UBUSHINJACYAHA v NTAGANZWA

[Rwanda URUKIKO RUKURU URUGEREKO RWIHARIYE RUBURANISHA IBYAHA MPUZAMAHANGA N'IBYAMBUKA IMBIBI – RP/GEN 00001/2016/HC/HCCI (Muhima, P.J., Ndagijimana na Mukamurenzi, J.) 28 Gicurasi 2020]

Amategeko mpanabyaha – Icyaha cyo gushishikariza abantu gukora jenoside – Icyaha cyo gushishikariza abantu gukora jenoside kigomba kuba gikozwe mu buryo butaziguye kandi mu ruhame nk'uko bimeze mu masezerano ku ikumira n'ihanwa ry'icyaha cya jenoside ibihugu byose bigomba kubahiriza.

Amategeko mpanabyaha – Igenwa ry'igihano – Igenwa ry'igihano iyo hari impamvu nkomezacyaha n'impamvu nyoroshyacyaha mu guhana harebwa uburemere bw'ibyaha bihama uregwa.

Incamake y'Ikibazo: Uru rubanza rwaciwe n'Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ariko uregwa akaba Yaratangiye akurikiranwa n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ku cyaha cya jenoside, gushishikariza ku buryo butaziguye kandi mu ruhame gukora jenoside, kurimbura, kwica no gusambanya ku gahato nk'ibyaha byibasiye inyoko muntu yakekwagaho gukora mu 1994 ubwo yari Burugumesiteri wa komini Nyakizu. Urwo rukiko rushingiye ku mategeko angenga imikorere yarwo n'ibimenyetso rwemeje ko dosiye y'urubanza rw'uregwa, wari ugishakishwa, yoherezwa mu Rwanda. Uregwa yaje gufatirwa muri Repubulika iharanira Demokarasi ya Congo, agezwa mu Rwanda kuwa 20/03/2016 n'Urwego rw'Inkiko Mpuzamahanga Mpanabyaha (MICT) kugira ngo ahaburanishirizwe.

Ubushinjacyaha bw'u Rwanda, Nyuma yo guhuza inyandiko y'ibirego yakozwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha ryo mu Rwanda nk'uko biteganywa n'ingingo ya 6 y'Itegeko N° 47/2013 ryo kuwa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, bwashyikirije Urukiko Rukuru, Urugereko rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi dosiye, bukurikiranye uregwa ku cyaha cya jenoside, icyo gushishikariza abantu gukora jenoside, kurimbura, kwica no gusambanya ku gahato nk'ibyaha byibasiye inyoko muntu. Ubushinjacyaha busobanura ko guhera ku itariki ya 06/04/1994 abaturage bo mu cyahoze ari perefegitura ya Gikongoro na Butare mu makomini ahana imbibi na komini Nyakizu, abatutsi batangiye kwicwa, bamwe muri bo baturutse mu makomini ya Mubuga, Rwamiko na Runyinya bahungira kuri paruwasi ya Cyahinda bibwira ko hari umutekano, abandi bahungira ku yindi misozi ndetse no mu gihugu cy'u Burundi ariko abenshi baragarurwa baricwa. Bukavuga ko mu batutsi bari barahungiye kuri paruwasi ya Cyahinda barenga ibihumbi mirongo itatu (30.000) abenshi bari barabishishikarijwe n'uregwa abizeza kubarindira umutekano ariko ari uburyo bwo kubahuriza ahantu hamwe kugira ngo bazahabicire, ko muri ubwo bwicanyi bwibasiye abatutsi yafatanyije n'inzego zitandukanye zirimo abasirikare, abajandarume, abapolisi, abakonseye, abaresiponsabule ba selire, interahamwe n'impunzi z'abarundi.

Ubushinjacyaha buvuga kandi ko kubera imirimo uregwa yakoraga nka Burugumesitiri, ari na perezida w'ishyaka rya MDR igice cya power, yari afite ububasha bwo kuba yahagarika ubwicanyi bwakorerwaga abatutsi muri komini yayoboraga ariko ubwo bubasha abukoresha mu gukangurira

abahutu kwica abatutsi, ayobora ibitero, ashyirishaho za bariyeri ziciweho abatutsi hirya no hino muri Nyakizu, nawe ubwe agira abo yica mu rwego rwo gutinyura abandi.

Bunasobanura ko mu bimenyetso bufite harimo abatangabuhamya bari barahungiye i Cyahinda no ku musozi wa Gasasa, abagize uruhare muri jenoside yakorewe abatutsi muri Nyakizu n'abitabiriye inama zitegura jenoside yagiye akoresha ahantu hatandukanye bemeza ko uregwa yagize uruhare mu bikorwa byo kwica abatutsi muri Nyakizu. Bunavuga ko uretse ubuhamya bwatanzwe bugaragaza uruhare rw' uregwa mu byaha aregwa, hari n'inyandiko zirimo amabaruwa na raporo yakoraga nabyo bigaragaza ko mu 1994 yagenzuraga amarondo na za bariyeri, yasabye intwaro zicishijwe abatutsi n'izindi nyandiko zerekana urwango yari afitiye abatutsi n'abafitanye isano nabo yitaga inkotanyi cyangwa inyenzi.

Ku cyaha cya jenoside Ubushinjacyaha bugaragaza ko muri Mata 1994 mbere y'itariki ya 15, abatutsi baturutse mu makomine yo muri Gikongoro ahana imbibi na komine Nyakizu ndetse n'abakomoka muri iyo komine bahungiye kuri paruwasi ya Cyahinda guhera kuwa 15/04/1994 bagabwaho ibitero, abarokotse bahungira ku misozi biteganye ya Gasasa, Nyakizu na Mwumba aho ibitero byababakurikiye naho bihica abatutsi benshi, hakaba n'abandi batutsi bahungiraga i Burundi bagiye bagarurwa bakicwa, abandi bakicirwa kuri za bariyeri n'ahandi nko mu Nkomero no muri segiteri ya Maraba. Ubushinjacyaha bugaragaza ko uregwa wari Burugumesitiri wa komine Nyakizu yagize uruhare muri ubwo bwicanyi akoresha inama zibutegura, ashyirishaho za bariyeri ziciweho abatutsi, ayobora ibitero afashijwe n'abasirikare, abajandarume, abapolisi ba komine, abaturage n'impunzi z'abarundi zari zihari. Kuri icyo cyaha uregwa yiregura avuga ko atigeze ategura kugaba igitero i Cyahinda kuwa 15/04/1994, ko icyo yemera ari uko yageze kuri paruwasi i Cyahinda aho abatutsi bari barahungiye ajyanye abajandarume bo kubarindira umutekano, ahageze akoresha inama abereka abagiye kubarindira umutekano, abaha n'umwanya wo kubaza ibibazo, nyuma bumva amasasu avugira ku mashuli yisumbuye yari kure y'aho inama yaberaga, ko ari we, ari n'abajandarume bahise basubira kuri komine bibaza ibibaye. Avuga kandi ko ibyahabaye byatewe n'abantu bari baracengeye mu mpunzi bagamije guhungabanya umutekano bafite intwaro bari bamaze iminsi bakoresha aho bari baturutse muri Gikongoro, ko icyo gihe bishe abajandarume babiri nyuma y'uko umwe mu mpunzi atemye umujandarume akanamwambura imbunda, ndetse n'umupadiri w'aho i Cyahinda akabaha indi bakazirashisha.

Ku cyaha cyo gushishikariza gukora jenoside, Ubushinjacyaha buvuga ko uregwa hari amagambo yagiye avugira mu nama zitandukanye ashishikariza abaturage bari bazirimo gukora jenoside, nk'amagambo yavugiye mu nama yakoresheje ku biro bya komini kuwa 14/04/1994 abwira abari bayirimo kugota paruwasi ya Cyahinda kugira ngo hatagira umututsi uhunga n'uko bose bagomba kwicwa, ayo yavugiye uwo munsi i Nkakwa mu nama yakoresheje abaturage akababwira ko nta mututsi ugomba kubacika kuko ari abanzi b'igihugu, bituma abahungaga bafatwa baricwa. Bunavuga ko mu gitondo cyo kuwa 15/04/1994 aturutse i Butare yahagaze kuri santeri ya Maraba hafi y'ivuriro abwira abari bahari gukora bivuga ko bagomba kwica abatutsi bose bo muri iyo segiteri, anababwira ko nagaruka adashaka ko hari umututsi uzaba ugihari, anababaza aho uyoye ibishingwe abishyira nabo bamusubiza ko babishyira mu gisimu. Ubushinjacyaha buvuga kandi ko kuwa 21/04/1994 nabwo yakoresheje inama hafi y'ibiro bya komine avuga ko bagomba gutera ku musozi wa Gasasa, Nyakizu na Mwoya, ko no muri uko kwezi kwa kane hagati y'itariki ya 7 n'iya 30/04/1994, uwitwa Nshimiye ari kumwe n'uregwa mu modoka ya komine bazengurutse segiteri ya Nyagisozi ashishikariza abahutu kwica abatutsi, anababwira ko utabikora afatwa agafungwa. Bukomeza buvuga ko icyaha cyo gushishikariza gukora jenoside gihanwa n'ubwo bitashyirwa mu bikorwa, ko gikorwa hifashishijwe amagambo,

amashusho cyangwa inyandiko bishishikariza abandi gukora jenoside, ko ugikora aba afite ubushake bwo kurimbura abantu bose cyangwa bamwe muri bo bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini. Bukanavuga ko harebwe amagambo uregwa yavuze agaragaza ko nawe yari afite ubwo bushake. Kuri icyi cyaha uregwa yiregura avuga ko nta nama yigeze akoresha ku biro bya komini mu rwego rwo gukangurira abahutu kwica abatutsi, ko abavuga ko izo nama zabayeho birengagiza nkana ko iyo ziza kubaho byari kumenyekana bigatuma ubuyobozi bwa perefegitura buburizamo uwo mugambi uretse ko no muri icyo gihe gukoresha inama byari bibujijwe mu gihugu hose. Avuga kandi ko ikigaragaza ko nta nama zo gushishikariza gukora jenoside zabaye muri Nyakizu ari uko abatutsi bahahungiye ubwabo bemeza ko uregwa yabakiriye abahumuriza ababwira ko ubwicanyi butazagera muri komini Nyakizu, ko iyo aza kuba hari aho yakoresheje inama avuga ko bagomba kwicwa batari kwemera kuhahungira, bigaragaza ko bahahungira bari bamufitiye icyizere kubera uko bari basanzwe bamuzi.

Ku cyaha cyo kurimbura n'icyo kwica nk'ibyaha byibasiye inyoko muntu, Ubushinjacyaha bunakurikiranye uregwa ku cyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu buvuga ko hagati y'itariki ya 15 n'iya 18/04/1994 yagabye ibitero ku baturage b'abasivile barenga ibihumbi mirongo itatu (30 000) bari bahungiye kuri paruwasi ya Cyahinda hicwa abaturage benshi barimo abatutsi n'abandi, ko yagabye n'ibitero ku musozi wa Gasasa hari hahungiye abantu baturutse kuri paruwasi ya Cyahinda naho hagwa abaturage batari abasirikare barimo abatutsi barenga ibihumbi birindwi (7000). Bumurega kandi igitero cyo kuwa 17/04/1994 yagabye ku baturage bagera ku gihumbi (1 000) bari kuri santeri y'ubucuruzi yo mu Nkomero muri komini Kigembe aho yategetse abasirikare n'abajandarume kurasa imbaga y'abatutsi n'abandi bari aho ngaho, hagwa abatutsi benshi bagera ku gihumbi. Bunamurega icyaha cyo kwica nk'icyaha cyibasiye inyokomuntu kubera kwica abantu batatu bafatiwe kuri bariyeri y'i Musumba muri segiteri Yaramba, iyicwa rya Rwagasana wiciwe kuri bariyeri yo mu Ryabidandi n'iry'umusore wiciwe kuri bariyeri y'i Coko mu kwezi kwa gatanu 1994. Buvuga ko ibyo bitero yagabye ku baturage b'abasivile byari rusange kandi simusiga kuko muri ibyo bitero yagabye i Cyahinda, i Gasasa n'ahandi byarimo abasirikare, abajandarume, interahamwe n'impunzi z'abarundi bakoreshaga imbunda n'intwaro za gakondo azi neza ko hahungiye abantu benshi, akanagira uruhare mu iyicwa ry'abantu bahunguga, ko uburyo ibyo bitero byakozwemo bugaragaza ko yari afite umugambi wo kurimbura no kwicwa abaturage batari abasirikare.

Kuri icyi cyaha, uregwa yiregura avuga ko bavuga ko nta bitero bya rusange cyangwa bya simusiga yigeze agaba kuri paruwasi ya Cyahinda, ku musozi wa Gasasa no mu Nkomero ho muri komini ya Kigembe hari harahungiye abatutsi nk'uko ubushinjacyaha bubivuga, ko n'abatangabuhamya b'ubushinjacyaha batagaragaza uruhare rwe muri ibyo bitero kuko imvugo zabo zigaragaza ko hari abamubonye kuri iyo misozi uwo munsi abandi bakavuga ko uwo munsi bamubonye ahandi ku masaha amwe, ko bitari gushoboka ko aho hantu hose ahabera icyarimwe. Anavuga ko nta n'umugambi wo kurimbura abatutsi yari afite kuko icyamujyanye i Cyahinda kuwa 15/04/1994 ari ukuhageza abashinzwe umutekano no kuberekana mu mpunzi kugira ngo bamenye ko umutekano wabo witaweho, ariko abantu bari bihishe muri izo mpunzi aba ari bo bateza umutekano muke ubwo bicaga bamwe mu bajandarume. yongeraho kandi ko nta ruhare yagize mu iyicwa ry'abantu batatu biciwe kuri bariyeri y'i Musumba muri segiteri Yaramba kuko avuye i Butare yasanze bishwe, umujandarume wabishe amusobanurira ko bari bafite ibimenyetso bigaragaza ko ari ingabo za FPR, ko icyo yakoze nk'umuyobozi yatanze raporo ku nzego zimukuriye. Akomeza avuga ko nta n'uruhare yagize mu iyicwa ry'umusore wiciwe kuri bariyeri i Coko kubera ko Coko iri muri komini Mubuga muri Gikongoro atayoboraga kandi hakaba hatagaragazwa aho yerekezaga icyo gihe. Avuga nanone ko ibyo ubushinjacyaha buvuga ko yagize uruhare mu iyicwa

rya Rwagasana atari byo kuko umutangabuhamya ubivuga yivuguruza, hamwe avuga ko babashoreye babajyana kuri komini aho burugumesitiri yari ari, ahandi akavuga ko yabasanze kuri bariyeri yo mu Ryabidandi, asoza avuga ko harebwe ibikorwa aregwa bigize icyaha cya jenoside, basanga yagombye kuregwa jenoside, gushishikariza gukora jenoside no gusambanya ku gahato nk'icyaha kibasiye inyoko muntu aho kuba ibyaha bitanu kuko icyaha cya jenoside aregwa gikubiyemo icyaha cyo kwica n'icyo kurimbura nk'ibyaha byibasiye inyoko muntu, ko ibyo byaha ari nabyo bigaragara mu nyandiko y'ibirego yavuye mu Rukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda.

Ku cyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyoko muntu, Ubushinjacyaha buvuga ko gusambanya ku gahato abagore b'abatutsikazi byakozwe mu bitero rusange cyangwa byasimusiga byibasiye abaturage batari abasirikare bazira ubwoko bwabo. Bugasobanura ko uregwa yagize uruhare mu bikorwa byo gusambanya abagore b'abatutsikazi muri Nyakizu no mu nkegero zaho nk'abafatiwe kuri bariyeri yo mu Ryabidandi barimo umugore witwa Mukandanga yahaye abatwa barimo abitwa Kazoviyo na Karemera ngo bamujyane bamukoreshe icyo bashaka nibarangiza bamwice, baramujyana barara bamusambanyiriza hafi y'inzu y'umugenzacyaha (Inspecteur de Police Judiciaire), bukeye bwaho baramwica umurambo we bawusanga kuri bariyeri. Bunavuga ko uregwa ari kuri iyo bariyeri hari umukobwa wari warahawe izina rya ARH abazwa mu iperereza, nyuma mu rukiko agahabwa izina rya DNF kubera impamvu z'umutekano we, yahaye umusore witwa Habibu mu rwego rwo kumugororera kubera uruhare yagize mu kwica abantu benshi, amumarana amezi arenga abiri yaramugize umugore, Buvuga kandi ko ubushake bwo gukora icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu bugaragarira ku kuba uregwa yaratanze abo bagore ngo basambanywe azi neza ko ari abaturage b'abasivile bo mu bwoko bw'abatutsi bari bibasiwe n'ibitero rusange cyangwa bya simusiga. Kuri icyi cyaha uregwa yiregura avuga ko ibivugwa n'ubushinjacyaha ko yahaye uwitwa Habibu umugore wari wahawe izina rya ARH mu iperereza mu rwego rwo kumugororera kuko yari yarishe abantu benshi atari byo kuko uretse no kuba ataramumuhaye nta nibyo yigeze yumva, ko ari amakuru yamenye ari gusoma ikirego cy'ubushinjacyaha, ko byongeye kandi bitumvikana ukuntu ubushinjacyaha buvuga ko hari abagore bishwe abitegetse ngo niburangiza buvuge ko yatanze uburenganzira bwo gutunga uwo nguwo we ntiyicwe. Asoza avuga ko iyo hagira abagore b'abatutsikazi basambanywa ku gahato umuyobozi wamusimbuye muri Nyakizu atari kubura kubimenya kuko abazwa mu iperereza yavuze ko nta bikorwa byo gufata ku ngufu azi byabaye muri Nyakizu ndetse no mu ikusanyamakuru rya Gacaca ryabaye aho DNF yari atuye bitari kubura kuvugwamo iyo aza kuba yarasambanyijwe.

Incamake y'icyemezo: 1. Harebwe ko muri rusange guhera muri Mata 1994 mu Rwanda hose abatutsi barimo bahigwa bakicwa kubera ubwoko bwabo, by'umwihariko muri komini Nyakizu no mu makomini bihana imbibi abatutsi batwikiwe amazu bahungira kuri paruwasi ya Cyahinda, hakanarebwa ko mbere y'uko i Cyahinda hagabwa igitero, Ntaganzwa(uregwa) yagiye i Butare gusaba abajandarume abajyana yo, bafatanyije n'abaturage bahasanze bica abatutsi benshi na nyuma hagakomeza kugabwa ibitero kugera bahabirukanye, abarokotse bagahungira mu misozi iteganye na Cyahinda naho ibitero bikabakurikira yo, abageragezaga guhungira mu gihugu cy'u Burundi uregwa agasaba ko babakurikira bakagarurwa, nyuma bakicwa bigaragaza ko yari afite ubushake bwo kurimbura abatutsi, bityo akaba hamwa n'icyaha cya jenoside.

2. Harebwe uburyo icyaha cyo gushishikariza abantu gukora jenoside gikorwamo, hakurikijwe amategeko y'u Rwanda cyangwa amategeko mpuzamahanga, icyo cyaha kigomba kuba gikozwe

mu buryo butaziguye kandi mu ruhame nk’uko bimeze mu masezerano ku ikumira n’ihanwa ry’icyaha cya jenoside ibihugu byose bigomba kubahiriza, bityo kuba nta kimenyetso kidashidikanywaho kigaragaza ko uregwa yakoresheje inama azivugiramo amagambo ashishikariza abari bazirimo ku buryo butaziguye kandi mu ruhame kwica abatutsi cyangwa kuba hari amasegiteri ya komini Nyakizu yazengurutsemo ashishikariza kubica, ntahamwa n’icyo cyaha.

3. Kuba uregwa yaragabye ibitero kuri paruwasi ya Cyahinda ahari hahungiye abatutsi bagera ku bihumbi mirongo itatu (30.000) bikica abaturage benshi b’abasivile, abarokotse ibitero bikabakurikira aho bari bahungiye ku misozi iteganye na Cyahinda naho hakicwa abantu benshi, uregwa agomba guhamwa n’icyaha cyo kurimbura nk’icyaha cyibasiye inyokomuntu.

4. Kubyerekeye icyaha cyo kwica nk’icyaha cyibasiye inyokomuntu, kuba uregwa n’aho yagiye agira uruhare mu kwica umubare muto nk’abantu batatu biciwe i Yaramba na Rwagasana Joseph wiciwe kuri bariyeri yo mu Ryabidandi, ibikorwa bigize icyo cyaha byari muri gahunda yo kurimbura abaturage b’abasivile bo mu bwoko bw’abatutsi, bityo uregwa ntahamwa n’icyaha cyo kwica nk’icyaha cyibasiye inyokomuntu.

5. Ukora icyaha cyo gusambanya ku gahato aba afite ubushake bwo gukoresha undi imibonano mpuzabitsina azi neza ko uyikoreshwa atabyemeraga, bityo harebwe uko uregwa yatesheje agaciro abagore basambayijwe ku gahato ari bo DNF na Mukandanga Astérie abwira abo abahaye ko ari ukubagororera kubera uruhare bagize mu bwicanyi no kugira ngo bumve uko abatutsikazi bamera, hakanarebwa ko muri Nyakizu hagabwaga ibitero rusange kandi bya simusiga byibasiraga abaturage b’abasivili bo mu bwoko bw’abatutsi uregwa yagizemo uruhare, bigaragaza ko atanga abo bagore yari afite ubushake bw’uko bakoreshwa ku gahato imibonano mpuzabitsina, bityo uregwa akaba ahamwa n’icyaha cyo gusambanya ku gahato nk’icyaha cyibasiye inyoko muntu.

6. Igenwa ry’igihano iyo hari impamvu nkomezacyaha n’impamvu nyoroshyacyaha mu guhana harebwa uburemere bw’ibyaha bihama uregwa.

Uregwa ahamwa n’icyaha cya jenoside;
Anahamwa no kurimbura no gusambanya ku gahato nk’ibyaha byibasiye inyokomuntu;
Uregwa ntahamwa n’icyaha cyo gushishikariza abantu gukora jenoside n’icyo kwica nk’icyaha cyibasiye inyokomuntu;
Uregwa ahanishijwe igihano cy’ igifungo cya burundu.

Amategeko yashingiweho:

Itegeko Nº 47/2013 ryo kuwa 16/06/2013 rigena kwimurira imanza muri Repubulika y’u Rwanda, ingingo 8 igika cya 3.

Itegeko ngenga N° 08/2013/ol ryo kuwa 16/06/2013 rihindura kandi ryuzuza Itegeko ngenga n° 31/2007 ryo kuwa 25/07/2007 rikuraho igihano cyo kwicwa nk’uko ryahinduwe kandi ryujujwe kugeza, Ingingo ya 5 bis.

Amasezerano ku ikumira n’ihanwa ry’icyaha cya jenoside yo kuwa 09/12/1948 u Rwanda rwashyizeho umukono kuwa 12/02/1975, ingingo ya 2, n’iya 3.

Itegeko Ngenga Nº 01/2012/OL ryo kuwa 2/05/2011 rishyiraho igitabo cy’amategeko ahana nk’ibigize icyaha cya jenoside, ingingo ya 9, 84, 114, 120, 132 (3), 196 n’iya 762.

Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 91, 92, 94, 134 n'iya 344.
Itegeko no 15/2004 yo kuwa 12/06/2004 ryekereye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65.
Code pénal français, article 211-1
Statut du Tribunal Pénal International pour le Rwanda, Article 2.
Statut de Rome de la Cour Pénale Internationale, Article 6, 7(2).
Nuremberg Satute, article 6
Pacte international relatif aux doits civils et politiqe, Article 15.
Convention européenne des droits de l'homme, Article 7.

Imanza zifashishijwe:
ICTR-2000-55C-T Le Procureur c/ lldephonse NIZEYIMANA du 19/06/2012.
ICTR-98-42-T The Prosecutor vs NYIRAMASUHUKO and al., 24th June 2011.
ICTR -94-36A-A Le Procureur c. Yussuf MUNYAKAZI du 28/09/2011
ICTR-96-3-A Le Procureur c/ Georges Anderson Nderubumwe RUTAGANDA du 26 Mai 2003
ICTR-98-41-T, Le Procureur c. Théoneste BAGOSORA et crts du 18 décembre 2008.
ICTR-01-76-4, Aloys SIMBA c. Le Procureur, 27 novembre2007.
ICTR-2000-55A-T Le Procureur c/ Tharcisse MUVUNYI du 12/09/2006.
ICTR-97-32-I Le Procureur c/ Georges Ruggiu, du 1er juin 2000.
ICTR-96-14-T, Le Procureur c/ NIYITEGEKA Eliezer du 16/05/2003.
ICTR-99-52-A, Le Procureur C/ Ferdinand NAHIMANA et crts du 28 novembre 2007.
ICTR-2001-72-T, Le Procureur c. Simon BIKINDI du 2 Septembre 2008.
ICTR-97-20-T, Le Procureur c. Laurent SEMANZA du 15 mai 2003.
2005SCC 40, MUGESERA v. Canada (Minister of Citizenship and Immigation), 28 June 2005.
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Urubanza

I. IMITERERE Y'URUBANZA

[1] Ntaganzwa Ladislas yabaye perezida w'ishyaka rya Mouvement Démocratique Républicain (MDR) muri komini Nyakizu mu cyahoze ari perefegitura ya Butare, anaba Burugumesitiri w'iyo komini kuva mu 1993 kugeza muri Nyakanga 1994. Yatangiye akurikiranwa n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ku cyaha cya jenoside, gushishikariza ku buryo butaziguye kandi mu ruhame gukora jenoside, kurimbura, kwica no gusambanya ku gahato nk'ibyaha byibasiye inyoko muntu yakekwagaho gukora mu 1994 ubwo yari Burugumesiteri wa komini Nyakizu.

[2] Ku itariki ya 08/05/2012, urwo rukiko rushingiye ku mategeko angenga imikorere yarwo n'ibimenyetso mu ngingo ya 11 bis irebana no kwimurira imanza mu zindi nkiko[1] rwemeje ko dosiye y'urubanza rwa Ntaganzwa Ladislas, wari ugishakishwa, yoherezwa mu Rwanda. Ntaganzwa Ladislas yaje gufatirwa muri Repubulika iharanira Demokarasi ya Congo, agezwa mu Rwanda kuwa 20/03/2016 n'Urwego rw'Inkiko Mpanabyaha Mpuzamahanga (MICT) kugira ngo ahaburanishirizwe.

[3] Ubushinjacyaha bw'u Rwanda, Nyuma yo guhuza inyandiko y'ibirego yakozwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'itegeko rigenga imiburanishirize y'imanza z'inshinjabyaha ryo mu Rwanda nk'uko biteganywa n'ingingo ya 6 y'Itegeko no 47/2013 ryo kuwa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, bwashyikirije uru rukiko dosiye buregamo Ntaganzwa Ladislas icyaha cya jenoside, icyo gushishikariza abantu gukora jenoside, kurimbura, kwica no gusambanya ku gahato nk'ibyaha byibasiye inyoko muntu.

[4] Mu nyandiko itanga ikirego, Ubushinjacyaha busobanura ko guhera ku itariki ya 06/04/1994 abaturage bo mu cyahoze ari perefegitura ya Gikongoro na Butare mu makomini ahana imbibi na komini Nyakizu, abatutsi batangiye kwicwa, bamwe muri bo baturutse mu makomini ya Mubuga, Rwamiko na Runyinya bahungira kuri paruwasi ya Cyahinda bibwira ko hari umutekano, abandi bahungira ku yindi misozi ndetse no mu gihugu cy'u Burundi ariko abenshi baragarurwa baricwa. Bukavuga ko mu batutsi bari barahungiye kuri paruwasi ya Cyahinda barenga ibihumbi mirongo itatu (30.000) abenshi bari barabishishikarijwe na NTAGANZWA Ladislas abizeza kubarindira umutekano ariko ari uburyo bwo kubahuriza ahantu hamwe kugira ngo bazahabicire,

[1] L' Article 11 bis du Règlement de procédure et de preuve dispose que : "A) Après la confirmation d'un acte d'accusation, que l'accusé soit placé ou non sous la garde du Tribunal, le Président peut désigner une Chambre de première instance qui determine s'il y a lieu de renvoyer l'affaire aux autorités de l'Etat: i) sur le territoire duquel le crime a été commis, ii) dans lequel l'accusé a été arrêté, ou, iii) ayant compétence et étant disposé et tout à fait prêt à accepter une telle affaire, afin qu'elles saisissent sans délai la juridiction appropriée pour en juger. B) La Chambre de première instance peut ordonner ce renvoi d'office ou sur la demande du Procureur, après avoir donné au Procureur et, lorsqu'il est placé sous la garde du Tribunal, à l'accusé, la possibilité d'être entendu. C) Lorsqu'elle examine s'il convient de renvoyer l'affaire selon les termes du paragraphe, A), la Chambre de première instance doit être convaincue que l'accusé recevra un procès équitable devant les juridictions de l'Etat concerné, et qu'il ne sera pas condamné à la peine capitale ni exécuté. D) Lorsqu'une ordonnance est rendue en application du présent article: i) L'accusé, s'il a été placé sous la garde du Tribunal, est remis aux autorités de l'Etat concerné; ii)La Chambre de première instance peut ordonner que des mesures de protection prises pour certains témoins ou victimes demeurent en vigueur; iii)Le Procureur doit communiquer aux autorités de l'Etat concerné toutes les informations relatives à l'affaire et qu'il juge appropriées et, notamment, les pièces jointes à l'acte d'accusation; iv) Le Procureur peut, et si la Chambre l´ordonne le Greffier doit, envoyer dans l'État concerné des observateurs qui auront pour mission de suivre la procédure. Les observateurs font respectivement rapport au Procureur, ou au Président, par le canal du Greffier. E) La Chambre de première instance peut délivrer à l'encontre de l'accusé un mandat d'arrêt, lequel doit spécifier l'Etat vers lequel il sera transféré pour être jugé (…)".

ko muri ubwo bwicanyi bwibasiye abatutsi yafatanyije n'inzego zitandukanye zirimo abasirikare, abajandarume, abapolisi, abakonseye, abaresiponsabule ba selire, interahamwe n'impunzi z'abarundi.

[5] Bunavuga ko kubera imirimo yakoraga nka Burugumesitiri, ari na perezida w'ishyaka rya MDR igice cya power, NTAGANZWA Ladislas yari afite ububasha bwo kuba yahagarika ubwicanyi bwakorerwaga abatutsi muri komini yayoboraga ariko ubwo bubasha abukoresha mu gukangurira abahutu kwica abatutsi, ayobora ibitero, ashyirishaho za bariyeri ziciweho abatutsi hirya no hino muri Nyakizu, nawe ubwe agira abo yica mu rwego rwo gutinyura abandi.

[6] Bunasobanura ko mu bimenyetso bufite harimo abatangabuhamya bari barahungiye i Cyahinda no ku musozi wa Gasasa, abagize uruhare muri jenoside yakorewe abatutsi muri Nyakizu n'abitabiriye inama zitegura jenoside yagiye akoresha ahantu hatandukanye bemeza ko NTAGANZWA Ladislas yagize uruhare mu bikorwa byo kwica abatutsi muri Nyakizu. Bunavuga ko uretse ubuhamya bwatanzwe bugaragaza uruhare rwa NTAGANZWA Ladislas mu byaha aregwa, hari n'inyandiko zirimo amabaruwa na raporo yakoraga nabyo bigaragaza ko mu 1994 yagenzuraga amarondo na za bariyeri, yasabye intwaro zicishijwe abatutsi n'izindi nyandiko zerekana urwango yari afitiye abatutsi n'abafitanye isano nabo yitaga inkotanyi cyangwa inyenzi.

