UBUSHINJACYAHA v HABYARIMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPAA/GEN 00008/2019/CA – (Rugabirwa, J. P., Tugireyezu na Kaliwabo, J.) 28 Gashyantare 2020]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ifungwa n'ifungurwa – Ifungurwa ry'agateganyo – Umuntu ufunzwe mu rwego rwo kurangiza igihano cy'igifungo yakatiwe ntashobora gufungurwa by'agateganyo ku mpamvu y'uko yafunzwe mu buryo bunyuranije n'amategeko n'inzego z'iperereza.

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Uburyozwacyaha –Kugirwa umwere – Nta muburanyi ushobora kwitwaza ko urubanza rwaciwe n'urundi rukiko rwamugize umwere mu gihe atarubayemo umuburanyi.

Amategeko agenga ibimenyetso n'itangwa ryabyo – Ibimenyetso mu manza nshinjabyaha –Ibimenyetso bishingiye ku buhamya – Agaciro k'ibimenyetso bishingiye ku buhamya – Urukiko nirwo rufite inshingano zo kwemeza ibimenyetso bigomba guhabwa agaciro rumaze kumva abatangabuhamya – Umucamanza ashobora guha agaciro igice kimwe cy'ubuhamya, ikindi ntigihabwe agaciro – Mu gihe ubuhamya bubiri buvuguruzanya, nyuma yo kumva abatangabuhamya, urukiko ni rwo rwemeza ko ubuhamya runaka aribwo bufite ishingiro.

Amategeko agenga imanza nshinjabyaha – Icyaha cya jenoside n'ibyaha byibasiye inyoko muntu – Icyaha cy'ubwumvikane bugamije gukora jenoside – Nubwo kidateganyijwe mu mategeko y'u Rwanda, icyaha cy'ubwumvikane bugamije gukora jenoside ni icyaha cyo gucura umugambi wo gukora jenoside.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, Habyarimana aregwa ko ubwo yari mu nzego z'ubuyobozi bw'ishyaka rya MRND ku rwego rwa Perefegitura y'Umujyi wa Kigali yakoze ibyaha bigamije gucura umugambi, gutegura, gushishikariza abandi, kugenzura no kuyobora jenoside cyangwa ibindi byaha byibasiye inyokomuntu. Uru rukiko rwemeje ko ahamwa n'ibikorwa byo gushishikariza, kurema umutwe w'abagizi ba nabi no kuyobora za bariyeri ziciweho abatutsi hagamijwe gukora icyaha cya jenoside n'ibyaha byibasiye inyoko muntu. Ku kijyanye n'inzitizi yari yatanze yo kuba yarafunzwe mu buryo bunyuranyije n'amategeko, Urukiko rwemeje ko itahabwa agaciro kuko yayitanze mu buryo budakurikije amategeko, rumuhanisha igifungo cya burundu y'umwihariko.

Uregwa yajuririye Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibe avuga ko Urukiko rwabanje rwirengagije ko yafunzwe mu buryo bunyuranyije n'amategeko, rumuburanisha atunganiwe, kandi ko rwaburanishije urubanza mu mizi rutabanje gusuzuma inzitizi yatanze. Urukiko Rukuru rwemeje ko iyo nzitizi yagombaga kubanza gusuzumwa ariko ko kuri uru rwego rw'ubujurire rutayisuzuma kuko urubanza mu mizi rwamaze gucibwa.

Ku bijyanye n'ibirego bishya Uregwa yasabaga ko bitasuzumwa kuko byazanywe mu bujurire n'Ubushinjacyaha kandi bitari mu mbibi z'ibyajuririwe, Urukiko Rukuru rwasanze ibikubiye mu bimenyetso byatanzwe n'Ubushinjacyaha biri mu mbibi z'ubujurire bwe kuko birebana n'uruhare rwe nk'umwe mu bayobozi b'ishyaka rya MRND mu kwitabira inama zitegura jenoside, gutoranya urubyiruko, kuruha imyitozo n'ibikoresho, bikaba atari ibirego bishya uretse uruhare rwe mu ishingwa rya radiyo RTLM rutagomba gusuzumwa kuko atarurezwe ku rwego rwa mbere. Bityo, rwemeza ko ahamwa n'icyaha cy'ubwumvikane bugamije gukora jenoside n'icyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside, ariko ko adahamwa no kuyobora za bariyeri ziciweho abatutsi yahamijwe n'Urukiko Rwisumbuye, ruhamishaho igihano cy'igifungo cya burundu y'umwihariko yahanishijwe ku rwego rwa mbere.

Ibi byatumye ajuririra Urukiko rw'Ikirenga ariko urubanza rwe rwoherezwa mu Rukiko rw'ubujurire kubera impinduka zakozwe mu rwego rw'ubucamanza, hagashyirwaho uru Rukiko. Mu bujurire bwe yakomeje agaragaza ko yafunzwe mu buryo bunyuranyije n'amategeko ariko Ubushinjacyaha bugasobanura ko adafunzwe muri ubwo buryo kuko yahanishijwe igifungo cya burundu y'umwihariko, kuba icyo cyemezo cyarafashwe hatagaragajwe itegeko ryashingiweho ntacyo bihindura dore ko ari ikibazo cy'imyandikire y'urubanza atari ibigize inenge yarwo.

Incamake y'icyemezo: 1. Umuntu ufunzwe mu rwego rwo kurangiza igihano cy'igifungo yakatiwe ntashobora gufungurwa by'agateganyo ku mpamvu y'uko yafunzwe mu buryo bunyuranije n'amategeko n'inzego z'iperereza.

2. Nta muburanyi ushobora kwitwaza ko urubanza rwaciwe n'urundi rukiko rwamugize umwere mu gihe atarubayemo umuburanyi.

3. Urukiko nirwo rufite inshingano zo kwemeza ibimenyetso bigomba guhabwa agaciro rumaze kumva abatangabuhamya. Umucamanza ashobora guha agaciro igice kimwe cy'ubuhamya, ikindi ntigihabwe agaciro. Mu gihe ubuhamya bubiri buvuguruzanya, nyuma yo kumva abatangabuhamya, urukiko ni rwo rwemeza ko ubuhamya runaka aribwo bufite ishingiro.

4. Nubwo kidateganyijwe mu mategeko y'u Rwanda, icyaha cy'ubwumvikane bugamije gukora jenoside ni icyaha cyo gucura umugambi wo gukora jenoside.

Ubujurire nta shingiro bufite.
Imikirize y'urubanza rwaciwe n'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi ihindutse kuri bimwe.
Amagarama aherera ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko-Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 132.

Amasezerano mpuzamahanga yo ku wa 16 Ukuboza 1966 yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki, ingingo ya 14.

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

Itegeko Nº 027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 155.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 105.

Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 184.

Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65 n'iya 119.

Imanza zifashishijwe:

Ubushinjacyaha na Bandora Charles, RPA 0001/12/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 22/03/2019.

Ubushinjacyaha na Ngirumpatse Mathieu na Karemera Edouard, ICTR-98-44-T.

Ubushinjacyaha na Simon Bikindi, ICTR –2001 -72 –T.

Ubushinjacyaha na Yussuf Munyakazi, ICTR-97-36A-A.

Ubushinjacyaha na Georges Anderson Nderubumwe Rutaganda, ICTR-96-3-A.

Ubushinjacyaha na Jean Paul Akayesu, ICTR -96-4-T.

Ubushinjacyaha na Seromba Athanase, ICTR-01-66-A.

Ubushinjacyaha na Ntagerura André na bagenzi be, ICTR-99-46-A.

Ubushinjacyaha na Musema Alfred, ICTR-96-13-T.
Ubushinjacyaha na Nahimana Ferdinand na bagenzi be, ICTR-99-52-A.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Habyarimana Jean yari Perezida w'ishyaka rya MRND (*Mouvement Révolutionaire National pour le Développement*) muri Perefegitura y'Umujyi wa Kigali, akaba n'umwe mu bari bagize Biro Politiki (*Bureau Politique*) y'iryo shyaka ku rwego rw'igihugu. Aregwa ko ubwo yari mu nzego z'ubuyobozi bw'ishyaka rya MRND ku rwego rwa Perefegitura y'Umujyi wa Kigali yakoze ibyaha bigamije gucura umugambi, gutegura, gushishikariza abandi, kugenzura no kuyobora jenoside cyangwa ibindi byaha byibasiye inyokomuntu, by'umwihariko kurema umutwe w'abagizi ba nabi atoranya urubyiruko rwo guha imyitozo ya gisirikare, akanaruha ibikoresho byicishijwe abatutsi, kujya mu nama zitegura jenoside, kugenzura za bariyeri ziva Nyabugogo ku isoko kugeza ku Muhima ku ishuli rya APACOPE, ari naho hiciwe abantu benshi barimo uwitwa Rutayisire alias Tigana.

[2] Urubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyarugenge, ku itariki ya 01/03/2016, uru Rukiko ruca urubanza RP GEN 0002/15/TGI/NYGE rwemeza ko Habyarimana Jean ahamwa n'ibikorwa byo gushishikariza, kurema umutwe w'abagizi ba nabi no kuyobora za bariyeri ziciweho abatutsi hagamijwe gukora icyaha cya jenoside n'ibyaha byibasiye inyokomuntu, ruvuga ko inzitizi irebana no gufungwa mu buryo bunyuranyije n'amategeko yari yatanzwe na Habyarimana Jean itahabwa agaciro kuko yayitanze mu buryo budakurikije amategeko, rumuhanisha igifungo cya burundu y'umwihariko.

[3] Habyarimana Jean ntiyishimiye imikirize y'urubanza, ajuririra Urukiko Rukuru Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi[1], avuga ko Urukiko Rwisumbuye rwirengagije ko yafunzwe mu buryo bunyuranyije n'amategeko, ko rwamuburanishije atunganiwe, kandi ko rwaburanishije urubanza mu mizi rutabanje gusuzuma inzitizi yatanze.

[4] Mu bujurire bwe kandi, Habyarimana Jean yavugaga ko Urukiko Rwisumbuye rwirengagije ko atari gukurikiranwaho icyaha cyo kurema umutwe w'abagizi ba nabi kubera ko cyashaje, ko yahamijwe ibyaha hashingiwe ku buhamya budafatika, bwashatswe hagamijwe kumuhamya ibyaha ndetse ko ababutanze batahamagawe mu Rukiko, kandi ko Urukiko rwanze ko Ubushinjacyaha buzana zimwe mu nyandiko zimurenganura zirimo inyandikomvugo y'iburanisha ku ifunga n'ifungurwa ry'agateganyo n'iperereza ryakozwe n'Ubushinjacyaha mu murenge wa Muhima.

[5] Mu rubanza RPA GEN 00002/2016/HCCI rwaciwe ku wa 28/04/2017, Urukiko Rukuru rwasanze koko Urukiko Rwisumbuye rwaragombaga kubanza gusuzuma inzitizi yatanzwe na Habyarimana Jean y'uko yafunzwe mu buryo bunyuranyije n'amategeko, ariko ko ku rwego rw'ubujurire rutayisuzuma kuko urubanza mu mizi rwamaze gucibwa, ndetse Habyarimana Jean agahanishwa igifungo cya burundu y'umwihariko, ko rero gusuzuma iyo nzitizi ntacyo byahindura.

[6] Ku birebana n'ibirego bishya Habyarimana Jean yavugaga ko Ubushinjacyaha bwazanye mu bujurire, avuga ko bitari mu mbibi z'ibyajuririwe, agasaba ko bitasuzumwa, muri byo akavuga inama aregwa ko yakoranye na Renzaho Tharcisse mu rwego rwo gutegura jenoside, uruhare rw'ishyaka rya MRND mu gutegura jenoside, kuba mu bashinze radiyo RTLM (*Radio Télévision Libre des Mille Collines*) no kuyobora ibitero hirya no hino mu gihugu uretse ku Muhima, Urukiko rwasanze ibikubiye

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[1] Muri uru rubanza, mu rwego rwo guhina amagambo harakoreshwa Urukiko Rukuru mu kuvuga Urukiko RukuruUrugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibe.

mu bimenyetso byatanzwe n'Ubushinjacyaha biri mu mbibi z'ubujurire bwe kuko birebana n'uruhare rwe nk'umwe mu bayobozi b'ishyaka rya MRND mu kwitabira inama zitegura jenoside, gutoranya urubyiruko, kuruha imyitozo n'ibikoresho, bikaba atari ibirego bishya uretse uruhare rwe mu ishingwa rya radiyo RTLM rutagomba gusuzumwa kuko atarurezwe ku rwego rwa mbere.

[7] Urukiko rwanzuye ko ubujurire bwa Habyarimana Jean bufite ishingiro kuri bimwe, ruvuga ko ahamwa n'icyaha cy'ubwumvikane bugamije gukora jenoside n'icyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside, ariko ko adahamwa no kuyobora za bariyeri ziciweho abatutsi yahamijwe n'Urukiko Rwisumbuye rwa Nyarugenge, ruhamishaho igihano cy'igifungo cya burundu y'umwihariko yahanishijwe ku rwego rwa mbere.

[8] Habyarimana Jean ntiyishimiye imikirize y'urubanza, ajuririra Urukiko rw'Ikirenga asaba ko rwasuzuma ibirebana n'uko yafunzwe mu buryo bunyuranyije n'amategeko, ko Urukiko Rukuru rwafashe icyemezo rudashingiye ku manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR)[2], ko atahawe umwanya wo kuvuguruzanya n'abatangabuhamya bamushinja, ko Urukiko Rukuru rwirengagije imvugo z'abatangabuhamya bamushinjura no kuba Urukiko Rukururwarakoze ikosa mu kumuhamya icyaha cy'ubwumvikane bugamije gukora jenoside.

[9] Nyuma y'ishyirwaho ry'Urukiko rw'Ubujurire, ubujurire bwa Habyarimana Jean bwoherejwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko[3], buhabwa RPAA/GEN 00008/2019/CA.

