4/1994 hiciwe abantu 16 Twagirayezu Wenceslas ahari.

[240] Urukiko rw'Ubujurire rusanga uyu mutangabuhamya ativuguruza, kuko, n'ubwo abazwa mu Bugenzacyaha yavuze ko atahamya ko Twagirayezu Wenceslas yishe kanaka kuko nta gitero bajyanyemo, yashimangiye ko yabaga ari kuri bariyeri yo kwa Gacamena afite intwaro gakondo. Ibi bikaba bitavuguruza ibyo yahamije imbere y'Urukiko ko ku wa 8/4/1994 mu gitondo kuri bariyeri yo kwa Gacamena hiciwe abantu 16, kuko icyangombwa ari uko yagaragaje ko Twagirayezu Wenceslas yari kuri iyo bariyeri yiciweho abantu.

5. DTC

[241] Nk'uko bigaragara mu gika cya 166 cy'urubanza rujuririrwa, ubuhamya bwa DTC ku byerekeye bariyeri yo kwa Gacamena bwateshejwe agaciro kubera kubugereranya n'ubwa Nsengiyumva Kanyamishoro Innocent, ndetse n'ubwa DTA banyuranya ku gitsina cy'abantu bishwe n'intwaro zakoreshejwe.

[242] Uyu mutangabuhamya abazwa na Polisi ya Denmark yavuze ko ku wa 7/4/1994, bishe abagore 3 n'umugabo umwe bahawe amabwiriza na Twagirayezu Wenceslas, ko ariko we nta muntu yishe, ko bamaze kwica abo bantu bagiye ku kiriziya ya Busasamana amutwaye mu modoka. Yanavuze ko yari umuyobozi wa bariyeri zose zo muri Segiteri ya Gacurabwenge.

[243] DTC, abazwa n'Ubugenzacyaha yavuze ko hagati y'itariki ya 7 n'iya 9/4/1994 mu ma saa yine (10h00), ubwo yari agiye gupakira imboga ahitwa mu Kinogo yabonye Twagirayezu Wenceslas kuri bariyeri yo kwa Gacamena afite imbunda ya Kalachnikov ari kumwe n'abasore bagera kuri batanu barimo KAMERE wa Gacamena, abona kuri iyo bariyeri bamaze kuhicira abantu 3 barimo abagore 2 n'umugabo umwe.

[244] Umutangabuhamya DTC atanga ubuhamya mu Rukiko, yahamije ko yari hamwe na Twagirayezu Wenceslas mu bwicanyi bwabereye iwabo kwa Gacamena ku wa 8/4/1994 mu gitondo cya kare afite imbunda ya R4.

[245] Uru Rukiko rukaba rusanga ubuhamya bwe buhuriza ku kuba Twagirayezu Wenceslas yarabaga kuri bariyeri yo kwa Gacamena afite imbunda, hakicirwa abantu. Naho kuba abazwa mu Bugenzacyaha yaravuze ko kuri iyo bariyeri hiciwe abantu hagati y'itariki ya 7 n'iya 9/4/1994, mu Rukiko Rukuru agahamya ko byabaye ku wa 8/4/1994, ntibyatesha agaciro ubuhamya bwe harebwe ibyasobanuwe haruguru ku birebana n'uko harebwe igihe gishize ibyo atangaho ubuhamya bibaye byoroshye kwibeshya ku itariki, uretse ko n'itariki ya 8/4/1994 yavuze iri hagati mu matariki yavuze. Naho kuba yaravuze ko yari afite imbunda yo mu bwoko bwa kalachnikov ahandi akavuga R4, ibyo ntibyari gutuma ubuhamya bwe buteshwa agaciro, kuko uretse n'uko yasobanuriye Urukiko Rukuru icyo yashakaga kuvuga, ntibinatangaje kwitiranya ayo moko yombi y'izo mbunda ku muturage udasanzwe azikoresha.

[246] Muri rusange rero, kubireba ubwicanyi bwabereye kuri bariyeri yo kwa Gacamena, uru Rukiko rurasanga, uretse ibyavuzwe na Gasenge Etienne Urukiko rwasanze bitagomba guhabwa agaciro, abandi batangabuhamya batanzwe n'Ubushinjacyaha bahuriza ku kuba Twagirayezu Wenceslas yarabaga kuri bariyeri yo kwa Gacamena; kuba iyo bariyeri yariciweho abantu no kuba Twagirayezu Wenceslas yari afite intwaro. Naho ibyo badahurizaho akaba ari amatariki abantu biciweho, umubare wabo n'igitsina byabo, ikigero cyabo mu myaka n'intwaro bicishijwe.

[247] Urukiko rusanga ariko, nk'uko byasobanuwe mu bika bibanziriza iki, ibi bikaba ari ibintu bito bitari gutuma ubuhamya bwabo buteshwa agaciro. Koko rero, harebwe igihe gishize ubwicanyi bwabereye kuri bariyeri yo kwa Gacamena bubaye, ntibitangaje kuba badahuza imvugo ku bijyanye n'abantu bishwe harebwe ibitsina byabo, amatariki biciweho, kuba bakwibeshya ku ntwaro zakoreshejwe, cyane cyane ko hari abavuga ko kuri iyo bariyeri habaga hari abafite imbunda, abandi bafite intwaro gakondo. Uru Rukiko rurasanga rero Urukiko Rukuru rwarakoze ikosa mu kwemeza ko nta bwicanyi bwabereye kuri bariyeri yo Gacamena, ko nta n'uruhare Twagirayezu Wenceslas yabugizemo.

c. Ibyerekeye ubwicanyi bwo kuri ISAR-Tamira

[248] Ingingo ya 183, agace ka 5o n'aka 6o, y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha n'ingingo ya 18 y'Itegeko n° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda zumvikanisha ko ubujurire bukorwa mu buryo bw'umwanzuro utanga ikirego, ugaragaza urutonde rw'inenge z'urubanza zisabirwa gukosorwa n'ibindi bibazo bigomba gusuzumwa n'ibisobanuro kuri buri nenge cyangwa kuri buri kibazo bigaragaza amakosa yakozwe

n'uburyo agomba gukosorwa hashingiwe ku mategeko n'ibimenyetso n'igisabwa urukiko. Mu yandi magambo, unenga imikirize y'urubanza rujuririrwa agomba kugaragaza inenge rufite, akanagaragaza uburyo yifuza ko yakosorwa.

[249] Nk'uko bigaragara mu gika cya 168 cy'urubanza rujuririrwa, Urukiko Rukuru rwasanze ibyerekeye uruhare Twagirayezu Wenceslas yagize muri iki gitero cyo muri ISAR-TAMIRA, byaravuzwe n'umutangabuhamya Rwasibo Alphonse abazwa mu Bugenzacyaha. Rwasibo Alphonse yavuze ko ku wa 7/4/1994, Twagirayezu Wenceslas yamusuye umugore we yabyaye, bigeze mu gihe cya saa yine z'amanywa haza abasirikare babiri barimo uwitwa Nguyeneza Evariste ufite ipeti rya Lieutenant ari kumwe n'uwari ukuriye abasirikare bo mu kigo cya ISAR -TAMIRA, bashaka aho Abatutsi bahereye, na bo babarangira Nyirinkwaya Alfred wari utuye hafi y'ibitaro. Avuga ko abo basirikare babasabye gushorera Nyirinkwaya Alfred n'umugore we wari uhetse umwana, bakabajyana muri position ya ISAR- TAMIRA. Avuga ko igihe bari mu nzira bahuye n'umukecuru witwa Barinkumi, yanze ko nawe bamushorera, abasirikare babategeka kumwica, Twagirayezu Wenceslas yaka uwitwa Mbabariye ubuhiri abukubita uwo mukecuru mu mutwe arapfa; bageze n'imbere bica Nyirinkwaya Alfred n'umugore we, barangije basubirana mu rugo kunywa inzoga.

[250] Naho mu gika cya 169 cy'urubanza rujuririrwa, Urukiko Rukuru rusanga ibijyanye n'igitero cyo muri ISAR-TAMIRA, Twagirayezu Wenceslas abishinjwa na Rwasibo Alphonse utarabajijwe mu Rukiko, maze rushingiye ku biteganywa n'ingingo ya 8, igika cya 2 n'icya 3, y'Itegeko no 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda ibuza gushingira ku buhamya bwanditse budafite ubundi bubushyigikira bwatangiwe mu Rukiko, rwemeza ko imvugo za RWASIBO Alphonse zitashingirwaho zonyine kuko zitunganiwe n'ibindi bimenyetso.

[251] Kuba Ubushinjacyaha butaragaraje amakosa ari mu bisobanuro by'Urukiko Rukuru mu kudashingira ku mvugo za Rwasibo Alphonse kuko ubuhamya bwe butasobanuwe mu Rukiko Rukuru, Urukiko rw'Ubujurire rusanga ibivugwa n'Ubushinjacyaha nta shingiro bifite.

d. Ku byerekeye ubwicanyi bwabereye kuri commune rouge, ku ishuri rya Saint Fidèle no ku Nyundo

[252] Igika cya 174 cy'urubanza rujuririrwa kigaragaza ko Urukiko Rukuru rwasanze ukwivuguruza gukabije ku birebana cyane cyane n'uburyo ibitero byagiye kuri "Commune rouge" no mu nkengero z'aho, ndetse no ku Nyundo byakozwemo, haba ku birebana n'aho byabaga biturutse, haba ku birebana n'uko byakozwe, haba ku birebana n'abishwe n'aho biciwe, gutuma ubu buhamya butagira ireme ku buryo butashingirwaho hemezwa ko Twagirayezu Wenceslas yagize uruhare mu bikorwa bigize ibyaha aregwa byabereye kuri "Commune rouge" no mu nkengero z'aho, no ku Nyundo.

[253] Nk'uko bigaragara mu gika cya 173 cy'urubanza rujuririrwa, mu isesengura ku bijyanye n'ibi bitero, Urukiko Rukuru rwagereranyije ubuhamya bwa Habingomba Théobald, ubwa DTC n'ubwa Biryamo Joseph, rusanga burimo ukwivuguruza gukomeye. Ku byerekeye ubuhamya bwa Habingoma Théobald, Urukiko Rukuru rwanabonye ko bufite inenge y'uko mu nzego zose yatanzemo ubuhamya agenda yivuguruza ku byerekeye aho ibitero byatangiriye n'aho byakomereje.

[254] Dosiye y'urubanza igaragaza ko Habingoma Théobald abazwa mu iperereza rya Polisi ya Denmark yavuze ko hagati yo ku wa 7 no ku wa 12 Mata 1994, ari kumwe na Twagirayezu Wenceslas, nyuma y'ubwicanyi bwakorewe ku kiriziya ya Busasamana bugakomereza kuri kaminuza ya Mudende kugeza saa moya z'umugoroba, bagiye mu gitero kuri "Petite barrière" bahahurira n'interahamwe zafashe Abatutsi nka magana abiri (200), bajya kubicira ahitwa kuri "Commune rouge", bakomereza kuri kiriziya ya Nyundo aho bapakiye mu makamyo Abatutsi bagera nko kuri magana atanu (500) bajya kubicira kuri "Commune rouge".