[7] NTAGANZWA Ladislas we avuga ko nta mugambi wo kwica abatutsi yagize, ko nta n'uruhare yagize mu iyicwa ryabo haba abo muri komine Nyakizu cyangwa abahahungiraga bava mu makomini bihana imbibi, kandi ko nka Burugumesitiri nta bubasha yari afite bwo kuba yabuza ko jenoside ikorwa. Asobanura ko guhera kuwa 14/04/1994, mu makomini yegeranye na segiteri ya Cyahinda havugiye amasasu, hatwikwa n'amazu bituma abantu baho bahungira muri Nyakizu kuri paruwasi ya Cyahinda ariko ko no muri Nyakizu hari umwuka mubi watewe n'amazu yari yatwitswe.

[8] Akomeza avuga ko ibyo ubushinjacyaha buvuga ko yateguye umugambi wo kwica abatutsi bari bahungiye kuri paruwasi ya Cyahinda, ko yanazengurutse komini Nyakizu abashishikariza kuhahungira kugira ngo abahurize hamwe abone uko bizaborohera kubica atari ukuri kuko hatagaragazwa aho yacuriye uwo mugambi, ko ahubwo kuba abatutsi barahahungiye ari uko bari bizeye kuhabonera umutekano kubera imyitwarire myiza bari bamuziho, kandi nk'umuyobozi nta kindi yari gukora uretse kubakira no kubahumuriza, ko byari n'inshingano ze kumenya abaje n'impamvu zibazanye no kugira ngo hafatwe ingamba zo kubafasha mu bikenewe kandi ibyo bikaba atari icyaha.

[9] Avuga kandi ko ari no muri urwo rwego rwo kugira ngo hafatwe ingamba zo kubarindira umutekano yagiye i Butare kugeza kuri perefe uko umutekano wifashe muri Nyakizu maze nawe asaba abajandarume bo gucunga umutekano kuko bitari gushoboka ko burugumesitiri abasaba abyibwirije ngo abahabwe bidakozwe na perefe wari ubifite mu nshingano ze, ko we atashoboraga no kubaha amabwiriza mu kazi kabo, ko icyo yakoze cyonyine ari ukubageza aho bakorera akazi batumwe no kuberekana kugira ngo abo baje gukorera babamenye, ko rero ibyo ubushinjacyaha buvuga ko yabakoresheje mu kwica abatutsi atari byo.

[10] Avuga ko ubwicanyi bwabaye muri Nyakizu abushyira mu bice bibiri, ubwabaye kuwa 15/04/1994 kuri paruwasi ya Cyahinda butewe n'abantu bari bacengeye mu mpunzi bagamije guhungabanya umutekano bakica abajandarume babiri afata nk'impanuka n'ubwabaye nyuma

y'iyo tariki ubwo habaga ibitero byirukanye impunzi kuri paruwasi ya Cyahinda bitegetswe n'uwari Perezida Sindikubwabo Théodore wemeje ko mu mpunzi z'abatutsi zari i Cyahinda harimo inkotanyi.

[11] Anavuga ko nta bimenyetso bigararagaza uruhare rwe mu byaha ubushinjacyaha bumushinja kuko abatangabuhamya bushingiraho batavugisha ukuri ku byabaye, banavuguruzanya mu mvugo zabo, ko n'inyandiko zinyuranye buvuga ari raporo yakoreraga inzego zimukuriye azimenyesha uko umutekano uhagaze muri Nyakizu yizeye ko zifata ingamba zikwiye mu rwego rwo kugarura umutekano muri iyo komini.

[12] Mu iburanisha ry'uru rubanza, mbere y'uko urukiko rutangira kuburanisha NTAGANZWA Ladislas rwabanje gutesha agaciro ibyemezo by'inkiko Gacaca z'imirenge ya Muhambara, Mwoya, Cyahinda na Butare ville byari byaramuhanishije igifungo cya burundu cy'umwihariko. Mu rubanza kandi ababuranyi ndetse n'urukiko babajije abatangabuhamya batanzwe n'ubushinjacyaha, bamwe babazwa barindiwe umutekano bahabwa andi mazina, batanagaragara mu ruhame n'amajwi yabo yahinduwe, abandi babarizwa mu ruhame batarindiwe umutekano. Urukiko rwanageze i Cyahinda gusura hamwe mu hakorewe ibyaha NTAGANZWA Ladislas aregwa runahabariza abandi batangabuhamya bashinja. Mu iburanisha ry'urubanza ku rwego rwa mbere, NTAGANZWA Ladislas akaba yaravuze ko nta batangabuhamya bamushinjura azatanga.

[13] Ibibazo bisuzumwa mu rubanza ni ukumenya niba NTAGANZWA Ladislas yaragize uruhare mu kugaba ibitero ku batutsi bari bahungiye kuri paruwasi ya Cyahinda no ku misozi biteganye, mu kugarura abatutsi bahungaga ngo bicwe, gukoresha inama zishishikariza kwica abatutsi no mu isambanywa ry'abagore ku gahato no kumenya niba ibyo bikorwa bigize ibyaha aregwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. **Kumenya niba NTAGANZWA Ladislas yaragize uruhare mu bikorwa aregwa no kumenya niba bigize icyaha cya jenoside.**

[14] Ikirego cy'ubushinjacyaha kigaragaza ko muri Mata 1994 mbere y'itariki ya 15, abatutsi baturutse mu makomine yo muri Gikongoro ahana imbibi na komine Nyakizu ndetse n'abakomoka muri iyo komine bahungiye kuri paruwasi ya Cyahinda guhera kuwa 15/04/1994 bagabwaho ibitero, abarokotse bahungira ku misozi biteganye ya Gasasa, Nyakizu na Mwumba aho ibitero byabakurikiye naho bihica abatutsi benshi, hakaba n'abandi batutsi bahungiraga i Burundi bagiye bagarurwa bakicwa, abandi bakicirwa kuri za bariyeri n'ahandi nko mu Nkomero no muri segiteri ya Maraba. Kinagaragaza ko NTAGANZWA Ladislas wari burugumesitiri wa komine Nyakizu yagize uruhare muri ubwo bwicanyi akoresha inama zibutegura, ashyirishaho za bariyeri ziciweho abatutsi, ayobora ibitero afashijwe n'abasirikare, abajandarume, abapolisi ba komine, abaturage n'impunzi z'abarundi zari zihari.

1.1 Ibitero byishe abatutsi kuri paruwasi ya Cyahinda no ku misozi biteganye.

►Imiburanire y'ubushinjacyaha

[15] Ubushinjacyaha buvuga ko kuwa 14/04/1994, NTAGANZWA Ladislas yakoresheje inama ebyiri zo gutegura ibitero ku batutsi bari bahungiye i Cyahinda, imwe ibera iwe mu rugo i Nyagasozi, indi ibera kuri komini Nyakizu yitabirwa n'abantu benshi barimo interahamwe zari ziturutse mu masegiteri yo muri komine ya Nyakizu nka Nyagisozi, Mwoya, Rutobwe n'ahandi, impunzi z'abarundi zirenga ijana zari zarahahungiye, bose bayizamo bitwaje intwaro gakondo, abajandarume n'abapolisi bitwaje imbunda, ko hari indi nama ya gatatu yabaye mu gitondo cyo kuwa 15/04/1994 mbere y'uko batera kuri paruwasi ya Cyahinda, ko muri izo nama NTAGANZWA Ladislas yazitangiyemo amabwiriza yo kujya kwica abatutsi.

[16] Buvuga ko kuwa 15/04/1994 mbere ya saa sita za mu gitondo, NTAGANZWA Ladislas akoresheje imodoka ye n'izindi yajyanye kuri paruwasi ya Cyahinda igitero kirimo abajandarume yari yagiye kuzana i Butare, abapolisi, interahamwe, abaturage n'impunzi z'abarundi, ageze ku kibuga kiri imbere ya kiliziya ya Cyahinda aho abatutsi bari bari abasaba gusubira mu makomine aho baje baturuka kugira ngo abashe kurindira umutekano abo muri Nyakizu yayoboraga, ko yanababwiye ko amafaranga yabo bayaguze inka naho abahutu ayabo bayagura imbunda, ko amahembe agiye kurwana n'amasasu. Bunavuga ko akimara kuvuga ayo magambo, abajandarume na NTAGANZWA Ladislas batangiye kurasa ku batutsi, bakwira imishwaro, ababashije guhunga bakicwa n'abaturage bari bazengurutse aho kuri paruwasi.

[17] Buvuga kandi ko kuva kuwa 16 kugeza kuwa 18/04/1994, NTAGANZWA Ladislas n'abantu yari ayoboye barimo abajandarume n'abasirikare bongeye kugaba ibitero i Cyahinda, ko abashoboye kurokoka bahungiye ku misozi iteganye na Cyahinda naho ibitero bibakurikira yo. Bukavuga ko ibyo bitero byaguyemo abatutsi beshi barenga ibihumbi makumyabiri na bitanu (25.000) barimo Gashagaza Félicien, Mutiganda, Nyirazaninka, Philomène, Sebarinda Ladislas, Ndatsikira Gervais, Ruganintwari Wenceslas n'abana be babiri Kalisa na Mbegeti, Semuzima Gerard n'abana be batatu Ngiruwonsanga Kazungu, Jeanne na Cyusa, Kalisa Stanislas, Rugemintwaza Ladislas n'umugore we n'abana babo babiri, ko hari n'abo NTAGANZWA Ladislas ubwe yishe arashe barimo Bwigwa, Ngango Damascène, Ruvugwabigwi Justin n'abandi.

[18] Bunavuga ko abatutsi barokotse ibitero by'i Cyahinda bahungiye ku misozi ya Gasasa, Nyakizu na Mwumba nabwo bagabweho ibitero kuva kuwa 16 kugeza kuwa 21/04/1994, ko muri ibyo bitero icyari gikomeye ari icyo kuri 21/04/1994 kuko ibindi byashimutaga abantu, abatutsi bakabisubiza inyuma bakoresheje amabuye ariko bigeze uwo munsi mu masaha ya mu gitondo NTAGANZWA Ladislas akoresha inama hafi y'ibiro bya komini irimo abaturage baturutse mu masegiteri yose ya Nyakizu, abajandarume, abapolisi, interahamwe n'impunzi z'abarundi, itangirwamo amabwiriza yo gutera abatutsi bari bahungiye muri iyo misozi. Buvuga ko NTAGANZWA Ladislas nawe yari mubahateye ayoboye igitero yambaye imyenda ya gisilikare yitwaje imbunda yarashishaga, ko abandi bamufashije kuyobora icyo gitero harimo abasirikare n'abajandarume, ko icyo gitero cyaguyemo abatutsi bagera ku bihumbi birindwi (7 000) barimo Nyirabazungu Thérèse, Nyirabantu, Nyiramasahuku Domitila, Sebumba Stephano, Kamanzi Félicité n'abandi benshi.

[19] Busoza buvuga ko hari ababajijwe mu iperereza barimo Kasire Cassien, Gatera Appolon, Rusagara François, Gasinzigwa Jean Damascene, Bwanakweri Vianney bahuriza ku kuba Ntaganzwa Ladislas yarageze i Cyahinda ari kumwe n'abajandarume, abapolisi, interahamwe n'impunzi z'abarundi asaba abatutsi bari bahahungiye gusubira iwabo kugira ngo abone uko acungira umutekano abo muri komine ye, bamusaba kubareka arabyanga, abajandarume bahita

batangira kubarasa ho, hapfa abantu benshi abandi barakomereka, ugerageje guhunga akicishwa intwaro gakondo. Bunavuga ko NTAMPAKA Zacharie, Rwemarika Straton, Mukankusi Espérance na Sezibera Révérien nabo bamushinja kuyobora ibitero ku misozi ya Gasasa, Nyakizu na Mwumba ari kumwe n'abajandarume n'interahamwe barasa ku mpunzi z'abatutsi.

►Imyiregurire ya NTAGANZWA Ladislas

[20] NTAGANZWA Ladislas n'abamwunganira bavuga ko atigeze ategura kugaba igitero i Cyahinda kuwa 15/04/1994, ko icyo yemera ari uko yageze kuri paruwasi i Cyahinda aho abatutsi bari barahungiye ajyanye abajandarume bo kubarindira umutekano, ahageze akoresha inama abereka abagiye kubarindira umutekano, abaha n'umwanya wo kubaza ibibazo, nyuma bumva amasasu avugira ku mashuli yisumbuye yari kure y'aho inama yaberaga, ko ari we, ari n'abajandarume bahise basubira kuri komine bibaza ibibaye. Banavuga ko ibyahabaye byatewe n'abantu bari baracengeye mu mpunzi bagamije guhungabanya umutekano bafite intwaro bari bamaze iminsi bakoresha aho bari baturutse muri Gikongoro, ko icyo gihe bishe abajandarume babiri nyuma y'uko umwe mu mpunzi atemye umujandarume akanamwambura imbunda, ndetse n'umupadiri w'aho i Cyahinda akabaha indi bakazirashisha.

[21] Bakomeza bavuga ko ibyo kuba mu mpunzi harimo abantu bacengeyemo bafite intwaro banagamije guhungabanya umutekano byanemejwe n'impuguke z'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda nka Filip Reyntjens na Alison Des Forges mu rubanza rwa Nyiramasuhuko na bamwe mu batangabuhamya b'ubushinjacyaha bari bahahungiye bemeza ko bamwe mu mpunzi bari bafite intwaro bari bamaze iminsi bakoresha mu makomine ya perefegutura ya Gikongoro bari bavuyemo bahunga, ko rero abavuga ko ari NTAGANZWA wabateye ari uko batamenye uko byagenze bigatuma bavuga ko ari we wabagabyeho igitero.

[22] Bavuga kandi ko bo basanga ubwicanyi bwabaye i Cyahinda kuwa 15/04/1994 butarateguwe ahubwo ari ibintu byabaye bitunguranye kuko inama ubushinjacyaha buvuga ko zabaye kuwa 14 no kuwa 15/04/1994 zitegura igitero cyagiye i Cyahinda nta zabayeho kubera ko hari ho amabwiriza ya guverinoma yashimangiwe na perefe wa Butare yavugaga ko nta nama cyangwa agatsiko k'abantu babiri kemewe, ko atari no kuyobora inama mu gitondo cyo kuwa 15/04/1994 nk'uko ubushinjacyaha bubivuga kandi bunavuga ko icyo gihe yari yagiye i Butare kuzana abajandarume bo kugaba igitero i Cyahinda. Banavuga ko NTAGANZWA Ladislas atabazwa ubwicanyi bwakozwe n'impunzi z'abarundi kuko atigeze avugana nazo kandi ko igihe yazindukiraga i Butare kuzana abajandarume atari azi ko ababona cyangwa ngo babe barasezeranye ko icyo abazaniye ari ukujya gufatanya n'izo mpunzi mu bitero.

[23] Bavuga nanone ko nyuma y'ibyabaye i Cyahinda kuwa 15/4/1994 nta kindi gitero cyongeye kuhagabwa kuwa 16 no kuwa 17/04/1994, ko n'ibivugwa n'abatangabuhamya b'ubushinjacyaha ko muri iyo minsi yahagabye ibitero nta shingiro bifite kuko kuwa 16 atahageze kubera ko yazindukiye i Butare kumenyesha perefe ibyaraye bihabaye, ko no kuwa 17/04/1994 nta gitero cyahabaye kuko aribwo yagiye i Butare kubwira inama y'umutekano uko ibintu byagenze, nayo ifata icyemezo cy'uko bajyana i Cyahinda kwirebera ibyahabaye, bahageze bavugana n'impunzi, ko ibyo bigaragaza ko ibyabaye ku wa 15/04/1994 atari igitero cyateguwe na NTAGANZWA Ladislas nk'uko ubushinjacyaha bubivuga.

[24] Bakomeza bavuga ko ubwicanyi bwabaye i Cyahinda guhera ku itariki ya 18/04/1994 na nyuma yaho bwo bufitanye isano n'ikurwaho ry'uwari perefe wa Butare Habyarimana Jean Baptiste, ko we ntaho ahuriye nabyo kuko ari guverinoma yariho yamukuyeho ivuga ko yabangamiye ubwicanyi nk'uko byasobanuwe mu rubanza rwa Nyiramasuhuko Pauline rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda aho ruvuga ko Perezida Sindikubwabo Théodore ubwe yageze i Nyakizu yemeza ko abatutsi bari kuri paruwasi bari bafite intwaro zikomeye, aba ari nawe utangiza ubwicanyi kuri uwo munsi, ko ari nabwo bamenye ko impunzi ari zo zatangije ubwicanyi kuwa 15/04/1994.

[25] Banavuga ko ntakigaragaza ko perezida aza i Nyakizu yahuye na NTAGANZWA Ladislas ngo abe yaramuhaye inshingano yo gutangiza ubwicanyi kuko mu muhango wo gusimburanya perefe Habyarimana Jean Baptiste na Nsabimana Sylvain yavuze ko agera kuri komini Nyakizu atahasanze Burugumesitiri, ko bitumvikana ukuntu ubushinjacyaha buvana icyaha ku muntu ucyiyemerera bukakimushyiraho, mu gihe bunagaragaza ko ubwo bwicanyi bwakozwe n'abasirikare. Bavuga ko icyo yakoze nka burugumesitiri ari uko yandikaraga inzego zimukuriye atanga raporo y'ikintu cyabaga cyose yizeye ko abicwaga batabarwa ariko ntizagira icyo zikora.

[26] Bavuga kandi ko nta gitero yagabye i Gasasa, ko ibyo ababajijwe mu iperereza n'ubushinjacyaha bavuga ko yateye i Gasasa ku matariki ya 16, 17 na 18/04/1994 atari byo kuko ibitero bikomeye bivugwa byabaye icyo gihe ari ibyabaye kuri paruwasi i Cyahinda, ko bitumvikana uko yari kuhava akajya gutera i Gasasa kubera ko hari n'abatangabuhamya b'ubushinjacyaha bavuga ko icyo gihe yari mu bitero i Cyahinda. Banavuga ko no kuwa 19/04/1994 nta gitero yagabye i Gasasa kuko uwo munsi yari i Butare mu nama y'ihererekanya bubasha hagati ya perefe mushya n'uwo yari asimbuye, bukeye kuwa 20/04/1994 yitabira inama ya mbere yakoreshejwe na perefe Nsabimana Sylvain wari wasimbuye perefe Habyarimana Jean Baptiste kandi akaba atari gushobora kuyisiba kuko bari bamenyeshejwe ko iza kuba irimo Perezida wa Repubulika na Minisitiri w'intebe. Banavuga ko kuwa 21/04/1994 nabwo nta gitero yagiyemo i Gasasa kuko uwo munsi nabwo yasubiye i Butare nk'uko n'umwe mu batangabuhamya b'ubushinjacyaha witwa Umulisa Aimée Josiane yemeza ko yamujyanye i Butare amuhungishije interahamwe zashakaga kumwica kandi uyu akaba akiriho.

[27] Bakomeza bavuga ko umutangabuhamya Ntampaka Zacharie ubushinjacyaha bwifashisha bumurega ko yari mu gitero i Gasasa yavuze ko icyo gitero cyabaye ari kuwa kabiri, ko harebwe ko kuri 15/04/1994 hari kuwa gatanu, kuwa kabiri ari ho hari ku itariki ya 19/04/1994 kandi kuri iyo tariki akaba yari i Butare mu muhango w'ihererekanya bubasha ry'abaperefe, ko ibyo binemezwa n'umutangabuhamya w'ubushinjacyaha witwa Rugimbana Appolinaire wemeje ko uwo munsi yamubonye mu nzira yerekeza i Butare saa tanu z'amanywa i Ngoma ya komini Kigembe ari hamwe n'umubikira n'umujandarume umwe, ko rero nta kimenyetso ubushinjacyaha butanga kigaragaza ko icyo gitero cyabaye kuwa 21/04/1994.

[28] Basoza bavuga ko imvugo z'ababajijwe mu iperereza ubushinjacyaha bushingiraho bumurega zitagaragaza uruhare rwe mu bwicanyi bwakorewe abatutsi muri komine Nyakizu n'ahandi kuko izo mvugo zidasobanura neza uko ibintu byagenze kubera ko ababajijwe bivuguruza, bavuguruzanya, abandi bakavuga ibyo bumvanye abandi, ndetse hakaba nabatagaragaza uruhare yagize mu bikorwa aregwa.

►Ubuhamya bwatangiwe mu rukiko ku birebana n'ibitero byo kuri paruwasi ya Cyahinda no ku misozi biteganye.

[29] Umutangabuhamya DNA wahawe iri zina kubera impamvu z'umutekano, avuga ko yahungiye kuri paruwasi ya Cyahinda kuwa 13/04/1994 ahasanga abantu benshi bagera ku bihumbi mirongo itanu (50.000) bari baturutse mu makomine ya Rwamiko na Runyinya kubera ko aho bari batuye bari batangiye kwica abatutsi no kubatwikira amazu, bahahungira bizeye ko bazabona ubutabazi, ko bigeze kuwa 15/04/1994 nka saa mbili n'igice yabonye NTAGANZWA Ladislas aho kuri paruwasi, akoresheje indangururamajwi yari afatiwe n'umupolisi ahamagara impunzi ngo bakorane inama, ababwira ko kubera ko babaye benshi aho birimo guteza umutekano muke muri komine ayobora, ko ibyiza basubira mu makomine yabo hagasigara abo muri Nyakizu kugira ngo abashe kubarindira umutekano, atanga amasaha abiri kugira ngo impunzi zibe zihavuye.

[30] Avuga ko NTAGANZWA Ladislas amaze kuvuga atyo yagiye, nyuma aza kugaruka hagati ya saa tanu na saa sita asanga impunzi zigihari, avuga ko zamusuzuguye maze atanga iminota icumi nabwo ntizagenda, ababwira ko ibyabo birangiye, ahita abwira abasirikare, abajandarume n'abapolisi bari aho kubarasa, abandi interahamwe zirabatema, hagwa abantu barenga igihumbi (1000) barimo Polepole François, Kabano Straton, Muturanyi Anastase na Rugwizangoga, abandi bakwira imishwaro, ko we yahungiye ku musozi wa Gasasa ahasanga abantu benshi, ahava ahungira iBurundi kuwa 16/04/1994. Avuga kandi ko atigeze abona NTAGANZWA Ladislas arasa, ko atanibuka imyenda yari yambaye ariko ko yari yambaye ingofero, akaba nta n'icyo yari yitwaje mu ntoki.

[31] Umutangabuhamya DNB nawe wahawe iri zina kubera impamvu z'umutekano, avuga ko yabonye NTAGANZWA Ladislas ajyana abarundi, interahamwe n'abajandarume kuri paruwasi ya Cyahinda kwica abatutsi bari bahahungiye, ko ku munsi ukurikiye uwo igitero cyabereyeho NTAGANZWA yabategetse kujya kureba umurambo w'umujandarume impunzi zari zishe zimutwara imbunda, bahageze babona imirambo myinshi z'abantu bari bishwe, bafata umurambo w'umujandarume bawujyana kuri komini, nyuma bawuhavana bawujyana i Butare mu bitaro, ko mugusubira i Nyakizu yasubiranyeyo na NTAGANZWA wari uvuye ku ishuli rya gisirikare rya ESO gusaba abasirikare. Avuga ko nka saa sita ishyira saa saba yari kumwe na NTAGANZWA kuri komini ategereje abasirikare yari yasabye, haza imodoka z'amakamyo enye zuzuye abasirikare, maze abasirikare batanu binjirana na NTAGANZWA Ladislas mu biro nyuma baza gusohokana bajyana kuri paruwasi kwica abantu, ababona barasa, ko bukeye bwaho NTAGANZWA yabajyanye gufasha abandi gukora isuku, bajugunya imirambo mu misarani, mu miringoti no mu byobo byari aho kuri paruwasi, ko na NTAGANZWA yari ahari afite indangururamajwi.

[32] DNB avuga kandi ko i Cyahinda habaye ibitero bibiri, icya mbere cyakozwe n'Interahamwe, abajandarume na NTAGANZWA Ladislas wari ufite imbunda, ko yamubonye arasa ariko ko atahamije, ko atamenye ingano y'abantu baguye mu gitero cya mbere kuko impunzi ubwazo zabihambiye, ko igitero cya kabiri cyavuye kuri komini kimanuka n'amaguru kirimo impunzi z'abarundi, interahamwe n'abasirikare, NTAGANZWA akirimo ariko ko nta kintu yari yitwaje, ko icyo gitero cyishe abantu kuva saa sita kugera saa kumi n'imwe.

[33] Umutangabuhamya Rusagara François Xavier we avuga ko kuwa 15/04/1994 hagati ya saa tatu na saa yine NTAGANZWA Ladislas yaje i Cyahinda ari kumwe n'abajandarume, abapolisi n'abasirikare, abarundi bazengurutse kiliziya avugira mu ndangururamajwi abwira abatutsi bari bahahungiye baturutse i Mubuga gusubira iwabo avuga ko umutekano wabonetse, ko asigara arindiye umutekano abo muri komine ye ya Nyakizu, ko hatarashira iminota icumi yababwiye ngo « nimwikinge amahembe y'inka zanyu ayacu twayaguze imbunda », batangira kubarasa ariko akaba atarumvise atanga itegeko ryo kurasa kuko yari ari kure ye gato. Anavuga ko uwageragezaga guhunga impunzi z'abarundi zamutemaga, hapfa abantu benshi barimo Rutikanga Onesphore warashwe na NTAGANZWA ubwe, Ruvugabigwi, Sharangabo Innocent, Sindayigaya, Merecianne na Wenceslas, ko uwitwa Mupagasi bamurashe ukuguru ariko ntiyapfa.

[34] Avuga nanone ko NTAGANZWA atera i Cyahinda yari yambaye ikote ry'umukara, afite imbunda imanitse mu kwaha n'inkota yahaye umugabo witwa Ntidendereza wari mu bahahungiye kugira ngo yirwaneho, ayitwaze asubira i Mubuga, ko we yihishe mu kiliziya no mu byumba by'ivuriro nyuma we n'abandi bahungira ku musozi wa Gasasa baraharara, baza kugaruka i Cyahinda kureba niba hari abarokotse, bahasanga abana bari mu byumba by'ivuriro no mu misarane. Avuga kandi ko uwo munsi wo ku wa gatandatu nta bitero byahabaye, ko kuwa 17/04/1994 ariho i Cyahinda hatwitswe, ko babibonaga bari i Gasasa.

[35] Umutangabuhamya Nyandwi Alfred avuga ko kuwa 15/04/1994 hagati ya saa tatu na saa yine yageze i Cyahinda ahasanga NTAGANZWA Ladislas arimo abwira abaturage kugota inyenzi Inkotanyi kugira ngo zitabacika, ko hari abajandarume n'abapolisi, ko yanahaye impunzi z'abatutsi zari zahahungiye iminota 30 ngo zibe zihavuye, nyuma y'isaha zitangira kuraswa, abacitse bakabatema. Anavuga ko uwo munsi impunzi zirwanyeho hapfa abajadarume batatu na NTAGANZWA araswa umwambi arakomereka agira umujinya ajya gusaba abandi basirikare. Hari n'aho avuga ko nubwo yarebaga ibyahabaga, we atari mu bahateye, ko ibyo gutanga iminota 30 yabimenyeye mu makuru, hakaba n'aho avuga ko kuwa 15/04/1994 yabonye NTAGANZWA ku gasenteri agana kuri paruwasi, hari n'ahandi avuga ko hapfa abajandarume yari mu gitero cyo kuri paruwasi cyarashe abantu kuko yahuye nacyo avuye kureba umuntu kwa muganga abura uko acyikuramo n'ubwo nta mbunda we yari afite.

[36] Anavuga ko yongeye gusubira i Cyahinda kuwa 18/04/1994 bagiye gukora isuku babitegetswe n'abayobozi babayoboraga mu ishyaka ku mabwiriza bari bahawe na NTAGANZWA, ko imirambo bayishyiraga mu cyobo ariko ko bikorwa NTAGANZWA atari ahari. Avuga kandi ko ibitero byagabwe i Nyakizu ari bitatu, ko icya mbere yumvise ko NTAGANZWA yari agiye kubwira impunzi zari zarahahungiye kuhava mu gihe cy'isaha, ko icyo gitero kishe abantu bagwa inyuma ya paruwasi, icya kabiri cyabaye nyuma y'iminsi ibiri ari hagati ya saa tatu na saa yine cyarimo NTAGANZWA, abaturage, abasirikare n'abapolisi, bamaze kurasa umusirikare, NTAGANZWA yavuze ko agiye gusaba inkunga y' abandi basirikari i Butare, ko bukeye baje batangirira kwica ku bari mu Kinyaga, abandi bajya ku musozi wa Nyakizu hejuru barahazunguruka naho igitero cya gatatu cyo cyaturutse hepfo mu misozi kirimo abarundi bari barahungiye i Nyagisozi. Avuga ko abasirikari NTAGANZWA yagiye gusaba aribo bateye i Nyakizu naho i Cyahinda hakaba hari hatewe n'abajandarume.

[37] Avuga kandi ko yagiye mu bitero byinshi, ko icya nyuma yagiyemo ari icy'i Nyakizu bari kumwe n'abasirikare n'abapolisi ariko ko batakijyanyemo na NTAGANZWA kuko yari yasigaye ku gasenteri ka Gasasa atanga amabwiriza y'uko bagomba kwica abatutsi ntihagire ubacika, ko

atigeze ajyana nabo i Gasasa mu bisi bya Nyakizu aho izo mpunzi z'abatutsi zari ziri, ko mu gitero cy'i Gasasa ari Nduwaleta wari umwarimu na Ndwaniye Sylvestre bababwiraga ko NTAGANZWA yategetse ko bagomba guhaguruka bose kuva ku ufite imyaka cumi n'umunani (18) bakajya gutera inyenzi inkotanyi, ko bishe abantu kuva saa mbili kugeza bwije, barabakurikira bagenda babica kugera ahitwa mu Kayogoro, ko icyo gihe NTAGANZWA yari yambaye ikoti rya gisirikari hejuru, ko ahandi yamubonye hose yabaga yambaye gisirikari afite n'imbunda.

[38] Umutangabuhamya Rwemarika Straton avuga ko kuwa 15/04/1994 nka saa tanu ari NTAGANZWA Ladislas wamukuye mu rugo rwe hamwe n'umuryango we, abajyana ku kiliziya i Cyahinda ababwira ko agiye kubacungira umutekano, bahageze bahasanga abantu benshi baturutse muri komine Mubuga, Runyinya na Kivu bahunganye n'inka zabo, ko nka saa tanu bahageze, NTAGANZWA Ladislas yahaje abasaba kwegerana, abajandarume basaba ko abafite intwaro bazishyira mu musarani, NTAGANZWA abasaba gusubira muri komine zabo kugira ngo arinde umutekano w'abaturage bo muri Nyakizu. Anavuga ko uwashakaga gusohoka abafite imipanga bari bazengurutse aho kuri paruwasi bamusubizagayo, nyuma babona abajandarume babatangatanze.