[10] Iburanisha ry'urubanza ryashyizwe ku wa 13/11/2019 ariko uwo munsi rirasubikwa kubera ko abacamanza bari bari mu mahugurwa, ryimurirwa ku wa 18/11/2019; kuva uwo munsi urubanza rugenda rusubikwa ku mpamvu zitandukanye. Urubanza rwongeye kuburanishwa mu ruhame ku itariki ya 09/01/2020 n'iya 13/01/2020, Habyarimana Jean yunganiwe na Me Nyirihirwe Hilaire, Ubushinjacyaha buhagarariwe na Rudatinya Nyangezi Gaspard, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

Ibibazo bigomba gusuzumwa muri uru rubanza akaba ari:

- Kumenya niba Habyarimana Jean afunzwe mu buryo bunyuranyije n'amategeko;
- Kumenya niba urubanza rwa Matayo Ngirumpatse na Edouard Karemera rwaciwe na TPIR rwakuraho Habyarimana Jean uburyozwacyaha ku bwumvikane mu mugambi wo gukora jenoside;
- Kumenya niba Urukiko Rukuru rwaragombaga byanze bikunze gutumiza Nyiringondo Epaphrodite na Mbarushimana Vincent kugira ngo bavuguruzanye na Habyarimana Jean no kumenya niba bagomba gutumizwa n'uru Rukiko kugira ngo habe ivuguruzanya;
- Kumenya niba Urukiko Rukuru rwarirengagije imvugo z'abatangabuhamya bashinjura Habyarimana Jean;
- Kumenya niba hari ikosa Urukiko Rukuru rwakoze mu guhamya Habyarimana Jean icyaha cy'ubwumvikane bugamije gukora jenoside n'icyaha cyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside.

[2] Tribunal Pénal International pour le Rwanda.

[3] Ingingo ya 105, igika cya mbere: guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko.

1. Kumenya niba Habyarimana Jean afunzwe mu buryo bunyuranyije n'amategeko

[11] Habyarimana Jean na Me Nyirihirwe Hilaire, umwunganira, bavuga ko mu gika cya 12 cy'urubanza rwajuririwe muri uru Rukiko, Urukiko Rukuru rwasanze Urukiko Rwisumbuye rwa Nyarugenge rwaragombaga kubanza gukemura inzitizi Habyarimana Jean yari yaratanze ku rwego rwa mbere irebana n'uko yafunzwe mu buryo bunyuranyije n'amategeko mbere yo kuburanisha urubanza mu mizi nk'uko byateganywaga n'ingingo ya 105, igika cya 3, y'Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga igihe urubanza rwaburanishwaga, ariko ko urwo Rukiko Rukuru rutakosoye iyo nenge, ko ahubwo rwasobanuye ko ntacyo rwabikoraho kuko afunzwe hashingiwe ku rubanza rwamukatiye igifungo cya burundu y'umwihariko, maze ruhita ruburanisha urubanza mu mizi rutabanje gufata icyemezo kuri iyo nzitizi, kandi ko rutagaragaje amategeko rwashingiyeho rufata icyo cyemezo. Basaba uru Rukiko ko rwafata icyemezo kuri iyo nzitizi kugira ngo Habyarimana Jean afungurwe by'agateganyo mbere y'icibwa ry'urubanza mu mizi.

[12] Habyarimana Jean asobanura ko yafashwe ku wa 20/12/1996, hashingiwe ku rutonde rw'abakoze icyaha cya jenoside yakorewe Abatutsi mu mwaka wa 1994, afungirwa muri Gereza ku wa 12/03/1997, ko ku wa 02/04/1997 yakorewe inyandiko imufunga by'agateganyo (MAP)[4], ariko ko atigeze ashyikirizwa umucamanza kugira ngo amufatire icyemezo kimufunga by'agateganyo, ko ahubwo mu mwaka wa 2009, aribwo yamenye ko atagira dosiye, nyamara uwari Umuyobozi wa Gereza witwa Gahima Rusa n'uwari Porokireri ku Rwego Rwisumbuye witwa Ndibwami Rugambwa bakomeje kumufunga mu buryo bunyuranyije n'amategeko bashingiye ku nyandiko zimufunga by'agateganyo zataye agaciro bituma agira igihombo gikomeye n'iyicarubozo ryo mu bwonko (*Torture psychologique*) kuko yahatiwe kwemera ibyaha atakoze no kubishinja bagenzi be, kuvutswa uburenganzira n'amahirwe yo kuburana adafunzwe no kubona umwunganizi, ariko ko azabitangira ikirego cyihariye mu Rukiko rubifitiye ububasha kugira ngo abo bayobozi bamufunze mu buryo bunyuranyije n'amategeko mu gihe cy'imyaka 20 yose bazabihanirwe n'amategeko banabimuhere indishyi kabone n'ubwo zaba ari symbolique.

[13] Habyarimana Jean n'umwunganira bavuga ko hashingiwe ku ngingo ya 78, 8º na 96, igika cya 3, z'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, akwiye gufungurwa by'agateganyo mbere y'icibwa ry'uru rubanza kuko nta cyemezo cy'umucamanza kimufunga by'agateganyo cyigeze gikorwa, kandi ko agifatwa nk'umwere nk'uko biteganywa n'ingingo ya 19 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Basaba uru Rukiko ko rwazashingira ku rubanza RP 00036/2017/HC/KIG rwaciwe n'Urukiko Rukuru, ku wa 06/12/2018, Ubushinjacyaha buburana na Nshimiyimana Diane Rwigara na Mukangemanyi Adeline Rwigara, kuko urwo Rukiko rwarekuye abaregwa kandi bari bafunzwe by'agateganyo.

[14] Uhagarariye Ubushinjacya avuga ko Habyarimana Jean adafunzwe mu buryo bunyuranyije n'amategeko kuko yahanishijwe igifungo cya burundu y'umwihariko nk'uko n'Urukiko Rukuru rwabisobanuye mu gika cya 12 cy'urubanza rujuririrwa, ko kuba umucamanza w'urwo Rukiko ataragaragaje ingingo z'Itegeko yashingiyeho afata icyo cyemezo kijyanye n'uko adafunzwe mu buryo bunyuranyije n'amategeko, ari uburyo bw'imyandikire y'urubanza ariko bitagize inenge yarwo.

[15] Avuga kandi ko hatashingirwa ku ngingo ya 96, igika cya 3, y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, kuko Habyarimana Jean atajuririye icyemezo kimufunga by'agateganyo, kandi ko no mu Rukiko Rukuru, Habyarimana Jean atari agifunze by'agateganyo, ko ahubwo yajuririye urubanza rwaciwe ku rwego rwa kabiri rwamuhanishije igifungo cya burundu y'umwihariko, bivuze rero ko agomba kuguma muri "*situation*" yo gufungwa yashyizwemo n'inkiko zabanje, maze akaburana ubujurire bwe bwa kabiri afunze nk'uko biteganywa

[4] *Mandat d'arrêt provisoire.*

n'ingingo ya 184, igika cya mbere, y'Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga igihe Habyarimana Jean yaburanaga, ariko niba yifuza kurega abamufunze mu buryo bunyuranyije n'amategeko, yazabitangira ikirego cyihariye mu Rukiko rubifitiye ububasha nk'uko biteganywa n'ingingo ya 144 na 145 z'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, kubera ko Urukiko rw'Ubujurire rudafite ububasha bwo kuburanisha ku rwego rwa mbere ikirego cyerekeranye n'ifungwa rinyuranyije n'amategeko.

[16] Avuga na none ko hatashingirwa ku rubanza rw'Ubushinjacyaha na Rwigara Diane kuko yafunguwe kubera ko yagizwe umwere, ariko ko Habyarimana Jean afunze mu rwego rwo kurangiza urubanza rwamukatiye igifungo cya burundu y'umwihariko nk'uko byasobanuwe haruguru.

UKO URUKIKO RUBIBONA

[17] Ingingo ya 184, igika cya mbere, y'Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga igihe Habyarimana Jean yaburanaga, iteganya ko ushinjwa wari ufunze mbere yo gucirwa urubanza rwategetse ko afungwa, akomeza gufungwa n'ubwo yaba yarajuriye[5].

[18] Imikirize y'urubanza rwajuririwe muri uru Rukiko, igaragaza, mu gika cyarwo cya 12, ko Urukiko Rukuru rwasobanuye ko n'ubwo Urukiko Rwisumbuye rwa Nyarugenge rutabanje gukemura inzitizi yari yatanzwe na Habyarimana Jean irebana n'uko yafunzwe mu buryo budakurikije amategeko mbere yo kuburanisha urubanza mu mizi nk'uko biteganywa n'amategeko, ariko ko rutasuzuma iyo nzitizi ku rwego Rwisumbuye rwa Nyarugenge rwamuhanishije igifungo cya burundu y'umwihariko kubera ibyaha yakoze, ko ahubwo rugomba gusuzuma impamvu ze z'ubujurire kugira ngo hamenyekane niba zifite ishingiro cyangwa zitarifite. Nyuma yo kuburanisha urwo rubanza mu mizi, Urukiko Rukuru rwemeje ko Habyarimana Jean ahamwa n'icyaha cy'ubwumvikane bugamije gukora jenoside, n'icyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside, maze rumuhanisha igifungo cya burundu y'umwihariko nk'uko bigaragarira mu gika cya 145 na 147 by'urubanza rwajuririwe.

[19] Urukiko rurasanga n'ubwo Habyarimana Jean yafunzwe mu buryo bunyuranyije n'amategeko nk'uko byemejwe n'Inkiko zabanje, ariko ko rutasuzuma iki kibazo hagamijwe kumenya niba ashobora gufungurwa by'agateganyo mbere y'icibwa ry'uru rubanza kuko ntacyo byamumarira kubera ko afunzwe mu rwego rwo kurangiza igifungo cya burundu y'umwihariko yahawe kubera icyaha cya jenoside akurikiranyweho, bigaragara ko nta kosa urwo Rukiko rwakoze ubwo rwemezaga ko Habyarimana Jean aburana ubujurire bwe afunze, bivuze rero ko atafungurwa by'agateganyo mbere y'icibwa ry'uru rubanza nk'uko biteganywa n'ingingo ya 187, igika cya mbere, y'Itegeko ryavuzwe haruguru.

[20] Urukiko rurasanga rutashingira ku rubanza RP 00036/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 06/12/2018, Ubushinjacyaha buburana na Mukangemanyi Adeline Rwigara na bagenzi be rushingirwaho na Me Nyirihirwe Hilaire wunganira Habyarimana Jean kuko muri urwo rubanza abaregwa barekuwe kubera ko bagizwe abere ku cyaha cyo guteza imvururu cyangwa imidugararo muri rubanda bari bakurikiranyweho n'Ubushinjacyaha, nyamara muri uru rubanza, Habyarimana Jean yafunzwe kubera ko yahanishijwe igifungo cya burundu y'umwihariko ku rwego rwa mbere n'urwa kabiri nk'uko byasobanuwe haruguru.

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[5] Iyo ngingo ninayo yahindutse ingingo ya 187, igika cya mbere, y'Itegeko nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko "Uregwa wari ufunze mbere yo gucirwa urubanza rwategetse ko afungwa, akomeza gufungwa n'ubwo yaba yarajuriye.

2. Kumenya niba urubanza rwa Matayo Ngirumpatse na Edouard Karemera rwaciwe na TPIR rwakuraho Habyarimana Jean uburyozwacyaha ku bwumvikane mu mugambi wo gukora jenoside[6]

[21] Habyarimana Jean yunganiwe na Me Nyirihirwe Hilaire yajuriye avuga ko Urukiko Rukuru rwamuhamije icyaha cy'ubwumvikane mu mugambi wo gukora jenoside, rwirengagije urubanza ICTR-98-44-T rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyireho u Rwanda (TPIR) rwemeje ko mbere y'itariki ya 08/04/1994 nta bwumvikane bwo gukora jenoside bwigeze buba ku birebana na Matayo Ngirumpatse na Edouard Karemera kimwe n'abandi bayobozi bakuru b'ishyaka MRND.

[22] Habyarimana Jean yisobanuye avuga ko mu gihe byagaragaye ko abayobozi bakuru b'ishyaka MRND nta bwumvikane bagize bwo gukora jenoside, ko we nk'umuyobozi wa MRND ku rwego rw'Umujyi wa Kigali ataryozwa gushyiraho umutwe w'interahamwa no kuwuha imyitozo ya gisirikare hagamijwe gukora jenoside, kandi ko Ubushinjacyaha buterekana inama n'ubwumvikane yaba yarakoranye n'abayobozi bari bamwungirije cyangwa undi uwo ari we wese hagamijwe gukora jenoside.

[23] Habyarimana Jean yasabye ko ku bw'iyo mpamvu, hakurikizwa igika cya mbere cy'ingingo ya 9 y'amategeko agenga Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ivuga ko nta muntu ushobora kuburanishwa n'Urukiko rw'Igihugu ku bikorwa binyuranyije ku buryo bukomeye n'amategeko mpuzamahanga areba inyokomuntu niba yaraburanishijwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, ku bikorwa bimwe.

[24] Ubushinjacyaha bwasubije ko urubanza rwa Ngirumpatse Matayo na Karemera Edouard ntacyo rurengeraho Habyarimana Jean, ko ahubwo uyu afata igice cy'urubanza abona kimufitiye inyungu yirengagije ko uru rubanza mu gika cyarwo cya [201] rwemeje ko Ngirumpatse nk'umuyobozi wa MRND yari afite ububasha bugenzura ibikorwa by'interahamwe, ko kandi n'umutangabuhamya HJB yemeje ko Habyarimana ubwe yagize uruhare mu gutoranya abasore bajya mu mutwe w'interahamwe.

[25] Ubushinjacyaha bukomeza buvuga ko Urukiko mpanabyaha rwashyiriweho u Rwanda rwemeje ko komite yayoboraga MRND ku rwego rw'Igihugu itashoboraga kugeza ubutumwa ku barwanashyaka bitanyuze kuri perezida w'ishyaka ku rwego rwa perefegitura[7], kandi ko Habyarimana Jean adakurikiranyweho kuba umuyobozi w'interahamwe, ko ahubwo aryozwa uruhare yagize mu ishyirwaho ry'uyu mutwe no kuwutoza ibya gisirikare hagamijwe kurimbura abatutsi, ibi bikaba byaragaragajwe mu nama zitandukanye.

UKO URUKIKO RUBIBONA

[26] Ingingo ya ngingo ya 155 y'Itegeko Nº 027/2019 ryo kuwa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, mu gika cyayo cya 2, iteganya ko nta gukurikirana kundi kubaho iyo ushinjwa agaragaje ko mu mahanga yaciriwe urubanza rudasubirwaho (ku cyaha akurikiranyweho).