[255] Mu Bugenzacyaha, Habingoma Théobald avuga ko hagati yo ku wa 8 na 12/4/1994, bavuye kwica i Mudende, bakomereza no ku ishuri rya "Institut Saint Fidèle". Avuga ko bahageze hafi saa kumi n'igice bafata abanyeshuri n'abakozi babo babapakira muri minibus ebyiri (2) babajyana ku Nyundo bigeze nko mu ma saa mbiri z'umugoroba (20h00) barabica, abasirikare bari muri icyo gitero bajya kurara muri camp Gisenyi.

[256] Mu Rukiko, Habingoma Théobald yavuze ko ubwicanyi bwabaye ku wa 8/4/1994, aho batangiriye kwica kuri kaminuza ya Mudende, bakomereza kuri Paruwasi ya Busasamana, bavuyeyo bajya ku ishuri rya "Institut Saint Fidèle", bagezeyo bafata abantu bababwira ko babajyanye kubakiriza ku Nyundo, bagezeyo bafatamo bamwe bajya kubicira kuri "commune rouge", yanavuze ko aho hose Twagirayezu Wenceslas yari ahari yamubonye. Uyu mutangabuhamya yabajijwe impamvu mbere yari yavuze ko bavuye ku Nyundo batashye muri camp Gisenyi none akaba abihinduye, yasubije ko bagiye muri camp byose babirangije, bamaze kurasa kuri commune rouge.

[257] Mu buhamya bwa DTC yavuze ko ubwicanyi bwabereye hafi y'Ababatisita kuri commune rouge bwabaye ku wa 11 cyangwa ku wa 12/4/1994 kuko babwumvise bavuye gupakira imbunda i Goma. Yanavuze ko bageze kuba pantekote bumva urusaku, bakababwira ko ari Twagirayezu Wenceslas wateye gerenade, bagezeyo basanga ubwicanyi bwarangiye barimo gupakira imirambo. Avuga ko iyi nkuru yayibwiwe na Pasiteri witwa Rukara.

[258] Urukiko rw'Ubujurire rusanga, nk'uko byasobanuwe haruguru, ibijyanye n'aho ibitero byagiye bikomereza, amatariki byabereyeho, umubare w'abantu bishwe, ibitsina byabo, intwaro zakoreshejwe ari ibintu bito bitatesha agaciro ubuhamya bwatanzwe n'abatangabuhamya bashinja ku birebana n'ibyaye kuri commune rouge, ku ishuri rya Saint Fidèle no ku Nyundo. Uru Rukiko kandi rwemeje ko ubuhamya bwatangiwe muri Polisi ya Denmark butari bukwiye gushingirwaho hateshwa agaciro ubundi buhamya bwatangiwe mu Rukiko ku bibazo bisa kuko ubwo buhamya bwatanzwe muri Polisi ya Denmark butagaragaza ko bene kubutanga, kimwe n'abagiye babusemura babusinye nk'uko byasobanuwe haruguru. Ku bw'ibyo, Urukiko rw'Ubujurire rusanga Urukiko Rukuru rwarakoze amakosa yo kwemeza ko ubuhamya bwa Habingoma Théobald n'ubwa DTC bwose buvuguruzanya ku buryo bukabije bituma butashingirwaho.

B.3 Ku byerekeye ibivugwa n'Ubushinjacyaha ko Urukiko Rukuru rwivuguruje rugira Twagirayezu umwere rushingiye ku kuba ataravuzwe muri Gacaca

- **Imiburanire y'Ubushinjacyaha**

[259] Abahagarariye Ubushinjacyaha bavuga ko mu gika cya 195 cy'urubanza rujuririrwa, Urukiko Rukuru rwivuguruje aho rwemeje ko kuba uregwa ataravuzwe mu ikusanyamakuru ry'Inkiko Gacaca bitabuza ko yakurikiranwaho icyaha cya jenoside, ariko ku bireba Twagirayezu Wenceslas ruvuga ko uburyo abatangabuhamya b'Ubushinjacyaha bamugaragaza nk'uwamamaye mu bikorwa n'inama zitegura jenoside, ndetse n'ibikorwa bya jenoside nyir'izina, atari kubura kuvugwa muri Gacaca mu duce twose Ubushinjacyaha buvuga yayoboyemo ubwicanyi. Basobanura ko iryo sesengura ntacyo rishingiyeho (objective criteria), kuko mu gihe cy'ikusanyamakuru ry'Inkiko Gacaca hari abantu benshi bagize uruhare muri jenoside batavuzwe bibagiranye kubera impamvu zitandukanye. Bavuga ko rero bitumvikana uburyo Urukiko Rukuru rwabonye ko Twagirayezu Wenceslas we atari kwibagirana ku buryo uwagaragaza uruhare rwe muri jenoside yakorewe Abatutsi mu 1994, iki gihe yaba atavugisha ukuri; uretse ko nta n'ikimenyetso rwashingiyeho cyerekana ko amakuru yose ajyanye na jenoside yavugiwe cyangwa se yatanzwe mu ikusanyamakuru rya Gacaca.

- **Imyiregurire ya Twagirayezu Wenceslas**

[260] Twagirayezu Wenceslas n'abamwunganira bavuga ko mu nyandiko yo kumufata, Ubushinjacyaha bwavugaga ko yari umuntu w'igihangange, ufite imitungo n'ibindi byinshi, ndetse bimugiraho ingaruka afungiwe muri Denmark kuko bamufataga nk'aho yari jenerari bahereye ku byavugwaga ku maradio no ku nyandiko bahawe n'Ubushinjacyaha. Bavuga ko rero bitumvikana uburyo ubu bavuga ko yari umuntu usanzwe. Basobanura ko atari akomeye mu itorero kuko iryo yari arimo ryari muri amwe bita inzaduka ryo mu cyaro; akaba yari umukorerabushake udahembwa, ko batagomba gufata iby'itorero ngo babihuze na politiki, dore ko basabwe ikimenyetso (carte) kigaragaza ko yari perezida wa CDR ntibakigaragaza.

[261] Bongeraho ko harebwe ibyavuzwe n'umutangabuhamya Gasenge Etienne wavuze ko yamubonaga nk'umuyobozi kuri bariyeri, Nsengiyumva Kanyamishoro Innocent we akavuga ko yari umuyobozi wa za bariyeri cyangwa uyobora ibitero, bakanavuga ko yari afite igitinyiro (autorité morale), nta kuntu atari kuvugwa mu ikusanyamakuru rya Gacaca, kandi ko atari kuba yaragendanye na Bunani Jean ngo ntavugwe, ko rero uburyo yavuzwe nta kuntu atari kuvugwa muri Gacaca.

UKO URUKIKO RUBIBONA

[262] Mu gika cya 195 cy'urubanza rujuririrwa, Urukiko Rukuru rwasanze, kuba Twagirayezu Wenceslas ataravuzwe mu ikusanyamakuru ry'Inkiko Gacaca bitavuze ko atakurikiranwa ku cyaha cya jenoside nk'uko n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwabyemeje mu rubanza rwa Gatete Jean-Baptiste, aho rwemeje ko kuba Gatete Jean-Baptiste atavugwa mu manza zaciwe n'Inkiko Gacaca ntacyo bimarira Urukiko, kuko kuba Urukiko rumwe ntacyo ruvuga ku muntu mu manza rukurikirana bitavuze ko nta ruhare yagize mu byaha aregwa, kuko ikirebwa ari ibikorwa bye ku giti cye n'ibimenyetso[60]. Urukiko Rukuru rwasanze ariko Twagirayezu Wenceslas abatangabuhamya b'Ubushinjacyaha bagaragaza nk'uwamamaye mu bikorwa n'inama zitegura jenoside ndetse n'ibikorwa bya jenoside nyir'izina, atari kutavugwa muri Gacaca mu duce twose Ubushinjacyaha buvuga yakozemo cyangwa yayoboyemo ubwicanyi.

[263] Urukiko rw'Ubujurire rusanga Urukiko Rukuru rwarivuguruje kuko nyuma yo kugaragaza ko kuba umuntu ataravuzwe mu ikusanyamakuru rya Gacaca bitavuze ko ko nta ruhare yagize mu byaha aregwa, rukaba rutari kwemeza ko Twagirayezu Wenceslas byanze bikunze yari kuvugwa muri Gacaca ngo kubera Ubushinjacyaha bwamugaragaje nk'uwamamaye mu bikorwa n'inama zitegura jenoside, kuko umurongo ugaragara mu rubanza rwa Gatete Jean-Baptiste ushimangira ko ikirebwa ari ibikorwa bye ku giti cye n'ibimenyetso.

B.4 Ku byerekeye ibyo Ubushinjacyaha buvuga ko abatangabuhamya Twagirayezu Wenceslas yatanze batamushinjura

[264] Abahagarariye Ubushinjacyaha bavuga ko kuva ku gika cya 182 kugeza ku cya 192 by'urubanza rujuririrwa, Urukiko Rukuru rwasesenguye imvugo z'abatangabuhamya Twagirayezu Wenceslas yatanze, maze mu gufata umwanzuro rwemeza ko abatangabuhamya b'Ubushinjacyaha batamuzi, ariko ko ibyo abo yatanze bavuga ari ukuri, nyamara ibyo bavuga bishimangira ahubwo ibivugwa n'abatangabuhamya bamushinja.

[265] Bakomeza basobanura ko abatangabuhamya Twagirayezu Wenceslas yatanze kumushinjura bavuga ko nta ruhare yagize mu byaha aregwa, barimo ibyiciro bine:

- abemeza ko batabonye Twagirayezu Wenceslas mu bikorwa by'ubwicanyi kuko batari aho byakorewe nka Bazege Ntahondi Léa, Mpahatanye Mathieu, Nyirabariyanga Ancille, Kaberuka Théophile n'Akimanimpaye Théoneste;

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[60] Reba urubanza rw'Ubushinjacyaha na Gatete Jean-Baptiste, Case no ICTR-2000-61-T, para. 130.

- abemeza ko batari bamuzi nka Ugwaneza Christophe ;

- abemeza ko batamubonye bitewe n'aho bari bari, intera yabatandukanyaga n'ahantu hakorerwaga icyaha nka Bufono Silas na Nyiramigambi Immaculée;

- n'abemeza ko jenoside itangira batari bahari nka Serukiko Théoneste.