[39] Anasobanura ko ubwo yari kuri paruwasi ya Cyahinda yabonye NTAGANZWA incuro ebyiri, ko ubwa mbere yahaje ari mu modoka ya komine itwawe na Luwire, ubundi ahaza ari mu mudoka y'abajandarume ariko ko atibuka uko yari yambaye, ko yabahaye iminota itanu nyuma asimbuka mu modoka afite imbunda maze ategeka abajandarume kubarasa, abandi barimo impunzi z'abarundi bakoresha imipanga barabatema, abandi bakabatera amabuye, inka nazo zikabakandagira kandi ko ibyo bikorwa NTAGANZWA yari mu gikari cyo kwa padiri arasa, ko hari n'imbunda yari ishinze ku kibuga yarashishwaga n'uwitwa Kambanda Ladislas, ko bamubonaga arasa abacitse ku icumu. Avuga ko mu bantu bahaguye harimo Rutikanga Onesphore, Musana Joseph, Kamonyo Augustin, Bimenyimana Célestin, Nyiramuhire Josepha, Mbungo Aloys, Rutayisire Jean n'umuryango we wose urimo abana batandatu n'abandi, ko we yahavuye kuwa gatanu tariki ya 15/04/1994 ahungira i Gasasa bamaze kwica abantu.

[40] Anavuga ko ubwo yari i Gasasa hagabwe ibitero byaturukaga impande zose, bashakisha abantu bari bihishe mu bihuru, ko icyo gihe yabonye NTAGANZWA ahitwa mu Kinyaga afite imbunda, ari kumwe n'abajandarume n'urubyiruko rw'ishyaka rya MDR ariko ko atamubonye i Gasasa mu gitero. Anavuga ko mu bantu benshi baguye aho i Gasasa we yabonye batatu, nyuma ahava kuwa 18/04/1994 ahungira i Burundi.

[41] Umutangabuhamya Bwanakweli Vianney avuga ko mu ijoro ryo kuwa 14/04/1994 bava iwa muri Mubuga bahuriye na NTAGANZWA ababwira kujya i Cyahinda abizeza kubacungira umutekano, bahageze bacumbika mu mashuli abanza ari munsi y'ikigo cy'ababikira, ko yagendaga azana abantu aho kuri paruwasi avuga ko abahungishije ariko ko yari agambiriye ko bicwa. Anavuga ko kuwa 15/04/1994, hagati ya saa yine n'igice na saa tanu NTAGANZWA yaje i Cyahinda ari kumwe n'abasirikare n'abajandarume, abasaba kwegerana, ababwira ko barimo guteza umutekano muke muri komine ye, abaha iminota makumyabiri ngo babe basubiye iwabo, itarashira avuga ko abahaye iminota itanu, nyuma yayo ababwira ko baguze inka, bo bagura imbunda, ko imbunda zigiye kurwana n'amahembe, ategeka ko babarasa, hagwa abantu benshi barimo umwana we witwa Mutagomwa, Muhayimpundu, Butura, Munyarukiga, Rukwirangabo, nawe baramurasa agwa mu mirambo, baratambuka barasa abahungiraga ku kiliziya n'i Nyakizu, ko icyo gihe NTAGANZWA nawe yari afite imbunda agenda arasa, ko uwitwa Kidari yakubise

umujandarume umupanga aramutema maze undi bari bahunganye wahoze ari umusirikare witwa Higiro amwambura imbunda, abandi babibonye batangira kubarasa cyane, ko hari n'indi mbunda umupadiri yahaye uwitwa Musana. Avuga kandi ko uretse uwo munsi babarasira i Cyahinda yongeye kubona NTAGANZWA Ladislas kuwa 16/04/1994 imbere ya Kiliziya ari kumwe n'abasirikare, ko uwo munsi ariho we yahungiye ku musozi wa Nyakizu ahasanga abandi bantu benshi bakomeretse ahava kuwa 17/04/1994 ahungira i Burundi.

[42] Umutangabuhamya DND avuga ko kuwa 15/04/1994 yajyanye na NTAGANZWA Ladislas i Butare amutwaye mu modoka ya Maniraho wari umucuruzi, bahageze bajya kuri jandarumeri, NTAGANZWA yinjira mu kigo, we aguma mu modoka, nyuma y'igihe gito azana n'abajandarume barenga mirongo itatu bafite intwaro za karashinikov na gerenade bajyana i Nyakizu bicaye inyuma mu modoka, ko bava i Butare bahagaze mu Ryabidandi, bakomeza bajya i Nyagisozi kuri santeri bahasanga abapolisi bafite imodoka zigera kuri eshatu, iya Gakwaya yari itwawe na Nzeyimana Venuste, iya Rugwizangoga yari itwawe na mukuru we witwa Ndatinya n'imodoka ya komini burugumesitiri yakundaga kugendamo, NTAGANZWA asohoka mu modoka ajya kuvugana n'umukuru wabo bafata gahunda yo kujya i Cyahinda kuri paruwasi ahari impunzi nyinshi z'abatutsi.

[43] Anavuga ko we yasigaye i Nyagisozi, NTAGANZWA n'abajandarume yavanye i Butare ndetse n'abaturage bajya i Cyahinda, hashize nk'iminota mirongo ine bumva amasasu menshi ahavugira mu gihe kigera ku isaha, ko ahajya yari afite imbunda yakundaga kugendana kuva jenoside yatangira, ko banajya i Butare yari ayifite. Avuga ko abari bagiye i Cyahinda bagarutse i Nyagisozi bababwira ko hari abajandarume babiri bafashwe n'impunzi zirwanaho zirabica, ko atibuka amazina yabo kuko bari baturutse i Butare, ko na burugumesiteri yari yakomeretse mu mutwe ahita ajya i Butare kwivuza.

[44] Akomeza avuga ko hagati y'amatariki ya 16 na 19/04/1994 yagiye mu gitero cy'abantu bagera ku bihumbi bitanu bafite ibikoresho bya gakondo kiyobowe na NTAGANZWA cyagiye i Cyahinda kwica abatutsi bari bahasigaye, ko bahageze haje abasirikare bavuye i Kibeho bakuriwe na Kanyeshyamba ababaza icyo bakoze kuko ahandi hose bari barangije kwica, ko hari umujandarume wateye geranade mu kiliziya, maze bose batangira kwica abantu bari bayirimo, ko we yakoreshaga imbunda yo mu bwoko bwa Lieen Fild yakoreshaga, ko na NTAGANZWA yari afite imbunda yicishije abantu. Avuga ko uwo nta muntu wahasigaye ari muzima uretse abacitse bagahungira i Nyakizu, ko bukeye nyuma y'cyo gitero NTAGANZWA yongeye guhamagaza abantu, anayobora ibyo kujugunya imirambo y'abatutsi mu myobo no mu miringoti yari ku kiliziya. Yongeraho ko yabwiwe na mukuru we witwa NDATINYA Louis Vincent ko hagati yo kuwa 16 na 19/04/1994 hari igitero NTAGANZWA yarimo n'abaturage benshi cyateye i Gasasa muri Nyakizu kica impunzi zari zahahungiye.

[45] Umutangabuhamya Kasire Cassien avuga ko kuwa 14/04/1994 yahungiye i Cyahinda nyuma yo kubona mu murenge wa Nyagisozi mu Ryabidandi abantu batangiye gutwika amazu, ko uwo munsi mu gitondo yahabonye NTAGANZWA Ladislas aje mu modoka ya komini ari kumwe n'abajandarume abazengurukamo ababwira ngo bahumure amahoro arahari, arongera arigendera, ko yahagarutse bumaze gucya nka nyuma y'amasaha atatu hagati ya saa ine na saa tanu ari kumwe n'abajandarume n'abasirikare yurira ameza afata indangururamajwi avuga ko nta muntu ashaka aho, abasaba gusubira mu ngo zabo agasigara acunga umutekano w'abo muri Nyakizu, abwira abamusabaga kuhaguma ko : « ayabo bayaguze inka nabo ayabo bayagura imbunda, ko nibazajya

babarasa bazajya bikinga ku mahembe y'inka zabo », maze abaha iminota icumi ngo babe bagiye, irangiye umujandarume atamenye izina amuhereza imbunda, we, abajandarume, abapolisi n'abasirikare bari kumwe bahita babarasa n'inka zikabandagira ziruka, hagwa abantu benshi barimo Muterahejuru Berchimas n'umudamu we Mukondo Agnès na Sibomana Laurent.

[46] Avuga kandi ko yiboneye NTAGANZWA yitarura impunzi nko muri metero icumi (10 m) atangira kurasa ku mpunzi, ko intwaro bakoresheje bica impunzi ari imbunda, imipanga, amahiri n'amabuye, ko hari n'umusirikare wishwe n'impunzi amaze kwica abantu benshi, ko imbunda yari afite yayambuwe n'uwitwa Musana wari utuye i Cyahinda wigeze kuba umusirikare arayirwanisha ashaka gutabara abantu biramunanira baramufata nawe baramwica. Avuga nanone ko yahungiye ku musozi wa Gasasa kuwa 15/04/1994 ariko ko atibuka itariki batereweho, ko baterwa yabonye imodoka ya komini ihazana abantu incuro ibyiri ariko ko ataramenye niba NTAGANZWA yari muri icyo gitero cyarimo abajandarume, abapolisi, impunzi z'abarundi zari mu nkambi ya Nyagisozi n'abaturage, ko bwakeye ahungira i Burundi.

[47] Umutangabuhamya DNE avuga ko kuwa 14/04/1994 hagati ya saa yine na saa tanu yagiye mu nama yabereye hepfo y'inzu y'inzuki, nko kuri metero icumi uvuye ku biro bya komini yari yakoreshejwe na NTAGANZWA Ladislas, Geofrey, Bazaramba François wari diregiteri w'amashuli n'abandi bababwira gutangira urugamba rwo kwica abatutsi bari barahungiye kuri paruwasi i Cyahinda, ko icyo gihe NTAGANZWA yari yambaye imyenda ya gisivili afite igitabo, arangije kuvuga umupolisi wari inyuma ye afite imbunda arayimuha. Avuga ko Bazaramba François yabasabye gutangatanga impande zose naho NTAGANZWA ababwira ko batera i Cyahinda kwica abatutsi n'uko bagota abatutsi ntihagire n'umwe ubacika, ko iyo nama irangiye nka saa tanu bahise bajya mu gitero i Cyahinda, bajyana na NTAGANZWA Ladislas wari afite imbunda ya karachinikov yarashishaga abatutsi bari mu kiliziya.

[48] Anavuga ko aho ku kiliziya i Cyahinda bahateye incuro eshatu bica abatutsi, hapfa abantu benshi, ko izo ncuro zose babaga bari kumwe na NTAGANZWA kandi ko buri gihe yabaga afite intwaro n'abapolisi bamurinda. Hari n'aho avuga ko kuwa 14/04/1994 yajyanye na NTAGANZWA mu gitero i Cyahinda bagenda n'amaguru imodoka ye igenda mu muhanda iri kumwe n'abapolisi n'abajandarume, bahageze ahita arasa nta kindi akoze, ahandi akavuga ko mu minsi ibiri yagiye i Cyahinda yabonye NTAGANZWA inshuro imwe, ubundi amubona i Gasasa. Hari n'aho avuga ko i Cyahinda habaye ibitero bibiri, icya mbere cy'abarundi nawe yari arimo cyabaye kuwa 13/4/1994, icya kabiri cya rurangiza kiba kuwa 14/04/1994. Avuga kandi ko kuwa 15/04/1994 habaye inama ya kabiri bayivamo nka saa tanu irenga, NTAGANZWA abajyana mu gitero i Gasasa/Nyakizu ababwira ko bajya gutera abatutsi bari bahahungiye, ko yari inyuma yabo agenda n'amaguru afite imbunda yakoresheje arasa impunzi.

[49] Umutangabuhamya Gatera Appolon wari mubahungiye kuri paruwasi, yemeza ko kuwa 15/04/1994 nka saa tanu yabonye NTAGANZWA Ladislas aza kuri paruwasi ya Cyahinda ari kumwe n'abapolisi n'abajandarume bagenda n'amaguru ari imbere yabo, yambaye imyenda ya gisirikare afite imbunda nini, afite n'indangururamajwi agenda azenguruka abwira impunzi ko izavuye Gikongoro zisubira yo kugira ngo arindire umutekano abaturage bo muri komine ye, anababwira gushyira ku ruhande rumwe ibikoresho bya gakondo bari bitwaje, bamwe barabikora abandi ntibabikora. Anavuga ko yamwumvise abwira impunzi ngo « bamwe baguze imbunda abandi bagura inka, ko inka zigiye kurwana n'amasasu », ko yari afite amatsiko yo kubona iyo ntambara y'inka n'amasasu, ko yabahaye iminota itanu ariko itararangira abapolisi n'abasirikare

bahita batangira kurasira ku kiliziya, bamwe barapfa barimo Gahakwa Laurent, Viateur, Ndamutsa, Mukagashugi na Marcel, abandi bariruka abatishwe n'amasasu na gerenade bakicwa n'abaturage, ko na NTAGANZWA yarashishaga imbunda yari afite, ko ku mugoroba wo kuwa 15/04/1994 we yahungiye i Gasasa ahagera saa cyenda, nyuma aza kuhava kuwa 17/04/1994.

[50] Akomeza avuga ko Gasasa nayo yatewe nyuma y'iminsi ibiri igitero cy'i Cyahinda kibaye nko mu gitondo cyo kuwa 17 cyangwa kuwa 18/04/1994 n'igitero cyarimo interahamwe kiyobowe na NTAGANZWA wari ufite imbunda, ko abahateye biciyemo ibice bibiri, kimwe kirimo NTAGANZWA kizamuka mu muhanda munini uva Gasasa ujya i Cyahinda, ikindi gica iruhande kizamuka mu mpunzi kizirasa, kinavuza ingoma n'amafirimbi hagwa abantu benshi bari bavuye mu makomini atandukanye, ko babonaga NTAGANZWA ari hepfo yabo nko muri metero mirongo itanu. Mu buhamya bwe mu rukiko hari aho avuga ko batangiye kubarasa bigabanyijemo amatsinda, we ajya mu itsinda ryagiye mu Nyakibanda ariko ko ajya yo batari batangira kwica, nyuma agaruka i Nyakizu ahasanga imirambo n'inkomere, ahita akomeza ajya i Burundi ari kumwe n'abantu bari hagati ya mirongo itatu na mirongo ine.

[51] Umutangabuhamya DNF avuga ko kuwa 15/04/1994, yabonye NTAGANZWA yambaye imyenda ya gisirikare agenda n'amaguru i Cyahinda aho bari barahungiye, ko icyo gihe we yari mu gikari kwa padiri yumva NTAGANZWA avugira mu ndangururamajwi abwira abari bahahungiye batari ab'i Nyakizu gutaha, ko abivuga yagendagendaga mu mpunzi azihumuriza, ko amaze kuvuga ayo magambo ariwe wabanje kurasa ahagaze mu kibuga kinini cy'ishuli ryisumbuye kiri munsi y'amazu y'abapadiri, abasirikare n'abajandarume nabo barabarasa, we abasha guhungira i Kigembe.

[52] Umutangabuhamya Sezibera Révérien uvuga ko yari mu bagiye mu bitero, avuga ko batera ku musozi wa Nyakizu babanje guca kuri komini ahari abantu benshi barimo abasirikari n'abapolisi, NTAGANZWA abaha amabwiriza yo kuhatera bakabica bakamaraho, bajyanayo muri icyo gitero banyuze mu Kinyaga, abayoboye yambaye imyenda ya gisirikare, hejuru yashyizeho ikoti rya gisivili, afite imbunda ari kumwe n'abasirikari, bahageze barasa abahahungiye barabica, ko na NTAGANZWA ubwe yarasaga mu kivunge cy'abantu, urokotse nabo bakamwica, ko atibuka itariki byabereyeho ariko ko hari ku cyumweru.

[53] Umutangabuhamya Ruhinguka Vital avuga ko yabonye NTAGANZWA Ladislas ari ku cyumweru ku murenge wa Nyagisozi barimo kurasa abantu i Cyahinda n'i Mwumba, ko yari afite imbunda ariko ko atamubonye ayirashisha kuko abarashe ari abasirikare n'abapolisi.

[54] Umutangabuhamya DHN avuga ko hagati y'itariki ya 16 na 17/04/1994 yagiye mu nama yabereye kuri komini yemerejwemo ko mu gitondo bazinduka bajya kwica abatutsi bari i Gasasa, ko bahateye incuro ebyiri, ubwa mbere ari kuwa 16/04/1994, bahageze abatutsi babasubiza inyuma, ubwa kabiri ari hagati y'itariki ya 18 na 20/04/1994 ajyayo abisabwe na konseye Munyakazi, ko mu icyo gitero bajyanye n'abasirikare bafite imbunda, abaturage bafite intwaro gakondo, bahageze abatutsi barabasanza babatera amabuye, bageze hepfo babona ikindi gitero giturutse kuri komini kirimo NTAGANZWA afite imbunda, anambaye gisirikare ari kumwe n'abajandarume, abapolisi n'impunzi z'abarundi, bahageze barabagota, barabarasa, baranyanyagira, abashatse gucika bakabatema, ko hapfuye abari hagati ya magatanu (500) n'igihumbi (1000), ko imbunda bajyanaga mu bitero zatanzwe na NTAGANZWA. Mu buhamya

bwe kandi hari aho avuga ko iyo nama itegura igitero cy'i Gasasa atayigiyemo kuko yari iy'abakonseye yari iyobowe na NTAGANZWA, ko ibyavugiywemo yabibwiwe na konseye we.

[55] Umutangabuhamya Rugimbana appolinaire avuga ko kuwa 17/04/1994 ari kuwa gatandatu ubwo yari ku musozi wa Nyakizu haje igitero kirimo abantu bari hagati ya makumyabiri na mirongo itanu bafite imbunda enye (4), bahangana nacyo ariko kiza kubanesha bahungira i Gasasa, ko ku munsi wa mbere nta bahaguye kuko babateye amabuye babasubiza inyuma, ko atigeze abona NTAGANZWA mu gitero cy'i Gasasa ariko ko cyari giturutse hepfo y'ibiro bya komini.

[56] Umutangabuhamya Ntampaka Zacharie avuga ko kuwa 15/04/1994 hagati ya saa yine na saa tanu i Cyahinda ku Kiliziya haje imodoka ya komine irimo NTAGANZWA Ladislas n'indi modoka ya Rugwizangoga irimo abajandarume n'abapolisi bafite imbunda maze NTAGANZWA ahagarara ku mugina, agiye kuvugira mu ndangururamajwi imbunda yari afite ayihereza uyimufasha, abwira abatutsi bari bahahungiye bavuye muri komine Nyakizu, Mubuga, Runyinya na Rwamiko, ko abahaye iminota itanu kugira ngo bose babe basubiye muri komini zabo, anavuga ko ayabo bayaguze inka naho ayabo bayagura imbunda ngo bahagarare barebe akamahembe n'imbunda, iminota yari yabahaye itarashira batangira kurasa, ushatse gucika abaturage n'impunzi z'abarundi bari bagose mu mpande za kiliziya bafite imipanga, ubuhiri n'izindi ntwaro za gakondo bakamwica. Akomeza avuga ko icyo gihe NTAGANZWA Ladislas yari yambaye ipantalo y'ibara rya kaki, afite imbunda ariko ko atamubonye ayirashisha kubera ko havuze amasasu menshi ahita ahunga, ko mu bahaguye barimo Rwagasana Célestin, Nkurunziza Vianney na Nyiramashuri Domitilla n'abandi benshi bari baturanye. Anavuga ko mu gihe yahungiraga ku kiliziya ntawabimushishikarije.

[57] [57] Avuga nanone ko yavuye i Cyahinda kuwa 15/04/1994 hagati ya saa yine na saa tanu ahungira ku musozi wa Gasasa, bahatera incuro nyinshi bashimuta bamwe muri bo ariko ko atibuka amatariki bagiye babatereraho uretse ko kuwa gatandatu, ku cyumweru no kuwa mbere nta mbunda bari bafite ariko bigeze kuwa kabiri bazana imbunda barabarasa bararangiza, ko kuwa gatandatu no kuwa kabiri kuri 19/04/1994 ariho yabonye NTAGANZWA Ladislas i Gasasa mu babateraga barimo impunzi z'abarundi, agenda hagati y'igitero afite imbunda ariko ko atabonye arasa. Avuga kandi ko NTAGANZWA ageze i Gasasa nta nama yahakoresheje, ko bamanutse kuri komini babareba, ari mu modoka ya komini agenda azenguruka za segiteri yohereza abantu i Gasasa mu bitero. Mu buhamya bwe kandi avuga ko yamubonye ku munsi wa nyuma ari ku manywa ari umugaba w'igitero.

[58] [58] Umutangabuhamya Gasinzigwa Jean Damascène avuga ko kuwa 15/04/1994 yahungiye i Cyahinda kuko hari abantu babatwikiraga amazu bagira uwo bahasanga bakamwica, ko bigeze hagati ya saa moya na saa yine yahabonye NTAGANZWA Ladislas ari kumwe n'abajandarume babiri, baramwegera bibwira ko aje kubahumuriza ababwira ko abantu bo mu zindi komini zitari Nyakizu abahaye iminota itanu ngo bagende, akimara kubivuga abara kuva kuri rimwe kugeza kuri gatatu, atanga itegeko ryo kubarasa, ko abarashe ari NTAGANZWA Ladislas, abajandarume n'abapolisi bari bakikije impunzi, hagwa abantu benshi atabashije kubara kuko nawe yahungaga, ko yabonaga barasa ahagaze ku kibuga, nyuma ahungira ku musozi wa Nyakizu aho yavuye ahungira i Burundi. Anavuga ko NTAGANZWA Ladislas yaje i Cyahinda afite imbunda ariko atibuka uko imyenda yari yambaye yasaga, ko ababwira gusubira iwabo nta ndangururamajwi yakoresheje, ko nta n'ikintu yari ahagazeho.

[59] Umutangabuhamya anavuga ko mu gitondo cyo kuwa 15/04/1994 mbere ya saa moya bahuriye na NTAGANZWA Ladislas mu Ryamarembo yerekeza i Cyahinda, ababaza icyo bahunze bamubwira ko ari abahutu, umujandarume bari kumwe ahita avuga ko abatutsi boroye inka nabo bagura imbunda ko bagiye guhangana.

[60] Abandi babajijwe batarahiye, babazwa nk'abatanga amakuru ari bo Mukankusi Espérance, Nzabirinda Emmanuel, Havugimana André, Rutaremara Claver, Nyiransangwa Janvière na Mukaruzamba Catherine bahuriza ku kuba NTAGANZWA yaraje i Cyahinda ari kumwe n'abapolisi, abajandarume, interahamwe n'impunzi z'abarundi akoresha inama abatutsi bari bahahungiye, nyuma barabarasa hagwa abatutsi benshi, abahungaga bakicishwa intwaro za gakondo, ababashije kurokoka bahungira ku musozi wa Gasasa aho ibitero byabakurikiye na Hatungimana Jean Baptiste we avuga ko mu gitero yagiyemo i Cyahinda ntacyo yahuriyemo na NTAGANZWA Ladislas.

►Icyo NTAGANZWA Ladislas avuga ku buhamywa bwatanzwe

[61] NTAGANZWA Ladislas n'abamwunganira bavuga ko ibyo umutangabuhamya DNE avuga ko NTAGANZWA Ladislas yagabye igitero i Cyahinda kuwa 14/04/1994 saa tanu z'amanywa nyuma y'inama yabereye ku biro bya komini Nyakizu ku nzu y'inzuki n'uko icyo gitero cyari icya kabiri kuko hari ikindi cyari cyahagabwe n'abarundi kuwa 13/04/1994 atari byo kuko nta wundi mutangabuhamwa wigeze abihamya, ko n'umutangabuhamya Kasire Cassien yivuguruza ku masaha no ku munsi kuko abazwa mu rukiko yavuze ko amagambo y'uko abatutsi baguze inka abahutu bagura imbunda nyuma batangira kurasa, NTAGANZWA Ladisla yayavuze ageze i Cyahinda kuwa 14/04/1994 hagati ya saa tatu na saa tanu ariko ubwo yabazwaga mu Bushinjacyaha akaba yaravuze ko ayo magambo, yayavugiye kuri paruwasi kuwa 15/04/1994 hagati ya saa saba na saa munani.

[62] Bakomeza bavuga ko abandi batangabuhamya bavuze ku gitero cyo kuwa 15/04/1994, bagiye bavuguruzanya ku masaha babonyeho NTAGANZWA Ladislas n'igihe amasasu yavugiye kuko nk'umutangabuhamya DNA, avuga ko yamubonye saa mbiri n'igice za mu gitondo, mu gihe DND ahamya ko kuri iyo saha yari mu kigo cya jandarumeri i Butare yagiye kuzana abajandarume naho Rusagara François agahamya ko yamubonye hagati ya saa tatu za mugitondo na saa yine kandi ko niba yari i Butare saa mbiri n'igice atari kuba yageze i Nyakizu muria yo masaha. Bavuga kandi ko Rubagumya Appolinaire na Rubumba Viateur bo bavuga ko muri ayo masaha yari i Maraba naho Rwemarika Straton atanga ubuhamya mu rukiko yavuze ko kuwa 15/04/94 NTAGANZWA Ladislas yageze kuri paruwasi saa tanu, ko mbere y'iyo saha yatundaga abantu abavana ku Kavuguto abajyana kuri paruwasi bivuga ko mbere ya saa tanu yari aho akora akazi ko gutunda abantu.

[63] Bavuga kandi ko umutangabuhamya Nyandwi Alfred yivuguruza kuko abazwa mu rukiko hamwe yavuze ko yagiye mu gitero cyo kuwa 15/04/1994 i Cyahinda, ahandi akavuga ko atahateye ariko abazwa mu bushinjacyaha akaba yari yavuze ko amakuru y'icyo gitero yayamenye avuye i Saburunduru, naho ubuhamya bwa Bwanakweri Vianney bukaba burimo urujijo kuko abazwa n'urukiko yavuze ko kuwa 15/04/1994, NTAGANZWA yabasanze ku mashuri abanza ari hepfo y'ikibikira, ko ari naho yavugiye amagambo y'uko abatutsi baguze inka abahutu bagura imbunda, ko ari naho amasasu yatangiriye kuvuga, ko kuwa 16/04/1994 uwitwa Kidari yiciye umujandarume kuri ayo mashuli binyuranye n'ibyo yari yaravuze abazwa n'ubushinjacyaha by'uko ku itariki ya

15/04/1994 yari ataragera kuri paruwasi n'uko hari umujandarume wari uhagaze imbere ya kiliziya ameze nk'uharinze, hakaza uwitwa Kidari akamuca umutwe akamwambura imbunda.

[64] Bavuga nanone ko umutangabuhamya Gatera Appolon yivuguruza kubera ko ari mu rukiko yahamije ko ubwo mu saa tanu Ntaganzwa yari atangiye kurasa yahungiye mu biraro by'inka, nyuma aza guhungira ku musozi uteganye na Nyakizu aho yageze ku mugoroba wo kuwa 15/04/1994 saa cyenda ariko abazwa n'ubushinjacyaha mu iperereza akaba yari yavuze ko amasasu yatangiye kuvuga saa sita ahungira mu kiliziya aho yasohotse saa moya z'ijoro, ko no mu bindi yagiye avuga nta kuri kurimo aho avuga ko ubwo yahungiraga i Gasasa kuwa 15/04/1994 yaharaye buracya arahirirwa arongera araharara ahava kuwa 17/04/1994 nyamara abazwa mu bushinjacyaha akaba yari yavuze ko yavuye Gasasa kuwa 16/04/1994 ajya mu Birambo akomereza i Nyumba nyuma ahungira i Burundi kuwa 17/04/1994, ko rero atari kuhava ku matariki abiri atandukanye.

[65] Bavuga ko ku matariki ya 16 na17/04/1994 nta bitero byabaye i Cyahinda kuko n' abatangabuhamya b'ubushinjacyaha barimo DNB wavuze ko kuwa 16/04/1994 yagiye i Cyahinda kureba umurambo w'umujandarume agaruka kuri komine saa cyenda, ko yasanze impunzi zamaze guhamba abantu bari baraye bahaguye, ko iyo haba hari igitero ibyo byose bitari gushoboka, ko na Rwemarika Straton yemeza ko kuwa 16/04/1994 nta gitero cyabaye kuko yashoboye kuva ku musozi wa Nyakizu akajya i Cyahinda kureba umuryango we, yabona imirambo y'abana be agasubira yo, ndetse na Rusagara François akaba avuga ko uwo munsi kuva saa yine kugeza saa saba bagiye kureba ko hari abarokotse igitero. Banavuga ko hari n'ababajijwe mu iperereza n'ubushinjacyaha barimo Nyirimanzi Athanase na Kalimanzira Appolinaire bemeje ko kuwa 16/04/1994 nta gitero cyabaye i Cyahinda, ko uwo munsi impunzi zakomeje kuhajya ndetse hakaba hari n'abarokotse ubwicanyi bwo kuri 15/04/1994, uwo munsi bisuganije bateranira kuri paruwasi, ko rero abantu batari gukomeza kuhajya kandi barimo kubarasa.

[66] Bavuga nanone ko bamwe mu batangabuhamya b'ubushinjacya bemeza ko kuwa 17/04/1994 nta bwicanyi bwabaye i Cyahinda, ko nta n'ibitero byari kuhaba kuko uwo munsi Perefe Habyarimana Jean Baptiste yahaje aherekejwe n'abashinzwe umutekano muri Butare, bahageze bakorana inama n'impunzi, ko ibi byanemejwe mu rubanza rwa Nyiramasuhuko na bagenzi be no mu rwa Nizeyimana Ildephonse zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda.

[67] NTAGANZWA Ladislas n'abamwunganira bavuga ko nta bitero byabaye ku musozi wa Gasasa ku matariki ya 16 na 17/04/1994, ko n'ubushinjacyaha butabashije kwerekana ko kuri ayo matariki hari igitero NTAGANZWA yagabye ku musozi wa Gasasa nk'uko bigaragazwa n' abatangabuhamya DNA, Rusagara François, Rwemarika Straton na Nyandwi Alfred, ko n'abavuga ko habaye ibitero bagenda bivuguruza baterekana ko NTAGANZWA yari muri ibyo bitero barimo Gatera Appolon uhamya ko Gasasa yatewe kuwa 17/04/1994 kandi icyo gihe atari ahari kuko hamwe avuga ko yahavuye kuri 17/04/1994 ahandi akavuga ko kuri iyo tariki yari i Nyumba/Nyakibanda muri komine Gishamvu naho ubwo yabazwaga mu iperereza kuwa 31/05/2016 akaba yari yavuze ko igitero cyaje i Gasasa kuri 16/04/94 nyuma y'igitero cy'i Cyahinda cyo kuri 15/04/94 i Cyahinda, ko ubuhamya bwe bwuzuyemo kwivuguruza kuko hari n'aho yivugiye ko atavuye i Gasasa kuva yahagera kuri 15/04/94 saa cyenda, kugeza kuri 17/04/94 saa saba.