[27] Ingingo ya 14 mu gace kayo ka 7 y'Amasezerano mpuzamahanga yo ku wa 16 Ukuboza 1966 yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki ivuga ko nta muntu ushobora

[6] Ibirebana n'inyito y'iki cyaha, biragarukwaho muri uru rubanza mu gice cya II.5.
[7] ICTR-98-44-T urubanza rw'Ubushinjacyaha na Ngirumpatse Mathieu na Karemera Edouard, igika cya 201: "*De plus, la Chambre juge peu probable que le Comité National Provisoire ait pu, sans l'implication du présidentpréfectoral s'adresser aux militants du MRND*".

gukurikiranwaho icyaha yahanaguweho cyangwa ku cyaha yakatiweho burundu mu rubanza rudasubirwamo hakurikijwe amategeko n'imiburanishirize y'imanza zishinja ibyaha bya buri gihugu.[8]

[28] Urukiko rurasanga urubanza ICTR-98-44-T rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR), nyuma yo gusesengura ibimenyetso rwashyikirijwe ku bireba uruhare rwa Ngirumpatse Matayo na Karemera Edouard mu ishyirwaho ry'umutwe w'interahamwe no kuwutoza ibya gisirikare, n'uburyo bagiye umugambi wo kurimbura abatutsi, na nyuma yo gusobanura inama zitandukanye ubuyobozi n'abayoboke ba MRND bitabiriye n'uburyo muri izo nama abatutsi bafashwe nk'abanzi, rwarasanze bahamwa n'ibyaha bya jenosode, gushishikariza gukora jenoside, ibyaha byibasiye inyokomuntu n'ubwicanyi mu gusohoza umugambi umwe wumvikanyweho (*Joint Criminal Entreprise*) kabone n'ubwo nta buryozwacyaha bushobora kwemezwa harebwe ku bikorwa byabaye mbere y'itariki 08/04/1994[9], ariko mu bujurire urwo Rukiko rukaba rwaremeje ko Karemera Edouard na Ngirumpatse Matayo bahamwa n'icyaha cya jenosode, gushishikariza gukora jenoside, ibyaha byibasiye inyokomuntu n'ubwicanyi bakoze nyuma y'itariki 18/04/1994 mu rwego rwo gusohoza umugambi umwe wumvikanyweho (*Joint Criminal Entreprise*)[10], Karemera Edouard na Ngirumpatse Matayo bakaba rero bataragizwe abere kuri ibyo bikorwa nk'uko Habyarimana abiburanisha.

[29] Ikindi kandi Urukiko rw'ubujurire rurasanga Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ku rwego rwa mbere rwari rwasanze Ngirumpatse na Karemera badahamwa n'icyaha cyo gucura umugambi wa jenoside hashingiwe ku bikorwa byabaye mbere ya 08/04/1994 maze ku rwego rw'ubujurire (ICTR-98-44-A) urwo Rukiko ruhindura icyemezo cy'Urugereko rw'Urukiko Rwisumbuye cyavugaga ko Ngirumpatse Matayo ahamwa n'icyaha cyo gucura umugambi wo gukora jenoside ariko rugumishaho umwanzuro uhamya Karemera Edouard icyaha cyo gucura umugambi wa jenoside byibura ku itariki ya 25/05/1994[11]; bivuze ko urwo Rukiko rwasuzumye ibimenyetso kuri buri wese ku giti cye, ari nacyo Urukiko Rukuru rwakoze ku bireba Habyarimana Jean, mbere yo kumuhamya ibyaha akurikiranyweho[12].

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[30] Urukiko rw'Ubujurire rukaba rero rurasanga haba ku cyaha cya jenosode, gushishikariza gukora jenoside, ibyaha byibasiye inyokomuntu byakozwe mu gusohoza umugambi umwe wumvikanyweho (*Joint criminal entreprise*) haba no ku cyaha cyo gucura umugambi wa jeoside (*entente en vue de commettre le génocide),* Ngirumpatse na Karemera batarabigizweho abere nk'uko Habyarimana Jean abiburanisha, keretse gusa ku bikorwa byabyaye mbere y'itariki 08/04/1994[13], bityo ingingo y'ubujurire ya Habyarimana Jean y'uko we nk'uwari umuyobozi wa MRND ku rwego rw'Umujyi wa Kigali adashobora guhamwa n'ubwumvikane mu mugambi wo gukora jenoside mu gihe Ngirumpatse Matayo na Karemera Edouard nk'abayobozi bakuru ba MRND batahamwe n'iki cyaha ikaba nta shingiro ifite.

[31] Urukiko rurasanga na none ingingo y'ubujurire ya Habyarimana Jean isaba ko hubahirizwa ingingo ya 9 ya Sitati zigenga Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda[14] nta

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[8] Art. 14 point 7 du Pacte International du 16 Décembre 1966 relatif aux droits civils et politiques ratifié par le Rwanda par le Décret-loi Nº 8/7bya5 du 12 Février 1975.

[9] ICTR-98-44-T urubanza rw'Ubushinjacyaha na Ngirumpatse Mathieu na Karemera Edouard, igika cya 1573: Aucune déclaration de culpabilité ne serait dès lors être prononcée relativement aux faits survenus avant le 8 avril 1994.

[10] ICTR-98-44-A rw'Ubushinjacyaha na Edouard Karemera et Mathieu Ngirumpatse, Ibika bya 146-156.

[11] ICTR-98-44-A rw'Ubushinjacyaha na Edouard Karemera et Mathieu Ngirumpatse, Igika cya 745: "*The Appeals Chamber has reversed the Trial Chamber's finding that Ngirumpatse was responsible for conspiracy to commit genocide, but has upheld the Trial Chamber's finding that Karemera was responsible for conspiracyt o commit genocide by at least 25 May 1994.*"

[12] Reba urubanza RPA GEN 00002/2016/HCCI.

[13] Ibirebana n'uruhare rwa Habyarimana Jean ku bikorwa byabaye mbere y'itariki ya 08/04/1994 birasuzumwa mu gice cya II.5 cy'uru rubanza.

[14] "*No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda*."

shingiro bufite kuko urubanza ICTR- 98- 44-T avuga ko rwamuvanyeho ku buryo budasubirwaho (*force de chose jugée*) ubwumvikane ku mugambi wo gukora jenoside, uyu atigeze arubamo umuburanyi, ibiruvugwamo bikaba bireba Ngirumpatse Matayo na Karemera Edouard bonyine kuko aribo baruvugwamo, ari nabo barengerwa n'ingingo ya 9 ivuzwe muri iki gika mu gihe baba baregewe inkiko ku byaha bamaze gucirwaho urubanza. Ibi ni nako ingingo ya 155 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ibivuga, aho mu gika cyayo cya kabiri, iteganya ko nta gukurikirana kundi kubaho iyo ushinjwa agaragaje ko mu mahanga yaciriwe urubanza rudasubirwaho (ku cyaha akurikiranyweho); Habyarimana Jean we rero akaba atagaragaza ko yigeze acibwa urubanza mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda.

[32] Rushingiye ku ngingo z'amategeko n'ibisobanuro bivuzwe haruguru no ku nyandiko z'abahanga mu mategeko bemeza ko ababuranyi ku giti cyabo kandi ku kiburanwa cyaciriweho urubanza, ari bo bonyine barengerwa n'ihame rya "*autorité de la chose jugée*"[15], Urukiko rw'Ubujurire rurasanga ingingo y'ubujurire bwa Habyarimana Jean y'uko Urukiko Rukuru rwirengagije gushingira ku rubanza rwa Ngirumpatse Matayo na Karemera Edouard kandi rwaramuhanaguyeho uburyozwacyaha ku bwumvikane bugamije gukora jenoside nta shingiro ifite.

3. Kumenya niba Urukiko Rukuru rwaragombaga byanze bikunze gutumiza Nyiringondo Epaphrodite na Mbarushimana Vincent kugira ngo bavuguruzanye na Habyarimana Jean, no kumenya niba bagomba gutumizwa n'uru Rukiko kugira ngo habe ivuguruzanya

[33] Habyarimana Jean avuga ko Urukiko Rukuru rwamuhamije ibyaha rushingiye ku buhamya bwa Nyiringondo Epaphrodite n'ubwa Mbarushimana Vincent, kandi rutarabahamagaje kugira ngo bavuguruzanye kuko ubuhamya bwabo bushidikanywaho. Asobanura ko ubuhamya bwa Nyiringondo Epaphrodite bukwiye guteshwa agaciro kubera ko burimo ivuguruzanya kuko mu Bushinjacyaha atigeze avuga ibyerekeranye na "*Comité de Crise*", ko ahubwo yayivuze mu buhamya yahaye urwo Rukiko igihe rwakoraga iperereza mu bitaro by'i Kanombe yari arwariyemo, kandi ko yanongeyemo amazina y'abandi batangabuhamya atavugiye mu Bushinjacyaha.

[34] Avuga nanone ko ubuhamya Mbarushimana Vincent yatangiye mu nzego z'iperereza bukwiye guteshwa agaciro kuko atabutangiye mu Rukiko Rukuru kugira ngo habe ivuguruzanya, ko ahubwo urwo Rukiko rwamushakishije rukamubura bitewe n'uko yavuze ko atatanga ubuhamya atabanje kubonana na Nyiringondo Epaphrodite wamukoreshaga muri Coopérative y'Abapineri. Asaba uru Rukiko ko rwabahamagaza kugira ngo habe ivuguruzanya.

[35] Habyarimana Jean asobanura ko ubuhamya bwa Nyiringondo Epaphrodite butahabwa agaciro kuko yavuze ko yagiye kwiyandikisha kwa Konseye wa Segiteri ya Muhima igihe bashakaga abasore bo kujya mu Nterahamwe, maze abona icyiciro cya mbere kijemo "*Comité National Provisoire*"y'Interahamwe, Habyarimana Jean, Ngirumpatse na Kabuga, kandi ko yabonye icyiciro cya kabiri kizamo Munyakazi wategekaga Jandarumeri na Renzaho Tharcisse wari Perefe w'Umujyi wa Kigali, ariko ko uretse ko izo nama zitabayeho, Nyiringondo Epaphrodite atashoboraga kuzizamo kuko ari umututsi wabaga muri Parti Libéral (PL).

[36] Avuga kandi ko Nyiringondo Epaphrodite yavuze ko muri izo nama, Habyarimana Jean yahaye Konseye wa Segiteri ya Muhima amabwiriza yo kwandika abasore bifuzaga kujya mu Nterahamwe,

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[15] Michel Franchimont, Ann Jacobs et Adrien Masset, Manuel de procedure pénale, 2eme éd., Larcier, 2006, pp.978- 981: "*Pour qu'il y ait "autorité de la chose jugée" du pénal sur le pénal, il faut que la demande soit formée contre les mêmes parties en la même qualité et que les prévenus soient poursuivis pour les mêmes faits que ceux qui ont déjà fait l'objet d'un jugement. Il n'y a pas d'autorité de la chose jugée entre co-auteurs et complices s'ils sont poursuivis séparément. La décision rendue précédemment ne peut ni leur nuire ni leur profiter, même si cela débouche sur des décisions contradictoires*".

ariko ko Habyarimana Jean atashoboraga kwivanga mu bikorwa by'Interahamwe kuko zari zifite Perezida, Visi - Perezida na Secrétaire wazo. Ikindi avuga, ni uko Konseye wa Segiteri ya Muhima, wari umukozi wa Leta, cyangwa Renzaho Tharcisse na Munyakazi, bari abasirikare, batashoboraga kujya mu Mashyaka ya Politiki, ko ahubwo byigeze gukorwa gusa igihe MRND yari Parti - Etat.

[37] Asobanura ko mu buhamya bwe, Nyiringondo Epaphrodite yavuze ko yari yiteguye kujya gushinja Habyarimana Jean muri Gacaca, ariko ko atabikoze kubera ko yasanze Habyarimana Jean yarashyizwe mu cyiciro cya mbere cy'abakoze jenoside bagombaga kuburanira mu Nkiko, akaba yibaza impamvu atatanze ubwo buhamya mu nyandiko icyo gihe.

[38] Akomeza asobanura ko Nyiringondo Epaphrodite yavuze ko Kamatamu yatumiraga abasore kwitoza ubuterahamwe, ariko ko nyuma y'aho yavuze ko yabatumiraga kugira ngo bajye gucunga umutekano, ndetse ko n'Ubushinjacyaha bwavuze ko Habyarimana Jean yabaga muri "*Comité de Crise"*, nyamara umutangabuhamya witwa Mukagatare akaba yaravuze ko iyo "*Comité de Crise*" itigeze ibaho.

[39] Yongeraho ko Mbarushimana Vincent yavuze ko habaye inama yari irimo Habyarimana Jean na Ngirumpatse yahamagariraga urubyiruko kujya kwitoza imyitozo ya gisirikare, kandi ko Habyarimana Jean yajyanye abo basore muri Camp Kigali akoresheje imodoka ye ya Land Rover, ndetse yabanje no kwirukana Abatutsi nk'uko byanashimangiwe na Nyiringondo Epaphrodite, ariko ko we (Habyarimana Jean) atashoboraga kujyana abo basore muri Camp Kigali akoresheje iyo modoka ye kuko bari benshi cyane.

[40] Me Nyirihirwe Hilaire umwunganira, avuga ko hashingiwe ku ngingo ya 111 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko gushidikanya birengera ushinjwa, ubuhamya bwa Nyiringondo Epaphrodite na Mbarushimana Vincent butahabwa agaciro kuko babogamiye ku ruhande rw'Ubushinjacyaha, kandi ko batabutangiye mu Rukiko kugira ngo Habyarimana Jean agire icyo abibariza imbonankubone.

[41] Avuga kandi ko hashingiwe ku ngingo ya 62 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ubuhamya ari ubutangiwe mu Rukiko, Nyiringondo Epaphrodite na Mbarushimana Vincent bakwiye gutumizwa muri uru Rukiko kugira ngo bahatangire ubuhamya bwabo, no kugira ngo Habyarimana Jean n'umwunganira bagire ibyo bababaza, kuko Nyiringondo Epaphrodite yabutangiye mu bitaro by'i Kanombe, aho yari arwariye, ariko ko Habyarimana Jean atahawe amahirwe yo kumuvuguruza kuko atari ahari, ko n'ubwo Mbarushimana Vincent yari yarabuze, akwiye kongera guhamagazwa muri uru Rukiko kugira ngo atange ubuhamya bwe no kugira ngo habe ivuguruzanya, yakongera kubura akaba aribwo hafatwa icyemezo cy'uko yabuze burundu.