[266] Abahagarariye Ubushinjacyaha basobanura ko ubuhamya batanze butari bukwiye gushingirwaho kubera impamvu zikurikira:

- Umutangabuhamya Sebashyitsi Appolinaire, ugaragara mu gika cya 182 cy'urubanza rujuririrwa, Urukiko Rukuru rwahaye agaciro ubuhamya bwe bw'uko kuri bariyeri yo kwa Gacamena, nta muntu wahafatiwe, ntawahiciwe nta n'uwahakomerekeye ko kandi atigeze ahabona Twagirayezu Wenceslas. Bavuga ko basanga Urukiko Rukuru rwarirengagije ko Sebashyitsi Appolinaire, yemeje ko yagiye kuri iyo bariyeri inshuro imwe, ko rero atakwemeza kandi atamenya neza ibikorwa byahakorewe, n'abagiye kuri iyo bariyeri mu gihe cyose atayigiyeho no mu gihe hari abandi batangabuhamya bemeza ko kuri iyo bariyeri hiciwe abantu, aribo Bazege Ntahondi Léa, DTC na DTB.

- Umutangabuhamya Nyirabariyanga Ancille, wari uturanye na bariyeri yo kwa Gacamena, agaragara mu gika cya 183 cy'urubanza rujuririrwa, Urukiko Rukuru rwahaye ishingiro ubuhamya bwe kubera ko yavuze ko atabonye Twagirayezu Wenceslas kuri iyo bariyeri n'ibyo yavuze ko nta bantu bahaguye. Bavuga ko inenge ari uko Urukiko Rukuru rwirengagije ko yahigwaga, ko yavuze ko kuva indege ya Perezida Habyarimana ihanutse ku wa 06/04/1994 yatangiye kwihisha mu bihuru no mu buvumo, ko ibi bigaragaza ko atashoboraga kujya mu muhanda, kuko yanavuze ko abakoraga kuri iyo bariyeri yabamenye kuko biyamiriraga, bakavuga n'amazina yabo.

- Mu gika cya 184 cy'urubanza rujuririrwa, Urukiko Rukuru rwahaye ishingiro ubuhamya bwa Serukiko Théoneste uvuga ko yaburaniye kuri site ya Gacurabwenge akanakatirwa n'Urukiko Gacaca, ko atigeze yumva Twagirayezu Wenceslas avugwa mu bikorwa bya jenoside. Abahagarariye Ubushinjacyaha bavuga ko basanga kuba ataramwumvise bitavuze ko atakoze jenoside, cyane ko jenoside itangira atari ahari, kuko yabwiye Urukiko ko yari i Nyamirambo, ko yageze i Rwerere nyuma y'ibyumweru bibiri ubwicanyi bwararangiye.

- Mu gika cya 185 cy'urubanza rujuririrwa, Urukiko Rukuru rwahaye ishingiro ubuhamya bw'umutangabuhamya Bufono Silas aho avuga ko mu gitero cyateye i Mudende ku itariki 07/04/1994 atakibonyemo Twagirayezu Wenceslas, ko abo yamenye ari Sisiro n'abandi basore batatu. Abahagarariye Ubushinjacyaha bavuga ko n'ubwo yari ahari, ariko atashoboraga kumenya abicanyi bose bahaje, kuko umutangabuhamya Bufono Silas yemeza ko mu ijoro ryo ku wa 06/04/1994 yaraye mu ngano ahava mu gitondo cyo ku wa 07/04/1994 n'uko babakingiranye mu nzu bahamara ibyumweru bibiri. Uwo mutangabuhamya yanavuze ko abicanyi bari benshi cyane, ariko avuga ko yamenyemo SISIRO n'abandi basore batatu, bikaba byerekana ko atashoboraga kumenya abicanyi bose bahaje.

- Mu gika cya187 cy'urubanza rujuririrwa, Urukiko Rukuru rwahaye kandi ishingiro ubumya bwa Akimanimpaye Théoneste aho avuga ko kugeza mu kwezi 03/1994 atongeye kubona Twagirayezu Wenceslas kuko abanyeshuri batigaga kandi ko atigeze amwumva mu Nkiko Gacaca. Bavuga ko kuba yaba atarumvise izina rye mu ikusanyamakuru rya Gacaca ya commune rouge no mu nkengero z'ikigo cya Collège Baptiste bidahagije kugira ngo bisobanure ko nta cyaha yakoze, kuko nta hame na rimwe rivuga ko umuntu akurikiranwaho jenoside ari uko yatanzweho amakuru mu ikusanyamakuru rya Gacaca cyane ko Twagirayezu Wenceslas yahagiye mu gitero ariko atari umuturage waho.

- Mu gika cya 188 cy'urubanza rujuririrwa, Urukiko Rukuru rwashingiye ku buhamya bwa Mpahatanye Mathieu uvuga ko aheruka Twagirayezu Wenceslas mu mwaka wa 1990 yiga muri RDC, akanavuga ko

mu ikusanyamakuru rya Gacaca havuzwe abayoboye ibikorwa byo kwica Abatutsi, barimo Karema Faustin na Karimunda. Abahagarariye Ubushinjacyaha bavuga ko inenge babona ari uko yari yatanzwe kugira ngo ashinjure Twagirayezu Wenceslas kuri jenoside yakorewe kuri kiriziya ya Busasamana; ariko atanga ubuhamya mu Rukiko Rukuru, yavuze ko ku itariki 8/04/1994 atigeze agera kuri paruwasi ya Busasamana, ko iby'ubwicanyi bwahabereye yabimenye abyumviye mu biganiro n'abandi. Banavuga ko kuba yaramuherukaga mu mwaka wa 1990 byerekana ko atashoboraga kumenya ibikorwa yakoze kandi kuba avuga abayoboye ubwicanyi, bikaba bidakuraho uruhare rw'abandi atavuze.

- Mu gika cya 189 cy'urubanza rujuririrwa, Urukiko Rukuru rwashingiye ku buhamya bwa Sindambiwe Emmanuel uvuga ko yabaye mu ikusanyamakuru ry'Inkiko Gacaca igihe kinini, ko atigeze yumva bavuga uruhare rwa Twagirayezu Wenceslas, ko nta n'umuntu azi wiciwe kuri bariyeri yo kwa Gacamena. Abahagarariye Ubushinjacyaha bavuga ko kuba nta muntu azi ko yiciwe kwa Gacamena bitavuze ko ntawahiciwe, kuko hari abatangabuhamya DTC na DTB bemeza ko hari abahiciwe. Bavuga kandi ko n'ibyo avuga ko nko muri metero magana atatu (300m) uvuye kuri iyo bariyeri hari abahiciwe bishwe na Bunani Jean, bihura n'imvugo y'umutangabuhamya Kaberuka Théophile nawe watanzwe n'uregwa. N'ubwo uyu avuga ko atagiye kuri iyo bariyeri, ariko yemeza ko kuri bariyeri yo kwa Gacamena yumvise ko hiciwe abantu barashwe na Inspecteur Bunani Jean. Bavuga kandi ko ibyo kuri paruwasi ya Busasamana umutangabuhamya atabimenye kuko ntaho yageze, ko ikigaragara ari uko nta makuru yari afite kuri Twagirayezu Wenceslas kuko yamuherukaga mu mwaka wa 1990, bivuze ko atabashije kumenya ko mu gihe yigaga muri Congo atahwemaga kugaruka mu biruhuko, ndetse akaba yari ashinzwe n'imirimo y'itorero AEBR muri paruwasi Kageshi, anashinzwe urubyiruko rwa AEBR mu Karere ka Gisenyi, n'uko mu gihe cya jenoside yari iwabo nyamara avuga ko batuye muri Selire imwe.

- Mu gika cya 190 cy'urubanza rujuririrwa, Urukiko Rukuru rwahaye ishingiro ubuhamya bwa Ugwaneza Christophe uvuga ko atigeze yumva izina rya Twagirayezu Wenceslas mu bagize uruhare mu bwicanyi bwakorewe kuri kaminuza ya Mudende, ko abo yibuka babugizemo uruhare ari Biryamo, BIGARE na David. Abahagarariye Ubushinjacyaha bavuga ko Ugwaneza Christophe yazanwe mu Rukiko na Twagirayezu Wenceslas avuga ko afite amakuru ahagije ku bakoze jenoside kuri kaminuza ya Mudende, nyamara akavuga ko yibuka abantu batatu gusa barimo Biryamo Joseph kandi uyu ahamya adashidikanya ko yari kumwe na Twagirayezu Wenceslas mu bwicanyi bwo kuri kaminuza ya Mudende. Banavuga ko ikindi cyerekana ko ibyo avuga nta shingiro bifite ari uko avuga ko mu bicanyi harimo n'abasirikare, ariko akaba atarabashije kugira n'umwe avugamo, bityo rero ubuhamya bwe bukaba budashobora kugaragaza ukuri kw'ibyabaye. Byongeye kandi akaba yaranemeje ko atari asanzwe azi Twagirayezu Wenceslas, ko yamubonye bwa mbere mu Rukiko.

- Mu gika cya 191 cy'urubanza rujuririrwa, Urukiko Rukuru rwashingiye ku buhamya bwa Sebudahe Xavier aho avuga ko yagize uruhare muri jenoside yakorewe Abatutsi i Gacurabwenge, ariko ko muri icyo gihe atigeze abona Twagirayezu Wenceslas, ko aramutse yaragize uruhare muri jenoside, yaba yarajyaga kuyikorera mu tundi duce. Bavuga ko uyu mutangabuhamya atabajijwe mu Rukiko n'ubwo inyandikomvugo ye iri muri dosiye y'Ubushinjacyaha, ko ikosa Urukiko Rukuru rwakoze ari uko rwafashe ubuhamya bwe igice, kuko yanavuze ko we atigeze ajya mu bitero. Bavuga ko Urukiko Rukuru rwagombaga kubona ko atari kuvuza induru atagiye mu bitero, ko bitumvikana uburyo yabigiyemo ntabone Twagirayezu Wenceslas byagaragajwe ko yagiye mu bitero bitandukanye. Ikindi bavuga ni uko iyo Sebudahe Xavier aba ataragiye mu bitero, atari kumenya uruhare Twagirayezu Wenceslas yabigizemo; uretse ko urwo Rukiko rwaramuvugishije ibyo atavuze kuko we yavugaga ko aho atamubonye ari aho we yakoreye ibyaha.

- Umutangabuhamya Bazege Ntahondi Léa avuga ko yaherukaga Twagirayezu Wenceslas mu mwaka wa 1992, ko we atigeze agera i Busasamana ubwo ibikorwa by'ubwicanyi byakorwaga kuko yagiyeyo ku itariki ya 09/04/1994 bagiye gukora kuri paruwasi ya Busasamana, abona kuri bariyeri yo kwa Gacamena hakorerwa amarorerwa.

[267] Abahagarariye Ubushinjacyaha bavuga ko abo ari bo batangabuhamya b'uregwa, Urukiko Rukuru rwashingiyeho ruvuga ko ari bo bafite amakuru yizewe kuri Twagirayezu Wenceslas, ko hari n'abandi bumviswe rutagize icyo ruvugaho. Bavuga ko iyo Urukiko rusuzuma imvugo zabo rwari kubona ko ubuhamya bwabo budakwiye kwizerwa bigatuma ruhindura icyemezo rwafashe.