[68] Banavuga ko n'ibyo Sezibera Révérien yavugiye mu rukiko ko mu gitero cyo kuwa 17/04/1994 NTAGANZWA Ladislas yari i Gasasa arasa ku mugaragaro yambaye ikoti kugira ngo saterite itamubona nyamara abazwa mu iperereza hari aho yavuze ko muri icyo gihe atavuye muri segiteri ye, ndetse na DNE abazwa mu iperereza akaba yaravuze ko i gitero cy'i Gasasa cyabaye kuwa 17/04/1994 nyamara mu rukiko aragihakana avuga ko cyabaye kuwa 15/04/1994, bihabanye n'ukuri kubera ko kuri iyi tariki nta wundi muntu uvuga ko aho i Gasasa habaye igitero.

[69] Bakomeza bavuga ko n'ibyo ubushinjacyaha bumurega bwifashishije ubuhamya bwa Ntampaka Zacharie ko igitero cya nyuma cyamaze abantu NTAGANZWA Ladislas yagiyemo ku musozi wa Gasasa cyabaye kuwa kabiri ari kuri 21/04/1994 atari byo kuko niba hari kuwa kabiri nk'uko abivuga, ko ubwo hari ku itariki ya 19/04/1994 kubera ko kuri 15/04/1994 ubwo hari habaye ubwicanyi buvugwa i Cyahinda hari kuwa gatanu, kandi kuri iyo tariki ya 19/04/1994 NTAGANZWA akaba atari kuboneka muri icyo gitero kuko hari n'undi mutangabuhamya w'ubushinjacyaha uvuga ko bari kumwe mu nama yari iyobowe na perezida Sindikubwabo Théodore mu muhango wo gusezera kuri perefe Habyarimana Jean Baptiste no kurahira k'uwamusimbuye Nsabimana Sylvain, ko ibyo kuba yaragiye muri iyo nama binashimangirwa na Rugimbana Appolinaire uhamya ko uwo munsi kuwa 19/04/1994 yabonye Ntaganzwa mu nzira ajya i Butare muri iyo nama, ubwo yamubonaga saa tanu z'amanywa i Ngoma ya Komini Kigembe ari hamwe n'umubikira n'umujandarume umwe, bigaragaza ko uwo munsi Ntaganzwa atari i Gasasa. Banavuga ko basanga ubushinjacyaha nta bimenyetso bwerekanye bihamya ko NTAGANZWA yagabye ibitegero i Gasasa kuwa 21/04/1994 kubera ko ubushinjacyaha bwivugira ko kuri iyo tariki yaru yajyanye umukobwa w'umututsikazi witwa Umulisa Aimée Josiane i Butare amuhungisha interahamwe ngo zashakaga kumwica kandi uyu akaba yararokotse akiriho.

[70] NTAGANZWA Ladislas n'abamwunganira bavuga ko n'ibyo Ubushinjacyaha buvuga ko kuwa 18/04/1994 yayoboye igitero i Cyahinda n'i Gasasa mu masaha amwe bitari gushoboka ko aba aho hantu hombi icyarimwe. Bakanavuga ko ibyo abatangabuhamya bamushinja bivuguruzwa n'ubuhamya bwa Nyandwi Alfred uvuga ko bari kumwe i Cyahinda kuwa 18/04/1994 ubwo barimo bakora isuku kuri paruwasi, ko nta n'impunzi zari zihari n'ubwa DNB uvuga ko uwo munsi NTAGANZWA yari i Cyahinda aho bakoraga isuku, anamuha abana makumyabiri na batanu (25) bakuwe mu mirambo, ko rero batari kuhakora isuku hari igitero, ko hatari kuba igitero ngo kibure kwica abo bana.

UKO URUKIKO RUBIBONA

►Ku birebana n'uruhare rwa NTAGANZWA Ladislas mu bitero byo kuri paruwasi ya Cyahinda.

[71] Urukiko rusesenguye ubuhamya bwatanzwe ku byerekeranye n'igitero cyagabwe i Cyahinda kuwa 15/04/1994, rusanga abatangabuhamya barimo Kasire Cassien, DNA, Rusagara François, Rwemarika Straton, Bwanakweri Vianney, Gasinzigwa Jean Damascène na Gatera Appolon bahuriza ku kuba NTAGANZWA Ladislas yaragize uruhare mu gitero cyagabwe kuwa 15/04/1994 ku batutsi bari bahungiye kuri paruwasi ya Cyahinda kuko basobanura ko kuwa 15/04/1994 NTAGANZWA Ladislas yaje i Cyahinda ari kumwe n'abajandarume, abapolisi n'abasirikare, abarundi bazengurutse kiliziya abwira abatutsi bari bahahungiye baturutse mu yandi

makomini gusubira iwabo kugira ngo arindire umutekano abo muri komini ye, babyanze ategeka ko babarasa, ugerageje guhunga impunzi z'abarundi n'interahamwe zari zizengurutse aho kuri paruwazi zikamutema, hagwa abatutsi benshi. DND we yemeza ko mbere y'uko icyo gitero kihagabwa mu gitondo yajyanye na NTAGANZWA Ladislas i Butare amutwaye mu modoka ajya gusaba abajandarume mu kigo cyabo, aba ari bo bajyana i Cyahinda mu gitero.

[72] Rusanga NTAGANZWA Ladislas mu miburanire ye mu rukiko nawe yemera ko kuwa 15/04/1994 yageze i Cyahinda kuri paruwasi aho abatutsi bari bahungiye ahajyanye abajandarume bo kubacungira umutekano, abakoresha inama, abaha n'umwanya wo kubaza ibibazo nubwo atemera ko ari igitero yari ahagabye asobanura ko ubwicanyi bwahabaye bwatewe n'abantu bari baracengeye mu mpunzi bagamije guhungabanya umutekano bafite intwaro bari bamaze iminsi bakoresha aho bari baturutse muri Gikongoro, banica abajandarume babiri.

[73] Urukiko rusanga ibyo NTAGANZWA Ladislas anenga ubuhamya bwatanzwe na Kasire Cassien, DNA, DND, Rusagara François, Rwemarika Straton, Bwanakweri Vianney, Gasinzigwa Jean Damascène na Gatera Appolon avuga ko bivuguruza ku masaha n'amatariki bamuboneye i Cyahinda haba mu rukiko no mu iperereza, imyenda yari yambaye, aho yari ahagaze, kuba muri ayo masaha bavuga atari kuba i Cyahinda ngo abe n'ahandi nk'i Butare cyangwa i Maraba n'uko ubuhamya bwabo butera urujijo ku kuba yari afite imbunda, nta shingiro bifite kuko hashingiwe ku biteganywa n'ingingo ya 65 y'Itegeko No15/2004 ryo kuwa 12/6/2004 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, ko rutitsitsa ku mubare w'abatangabuhamya, rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bihimbira, urukiko rusanga kuba abatangabuhamya bagira ibyo badahurizaho bijyanye n'amasaha, iminsi, itariki, ibyo uregwa yari yambaye n'ibindi bitatuma abatangabuhamya batizerwa cyangwa ngo ubuhamya bwabo buteshwe agaciro kuko rurebye uko basobanura ibyabaye i Cyahinda by'uko NTAGANZWA Ladislas yageze kuri paruwasi ari kumwe n'abajandarume batangiza ubwicanyi bafatanyije n'interahamwe n'impunzi z'abarundi, hakanarebwa ibihe bamwe mu batangabuhamya barimo by'ubuhunzi, umutekano muke n'igihe gishize ibyo batangaho ubuhamya bibaye uko kunyuranya ku tuntu duto kudafite uburemere bwatuma ubuhamya bwabo buteshwa agaciro cyangwa abatangabuhamya batizerwa.

[74] Urukiko rusanga ibyo kuba kunyuranya kw'abatangabuhamya ku tuntu duto nk'itariki n'isaha kubera igihe gishize ibyo batangaho ubuhamya bibaye bidatesha agaciro ireme ry'ubuhamya binahura n'ibyasobanuwe mu rubanza rwa Bikindi Simon[2] ndetse no mu rubanza rwa Nizeyimana Ildephonse[3] zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda.

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[2] ICTR-2001-72-T L e Procureur c. Simon BIKINDI, du 2 décembre 2008, p.15, para 32, : "La Chambre reconnaît qu'il s'est écoulé une longue période entre la date des faits allégués dans l'acte d'accustation et celle des dépositions à l'audience. Ainsi, le manque de précision ou l'existence de contradictions mineures entre les dépositions de différents témoins ou entre la déposition d'un témoin et ses dépositions d'un témoin et ses déclarations antérieures, n'ont généralement pas été considérés comme jetant nécessairement le discrédit sur ces depositions".

[3] ICTR·2000-55C-T, Le Procureur c. Ildephonse Nizeyimana, du 02 Juin 2012, p. 94, para 289, "La Chambre estime que ces divergences ne portent pas à consequence, ces dépositions traduisant, comme c'est normal, une certaine confusion quant à la date. (…)"

[75] Urukiko rusanga ariko ubuhamya bwa DNE butashingirwaho ku birebana n'igitero cyo kuwa 15/04/1994 i Cyahinda kuri paruwasi kuko yivuguruza, kandi n'uburyo asobanura ibitero byahabaye bikaba bitandukanye n'uko abandi batangabuhamya babivuga kubera ko we avuga ko igitero cya mbere cyabaye kuwa 13/04/1994 gikozwe n'abarundi, ikindi kiba kuwa 14/04/1994, hakaba n'aho avuga ko bahateye incuro eshatu kandi ko muri ibyo bitero byose yabijyanagamo na NTAGANZWA, ahandi nanone akavuga ko yahamubonye incuro imwe nyamara yari yavuze ko bajyanaga mu bitero byose, ndetse hakaba hari n'aho avuga ko NTAGANZWA ageze aho abatutsi bari bahungiye yahise arasa nta kindi akoze mu gihe abandi bahuriza ku kuba ahageze yabanje kubakoresha inama abasaba gusubira iyo baturutse. Rusanga nanone ubuhamya bwa Nyandwi Alfred nabwo butashingirwaho ku birebana n'icyo gitero kuko ibyo yavugiye mu rukiko by'uko yari mu gitero bivuguruzanya n'ibyo yavugiye mu bushinjacyaha ko atari akirimo.

[76] Rusanga kandi kuba hari abatanze ubuhamya bavuga ko muri ayo masaha NTAGANZWA atari i Cyahinda nka Rubagumya Appolinaire na Rubumba Viateur bavuga ko bamubonye i Maraba na DND wahamije ko saa mbiri n'igice yari mu kigo cya jandarumeri i Butare yagiye kuzana abajandarume nabyo bitatesha agaciro ubuhamywa bw'abemeza ko bamubonye i Cyahinda kuko NTAGANZWA nawe adahakana ko uwo munsi yavuye i Butare agaca i Maraba, nyuma akajya n'i Cyahinda ahajyanye abajandarume bo gucunga umutekano n'uko uwo munsi hari abantu bahishwe uwo munsi, kandi n'aba batangabuhamya ibyo bavuga bikaba bihura n'ibyo nawe avuga ko yahanyuze agiye i Butare yongera kunyura azanye abajandarume avuga ko yari ajyanye i Cyahinda kuharinda umutekano.

[77] Urukiko rusanga rero ibyo NTAGANZWA Ladislas avuga ko ajya i Cyahinda yari ahajyanywe no kwereka abahahungiye abashinzwe kubarindira umutekano, ko atari igitero yari ahagabye, nta shingiro bifite kuko nk'uko byasobanuwe, ubuhamya bwashingiweho bugaragaza ko ari igitero yagabye ku bari bahahungiye ari kumwe n'abajandarume yabanje kujya kuzana i Butare, abapolisi, abaturage n'impunzi z'abarundi bari bazengurutse aho i Cyahinda bicaga ugerageje gucika bakoresheje imipanga n'ubuhiri.

[78] Byongeye kandi ibyo avuga ko ibyahabaye byatewe n'uko mu mpunzi hari abantu bari bacengeyemo bagamije guhungabanya umutekano bafite n'intwaro n'uko bishe umujandarume nyuma yo kumwambura imbunda yari afite, nabyo nta shingiro bifite kuko abatangabuhamya basobanura uburyo NTAGANZWA ageze kuri paruwasi ya Cyahinda yasabye abatutsi bari bahahungiye gusubira iwabo, abaha igihe gito cyo kuba bahavuye, ababwira ko inka zabo ntacyo zabamarira imbere y'amasasu, nyuma batangira kubarasa. Iby'uko kuwa 15/04/1994 hari igitero cyagabwe ku batutsi bari bahungiye kuri paruwasi ya Cyahinda NTAGANZWA Ladislas yajyanye yo abajandarume byanavuzwe mu rubanza rwa Nizeyimana Ildephonse rwaciwe n'urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda[4]. Kuba kandi mu matariki ya 15/04/1994 i Cyahinda haragabwe igitero ku batutsi bari bahahungiye byanagarutsweho mu rubanza rwa Nyiramasuhuko Pauline na bagenzi be rwaciwe n'urwo rukiko[5].

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[4] ICTR-2000-55C-T Le Procureur c' lldephonse NIZEYIMANA du 19/06/2012, p.86, para. 267, :" En outre, il ressort des témoignages à décharge que pendant Ie deuxieme tiers du mois d'Avril 1994, probablement Ie 15 Avril, Ie bourgmestre de Nyakizu, Ladislas Ntaganzwa, avait conduit des gendarmes au complexe de la paroisse de Cyahinda, ces gendarmes avaient attaqué les déplacés qui y étaient installés, mais ceux-ci avaient riposté, tué au moins deux gendarmes et blessé Ie bourgmestre. (…)".

[5] ICTR-98-42-T, Le Procureur C/ NYIRAMASUHUKO et consorts, du 24 juin 2011, p. 237, para. 856

[79] Urukiko rusanga nanone kuva ku itariki ya 16/04/1994 ibyo bitero byarakomeje kugabwa ku batutsi bari barahungiye kuri paruwasi i Cyahinda nk'uko byemezwa n'abatangabuhamya barimo DND uvuga ko hagati ya 16 na 19/04/1994 yagiye mu gitero kiyobowe na NTAGANZWA Ladislas cy'abantu bagera ku bihumbi bitanu (5000) bagiye kwica abatutsi bari bahasigaye na Rusagara François uvuga kuwa 17/04/1994 ubwo bari i Gasasa babonye i Cyahinda hatwikwa. Ibyo kuba Cyahinda yaragabweho ibitero muri icyo gihe NTAGANZWA Ladislas akabigiramo uruhare binashimangirwa n'itangazo riri muri dosiye, yagejeje ku biro ntaramakuru bya ORINFOR Butare agaragaza ko kuwa 15/04/1994 inkotanyi zagerageje gufata komini Nyakizu bakazikoma imbere zisubira kuri paruwasi i Cyahinda, ko imirwano yaje gukomeza tariki ya 16 kugeza tariki ya 19/04/1994 abaturage bafasha ingabo, barazimenesha zihungira hejuru ku misozi naho zitatinze kuva, akanavuga ubwoko bw'imbunda zakoreshejwe muri ibyo bitero.

[80] Rusanga hakurikijwe ibikubiye mu nyandiko itanga ikirego, ibivugwa n'abatangabuhamya no mu miburanire ya NTAGANZWA Ladislas, muri ibyo bitero byabaye kuri paruwasi ya Cyahinda harimo igitero gikomeye cyarimo abasirikare bakoreshaga imbunda zikomeye cyabaye kuwa 18/04/1994 nyuma y'uko kuwa 17/04/1994 abagize inama y'umutekano barimo Perefe Habyarimana Jean Baptiste basuye abatutsi bari barahungiye kuri paruwasi ya Cyahinda. Iby'uko icyo gitero cyabaye kuri iyo tariki ya 18/04/1994 byanasobanuwe mu manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda zirimo urwa NIZEYIMANA Ildephonse[6].

[81] Urukiko runasanga inkotanyi NTAGANZWA Ladislas yavugaga muri iryo tangazo akaba ari abatutsi bari bahungiye kuri paruwasi ya Cyahinda, ko ibyo yongeye no kubishimangira mu mabaruwa yagiye yandikira inzego zinyuranye zirimo iyo yandikiye uwari Minisitiri w'intebe yivugiraga ko abatutsi bari barahungiye i Cyahinda ari inyenzi- inkotanyi zashakaga gufata komini yayoboraga, ko n'abantu bageragezaga kubahungisha cyangwa kubahisha bitwara bunyenzi, ko hari n'abahagaritswe mu mirimo yabo avuga ko ari ukugira ngo hatoranywe intwari zayoboye urugamba i Cyahinda kugira ngo birangirize urwo rugamba.

[82] Urukiko rusanga ibyo NTAGANZWA Ladislas n'abamwunganira bavuga by'uko nta bitero byabaye i Cyahinda ku matariki ya 16/04/1994 kuko abatangabuhamya bavuga ko impunzi zakomeje kuhahungira n'uko kuwa 17/04/1994 ari wo munsi Perefe Habyarimana Jean Baptiste yaje i Cyahinda aherekejwe n'abashinzwe umutekano muri Butare, bahageze bakorana inama n'impunzi z'abatutsi, nta shingiro bifite kuko NTAGANZWA Ladislas ubwe mu itangazo yakoze ryavuzwe yavuze ko ibitero byakomeje kuri paruwasi i Cyahinda kuva kuwa 16 kugera kuwa 19/04/1994.

[83] Urukiko rukaba rusanga rero kuba NTAGANZWA Ladislas ari mu batangije ubwicanyi i Cyahinda kuri paruwasi kuwa 15/04/1994 avuga ko abatutsi bari bahahungiye ari inkotanyi zashakaga gufata komini Nyakizu yayoboraga nyuma ibitero bigakomeza kuhagabwa ku minsi yakurikiyeho kugeza bahagabye igitero gikomeye kirimo abasirikare bakoreshaga imbunda zikomeye, interahamwe n'impunzi z'abarundi bicishaga intwaro gakondo abageragezaga guhunga, bigaragaza ku buryo budashidikanywaho uruhare yagize mu iyicwa ry'abatutsi bari barahungiye kuri Paruwasi ya Cyahinda.

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[6] ICTR-2000-55C-T Le Procureur c/ lldephonse NIZEYIMANA du 19/06/2012, p.86, para. 311 : "Aussi I'ensemble des éléments de preuve versés au dossier permettent d'établir au-delà de tout doute raisonnable que des militaires, dont une section de quelque 11 militaires du camp de I'ESO et I'adjudant-chef Kanyeshyamba, faisaient partie des assaillants qui avaient lancé I' attaque contre la paroisse de Cyahinda vers Ie 18 Avril 1994".

►Ku birebana n'uruhare rwa NTAGANZWA Ladislas mu bitero byo ku misozi ya Gasasa, Nyakizu na Mwumba

[84] Abatangabuhamya babajijwe mu rukiko ku birebana n'ibyo bitero hari abatagaragaza ko NTAGANZWA Ladislas yari muri ibyo bitero barimo Rwemarika Straton uvuga ko ubwo yari i Gasasa yabonye NTAGANZWA mu Kinyaga afite imbunda ariko ko atamubonye mu gitero i Gasasa, Kasire Cassien uvuga ko ubwo yari i Gasasa baterwa yabonye imodoka ya komini ihazana abantu incuro ebyiri ariko kubera ko yari kure atamenye niba NTAGANZWA yari ayirimo, Ruhinguka Vital uvuga ko ari ku cyumweru yamubonye ku murenge wa Nyagisozi barimo kurasa i Cyahinda n'i Mwumba ariko ko atamubonye arashisha imbunda yari afite, Rugimbana Appolinaire uvuga ko kuwa 17/04/1994 ku musozi wa Nyakizu ari kuwa gatandatu haje igitero cy'abantu makumyabiri (20) barahangana kirabaganza bahungira i Gasasa ariko ko atahabonye NTAGANZWA.

[85] Mu batangabuhamya babajijwe hari n'abemeza ko NTAGANZWA Ladislas yari muri ibyo bitero nka Gatera Appolon uvuga ko ku itariki ya 17 cyangwa iya 18/04/1994 i Gasasa hatewe n'igitero kirimo interahamwe kiyobowe na Ntaganzwa afite imbunda, Sezibera Révérien uvuga ko NTAGANZWA yabahaye amabwiriza yo kwica abatutsi bakabamaraho, anabajyana i Gasasa yambaye imyenda ya gisirikare, afite imbunda arasa ariko ko atibuka itariki uretse ko hari ku cyumweru, DHN uvuga ko yabwiwe na konseye witwa Munyakazi ko hagati y'itariki ya 16 n'iya 17/04/1994 habaye inama y'abakonseye iyobowe na NTAGANZWA Ladislas yemeje ko mu gitondo bazinduka bajya kwica abatutsi bari i Gasasa, akanavuga ko bahateye hagati y'itariki ya 18 n'iya 20/04/1994 bajyanye n'abasirikare bafite imbunda n'abaturage bafite intwaro gakondo, bahageze abatutsi babatera amabuye barabasanza, bageze hepfo babona ikindi gitero giturutse kuri komini kirimo NTAGANZWA afite imbunda, anambaye gisirikare ari kumwe n'abajandarume, abapolisi n'impunzi z'abarundi, bahageze barabagota, barabarasa, baranyanyagira, abashatse gucika bakabatema, hapfa abari hagati ya magana atanu (500) n'igihumbi (1 000) ariko ko atibuka amazina y'abahaguye kubera ko atari atuye aho hafi.

[86] Ntampaka Zacharie nawe yemeza ko i Gasasa bahateye incuro nyinshi ariko ko atibuka amatariki, ko umunsi bazanye imbunda ari mu gitero cyahabaye ari kuwa kabiri aho babarashe bararangiza, ko ibitero yabonyemo NTAGANZWA Ladislas ari ibyo kuwa gatandatu no kuwa kabiri kuri 19/04/1994, agenda hagati y'igitero afite imbunda ariko ko atabonye arasa, ko ahageze nta nama yakoresheje ariko ko yagendaga azenguruka za segiteri yohereza abantu mu bitero, ko mu babateraga harimo abarundi b'impunzi. Abandi bemeza ko NTAGANZWA Ladislas yari mu bitero i Gasasa ni abatanze amakuru bavuga ko abarokotse ibitero by'i Cyahinda bahahungira bibakurikira yo barimo Mukankusi Espérance, Nzabirinda Emmanuel, Havugimana André, Rutaremara Claver, Nyiransangwa Janvière na Mukaruzamba Catherine. Uretse abo bemeza ko biboneye NTAGANZWA mu bitero by'i Gasasa, hari na DND uvuga ko yabwiwe na mukuru we ko hagati yo kuwa 16 na 19/04/1994, hari igitero NTAGANZWA yarimo n'abaturage benshi gitera Gasasa muri Nyakizu cyica impunzi z'abatutsi zari zahahungiye.

[87] Urukiko rusesenguye ubwo buhamya bwose bwatanzwe ku bitero byo ku misozi ya Gasasa, Nyakizu na Mwumba iteganye na Cyahinda, rusanga ikigaragara mu buhamya bwa Gatera Appolon, Sezibera Reverien, DHN na Ntampaka Zacharie bavuga ko babonye NTAGANZWA Ladislas mu bitero byo kuri iyo misozi ari uko abatutsi barokotse ibitero by'i Cyahinda kuri paruwasi bahungiye muri iyo misozi bagabwaho ibitero byinshi byarimo NTAGANZWA

Ladislas, abasirikare bafite imbunda zikomeye, interahamwe n'impunzi z'abarundi bitwaje intwaro za gakondo, byica abatutsi benshi bari bahahungiye bagera ku bihumbi birindwi (7 000) barimo Nyirabazungu Thérèse, Nyirabantu, Nyiramasahuku Domitila, Sebumba Stephano, Kamanzi Félicité, abarokotse bahungira mu gihugu cy'u Burundi.

[88] Urukiko rurasanga kuba hari abatangabuhamya bavuzwe bavuga ko batabonye NTAGANZWA Ladislas mu bitero byo ku musozi wa Gasasa, Nyakizu na Mwumba, bitatuma ubuhamya bw'abahamubonye budashingirwaho nk'ikimenyetso kuko nabo ubuhamya bwabo butamushinjura kubera ko nka Rwemarika Straton avuga ko ubwo i Gasasa habaga igitero yabonye NTAGANZWA mu Kinyaga afite imbunda ari kumwe n'abajandarume n'urubyiruko rw'ishyaka rya MDR kandi aho mu Kinyaga, nk'uko urukiko rwabibonye mu iperereza, akaba ari agasozi kari hagati y'aho ibiro bya komini Nyakizu byari biri n'umusozi wa Gasasa. Byongeye kandi kuba Rugimbana Appolinaire atarabonye NTAGANZWA mu gitero cy'abantu makumyabiri (20) ku musozi wa Nyakizu, nabyo bikaba bitatuma ubuhamya bw'abamubonye ku yindi misozi ya Gasasa cyangwa Mwumba buteshwa agaciro kuko kuba ataramubonye muri icyo gitero bitavuze ko nta bindi yagiyemo kuko hari abandi batangabuhamya bemeza ko bahamubonye naho Ruhinguka Vital akaba atagaragaza ko ubwe yageze kuri iyo misozi igihe ibyo bitero byabaga.

[89] Urukiko rusanga ariko ubuhamya bwa DNE n'ubwa Nyandwi Alfred butashingirwaho mu kugaragaza ko NTAGANZWA Ladislas yagize uruhare mu bitero byo ku misozi iteganye na Cyahinda kuberako, nk'uko urukiko rwabisobanuye, bagenda bivuguruza mu buhamya bwabo.

[90] Urukiko rusanga ibyo NTAGANZWA Ladislas avuga ko nta bitero yagabye i Gasasa ku matariki ya 16, 17 na 18/04/1994 kuko ibitero bikomeye bivugwa byabaye icyo gihe ari ibyo kuri paruwasi i Cyahinda aregwa kuba yarimo n'uko atari kujya mu gitero kivugwa ko cyabaye kuwa 19/04/1994 kubera ko yari mu nama i Butare, nta shingiro bifite kuko abatangabuhamya Gatera Appolon, Sezibera Révérien, Ntampaka Zacharie na DHN bose bemeza ko bamubonye mu gitero cyishe abatutsi benshi bari bahungiye ku musozi wa Gasasa cyarimo abasirikare, abajandarume, abapolisi, interahamwe n'impunzi z'abarundi afite n'imbunda. Nk'uko byasobanuwe, kuba batahuriza ku matariki icyo gitero cyabereyeho bikaba bitaba impamvu yatuma ubuhamya bwabo budashingirwaho mu kugaragaza ko icyo gitero cyabayeho n'uko NTAGANZWA Ladislas yakigizemo uruhare kuko bose icyo bahurizaho ari uko icyo gitero cyabayeho kikanica abatutsi benshi bari bahungiye muri iyo misozi.

[91] Urukiko rusanga n'ibyo avuga ko umutangabuhamya Ntampaka Zacharie ubushinjacyaha bushingiraho bumurega atavuga ko hari igitero cyabaye kuwa 21/04/01994 kuko icyo avuga gusa ari uko cyabaye ari kuwa kabiri kandi uwo munsi akaba yari yagiye i Butare mu muhango w'ihererekanya bubasha ry'abaperefe, ashaka kugaragaza ko atari kujya muri icyo gitero cyo kuri 19/04/1994, nta shingiro bifite kuko abatangabuhamya bagaragaje ko hari ibitero byabaye kuri uwo musozi kandi akabigiramo uruhare, kuba rero Ntampaka Zacharie yakwibeshya ku itariki cyangwa ku munsi nabyo bitatuma ubuhamya bwe buteshwa agaciro kuko nk'uko byasobanuwe kwibeshya ku matariki nta ngaruka bifite ku ireme ry'ubuhamya mu gihe hari ibimenyetso bidashidikanywaho bigaragaza ko ibyo bitero byabayeho kandi NTAGANZWA Ladislas akabigiramo uruhare.

[92] Hashingiwe ku bimaze gusobanurwa, urukiko rusanga ibitero byo ku misozi ya Gasasa, Nyakizu na Mwumba byari mu rwego rw'ibitero byatangiriye kuri paruwasi i Cyahinda kuwa

15/04/1994 bigakurikira abatutsi baharokotse bari barahungiye kuri iyo misozi nk'uko n'itangazo NTAGANZWA Ladislas yashyikirije ibiro ntaramakuru bya ORINFOR Butare ryavuzwe avugamo ko inkotanyi zari kuri paruwasi ya Cyahinda bazirukanye kuri paruwasi zihungira mu misozi naho zitatinze kuva, urukiko rusanga uko kuba zitarahatinze bisobanura ko zahavuye ari uko zigabweho ibitero. Urukiko rukaba rusanga abo yitaga inkotanyi ari abatutsi kuko aribo bari bahungiye i Cyahinda banagabwaho ibitero ndetse n'ubuhamya bwatanzwe mu rukiko bukaba butagaragaza ko hari abarwanyi b'inkotanyi bari aho kuri paruwasi ya Cyahinda.

1.2 Kumenya niba hari inama zabereye i Nyantanga, Nkakwa n'i Viro zigatangirwamo amabwiriza yo kwica abatutsi.

►Imiburanire y'ubushinjacyaha

[93] Ubushinjacyaha buvuga ko hagati y'itariki ya 7 n'iya 8/04/1994, NTAGANZWA Ladislas yakoresheje inama ku mashuri i Nyantanga irimo Mulindahabi Justin wari superefe wa superefegitura ya Gisagara, Bazaramba François wari diregiteri w'ishuli ry'imyuga rya Nyantanga, Akobagaya Razaro umurundi w'impunzi, Sesonga Frodouald wari umuyobozi w'ishyaka rya CDR, abarimu n'abandi benshi, ko iyo nama yatangiwemo amabwiriza yo kwica abatutsi, Bazaramba François ashingwa kugenzura uko kwica bizakorwa, Akobagaya Razaro ashingwa kwica muri ako gace naho Sesonga Frodouald ashingwa kugenzura aho abatutsi bagomba kwicirwa nk'uko bisobanurwa na Rutayisire Joseph wabajijwe mu iperereza.

[94] Bunavuga ko kuwa 14/04/1994, NTAGANZWA Ladislas aherekejwe n'abajandarume yakoresheje inama muri segiteri ya Nkakwa ari kumwe na konseye Ngendamagabo Théoneste, abaturage benshi n'impunzi z'abarundi, atangiramo amabwiriza y'uko bagomba kwica abatutsi bose, avuga ko abatutsi ari abanzi b'igihugu, anategeka ko nta mututsi ugomba guhungira i Burundi ko uwo bazafata bagomba kumwica, ko ayo mabwiriza yashyizwe mu bikorwa bagarura abatutsi bahungiraga i Burundi bicirwa ahitwa Gisoro, abandi bagera ku icumi bicirwa muri selire ya Kaduha, batangira gutwika amazu no gushakisha abatutsi aho bihishe bakabica bakoresheje intwaro gakondo, ko NTAGANZWA yanatanze amabwiriza y'uko umuntu wese udashaka kwifatanya n'abandi kwica abatutsi nawe agomba kwicwa cyangwa bakamumushyira akamufatira ibyemezo.

[95] Bunavuga nanone ko kuwa 14/04/1994, NTAGANZWA Ladislas yakanguriye abahutu bo muri komini Nyakizu gukaza amarondo kugira ngo hatagira umututsi uhungira i Burundi bakoresheje inzira yerekeza i Nkakwa ku mupaka, anavuga ko uwo bafata bahita bamwica.