[42] Uhagarariye Ubushinjacyaha avuga ko hashingiwe ku ngingo ya 86 y'Itegeko Nº 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko ibimenyetso mu manza z'inshinjabyaha bishingira ku mpamvu zose z'ibyabaye, no ku ngingo ya 65 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ari Urukiko rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, asanga Nyiringondo Epaphrodite na Mbarushimana Vincent batakongera guhamagazwa nk'abatangabuhamya muri uru Rukiko, kuko ubuhamya batangiye mu nzego z'iperereza bufite agaciro kuko bwunganiwe n'ubwatangiwe mu Rukiko Rukuru na Nkubito Isaac, HJA, HJB, HJC, HJD na HJE nk'uko bigaragarira mu gika cya 35 kugeza ku cya 39 na 47 by'urubanza rujuririrwa, kandi ko Habyarimana Jean yahawe umwanya uhagije wo kubabaza ibibazo byose yifuzaga, barabimusubiza.

[43] Asobanura ko Urukiko Rukuru rwasanze Nyiringondo Epaphrodite aho yari arwariye mu bitaro by'i Kanombe, rumubaza ibibazo byose Habyarimana Jean yifuzaga kumubaza, arabisubiza, ko nyuma y'aho, rwasomeye Habyarimana Jean n'Ubushinjacyaha izo mvugo ze nabo bagira icyo bazivugaho.

[44] Akomeza asobanura ko Urukiko Rukuru rwahamagaje Mbarushimana Vincent kugira ngo habe ivuguruzanya, ariko ko ritabaye kubera ko yabuze kuko inyandiko z'ihamagara ziri muri dosiye zivuga ko atakibarizwa aho yari atuye, ariko ko ubuhamya bwe bufite agaciro kuko bwatanzwe mu nzego z'iperereza mu buryo bukurikije amategeko.

[45] Yongeraho ko n'ubwo Nyiringondo Epaphrodite na Mbarushimana Vincent bahamagazwa muri uru Rukiko, ntacyo barumarira kuko barangije gutanga ubuhamya bwabo mu nzego z'iperereza, no mu Rukiko Rukuru, kandi ko ubuhamya bwabo bufite agaciro kuko bwunganiwe n'ubw'abandi batangabuhamya buri muri dosiye.

UKO URUKIKO RUBIBONA

[46] Ingingo ya 119 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko mu manza nshinjabyaha ibimenyetso mu manza bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Naho ingingo ya 62 y'iryo Tegeko, igateganya ko ubuhamya ni ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa.

[47] Na none ingingo ya 65 y'Itegeko ryavuzwe haruguru, iteganya ko Urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ko ifite ingingo zikiranuye kandi ko ikwiye kwemerwa cyangwa guhakanwa, ko rutitsitsa ku mubare w'abatangabuhamya, ko ahubwo rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira.

[48] Abahanga mu mategeko basobanura ko n'ubwo ihame ry'ivuguruzanya ryemerera ababuranyi b'impande zombi kuvuguruza no kujya impaka ku bimenyetso byabonetse igihe cy'iperereza mu rubanza rw'inshinjabyaha, ariko ko umucamanza uburanisha urubanza mu mizi ashobora guca urubanza ashingiye kuri ibyo bimenyetso bitabaye ngombwa ko abatangabuhamya babajijwe igihe cy'iperereza bongera gusubira mu mvugo zabo igihe cy'iburanisha.[16]

[49] Dosiye y'urubanza igaragaza ko mu Bushinjacyaha ku wa 24/10/2014, n'imbere y'Urukiko Rukuru, ku wa 23/11/2016, igihe rwakoraga iperereza mu bitaro bya Kanombe, aho Nyiringondo Epaphrodite yari arwariye, uyu yarusobanuriye ko Habyarimana Jean yagize uruhare mu gutoranya urubyiruko rw'interahamwe rwigishijwe ibya gisirikare, kandi ko nyuma y'aho, urwo rubyiruko rwishe abatutsi benshi barimo Rutayisire Deo alias Tigana, Gasongo, Munyankindi na Vénantie.

[50] Dosiye igaragaza kandi ko nyuma y'iryo perereza, urwo Rukiko rwasubukuye iburanisha ku wa 08/12/2016, maze Habyarimana Jean n'Ubushinjacyaha bahabwa umwanya uhagije wo kugira icyo bavuga kuri ubwo buhamya, aho muri rusange, Habyarimana Jean yavuze ko ubuhamya Nyiringondo Epaphrodite yatanze igihe cy'iperereza, butahabwa agaciro kuko budahuye n'ubwo yatanze mu Bushinjacyaha ku wa 24/10/2014.

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[16] Michel Franchimont, Ann Jacob et Adrien Masset, Manuel de Procédure Pénale, Liège, Belgique, 2012, p.758: "*Le caractère contradictoire de la procédure permet, certes, aux parties de contredire et discuter les éléments recueillis au cours de la phase préliminaire du procès pénal, mais (...) le juge du fond peut fonder sa conviction sur des éléments de l'information et de l'instruction qui ont été recueillis non contradictoirement et qui ne doivent pas nécessairement être repris oralement et contradictoirement à l'audience*".

[51] Muri dosiye hari kandi ubuhamya Mbarushimana Vincent alias Gasongo yatangiye mu Bushinjacyaha ku wa 24/10/2014, aho yashinje Habyarimana Jean kuba yarateranyirije hamwe urubyiruko rwo ku Muhima na Kimisagara muri Camp Kigali, aho rwatorejwe imbunda, kandi ko hagati yo ku wa 10 no ku wa 13/04/1994, urwo rubyiruko rw'interahamwe rwishe ibyitso bikomeye by'Inkotanyi.

[52] Dosiye igaragaza na none ko iburanisha ry'urubanza rujuririrwa ryagiye ryimurirwa ku matariki atandukanye yo ku wa 20/10/2016, ku wa 24/10/2016, ku wa 01/11/2016, no ku wa 11/11/2016, kugira ngo Urukiko Rukuru rwumve Mbarushimana Vincent alias Gasongo nk'umutangabuhamya nk'uko na Habyarimana Jean yabyifuzaga, ariko ko uwo mutangabuhamya atabonetse bitewe n'uko batamenye aho abarizwa, ariko ko Habyarimana Jean yahawe umwanya uhagije wo kugira icyo avuga ku buhamya yatangiye mu Bushinjacyaha ku wa 24/10/2014 bwavuzwe haruguru, no ku bwa Nyiringondo Epaphrodite bwavuzwe haruguru nk'uko bigaragarira mu bika bya [20], [52], [53], [98], [99] na [108] by'urwo rubanza.

[53] Na none imikirize y'urubanza rwajuririwe muri uru Rukiko, igaragaza mu gika cyarwo cya 36, ko Urukiko Rukuru rwasobanuye ko ubuhamya bwa Nyiringondo Epaphrodite na Mbarushimana Vincent alias Gasongo bwavuzwe haruguru, bukwiye gufatwa nk'ikimenyetso kigaragaza ko Habyarimana Jean yabaye mu batoranyije urubyiruko rw'interahamwe rwigishijwe ibya gisirikare kuko bavuze ibyo bazi, banahagazeho, kubera ko bari bari mu rubyiruko rwatoranywaga, uretse ko babavanyemo kubera ko bari abatutsi. Urwo Rukiko rwemeje kandi ko ubwo buhamya bukwiye guhabwa agaciro kuko bushimangirwa n'ubwatanzwe n'abandi batangabuhamya barimo Nkubito Isaac, HJA, HJB, HJC na HJE, bemeje ko Habyarimana Jean ari mu batoranyije urubyiruko rwo kwigisha ibya gisirikare abifashijwemo n'abayobozi b'ama Komini n'ama Segiteri yabishishikarije, kandi ko yanarukoresheje inama ku cyicaro cy'ishyaka rya MRND kiri ku Muhima ku nzu ya Kabuga mbere y'uko rwoherezwa mu myitozo ya gisirikare nk'uko abo batangabuhamya babisobanuye mu bika bya [37], [38], [39], [40] na [41] by'urubanza rwajuririwe.

[54] Hashingiwe ku ngingo z'Itegeko no ku bisobanuro by'abahanga byavuzwe haruguru, Urukiko rurasanga, kuba mu iburanisha ry'urubanza, Habyarimana Jean yarahawe umwanya uhagije wo kuvuguruza ubuhamya bwatanzwe na Nyiringondo Epaphrodite na Mbarushimana Vincent alias Gasongo nk'uko bigaragarira mu bika bya [20], [52], [53], [98], [99] na [108] by'urubanza rwajuririwe, kandi mu bushishozi bwarwo nk'uko biteganywa n'ingingo ya 65 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, urwo Rukiko rukaba rwarasanze ubwo buhamya bufite agaciro kuko bwunganiwe n'ubuhamya bwatanzwe n'abandi batangabuhamya barimo Nkubito Isaac, HJA, HJB, HJC na HJE nk'uko rwabisobanuye mu gika cya 41 cy'urwo rubanza, bigaragara ko nta kosa urwo Rukiko rwakoze ubwo rwashingiraga ku buhamya bwa Nyiringondo Epaphrodite na Mbarushimana Vincent alias Gasongo bukubiye mu nyandikomvugo bakorewe mu Bushinjacyaha n'imbere y'Urukiko Rukuru, igihe cy'iperereza, kubera ko mu manza z'inshinjabyaha ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwanya wo kuhaba no kunyomozanya nk'uko biteganywa n'ingingo ya 119 y'Itegeko ryavuzwe haruguru, bivuze rero ko atari ngombwa ko uru Rukiko rwongera guhamagaza byanze bikunze Nyiringondo Epaphrodite na Mbarushimana Vincent alias Gasongo muri uru rubanza kugira ngo bavuguruzanye na Habyarimana Jean, cyane cyane ko Mbarushimana Vincent alias Gasongo ataboneka kubera ko ntawe uzi aho aherereye nk'uko byasobanuwe haruguru.

[55] Urukiko rurasanga, kuba ubuhamya bwa Nyiringondo Epaphrodite n'ubwa Mbarushimana Vincent alias Gasongo bufite agaciro kubera ko bwunganiwe n'ibindi bimenyetso bigizwe n'imvugo z'abatangabuhamya batandukanye nk'uko byasobanuwe haruguru, bukwiye gusuzumirwa hamwe n'ibindi bimenyetso biri muri dosiye kugira ngo hamenyekane niba koko Habyarimana Jean yarakoze ibyaha yahamijwe n'Urukiko Rukuru nk'uko biza gusobanurwa mu bindi bika by'uru rubanza.

[56] Urukiko rurasanga imvugo ya Habyarimana Jean y'uko ubuhamya bwa Nyiringondo Epaphrodite butahabwa agaciro kubera ko burimo ivuguruzanya nta shingiro ifite, kuko kuba, imbere y'Urukiko Rukuru, Nyiringondo Epaphrodite yaba yarongeyemo amagambo arebana na "*Comité de crise*" n'amazina y'abatangabuhamya atavugiye mu Bushinjacyaha, atari ikimenyetso kigaragaza ko yivuguruje, ahubwo bigaragara ko impamvu yatumye yongeramo ayo magambo, ari uko hari hashize igihekirekire kirenga imyaka makumyabiri (20) yose kuva jenoside yakorewe abatutsi ibayemu mwaka wa 1994 n'igihe yatangiye ubwo buhamya mu Bushinjacyaha ku wa 24/10/2014, n'imbere y'urwo Rukiko ku wa 23/12/2016. Ibyo bihuje kandi n'ibyemejwe mu rubanza ICT–2001-72–T, rw'Ubushinjacyaha na Bikindi Simon, rwaciwe n'Urukiko Mpanabyaha rwashyiriweho u Rwanda (TPIR) ku wa 02/12/2008, aho rwasobanuye ko kuba hari ibyo abatangabuhamya batavuga kimwe cyangwa bashobora kwibeshya ho mu buryo budakabije, cyangwa iyo ubuhamya bw'umutangabuhamya yatangiye mu Rukiko budahuje n'ibyo yavuze mbere, bitagira ingaruka ku kwizerwa k'ubuhamya bwabo kuko bishobora kuba byaratewe n'igihe kirekire gishize cyo kuva ku itariki icyaha cyakoreweho nk'uko bigaragarira mu nyandiko itanga ikirego kugeza ku itariki ubwo buhamya bwatangiwe ho mu Rukiko[17].

[57] Urukiko rurasanga, na none nta kosa urwo Rukiko rwakoze ubwo rwahaga agaciro igice kimwe cy'ubuhamya bwa Nyiringondo Epaphrodite kijyanye n'uko Habyarimana Jean yagize uruhare mu gutoranya urubyiruko rw'interahamwe rwahawe imyitozo ya gisirikare, ikindi ntigihabwe agaciro, kuko hashingiwe ku ngingo ya 65 y'Itegeko ryavuzwe haruguru, ari Urukiko rwonyine rufite ububasha bwo gusesengura imvugo z'abatangabuhamya no kwemeza ko zihuje cyangwa zidahuje n'ikiburanwa, hashingiwe ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira. Ibyo bihuje kandi n'ibyemejwe mu rubanza ICT –2001-72 –T, rw'Ubushinjacyaha na Bikindi Simon rwavuzwe haruguru, aho Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR) rwasobanuye ko igice kimwe cy'ubuhamya gishobora guhabwa agaciro mu gihe aricyo cyizewe[18].

4. Kumenya niba Urukiko Rukuru rwarirengagije imvugo z'abatangabuhamya bashinjura Habyarimana Jean

[58] Habyarimana Jean yunganiwe na Me Nyirihirwe Hilaire avuga ko hari ubuhamya bumushinjura Urukiko Rukuru rutahaye agaciro, muri bwo hakaba harimo ubuhamya bwa Setiba Joseph wari Perezida w'Interahamwe muri Segiteri ya Kigali wavuze ko uwitwa Turatsinze Jean Pierre ari we wayoboraga interahamwe muri Kigali Ngali, kandi ko ari we wakumiriye interahamwe ubwo zari zigiye gutera iwe zishaka abatutsi yari yarahishe, akanasobanura ko intwaro zahabwaga izo nterahamwe zatangirwaga ku Kigo cya gisirikare ahakorerwaga imyitozo; bivuze ko rero atari we wazitangaga nk'uko yabirezwe.