[268] Basoza kuri iyi ngingo, bavuga ko umwanzuro w'Urukiko Rukuru ugaragara mu gika cya 192 n'icya 193 by'urubanza rujuririrwa, ntaho uhuriye n'ibyo Ubushinjacyaha bwagaragaje ku bivugwa n'abatangabuhamya b'uregwa bihura n'ibivugwa n'abatangabuhamya bamushinja. Bavuga ko rero Urukiko Rukuru rutagombagagutesha agaciro ireme ry'ubuhamya batanze ku ruhare rwe mu bikorwa bigize ibyaha aregwa.

- **Imyiregurire ya Twagirayezu Wenceslas**

[269] Twagirayezu Wenceslas n'abamwunganira basobanura ko ibyo Ubushinjacyaha bunenga ubuhamya bwa Sebashyitsi Appolinaire wavuze ko kuri bariyeri yo kwa Gacamena nta muntu wahafatiwe, nta wahiciwe, nta n'uwahakomerekeye, ko kandi atigeze ahabona Twagirayezu Wenceslas bwitwaje ko yavuze ko yagiye kuri iyo bariyeri inshuro imwe, nta shingiro bifite. Ibyo babihera ku kuba mu gufata icyemezo Urukiko Rukuru rutarashingiye gusa ku kuba yararaye rimwe kuri bariyeri yarishinze kwa Gacamena, ko rwanashingiye ku kuba umutangabuhamya yararugaragarije ko azi uregwa, aho yavuze ko yabaye umuhereza kwa Padiri, yiga amashuri abanza ku ishuri ribanza rya Munanira, ajya no kwiga muri RDC. Bavuga kandi ko Urukiko rwahaye agaciro ubuhamya bwe rushingiye ku kuba yari umuyobozi, nyumbakumi muri Kanyabijumba aho bariyeri yo kwa Gacamena yari iri kuva mu mwaka wa 1990 kugeza bahunze igihugu; ko yanasobanuye ko we n'uwitwa Mbonyubwabo aribo bari bafite inshingano zo gupanga abarara kuri bariyeri kandi bakanahabwa raporo buri gitondo[61], ko ibyo rero bigaragaza ko yari azi ibibera kuri iyo bariyeri.

[270] Ku byerekeye umutangabuhamya Bazege Ntahondi Léa wazanwe na Twagirayezu Wenceslas kugira ngo agaragarize Urukiko ko yari amuzi no kugira ngo agaragaze amakuru afite ku bakoze amarorerwa yo kwica Abatutsi muri Busasamana, Ubushinjacyaha bukavuga ko atamushinjuye kuko busanga adashobora kuvuga ibyaho kuko yavuze ko yageze i Busasamana kuri paruwasi ku itariki ya 9/04/1994 nta bikorwa by'ubwicanyi birimo kuhabera, ko ahubwo ubwo yajyayo, yageze kuri bariyeri yo kwa Gacamena akabona hakorerwa amarorerwa. Twagirayezu Wenceslas n'abamwunganira bavuga ko ibyo ubushinjacyaha buvuga ko atamushinjuye ku bijyanye n'ibitero by'i Busasamana nta shingiro bifite, kuko uretse no kuba ataramuvuze mu bagize uruhare mu bitero byo ku Kiriziya ya Busasamana, nta n'ubwo yamwumvise mu bagize uruhare mu bwicanyi bwahabereye bavuzwe mu ikusanyamakuru rya Gacaca. Bavuga ko ahubwo abo yavuze bakoze ubwicanyi muri kariya gace ari interahamwe yitwaga Twagirayezu Mabuye, Suwedi, Benoît na Bunani Jean, ko aho yavuze atageze ari kuri bariyeri yo kwa Gacamena. Bavuga ko impamvu Bazege Ntahondi Léa yavuze ko Twagirayezu Wenceslas atageze kuri bariyeri yo kwa Gacamena ari uko ataherukaga muri Busasamana, ko yamuherukaga muri Nzeli 1993 aje kwigisha muri Gacuba.

[271] Twagirayezu Wenceslas n'abamwunganira bavuga ko ibyo Ubushinjacyaha buvuga ko Urukiko Rukuru rutagomba gushingira ku buhamya bwa Mpahatanye Mathieu kuko atigeze agera kuri Kiriziya ya Busasamana nta shingiro bifite. Bavuga ko yazanwe mu Rukiko kugira ngo avuge ko azi neza uregwa, aho akomoka, ko amuheruka mu mwaka wa 1990 n'iby'uko yaba yarabaye umwarimu ku kigo cy'amashuri cya Munanira, ko yagombaga no kuvuga niba yaragize uruhare muri jenoside yakorewe Abatutsi muri Busasamana. Basobanura ko mu Rukiko Rukuru yagaragaraje ko amuzi, bari baturanye, agaragaza ko atigeze aba umwarimu ku kigo cy'amashuri cya Munanira, anasobanura ko atari kubura kubimenya kuko yari umwarimu ukuriye abandi kuri icyo kigo cya Munanira, ko ibi bigaragaza ko abagiye bavuga ko yari umwarimu kuri Munanira babeshye. Banavuga ko umutangabuhamya Mpahatanye Mathieu yanavuze

[61] Inyandikomvugo y'iburanisha yo ku wa 22/04/2022, urupapuro rwa 7-9.

amazina y'abayoboye ibikorwa byo kwica Abatutsi muri Busasamana, anashimangira ko Twagirayezu Wenceslas atari abarimo, kuko yari azi ko yari yaragiye kwiga muri Congo, akaba ntacyo yavuze kimushinja.

[272] Bavuga kandi ko ibivugwa n'Ubushinjacyaha by'uko Urukiko Rukuru rwashingiye ku buhamya bwa Nyirabariyanga Ancille rwirengagije ko atashoboraga kumenya ibyaberaga kuri bariyeri yo kwa Gacamena yari ishinze mu marembo y'inzu ye, ngo kuko ubuvumo yari yihishimo bwari muri uvuye aho bariyeri yari iri nta shingiro bifite, kubera ko Nyirabariyanga Ancille yagaragarije Urukiko ko nta muntu waguye kuri iyo bariyeri bitewe n'uko ibyahaberaga metero magana ane (400m) byose yabimenyaga, ko abo yamenye ari abaguye haruguru yayo mu cyahoze ari Komine Mutura. Banavuga ko iyo mvugo ye igaragaza ko iyo haza kuba hari abantu baguye kuri iyo bariyeri atari kubura kubimenya mu gihe agaragaza ko hari abo yamenye bo muri Mutura kure y'aho atuye. Bongeraho ko ibyavuzwe n'abatangabuhamya bashinja ku birebana n'uruhare rwe kuri iyo bariyeri bivuguruje bikabije, ndetse baranavuguruzanya ku buryo bukabije bakaba batavuguruza ibyavuzwe na Nyirabariyanga Ancille, cyane cyane ko nta zina ry'umuntu wahiciwe ryagaragajwe n'Ubushinjacyaha.

[273] Twagirayezu Wenceslas n'abamwunganira bavuga ko n'ibyo abahagarariye Ubushinjacyaha bavuga ko umutangabuhamya atari uwo kwizerwa ngo kuko ubuvumo yari yihishemo bwari muri metero magana ane (400m) y'aho ibyaha byaberaga atari byo, kuko icyo yagaragaje ari uko nta muntu waguye kuri bariyeri ya Gacamena, akaba yaranabihurijeho n'abandi batangabuhamya, bityo ibyo Ubushinjacyaha buvuga ko hari intera ndende ku buryo atabona ibyahabereye, ntacyo bugaragaza bubishingiraho, uretse ko ashobora no kuvuga ibyo yumvise. Bongeraho ko Nyirabariyanga Ancille yacitse ku icumu rya jenoside yakorewe Abatutsi, nta nyugu yari afite mu kumuhishira mu gihe hari abandi yavuze bagize uruhare muri jenoside yakorewe Abatutsi muri kariya gace.

[274] Bakomeza bavuga ko abandi batangabuhamya bavuze ko kuri bariyeri yo kwa Gacamena nta batutsi bahaguye ari Sebashyitsi Appolinaire, Sindambiwe Emmanuel wari Resiponsabule wa Selire wavuze ko yabonaga raporo, ndetse na Kaberuka Théophile. Banavuga ko ibyo abahagarariye Ubushinjacyaha bavuga ko Kaberuka Théophile nawe yavuze ko yigeze kumva bavuga ko kuri bariyeri yo kwa Gacamena hari abantu bahiciwe atari byo, kuko butagaragaza aho yabivugiye, ahubwo ikigaragara mu nyandikomvugo ye yo ku wa 22/04/2022, ari uko yumvise bavuga ko nta muntu wiciwe kuri bariyeri yo kwa Gacamena, ko ibyo kuvuga ko yumvise ko Bunani Jean yaharasiraga abantu byatewe n'uko Ubushinjacyaha bwakomeje kubimubazaho, ariko izo mvugo zombi zikaba zirimo urujijo.

[275] Bavuga na none ko icyo bifuje ko Kaberuka Théophile aza kugaragariza Urukiko ari uko azi uregwa, akanemeza ko bari baturanye, ko atari muri Gisenyi, Gacuba II mu gihe cy'ibiruhuko bya Pasika. Mu buhamya bwe akaba yaragaragaje ko amuzi kandi ko yari yaramubwiye ko azajya muri Congo mu biruhuko bya Pasika, anavuga ko bitangiye atongeye kumubona, yanavuze ko Twagirayezu Wenceslas atigeze avugwa mu ikusamyamakuru rya Gacaca. Mu bindi yagombaga kuvugaho, harimo n'umuntu witwa Pasteur Rukara wavugwaga ko ari uwo muri AEBR kandi ntawabayeho, kuko abatangabuhamya b'Ubushinjacyaha bavugaga ko ari we wemeje ibyo yakoze muri Gacuba. Bavuga kandi ko ibyo Ubushinjacyaha bumunenga ko yabanje kujya ku ruhande rw'Ubushinjacyaha nk'umutangabuhamya ushinja, nyuma akaza mu Rukiko nk'umutangabuhamya ushinjura, atari inenge kuko kuba Urukiko Rukuru rwashingira ku buhamya bwe rukamugira umwere nta kosa ririmo.