[96] Ubushinjacyaha bukomeza buvuga ko ku itariki ya 20/5/1994 hari inama yabereye ku isoko rya Viro yasabye abaturage kwirwanaho bagakomeza gushakisha umwanzi aho ariho hose, ko numuhisha nawe akwiye gufatwa nk'umwanzi, ko iyo nama yitabiriwe n'abayobozi barimo Sylvain Nsabimana, Alphonse Nteziryayo, Colonel Simba Aloys, Perezida w'urukiko rwa mbere rw'iremezo rwa Butare Ruzindana, colonel Muvunyi Tharcisse, NTAGANZWA Ladislas n'abaturage bo mu masegiteri ya Cyahinda, Nyagisozi, Rutobwe na Muhambara, ko muri iyo nama Nteziryayo Alphonse yahaye NTAGANZWA Ladislas imbunda ebyiri, anavuga ko azohereza izindi ku biro bya komine Nyakizu, uyu nawe yerekana abasore bari barahawe imyitozo ya gisirikare, Colonel Muvunyi ababwira ko inkotanyi zitera mu dutsiko tw'abantu batanu, ko bakwiye kwirwanaho ntibagire ubwoba. Buvuga ko nyuma y'iyo nama hishwe abatutsi benshi

biturutse ku mabwiriza yayitangiwemo, ko inama irangiye NTAGANZWA yafashe abasore bamwe abajyana mu modoka ya komini bajya kwica abatutsi bari barahishwe n'abaturage i Cyahinda, ko na konseye Ngendamagabo Théoneste wari konseye wa segiteri Nkakwa yafashe abaturage n'impunzi z'abarundi bajya kwica abatutsi bari bihishe mu baturage barimo Mvumbuko Martin, abana bane ba Kasine n'umwana wa Mukankusi.

►Imyiregurire ya NTAGANZWA Ladislas

[97] NTAGANZWA Ladislas n'abamwunganira bavuga ko nta nama yatangiwemo amabwiriza yo kwica abatutsi yigeze akoresha muri segiteri ya Nkakwa kuwa 14/04/1994, ko n'abatangabuhamya b'ubushinjacyaha bavuga ko yahageze bwije, ko rero bitari gushoboka ko akoresha inama nijoro kuko icyo gihe byari bibujijwe gukoresha inama cyangwa kurema udutsiko. Bakomeza bavuga ko umwe mu batangabuhamya b'ubushinjacyaha yemeza ko impunzi zari zivuye i Kibeho zishwe mu gitondo cyo kuwa 15/04/1994 NTAGANZWA adahari, ko n'umupolisi wari uhari atakoresheje intwaro ye mu kubica, ko byongeye kandi ubushinjacyaha buterekana ko ariwe watanze amabwiriza yo kwica izo mpunzi kuko hari abavuga ko yahageze zamaze kugarurwa n'abandi bavuga ko yahageze zamaze kwicirwa hakurya y'Akanyaru.

[98] [98] Banavuga ko NTAGANZWA Ladislas atabazwa ibirebana n'inama yo ku rwego rwa perefegitura yabereye i Viro kuwa 20/05/1994 irimo perefe n'uhagarariye ingabo, ko n'imbunda ebyiri za Karachinikov yaherewe muri iyo nama yazihawe mu rwego rwo kongerera ubushobozi abashinzwe umutekano muri komini, ko nawe yahise aziha ushinzwe imbunda muri komine, ko nta yindi nama yigeze akoresha itangirwamo imbunda kandi n'izo zatanzwe mu buryo bukurikije amategeko kuko Burugumesitiri ariwe itegeko ryahaga ububasha bwo gutegeka abapolisi no kubashakira ibikoresho, ko rero atabona icyo ubushinjacyaha buheraho buzimurega cyane cyane ko kuri iyo tariki muri Nyakizu ubwicanyi bwari bwararangiye. Bavuga kandi ko nta nama zo gukangurira abahutu kwica abatutsi azi zabereye i Nyantanga hagati y'itariki ya 7 n'iya 8/04/1994, kuko icyo gihe ubushinjacyaha buvuga zabereye bunivugira ko yashishikarizaga abatutsi guhungira i Cyahinda abizeza kubarindira umutekano.

UKO URUKIKO RUBIBONA

►Inama zabereye i Nyantanga

[99] Urukiko rusanga imvugo ubushinjacyaha bushingiraho burega NTAGANZWA Ladislas iby'inama yabereye i Nyantanga igatangirwamo amabwiriza yo kwica abatutsi ari iza Rutayisire Joseph wabajijwe mu iperereza akavuga ko hagati y'itariki ya 7 n'iya 8/04/1994, NTAGANZWA Ladislas yakoresheje inama ku mashuri i Nyantanga irimo Mulindahabi Justin wari superefe wa superefegitura ya Gisagara, Bazaramba François wari diregiteri w'ishuli ry'imyuga rya Nyantanga, Akobagaya Razaro umurundi w'impunzi, Sesonga Frodouald wari umuyobozi w'ishyaka rya CDR, abarimu n'abandi benshi, ko iyo nama yatangiwemo amabwiriza yo kwica abatutsi; Bazaramba François ashingwa kugenzura uko kwica bizakorwa, Akobagaya Razaro ashingwa kwica muri ako gace naho Sesonga Frodouald ashingwa kugenzura aho abatutsi bagomba kwicirwa.

[100] Urukiko rusesenguye iyo mvugo, rusanga yonyine itaba ikimenyetso kidashidikanywaho cyemeza ko ku matariki y'itariki ya 7 n'iya 8/04/1994, NTAGANZWA Ladislas yaremesheje

inama yo gutegura jenoside ku mashuli y'i Nyantanga kuko ibyo avuga ari ibyo yabwiwe n'abasore b'inshuti ze bidashyigikiwe n'ubuhamya bwatangiwe mu rukiko nk'uko biteganywa n'ingingo 8 igika cya 3 cy'Itegeko Nº 47/2013 ryo kuwa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda iteganya ko urukiko rushobora guhamya umuntu icyaha rushingiye ku gaciro k'ubuhamya bwanditse bwatanzwe mbere n'abatangabuhamya batahamagajwe mu rukiko iyo bufite ubundi bubushyigikira.

►Inama yabereye i Viro

[101] Mu batangabuhamya bavuze kuri iyi nama harimo Nkomezamihigo Louis uvuga ko ku gicamunsi cyo kuwa 20/04/1994 yabonye NTAGANZWA Ladislas mu nama yabereye i Viro muri Nyakizu yari igamije kubasobanurira ibyo kwirindira umutekano irimo Colonel Muvunyi Tharcisse, Nteziryayo Alphonse wari Perefe, Colonel Simba Aloys, Ruzindaza Perezida w'Urukiko rwa Mbere rw'Iremezo rwa Butare na Nsabimana Sylvain wari perefe ucyuye igihe, ko abafashe ijambo ari Colonel Muvunyi Tharcisse, Nteziryayo na NTAGANZWA wavuze ko bagomba kwirindira umutekano ariko ko nta ntwaro bafite, anerekana abasore bagomba kuwurinda, nyuma perefe amuha imbunda y'icyitegererezo avuga ko izindi azisiga kuri komini.

[102] Avuga ko batashye nka saa kumi n'ebyiri inama irangiye bageze i Cyahinda mu ihuriro ry'imihanda aho bita kwa Bahizi, uwitwa Beleton, Burigadiye Hussein n'umushoferi wa NTAGANZWA, uyu yari yasize aho bavuye mu nama, bababujije kujya mu ngo zabo, barabashorera baberekeza i Saburunduru gusaka inyenzi, ko muri iryo joro abari babahagaritse bagiye mu gitero cyishe abana bavuka ku bagore b'abahutukazi bashatse mu batutsi barimo abo kwa Vianney, hanicwa abandi bantu benshi, ko ibyo babibwiwe na ba nyina b'abo bana, ko hari n'ababyireze muri Gacaca.

[103] Undi mutangabuhamya wavuze kuri iyo nama ni DND uvuga ko kuwa 19/05/1994 nka saa saba ishyira saa munani hari inama yabereye i Viro yarimo Colonel Muvunyi Tharicisse na Nteziryayo Alphonse n'abaturage benshi bagera ku bihumbi bibiri, ko muri iyo nama abo basirikare bari bayirimo bavuze ku bijyanye no kwirindira umutekano (auto défense civile), ko banarashe mu kirere abaturage baragwirirana, abasirikare bahita bababahumuriza bababwira ko batagomba kugira ubwoba , ahubwo bagomba kwirinda umwanzi ari we mututsi, ko icyo gihe NTAGANZWA yari yabanje gufata ijambo ryo gutanga ikaze, ko na colonel Muvunyi yamuhaye imbunda enye zo gukomeza kwirinda zikaba zarakoreshwaga n'abazaga kuri komini ku izamu kugeza bahunze ariko ko atamenye irengero ryazo kuko burugumesitiri we yahunganye imbunda ya Karachinikov.

[104] Anavuga ko inama irangiye i Cyahinda hishwe abantu benshi barimo umuryango w'abarori, uwitwa Kamatari, Vital, Françoise w' umuhutukazi wari warashatse mu batutsi n'abana, ko ababishe barimo Habimana na Sebanani babyireze muri Gacaca. Mu buhamya bwe kandi avugamo abasore bitwa Nkomeje na Rubazinda bishe abana bagera ku icumu, ko hari abandi bana batatu abo basore bavanye ku mukecuru witwa Domina arababaka abashyira NTAGANZWA Ladislas mu rugo iwe, ko iyicwa ry'abo bana ntaho rihuriye n'inama yabereye i Viro, ko uretse abo bana nta bandi bana azi NTAGANZWA yagize uruhare mu iyicwa ryabo.

[105] Hatungimana Jean Baptiste wabajijwe atarahiye, we mu makuru yatanze mu rukiko yavuze ko kuwa 20/05/1994 i Viro haje abayobozi barimo Nteziryayo na Colonel Simba, uwitwa

Murekezi Etienne ababwira ko hari abantu bahishe mu ngo zabo maze ababaza icyo bakora, bamusubiza bavuga ngo “nimukureho”, ko icyo gihe hishwe abana bari barasigaye i Nyakizu. Anavuga ko uwo munsi Colonel Simba yahaye Baziga wari umupolisi warindaga NTAGANZWA Ladislas imbunda kandi ko izo mbunda ari NTAGANZWA wari warazisabye.

[106] Urukiko rusuzumye ubuhamya bwatanzwe na Nkomezamihigo Louis na DND bugaragaza ko i Viro habaye inama yahuje abaturage benshi, NTAGANZWA Ladislas n’abandi bayobozi b’inzego za gisivile n’iza gisirikari yavugaga ku bijyanye no kwirindira umutekano, NTAGANZWA Ladislas ayiherwamo imbunda. Ibyo kuba kandi i Viro harabaye inama igatangirwamo imbunda binemezwa na Hatangimana Jean Baptiste wabajijwe n’urukiko nk’umutangamakuru. Urukiko runasanga na NTAGANZWA yemera ko iyo nama yabaye kuwa 20/05/1994 ayiherwamo imbunda mu rwego rwo kongerera ubushobozi abashinzwe umutekano muri komini.

[107] Urukiko rusanga ariko nta kimenyetso kidashidikanywaho kigaragaza ko hari amabwiriza yo kwica abatutsi NTAGANZWA Ladislas yatangiye muri iyo nama kuko abatangabuhamya babajijwe kuri iyo nama ntawe ubyemeza kubera ko icyo Nkomezamihigo Louis avuga ari uko NTAGANZWA Ladislas yavuze ko bagomba kwirindira umutekano naho DND akaba avuga ko icyo NTAGANZWA yakoze ari ugutanga ikaze, naho iby’ uko bagomba kwirinda umwanzi ari we mututsi bikaba byaravuzwe n’abasirikari bari bamaze kurasa mu kirere na Hatangimana Jean Baptiste watanze amakuru akaba yaremeje ko ari uwitwa Murekezi Etienne wabajije icyo bagomba gukorera abatutsi bahishe mu ngo zabo, akaba atagaragaza ko hari icyo NTAGANZWA yavuze bagomba kubakorera.

[108] Urukiko rurasanga n’ibyo Nkomezamihigo Louis avuga ko iby’iyicwa ry’abantu n’iry’abana bishwe nyuma y’inama y’i Viro n’uko hari n’ababyireze muri Gacaca atavuga abo ari bo nabyo bitagaragaza uruhare rwa NTAGANZWA Ladislas mu iyicwa ryabo kuko ibyo avuga ari ibyo avuga ko yumvanye abandi bidashyigikiwe n’ubundi buhamya bwatangiwe mu rukiko.

[109] Rusanga kandi na DND atagaragaza uruhare rwa NTAGANZWA Ladislas mu iyicwa ry’abantu bishwe nyuma y’iyo nama kuko mu buhamya bwe yivuguruza hamwe avuga ko abana batatu bakuwe kwa Domina akabasiga mu rugo kwa NTAGANZWA, ahandi akavuga ko bishwe adasobanura uburyo bishwemo n’uruhare yabigizemo. Rusanga nanone n’iyicwa ry’abandi bantu barimo abana icumi (10) atagaragaza uruhare rwa NTAGANZWA mu iyicwa ryabo kuko abo avuga babireze muri gacaca batavuze ko yabigizemo uruhare, byongeye kandi mu buhamya bwe hakaba hari aho agaragaza ko iyicwa ry’abo bana ridafitanye isano n’inama yabereye i Viro, ndetse anabazwa mu bushinjacyaha akaba yari yavuze ko abayobozi bari kumwe na NTAGANZWA Ladislas muri iyo nama ari bo bategetse ko abana bavuka ku bahutukazi bashatse mu batutsi bashakishwa bakicwa kuko nabo ari inyenzi.

►Inama yabereye i Nkakwa

Ubuhamya bwatanzwe

[110] Ku byerekeranye n’inama n’iyicwa ry’abatutsi bahungiraga i Burundi, umutangabuhamya DNC avuga ko kuwa 14/04/1994 we na bagenzi be bagera kuri magana arindwi (700) bari mu nzira bahungira i Burundi bageze kuri santeri ka Viro nka saa kumi cyangwa saa kumi n’imwe

bahura na NTAGANZWA ari kumwe n'abapolisi batatu(3) n'interahamwe umunani (8) zifite ubuhiri n'imipanga, barabahagarika bababaza aho bagiye, NTAGANZWA n'abo bari kumwe bababwira ko babereka aho bajya bakabarindira umutekano ariko barabyanga barakomeza, nko mu masaa kumi n' ebyiri za nimugoroba bageze ahitwa i Nkakwa ku cyambu cya Cyimfizi interahamwe zaho zitangira kubavugiriza induru babwira abantu b' i Burundi ko batewe bituma batangira kubica bataragera ku Kanyaru bamwe barapfa barimo Muzungu Emmanuel, Karekezi Gratien, Ntabana Faustin, Karengera Alexis, Karekezi n'abandi benshi atibuka, ko we n'abandi bambutse bageze i Burundi babaka intwaro za gakondo bari bafite bababwira gusubira iyo bavuye, bamwe babasha kugaruka mu Rwanda, abandi abarundi babatemagurira ku Kanyaru. Avuga ko icyo gihe atamenye niba na NTAGANZWA yari mu gitero cyabakurikiye ariko nk'umuyobozi wa komine ntacyo yakoze ngo abo bantu baticwa.

[111] Umutangabuhamya DND we avuga ko kuwa 14/04/1994, NTAGANZWA Ladislas yazengurutse amasegiteri ya komini Nyakizu afite indangururamajwi ahamagarira abaturage kujya gutabara i Nkakwa, ko nko mu masaa kumi n'ebyiri n'igice yaje i Nyagisozi hafi yaho yacururizaga amushyira mu modoka barajyana bageze i Nkakwa bahasanga abantu barimo uwitwa Maniraho wari diregiteri w'amashuli, ababwira ko yamenye ko hari impunzi z'abatutsi zirimo guhungira i Burundi, ko zitagomba kubacika ngo zigende, amaze kuvuga ayo magambo abaturage n'insoresore z'abarundi bahise bazikurikira kugira ngo bazigarure kuko zari zageze ku Kanyaru nabo mu ma saa mbili z'ijoro basubira i Nyagisozi. Anavuga ko mu makuru yumviye mu ikusanyamakuru ryo muri gereza ari uko izo mpunzi zishwe n'abari bazikurikiye, ko hanavuzwe ko NTAGANZWA yagiye ajya i Nkakwa incuro nyinshi ari nijoro, ko ikibigaragaza ari uko mu ijoro ryo kuwa 14 rishyira kuwa 15/04/1994 abasore bagiye kwica i Nkakwa bazamutse bica abatutsi bari bakiri mu ngo zabo.

[112] Umutangabuhamya Sezibera Révérien avuga ko kuwa 14/04/1994 ubwo abatutsi barimo bahungira i Burundi bari ku musozi wa Cyimfizi, we yari kwa Maniraho ku musozi hejuru i Nkakwa ahitwaga mu Bihembe muri serire ya Kaduha aho NTAGANZWA yabasanze nka saa moya z'ijoro ari kumwe n'impunzi z'abarundi bakurikiye abo batutsi bahungiraga i Burundi, ko yabakoresheje inama ari abantu magana ane (400) b'i Nkakwa no mu yandi masegiteri bari bateraniye aho, abasaba kubagarura avuga ngo : « ntibabacike babice kuko ari abanzi b'amahoro », ko yanababwiye ko agiye kuzana abandi bantu bo kubafasha bo mu masegiteri ya Mwoya, Rutobwe, Muhambara na Nyagisozi. Anavuga ko bamwe mu batutsi bari aho barimo Gashugi Jean bari biriwe basangira bamaze kumva ayo magambo ya NTAGANZWA bahise bahunga, ko muri iryo joro yanamubonye incuro eshatu agenda atunda abantu ababwira ngo:"mukore".

[113] Akomeza avuga ko bafatanyije n'impunzi z'abarundi bahise bajya kugarura abatutsi bahungiraga i Burundi, babicira ahitwa i Gisoro, ko icyo gihe babagarura NTAGANZWA yari ahari, ko hari n'abapfuye ahari, ko ibyo birangiye NTAGANZWA yababwiye ko ubwo ab'i Nkankwa barangiye, bagiye gukomereza i Cyahinda. Anavuga ko abantu bazanye na NTAGANZWA i Nkakwa barimo abasirikare barenga icumi, impunzi z'abarundi, Nkurunziza w'umupolisi, Nshimiye wari umwarimu, Musayidi, Merani n'abandi atibuka, ko hari abaje mu modoka n'abaje n'amaguru, aremesha inama, impunzi z'abarundi zirambuka zigarura abatutsi bari bamaze guhunga. Yanavuze ko NTAGANZWA yabonanye n'abatutsi bahungaga.

[114] Umutangabuhamya Ruhinguka Vital we avuga ko mu 1994 hari ubwo yabonye NTAGANZWA Ladislas nka saa kumi n'imwe ari mu modoka ajya mu Bihembe, abasanga kuri

santeri y’iwabo barimo kunywa inzoga, ko icyo gihe abatutsi bari bavuye i Cyahinda bahungiraga i Burundi, ko NTAGANZWA ahageze yahamagaye konseye Ngendamagabo amubaza icyo barimo gukora avuga ko abatutsi bagiye kubatanga imbere kugira ngo bazagaruke babatera, asaba ko abaturage babakurikira bakabagarura uwanze kujya yo bakabimumenyesha, ko abagiye yo bari bafite ubuhiri n’imipanga babavugiriza induru n’amafirimbi ariko ko basanze abatutsi bamaze kwambukira i Burundi, babagarura bageze ku gasanteri ka mu Mubuga i Burundi, ko bajya kubatangira batajyanye na NTAGANZWA kuko yahise ajya i Kibangu n’imodoka akaba yaragendanaga n’abapolisi bafite imbunda ariko ko ntawe barashe, ko nta n’umupolisi yasize aho i Nkakwa, ko konseye wa segiteri ya Nkakwa Ngendamagabo nawe yababwiraga gukora avuga ko ari amabwiriza yahawe na NTAGANZWA.

[115] Mu buhamya bwe kandi anavuga ko impunzi z’abarundi zaje zikurikiye NTAGANZWA zishe abagera kuri mirongo inani (80), ko bukeye kuwa 15/04/1994 hari abandi batutsi barenga magana abiri (200) cyangwa magana atatu (300) biciye i Gisoro ku Kanyaru , babajugunya mu cyobo cyarimo amatafari babitegetswe n’abayobozi, ko mu bishwe icyo gihe barimo Rubonesha Silas n’umuhungu we kandi ko igitero cyagiye gutangira abandi batutsi bahungaga cyarimo abantu benshi baturutse Nyagisozi, Nkakwa, Rutobwe, Muhambara, Cyahinda n’i Kibangu n’ahandi.

[116] Mukankusi Espérance we asobanura ko kuwa 14/04/1994 nka saa cyenda NTAGANZWA Ladislas yagaruye abantu bari bavuye ahitwa Karama abohereza i Cyahinda avuga ko agiye kubarindira umutekano bamwe baremera bajyayo abandi barabyanga, ko abakomeje yumvise ko biciwe i Nkakwa hagati ya saa kumi na saa kumi n’imwe n’abantu yabonye NTAGANZWA arimo apakirira ku gasanteri ka Cyahinda bafite ubuhiri, imipanda n’izindi ntwaro.

►Icyo NTAGANZWA Ladislas avuga ku buhamya bwatanzwe

[117] NTAGANZWA Ladislas n’abamwunganira banenga ubuhamya bwatanzwe bavuga ko ubuhamya Ubushinjacyaha bushingiraho butahabwa agaciro kuko umutangabuhamya Sezibera Révérien yivuguruza kubera ko abazwa mu rukiko yahamije ko NTAGANZWA ageze i Nkakwa kuwa 14/04/1994 saa moya z’ijoro yakoresheje inama kandi ko yahasanze impunzi z’abatutsi, anabonana na zo naho abazwa mu iperereza akaba yari yavuze ko yageze i Nkakwa izo mpunzi zamaze kwambuka i Burundi, ahandi avuga ko ubwo NTAGANZWA yageraga i Nkakwa, yasanze impunzi z’abatutsi abarundi bamaze kuzigarura ngo zicwe, ko rero kuba imvugo ze zivuguruzanya bigaragaza ko uwo mutangabuhamya atabonye NTAGANZWA i Nkakwa uwo munsi.

[118] Bakomeza bavuga ko n’ubuhamya bwa DND nabwo butashingirwaho kuko atavuga ko NTAGANZWA ageze i Nkakwa yakoresheje inama abari bahari ayitangiramo itegeko ryo kugarura impunzi z’abatutsi zahungiraga i Burundi, ko nta n’aho avuga ko yabonanye na konseye wa segiteri Nkakwa, ko n’ibyo avuga ko NTAGANZWA ageze i Nkakwa yabonanye n’abantu barimo Maniraho wari Diregiteri w’amashuli akamubwira ko izo mpunzi yamenye ko ari abatutsi ko batagomba kubacika, bazigarura atari byo kuko uwo Maniraho ntacyo yari ahagarariye muri segiteri Nkakwa, ko nta n’icyo yari kumutuma ngo yizere ko agikora, n’abaturage bakaba batari kumwumvira. Bavuga kandi ko DND yiyemereye ko amakuru yo kugarura impunzi zahungiraga i Burundi yayamenyeye muri Gacaca ya gereza abibwiwe na Sezibera Révérien na Ruhinguka Vital kandi atari kuyayoberwa kuko yari mubari bashinzwe umutekano muri komini, ahorana na Ntaganzwa Ladislas.

[119] Bavuga ko n'ibyo bavuga ko NTAGANZWA yasanze impunzi z'abatutsi i Nkakwa zitarambuka i Burundi agatanga itegeko ryo kuzigarura binyuranye n'ibyo umutangabuhamya Ruhinguka Vital yavuze kuko yemeza ko NTAGANZWA yageze i Nkakwa impunzi z'abatutsi zimaze kwambuka i Burundi kandi ko ariho ziciwe nta wagarutse hakuno, ko kuba NTAGANZWA Ladislas nta mpunzi yategetse ko zigarurwa bishimigirwa n'ibyo avuga ko ubwo yageraga i Nkakwa hari saa kumi n'igice yavuganye na konseye arangije ahita yigendera, ndetse n'ubuhamya bwa DNC wahamije ko NTAGANZWA nta ruhare yagize mu kwica impunzi cyangwa kuzigarura mu Rwanda, akanavuga ko hari abatutsi bishwe n'abarundi bamaze guhungira yo, ko atigeze abona NTAGANZWA i Nkakwa.

[120] Basoza bavuga ko abavuga ko yakoresheje inama na bo banyuranya ku masaha Ntaganzwa yayikoresherejeho, kuko umwe avuga ko hari hakibona ari saa kumi n'igice, undi akavuga ko hari nijoro saa moya, bigaragaza ko nta n'umwe wamubonye akoresha iyo nama yatangiwemo amabwiriza yo kwicwa abatutsi bahungaga, ko kuba izo mpunzi zariciwe i Burundi nta ruhare yabigizemo kuko nta bubasha yari afite bwo gutegeka ko bicirwa yo cyangwa bwo gutegeka ko zigarurwa mu Rwanda.

UKO URUKIKO RUBIBONA

[121] Urukiko rusesenguye ubuhamya bwatanzwe ku iyicwa ry'abatutsi bahungiraga i Burundi banyuze muri segiteri ya Nkakwa, rusanga harimo abavuga ko NTAGANZWA Ladislas ari we wabwiye abaturage yasanze i Nkakwa kujya kugarura abatutsi bahungaga n'uvuga ko ibyo kubagarura, NTAGANZWA yabibwiye konseye Ngendamagabo, uyu aba ari we ubwira abaturage gukurikira abatutsi bakabagarura; batangira abari batarambuka Akanyaru, barabagarura barabica, bamwe babicira aho babajugunya mu Kanyaru, abandi babicira ku Gisoro n'ahandi. Urukiko rusanga ikigaragara muri ubwo buhamya ari uko ku mugoroba wo kuwa 14/04/1994, NTAGANZWA Ladislas yageze i Nkakwa ahasanga abantu barimo konseye Ngendamagabo Théoneste amubwira kutareka abatutsi bahungira i Burundi, konseye nawe abwira abaturage kujya kubatangira, barabagarura barabica nk'uko umutangabuhamya Ruhinguka Vital yakomeje kubisobanura haba mu iperereza no mu rukiko.

[122] Urukiko rusanga icyakora muri ubwo buhamya nta kigaragaza ku buryo budashidikanywaho ko NTAGANZWA agera i Nkakwa yakoresheje inama abaturage kubera ko Sezibera Révérien na Ruhungika Vital bavuga ko NTAGANZWA yabasanze i Nkakwa batabihurizaho kuko Sezibera avuga ko yabakoresheje inama ababwira kujya kugarura abatutsi bahungaga naho Ruhinguka akavuga ko NTAGANZWA ahageze ibyo kugarura abatutsi yabibwiye konseye Ngendamagabo, uyu aba ari we uhamagara abaturage ababwira kujya kubagarura, mu gihe DND uvuga ko yajyanye na NTAGANZWA i Nkakwa uwo munsi, ibyo yavuze mu iperereza by'uko NTAGANZWA ageze kuri santeri hafi y'Akanyaru yegeranyije abantu yahasanze abakoresha inama ababwira ko izo mpunzi zitagomba kubacika ariko atanga ubuhamya mu rukiko ibyo yavuze ari uko bageze i Nkakwa bahasanze abantu barimo uwitwa Maniraho wari diregiteri w'amashuli, NTAGANZWA ababwira ko yamenye ko izo mpunzi ari abatutsi, ko batagomba kubacika ngo bagende atavuga ko ari inama yabakoresheje.

[123] Rusanga ibyo NTAGANZWA Ladislas n'abamwunganira banenga ubuhamya bwa DND bavuga ko ntacyo yari gutuma Maniraho ngo abaturage bamwumve kuko ntacyo yari ahagarariye

muri segiteri, bitatesha agaciro ubuhamya bwe kubera ko iby'uko NTAGANZWA Ladislas yageze i NKakwa ku mugoroba wo kuwa 14/04/1994 n'ibyakurikiyeho byo kugarura abatutsi bakabica abihurizaho n'abandi batangabuhamya nk'uko byasobanuwe, ndetse n'ibyo bavuga by'uko kugarura abatutsi bahungiraga i Burundi no kubica DND yabyumviye muri Gacaca ya gereza nabyo bitatuma ubuhamya bwe budashingirwaho nk'ikimenyetso kigaragaza uruhare rwa NTAGANZWA mu iyicwa ry'abo batutsi kuko Sezibera Révérien na Ruhinguka Vital avuga ko yabyumbanye batanze ubuhamya mu rukiko bemeza ko yageze i Nkakwa n'uko bagiye kugarura abatutsi baranabica.

[124] Rusanga n'ibyo bavuga ko Ruhinguka Vital na DNC batavuga ko hari uruhare yagize mu iyicwa ry'abo batutsi, nabyo nta shingiro bifite kuko Ruhinguha Vital agaragaza neza uruhare rwe aho avuga ko NTAGANZWA ageze i Nkakwa ari we wasabye konseye ko abo batutsi bagarurwa, nyuma baragarurwa baricwa naho DNC akaba nawe atamushinjura kubera ko ibyo avuga by'uko yari mu bantu bahungiraga i Burundi bahuriye na NTAGANZWA ku gasanteri ka Viro arabahagarika barabyanga barakomeza bageze i Nkakwa ku cyambu cya Cyimfizi interahamwe zaho zitangira kubavugiriza induru babwira abantu b' i Burundi ko batewe bituma bamwe bicwa bataragera ku Kanyaru, abandi abarundi babatemagurira ku Kanyaru byuzuzanya n'ibyo abandi batangabuhamya bavuga ku iyicwa ry'abantu bahungiraga i Burundi.

[125] Rusanga nanone n'ibyo bavuga ko umutangabuhamya Sezibera Révérien yivuguruza kuko abazwa mu rukiko yahamije ko NTAGANZWA ageze i Nkakwa kuwa 14/04/1994 saa moya z'ijoro yakoresheje inama kandi ko yahasanze impunzi z'abatutsi, anabonana na zo, naho abazwa mu iperereza akaba yari yaravuze ko NTAGANZWA yageze i Nkakwa zamaze kwambuka i Burundi, ndetse akanavuga ko yasanze impunzi z'abatutsi abarundi bamaze kuzigarura i Nkakwa, bitatuma ubuhamya bwe buteshwa agaciro kuko ubuhamya bwe bwuzuzanya n'ubwa DND na Ruhinguka Vital bemeza ko mu mugoroba wo kuwa 14/04/1994 NTAGANZWA Ladislas yageze i Nkakwa, abaturage bajya kugarura abatutsi barimo bahungira i Burundi, bamwe barabagurura baricwa.