[59] Akomeza avuga ko undi mutangabuhamya wiswe HJD wari Perezida w'Interahamwe muri Segiteri ya Nyakabanda yatumijwe kugira ngo aze amushinjure ku birebana n'ubuhamya bwari bwatanzwe n'umutangabuhamya HJC, uyu akaba yari interahamwe yamamaye nk'uko byemejwe n'umutangabuhamya wiswe ALJ mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda na HJE mu Rukiko Rukuru, mu buhamya bwa HJC akaba yari yemeje ko ku wa 15/05/1994 habaye inama yo guhiga abatutsi bari basigaye muri za Segiteri na za Nyumbakumi yari iyobowe na Renzaho Tharcisse; nyamara Urukiko Rukuru rukaba rutarahaye agaciro ubuhamya bw'uyu HJD wavuze ko iyo nama yo ku wa 15/05/1994 ntayabaye, ko ahubwo ku wa 20/05/1994 ari bwo habaye inama ku ishuri

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[17] ICTR –2001 -72 –T rw'Ubushinjacyaha na Simon Bikindi, igika cya 32: "*La Chambre reconnaît qu'il s'est écoulé une longue période entre la date des faits allégués dans l'acte d'accusation et celle des dépositions à I'audience. Ainsi, Ie manque de précision ou I'existence de contradictions mineures entre les dépositions de différents témoinsou entre la déposition d'un témoin et ses déclarations antérieures, n'ont généralement pas été considérés comme jetant nécessairement Ie discrédit sur ces dépositions*".

[18] ICTR –2001 -72 –T rw'Ubushinjacyaha na Bikindi Simon, igika cya 32: "*Même si elle a parfois décidé de ne pas se fonder sur certains aspects de la déposition d'un témoin, la Chambre a néamoins retenu d'autres parties de celle- ci jugées fiables et crédibles*".

rya Nyakabanda igamije gushaka interahamwe zijya gufasha abasirikare kubohoza Mburabuturo yari yafashwe n'inkotanyi.

[60] Habyarimana Jean avuga ko ubundi buhamya butitaweho n'Urukiko Rukuru ari ubw'uwitwa Mucanda Vital wavuze ko ari we (Habyarimana Jean) wakiraga inama na za mitingi (*meetings*) kandi ko zabaga zirimo abahutu, abatutsi n'abatwa, nyamara ibyo yavuze urwo Rukiko rukaba rwarabyirengagije mu gufata icyemezo.

[61] Ku byerekeye inama yo ku wa 16/01/1994; Habyarimana Jean asobanura ko nyuma y'uko FPR iteye habayeho urwicyekwe hagati y'abahutu n'abatutsi, hakaba hari n'ikindi kibazo gikomeye cy'abakiga n'abanyenduga, ndetse no guhangana gushingiye ku Turere hagati y'ishyaka rya MDR rya Kayibanda na MRND ya Habyarimana, iyi nama rero ikaba yari igamije kubwira interahamwe ko zigomba kwitonda. Habyarimana Jean avuga ko ingengabitekerezo ya "*Hutu Power*" ikomoka ku magambo yavuzwe na Karamira muri meeting yo ku wa 23/10/1993 aho abaturage bose (abahutu, abatwa, abatutsi) bari bahamagariwe kwamagana iyicwa rya Perezida Ndadaye, maze nawe (Habyarimana Jean) akaba yarafashemo ijambo.

[62] Me Nyirihirwe Hilaire wunganira Habyarimana Jean avuga ko muri ubwo buhamya bushinjura Habayarimana Jean, abatangabuhamya bagaragaje ko atari we wagize uruhare muri za mitingi zo gukangurira abahutu kwica abatutsi no mu itegurwa rya jenoside, ko Ubushinjacyaha butabasha gutanga ibimenyetso bigaragaza ko Habyarimana Jean yagize uruhare mu gushishikariza abahutu n'interahamwe gukora jenoside yakorewe abatutsi, maze asaba ko bugaragaza cassette, extrait cyangwa ubuhamya bwanditse byerekana uruhare rwe ku buryo bufatika. Avuga na none ko uwo yunganira yahamijwe ko yari mu nama yabereye kuri stade ya Nyamirambo ishishikariza abahutu kwica abatutsi, nyamara icyo yari igamije ari ukwamagana urupfu rwa Ndadaye wari Perezida w'u Burundi ndetse ko Habyarimana adahakana ko yari ayirimo kandi ko yafashemo ijambo, ko ariko yari agamije guhumuriza abantu muri rusange no guhosha insoresore zari zitangiye gukora ibikorwa bibi.

[63] Uhagarariye Ubushinjacyaha avuga ko imvugo za Setiba Joseph zivuguruzanya n'iz'abandi batangabuhamya, harimo HJE, HJA ndetse n'iza Habyarimana Jean ubwe nk'uko bigaragara mu bika bya [69] kugeza kuri [77] by'urubanza rwajuririwe, aho Urukiko Rukuru rwagiye rugaragaza impamvu rutahaye agaciro imvugo z'abatangabuhamya, kandi ko bitumvikana ukuntu Setiba Joseph wari watangarije Ubushinjacyaha ko atazi Habyarimana Jean, ubwo bwamubazaga bumusanze muri Gereza yageze mu Rukiko akavuga ko amuzi kandi ko nta kibi yakoze muri jenoside yakorewe abatutsi, ko rero uku kwivuguruza ari ko kwatumye Urukiko Rukuru rudashingira ku buhamya bwe.

[64] Akomeza avuga ko imvugo z'umutangabuhamya witwa HJD zidakwiye gushingirwaho, kuko Habyarimana Jean atigeze agaragaza ikimenyetso cy'uko koko yari Perezida w'Interahamwe muri Nyakabanda, naho imvugo z'umutangabuhamya HJC Urukiko Rukuru rukaba rwarazishingiyeho kuko yari ari mu nama yashishikarije abahutu kwica abatutsi, kandi ko nawe ari Habyarimana Jean wari wamwitangiye ubwe kugira ngo amushinjure, ndetse ko hari n'undi yari yashatse wavuze ko atigeze ashishikariza abahutu kwica abatutsi, ko ahubwo yabashishikarizaga kumvikana, nyamara ko ibi atari ukuri kuko mu nama zitandukanye zashishikarizaga abahutu kwica abatutsi, Habyarimana Jean yavugaga ko umwanzi w'u Burundi ari nawe mwanzi w'u Rwanda, asaba abahutu kwishyira hamwe kugira ngo barwanye umwanzi ari we mututsi, ibi akaba yarabigarutseho mu nama yabaye ku wa 16/01/1994 nk'uko bigaragara mu gika cya [569] cy'urubanza rwa Karemera Edouard na Matayo Ngirumpatse.

[65] Ku bijyanye n'itangwa ry'intwaro, uhagarariye Ubushinjacyaha avuga ko n'ubwo Habyarimana Jean avuga ko hari abatangabuhamya bamushinjura, Urukiko Rukuru rwasobanuye uruhare rwe nk'uko bigaragara mu bika bya [69] kugeza kuri [77] by'urubanza rwajuririwe ko kandi kuba Habyarimana Jean yari umuyobozi wa MRND ku rwego rw'Umujyi wa Kigali ndetse iri shyaka akaba ari naryo

ryabagamo interahamwe, kwemeza ko atagize uruhare mu itangwa ry'intwaro zakoreshejwe jenoside byaba ari ukubeshya kuko yahuraga kenshi n'abandi bayobozi muri gahunda zose, harimo n'aba gisirikare.

[66] Uhagarariye Ubushinjacyaha avuga ko amagambo Habyarimana Jean yavugiye muri "*meeting*" yo ku wa 23/10/1993 n'iyo ku wa 16/01/1994 akangurira abahutu kwishyira hamwe ngo barwanye umwanzi agaragara mu bika bya [521], [522], [514], [517], [518] na [519] by'urubanza rwa Karemera Edouard na Matayo Ngirumpatse naho mu gika cya [524] cy'urwo rubanza ho hakaba hagaragara aho yavugiye ibyerekeye idéologie hutu power. Avuga ko muri meeting yo ku wa 16/01/1994 nk'uko bigaragara by'umwihariko mu bika bya [573] na [574], Habyarimana Jean yavuze ko agiye gutanga inyandiko igaragaza ikibazo kiri hagati y'abahutu n'abatutsi n'uburyo bwo gukosora umwanzi ari we mututsi. Uhagarariye Ubushinjacyaha avuga kandi ko umutangabuhamya HJC ari we wasobanuye ko Conseiller Karushara Rose yasabye imbunda mu nama bari barimo, nyamara Habyarimana Jean akaba ataramuvuguruje, bivuze ko yari ashyigikiye ibyo yavuze; ibi bikaba bigaragaza uruhare rwe mu bikorwa byo gushishikariza abantu gukora jenoside no kubashyigikira.

UKO URUKIKO RUBIBONA

[67] Ingingo ya 65 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze, ntacyo bihimbira.

[68] Dosiye igaragaza ko mu rubanza rwajuririwe, Setiba Joseph, HJD na Mucanda Vital bemeje ko nta mikoranire yari hagati y'interahamwe n'ubuyobozi bw'ishyaka rya MRND, ko nta n'umuyobozi w'ishyaka rya MRND wagize uruhare mu gikorwa cyo gutoranya urubyiruko rwatojwe ibya gisirikare, Urukiko Rukuru rukaba rwaremeje ko izo mvugo nta shingiro zifite, kuko nabo ubwabo bemeza ko hari ibikorwa interahamwe zahuriragamo n'abayobozi ba MRND birimo za meeting, kurindira umutekano abarwanashyaka bazirimo, imyigaragambyo no gushishikariza urubyiruko kujya mu ishyaka rya MRND[19].

[69] Mu bujurire bwa Habyarimana Jean, avuga ko Urukiko Rukuru rwamuhamije uruhare muri jenoside yakorewe abatutsi mu Rwanda mu mwaka w'1994 rwirengagije imvugo z'abatangabuhamya bamushinjuye ari bo Setiba Joseph, HJD wahawe iryo zina ku bw'umutekano we na Mucanda Vital, uru Rukiko rukaba rugiye gusesengura niba Urukiko Rukuru rwarirengagije izo mvugo.

Ku bireba umutangabuhamya Setiba Joseph

[70] Dosiye igaragaza ko mu iburanisha ryo ku itariki ya 28/02/2017, mu Rukiko Rukuru, Setiba Joseph yasobanuye ko we na bagenzi be b'interahamwe batari bafite imikoranire ya buri gihe n'ishyaka rya MRND, uretse nk'igihe habaga habaye mitingi (*meeting*) mu Mujyi wa Kigali cyangwa mu myigaragambyo, muri icyo gihe bakaba baroherezwaga n'ubuyobozi bw'interahamwe k'ukuriye iryo shyaka ku rwego rw'Umujyi akabereka icyo bagomba gukora muri mitingi cyangwa mu myigaragambyo. Yasobanuye ko uwitwa Turatsinze Jean Pierre ari we wakoranaga bya hafi n'ishyaka rya MRND akabahuza n'ubuyobozi bukuru bwaryo ku rwego rw'Igihugu, kandi ko atigeze abona Habyarimana Jean muri gahunda z'interahamwe, ko ahubwo yamubonaga muri mitingi zaberaga kuri Stade Régional i Nyamirambo muri 1993 kuko ari we wakiraga abashyitsi. Ku birebana n'imyitozo n'imbunda byahabwaga interahamwe, Setiba Joseph yavuze ko byari bishinzwe abasirikare ari nabo babajyanaga i Gabiro, kandi ko nta muyobozi n'umwe w'ishyaka wabaga ahari.

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[19] Urubanza RPA GEN 00002/2016/HCCI, igika cya [42].

[71] Nk'uko byagaragajwe haruguru, mu bujurire bwa Habyarimana Jean avuga ko Setiba Joseph wari Perezida w'Interahamwe muri Segiteri ya Kigali yamushinjuye ubwo yasobanuraga ko Turatsinze Jean Pierre ari we wayoboraga interahamwe muri Kigali Ngali ndetse ko ari we wakumiriye interahamwe zashakaga gutera iwe zishaka abatutsi yari ahishe, anasobanura ko intwaro zatangirwaga mu Kigo cya gisirikare, bityo ko nta ruhare yagize mu itangwa ryazo.

[72] Urukiko rw'Ubujurire rurasanga kuba Setiba Joseph yaravuze ko Turatsinze Jean Pierre ari we wayoboraga interahamwe muri Kigali Ngali bitagaragaza ko yashinjuye Habyarimana Jean kuko atarezwe kuyobora interahamwe ngo Setiba Joseph abe yarabivuguruje; ahubwo yahamijwe ibyaha bitandukanye yakoze nk'uwari Perezida w'ishyaka rya MRND muri Perefegitura y'Umujyi wa Kigali, aribyo icyaha cy'ubwumvikane bugamije gukora jenoside n'icyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside hashingiwe ku buhamya bwa Nkubito, HJE, HJC, HJB, HJA, Mbarushimana na Nyiringongo babajijwe mu iperereza n'imbere y'Urukiko.

[73] Ku birebana no kuba Setiba Joseph yaba yarakumiriye interahamwe zashakaga gutera kwa Habyarimana Jean zishakayo abatutsi yari ahishe, Urukiko rurasanga iki kibazo Setiba Joseph yarakibajijwe ku birebana n'uruhare rw'ubuyobozi bwa MRND kuri za bariyeri, ariko iki cyaha cyo kuyobora za bariyeri ziciweho abatutsi Habyarimana Jean akaba ataragihamijwe, naho ibyo kuba haba hari abatutsi yari ahishe bikaba atari ikimenyetso kimushinjura kuko bidakuraho ibindi bikorwa bigize icyaha cya jenoside yakoze nk'uko yabihamijwe n'Urukiko Rukuru.