[276] Twagirayezu Wenceslas n'abamwunganira bavuga kandi ko ibivugwa n'abahagarariye Ubushinjacyaha ko umutangabuhamya Sindambiwe Emmanuel aho kumushinjura amushinja, nta shingiro bifite kuko bamutanze ku bijyanye n'ibyo Ubushinjacyaha buvuga ko byabereye kuri bariyeri yo kwa Gacamena no kugira ngo agaragaze ko amuzi. Mu buhamya bwe yavuze ko atuye Nyarusozi, ko yayoboye Rubikiro, anavuga ko atigeze abona Twagirayezu Wenceslas kuri bariyeri yo kwa Gacamena kandi ko yakiraga raporo zibyaberaga kuri iyo bariyeri, ko ahubwo ubuhamya bwe bugaragaza ko ari umwere.

[277] Ku byerekeye ibyo Ubushinjacyaha buvuga ko ibivugwa n'umutangabuhamya Bufono Silas bishinja Twagirayezu Wenceslas, ariko Urukiko Rukuru rukaba rwarabishingiyeho bumushinjura nta shingiro bifite, kuko uyu mutangabuhamya yazanwe mu Rukiko kugira ngo agaragaze niba yaramubonye mu bantu bateye kuri kaminuza ya Mudende mu ijoro ryo ku wa 06 rishyira ku wa 07/04/1994. Mu buhamya bwe yagaragaje ko atamubonye, ko n'ubwo yaje kujya kwihisha, abagabye ibitero baje abareba, ko nk'umuntu yari asanzwe azi neza, atari kumuyoberwa cyane ko bavuga ko ari we wari uyoboye igitero, ko rero ibyo Ubushinjacyaha buvuga ko atari kubona abantu bose nta shingiro bifite. Kuba na none yarashingiweho n'Urukiko Rukuru rumugira umwere ku bikorwa byabereye kuri kaminuza ya Mudende na byo basanga nta kosa ririmo kuko mu buhamya bwe yavuze ko amuzi neza kuko bari baturanye, ko abahateye baje abareba, avuga ko yamenye uwitwa SISIRO wari utuye muri Mutura n'izindi nsoresore ko kandi Twagirayezu Wenceslas iyo aza mubahateye yari kumumenya.

[278] Bavuga kandi ko ubuhamya bwa Ugwaneza Christophe butamushinja nk'uko Ubushinjacyaha bubivuga, nta n'ikosa Urukiko Rukuru rwakoze rubushingiraho, kuko kuba atari asanzwe amuzi atari inenge yatuma adatanga ubuhamya bumushinjura, kuko kuba yaravukiye akanakurira mu karere ibikorwa bigize ibyaha aregwa byakorewe, yaranabaye mu nyangamugayo za Gacaca, ndetse akaba ari n'umurinzi w'igihango wafashije abahigwaga muri jenoside, atari kuyoberwa cyangwa kumva ko Twagirayezu Wenceslas nk'umuntu Ubushinjacyaha buvuga ko yayoboraga ibitero yagize uruhare mu bwicanyi bwahakorewe, ndetse nawe yivugiye ko atari kubura kutabyumva. Bavuga ko bamutanze nk'umuntu ufite amakuru ahagije kubwicanyi bwabereye kuri kaminuza ya Mudende no muri kariya gace, kandi kuba ashinja Biryamo Joseph, uyu nawe akamushinja, bitavuga ko ibyo Biryamo Joseph avuga ari ko kuri, kuko nk'uko Urukiko Rukuru rwabigaragaje, mu mvugo ze agenda yivuguruza.

[279] Bavuga kandi ko ubuhamya bwa Akimanimpaye Théoneste na bwo ntaho buhurira n'ubw'abatangabuhamya bashinja, nta n'impamvu bagaragaza yatuma budashingirwaho. Basobanura ko uyu mutangabuhamya bamuzanye mu Rukiko kugira ngo agaragaze ko igihe ibyaha Twagirayezu Wenceslas aregwa byakorwaga, nta banyeshuri bari bari kuri Collège Baptiste, no kugira ngo agaragaze niba koko muri icyo gihe yaba yaragiye kuri iryo shuri. Yagaragaje ko nta munyeshuri waguye muri icyo kigo, ko atanahabonye Twagirayezu Wenceslas; ibyo bikaba bigaragaza ko yari yaragiye muri Congo, kuko iyo ahaba aba yaramubonye. Bongeraho ko Akimanimpaye Théoneste yari kontabure, aza kwirukanwa, aramusimbura, ko iyo aza kuba hari uruhare yagize muri jenoside, yari kumushinja nk'umuntu wamusimbuye. Ku byerekeye ibivugwa n'Ubushinjacyaha ko adatanga amakuru yuzuye kuko hari umwana Nkezabera Paulin avuga ko yari ahishe wiciwe mu kigo cya Collège y'Ababatiste, Twagirayezu Wenceslas n'abamwunganira bavuga ko hakwiye gusobanurwa niba uwo mwana yaraguye mu kigo kuko atariho uyu yari atuye.

[280] Bavuga na none ko ku mutangabuhamya Serukiko Théoneste, Ubushinjacyaha buvuga ko atari kumenya ibyo uregwa yakoze ngo kuko avuga ko indege ya Perezida Habyarimana ihanuka yari i Kigali, ko yaje nyuma y'ibyumweru 2 agansanga nta bwicanyi bugihari nta shingiro bifite, kuko icyo uyu mutangabuhamya avuga ari uko nawe yashinjwe ubwicanyi bwa Gacurabwenge, akatirwa n'Urukiko Gacaca, ariko ko atigeze yumva Twagirayezu Wenceslas avugwa mu bikorwa bya jenoside. Bavuga ko ibyo uyu mutangabuhamya yavuze ari ibyo yumvise kandi ari ko kuri kwe; ibyo avuga akaba abifitiye amakuru, bityo ko kuba Urukiko Rukuru rwarashingiye ku buhamya bwe nta kosa rwakoze.

[281] Ku mutangabuhamya Sebudahe Xavier, Twagirayezu Wenceslas n'abamwunganira bavuga ko atari bo bamutanze, ko ubuhamya yabutangiye mu Bugenzacyaha, ko ibyo Ubushinjacyaha buvuga ko Urukiko Rukuru rutarebye ubuhamya bwose atari byo, ahubwo ikigaragara ari uko rwabusesenguye ruvanamo ko amushinjura. Bongeraho ko Sebudahe Xavier yavuze ko azi Twagirayezu Wenceslas, ko atigeze amubona mu bwicanyi bwa Gacurabwenge, ko iyo ahaba yari kumumenya. Basoza bavuga ko ubuhamya bwe ahubwo bwagombaga gukoreshwa n'Ubushinjacyaha bukamushinjura kuko nayo ari inshingano yabwo.

UKO URUKIKO RUBIBONA

[282] Impaka kuri iyi ngingo zishingiye ku kumenya niba mu isesengura ry'ubuhamya, Urukiko Rukuru rwarakoze amakosa yo guha agaciro ubuhamya bw'abatangabuhamya bashinjura kandi mu by'ukuri batamushinjura, ahubwobagaragaza ko nta bumenyi bafite ku bikorwa aregwa, kandi n'ibyo bavuga bishimangira iby'abatangabuhamya bashinja.

[283] Urukiko rusanga mu gika cya 193 cy'urubanza rujuririrwa, Urukiko Rukuru rwaremeje ko ubuhamya bw'abatangabuhamya bashinjura bufite ireme kandi bukwiye kwemerwa kuko bwatanzwe n'abantu bari baturanye n'umuryango wa Twagirayezu Wenceslas kuva mu bwana bwe, abo biganye mu mashuri abanza, abarimu bo mu gace k'iwabo, abayobozi bo mu nzego z'ibanze ku rwego rwa Nyumbakumi na Serile na bamwe mu bagize uruhare mu bikorwa bya jenoside muri kariya gace, bigaragarira Urukiko ko bafite ubumenyi buhagije ku byo batangira ubuhamya.

a. Ku byerekeye igitero cyo kuri Kaminuza ya Mudende n'icyo ku kiriziya ya Busasamana

[284] Urukiko rw'Ubujurire rusanga abatangabuhamya batanzwe na Twagirayezu Wenceslas icyo bahurizaho ari uko bataherukaga kumubona, ko batamwumvise avugwa mu ikusanyamakuru ry'Inkiko Gacaca. Abari aho ibitero byabereye nka Bufono Silas wari kuri Kaminuza ya Mudende igihe igitero cyabaga wemeza ko atamubonye, avuga ko igitero kije yagiye kwihisha, mu gitondo agarutse barabakingirana bakajya barebera mu madirishya. Kuba Bufono Silas ataramubonye mu gitero kinini cyicisha abantu intwaro zirimo amasasu ibyo avuga bikaba bitaba ikimenyetso cyashingirwaho hemezwa ko Twagirayezu Wenceslas atageze kuri kaminuza ya Mudede. Undi wari aho ibitero byabereye ni Ugwaneza Christophe, ubuhamya bwe nabwo bukaba butaba ikimenyetso kimushinjura, kuko atashoboraga kumenya niba yari ahari cyangwa atari ahari kuko atari asanzwe amuzi. Ku bw'ibyo, nk'uko bigaragara mu gika cya 185 n'icya 190 by'urubanza rujuririrwa, Urukiko Rukuru rukaba rwarakoze ikosa ryo kubashingiraho rwemeza ko ubuhamya bwabo bufite inshingiro ku kuba nta ruhare Twagirayezu Wenceslas yagize mu gitero cyo kuri kaminuza ya Mudende[62].

[285] Urukiko rw'Ubujurire rusanga ku bireba ubuhamya bwa Bazege Ntahondi Léa, Barangira Tharcisse, Serukiko Théoneste na Mpahatanye Mathieu, n'ubwo Urukiko Rukuru rutabashingiyeho ku bireba uruhare rwa Twagirayezu Wenceslas ku byabaye kuri kaminuza ya Mudende no ku kiriziya ya Busasamana, nabwo butaba ikimenyetso kigaragaza ko atari muri ibyo bitero, kuko Bazege Ntahondi Léa yageze kuri paruwasi igitero cyaraye kibaye, abandi bakavuga ko nta cyo bazi ku byabereye kuri kiriziya ya Busasamana kuko batahageze.

[286] Urukiko rw'Ubujurire rusanga kuba aba batangabuhamya bahuriza ku kuba Twagirayezu Wenceslas ataravuzwe muri baruharwa bo muri kariya gace, nta navugwe mu ikusanya makuru ry'Inkiko Gacaca, nabyo atari ikimenyetso kigaragaza ko atageze kuri kaminuza ya Mudende no kuri kiriziya ya Busasamana, kuko nta kigaragaza ko mu gihe cy'ikusanyamakuru abagize uruhare mu bitero bose bavuzwekuko hari impamvu zitandukanye zashoboraga gutuma batavugwa cyangwa bibagirana. Uru Rukiko rugasanga rero ubuhamya bw'abatangabuhamya bashinjura butavuguruza ubuhamya bwatanzwe n'abatangabuhamya bemeza ko bari kumwe mu bitero bya Mudende na Busasamana.