1.3 Ku birebana n'ubwicanyi bwakorewe abatutsi muri segiteri ya Maraba

►Imiburanire y'Ubushinjacyaha

[126] Ubushinjacyaha buvuga ko ku itariki ya 15/04/1994, NTAGANZWA Ladislas yavuye i Butare ari mu modoka ya komini ari kumwe n'abajandarume, ahagarara kuri santeri ya Maraba ku ivuriro, akoresha inama abaturage benshi bari bamutegereje bitwaje intwaro gakondo, abashishikariza gukora ashaka kuvuga kwica abatutsi, ko nyuma y'ayo magambo, amazu y'abatutsi yatwitswe, abaturage batangira no kwica abatutsi bahereye ku mukozi wakoraga ku ivuriro wari wihishe ku witwa Seburindi Onesphore. Bunavuga ko amaze gutangiza ubwicanyi i Maraba yasize atumye uwitwa Havugwanayo Faustin wari urubyiruko rw'ishyaka rya MDR (umujideri) kuri Bazaramba François na Dusabe Geoffrey kubabwira ko batangira kwica abatutsi akoresheje ijambo "gukora"yakomeje ajya i Cyahinda, Bazaramba nawe ahita asaba abaturage kwica abatutsi ababwira ko utitabira ubwicanyi nawe yicwa, hicwa Emmanuel n'umugore we.

[127] Busobanura ko mu bihe bisanzwe ijambo "gukora" ritavuga kwica ariko ko harebwe igihe NTAGANZWA yarikoreshejemo hirya no hino mu gihugu abatutsi barimo kwicwa ndetse n'i Nkakwa haraye hiciwe abandi bahungiraga i Burundi, nta bindi bisobanuro ryari guhabwa kuko

amaze kurikoresha n'abaturage batangiye kwica abatutsi, ko na nyuma y'iminsi ine kuwa 19/04/1994 uwahoze ari Perezida Sindikubwabo nawe yarikoresheje ari i Butare akangurira abahutu kwica abatutsi.

►Imyiregurire ya NTAGANZWA Ladislas

[128] NTAGANZWA Ladislas n'abamwunganira bavuga ko ubushinjacyaha bumurega ko ubwo yanyuraga i Maraba avuye i Butare kuwa 15/04/1994 yakoresheje inama abwira abaturage bari aho gukora ashaka kuvuga kwica abatutsi, ko ibyo atari byo kuko ijambo "gukora" ritavuga kwica abatutsi, ko butanagaragaza igihe iryo jambo ryatangiriye gukoreshwa kugira ngo abaribwiwe bahite bumva ko babwiwe kwica abatutsi atari ugukora umurimo usanzwe.

[129] Banavuga ko ibyo bumushinja ko yatumye kuri Dusabe na Bazaramba gutangira kwica abatutsi n'uko yavuze ko nagaruka asanga nta batutsi bahari nabyo ntabyabayeho kuko n'abatangabuhamya b'ubushinjacyaha bavuguruzanya ku byahabereye kubera ko hari uvuga ko NTAGANZWA Ladislas ahagera abahutu n'abatutsi bari kumwe maze akavuga ko nagaruka atahasanga abatutsi, hakaba n'uvuga ko bashoreye abatutsi bahura na NTAGANZWA ku Gatuku ababwira kubica.

Ubuhamya ku bwicanyi bwakorewe abatutsi muri segiteri ya Maraba

[130] Umutangabuhamya DHN atanga ubuhamya mu rukiko yejemeje ko kuwa 15/04/1994 nko mu ma saa tanu ubwo bari mu mirima yabo bahingaga basabwe kujya ku muhanda i Maraba ahitwa ku mugano bari kumwe n'abatutsi, ko NTAGANZWA Ladislas yahabasanze avuye kuri komini yerekeza i Kibangu, ababwira gukora isuku bagasiba urugomo, abasobanurira ko gukora isuku ari ukwica abatutsi naho gusiba urugomo ari ukutagira uwo bakomeretsa ahubwo babica, ko avuye i Kibangu yasanze baboshye abatutsi ababwira kubica ntihagire n'umwe usigara, anabasobanurira ko iyo ukubuye ibishingwe ubijugunya mu kinogo. Anemeza ko nabo bishe abatutsi barimo imiryango igera ku icumi (10), NdekezI Cassien, Karegeya Gaspard, Minani Michel, Kalisa Karoli, Gatsimbanyi, Hitimana Alexis n'abandi bicwa ariko kuri uwo munsi kuwa 15/04/1994 hari umukobwa witwa Mukambabazi Appoline wabacitse. Mu buhamya bwe kandi avuga ko ibyo kuboha abatutsi ari NTAGANZWA wabibabwiye, ahandi akavuga ko ari konseye Munyakazi Etienne wabibabwiye kuko yari yakoranye inama na NTAGANZWA.

[131] Umutangabuhamya Rugimbana Apollinaire we yemeza ko kuwa gatanu tariki 15/04/1994 hagati ya saa tatu na saa yine yagiye i Maraba kwivuza aho bita ku mugano ahageze ahasanga abaturage benshi, nyuma haza NTAGANZWA Ladislas avuye i Butare ari kumwe n'abajandarume babiri n'umushoferi, ko nyuma gato haje no kuza indi modoka irimo abajandarume benshi. Akomeza avuga ko NTAGANZWA Ladislas ahageze yababwiye ko mu minota itanu hatagira umututsi uba ukiri muri iyo segiteri, maze ahamagara Nzakora amutuma kuri Bazaramba na Geoffrey ngo batangire bakore, ko we amaze kumva ayo magambo yahise agenda, ko atamenye igihe NTAGANZWA yamaranye n'abaturage bari bamutegereje, ko nyuma yaje kubona amazu y'abatutsi b'i Maraba atangiye gushya ariko nta muntu wishwe ahari. Yanavuze ko ahandi yabonye NTAGANZWA Ladislas ari i Kiyonza ariko ko atamubonye mu bwicanyi bwo kuri "kiosque" ya Bazaramba kuwa 13 no kuwa 14/04/1994 ahiciwe abasore bahungaga.

Ibyo NTAGANZWA Ladisilas anenga imvugo z'abatangabuhamya

[132] NTAGANZWA Ladislas n'abamwunganira bavuga ko ku byerekeranye n'inama ubushinjacyaha buvuga ko yakoresheje i Maraba ku mugano kuwa 15/04/1994 n'amagambo yahavugiye abwira abahutu kwica abatutsi akoresheje ijambo « gukora », basanga ubuhamya bushingirwaho buvuguruzanya kuko DNH yabwiye Urukiko ko ayo magambo NTAGANZWA yayavuze avuye ku biro bya komini yerekeza i Kibangu mu gitondo cyo kuri 15/04/94 mu ma saa tanu z'amanywa, bihabanye n'imvugo z'abandi batangabihamya b'Ubushinjacyaha barimo Rugimbana Appolinaire wemeza ko uwo munsi kuri iyo saha NTAGANZWA yavaga mu nzira ituruka i Kibangu yerekeza ku biro bya komini, Banganakwinshi Augustin abazwa mu bushinjacyaha we yavuze ko NTAGANZWA yahuriye nabo ku Gatuku bashoreye abatutsi babavana ku mugano berekeza ku Kanyaru, Burasanzwe Simon na Musana Laurent bo bazwa mu iperereza bavuze ko Ntaganzwa yaturukaga i Butare mu masaa tanu bihura n'ibyo ubwe yibwiriye urukiko ko muri ayo masaha yavaga i Butare kuzana abashinzwe umutekano.

[133] Bakomeza bavuga ko ikindi kigaragaza ko nta magambo yo kubashishikariza kwica abatutsi yavugiye i Maraba ari uko DHN we avuga ko ubwo NTAGANZWA yageraga aho i Maraba,nta rindi jambo yavuze uretse kubabwira ko bakora ariko bagasiba urugomo, ko yanavuze ko icyo gihe abatutsi n'abahutu bari hamwe, ko iby'uko "gukora" byasobanuraga kwica abatutsi babisobanuriwe nyuma y'iminsi ibiri n'abakonseye i Nyakizu, ko rero niba baramenye ko gukora ari ukwica abatutsi nyuma y'iminsi ibiri bivuzwe na NTAGANZWA, bivuze ko uwo munsi kuwa 15/04/1994 nta mututsi wigeze wicwa, ko basanga kandi Ubushinjacyaha bufata ijambo "gukora" ryavuzwe na perezida Sindikubwabo ku itariki ya 19/04/1994 ubwo yari i Butare bukarimwitirira, ko binatangaje ko yari gukoresha imvugo nyuma na perezida akayikoresha kandi atari mubashinjwe kumutegurira ijambo, ikindi kandi hakaba nta n'uwundi mutangabuhamya wumvise ayo magambo.

[134] Banavuga ko ubushinjacyaha bushingira ku mvugo za Banganakwinshi zo mu iperereza, buvuga ko ubwo NTAGANZWA yari i Maraba yabajije abahutu bari kumwe n'abatutsi aho uyoye ibishingwe abishyira, ashaka kuvuga kwica abatutsi, nabo bamusubiza ko babishyira mu gisimu, anababwira ko nagaruka adashaka kuhasanga abatutsi, ko nyuma y'ayo magambo batangiye kubica nyamara guhera muri icyo gitondo kugera saa saba bari kumwe nabo nta cyo babatwaye, bavuga ko basanga ibyo umutangabuhamya avuga bishobora kuba byarabaye nyuma y'ubwicanyi bwabereye i Cyahinda kuwa 15/04/1994 kuko amasaha ubushinjacyaha buvuga ubwo bwicanyi bw'i Maraba bwabereyeho ahura n'igihe buvuga ko yari i Cyahinda mu gitero, ko batanabona aho buhera bumurega gutanga itegeko ryo kwica abatutsi i Maraba hagati ya saa yine na saa tanu ariko bugatanga ibimenyetso bigaragaza ko bishwe saa saba.

[135] Bavuga kandi ubuhamya bwa Rugimbana Appolinaire butashingirwaho kuko buvuguruza ibyo yari yavugiye mu iperereza kuko abazwa mu rukiko yavuze ko NTAGANZWA agera i Maraba ku mugano yabwiye abantu yari asanze aho ko mu minota itanu hatagira umututsi uba ukiri muri iyo segiteri, nyamara abazwa mu bushinjacyaha akaba yari yavuze ko yabahaye iminota mirongo itatu; bavuga kandi ko abazwa mu rukiko yemeje ko nta bantu biciwe aho areba kuko NTAGANZWA amaze kuvuga ko bica abatutsi we yahise agenza umugongo aragenda nyamara ubwo yabazwaga n'Ubushinjacyaha akaba yari yavuze hari abatutsi biciwe aho areba barimo uwakoraga ku ivuriro. Bakomeza banavuga ko mu buhamya bwe kandi yemeje ko aho ku mugano hari abahutu gusa uretse umwana wakinaga umupira ariko bikaba bitumvikana ukuntu avuga ko bahise bica abatutsi bari aho, ko rero bitari gushoboka ko ako kanya hahita hicwa abatutsi kandi

yaravugaga ko hari abahutu gusa, ko nta n'ibyo yari kubona kandi avuga ko yahise agenda NTAGANZWA akimara kuvuga.

[136] Basoza bavuga ko abatangabuhamya b'Ubushinjacyaha badahuza ku magambo bumvise NTAGANZWA avugira i Maraba kuko umwe avuga ko yavuze ngo bakore, undi akavuga ko yabajijje aho uyoye ubishingwe abishyira nawe akabasubiza ko babishyira mu kinogo n'uvuga ko yabayaye iminota itanu kugira ngo babe bishe abatutsi, ko batanahuriza ku masaha bamuboneyeho kuko umwe avuga ko yamubonye saa yine, undi saa tanu, undi saa saba bigaragaza neza ko nta n'umwe wamubonye uwo munsi.

UKO URUKIKO RUBIBONA

[137] Urukiko rusesenguye ubuhamya bwatanzwe ku bwicanyi bwabereye i Maraba, rusanga butagaragaza ku buryo budashidikanywaho ko kuwa 15/04/1994 NTAGANZWA Ladislas yageze i Maraba hafi y'ivuriro akabwira abaturage yahasanze kwica abatutsi, nyuma hakicwa abatutsi benshi kubera ko nka DHN atanga ubuhamya mu rukiko yivuguruje hamwe avuga ko NTAGANZWA Ladislas avuye i Kibangu yasanze baboshye abatutsi ababwira kubica, ahandi akavuga ko ari we wababwiye kubaboha, hakaba n'aho yavuze ko babibwiwe na konseye Munyaneza.

[138] Runasanga ubuhamya bwa Rugimbana Appolinaire nabwo buvuguruzanya n'ibyo yavugiye mu iperereza kuko atanga ubuhamya mu rukiko yavuze ko NTAGANZWA ageze i Maraba aho bita ku mugano yabwiye abo yahasanze ko mu minota itanu hatagira umututsi uba ukiri muri iyo segiteri, anatuma kuri Geoffrey na Bazaramba gutangira gukora, ko NTAGANZWA amaze kuvuga ayo magambo we yahise agenza umugongo aragenda ariko ubwo yabazwaga n'Ubushinjacyaha mu iperereza akaba yari yaravuze ko yabahaye iminota mirongo itatu, anavuga ko hari abatutsi biciwe aho areba barimo uwakoraga ku ivuriro.

[139] Urukiko rusanga n'imvugo za Banganakwinshi Augustin zo mu iperereza nazo zitashingirwaho hemezwa ko NTAGANZWA Ladislas kuwa 15/04/1994 yicishije abantu b'i Maraba kuko amagambo avuga y'uko yababajijje aho uyoye abishyira n'uko bamusubije ko babishyira mu gisimu atandukanye n'aya Rugimabana Appolinaire uvuga ko ageze i Maraba yatanze iminota kugira ngo babe bamaze kwica abatutsi bose bo muri iyo segiteri n'ayo DHN avuga y'uko yababwiye gukora isuku bagasiba urugomo kuko n'ibyo bahurizaho birebana no kuyora ibishingwe urukiko rukaba rwasanze mu buhamya bwe DHN agenda yivuguruza ku buryo rutamenya amagambo nyayo yababwiye ageze aho n'icyo yababwiye gukora. Bityo rukaba rusanga nta kimenyetso kidashidikanywaho kigaragaza ko kuwa 15/04/1994, NTAGANZWA Ladislas yagize uruhare mu kwica abatutsi i Maraba.

1.4 Ku birebana n'iyicwa abatutsi kuri santeri ya Nkomero

►Imiburanire y'ubushinjacyaha

[140] Ubushinjacyaha buvuga ko ku itariki ya 16/04/1994, NTAGANZWA Ladislas yagiye ku Kanyaru afite abajandarume n'abasirikari ategeka ko abatutsi bagera ku gihumbi (1000) bari bahafatiwe bashaka guhungira mu gihugu cy'u Burundi bajyanwa kuri santeri ya Nkomero avuga ko ariho babona ubufasha, bahageze abwira abasirikari n'abaturage kubarinda kugira ngo hatagira

ubacika. Bunavuga ko kuwa 17/04/1994 mu gitondo yahagarutse aherekejwe n'abajandarume barenga makumyabiri (20), ahageze yifashishije indangururamajwi ategeka abajandarume n'abasirikari kurasa imbaga y'abatutsi bari aho, hicwa abantu benshi barimo Burasanzwe Jean, Kankindi Madeline, Uwanyirigira Annonciata, Rwahama, Laurent umuhungu wa Ruhigangoga na Mukarugambwa.

[141] Buvuga kandi ko nubwo santeri ya Nkomero itari muri komine ya Nyakizu yayoboraga ariko ihana imbibi nayo, ikanaba ku muhanda munini ugana yo ku buryo bitari kumubuza gutanga amabwiriza yo kuhicira abantu, ko ibyo kuba ariwe wazanye abajandarume akanabaha amabwiriza yo kwica abantu bari bahateraniye byemezwa n'imvugo zo mu iperereza za BYC uri mu bahakomerekeye n'abana be batanu barahicirwa, ko hari n'undi mutangabuhamya wahasanze imirambo bukeye bwaho kuri 18/04/1994 ahunga. Bunavuga ko aho mu Nkomero hari icyobo iyo mirambo yari yarajugunywemo n'urwibutso yaje gushyingurwamo, ko kuba NTAGANZWA Ladislas yaratanze amabwiriza ahatari muri komini yayoboraga nta gitangaza kirimo kubera ko mu gihe jenoside yakorwaga amategeko ajyanye n'imbibi z'amakomini atakurikizwaga.

►Imyiregurire ya NTAGANZWA Ladislas

[142] NTAGANZWA Ladislas n'abamwunganira bavuga ko ibyo ubushinjacyaha buvuga atari byo kuko bitari gushoboka ko ategeka ko abatutsi bafatiwe ku Kanyaru bajyanwa kuri santeri ya Nkomero iri muri komine Kigembe atayoboraga, ngo na nyuma asubire yo ategeke abasirikare bari babarinze kubica, ko no ku itariki ya 17/04/1994, umunsi ubushinjacyaha buvuga ko yicishirijeho abo batutsi bari mu Nkomero hari hakiri umutekano inzego z'ubutegetsi zikora uko bisanzwe, ko rero atari gutegeka ko abantu bicirwa mu yindi komine ngo bibure kumenyeshwa urwego rw'umutekano rwa perefegitura ko yateje umutekano muke mu yindi komini.

[143] Banavuga ko kuba aho mu Nkomero ari hafi ya komine Nyakizu yayoboraga no kuba hari icyobo cyajugunywemo abatutsi n'urwibutso rwa jenoside bitaba ibimenyetso by'uko ari we watanze itegeko ryo kwica abo batutsi nk'uko ubushinjacyaha bubivuga, kandi ko uretse ubwicanyi bwabaye muri Nyakizu muri ayo matariki, nta bwicanyi bwabaye muri Kigembe ku matariki ya 16 no kuwa 17/04/1994 kuko muri perefegitura ya Butare ubwicanyi bwatangiye ku itariki ya 19/04/1994. Byongeye kandi muri icyo gihe we akaba atarigeze agera ku mupaka w' Akanyaru.

[144] Basoza bavuga ko ubushinjacyaha bumurega gutanga itegeko ryo kurasa abantu bari mu Nkomero, ariko bukaba butarashoboye kwerekana uwo yahaye ayo mabwiriza yo kurasa, ko butanerekana ko nibura hari abantu bo muri Nyakizu bari mu bishe abo bantu, bukaba rero nta bimenyetso bushingiraho bumurega ubwo bwicanyi.

►Ubuhamya bwatanzwe ku byerekeranye n'abatutsi biciwe kuri santeri ya Nkomero

[145] Umutangabuhamya Rusangara François avuga ko ahungira i Burundi kuwa 19/04/1994 yageze ahitwa i Ngera ahasanga Ntaganzwa ari kumwe n'abantu barimo abaturage bambaye ibirere, ahabona imirambo y'abantu ariko bo babasha gutambuka bageze mu Nkomero havuga amasasu abasirikare b'abarundi barasa hejuru abari babakurikiye bahita bareka kubarasaho ariko ko hari abahakomerekeye.

[146] Nzabirinda Emmanuel wahaye amakuru urukiko avuga ko ubwo bari bavuye i Gasasa bahuriye na NTAGANZWA Ladislas ahitwa i Murama ari mu modoka ajyanye ababikira, agarutse abasanga mu Nkomero abenshi mu batutsi bahungaga bamaze gutambuka, ko abajandarume babiri bari imbere babarasheho nabo babiyahuraho bitabara, bituma abo bajandarume bagira ubwoba binjira mu modoka barahunga.

►Ibyo NTAGANZWA Ladislas avuga ku buhamya bwatanzwe

[147] NTAGANZWA Ladislas n'abamwunganira bavuga ko Rusagara François yivuguruza kubera ko abazwa mu iperereza hari aho yavuze ko yasanze NTAGANZWA Ladislas mu Nkomero ari kumwe na Superefe Biniga ariko abazwa mu Rukiko akaba yaravuze ko ubwo yageraga mu Nkomero yari yasize NTAGANZWA i Ngera, akaba rero atari kumubona mu Nkomero kandi yamusize i Ngera; ko na Nzabirinda Emmanuel atamushinja kuko avuga ko kuwa mbere tariki ya 18/04/1994 yahuriye na NTAGANZWA Ladislas ahitwa Murama ajyanye ababikira, nyuma abasanga mu Nkomero afite imodoka, abajandarume babiri bari imbere babarasaho nabo barabarwanya bagira ubwoba bahita binjira mu modoka barahunga, ariko ko aterekana ko ari NTAGANZWA wabarasheho, ikindi kandi ibyo avuga bikaba binyuranye n'ibyo ubushinjacyaha bumurega ko kuri 18/04/1994 yari kuri Paruwasi ya Cyahinda kuva mu gitondo kugera saa kumi n'imwe, ko rero atari kuba ahari ngo abe yaranajyanye ababikira i Butare, ko n'ubuhamya bwe budasobanura iby'abantu biciwe mu Nkomero kuwa 17/04/1994 barashwe.

[148] Banavuga ko Rugimbana Appolinaire abazwa mu rukiko yavuze ko yabonye Ntaganzwa i Kiyonza muri komini Kigembe ku itariki ya 19/04/1994 ariko abazwa mu iperereza hari aho yavuze ko uwo munsi yamubonye i Murama ho muri komini Kigembe, ari kumwe n'umubikira n'umujandarume, akanavuga ko uwo munsi bambutse umupaka w'u Burundi saa saba nta kibazo bagize kuko abasirikare bari bawuriho bari bagiranye ikibazo n'abasirikare b'abarundi barahava, ko rero ari we, ari na Rusagara François bavuga ko bambutse umupaka, batagaragaza ko NTAGANZWA yababujije kwambuka.

[149] Banavuga ko BYC abazwa mu iperereza yavuze ko kuwa 16/04/1994 mu gitondo, Ntaganzwa yasanze abasirikare barinda umupaka bababujije kwambuka, ategeka ko babajyana mu Nkomero kugira ngo bahafashirizwe, ko iyo biba byarabayeho, ubuyobozi bwaho mu Nkomero buba bwarabonye abo bantu kuko bahiriwe baranaharara, bukanatanga amakuru y'uko haje impunzi, bityo ko n'ibyo avuga ko mu gitondo cyakurikiyeho kuri 17/04/1994 NTAGANZWA yahaje ari mu modoka ya komini ari kumwe n'abajandarume icumi (10) n'abasirikare makumyabiri (20) bari mu makamyo abiri, akamwumva atanga amabwiriza yo kubarasa atari byo kuko mu rubanza rwa Nizeyimana Ildephonse rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda hemejwe ko nta makamyo yavuye i Butare mu ishuli rya Gisirikare (ESO) ajyana abasirikare i Nyakizu.

UKO URUKIKO RUBIBONA

[150] Urukiko rusesenguye ubuhamya bwatanzwe mu rukiko n'imvugo zo mu iperereza, rusanga bitagaragaza ku buryo budashidikanywaho uruhare rwa NTAGANZWA Ladislas mu iyicwa ry'abatutsi bafatiwe ku mupaka w'Akanyaru bashaka guhungira i Burundi bakagarurwa i Nkomero ku isoko, nyuma bakaza kuhicirwa n'abasirikare, abajandarume n'abaturage kuko Rusagara na

Nzabirinda bavuga ko banyuze mu Nkomero babashije guhungira i Burundi baciye ku Kanyaru badahuriza kuri ubwo bwicanyi bwahabereye kuwa 17/04/1994.

[151] Ubuhamya bwa Rusagara François bugaragaza ko ubwo kuwa 19/04/1994 bahungira i Burundi basize NTAGANZWA ahitwa i Ngera aho babonye imirambo ariko bo barakomeza bageze mu Nkomero havuga amasasu abasirikare b'abarundi barasa hejuru abari babakurikiye bahita bareka kubarasa bamwe barahakomerekera, ubwo buhamya bwe bukaba butagaragaza uruhare rwa NTAGANZWA mu iyicwa ry'abantu avuga ko yabonye imirambo yabo i Ngera cyangwa se niba ariwe watanze itegeko ryo kubarasaho bageze mu Nkomero.

[152] Rusanga n'amakuru yatanzwe na Nzabirinda Emmanuel nayo atavuga ku iyicwa ry'abo batutsi biciwe mu Nkomero kuko we icyo avuga ari uko ubwo bahungaga NTAGANZWA yabasanze mu Nkomero abenshi mu batutsi bamaze gutambuka, ko abajandarume babiri bari imbere babarasheho nabo babiyahuraho bitabara bagira ubwoba bahita binjira mu modoka barahunga, ko atavuze ko abo bajandarume hari abantu barashe cyangwa bishe.

[153] Urukiko rugasanga rero imvugo za BYC wabajije n'intumwa z'Urukiko Mpanabyaha Mpuzamahanga mu iperereza ryo kuwa 01/03/2012 akavuga ko ubwo yahungiraga mu gihugu cy'u Burundi avuye i Gasasa kuwa 16/04/1994 yabonye NTAGANZWA Ladislas aje ku Kanyaru afite abajandarume n'abasirikare, abwira abari bahafatiwe bagera ku gihumbi (1000) ko bajya mu Nkomero ho muri komini Kigembe kugira ngo babone ubufasha, abasirikare barabashorera babajyanayo ku mbaraga NTAGANZWA abari inyuma ari mu modoka ya komini bagezeyo basigara aho mu kibuga cy'isoko barinzwe n'abasirikare n'abaturage b'abahutu ku buryo batabashaga kuhava, ko bukeye kuwa 17/04/1994 NTAGANZWA yahagarutse afite abasirikare barenga makumyabiri (20) n'abajandarume icumi (10), ategeka ko babarasa, ko we yabashije gucika yakomeretse mu bitugu, abandi batusi benshi barahagwa barimo abana be batanu n'abitwa Jean Burasanzwe, Madaleine Kankindi, Annonciata Uwanyirigira na Rwahama nazo zitashingirwaho nk'ikimenyetso kigaragaza uruhare rwa NTAGANZWA Ladislas mu iyicwa ry'abo batutsi bakuwe ku mupaka w'Akanyaru bakaza kwicirwa mu Nkomero kuko zidashyigikiwe n'ubuhamya bwatangiwe mu rukiko. Byongeye kandi BYC abazwa mu bushinjacyaha kuwa 04/05/2016 akaba atarigeze agaragaza uruhare rwa NTAGANZWA mu iyicwa ry'abatutsi biciwe mu Nkomero kuwa 17/04/1994 nawe akahakomerekera nk'uko yari yarabivuze mbere.

1.5 Ku byerekeranye n'ubwicanyi bwakorewe kuri za bariyeri

►Imiburanire y'ubushinjacyaha

[154] Ubushinjacyaha buvuga imwe mu ntwaro NTAGANZWA Ladislas yakoresheje mu kwica abatutsi cyangwa mu gutuma badahungira hanze y'igihugu ari ugushyiraho bariyeri muri komini yayoboraga, ko ari muri urwo rwego yategetse abakonseye gushyira bariyeri mu Ryamarembo, mu Ryabidandi, Nyagisozi, Muhambara, i Cyahinda ugana Kibumba no ku muhanda wo ku Kavuguto mu rwego rwo kubuza abatutsi guhunga. Bunavuga ko kuri bariyeri yo mu Nkomero hiciweho abatutsi barenga mirongo ine (40) mu matariki ya 17/04/1994 ku mabwiriza ya NTAGANZWA Ladislas na Biniga Damien wari superefe wa Gikongoro, ko no mu mpera z'ukwezi kwa kane ahagana mu matariki ya mbere y'ukwezi kwa gatanu 1994 nabwo NTAGANZWA Ladislas ari kumwe na komanda wa polisi n'abajandarume bane bageze kuri

bariyeri yari i Coko muri komine ya Mubuga bahafatira umututsi utaramenyekanye izina baramukubita kugeza apfuye, ko nanone mu kwezi kwa gatanu 1994 ku matariki atibukwa neza kuri bariyeri y'i Musumba muri segiteri Yaramba naho hafatiwe abantu batatu abari kuri bariyeri babambura imodoka barabashorera babajyana kuri komine bageze ahitwa mu Bugarama bahura na NTAGANZWA Ladislas ari kumwe n'abajandarume babiri ahita abarasira aho, ko no kuri bariyeri yo ku mugano i Maraba hiciwe abatutsi bari hagati ya batandatu n'umunani.

►Imyiregurire ya NTAGANZWA Ladislas

[155] NTAGANZWA Ladislas n'abamwunganira bavuga ko nta mwihariko wo gushyiraho bariyeri muri komini Nyakizu yagize kuko zashyizweho ku mabwiriza ya guverinoma yariho mu rwego rwo kurinda ubusugire bw'igihugu batahura umwanzi warwanaga nayo washoboraga gucengera mu gihugu, ko icyo bo bakoze muri Nyakizu bakimara kubona impunzi zije zituruka ku Gikongoro ari nyinshi ari ukugenzura ko hatarimo interahamwe zashoboraga guhungabanya umutekano kuko babwirwaga n'abahunze ko ababateraga ari interahamwe kandi ko byakozwe mu bwumvikane n'abaturage bose harimo n'abatutsi nyuma biza kubarenga haba ubwicanyi bukomeye bwatewe n'uko batabashije kumenya icyari kibyihishe inyuma bituma barwanya uwo batazi neza.

[156] Bakomeza bavuga ko abantu bamurega ko yiciye kuri bariyeri y' i Musumba muri segiteri Yaramba atari byo kuko yageze kuri iyo bariyeri avuye i Butare asanga hiciwe abantu batatu, umujandarume wabishe amusobanurira ko bari bafite ibimenyetso birimo amakarita n'imbunda bigaragaza ko ari ingabo za FPR-Inkotanyi, ko icyo yakoze nk'umuyobozi yatanze raporo, anajyana imodoka barimo kuri komini abimenyesha inzego zimukuriye, ko abatangabuhamya bavuga ko yahaje avuye kuri komini bahamya ibyo batahagazeho.

[157] [157] Banavuga ko ibyo ubushinjacyaha bumurega ko ari kumwe na burigadiye wa komini n'abajandarume bane bafatiye umusore kuri bariyeri i Coko baramukubita kugeza apfuye atari byo kubera ko Coko iri muri komini Mubuga muri Gikongoro atayoboraga kandi hakaba hatagaragazwa aho yerekezaga icyo gihe kugera ubwo agenzura bariyeri yo mu yindi komini, ko n'ibyo buvuga ko ariwe wayishyirishijeho atari byo kubera ko hatagaragazwa niba imaze kujyaho yarayirindishije abaturage bo muri Nyakizu cyangwa abo muri Mubuga kandi n'ubwo izo komini zari zegeranye nta washoboraga kubyitwaza ngo ajye gukora ibyo yishakiye mu yindi komini.

UKO URUKIKO RUBIBONA

►Ku byerekeranye n'abantu biciwe i Yaramba

[158] Umutangabuhamya Rutagengwa Martin avuga ko mu gihe cya jenoside hagati y'itariki ya 15 na 25/04/1994 hari imodoka ya Suzuki Samurai yafatiwe kuri bariyeri y'i Musumba muri segiteri Yaramba ifashwe n'abaturage irimo abagabo batatu b'abatutsi, umwe yambaye ikote n'ingofero bya gisirikare, abandi ari abasivile bafite za gerenade ebyiri, barabashorera babajyana kuri komine kuko abantu bafatwaga icyo gihe ariho babajyanaga, ko we yasigaye kuri segiteri, nyuma aza kubwirwa na Ahorukomeye Vincent, Ndayambaje bahimba Mupanga bari mu babashoreye na Musana Laurent, ko bageze muri selire Bugarama bahuye na burugumesitiri NTAGANZWA n'abajandarume barababahagarika, NTAGANZWA ategeka abajandarume kurasa abo bantu.