[74] Ku birebana n'ibikorwa byo gutanga imbunda n'imyitozo ku nterahamwe, Urukiko rw'Ubujurire rurasanga nk'uko n'Urukiko Rukuru rwabibonye, imvugo ya Setiba Joseh ivuguruzwa n'iya Nkubito Isaac wari Perezida w'ishyaka rya MRND mu cyahoze ari Komini Kacyiru wabarijwe mu iburanisha ryo ku itariki ya 28/02/2017 mu Rukiko Rukuru asobanura ko nyuma y'inama yabereye kuri stade i Nyamirambo, mu mwaka wa 1993 hakurikiyeho gutoza urubyiruko rwa MRND n'urwa PSD (*Parti Social Democrate*) rwitwaga abakombozi, bakajya ku biro bya MRND (*Permanence*) bagakora inama, bakabwirwa ko umwanzi ari umututsi, ndetse ko nyuma boherejwe mu mahugurwa i Gabiro bamaze guhabwa amabwiriza n'abayobozi barimo na Habyarimana Jean, akaba yaravuze ko ibyo avuga bimwe yabyiboneye, ibindi yabibwiwe.

[75] Urukiko rurasanga nk'uko n'Urukiko Rukuru rwabibonye, imvugo ya Nkubito Isaac ikwiye guhabwa agaciro kubera ko ishyigikirwa n'iya HJA babarijwe umunsi umwe, uyu akaba yaravuze ko urubyiruko rw'interahamwe rwatoranywaga n'abahagarariye MRND mu rwego rwa Segiteri na Serire, barimo Kaboyi Jérémie wari Konseye wa Segiteri Nyamirambo na Karushara Rose wari Konseye wa Segiteri Kimisagara, amabwiriza yo kubatoza akaba yarayavanaga mu buyobozi bukuru bwa MRND harimo na Habyarimana Jean. Rurasanga ibi byaranagarutsweho na HJB wavuze ko yabanaga na Habyarimana Jean mu ishyaka rya MRND, asobanura ko nk'umuyobozi w'iryo shyaka, Habyarimana Jean atari kuyoberwa iby'ishyirwaho ry'urubyiruko rw'interahamwe rwabanje gushyirwa mu Mujyi wa Kigali, rugahabwa imyitozo ya gisirikare n'intwaro rwifashishaga mu bitero rwagabaga, iyo myitozo ikaba yarakorerwaga kwa Kabuga ku Muhima, mu Mutara, mu Bigogwe n'ahandi, kandi ko izi nterahamwe zabaga zavuye i Kigali ari zo zishe abatutsi mu Bugesera, mu Bigogwe, i Butare n'ahandi hantu hatandukanye, ko ibirebana n'imyitozo yabibonaga cyane cyane mu maraporo yabaga ariho umukono wa Habyarimana Jean.

[76] Urukiko rurasanga kandi n'abandi babajijwe barimo HJC, HJE, Nyiringondo Epaphrodite na Mbarushimana Vincent mu Rukiko Rukuru baremeje ko Habyarimana Jean yagize uruhare mu itangwa ry'imbunda ku nterahamwe kuko HJC uri mu bazihawe yavuze ko mbere y'itangwa ry'imbunda habanje kuba inama ku wa 15/5/1994 na Habyarimana Jean yarimo ashyigikira icyo gitekerezo cyari gitanzwe

na Karushara Rose[20], ndetse ko na HJE yavuze ko Habyarimana Jean nk'umuyobozi wa MRND yagize uruhare mu ishyirwaho ry'umutwe w'interahamwe no mu kuziha imyitozo ya gisirikare. Urukiko rurasanga nanone abatangabuhamya babajijwe n'Ubushinjacyaha mu iperereza ari bo Nyiringondo Epaphrodite na Mbarushimana Vincent nabo baragaragaje uruhare rwa Habyarimana Jean mu gutoranya urubyiruko rw'interahamwe, kubaha imyitozo no kubaha imbunda bagombaga gukoresha mu kwica abatutsi ndetse ibyerekeranye no guha imbunda Interahamwe bikaba byaranagarutsweho kandi bikanemezwa mu rubanza ICTR-98-44-T Ubushinjacyaha bwaburanye na Edouard Karemera na Ngirumpatse Matayo[21].

[77] Urukikiko rurasanga nk'uko n'Urukiko Rukuru rwabibonye, ubuhamya bwa Nkubito Isaac, HJC na HJE aribwo bukwiye guhabwa agaciro kuko bafite ubumenyi buhagije ku byabaye kuko bamwe muri bo bari interahamwe zakoranye bya hafi na Habyarimana Jean mu ishyaka rya MRND, mu gihe Setiba Joseph atakoranaga buri gihe naryo ku buryo byatuma amenya gahunda za Habyarimana Jean nk'uko yabyiyemereye mu buhamya bwe bwavuzwe haruguru.

[78] Urukiko rw'Ubujurire rurasanga rero Urukiko Rukuru rutarirengagije ubuhamya bwatanzwe na SETIBA Joseph nk'uko Habyarimana Jean abivuga, ahubwo rwarabusesenguye maze rugasanga butahabwa agaciro kubera ko buvuguruzwa n'ubwa Nkubito Isaac, HJA, HJB, HJC, HJE, Nyirangondo Epaphrodite na Mbarushimana Vincent, Urukiko rukaba rusanga ari bo bafite ubumenyi buhagije ku byabaye, kuko hashingiwe ku ngingo ya 65 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo yibukijwe haruguru, ari Urukiko rwonyine rufite ububasha bwo gusesengura imvugo z'abatangabuhamya no kwemeza ko zihuje cyangwa zidahuje n'ikiburanwa, hashingiwe ku bumenyi bwabo by'ibyabaye no ku buryo babivuga uko byagenze. Uko guhitamo ubuhamya hashingiwe ku byabaye, bikaba bihuje n'ibyemejwse n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Yussuf Munyakazi aho Urukiko rwashingiye ku bimenyetso by'Ubushinjacyaha aho gushingira ku by'urega kuko rusanga mu gihe hagaragara ikinyuranyo mu bintu byabaye, Urukiko rubanza arirwo ruba rufite inshingano zo kwemeza ibimenyetso bigomba guhabwa agaciro rumaze kumva abatangabuhamya[22].

Ku bireba umutangabuhamya HJD

[79] Dosiye igaragaza ko HJD wahawe iri zina kubw'umutekano we, akaba yari Perezida wa MRND muri Segiteri Nyakabanda, nawe yabarijwe mu iburanisha ryo ku wa 28/02/2017 mu Rukiko Rukuru, avuga ko ubuyobozi bw'interahamwe ntaho bwahuriraga n'ubwi'ishyaka rya MRND, cyakora ko ubuyobozi bwa MRND bwashoboraga gusaba ubw'interahamwe kubaha abasore ngo bakorane mitingi (meeting), akaba ari uwitwa Turatsinze wari ushinzwe coordination yazo. Yavuze ko nta nama azi yabaye ku wa 15/05/1994 igamije guhiga abatutsi, ko iyo azi ari iyabaye mu mpera z'uko kwezi igamije gushaka abasore bo kubohoza umusozi wa Mburabuturo yakoreshejwe n'abasirikare kandi ko nta na rimwe yigeze abona Habyarimana Jean aza mu Nyakabanda gusaba abasore b'interahamwe, ndetse ko nta ruhare MRND n'abayobozi bayo ku rwego rw'Umujyi bagize mu gutegura nogukora jenoside yakorewe abatutsi.

[80] Urukiko rw'Ubujurire rurasanga Habyarimana Jean avuga ko yasabye ko HJD abazwa kugira ngo abeshyuze amakuru yari yatanzwe na HJC wemeje ko ku wa 15/05/1994 habaye inama yo guhiga

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[20] Yari Konseye wa Segiteri Kimisagara

[21] ICTR-98-44-T rw'Ubushinjacyaha na Edouard Karemera hamwe na Mathieu Ngirumpatse, igika cya 444: "*Lachambre conclut que le Procureur a établi au délà de tout doute raisonnable qu'à compter de 1993, des armes ont été fournies aux Interahamwe pendant que d'autres étaient stockées pour leur ệtre distribuées à une date ultérieure*".

[22] ICTR-97-36A-A, rw'Ubushinjacyaha na Yussuf Munyakazi, igika cya 118: "*The Appeals Chamber recalls that, when faced with competing versions of events, it is the duty of the Trial Chamber that heard the witnesses to determine which evidence it considers more probative. Based on the foregoing, the Appeals Chamber finds that it was reasonable for the Trial Chamber to accept the Prosecution evidence over Witness Nahimana's account.*"

abatutsi bari basigaye muri za Segiteri na za Nyumbakumi, ko ahubwo habaye iyari igamije gushaka abasore bo kubohoza Mburabututo yari yafashwe n'inkotanyi, ariko ko ibyo yavuze Urukiko Rukuru rutabihaye agaciro.

[81] Urukiko rw'Ubujurire rurasanga HJD yaravuze ko atazi inama yo kuwa 15/05/1994 yari igamije guhiga abatutsi, ahubwo ko iyo azi ari iyabaye mu mpera z'ukwezi kwa gatanu 1994 yari igamije kubohoza Mburabuturo, nyamara HJC akaba yarasobannuye ko iyo nama yo ku wa 15/05/1994 yabayeho, ko kandi yari iyobowe na Colonel Renzaho Tharcisse, Colonel Ndahimana wari ukuriye ingabo mu Mujyi wa Kigali n'Uburasirazuba, Colonel Edouard Hakizimana ndetse ko na Habyarimana ubwe yari ayirimo, ko yari igamije guhiga abatutsi mu ngo zabo kandi ko we ubwe yahawe imbunda eshanu kuko hari hakenewe intwaro zo kwifashisha muri ibyo bikorwa nk'uko byari byagaragajwe na Karushara Rose, Habyarimana Jean agashyigikira iki gitekerezo; uburyo HJC abivuga bikaba bigaragaza ko avuga koko ibyo yahagazeho, Urukiko rukaba rubona nta nyungu yaba afite yo kubeshyera Habyarimana Jean cyane ko yari mu Nterahamwe kandi bizwi ko zikomoka muri MRND. Urukiko rurasanga rero ibyo Habyarimana Jean avuga ko uyu mutangabuhamya HJD amushinjura atari byo kuko inama avuga yamushinjuyeho atayizi, kandi akaba atavuguruza amakuru yatanzwe na HJC wayimushinje; bityo icyemezo cyafashwe n'Urukiko Rukuru cyo kudaha agaciro ubuhamya bwa HJD kuri iyi ngingo kikaba nta nenge gifite.

[82] Urukiko rw'Ubujurire rurasanga nk'uko n'Urukiko Rukuru rwabibonye ubuhamya bwatanzwe na HJC aribwo bufite ishingiro ugereranije n'ubwatanzwe na HJD, ibyo bikaba bihuje n'ibyemejwe mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda aho rwemeje mu rubanza rwa Georges Anderson Nderubumwe Rutaganda ko mu gihe ubuhamya bubiri buvuguruzanya, Urukiko rubanza nyuma yo kumva abatangabuhamya arirwo rwemeza ko ubuhamya runaka aribwo bufite ishingiro[23].

Ku birebana n'umutangabuhamya Mucanda Vital

[83] Mucanda Vital nawe yabarijwe mu iburanisha ryo ku wa 28/02/2017 avuga ko yari interahamwe ku rwego rwa Segiteri, ari n'umukuru wabo ushinzwe animation muri Segiteri Gitega ku Karambo, asobanura ko bagendanaga n'abarwanashyaka babo bakabarindira umutekano, ko uwitwa Twahirwa Séraphin ari we wababwiraga ibyo bagombaga gukora, haba kujya mu myigaragambyo cyangwa muri za mitingi. Yavuze ko ntaho bahuriraga na Habyarimana Jean, uretse mu myigaragambyo no muri za mitingi, ko atageraga mu nama zabo, aho yibuka bahuriye akaba ari muri mitingi yabereye i Nyamirambo mu mwaka wa 1993, akaba yaranayifashemo ijambo avuga ko ari abatwa, abatutsi, n'abahutu bagomba kumenya ko umwanzi w'u Rwanda ari nawe mwanzi w'u Burundi, ko bose bamaganye iyicwa rya Perezida Ndadaye.

[84] Urukiko rw'Ubujurire rurasanga mu miburanire ye, Habyarimana Jean yari yasabye ko Mucanda Vital abazwa kugira ngo asobanure ko ari we wakiraga za mitingi zabaga zirimo abaturage bose, abahutu, abatutsi n'abatwa, ibi Urukiko Rukuru rukaba rwarabyirengagije.

[85] Ku birebana n'ibyavuzwe na Mucanda Vital, Urukiko rurasanga mu bisobanuro yahaye Urukiko yaravuze ko ubuyobozi bwa MRND ntaho bwahuriraga n'ubw'interahamwe, uretse kujyana mu myigaragambyo no muri za mitingi, nyamara nk'uko byavuzwe na Nyiringondo Epaphrodite, Mbarushimana Vincent, HJA, HJB, HJE na Nkubito Isaac, Habyarimana Jean nk'umuyobozi w'ishyaka rya MRND mu Mujyi wa Kigali yaragize uruhare rukomeye mu gushyiraho urubyiruko rw'interahamwe ndetse no kuziha imyitozo n'imbunda zakoreshejwe mu guhiga no kwica abatutsi.

[23] ICTR-96-3-A rwa Georges Anderson Nderubumwe Rutaganda, igika cya 501: Appeals Chamber recalled that "*where there are two conflicting testimonies, it falls to the Trial Chamber before which the witness testified to decide which of the testimonies has more weight […]*."

[86] Urukiko rurasanga ku birebana na meeting yo ku wa 23/10/1993, Mucanda Vital yaravuze ko icyo Habyarimana Jean yavuze ari uko bamaganye iyicwa rya Perezida Ndadaye[24], ndetse ko umwanzi w'u Burundi ari nawe mwanzi w'u Rwanda kandi ko icyo gihe hari abatwa, abahutu n'abatutsi, na Habyarimana ubwe akaba adahakana ko yafashe ijambo muri iyo mitingi, nyamara Nkubito Isaac, HJA na HJE bakaba barasobanuriye Urukiko Rukuru ko iyo bavugaga umwanzi byababaga bishatse kuvuga umututsi, ibyo ndetse bikaba byaranasobanuwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza ICTR-98-44- T rw'Ubushinjacyaha na Edouard Karemera hamwe na Mathieu Ngirumpatse[25], bityo rero kuba muri iyi nama Habyarimana Jean yarafashe ijambo akamagana umwanzi w'u Rwanda bikaba bigaragaza ko yashishikarije ku buryo bukomeye abari bayirimo kwishyira hamwe bakarwanya abatutsi aho bari hose.