[287] Urukiko rw'Ubujurire rusesenguye ubuhamya bw'impande zombi ku bijyanye n'ibitero byo kuri Kaminuza ya Mudende no kuri Paruwasi ya Busasamana, rusanga abatangabuhamya bashinja bahuriza ku kuba Twagirayezu Wenceslas yari muri ibyo bitero afite imbunda, kandi ko byiciwemo abantu. Icyo badahurizaho cyangwa bivuguruzaho hagereranyijwe imvugo zabo za mbere ni ubuhamya batanze mu Rukiko n'itariki ibyo bitero byakoreweho, amasaha byabereye, aho abicanyi bakomereje ibitero no kuba mu bitero Twagirayezu yaba yarakoresheje imbunda yari afite.

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[62] Reba igika cya 185 n'icya 190 by'urubanza rujuririrwa

b. Ku byerekeye bariyeri yo kwa Gacamena

[288] Muri rusange abatangabuhamya batanzwe na Twagirayezu Wenceslas bagaragaje ko nta bwicanyi bwabereye kuri bariyeri yo kwa Gacamena, kandi ko batigeze bumva izina rye rivugwa mu ikusanyamakuru ry'Inkiko Gacaca. Ibi babisobanura mu buryo bukurikira:

- Umutangabuhamya Bazege Ntahondi Léa atanga ubuhamya mu Rukiko Rukuru yavuze ko mu gihe cya jenoside, ubwo bari mu mirimo ya Paruwasi mu ijoro, babonye amarorerwa ku mabariyeri menshi nk'iyo kwa Gacamena. Yanavuze ko atigeze abona Twagirayezu Wenceslas, ko ahubwo hari interahamwe ikomeye yitwaga Twagirayezu Mabuye n'izindi nterahamwe.

- Umutangabuhamya Barangirana Tharcisse yavuze ko yabonye bariyeri yo kwa Gacamena iriho abantu Konseye yari yarahaye imbunda zo kurinda izo bariyeri bitaga abarinzi, ko abo yibuka ari Resiponsabule Mbonyubwabo na Nyumbakumi witwaga Sebashyitsi Appolinaire, ariko nta bantu azi bahiciwe.

- Sebashyitsi Appolinaire we yavuze ko kuva mu mwaka wa 1990 yari nyumbakumi muri Kanyabijumba aho bariyeri yo kwa Gacamena yari iri, ko n'ubwo atibuka igihe yagiriyeho, yashyizweho na ba Konseye, ba Resiponsabule na Burugumesitiri, ikaba yaravuyeho bahunze bagiye muri RDC. Yasobanuye ko ntawayiyoboraga, ko Resiponsabule wa Selire ari we wapangaga abayijyagaho, ko nawe yigeze kuyiraraho rimwe, ko nta muntu wahafatiwe, nta wahiciwe, nta n'uwahakomerekeye, ko atigeze ayibonaho Twagirayezu Wenceslas.

- Nyirabariyanga Ancille uvuga ko yari umugore wa Gacamena. Yemeza ko kwa Gacamena habaye bariyeri yashyizweho kuva indege ya Perezida Habyarimana ihanutse ariko ko Twagirayezu Wenceslas atigeze ayimubonaho, kuko n'ubwo atashoboraga kujya ku muhanda yamenyaga abayiriho kuko biyamiriraga bakavuga n'amazina yabo, ko nta bantu bahiciwe, ko abantu azi bishwe ari abaguye haruguru y'iwabo cyane muri Mutura.

- Serukiko Théoneste yavuze ko muri Gacaca yaburaniye kuri site ya Gacurabwenge aranakatirwa, ariko ko atigeze yumva bavuga Twagirayezu Wenceslas. Muri make ahamya ko atigeze yumva Twagirayezu Wenceslas mu bagize uruhare mu bwicanyi bwabereye kuri bariyeri yo kwa Gacamena.

- Pasiteri Kaberuka Théophile yavuze ko indege ya Perezida Habyarimana igwa yari i Gacurabwenge, jenoside itangira ari mu rugo, ko atamenye abari bayoboye interahamwe muri Gacurabwenge, ko bariyeri yo kwa Gacamena yumvise ko yahabaye ariko atayigezeho, yavuze ko nta bantu bahaguye, ahandi avuga ko yumvise ko Bunani Jean yarasiraga abantu kuri iyo bariyeri. Yanavuze ko mu ikusanyamakuru yari ahari akaba atarumvise bavugamo izina rya Twagirayezu Wenceslas, ko abo yibuka bavuzwe ari Bunani Jean, Kanyamihanda na Barangirana n'abafunzwe nka Sebudari, Obed na Karema.

- Mpahatanye Mathieu yavuze ko mu ikusanyamakuru abagaragaye bayoboraga ibikorwa byo kwica Abatutsi bafunzwe nk'uwitwa Karema Faustin na Karimunda, ko na bariyeri yo kwa Gacamena yayumvise ariko atayibonye kandi ko nta muntu azi wayiguyeho.

- Sindambiwe Emmanuel avuga ko yari umuyobozi wa Selire kandi yiganye na Twagirayezu Wenceslas, yavuze ko bariyeri yo kwa Gacamena yashinzwe mbere gato ya jenoside, iza gukurwaho n'uko FPR ifashe igihugu. Yanavuze ko nta muntu azi wahiciwe kuko nk'uwahayoboye ahazi cyane, ko umuntu wari uyishinzwe ari Bunani Jean wari Insipegiteri w'amashuri, wanamamaye cyane muri jenoside. Yanavuze ko ikusanyamakuru rya Gacaca ryabaye igihe kinini, ariko atumvise bavuga ko Twagirayezu Wenceslas yagize uruhare muri jenoside, ko ahubwo hari undi muntu witwa Twagirayezu bahimbaga Ndabanyurahe Mabuye wari utuye hafi yo kwa Burugumesitiri Butsingiri Kantwari muri Gasiza waguye muri RDC mu mwaka wa 1995, ko uwo yari umuturage usanzwe utarize. Yongeyeho ko hafi ya bariyeri yo kwa Gacamena

nko muri metero magana atatu (300) haguye abantu bishwe na Bunani Jean na Nkunduwenda kandi ko abo bantu batamenyekanye kuko bari bavuye ruguru muri Mudende.

[289] Urukiko rw'Ubujurire rusanga ikigaragara muri aba batangabuhamya bashinjura Twagirayezu Wenceslas harimo abemeza ko kuri bariyeri yo kwa Gacamena hiciwe abantu. Abo ni nka Sindambiwe Emmanuel, Bazege Ntahondi Léa na Kaberuka Théophile. Hakaba n'abandi bemeza ko ntabahiciwe, nka Nyirabariyanga Ancille, Sebashyitsi Appolinaire, Mpahatanye Mathieu na Barangirana Tharcisse. Abavuga ko hari abahiciwe bahuza n'abatangabuhamya bamushinja; ibyo bikaba bigaragaza ko abahamya ko nta bwicanyi bwahabaye batavuga ukuri. Abahamya ko habereye ubwicanyi, bo banemeza ko batahabonye Twagirayezu Wenceslas. Ibyo ariko bikaba bitavuguruza abahamya ko bahamubonye. Mu bemeza ko habereye ubwicanyi batahabonye TWAGIRAYEZU Wenceslas hari nka Kaberuka Théophile uvuga ko atageze kuri iyo bariyeri, ko n'iby'ubwicanyi bwahabereye yabibwiwe; bikaba byumvikana ko atari kumenya ababigizemo uruhare bose. Naho uvuga ko yabyiboneye nka Bazege Ntahondi Léaavuga ko yabonye hakorerwa amarorerwa mu ijoro, bikaba byumvikana ko nawe atashoboraga kumenya abayagizemo uruhare bose. Naho Sindambiwe Emmanuel uhamya ko yabonye abantu bicwa ariko ko atahabonye Twagirayezu Wenceslas, ireme ry'ubuhamya bwe naryo riracyemangwa nk'uko biza gusobanurwa mu bika bikurikira.

[290] Urukiko rw'Ubujurire rusanga abatangabuhamya b'impande zombi bahuriza ku kuba muri Gacurabwenge, hari bariyeri yo kwa Gacamena yashyizweho mbere ya Mata 1994, kuko nka DTB avuga ko iyo bariyeri yari yarashyizweho kuva mu 1992-1994 n'ubuyobozi bwa Segiteri Gacurabwenge kugira ngo bajye bahiga Abatutsi n'abo bitaga ibyitso byabo, imvugo ye ikaba ishimangirwa na Sindambiwe Emmanuel wari umuyobozi wa selire, uvuga ko yagiyeho mbere gato ya jenoside na Sebashyitsi Appolinaire, wari Nyumbakumi muri Kanyabijumba aho iyo bariyeri yari iri, ndetse Barangirana Tharcisse atanga ubuhamya yavuze ko yabonye bariyeri yo kwa Gacamena iriho abantu Konseye yari yarahaye imbunda zo kurinda izo bariyeri. Ibi bikaba byumvukanisha ko iyo bariyeri yari ihari kandi ko abantu bari bayiriho babaga bafite imbunda.

[291] Mu gika cya 192 cy'urubanza rujuririrwa, Urukiko Rukuru rwemeje ko nta muntu wigeze yicirwa kuri bariyeri yo kwa Gacamena, rushingiye ku buhamya bw'abatangabuhamya nka Sebashyitsi Appolinaire, Nyirabariyanga Ancille, Sindambiwe Emmanuel. Nyamara igitangaje ni uko Sebashyitsi Appolinaire ahamya ko nta muntu wafatiwe kuri bariyeri yo kwa Gacamena, nta wahiciwe, nta n'uwahakomerekeye, mu gihe abandi batangabuhamya, uretse n'abatanzwe n'Ubushinjacyaha bagaragajwe haruguru, hari n'abatangabuhamya batanzwe na Twagirayezu Wenceslas bahamya ko kuri iyo bariyeri hiciwe abantu, Urukiko Rukuru rutagize icyo ruvuga ku buhamya bwabo. Abo ni nka Bazege Ntahondi Léa wemeje ko hakorewe amarorerwa; Kabera Théophile wavuze ko yumvise bavuga ko Bunani Jean yaharasiraga abantu na Sindambiwe Emmanuel uvuga ko hari abantu Bunani Jean yiciye muri metero magana atatu (300m) uvuye kuri bariyeri. Ibyo bahamya bikaba bihura n'ibyavuzwe n'abatangabuhamya b'Ubushinjacyaha bemeza ko kuri iyo bariyeri haguyeho abantu, ndetse nka DTA abazwa mu Bugenzacyaha akaba yaravuze ko abagore babiri n'umusore bahafatiwe bagiye kubicira nko muri metero mirongo itandatu (60m) uvuye kuri bariyeri, naho mu Rukiko Rukuru avuga ko babanje kubaka ibyangombwa. Ikindi kigaragaza ko Sebashyitsi Appolinaire atashoboraga kuba umutangabuhamya wizewe ni uko avuga ko yigeze kurara kuri iyo bariyeri umunsi umwe, nyamara umutangabuhamya Barangirana Tharcisse nawe watanzwe na Twagirayezu Wenceslas we yemeza ko Sebashyitsi Appolinaire yari mu bantu barindaga bariyeri kandi bahawe imbunda na Konseye.