[159] Anavuga ko ku mugoroba imodoka abo bagabo barimo NTAGANZWA wari wambaye ikoti rya gisirikare bita simoko yaje kuyitwara aho yari yasigaye mu kabuga ka Kibazo ari kumwe n'abajandarume agenda ayitwaye, ko icyo gihe yabasanze kuri segeteri abasaba guhagarara neza bagakomeza irondo ntibarangare kugira ngo hatagira ubacika, ko hari n'ubundi yamubonye i Yaramba hafatiwe imodoka ya corolla kuri segiteri Yaramba irimo abasore batatu n'umusirikare umwe ufite imbunda, bakeka ko ari abatutsi, amakuru ageze kuri NTAGANZWA aza ari mu modoka ya komini ari kumwe n'urubyiruko rw'ishyaka rya MDR, ahageze babajyana kubafungira kuri komine, ko nyuma yabwiwe na burigadiye ko babarekuye banabasubiza imodoka yabo kubera ko basanze ari abahutu.

[160] DHN yemeza ko yabonye NTAGANZWA Ladislas ari kumwe n'abajandarume i Yaramba baturutse kuri komine, ubwo hari imodoka yari yafashwe n'abaturage irimo abantu batatu barimo umwe wari wambaye ikoti rimeze nk'irya gisirikare, barabashorerera babajyana kuri komine bahurira na NTAGANZWA muri selire Bugarama arabarasa, arangije abwira abaturage kubahwanya, imodoka barimo ya Suzuki Samurai arayitwara.

[161] Urukiko rusesenguye ubwo buhamya, rusanga NTAGANZWA Ladislas yaragize uruhare mu iyicwa ry'abantu batatu bafatiwe kuri bariyeri y'i Musumba muri segiteri Yaramba, nyuma bicirwa ahitwa Bugarama babajyanye kuri komine kuko ariwe wategetse abajandarume kubarasa nk'uko byemezwa n'umutangabuhamya Rutagengwa Martin wemeza ko nawe yari mu bashoreye abo bantu ariko agasigara mu nzira, nyuma akabwirwa na Ahorukomeye Vincent, Ndayambaje bahimba Mupanga na Musana Laurent ko bageze muri selire Bugarama bahuye na burugumesitiri NTAGANZWA n'abajandarume barabahagarika NTAGANZWA ategeka abajandarume kurasa abo bantu, ibyo avuga bikaba bihura n'imvugo yo mu iperereza ya BNG ryo kuwa 16/05/2007 ryakozwe n'ubushinjacyaha bwo mu gihugu cya Finland mu rubanza rwa Bazaramba, igaragaragaragara muri dosiye, aho agaragaza ko abo bantu bafatiwe i Yaramba bafashwe babita inkotanyi babereka NTAGANZWA avuga ko nta wundi muti ko bazi icyo bagomba kubakoresha, umusirikare ufite ipeti rya serija abica abarashe[7].

[162] Rusanga na NTAGANZWA Ladislas mu miburanire ye nawe yemera ko abo bantu bishwe nubwo asobanura ko yageze kuri iyo bariyeri agasanga bamaze kwicwa, umujandarume wabishe akamubwira ko bababfatanye ibintu bigaragaza ko ari ingabo za FPR-Inkotanyi. Urukiko rusanga ariko hagendewe ku bimaze gusobanurwa nta kimenyetso kigaragaza ku buryo budashidikanywaho ko ari NTAGANZWA Ladislas ubwe warashe abo bantu nk'uko bivugwa na DHN.

[163] Ibyo avuga ko yasanze bishwe bikaba nta shingiro bifite kuko ubuhamywa bwatanzwe bugaragaza ko yasanze bataricwa, bikanashimangira n'ibaruwa yandikiye superefe wa superefegitura ya Busoro kuwa 17/05/1994 amumenyesheje ko kuwa 16/05/1994 bavuye mu nama i Butare bageze i Nyakizu basanze abaturage bo muri segiteri Yaramba bafashe abantu batatu bari mu modoka AC 3781 Jeep Suzuki, ko baje gusanga ari inkotanyi, ko mu bintu bababfatanye harimo gerenade ebyiri n'impapuro nyinshi zirimo lisiti batangiraho umusanzu w'inyenzi.

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[7] When Geoffrey said "these are the three people we got". The bourgmestre said: Mean these ones ? There's no other medicine, you know what you have to do with them". So the sergeant, he lined them up back to back following each other.. three and shot them with one bullet and killed them,…., Interview of BNG dated 16/05/2007 transcribed from audio-recording, p.21

►Ku birebana n'abatutsi biciwe kuri bariyeri i Maraba

[164] Urukiko rusanga umutangabuhamya DHN ariwe wenyine watanze ubuhamya avuga ko bariyeri y'i Maraba yaguyeho abantu benshi bagera ku icyenda cyangwa icumi barimo abagabo batatu bazanywe na Ntaganzwa abasigira abaturage ngo babice, ko muri abo bagabo bahiciwe harimo umugabo w'i Cyahinda. Anavuga ko nko mu kwezi kwa gatanu 1994 hari umuntu NTAGANZWA yavanye i Butare amuta kuri bariyeri bari bariho baramwica ariko ko abana babiri bari kumwe bataguye kuri iyo bariyeri. Mu buhamya bwe kandi avuga ko hari indi modoka itukura ifite kabine yifungura ya Corolla yavaga i Maraba ahitwa mu Kamanga irimo abantu batatu, ko NTAGANZWA ari kumwe n'abajandarume yaje afite imodoka ya komine ayitambika imbere arabarasa imodoka arayitwara, ko abarasa yari ahari.

[165] Urukiko rusesenguye ubwo buhamya, rusanga ku birebana n'abantu bagera ku icyenda DHN avuga ko baguye kuri bariyeri y'i Maraba, ubuhamya bwe butashingirwaho nk'ikimenyetso kidashidikanywaho kigaragaza ko NTAGANZWA Ladislas yagize uruhare mu iyicwa ry'abo kuko DHN atabatandukanya n'abandi bantu benshi avuga biciwe i Maraba ku mugano kuwa 15/04/1994, urukiko rwasanze ubuhamya bwe butashingirwaho kubera kwivuguruza.

[166] Ikindi kandi, ibyo avuga ko hari abantu batatu bari mu modoka Corolla NTAGANZWA yitambitse imbere agahita abarasa binyuranye n'ibyo umutangabuhamya Rutagengwa Martin avuga ko abo bantu bari mu modoka ya Corolla batishwe, ahubwo ko NTAGANZWA Ladislas yabajyanye kuri komine ariko nyuma abwirwa na burigadiye ko barekuwe babasubiza imodoka yabo bahungira mu gihugu cya Zaïre. Rusanga kandi na Banganakwinshi Augustin wabajijwe mu iperereza nawe uvuga ko yabaga ari kuri iyo bariyeri yemeza ko mu bantu baguye kuri bariyeri yo ku mugano harimo umuhungu w'i Cyahinda wavaga i Butare wahiciwe ariko akaba atavuga ko ari NTAGANZWA Ladislas wahamuzanye cyangwa wategetse ko yicwa.

►Ku birebana n'umusore wiciwe kuri bariyeri y'i Coko

[167] Urukiko rusanga umutangabuhamya Bwanakweri avuga ko NTAGANZWA yatanze amabwiriza anagenzura uko ubwicanyi bukorwa ashyirishaho za bariyeri zituma abantu badasohoka i Cyahinda, iy'i Nyagisozi, mu Ryabidandi, hagati ya Rutega na Saburunduru no hagati ya Cyahinda na Coko, ko izo bariyeri zari zibazengurutse kugira ngo badacika, ko impamvu abivuga ari uko zari muri komini ayobora. Rusagara François we avuga ko bariyeri yabonye ya mbere yari i Coko, iya kabiri yari ku Kavuguto, iya gatatu yayibonye mu Cyuna n'indi ijya mu Kijeje ariko ko bahanyura nta muntu wahaguye.

[168] Urukiko rusesenguye ubuhamya bwa Bwanakweli Vianney n'ubwa Rusagara François, rusanga butagaragaza ko hari umuntu waguye kuri bariyeri y'i Coko NTAGANZWA Ladislas abigizemo uruhare.

[169] Urukiko rusanga imvugo za Mutesa Clément zonyine zo mu iperereza z'uko yahungiye i Coko aho NTAGANZWA yaje ari kumwe n'abajandarume bane na burigadiye wa polisi bagana kuri bariyeri yari aho hafi, bahageze bahasanga umusore wari wahafatiwe bose batangira kumukubita, mu minota mike baba baramwishe zitashingirwaho mu kugaragaza uruhare rwa NTAGANZWA muri urwo rupfu hakurikijwe ibiteganywa n'ingingo 8 igika cya 3 cy'Itegeko Nº 47/2013 ryo kuwa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda iteganya ko

urukiko rushobara guhamya umuntu icyaha rushingiye ku gaciro k'ubuhamya bwanditse bwatanzwe mbere n'abatangabuhamya batahamagajwe mu rukiko iyo bufite ubundi bubushyigikira kubera ko iyo mvugo ye idashyigikiwe n'ubundi buhamya bwatangiwe mu rukiko.

►Ku byerekeranye n'abantu mirongo ine (40) biciwe kuri bariyeri yo mu Nkomero

[170] Urukiko rusanga ku byerekeranye n'abantu barenga mirongo ine (40) ubushinjacyaha buvuga ko biciwe kuri bariyeri yo mu Nkomero kuwa 17/04/1994 bahungira i Burundi, budasobanura aho batandukaniye n'abandi igihumbi (1000) buvuga ko uwo munsi biciwe i Nkomero ku isoko. Bityo urukiko rukaba rusanga nta kimenyetso kigaragaza ko abo bantu mirongo ine (40) bahaguye uwo munsi NTAGANZWA Ladislas abigizemo uruhare.

►Ku byerekeranye n'abantu biciwe ku yandi mabariyeri.

[171] Umutangabuhamya DND avuga ko hari bariyeri NTAGANZWA yashyirishijeho zirimo iyo mu Ryabidandi, iy'i Cyahinda, iy'i Nyagisozi, iy'i Viro zari zigamije gutangira abatutsi ngo badahunga nijoro, ko kuri bariyeri ya Nyagisozi haguye abantu kuko ariho yari atuye ariko ko atamenye amazina yabo. Kasire Cassien avuga ko muri Nyakizu hari harashyizweho bariyeri mu Ryamarembo, Cyahinda, Nyagisozi na Muhambara zatangiraga abantu zibabuza guhunga cyangwa guhungira i Burundi, ko hari ubwo yaciye kuri bariyeri y'i Cyahinda nijoro ahasanga imirambo, ko iyo mu Ryamarembo yaguyeho nyirasenge n'umukobwa we. Anavuga ko bageze i Gasasa Karemera yamubwiwe ko NTAGANZWA ariwe wababwiye gushyiraho bariyeri zo gukumira abatutsi bahungaga, ko andi makuru yumvise ari uko abaturage bavugaga ko NTAGANZWA yategekaga abakonseye gushyiraho bariyeri no gushyiraho abazigenzura.

[172] [172] Urukiko rusesenguye ubwo buhamya bwa DND n'ubwa Kasire Cassien, rusanga butagaragaza ko NTAGANZWA Ladislas yagize uruhare mu iyicwa ry'abantu baziguyeho kuko DND avuga gusa ko kuri bariyeri y'i Nyagisozi haguye abantu kuko ariho yari atuye atagaragaza uruhare rwa NTAGANZWA Ladislas mu iyicwa ryabo. Rusanga nanone na Kasire Cassien atagaragaza uruhare rwa NTAGANZWA mu iyicwa ry'abantu avuga ko baguye kuri bariyeri y'i Cyahinda n'iyo mu Ryamarembo kuko uruhare rwe arushingira gusa ku kuba ariwe washyirishijeho bariyeri adasobanura ko hari uruhare yagize mu iyicwa ryabo.

1.6 Ibyerekeranye n'iyicwa ry'abana bari bacumbikiwe mu kigo cya Croix rouge

►Imiburanire y'ubushinjacyaha

[173] Ubushinjacyaha buvuga ko hari abana makumyabiri na batanu (25) barokotse mu bitero byakozwe kuri paruwasi ya Cyahinda hagati y'itariki ya 15 na 19/04/1994 NTAGANZWA Ladislas abaha umukozi wa Croix rouge kugira ngo ajye kubitaho ariko nyuma yohereza abasore barimo n'abarundi bitwaje intwaro gakondo kubatwara, uwo mukozi arabimana baragenda, hashize akanya NTAGANZWA Ladislas aza kubitwarira, ko kuva icyo gihe abo bana batongeye kuboneka.

►Imiburanire ya NTAGANZWA Ladislas

[174] NTAGANZWA Ladislas n'abamwunganira bavuga ko ibyabo bana atabizi, nta n'ibyo yigeze yumva, ko bitanumvikana ukuntu yari kugirira abo bana impuhwe, nyuma akajya kubicisha.

Bavuga ko ibyo umutangabuhamya DNB umushinja avuga bitera urujijo kuko yemeza ko NTAGANZWA yamuhaye abo bana kuwa 18/04/1994 bakuwe mu mirambo nyuma y'igitero cyari cyaraye kibaye i Cyahinda kuwa 17/04/1994 nyamara abandi batangabuhamya bakaba bemeza ko igitero cyabaye kuwa 18/04/1994, ko atanagaragaza ko iby'abo bana yabibwiye umukuriye mu kazi cyangwa se ngo abe yarabanditse mu bitabo bya Croix rouge.

UKO URUKIKO RUBIBONA

[175] Urukiko rusanga umutangabuhamya DNB avuga ko ubwo bari bagiye gukora isuku i Cyahinda, NTAGANZWA Ladislas yamuhaye abana makumyabiri na batanu (25) bari bakuye mu mirambo yari mu kiliziya abajyana muri « Croix rouge » aho yakoreraga, baraharara, bukeye nka saa mbili haza impunzi z'abarundi n'interahamwe zimusaba kubaha abo bana arabimana, nyuma zigarukana na NTAGANZWA barabajyana ariko ko atamenye aho babiciye.

[176] Nyandwi Alfred we avuga ko yongeye gusubira i Cyahinda hashize iminsi itatu kuwa 18/04/1994 bagiye gukora isuku babitegetswe n'abayobozi bayoboraga mu ishyaka ku mabwiriza bari bahawe na NTAGANZWA, ko imirambo bayishyiraga mu cyobo bakanakoropa n'amazi ariko ko bikorwa NTAGANZWA atari ahari, ko abari bagikanyakanya bari ahitwa mu Kinyaga

[177] Rusagara François avuga ko nyuma y'igitero cyabaye i Cyahinda bahungiye i Gasasa, baraharara bukeye bagaruka i Cyahinda ari nka saa yine kureba niba hari abana na ba nyina barokotse, barahazenguruka batoragura abana bari mu byumba no mu misarani bahava nko mu masaa saba, nyuma bahungira i Burundi.

[178] Urukiko rusesenguye ubuhamya bwa DNB, rusanga ibyo avuga ku iyicwa ry'abo bana bitera gushidikanya kuko adasobanura neza uburyo abo bana bishwemo uretse kuvuga ko NTAGANZWA Ladislas ari kumwe n'iterahamwe n'impunzi z'abarundi yabatwaye nyuma ntamenye irengero ryabo. Ikindi Nyandwi Alfred uvuga ko nawe yagiye gukora isuku i Cyahinda nyuma y'igitero akaba atavuga iby'abo bana bakuwe mu mirambo, akanemeza ko icyo gihe babikora NTAGANZWA Ladislas atari ahari mu gihe DNB we avuga ko yari ahari amuha abo bana. Byongeye kandi na Rusagara François uvuga ko yasubiye i Cyahinda nyuma y'igitero bakahatoragura abana ntavuga ko hari abandi bana bahakuwe bakajyanwa mu kigo cya Croix rouge ndetse na Mukaruzamba Catherine uvuga ko yari yahungiye i Cyahinda, akanavuga ko hari ubwo yagarutse i Cyahinda kureba umwana yari yahasize avuye i Gasasa aho yari yahungiye nyuma y'igitero, yabajijwe kubijyanye n'abo bana bakuwe mu mirambo avuga ko ntabyo azi.

1.7 Kumenya niba ibimenyetso birebana n'inyandiko ziri muri dosiye bigaragaza uruhare NTAGANZWA Ladislas yagize mu iyicwa ry'abatutsi.

►Imiburanire y'ubushinjacyaha

[179] Ubushinjacyaha bunavuga ko uretse ibyavuzwe n'abatangabuhamya mu iperereza, hari n'inyandiko zirimo amabaruwa na raporo byakorwaga na NTAGANZWA Ladislas bigaragaza uruhare rwe muri jenoside. Buvuga ko muri izo nyandiko harimo ibaruwa NTAGANZWA Ladislas yandikiye superefe wa superefegitura ya Busoro ku itariki ya 10/05/1994 amubwira ibyo babonye ku itariki ya 09/05/1994 ubwo bagenzuraga amarondo muri komini Nyakizu, bigaragaza

ko yagize uruhare muri jenoside kuko ari we washyirishijeho akanagenzura amarondo na za bariyeri ziciweho abatutsi.

[180] Buvuga kandi ko n'ibaruwa yo kuwa 31/05/1994 yanditse agaragaza amasasu akenewe muri komini Nyakizu nabyo bigaragaza uruhare rwe muri jenoside yakorewe abatutsi kuko yatse kandi agatanga imbunda zakoreshejwe mu kwica abatutsi, iyo kuwa 03/06/1994 yandikiye Kajuga Robert wari perezida w'interahamwe ku rwego rw'igihugu amusaba kumutera inkunga mu kubona vuba intwaro kugira ngo babone uko bahangana n'inyenzi n'uko yamuha umwanya bakabonana kugira ngo amusobanurire uko ibintu byifashe muri komini Nyakizu.

[181] Bukomeza buvuga ko hari n' ibaruwa yandikiye Minisiteri w'intebe amugezaho ibibazo bibakomereye birimo icy'abakonseye bitwara bunyenzi, abazifatanywe n'abazambukije bazijyana i Burundi, ashaka kuvuga abatutsi, akanavugamo ko abo bakonseye bose bababakuyeho bakabasimbuza abo yise intwari kuko bayoboye urugamba mu ntambara y'i Cyahinda, ko ikindi kibazo yagaragaje muri iyo baruwa ari ikirebana n'uwitwa Nshimiryayo Ange yavugaga ko yari afite umwana mu nkotanyi n'umugore w'umututsikazi, ko nawe ubwe yitwaraga bunyenzi kuko yahungiye kuri paruwasi ya Cyahinda, bigaragaza ubushake yari afite bwo kumaraho abatutsi bose akanagera aho ahiga abafitanye isano nabo. Bunavuga ko muri iyo baruwa yamenyeshaga Minisitiri w'intebe ko komine ye imeze neza, irinzwe, anashima ubutwari abaturage bagaragaza aho agakomye kose bahagurukira rimwe yirengagije ko muri Nyakizu haguye abatutsi barenga ibihumbi makumyabiri na bitanu (25.000) bari bahungiye kuri paruwasi ya Cyahinda, ku musozi wa Gasasa no ku mabariyeri ndetse hirya no hino bagumya kwicwa.

[182] Ubushinjacyaha bunavuga ko ibaruwa NTAGANZWA Ladislas yandikiye perefe wa perefegitura ya Butare amwohereza dosiye ya Nshimiryayo Ange avuga ko igihe inkotanyi zashakaga kwigarurira komini Nyakizu zikirundanyiriza i Cyahinda nawe yazigiyemo, anazimaramo iminsi kuko yahamubonye ubwo yajyagayo bakamukomeretsa, bakanakomeretsa n'abajandarume babiri, bigaragaza ko abo yitaga inkotanyi cyangwa inyenzi ari abatutsi kuko aho kuri paruwasi Cyahinda hatigeze haba ibirindiro by'inkotanyi ahubwo abari barahahungiye ari abatutsi bari baraturutse muri Nyakizu no mu yandi makomini bituranye. Buvuga nanone ko hari indi ibaruwa yo kuwa 26/04/1994, NTAGANZWA Ladislas yandikiye abakonseye bose abatumira mu nama yo kuwa 28/04/1994 yahuje abaserire n'abahagarariye amashyaka yiga ku bibazo birebana n'impunzi zari zarahungiye kuri paruwasi ya Cyahinda, intambara, gusahura n'iminyago, imitungo y'abatutsi bahunze, ikibazo cy'inyezi n'uko zigomba gushakishwa aho zihishe hose hakavugwa, ko hanemejwe ko hashyirwaho abasore icumi muri buri segiteri bagahabwa imyitozo ya gisirikare.

[183] Buvuga kandi ko hari indi baruwa yo kuwa 10/05/1994, NTAGANZWA Ladislas yandikiye Superefe wa Superefegitura ya Busoro amugezaho raporo y'ibyavugiwe mu nama yo kuwa 28/04/1994 n'imyanzuro yafatiwemo aho avuga ko bakoze inama kugira ngo basuzume uko ibintu byifashe, agaragaza ko bababajwe n'ukuntu ivuriro n'ishuli by'i Cyahinda byangiritse bikabije bitewe n'amasasu yahavugiye, uko basabye ko hakorwa umuganda wo kuhakora isuku, buvuga ko ibyizwe muri iyo nama n'ibikubiye muri raporo bigaragaza ko kuri paruwasi ya Cyahinda, ku bitaro no ku mashuri hahungiye abatutsi bavuye ahantu hatandukanye, ko izo mpunzi z'abatutsi zagabweho ibitero zikicwa hakoreshejwe amasasu, ko yayoboye inama zo kunoza uko jenoside igomba gukorwa, ko bakomeje guhiga abatutsi hagamijwe kubamaraho mu cyo yise "ratissage", hanashyirwaho bariyeri n'amarondo mu rwego rwo guhiga abo bitaga umwanzi.

Ubushinjacyaha bunavuga ko muri iyo baruwa NTAGANZWA Ladislas yavuze kandi ko umutekano ari wose nyamara abatutsi bicwaga bari bamwe mu baturage ayobora.

[184] Buvuga nanone ko hari indi baruwa yo kuwa 30/05/1994, NTAGANZWA Ladislas yandikiye superefe wa superefegitura ya Busoro amugezaho raporo y'inama yateranye ku itariki ya 09/05/1994 amubwira ko bunguranye ibitekerezo ku ntambara barwana n'umwanzi bagasanga bashobora kuyitsinda birinda amacakubiri no gusahura n'ibindi byose bishobora gutuma abantu batumvikana n'uko bashyizeho komisiyo igizwe n'abantu icyenda ishinzwe gukurikirana iby'intambara, ko iyo ntambara yavugaga ari ubwicanyi bwakorerwaga abatutsi.

[185] Bukomeza buvuga ko hari n'ibaruwa yo kuwa 20/5/1994 yandikiye superefe wa Busoro amumenyesha ko hari abantu babiri bafashwe ku itariki ya 19/05/1994 bagasanga nta byangombwa bafite ariko we ahita yemeza ko ari inkotanyi, ko hari n'indi baruwa yamwandikiye kuwa 31/05/1994 amugezaho ikibazo cy'impunzi zituruka muri komini ya Ngenda, yavugaga ko hari inyenzi zafatiwe muri segiteri Kibangu bakazica nyuma yo kubabwira ko hari n'izindi zirenga mirongo itatu (30) zinjiye muri Nyakizu, ko hafashwe icyemezo cyo kuzishakisha hose, anamwibutsa kwihutisha kubaha intwaro, ko hari n'inyandikomvugo y'inama yo kuwa 02/06/1994 yahuje Burugumesitiri NTAGANZWA Ladislas n'abagize icyiswe komite y'umutekano n'abakonseye b'amasegiteri ya Nyakizu aho buri mukonseye yatanze raporo y'uko byifashe muri segiteri ye, hemezwa ko bariyeri zigomba kujya aho ubutegetsi bwemeje, abagomba gusakwa n'uko hagomba gukorwa inama kenshi, ko ikigaragara muri iyo nyandikomvugo ari uko bagiye gusaka kwa Rugwizangoga bavuga ko abitse inkotanyi yitwa Yohani Nzirabatinyi kandi ari umuturage usanzwe. Buvuga kandi ko ibaruwa yandikiye uwitwa Nzeyimana Venuste amuha uburenganzira bwo gutunga imbunda yari yamubwiye ko yatoye ubwo bateraga i Cyahinda igaragaza ko yari afite ububasha bwo gutanga uburenganzira bwo gutunga imbunda.

[186] Busoza buvuga ko ibivugwa muri izo nyandiko bishimangira ko NTAGANZWA ariwe wayoboye ubwicanyi, ko yatangaga amabwiriza, anatanga intwaro zicishijwe abatutsi, ko yanarakoreshaga inama agamije kunoza uko jenoside ikorwa, ko ibyo binashimangirwa n'ibaruwa Superefe wa Superefegitura ya Busoro yamwandikiye amushimira ubushishozi agaragaza mu gutahura umwanzi inyenzi-inkotanyi n'ibitekerezo yagejeje ku baturage.

►Imyiregurire ya NTAGANZWA ku bimenyetso bishingiye ku nyandiko

[187] Ntaganzwa Ladislas n'abamwunganira bavuga ko nyuma y'ubwicanyi bukomeye bwabaye muri Nyakizu kuva kuwa 15/04/1994 nta kintu cyashoboraga gukorwa kubera ko hari imvururu nyinshi kandi ko kugeza kuwa 24/04/1994 abari barahungiye muri Nyakizu bose bari bamaze kwambuka bajya i Burundi n'ahandi, ko ariyo mpamvu kuwa 28/04/1994 Burugumesitiri yatumije abagize inama ya komini ngo barebere hamwe uko ibintu byifashe n'uburyo ubuzima bwakomeza. Bavuga ko mu byizwe muri iyo nama, harimo uburyo intambara yatangiye, uburyo bayitsinda, ko ibyo bitari umwihariko wo muri komini Nyakizu gusa kuko yari intambara yari mu gihugu hose. Bavuga ko hari n'amabwiriza yatanzwe n'urwego rw'umutekano muri Butare y'uko buri komini ishaka abasore bo guha imyitozo ya gisirikare, bagategereza igihe bazakenerwa kujya gufasha ingabo ku rugamba ariko ko mu gihe bari bataragenda bagombaga gufasha kurinda ko umwanzi yafata komini, ko NTAGANZWA ku giti cye atari gukoresha iyo myitozo ngo bibure kugera kuri komanda wa jandarumeri wafatwaga nk'umwe mu nkingi zakingiraga Butare ngo abure kubihagarika kuko bitari mu nshingano za Komini gukoresha iyo myitozo ya gisirikare

[188] Bakomeza bavuga ko n'ibyo ubushinjacyaha buvuga ko hashyizweho umunsi wo gukora "ratissage" buvuga ko kwari uguhiga abatutsi kuko nta ntambara yari yabereye i Cyahinda atari byo kuko kuva tariki ya 15/04/1994 kugeza kuri 17/04/1994, nta ntambara yari yahabaye kubera ko ibyari byabaye bari babifashe nko gucengera kw'ingabo za FPR, ko aho uwari Perezida Sindikubwabo ahagereye akemeza ko mu mpunzi zari i Cyahinda harimo abantu bihishemo bafite intwaro zikomeye, agategeka ko babarwanya hakoreshejwe intwaro zikomeye, iyo ariyo yari intambara, ko ari no muri urwo rwego abasirikare bari muri iyo nama kandi bakaba baragombaga gukora ku buryo hamenyekana ko ahantu hose nta mwanzi ugihari. Banavuga ko nta cyaha cya jenoside yakoze ashyiraho gahunda yo gukora isuku kuri paruwasi no mu nkengero zayo.

[189] Bakomeza bavuga ko ku birebana n'amarondo no gushyiraho bariyeri atari umwihariko wa NTAGANZWA Ladislas kuko yari gahunda ya guverinoma mu rwego rwo gukumira gucengera k'umwanzi warwanaga intambara ya kinyeshyamba, ko ibaruwa yandikiye Superefe ku itariki ya 10/05/1994 yari mu rwego rwo kumumenyesha ko abari mu nama basanze uburyo batsinda intambara ari ugushyiraho amarondo, hakagenzurwa abantu bahita kugira ngo hatahurwe umwanzi ubihishemo.

[190] Banavuga ko ibaruwa No 101/04.05/1 yo ku wa 10/05/1994, yandikiye Superefe wa superefegitura ya Busoro yayanditse mu gihe umutekano wasaga nk'aho wari umaze kugaruka nubwo abatutsi bari barapfuye abandi bagahunga, ko yamumenyeshaga nk'urwego rumukuriye uburyo byifashe muri Nyakizu nuko nta bimenyetso byagaragazaga ko hari undi mwanzi uhari, ko ibaruwa no 106/04.09.01/4 yo kuri 17/05/94 nayo yandikiye Superefe yamumenyeshaga iby'abantu bafashwe n'abaturage muri segiteri Yaramba kuwa 16/05/1994 bari mu modoka yo mu bwoko bwa Suzuki Samurai, ko byagaragaye ko abo bantu bari inkotanyi, kubera ko abasirikare bazi ibyo gutahura umwanzi ari bo babyemeje kubera ibyo babasanganye, ko rero batazize ko ari abatutsi kandi ko ibyo ubushinjacyaha buvuga ko yatanze raporo y'ibinyoma agamije guhisha impamvu bishwe atari byo kuko ibyo yavuze bihura n'ibyavuzwe n'abatangabuhamya babwo aho bagaragaje ko abo bantu bari bafite intwaro. Banavuga ko kuba yaratangaga raporo y'ibyabaga byabaye yizera ko bizafasha inzego z'umutekano kuwugarura muri komini yayoboraga asanga nta cyaha kirimo.

[191] [191] Bavuga kandi ko ibaruwa no 115/04.09.01/4 yo kuwa 30/05/1994 yandikiye Superefe wa superefegitura ya Busoro yamugezagaho ibyavugiwe mu nama yabaye kuri 09/05/1994, igahuza abakonseye, impuguke muri komini Nyakizu, abahagarariye amashyaka mu rwego rwa komini na segiteri n'uhagarariye abajandarume bari muri komini Nyakizu birimo ibijyanye no gutsinda intambara, uko intambara yavugwaga atari iyo muri Nyakizu gusa ahubwo yari intambara yo mu rwego rw'igihugu, hafatwa imyanzuro y'uko abantu baba maso bagashyira hamwe bakirinda ubusahuzi bwari mu bintu byatezaga umutekano muke kuko byari bimaze kugaragara ko n'abasirikare bamwe bata urugamba bagahugira mu gusahura, ko ari muri urwo rwego babibuzaga abaturage b'i Nyakizu, kugira ngo bidaha umwanzi icyuho, ko ari nayo mpamvu hashyizweho itsinda ry'abantu bo gukemura impaka zavutse, bakanamenya ko ntaho umwanzi arimo kugerageza kwinjirira, ko ibyo byanamenyeshejwe inzego zimukuriye zirimo urwa perefegitura n'umukuru w'ingabo mu karere ka Butare-Gikongoro, kandi abo bose bakaba bataragaragaje ko bidakwiye, ko rero atabikoze mu rwego rwo gukora jenoside kuko muri Nyakizu ubwicanyi bwari bwararangiye.