[87] Urukiko rurasanga imvugo ya Me Nyirihirwe Hilaire wunganira Habyarimana Jean y'uko icyari kigamijwe mu nama yo ku wa 23/10/1993 ari ukwamagana urupfu rwa Ndadaye wari Perezida w'u Burundi nta shingiro bifite kuko n'ubwo byaba byaravuzweho, abafashe amagambo muri iyo mitingi barimo na Habayarimana Jean bagarutse cyane ku gushishikariza abari bayirimo kwishyira hamwe bakarwanya umwanzi ari we mututsi nk'uko abatangabuhamya babajijwe mu iperereza no mu Rukiko Rukuru bavuzwe haruguru babisobanuye, ndetse ibi bikaba byaranasobanuwe n'abatangabuhamya ALC, UB na AWD bari muri iyo mitingi nk'uko byasobanuwe mu rubanza rw'Ubushinjacyaha na Karemera Edouard hamwe na Ngirumpatse Mathieu rwabereye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR)[26] ; igisobanuro cy'ijambo umwanzi byavugaga umututsi kikaba kandi cyaratanzwe mu rubanza ICTR -96-4-T rw'Ubushinjacyaha na Jean Paul Akayesu.[27]

[88] Rurasanga kandi Habyarimana Jean yari no mu nama yo ku wa 16/01/1994 nk'uko nawe yabyemereye uru Rukiko mu iburanisha ryo ku wa 13/01/2020 ndetse bikaba binagaragara mu gika cya [573] cy'urubanza ICTR-98-44-T rw'Ubushinjacyaha na Edouard Karemera hamwe na Mathieu Ngirumpatse rwibukijwe haruguru, Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rukaba rwaremeje mu gika cyarwo cya [598], ko Ubushinjacyaha bwagaragaje nta gushidikanya ko kuwa 16/01/1994, kuri Stade Nyamirambo habereye "*meeting*" yari irimo Karemera Edouard, Ngirumpatse Mathieu n'abandi bayobozi bakuru b'ishyaka rya MRND kandi banafashemo ijambo, ko n'abagize umutwe w'interahamwe bari bayirimo, abari bayirimo bose bakaba barashyigikiye igitekerezo cya Hutu Power[28], ibi bikaba bishimangira uruhare rwa Habyarimana Jean mu nama zitandukanye zacuriwemo umugambi wo kumvisha abahutu ko bagomba kwishyira hamwe bakarwanya abatutsi, iyi nama ikaba itari igamije kubwira interahamwe ko zigomba kwitonda gusa nk'uko Habyarimana Jean abiburanisha.

[89] Rusanga na none ibyo Me Nyirihirwe Hilaire avuga ko mu kugaragaza uruhare rwa Habyarimana Jean hagomba kwifashishwa cassette, extrait cyangwa ubuhamya bwanditse nta shingiro bifite kuko ibimenyetso by'abatangabuhamya bitabujijwe muri bene izi manza, ndetse itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo rikaba riteganya ko mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe umwanya kugira ngo banyomozanye, ibi bikaba bigaragaza ihame ry'ubwigenge mu gutanga

[24]Uyu yari Perezida w'u Burundi kuva 10/07/1993 kugeza ku wa 21/10/1993; Region week.com, consulté le17/02/2010.

[25] ICTR-98-44-T urubanza rw'Ubushinjacyaha na Ngirumpatse Mathieu na Karemera Edouard Igika cya [537].

[26] ICTR 98-44-T rw'Ubushinjacyaha na Edouard Karemera hamwe na Mathieu Ngirumpatse, igika cya [520],[521], [522] na [524].

[27] ICTR -96-4-T rw'Ubushinjacyaha na Jean Paul Akayesu igika cya 123.

[28] ICTR 98-44-T: [….], De l'avis de la Chambre, "*Le Procureur a établi au –delà de tout doute raisonnable qu'un meeting s'était tenu au stade de Nyamirambo le 16 janvier 1994, que Karemera, Ngirumpatse et d'autres hauts responsables du MRND avaient assisté à ce meeting et s'étaient adressés à l'assistance, que des membres de la milice Interahamwe y avaient également pris part, et qu'on y avait épousé la cause de l'idéologie Hutu Power"*.

ibimenyetso uretse ibibujijwe n'amategeko (*liberté de la preuve*) mu manza nshinjabyaha[29], bityo rero hakaba nta mpamvu yatuma ibimenyetso by'abatangabuhamya bitahabwa agaciro kandi nabyo byemewe, ahubwo Habyarimana Jean n'umwunganizi we bakaba bafite inshingano yo kuvuguruza ubuhamya bw'abatangabuhamya bamushinja, ariko nyamara bakaba batarabashijekuvuguruza ubwo buhamya bumushinja ibyaha akurikiranyweho.

[90] Hakurikijwe ibisobanuro bitanzwe haruguru, Urukiko rw'Ubujurire rurasanga Urukiko Rukuru rutarirengagije imvugo za HJD, Setiba Joseph na Mucanda Vital, ahubwo rwarazisesenguriye hamwe n'ibindi bimenyetso biri muri dosiye, rugasanga nta shingiro zifite, uru Rukiko rukaba rwemeranywa n'umwanzuro wafashwe n'Urukiko Rukuru kuko nk'uko byagaragajwe hari ubundi buhamya buvuguruza ubwatanzwe na HJD, Mucanda Vital na Setiba Joseph, akaba ari bwo bukwiye guhabwa agaciro kubera impamvu zasobanuwe haruguru.

5. Kumenya niba hari ikosa Urukiko Rukuru rwakoze mu guhamya Habyarimana Jean icyaha cy'ubwumvikane bugamije gukora jenoside n'icyaha cyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside

[91] Habyarimana Jean avuga ko Urukiko Rukuru rwakoze amakosa mu kumuhamya icyaha cy'ubwumvikane bugamije gukora jenoside n'icyaha cyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside hashingiye ku mvugo z'abatagabuhamya bamushinja, mu gihe Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwemeje ko Ngirumpatse Matayo, Karemera Edouard kimwe n'abandi bayobozi bakuru ba MRND badahamwa n'ubwumvikane bugamije gukora jenoside ku bikorwa byabaye mbere y'itariki ya 08/04/1994.

[92] Ubushinjacyaha buvuga ko uru rubanza rwa Ngirumpatse Matayo na Karemera rutarengera Habyarimana Jean kuko adakurikiranyweho kuba yari umuyobozi w'Interahamwe, ko ahubwo aryozwa uruhare yagize mu ishyirwaho ry'uwo mutwe no kuwutoza ibya gisirikare hagamijwe kurimbura abatutsi nk'uko byemejwe n'abatangabuhamya.

UKO URUKIKO RUBIBONA

Ku birebana no kuba Urukiko Rukuru rwarahamije Habyarimana Jean icyaha cy'ubwumvikane bugamije gukora jenoside

[93] Ingingo ya 132, 4º y'Itegeko-Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana[30] ndetse n'ingingo ya 3, b y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 ku ikumira ry'icyaha cya jenoside[31] biteganya icyaha cyo kujya no gucura umugambi wo gukora jenoside. Icyo cyaha kikaba cyaranasobanuwe kandi mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda harimo urwa Alfred Musema rwaciwe ku wa 27/01/2000 aho rwavuze ko gucura umugambi wo gukora jenoside ari ukumvikana cyangwa guhuza igitekerezo hagati y'abantu babiri cyangwa barenze, icyumvikanyweho kikaba ari ugukora jenoside[32].

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[29] Ingingo ya 119 y'Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[30] Bitabangamiye ibiteganywa n'izindi ngingo z'iri Tegeko–Ngenga ku byerekeye ubwinjiracyaha n'ubufatanyacyaha, ibikorwa bikurikira bihanishwa ibihano biteganyirijwe ibyaha bivugwa muri uyu Mutwe […] kujya umugambi wo gukora icyo cyaha n'ubwo bitashyirwa mu bikorwa [..]. Ibikubiye muri iyi ngingo ni nabyo dusanga mu ngingo ya 93,1º y'Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[31] *[….] The following acts shall be punishable […] Conspiracy to commit genocide* (Art. 3, e of The Convention on the Prevention and Punishment of the Crime of Genocide.

[32] ICTR-96-13-T rw'Ubushinjacyaha na Musema Alfred, igika 191 "… *La Chambre définit l'entente en vue de commettre le genocide comme une résolution d'agir sur laquelle au moins deux personnes se sont accordées en vue de commettre un jenocide*", ICTR-99-52-A rw'Ubushinjacyaha na Nahimana Ferdinand na bagenzi be, igika cya 344; ICTR-99-46-A

[94] Urukiko Rukuru rwahamije Habyarimana Jean icyaha cy'ubwumvikane bugamije gukora jenoside rushingiye ku ngingo ya 132, 4º y'Itegeko-Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana no ku mvugo z'abatagabuhamya bamushinja barimo Nkubito Isaac, HJA, HJB, HJC, HJE bemeje ko yagize uruhare mu gutoranya urubyiruko rw'interahamwe rwahawe imyitozo ya gisirikare n'ibikoresho byakoreshejwe mu kwica abatutsi ari ku Muhima ku nzu ya Kabuga afatanyije na Ngirumpatse Mathieu, Nzirorera Joseph, renzaho Tharcisse, Munyakazi Laurent, Kajuga Robert, Rutaganda Georges, Kamatamu Euphrasie n'abandi, kandi n'ahandi muri Perefegitura y'Umujyi wa Kigali, urwo rubyiruko rukaba rwaratoranywaga rugahabwa imyitozo n'ibikoresho byakoreshejwe jenoside.

[95] Ikindi cyashingiweho n'Urukiko Rukuru mu guhamya Habyarimana Jean ubwumvikane bugamije gukora jenoside ni uko yakoreshaga inama abayobozi b'ishyaka rya MRND ku rwego rwa Komini yari akuriye akabagezaho imyanzuro y'inama zo mu buyobozi bukuru bw'iryo shyaka yo kumenya umwanzi uwo ari we n'uko bagomba kumurwanya nabo bakajya kubigeza kubo bari bakuriye ku rwego rwa Segiteri, Urukiko Rukuru rukaba rwaravuze ko kuba yarakoraga inama n'abayobozi, ibyo ababwiye bakemera kubigeza ku bandi bigaragaza ko babaga babyumvikanyeho muri iyo nama. Rwasanze na none kuba Habyarimana Jean yari mu nama yo ku wa 15/05/1994 yari yatumijwe na Perefe Renzaho Tharcisse irimo abantu batandukanye barimo Colonel Ndahimana, Colonel Edouard Hakizimana na Konseye Karushara Rose ikavugirwamo ibyo guhiga abatutsi n'ibyitso byari bisigaye, ndetse n'ibyo gutanga imbunda kugira ngo icyo gikorwa gishoboke, nyuma y'aho izo mbunda zigatangwa, nabyo byerekana ko muri iyo nama habereyemo ubwumvikane bwo guhiga abatutsi n'abo bitaga ibyitso[33].

[96] Rushingiye ku biteganywa n'ingingo ya 132, 4º y'Itegeko-Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana hamwe n'ingingo ya 3, b y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 ku ikumira ry'icyaha cya jenoside ndetse no ku byabaye, Urukiko rw'Ubujurire rurasanga inyito y'icyaha cyahamijwe Habyarimana Jean n'Urukiko Rukuru yaragombaga kuba gucura umugambi wo gukora jenoside, aho kuba ubwumvikane bugamije gukora jenoside, kubera ko ubwumvikane atariyo nyito iteganywa n'Itegeko, ahubwo ari igisobanuro kigaragaza uko icyaha kigerwaho. Ibi akaba ari nabyo byemejwe mu rubanza RPA 0001/12/CS rwaciwe n'Urukiko rw'Ikirenga, haburana Ubushinjacyaha na Bandora Charles, aho uyu yari yahamijwe icyaha cy'ubwumvikane bugamije gukora jenoside mu Rukiko Rukuru ariko Urukiko rw'Ikirenga rugahindura inyito, rukemeza ko ari ugucura umugambi wo gukora jenoside.[34] Aha Urukiko rw'Ubujurire rukaba rusanga n'ubwo bitandukaniye ku ijambo kujya umugambi no gucura umugambi, ariko muri rusange inyito yo kujya umugambi wo gukora jenoside ikoreshwa mu ngingoya 132, 4º y'Itegeko-Ngenga Nº 01/2012/OL ryavuzwe haruguru, ihura n'iyo gucura umugambi wo gukora jenoside ikoreshwa mu ngingo ya 3, b y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 ku ikumira ry'icyaha cya jenoside ndetse n'inyito yo gucura umugambi wo gukora jenoside yakoreshejwe n'Urukiko rw'Ikirenga muri urwo rubanza rwa Bandora Charles.

[97] Ku birebana n'uko Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza ICTR-98-44-T rw'Ubushinjacyaha na Edouard Karemera na Ngirumpatse Matayo rwemeje ko Edouard Karemera, Ngirumpatse Matayo ndetse n'abandi bayobozi ba MRND batahamywa ibyaha bya jenosode, gushishikariza gukora jenoside, ibyaha byibasiye inyokomuntu n'ubwicanyi bakoze mu rwego rwo gusohoza umugambi umwe wumvikanyweho (*Joint Criminal Entreprise*) hamwe n'icyo gucura umugambi wo gukora jenoside rushingiye ku bikorwa byabaye mbere y'itariki ya 8/04/1994, Urukiko rw'Ubujurire rurasanga koko Urugereko rw'Ubujurire rw'Urukiko Mpanabyaha

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rw'Ubushinjacyaha na Ntagerura André na bagenzi be, igika cya 92; ICTR-01-66-A rw'Ubushinjacyaha na Seromba Athanase, igika cya 218.

[33] Urubanza RPA GEN 00002/16/HCCI, Igika cya 131-133.

[34] RPA 0001/12/CS rwaciwe ku wa 22/03/2019 haburana Ubushinjacyaha na Bandora Charles, igika cya 53.