[292] Urukiko rw'Ubujurire rusanga ibivugwa na Twagirayezu Wenceslas ko ikigaragaza ko Sebashyitsi Appolinaire afite amakuru yizewe ari uko ari we na Responsabule Mbonyubwabo bari bafite inshingano zo gupanga abarara kuri bariyeri kandi bakanahabwa raporo buri gitondo nta shingiro bifite, kuko mu buhamya bwe yagaragaje uguhuzagurika kuko hamwe yemezaga ko ari Responsabule wapangaga abayijyaho, ko ntawayiyoboraga, ahandi akavuga ko yayirayeho rimwe, ko ikindi gihe yajya kureba abasore yapanze. Ibyo avuga ko nta muntu wayoboraga bariyeri nabyo bikaba bitandukanye n'ibyo

Sindambiwe Emmanuel avuga ko iyo bariyeri yayoborwaga na Bunani Jean wari Inspegiteri w'amashuri wamamaye cyane muri jenoside, ko yanahabwaga raporo.

[293] Urukiko rw'Ubujurire rusanga ubuhamya bwa Nyirabariyanga Ancille n'ubwa Sindambiwe Emmanuel nabwo bufite inenge ikomeye ituma butarashoboraga gushingirwaho nk'ubuhamya bwizewe. nka Nyirabariyanga Ancille, mu buhamya bwe avuga ko nta bantu biciwe kuri bariyeri yo kwa Gacamena, nyamara iyo bariyeri yari imbere y'urugo rwe, kandi hakaba hari abandi batangabuhamya bemeza ko hiciwe abantu, barimo n'abatanzwe na Twagirayezu Wenceslas ubwe, nka Bazege Ntahondi Léa, Kaberuka Théophile Na Sindambiwe Emmanuel. Uyu Sindambiwe Emmanuel nawe ubuhamya bwe ntibwari bukwiye kwizerwa kuko nabwo bufite inenge y'uko nk'umuyobozi wa serire yemeza ko nta bwicanyi bwabereye kuri iyo bariyeri mu gihe, nk'uko byavuzwe, hari abandi bemeza ko habereye ubwicanyi. Ikindi kandi mu buhamya bwe hari aho avuga ko hari abantu biciwe kuri metero magana atatu (300 m), uru Rukiko rwasanze bariciwe kuri bariyeri kuko bishwe na Bunani Jean wayiyoboraga.

[294] Uru Rukiko rusanga ibivugwa na Twagirayezu Wenceslas ko iyo hagira abantu bagwa kuri iyo bariyeri Nyirabariyanga Ancille atari kubura kubimenya bitewe n'uko ibyahaberaga byose yabimenyaga, n'uko nk'uwacitse ku icumu nta nyungu yari afite yo kumuhishira nabyo nta shingiro bifite, kuko uyu mutangabuhamya avuga ko atashoboraga kujya ku muhanda, ko kuva indege ya Perezida Habyarimana ihanutse, ibintu bimaze gukomera we n'abana be bagiye kwihisha mu buvumo ahantu hari intera uvuye iwabo mu rugo, ahandi akavuga ko impamvu atari kubiyoberwa ari uko mbere y'uko bajya kwihisha abakoraga ibikorwa by'ubugizi bwa nabi babivugaga kubera ko babonaga nta cyaha bakora, hakaba n'aho avuga ko bashobora kuba barabivugiye ahandi. Ibi bikaba bigaragaza ko nta makuru ahagije yari afite ku byaberaga kuri bariyeri yo kwa Gacamena.

[295] Urukiko rw'Ubujurire rurasanga kandi mu kwemeza ko nta bwicanyi bwabereye kuri bariyeri yo kwa Gacamena, Urukiko Rukuru ntacyo rwavuze ku buhamya bwa Bazege Ntahondi Léa wemeje ko yabonye kuri iyo bariyeri hakorerwa amarorerwa no ku byo Pasiteri Kaberuka Théophile yavuze ahamya ko yumvise ko Bunani yaharasiraga abantu. Ibyo bikaba bihura n'ibyavuzwe na Sindambiwe Emmanuel ko hari abantu Bunani Jean yiciye nko muri metero magana atatu (300m) uvuye kuri iyo bariyeri.

[296] Urukiko rusanga muri aba batangabuhamya Twagirayezu Wenceslas yatanze harimo benshi batanze ubuhamya burimo inenge zikomeye zagombaga gutuma butizerwa kubera ko ibyo bagiye bemeza usanga mu by'ukuri bidashoboka. Uretse abavuzwe mu bika bibanziriza iki, hari na Barangirana Tharcisse wavuze ko nta bantu biciwe kuri bariyeri yo kwa Gacamena, nyamara ariho yari atuye, azi n'abari bashinzwe iyo bariyeri, mu gihe nk'uko byasobanuwe hari abandi batangabuhamya batanzwe n'impande zombi muri uru rubanza bemeza ko hiciwe abantu. Ibi binareba Mpahatanye Mathieu wavuze ko ibya bariyeri yo kwa Gacamena ari ibyo yumvise gusa kandi nyamara yari ahaturiye kuko yari atuye muri Gacurabwenge aho iyo bariyeri yari iri, ndetse mu mvugo za benshi ikaba yari ihamaze igihe[63].

[297] Uru Rukiko rurasanga rero, Urukiko Rukuru rwarakoze ikosa mu kwemeza ko nta bwicanyi bwabereye kuri bariyeri yo kwa Gacamena, ko nta n'uruhare Twagirayezu Wenceslas yabugizemo.

UMWANZURO RUSANGE

[298] Ingingo ya 2 y'Amasezerano Mpuzamahanga yo ku wa 09 Ukuboza 1948 agamije gukumira no guhana icyaha cya jenoside yemejwe mu Rwanda binyuze mu Itegeko - Teka no 08/75 ryo ku wa 12/02/1975[64], kimwe n'ingingo ya 91, agace ka 1o y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya

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[63] DTB avuga ko iyo bariyeri yari yarashyizweho kuva mu 1992-1994.

[64] Amasezerano ku ikumira n'ihanwa ry'icyaha cya jenoside yo ku wa 09/12/1948 u Rwanda rwashyizeho umukono ku wa 12/02/1975 mu ngingo yayo ya 2 ateganya ko icyaha cya jenoside ari kimwe mu bikorwa bikurikira kigamije kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo,

ibyaha n'ibihano muri rusange, ziteganya ko icyaha cya Jenoside ari kimwe mu bikorwa bikurikira, gikozwe kigambiriwe, 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: 1º kwica abo bantu; (…).

[299] Ingingo ya 94 y'iryo Tegeko iteganya ko icyaha cyibasiye inyokomuntu ari kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare: 1º kwica; 2o kurimbura (..).

[300] Mu rubanza rwa Nahimana Ferdinand na bagenzi be, Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, rwagaragaje ko umuntu ashobora guhamwa n'icyaha cya jenoside n'icyaha cyibasiye inyokomuntu hashingiwe ku bikorwa bimwe kubera ko ibikorwa bigize buri cyaha bitandukanye, icyaha cya jenoside gikorwa mu mugambi wo kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, naho icyaha cyibasiye inyokomuntu kigakorwa mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivile[65].

[301] Mu yandi magambo, umuntu uri mu bakoze ibikorwa by'ubwicanyi byagambiriwe, bikozwe n'ibitero byibasira abantu bagize itsinda runaka rihuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bigamije kubarimbura bose cyangwa bamwe muri bo kubera icyo bari cyo, bikorewe abasivile, mu bihe bisanzwe cyangwa by'intambara, afatwa nk'uwakoze icyarimwe mu mpurirane mbonezamugambi icyaha cya jenoside n'icyaha cyibasiye inyoko muntu.

[302] Nk'uko byasobanuwe mu bika bibanza, uru Rukiko rurasanga Urukiko Rukuru rwarakoze ikosa mu isesengura ry'imvugo z'abatangabuhamya bituma rugira Twagirayezu Wenceslas umwere rushingiye ku kuba ngo abatangabuhamya bashinja bivuguruza ku buryo bukabije. Nyamara nk'uko byasobanuwe, ibyo badahurizaho mu buhamya bwabo ni utuntu duto tutari dukwiye gutesha agaciro ireme ry'ubuhamya bwabo. Uru Rukiko ruranasanga ubuhamya bw'abatangabuhamya batanzwe na Twagirayezu Wenceslas butamushinjura ku bikorwa bigize ibyaha aregwa kuko byagaragaye ko nta bumenyi buhagije bafite ku byo aregwa, bakaba batanakwiye kwizerwa kuko bavuga ibintu bitari ukuri ku buryo bugaragarira uwo ari we wese wasesengura imvugo zabo ahuza ibyo bavuze, aho bari bari n'igihe byakorewe. Icyakora, nk'uko na none byagaragaye, isesengura ry'imvugo z'abatanze ubuhamya bose ntirigaragaza ku buryo budashidikanywaho ko Twagirayezu Wenceslas ari mu bari bayoboye ibitero byavuzwe nk'uko Ubushinjacyaha bushaka kubyumvikanisha.

[303] Nyuma yo gusuzuma ibimenyetso byatanzwe n'Ubushinjacyaha bigizwe n'ubuhamya bw'abamushinja no gusanga ubuhamya bushinjura nta shingiro bufite, Urukiko rw'Ubujurire rurasanga Twagirayezu Wenceslas yaragize uruhare mu bitero byishe Abatutsi kuri kaminuza ya Mudende, kuri kiriziya ya Busasamana, ku ishuri rya Saint Fidèle, ku Nyundo, kuri commune rouge no kuri bariyeri yo kwa Gacamena kuko byagaraye mu buryo budashidikanywaho ko yari abirimo. Urukiko rw'Ubujurire rushingiye kuri ibyo, no ku kuba Twagirayezu Wenceslas yariyemereye ko kuva muri Mutarama kugeza muri Nyakanga 1994 yari mu Rwanda, kuba nta cyangombwa kigaragaza ko yambutse umupaka, ndetse n'inyandiko yiswe décharge ikaba ifite inenge y'uko ntacyemeza ko yakozwe ku itariki yo ku wa 08/04/1994 yitirirwa, rusanga Urukiko Rukuru rwarakoze amakosa mu kwemeza ko atari mu Rwanda kuva ku itariki ya 7 kugeza ku itariki ya 09/04/1994 ubwo ibikorwa bigize ibyaha aregwa byakorwaga. Mu yandi magambo, ubuhamya bwatanzwe n'abatangabuhamya banditse inyandiko yemeza ko Twagirayezu Wenceslas yari muri Congo ubwo ibyaha aregwa byakorwaga ntibukwiye kwemerwa nk'ukuri.

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haba mu bihe bisanzwe cyangwa mu bihe by'intambara: 1° kwica abo bantu; 2° kubatera ubumuga bw'umubiri cyangwa bwo mu mutwe; 3° kubashyira, ubigambiriye, mu mibereho ishobora gutuma barimbuka bose cyangwa harimbuka igice cyabo; 4° gufata ibyemezo bibabuza kubyara; 5° kubambura ku ngufu urubyaro rwabo ukaruha abandi bantu badahuje.

[65] Reba urubanza rw'ubujurire haburana Ubushinjacyaha na Nahimana Ferdinand na bagenzi be (Media Case), Case no ICTR - 99-52-A, para. 1029.

[304] Hashingiwe ku bimaze gusobanurwa, Urukiko rw'Ubujurire rusanga kuba Twagirayezu Wenceslas yari mu bitero byishe Abatutsi benshi bari bahungiye kuri kaminuza ya Mudende no kuri kiriziya ya Busasamana, akaba yaranajyanye n'igitero cyakuye Abatutsi barimo abanyeshuri n'abakozi ku ishuri rya Saint Fidèle kikabajyana ku Nyundo babwirwa ko bagiye kubarokora, babagezayo bamwe bakahabicira, abandi bakajya kubicira aho bise commune rouge, no kuba ubwo yari kumwe n'abandi kuri bariyeri yo kwa Gacamena yaratangiriye Abatutsi bageragezaga guhungira muri RDC, bakabica, bigaragaza nta shiti ko nta kindi bari bagamije atari ukurimbura Abatutsi, bityo akaba ahamwa n'icyaha cya jenoside. Uru Rukiko runasanga kandi kuba ibyo byaha yarabikoze mu bitero bigamije kurimbura abantu mu kivunge b'abasivile, yaranakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu.

C. Ku byerekeye ibihano bisabwa n'Ubushinjacyaha

- **Imiburanire y'Ubushinjacyaha**

[305] Abahagarariye Ubushinjacyaha basaba Urukiko rw'Ubujurire kwakira ubujurire bw'Ubushinjacyaha no kwemeza ko bufite ishingiro, guhindura urubanza rwajuririwe no kwemeza ko Twagirayezu Wenceslas ahamwa n'icyaha cyo kwica nk'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu. Basobanura ko kubera uburemere bw'ibyaha yakoze n'ingaruka zikomeye ibyo byaha byateje zirimo umubare munini w'Abatutsi wishwe, abatewe ubumuga bwo ku mubiri no mu mutwe n'imfubyi zitagira ingano, basanga akwiye guhanishwa igifungo cya burundu. Banavuga ko adakwiye kugabanyirizwa igihano kubera uburemere bw'icyaha cya jenoside yakoze n'uruhare yagize mu bitero yagiyemo mu karere k'iwabo ari umuntu ujijutse kuko yari umwarimu.

[306] Bavuga kandi ko kuba uburemere bw'icyaha butuma uwagikoze atagabanyirizwa igihano byasobanuwe mu manza zitandukanye zaciwe n'uru Rukiko nko mu rubanza no RPAA/GEN 00009/2019/CA haburana Ubushinjacyaha na Kabilima Jean Damascène rwaciwe ku wa 16/10/2020 mu gika cya 109 n'icya 110, ndetse no mu gika cya 125 cy'urubanza rwa Kambanda Jean rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, bityo na Twagirayezu Wenceslas akaba adakwiye kugabanyirizwa igihano.

- **Imyiregurire ya Twagirayezu Wenceslas**

[307] Twagirayezu Wenceslas n'abamwunganira bo bavuga ko basanga icyifuzo cy'Ubushinjacyaha cyo guhindura imikirize y'urubanza rwaciwe n'Urukiko Rukuru nta shingiro gifite, kubera ko yagaragaje ibimenyetso by'uko atari mu Rwanda ku itariki ya 6 kugeza ku ya 9/04/1994 ubwo ibikorwa bigize ibyaha aregwa byakorwaga, Ubushinjacyaha bukaba butarabashije kugaragaza ibimenyetso bibivuguruza n'ibimenyetso simusiga bihamya ko yakoze ibyaha bumurega. Bavuga ko nk'uko Urukiko Rukuru rwabigaragaje abatangabuhamya b'ubushinjacyaha baranzwe no kwivuguruza ku tuntu duto no ku bintu by'ingenzi, bigaragaza ko nta bumenyi ku byaha akurikiranweho bafite, kuko bavuga ibyo batiboneye n'ibyo batiyumviye. Basoza basaba Urukiko gushingira ku ngingo ya 107 n'iya 111 z'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha, rukemeza ko ubujurire bw'ubushinjacyaha nta shingiro bufite, rukanemeza ko urubanza rwajuririwe rudahindutse.

UKO URUKIKO RUBIBONA

[308] Ingingo ya 3 y'Itegeko Ngenga n° 04/2012/OL ryo ku wa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo iteganya ibikurikira: "Ikurikiranwa n'ihanwa ry'ibikorwa bigize icyaha cya Jenoside yakorewe Abatutsi n'ibindi byaha byibasiye inyokomuntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994 byari bisanzwe biburanishwa

n'Inkiko Gacaca, bikorwa n'inzego zibifitiye ububasha hakurikijwe amategeko asanzweho mu ikurikirana n'ihana ry'ibyaha".

[309] Ingingo ya 335 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ibikurira: "Iri tegeko ritangira gukurikizwa ku munsi ritangarijweho mu Igazeti ya Leta ya Repubulika y'u Rwanda. Icyakora, ibyaha bya Jenoside yakorewe Abatutsi n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994 bihanwa hakurikijwe ibihano biteganyijwe muri iri tegeko uretse ibiteganyijwe ukundi n'itegeko."

[310] Nk'uko byasobanuwe haruguru, Urukiko rw'Ubujurire rwasanze TWAGIRAYEZU Wenceslas ahamwa n'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha kibasiye inyokomuntu, kubera uruhare yagize mu bitero byagiye kuri kaminuza ya Mudende, kuri kiriziya ya Busasamana bikica Abatutsi bari bahahungiye ndetse akaba yaragize uruhare mu iyicwa ry'Abatutsi bageragezaga guhungira muri RDC biciwe kuri bariyeri yitiriwe Gacamena yo muri Gacurabwenge yabaga ariho no kuri commune rouge, ku ishuri rya Saint Fidèle no ku Nyundo.

[311] Ingingo ya 92 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko yahinduwe kugeza ubu[66] iteganya ibi bikurikira: « Umuntu ukoze kimwe mu bikorwa bivugwa mu ngingo ya 91 y'iri Tegeko aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa igihano cy'igifungo cya burundu». Ingingo ya 95 y'Itegeko nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe yo igateganya ko umuntu wese uhamijwe n'urukiko gukora kimwe mu bikorwa bivugwa mu gace ka 1°, aka 2°, aka 3°, aka 6°, aka 7°, aka 9° n'aka 11° tw'ingingo ya 94 y'iri tegeko, ahanishwa igihano cy'igifungo cya burundu. Naho ingingo ya 60 y'iryo Tegeko nk'uko yahinduwe kugeza ubu[67] igateganya ko iyo umucamanza yemeje impamvu nyoroshyacyaha, ashobora kugabanya igihano, igifungo cya burundu kikagabanywa ku buryo ariko kitajya munsi y'igihano cy'igifungo cy'imyaka 15.

[312] Mu rubanza no RPA/GEN 0001/15/CS haburana Ubushinjacyaha na Bandora Charles rwaciwe n'Urukiko rw'Ikirenga ku wa 22/03/2019 rwasobanuye ibijyanye n'itangwa ry'igihano mu gihe hari impamvu nyoroshyacyaha n'impamvu nkomezacyaha. Muri urwo rubanza Urukiko rw'Ikirenga rwemeje ko impamvu nyoroshyacyaha zigenwa n'Urukiko mu bushishozi bwarwo, ariko impamvu nkomezacyaha ziba ziteganywa n'itegeko, cyangwa se Ubushinjacyaha bugatanga ibimenyetso bigaragaza ku buryo budashidikanywaho impamvu uwahamwe n'icyaha agomba guhabwa igihano kinini. Muri urwo rubanza kandi Urukiko rw'Ikirenga rwavuze ko n'ubwo Bandora Charles yahamwe n'ibyaha bifite uburemere, kandi byagize n'ingaruka zikomeye ku muryango nyarwanda; kuba yarahamwe n'ibi byaha bidahagije kugira ngo bibe impamvu nkomezacyaha zituma igihano yahanishijwe kiyongera mu gihe Ubushinjacyaha butagaragaje ko yabikoranye urwango n'ubugome birenze iby'abandi bakoze ibyaha mu gace byakorewemo. Ibyo Urukiko rw'Ikirenga rwavuze ni nabyo byemejwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Kalimanzira Callixte.[68]

[313] Urukiko rw'Ubujurire rurebye ibyaha bihama Twagirayezu Wenceslas, ingaruka byagize ku muryango nyarwanda, uburyo byakozwemo, aho ibitero byagiye bisanga Abatutsi aho bahungiye bizeye kuharokokera; mu iyicwa ryabo, nk'uko abatangabuhamya babivuga, hagakoreshwa amasasu n'intwaro gakondo, rusanga ibyaha yakoze bifite uburemere bukomeye. Uru Rukiko rushingiye ariko ku kuba ibyaha yakoze bitamushyira mu rwego rw'abateguye cyangwa urw'abayoboye ibitero byishe abatutsi ahantu havuzwe no kuba ari ubwa mbere ahamijwe icyaha, rusanga agomba guhanishwa igifungo cy'imyaka makumyabiri (20).

III. ICYEMEZO CY'URUKIKO

[66] Ingingo ya 5 y'Itegeko no 059/23 ryo ku wa 04/12/2023.
[67] Ingingo ya 2 y'Itegeko no 059/23 ryo ku wa 04/12/2023.
[68] Reba urubanza rw'Ubushinjacyaha na Callixte Kalimanzira, Case No. ICTR-05-88-T, para. 748-752.

[314] Rwemeje ko ubujurire bw'Ubushinjacyaha bufite ishingiro;

[315] Rwemeje ko urubanza noRP/GEN 00003/2019/HC/HCCIC rwaciwe n'Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibe ku wa 11/01/2024 ruhindutse mu ngigo zarwo zose;

[316] Rwemeje ko Twagirayezu Wenceslas ahamwa n'icyaha cya jenoside n'icyaha cyo kurimbura nk'icyaha kibasiye inyokomuntu;

[317] Ruhanishije Twagirayezu Wenceslas igifungo cy'imyaka makumyabiri (20);

[318] Rwemeje ko amagarama y'urubanza aherera ku Isanduku ya Leta.