Mpuzamahanga rwashyiriweho u Rwanda rwaremeje nta buryozwacyaha bushingiye ku gusohoza umugambi umwe wumvikanyweho (Joint Criminal Entreprise) bushobora kwemeza harebwe ku bikorwa byabaye mbere y'itariki 08/04/1994[35] ko kandi biri mu gaciro kwemeza ko uruhare rwa Karemera na Ngirumpatse mu byabaye mbere y'itariki ya 8/04/1994 rutari mu rwego rwo gukora ibyaha bikubiye muri Sitati[36]; ko rero, Urugereko rwa Mbere rw'Iremezo rutibeshye mu kuvuga ko atari wo mwanzuro wonyine washoboraga gukurwa mu bimenyetso bifatika byatuma Karemera na Ngirumpatse bahamywa icyaha cyo gucura umugambi wo gukora jenoside hashingiwe ku byabaye mbere y'itariki 8/04/994[37].

[98] Urukiko rw'Ubujurire rurasanga ariko n'ubwo byemejwe gutyo, urwo rubanza rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rutareba Habyarimana Jean nk'uko aruburanisha, ko ahubwo rureba Karemera Edouard na Ngirumpatse Matayo barubayemo ababuranyi, bityo Habyarimana Jean akaba adashobora kurwitwaza avuga ko rwamugize umwere ku byaha byo gushishikariza gukora jenoside, ibyaha byibasiye inyokomuntu n'ubwicanyi bakoze mu rwego rwo gusohoza umugambi umwe wumvikanyweho (*Joint Criminal Entreprise*) no ku cyaha cyo gucura umugambi wo gukora jenoside ku bikorwa byabaye mbere y'itariki ya 08/04/1994 nk'uko byasobanuwe mu gice cya II muri uru rubanza (II.2).

[99] Ku birebana n'icyaha cyo gucura umugambi wa jenoside, Urukiko rw'Ubujurire rurasanga Habyarimana Jean we yarahamijwe icyo cyaha n'Urukiko Rukuru hashingiwe ku bimenyetso by'inama n'ibikorwa byabaye muri 1993, ni ukuvuga mbere y'itariki ya 08/04/1994 hamwe n'ibya nyuma y'iyo tariki.

[100] Ku kibazo cyo kumenya niba hanashingirwa no ku bimenyetso bya mbere ya 08/04/1994 mu kumuhamya icyaha , Urukiko rw'Ubujurire rurasanga uretse n'uko hari izindi nyandiko z'abahanga bemeje ko n'ubwo bwose jenoside nyirizina yakozwe ahanini kuva ku itariki 7/04/1994 kugeza mu mpera za Nyakanga 1994, ko ariko yari yarateguwe mbere yaho cyane, ko kandi yakomeje gukorwa n'abari barayiteguye, abayishyize mu bikorwa n'ibyitso byabo ndetse bakanayikomeza mu mpeshyi na nyuma yo kwambuka umupaka wa Zaïre n'u Rwanda[38], muri uru rubanza rwa Habyarimana Jean by'umwihariko, Urukiko rw'Ubujurire rukaba rusanga nk'uko n'Urukiko Rukuru rwabibonye hari abatangabuhamya barimo Nkubito Isaac, HJA, HJB, HJC na HJE, bemeje ko Habyarimana Jean yari mu nama zabaye muri 1993 no ku wa 15/05/1994 zari zigamije gutoranya urubyiruko rw'interahamwe, ruhabwa imyitozo ya gisirikare n'ibikoresho birimo n'imbunda, uru rubyiruko rukaba rwaragizeuruhare rukomeye mu gukora jenoside mu Mujyi wa Kigali no mu bice bitandukanye by'igihugu.

[101] Urukiko rw'Ubujurire rurasanga kandi nk'uko n'Urukiko Rukuru rwabibonye, uretse gusa ku birebana n'inyito yahinduwe, iki cyaha kigaragazwa n'uko Habyarimana Jean nk'umuyobozi wa MRND mu Mujyi wa Kigali yagize uruhare mu nama zitandukanye yayoboye asobanurira abo yari akuriye ko umwanzi ari umututsi nk'uko abatangabuhamya barimo Nkubito na HJB bagaragajwe

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[35] ICTR-98-44-T urubanza rw'Ubushinjacyaha na Ngirumpatse Mathieu na Karemera Edouard, igikacya 1573: "*Aucune déclaration de culpabilité ne serait dès lors être prononcée relativement aux faits survenus avant le 8 avril 1994.*"

[36] Statut du Tribunal Pénal International pour Le Rwanda.

[37] ICTR-98-44-A rwaciwe ku wa 29/09/2014 rw'Ubushinjacyaha na Edouard Karemera et Mathieu Ngirumpatse,igika cya 741: "*The Appeals Chamber is satisfied that the considerations identified by the Trial Chamber reasonably support its finding on the reasonable possibility that Karemera's and Ngirumpatse's involvement in the pre-8 April 1994 events had not been conducted with the intent that crimes covered by the Statute be committed. Consequently, the Trial Chamber did not err in concluding that it was not the only reasonable inference that could be drawn from the circumstantial evidence that Karemera and Ngirumpatse possessed the requisite mens rea for a conviction for conspiracy to commit genocide in relation to the pre-8 April 1994 events.*"

[38] Géraud de La Pradelle, Imprescriptible: L'implication française dans le génocide tutsi portée devant les tribunaux, France, 2005, p. 109: "*Bien sur, le génocide proprement dit a été commis pour l'essentiel, sur le territoire nationaldu Rwanda entre le 7 avril et la fin juillet 1994 ; mais Il a été préparé de longue date et l'activité criminelle de ses concepteurs, comme de ses agents et complices, ne s'est pas arrêtée à la fin de l'été, une fois passée la frontière qui sépare le Rwanda du Zaïre.*"

haruguru babisobanuye, nabo bakabigeza ku bo bayoboye, ndetse no kuba yari mu nama yo wa 15/5/1994 yari igamije gukangurira abaturage guhiga abatutsi n'ibyitso byari bisigaye ndetse hagatangwa intwaro zo kwifashishwa muri ibyo bikorwa, kubw'ibyo Urukiko rw'Ubujurire rukaba rwemeranywa n'Urukiko Rukuru, uretse gusa ku birebana n'inyito y'icyaha, mu guhamya Habyarimana Jean icyaha cyo gucura umugambi wo gukora jenoside.

Ku birebana no kuba Urukiko Rukuru rwarahamije Habyarimana Jean icyaha cyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside

[102] Ingingo ya 132, 3º y'Itegeko-Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana[39] n'ingingo ya 3 y'Amasezerano Mpuzamahanga arebana no gukumira no guhana icyaha cya jenoside[40] biteganya kandi bigahana icyaha cyo gushishikariza gukora genoside. Ibikorwa byo gushishikariza gukora jenoside byanasobanuwe mu rubanza ICTR-2001-72-T rw'Ubushinjacyaha na Bikindi Simon, aho rwasobanuye ko gushishikariza gukora jenoside bisaba ko ubikora aba afite umugambi wo gukora jenoside kandi ko atari ngombwa ko hagiraigikorwa kigamije gukora jenoside kibikurikira[41].

[103] Naho ingingo ya 132, 5º y'Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko[42] igateganya kandi igahana icyaha cyo gushyigikira umuntu ushaka gukora icyo cyaha n'ubwo atagishyira mu bikorwa.

[104] Urukiko Rukuru rumaze kubona ko Habyarimana Jean yabaye icyitso mu gukora jenoside (complicité de génocide) ndetse akanashishikariza gukora jenoside (incitation à commettre le génocide) kubera ibikorwa bitandukanye yakoze byavuzwe haruguru, rwashingiye ku ngingo ya 98 y'Itegeko-Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana maze rubihuriza hamwe rumuhamya icyaha cyo kuba icyitso cy'abakoze jenoside kubera gushishikariza gukora jenoside no gutanga intwaro zakoreshejwe jenoside.

[105] Ku ruhande rumwe, Urukiko Rukuru rwabonye ko Habyarimana Jean ahamwa n'icyaha cyo gushishikariza gukora jenoside hashingiwe ku kuba yari mu nama yo kuwa 23/10/1993 yavugiyemo amagambo atandukanye yo gushishikariza abahutu kwishyira hamwe bakarwanya umwanzi ari we mututsi nk'uko byasobanuwe haruguruku rundi ruhande rubona ko yabaye icyitso mu cyaha cya jenoside rushingiye ku kuba yaragize uruhare mu guha urubyiruko rw'interahamwe imyitozo ya gisirikare n'intwaro, no kuba mu kwezi kwa 5/1994 yaragiye mu nama agashyigikira ko hatangwa imbunda zo guhiga abatutsi bari basigaye mu maserire ari nabyo bigaragaza ko yatanze inkunga ya ngombwa ku bantu bishe abatutsi kuri za bariyeri, mu ngo ndetse n'ahandi babaga bihishe hirya no hino muri Perefegiture y'Umujyi waKigali no hirya no hino mu gihugu[43].

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[39] Bitabangamiye ibiteganywa n'izindi ngingo z'iri Tegeko -Ngenga ku byerekeye ubwinjiracyaha n'ubufatanyacyaha, ibikorwa bikurikira bihanishwa ibihano biteganyirijwe ibyaha bivugwa muri uyu mutwe […] gushishikariza abantu gukora icyo cyaha n'ubwo bitashyirwa mu bikorwa [..]. Ibikubiye muri iyi ngingo ni nabyo dusanga mu ngingo ya 93,3º y'Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[40] *The following acts shall be punishable […]* "*Direct and public incitement to commit genocide*" (Art.3, c of The Convention on the Prevention and punishment of the crime of Genocide.

[41] ICTR -2001-72-T rw'Ubushinjacyaha na Bikindi Simon, igika cya 419: "*Commet le crime d'incitation directe et publique à commettre le genocide la personne qui agit avec l'intention d'inciter directement et publiquement autrui à commettre le génocide, ce qui suppose l'existence d'une intention génocide. Infraction formelle, l'incitation directe et publique à commettre le génocide est punissable même si aucun acte de génocide n'en a résulté*".

[42] Bitabangamiye ibiteganywa n'izindi ngingo z'iri Tegeko–Ngenga ku byerekeye ubwinjiracyaha n'ubufatanyacyaha, ibikorwa bikurikira bihanishwa ibihano biteganyirijwe ibyaha bivugwa muri uyu Mutwe […] gushyigikira umuntu ushaka gukora icyo cyaha n'ubwo atagishyira mu bikorwa. Ibikubiye muri iyi ngingo ni nabyo dusanga mu ngingo ya 93, 5º y'Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[43] Igika cya 139 cy'urubanza RPA GEN 00002/16/HCCI.

[106] Urukiko rw'Ubujurire rusanga nk'uko n'Urukiko Rukuru rwabonye Habyarimana Jean ahamwe n'ibyaha akurikiranyweho, ariko ku birebana n'inyito y'ibyaha yahamijwe, rukaba rusanga rugomba gukosora iyo nyito ihuriza hamwe icyaha cyo kuba icyitso cya jenoside kubera gushishikariza gukora jenoside (*complicité de genocide pour avoir inciter à commettre le génocide*) rukemeza ko kuri iyi ngingo hashingiwe ku bimenyetso byagaragajwe haruguru Habyarimana Jean ahamwa n'icyaha cyo kuba icyitso cy'abakoze jenoside (*complicité de génocide*) hamwe n'icyaha cyo gushishikariza gukora jenoside (*incitation à commettre le génocide*), buri cyose nk'icyaha cyihagije, kubera ko buri cyaha cyose gifite ibikigize bitandukanye n'iby'ikindi ndetse ibikorwa byashingiweho n'Urukiko Rukuru mu kwemeza ibyo byaha byombi bikaba bitandukanye.

[107] Urukiko rw'Ubujurire rurasanga rero Habyarimana Jean ahamwa n'ibyaha byose uko ari bitatu, aribyo gucura umugambi wo gukora jenoside, kuba icyitso mu gukora jenoside no gushishikariza gukora jenoside, bikaba bigize impurirane mbonezamugambi nk'uko isobanurwa mu ngingo ya 84 y'Itegeko-Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 ryibukijwe haruguru[44] kubera ko byose byakozwe mu mugambi umwe wo gukora jenoside, bityo Habyarimana Jean akaba agomba guhanishwa igihano cy'igifungo cya burundu giteganyirijwe ibyo byaha, aho kuba igifungo cya burundu y'umwihariko yari yahanishijwe n'Urukiko Rukuru kuko icyo gihano kitagiteganyijwe ma mategeko y'u Rwanda hashingiwe ku ngingo ya 26 y'Itegeko N° 68/2018 ryo ku wa 30/8/2018 riteganya ibyaha n'ibihano muri rusange.[45]

[108] Hakurikijwe ibisobanuro bitanzwe haruguru, Urukiko rw'Ubujurire rurasanga ubujurire bwa Habyarimana Jean nta shingiro bufite kuko nk'uko n'Urukiko Rukuru rwabibonye nta bimenyetso yatanze bivuguruza ibyashingiweho n'Urukiko Rukuru mu kumuhamya ibyo byaha, bityo urubanza RPA GEN 00002/16/HCCI rwaciwe n'Urukiko Rukuru ku wa 28/04/2017 rukaba rutagomba guhinduka, uretse gusa ku birebana n'inyito zari zahawe ibyaha Habyarimana Jean yahamijwe no ku birebana n'igihano.

III. ICYEMEZO CY'URUKIKO

[109] Rwemeje ko ubujurire bwa Habyarimana Jean nta shingiro bufite.

[110] Rwemeje ko imikirize y'urubanza RPA GEN 00002/16/HCCI rwaciwe ku wa 28/04/2017 n'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi ihindutse gusa ku birebana n'inyito y'ibyaha no ku gihano yahanishijwe.

[111] Rwemeje ko Habayarimana ahamwa n'ibyaha byo gucura umugambi wo gukora jenoside, kuba icyitso cy'abakoze jenoside no gushishikariza abandi gukora jenoside.

[112] Ruhanishije Habyarimana Jean igifungo cya burundu.

[113] Ruvuze ko amagarama y'urubanza aherera ku isanduka ya Leta.

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[44] Iyo ku gikorwa kimwe gusa cyangwa byinshi, uwakoze icyaha yari guhanishwa ibihano byinshi byo gufungwa cyangwa by'ihazabu, umucamanza amuhanisha igihano kiruta ibindi yongera igihe cyangwa umubare bitewe n'uburyo ibyaha byakozwe ariko ntarenze urugero ntarengwa wongeyeho icya kabiri cy'icyo gihano kirushijeibindi gukomera.

[45] Iyo ngingo ya 26 ivuga ko igihano cy'igifungo gishobora kumara igihe kizwi cyangwa kikaba icya burundu.