[192] Bavuga nanone ko ibivugwa mu ibaruwa no 109/04.09.01/4 yo kuri 20/05/1994 yandikiye Superefe wa superefegitura ya Busoro amwibutsa ko hari inkotanyi zari zarafatiwe i Yaramba, ko hari n'abandi basore babiri bafatiwe hafi ya komini ari nijoro n'abashinzwe amarondo bavuga ko bagiye muri komini Cyahinda, ko kuba hataramenyekanye abo ari bo byatumye bafatwa nk'abacengezi, ko we nta kindi yari gukora mu gihe abasirikare bari kuri komine bari bemeje ko abo bantu ari abanzi, ko icyo yakoze ari ukubahiriza amabwiriza yose akamenyesha inzego zifite mu nshingano zazo umutekano.

[193] Bakomeza bavuga ko ibaruwa No 120/04.09.01/4 yo kuwa 31/05/1994 yandikiye superefe yamubwiraga ko impunzi zimaze kuba nyinshi muri komine Nyakizu n'uko umutekano utameze neza, ko abahanyuraga bahunga bafite aho bajya hazwi babareka bakajya mu miryango yabo mu makomini baturukamo yo muri Gikongoro nka Nshili n'ahandi, ko muri iyo baruwa yanamumenyesheje ko batari gushira amakenga ibyangombwa by'abazaga muri Butare baturutse ahandi kuko hari izindi nyenzi zafatiwe muri segiteri Kibangu, mbere yo kwicwa zikavuga ko hari izindi mirongo itatu (30) zishobora kuba zarahaje, ko ibyo byabateraga impungenge bigatuma amenyesha Superefe ayo makuru, anasaba inama y'icyakorwa. Avuga ko ibyo kuba inkotanyi zaracengeraga mu makomini ari nabyo byavuzwe na Colonel Muvunyi Tharcisse mu nama y'abaturage yabereye i Viro kuwa 20/05/1994, ko rero kwibutsa ko komine Nyakizu ihabwa intwaro byari ngombwa kuko byari byaremejwe ko abaturage bazihabwa mu buryo bwo kurwanya umwanzi.

[194] Banavuga ko ibyo ubushinjacyaha buvuga ko mu ibaruwa no 103/04.09.01 yo kuwa 10/05/1994 yandikiye Superefe wa Busoro yavuze ko abafite uruhare rukomeye mu gusubiranishamo abaturage b'abahutu ari abafite abagore b'abatutsikazi cyangwa ubwabo bakomoka ku batutsi, bukavuga ko ibyo bigaragaza urwango yari afitiye abatutsi atari byo kuko icyo yamenyeshaga superefe muri iyo baruwa ari uko umupolisi wa komine yasindiye muri santeri ya Cyahinda agakangisha abantu imbunda, kandi bari ku marondo yo gucunga umutekano wa nijoro, arayakwa mu rwego rwo kubahiriza umutekano naho undi bari kumwe ateye amahane ashyirwa muri kasho ya komini, ko ibyo butabishingiraho bumurega gushaka gukora jenoside bushingiye ku kuba yaragaragaje isano bafitanye n'abatutsi kuko ayo masano yagaragaraga mu mwirondoro wabo wari mu bitabo by'irangamimerere ya Leta, ko rero asanga nta kosa ryarimo gutangaza ko abo bantu bari abatutsi cyangwa babakomokaho.

[195] Bavuga ko ibaruwa yo kuri 31/05/1994 ubushinjacyaha buvuga ko ari ikimenyetso cyo gukora jenoside atari byo kuko yayanditse agaragaza amasasu akenewe muri komine Nyakizu kubera ko yari isanzwe ifite imbunda kandi bikaba byari mu nshingano ze harebwe ibihe barimo, ko byongeye kandi byari ngombwa gusaba amasasu kuko hari gahunda yo kwigisha abasore ibijyanye n'igisirikare kugira ngo bategurwe gutabara igihe bazakenererwa ko bitari bigamije kwica abatutsi kuko ayandika ubwicanyi bwari bwararangiye ari mu gihe cyo kwicungira umutekano.

[196] Bakomeza bavuga ko kuba mu ibaruwa yandikiye Minisitiri w'intebe yaramubwiye ko hari abakonseye bananiranye bitwara nk'inkotanyi bagaragaza ko bari ku ruhande rwa FPR, akabasabira kuvanwaho atari ikimenyetso cyo gukora jenoside kuko mu nama Kambanda Jean wari minisitiri w'intebe yakoreye i Butare ubwo bari mu muhango wo gusimbura Perefe Habyarimana, hajyaho Nsabimana Silvani, yavuze ko hari abakorera FPR, ko rero bagombaga kuvaho. Banavuga ko atanabazwa iby'intambara yabereye i Cyahinda kuko yabaye nyuma yo

gutangirwa uburenganzira na Perezida w'igihugu akaba ariwe byabazwa kandi ko kuba iyo ntambara yarahabaye byemejwe n'abari babifitiye ubumenyi bavuga ko intambara iri mu gihugu hose irwanwa mu buryo buvanze ubunyeshyamba no guhangana.

[197] Bavuga kandi ko muri iyo baruwa yavuzemo ikibazo cya Nshimiryayo Ange wari mu bari bihishe i Cyahinda bafite intwaro; akanagira umuhungu mu barwanyaga Leta, ko ibyo ari byo byatumye mu rwego rwa gisirikare hafatwa icyemezo cyo gutera iwe hagasakwa, ko no kuba yari atunze ibirangantego bya FPR byatumye akurikiranwa, ashyikirizwa inzego zibishinzwe, ko rero impamvu yatumye amwandikira kwari ukumumenyesha ko amashyaka ya MRND na PSD yashakaga guhungabanya MDR muri Nyakizu bagendeye kuri ako kaduruvayo, anamusaba intwaro amumenyesha ko bahawe ebyiri gusa kandi bari ku mupaka w'u Burundi ahavugwaga ko hazaturuka igitero cy'umwanzi.

[198] Bavuga nanone ko mu rwandiko no 119/04.09.1.4 rwo kuwa 01/06/1994 yamenyeshaga Superefe ko hari abasirikare b'abarundi bajya gufasha inkotanyi banyuze mu Bugesera baturutse mu Kirundo, ko ayo makuru yayakuraga ku bantu yoherezaga mu Burundi, anamumenyesha ko muri abo bajya gufasha inkotanyi, harimo n'abatutsi bahunze u Rwanda bifatanyije n'abarundi batera inkambi yarimo abarundi batahutse, bicamo abantu, ko n'umuhungu wa Nshimiryayo Ange byavugwaga ko yagiye mu nkotanyi aciye mu Bugesera, ko asanga kuba yaratanze amakuru nk'ayo nta cyaha cya jenoside kirimo.

[199] Bavuga ko mu ibaruwa No 124/ 04.09.014 yo kuwa 03/06/1994 yandikiye Kajuga Robert yagiraga ngo amufashe kubona intwaro kuko yari yarerekanye ko zikenewe ariko bakomeza kumurerega akumva ko ashobora kumuvuganira ku babishinzwe kuko we yahoranaga nabo kandi akaba yari kuzimubonera ku buryo bworoshye, bigatuma ashobora kurinda umupaka nk'uko yari yarabisabwe na Superefe wa superefegitura ya Busoro mu rwandiko yamwandikiye amusaba ko bakaza umutekano ku Kanyaru no ku byambu kuko hariho amakuru y'ibitero by'inyenzi byashoboraga kuhanyura bivuye i Burundi, ko ari nayo mpamvu amarondo yakorwaga aho ku Kanyaru n'ahandi hose umwanzi yari kunyura, ko rero nta wari kujya gukora amarondo aho hose yiteguye ibitero ngo abure gukenera intwaro, ko na Kambanda Jean wari Minisitiri w'intebe, mu rubanza rwe yagaragaje ko kwicungira umutekano yari gahunda ya guverinoma.

[200] NTAGANZWA Ladislas n'abamwunganira banavuga ko baruwa no 128/04.09.01/4 yo kuwa 08/06/1994 yandikiye perefe wa Butare atari ikimenyetso cyo gukora jenoside kuko icyo yari igamije kwari ukohereza dosiye ya Nshimiryayo Ange inzego zibishinzwe kugira ngo zirebe ko hari ibyaha yakurikiranwaho. Bavuga nanone ko kuba uwitwa Yusitini Nzeyimana yaramwandikiye kuwa 19/06/1994 amusaba gutunga imbunda yari yaratoraguye i Cyahinda, nta cyaha abibonamo kuko yabikoze mu gihe havugwaga ko abaturage bagomba guhabwa intwaro kugira ngo umwanzi nabarasa nabo bazamurase, hakaba nta mpamvu yari ihari yo kumwima ubwo burenganzira mu gihe hari hategerejwe amabwiriza mashya arebana no kwicungira umutekano.

[201] Bavuga nanone ko n'inyandikomvugo y'inama yo kuwa 02/06/1994 yahuje Burugumesitiri NTAGANZWA Ladislas n'abakonseye b'amasegiteri ya Nyakizu, hakemezwa ko bariyeri zigomba kujya aho ubutegetsi bwemeje, abagomba gusakwa n'uko bagomba gukora inama kenshi nayo itagomba gufatwa nko gukora icyaha cya jenoside nk'uko ubushinjacyaha bubivuga kubera ko n'ubusanzwe inama zakorwaga zari izo kugaragaza uko ibintu byari byifashe kandi igihe iyo nama yabereye, muri Nyakizu ubwicanyi bwari bwararangiye, ko nta n'abatutsi bari bagihari, ko

kuba harabaga inama agatanga raporo bigaragaza ko ntacyo yigeze ahisha mu mikorere ye kandi kuvuga ko bagiye gusaka inkotanyi kwa Rugwizangoga bitavuze ko ari umututsi bari bagiye gusaka.

[202] Bakomeza bavuga ko kuba Superefe wa Superefegitura ya Busoro yaramwandikiye amushimira imikorere ye mu birebana no kugarura no kwirindira umutekano bitagomba gufatwa nk'aho yamushimiraga ko ari we wayoboye ubwicanyi muri Nyakizu. Banavuga ko ku birebana n'impunzi zavaga mu Bugesera, muri iyo baruwa superefe nawe yagaragaje ko n'inama y'umutekano mu rwego rwa perefegitura yafashe icyemezo cy'uko impunzi zitagomba kongera gukwira hose ko ahubwo zishyirwa hamwe i Mubumbano, ko hanafashwe icyemezo cy'uko zigomba gusakwa kugira ngo umwanzi urimo atahurwe, ko rero iyo aza kuba agamije kwica abantu atari kubimenyesha inzego zimukuriye mu gihe muri Nyakizu hari abajandarume bahashyizwe mu rwego rwo gukurikirana umutekano buri munsi nabo batanga raporo.

[203] Bavuga ko ibaruwa no 60/04.09/04 yandikiwe na Superefe amumenyesha ko hari umugambi w'umwanzi ushobora kugaba igitero aturutse i Burundi asaba abantu kugenzura umupaka nayo itafatwa nk'ikimenyetso cyo gukora jenoside kuko bwari uburyo bwo gukumira ko hari igitero cyakorwa giturutse i Burundi kandi bikaba byari bivuzwe n'inzego zizewe mu kumenya aho umwanzi yaturuka.

[204] Basoza bavuga ko haba ibimenyetso by'ubushinjacyaha bishingiye ku mvugo z'ababajijwe mu iperereza, haba n'inyandiko bwatanze asanga byose bitagaragaza uruhare rwe mu bwicanyi bwakorewe abatutsi muri komini Nyakizu n'ahandi kuko imvugo z'abatangabuhamya zidasobanura neza uko ibintu byagenze, zivuguruzanya naho amabaruwa atandukanye yanditse akaba ari raporo yakoreraga inzego zimukuriye kugira ngo hafatwe ingamba zo kurinda umutekano, ko andi mabaruwa yanditse asaba intwaro cyangwa amasasu nabyo yabikoze mu rwego rw'akazi yari ashinzwe ko gushakira ibikoresho abashinzwe umutekano.

UKO URUKIKO RUBIBONA

[205] Urukiko rusesenguye ibikubiye muri izi nyandiko, rusanga nabyo bigaragaza ko NTAGANZWA Ladislas yari afite umugambi anagira uruhare mu iyicwa ry'abatutsi bo muri komini ya Nyakizu n'abari barahahungiye bavuye ahandi kubera ko muri izo nyandiko harimo izo asobanura uburyo bagabye ibitero ku batutsi bari barahungiye i Cyahinda avuga ko ari urugamba barwanye n'inkotanyi zari zahahungiye, iyo yandikiye uwari Minisiteri w'intebe avugamo ko bakuyeho abakonseye bitwaye bunyenzi kubera ko bahishe banambutsa i Burundi abatutsi yitaga inyenzi nuko basimbujwe abo yitaga intwari zayoboye urugamba mu ntambara yari yabereye i Cyahinda, iyo yandikiye Perefe wa perefegitura ya Butare kuwa 08/06/1994 avugamo ko aho inkotanyi zishakiye kwigarurira komini Nyakizu zirundanyirije i Cyahinda, iyo yandikiye Superefe wa superefegitura ya Busoro avugamo ibyo kutizera impampuro abantu bahungaga bandikirwaga n'abakonseye b'aho baturuka, inyenzi zafatiwe i Kibangu mbere yo kwicwa zikababwira ko hari izindi mirongo itatu zinjiye muri Nyakizu n'uburyo yafashe icyemezo cyo gushakisha hose muri segeteri zose za komini Nyakizu aho zaba ziri kugira ngo umugambi wazo bawuburizemo, anasaba kwihutisha kubaha intwaro zo kubafasha muri ibyo bikorwa.

[206] Bityo, nk'uko uru rukiko rwabisobanuye mu rubanza rwa Mugesera Léon rwaciwe kuwa 15/04/2016 rwifashishije ibyasobanuwe n'abahanga barimo Mathias Ruzindana wiyambajwe

n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Akayesu Jean Paul[8] wavuze ko amagambo inkotanyi, inyenzi cyangwa ibyitso yakoreshwaga bashaka kuvuga abatutsi ndetse na Evariste Ntakirutimana wiyambajwe n'urwo rukiko mu rubanza rwa Nyiramasuhuko na bagenzi be[9] wasobanuye ko mu gihe cy'intambara yo mu Rwanda, abafataga ijambo birindaga kwerura ngo bavuge ko bari bahanganye n'abatutsi kugira ngo hatagira ababyivangamo cyangwa ngo bitume amahanga ahurura n'inyandiko yakorewe mu buyobozi bukuru bwa gisirikari (état major) kuwa 21/09/1992 nayo isobanura ko umwanzi wavugwaga, icyo gihe, ari umututsi uri mu gihugu, hanze yacyo cyangwa umushyigikiye, urukiko rusanga inyenzi, inkotanyi cyangwa umwanzi NTAGANZWA Ladislas nawe yavugaga muri yo mabaruwa ari abatutsi.

[207] Urukiko rusanga ikindi kigaragaza ko NTAGANZWA Ladislas yari afite umugambi wo kwica abatutsi, anagira uruhare mu iyicwa ry'abatutsi muri Nyakizu ari uko muri ayo mabaruwa harimo ayo yagiye yandika asaba intwaro zo kumufasha mu rugamba rwo guhangana n'inyenzi nk'iyo yandikiye Kajuga Robert wari perezida w'interahamwe amusaba intwaro kugira ngo bazabashe guhangana n'inyenzi, ibaruwa yo kuwa 10/05/1994 yandikiye Superefe wa Busoro amugezaho ibyavuye mu nama yo 28/04/1994 yigaga ibijye n'uko ibintu byifashe nyuma y'intambara yabereye kuri paruwasi ya Cyahinda agaragaza ibyemezo bafashe byo gukora amarondo yo kugenzura aho umwanzi yanyura, gushyiraho bariyeri no gushakisha abasore bo gutoza ibya gisirikare.

[208] Urukiko rugasanga rero ibyo avuga ko yandikaga ayo mabaruwa mu rwego rwo kumenyesha inzego zimukuriye uko umutekano uhagaze kugirango zifate ingamba zo kugarura umutekano, nta shingiro bifite kuko muri ayo mabaruwa atarimo kumenyesha gusa ibyabaye ahubwo yanagaragazaga ibyo barimo bakora birimo kugaba ibitero ku batutsi avuga ko ari urugamba arwana n'inkotanyi kandi nka Burugumesitiri atari kuyoberwa ko i Cyahinda hari hahungiye abaturage bo mu bwoko bw'abatutsi baturutse mu makomini ahana imbibi na Nyakizu ndetse n'abo muri iyo komini yayoboraga.

UKO URUKIKO RUBIBONA KU BIREBANA N'AMATEGEKO KU CYAHA CYA JENOSIDE

[209] Ubushinjacyaha buvuga ko icyaha cya jenoside giteganywa n'ingingo ya 114 y'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko jenoside ari igikorwa gikozwe mu buryo bwateguwe hagamijwe kurimbura abantu bose cyangwa bamwe muri bo bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini bazira icyo bari cyo haba mu bihe bisanzwe cyangwa mu bihe by'intambara. Bukanavuga ko kugira ngo icyo cyaha kibeho bisaba ko ugikora aba afite umugambi wihariye (specific intent) wo kurimbura abantu bose cyangwa bamwe muri bo bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, ko uwo mugambi ugaragarira mu bikorwa ndengakamere nyir'ukugikora yakoze, ndetse ko wanareberwa mu bihe igihugu cyarimo hicwa abatutsi.

[210] Buvuga ko kuba NTAGANZWA Ladislas yarayoboye ibitero ku batutsi bari barahungiye ahantu hanyuranye muri Nyakizu, agakora ibikorwa birimo kwica, gutanga amabwiriza n'intwaro

[8] Case No ICTR-96-4-T The Prosecutor vs AKAYESU Jean Paul, 2nd September 1998, para.147-150.
[9] Case No.ICTR-98-42-T The Prosecutor vs NYIRAMASUHUKO and al. , 24th June 2011, para. 3769

zakoreshejwe mu kwica abatutsi, yitwara igisirkare kandi atari umusirikare, ibyo byose abikora agamije kurimbura abatutsi bose cyangwa bamwe muri bo bigaragaza ko yakoze icyaha cya jenoside cyangwa agikoresha abandi.

[211] NTAGANZWA Ladislas n'abamwunganira bavuga ko atigeze agambirira kwica abatutsi, ko n'igihe ibikorwa ubushinjacyaha bumurega buvuga ko bigize icyaha cya jenoside byakorewe, nta mategeko yariho ahana icyo cyaha kuko n'amasezerano mpuzamahanga ku ikumira no guhana icyaha cya jenoside u Rwanda rwashyizeho umukono kuwa 12/02/1975 atateganyaga ibihano kuri icyo cyaha. Banavuga ko n'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ubushinjacyaha bushingiraho bumurega nta ngingo z'inzibacyuho riteganya ku byerekeranye n'itegeko ryo mu 1996 ryahanaga icyaha cya jenoside.

[212] Urukiko rusanga Amasezerano ku ikumira n'ihanwa ry'icyaha cya jenoside yo kuwa 09/12/1948 u Rwanda rwashyizeho umukono kuwa 12/02/1975 mu ngingo yayo ya 2 ateganya ko icyaha cya jenoside ari kimwe mu bikorwa bikurikira kigamije kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, haba mu bihe bisanzwe cyangwa mu bihe by'intambara: 1° kwica abo bantu; 2° kubatera ubumuga bw'umubiri cyangwa bwo mu mutwe; 3° kubashyira, ubigambiriye, mu mibereho ishobora gutuma barimbuka bose cyangwa harimbuka igice cyabo; 4° gufata ibyemezo bibabuza kubyara; 5° kubambura ku ngufu urubyaro rwabo ukaruha abandi bantu badahuje[10].

[213] Urukiko rusanga ibyo bikorwa ari nabyo byateganywaga n'ingingo ya 114 y'Itegeko Ngenga No 01/2012/OL ryo kuwa 2/05/2011 rishyiraho igitabo cy'amategeko ahana nk'ibigize icyaha cya jenoside[11] ndetse akaba ari nabyo biteganywa n'ingingo ya 91 y'Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. Urukiko rusanga n'itegeko rishyiraho Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda[12] n'irishyiraho Urukiko Mpanabyaha Mpuzamahanga[13] uko asobanura jenoside bihura n'ibisobanuro bitangwa n'amategeko u Rwanda rugenderaho.

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[10] Article 2 de la convention pour la prévention et la repression du crime de génocide : "Dans la présente Convention, le génocide s'entend de l'un quelconque des actes ci-après, commis dans l'intention de détruire, en tout ou en partie, un groupe national, ethnique, racial ou religieux comme tel :
a) Meurtre de membres du groupe;
b) Atteinte grave à l'intégrité physique ou mentale de membres du groupe;
c) Soumission intentionnelle du groupe à des conditions d'existence devant entraîner sa destruction physique totale ou partielle;
d) Mesures visant à entraver les naissances au sein du groupe;
e) Transfert forcé d'enfants du groupe à un autre groupe ».

[11] Ingingo ya 114 y'Itegeko Ngenga No 01/2012/OL ryo kuwa 2/05/2012 rishyiraho igitabo cy'amategeko ahana isobanura icyaha cya jenoside mu buryo bukurikira: "Icyaha cya Jenoside ni kimwe mu bikorwa bikurikira cyakozwe mu buryo bwateguwe kigamije kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, haba mu bihe bisanzwe cyangwa mu bihe by'intambara:
1° kwica abo bantu;
2° kubatera ubumuga bw'umubiri cyangwa bwo mu mutwe;
3° kubashyira, ubigambiriye, mu mibereho ishobora gutuma barimbuka bose cyangwa harimbuka igice cyabo;
4° gufata ibyemezo bibabuza kubyara;
5° kubambura ku ngufu urubyaro rwabo ukaruha abandi bantu badahuje"

[12] Article 2 du Statut du Tribunal Pénal International pour le Rwanda

[13] Article 6 du Statut de Rome de la Cour Pénale Internationale

[214] Urukiko rusanga kugira ngo icyaha cya jenoside kibeho hagomba kubaho kimwe mu bikorwa biteganywa n'izo ngingo bikozwe hagamijwe kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo haba mu bihe bisanzwe cyangwa mu bihe by'intambara. Imanza zaciwe n'Inkiko Mpanabyaha Mpuzamahanga nazo zigaruka kuri ibyo bisobanuro by'icyaha cya jenoside aho Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze ari Yugusalaviya mu rubanza rwa Jelisic[14] rwemeje ko jenoside irangwa n'ibikorwa byavuzwe n'ubushake bwihariye bwo kurimbura abantu bose cyangwa bamwe muri bo bazira icyo bari cyo n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Tharcisse Muvunyi rwagagaje ko icyaha cya jenoside ari kimwe mu bikorwa birimo kwica , ko n'ugikora aba afite umugambi wihariye wo kurimbura itsinda ry'abantu bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa idini bazira icyo bari cyo [15].

[215] Urukiko rusanga by'umwihariko kwica nka kimwe mu bikorwa by'icyaha cya jenoside bisaba ko uwabikoze aba yishe abantu bose cyangwa bamwe muri bo bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo. Ibi akaba aribyo Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwasobanuye mu rubanza rwa Semanza Laurent ruvuga ko kugira ngo umuntu ahamwe n'icyaha cya jenoside kubera kwica bisaba ko umushinjacyaha aterekana gusa ko uregwa yari afite ubushake bwo kurimbura abantu bose cyangwa bamwe muri bo bazira icyo bari cyo agomba no kugaragaza ko uregwa yari afite ubushake bwo kwica umwe cyangwa benshi bagize itsinda n'uko uwishwe cyangwa abishwe bari bamwe mu bagize itsinda rishingiye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini ryari rigenderewe.[16]

[216] Urukiko rusanga kandi uretse ibikorwa bigize icyaha cya jenoside byavuzwe, ugikora agomba kuba anafite ubushake bwihariye bwo kurimbura abantu bose cyangwa bamwe muri bo bagize itsinda rihuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo. Mu manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda nko mu rubanza rwa Yussuf Munyakazi[17], mu rubanza rwa Akayesu Jean Paul[18] n'urwa

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[14] Jelisic, (Trial Chamber), December 14, 1999, para. 62 " Genocide is characterized by two legal ingredients according to the terms of Article 4 of the Statue : [1] the material element of the offence, constituted by one or several acts enumerated in paragraph 2 of Article 4; [2] the mens rea of the offence, consisting of the special intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such"

[15] ICTR-2000-55A-T, Le Procureur c/ Tharcisse MUVUNYI, du 12 septembre 2006, para. 477- 478.

[16] ICTR-97-20-T Le Procureur c/ SEMANZA Laurent du 15 mai 2003, para. 319, : "Pour faire déclarer l'accusé pénalement responsable de génocide à raison du meurtre de membres d'un groupe, le Procureur doit établir non seulement que l'accusé était animé de l'intention de détruire, en tout ou en partie, le groupe visé, mais également que les éléments suivants sont réunis : 1) l'accusé a intentionnellement donné la mort à un ou plusieurs membres du groupe, la préméditation n'étant pas requise ; et 2) la victime ou les victimes appartenaient au groupe ethnique, racial, national ou religieux visé

[17] ICTR -94-36A-A Le Procureur c. Yussuf MUNYAKAZI du 28/09/2011, "La Chambre d'appel note que la Chambre de première instance a énoncé correctement les éléments constitutifs de la mens rea requise pour le génocide et l'extermination constitutive de crime contre l'humanité. La Chambre de première instance a fait observer, en particulier, que pour qu'une personne commette le génocide, elle doit agir "dans l'intention de détruire en tout ou en partie un groupe national, ethnique, racial ou religieux", para. 141, p.53

[18] ICTR-96-4-T Le Procureur c/ AKAYESU Jean Paul du 2 septembre 1998, para. 498, "Le génocide se distingue d'autres crimes en ce qu'il comporte un dol spécial ou dolus specialis. Le dol spécial d'un crime est l'intention précise, requise comme élément constitutif du crime, qui exige que le criminel ait nettement cherché à provoquer le résultat

Kamuhanda Jean de Dieu[19], urukiko rwasobanuye ko aho icyaha cya jenoside gitandukanira n'ibindi byaha ari uko gisaba ubushake bwihariye bwo kugikora, ko ubushake bwihariye bwo gukora icyaha ari ubushake budashidikanywaho, bwa ngombwa kugira ngo icyaha cya jenoside kibeho, bukanasaba ko ukora icyaha aba yarashatse kugera kukigambiriwe, ko rero ubushake bwihariye bwo gukora jenoside bugaragarira mu gushaka kurimbura abantu bose cyangwa bamwe muri bo bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini bazira icyo bari cyo.

[217] Urukiko rurasanga iyo nta bimenyetso bihita bigaragaza ubushake bwihariye bwo gukora icyaha cya jenoside nko kwemera icyaha, ubwo bushake bushobora no kureberwa mu bikorwa, uburyo byakozwemo n'uko ibihe byari bimeze bikorwa. Ibi akaba ari nabyo byagiye byemezwa mu manza zaciwe n'Inkiko Mpanabyaha Mpuzamahanga nko mu rubanza rwa RUTAGANDA Georges[20], urwa BAGOSORA Theoneste[21], urwa Simba Aloys[22], urwa Stakic[23] n'urwa Jelisic[24].

[218] Urukiko rurebye rero ko muri rusange guhera muri Mata 1994 mu Rwanda hose abatutsi barimo bahigwa bakicwa kubera ubwoko bwabo, by'umwihariko muri komini Nyakizu no mu makomini bihana imbibi abatutsi batwikiwe amazu bahungira kuri paruwasi ya Cyahinda, hakanarebwa ko mbere y'uko i Cyahinda hagabwa igitero, NTAGANZWA Ladislas yagiye i Butare gusaba abajandarume abajyana yo, bafatanyije n'abaturage bahasanze bica abatutsi benshi na nyuma hagakomeza kugabwa ibitero kugera bahabirukanye, abarokotse bagahungira mu misozi iteganye na Cyahinda naho ibitero bikabakurikira yo, abagerageza guhungira mu gihugu cy'u Burundi agasaba ko bababakurikira bakagarurwa, nyuma bakicwa bigaragaza ko yari afite ubushake bwo kurimbura abatutsi.

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incriminé. Dès lors le dol spécial du crime de génocide réside dans l' intention de détruire en tout ou en partie un groupe national, étnique, racial ou religieux, comme tel"

[19] ICTR-99-54A- T, Le Procureur c/ Jean de Dieu KAMUHANDA du 22/01/2004, para 622 p.142

[20] ICTR96-3-A Le Procureur c/ Georges Anderson Nderubumwe RUTAGANDA du 26 Mai 2003, para. 525, p.202 "… Les manifestations explicites de l'intention criminelle sont […] rares en matière pénale. En l'absence de preuves explicites directes, le dolus specialis peut donc se déduire d'un ensemble de faits et de circonstances pertinentes. Une telle approche permet d'éviter qu'une personne accusée de génocide soit soustraite à la condamnation, du seul fait que son intention n'était pas manifeste".

[21] 21ICTR-98-41-T, Le Procureur c. Théoneste BAGOSORA et crts du 18 décembre 2008, para 2116, p.757 : "La Chambre fait observer qu'en l'absence de preuve directe, l'intention de commettre le genocide qui habite l'auteur peut être déduite de certains faits et indices qui sont de nature à établir, au-delà de tout doute raisonnable, l'existence de l'intention. Au nombre des éléments propres à établir l' intention spécifique du génocide figurent notamment le contexte général de perpétration d'autres actes répréhensibles systématiquement dirigés contre le même groupe, l'échelle des atrocités commises, le fait que les victimes ont été délibérements et systématiquement choisies en raison de leur appartenance à un groupe particulier, ou la répétition d'actes de destruction discriminatoires".

[22] CTR-01-76-4, Aloys SIMBA c. Le Procureur, 27 novembre2007, p. 78, para 264: "(….) La chambre d'appel a déjà indique que la preuve de l'intention génocide peut se déduire des faits et des circonstances de la cause, ce qui l'a amenée à considérer qu'il suffit à cet égard d'exposer dans l'acte d'accusation les faitsd'ou l'état d'esprit de l'accusé doit être déduit.(…).

[23] Stakic, (Trial Chamber), July 31, 2003, para.526 : "It is generally accepted, particularly in the jurisprudence of both this Tribunal and the Rwanda Tribunal, that genocidal dolus specialis can be inferred either from the facts, the concrete circumstances, or'a pattern of purposeful action".

[24] Jelisic, (Appeals Chamber), July 5, 2001, para 47:"As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred… from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts".

[219] Iby’ubwo bushake binashimangirwa n’uko mu mabaruwa yandikiraga inzego zinyuranye muri ibyo bihe yagiye avuga ko abatutsi bari barahungiye i Cyahinda ari inyenzi-inkotanyi zashakaga gufata komine yayoboraga, ko n’abantu bageragezaga kubahungisha cyangwa kubahisha yavugaga ko bitwara bunyenzi ndetse bamwe banahagarikwa mu mirimo yabo kugira ngo basimbuzwe intwari yavugaga ko zayoboye urugamba i Cyahinda no kugira ngo barurangize.

[220] Hashingiwe rero ku biteganywa n’ingingo ya 114 y’Itegeko Ngenga no 01/2012/OL ryo kuwa 2/05/2012 rishyiraho igitabo cy’amategeko ahana n’ibyasobanuwe ku bikorwa bigize icyaha cya jenoside, rusanga kuba NTAGANZWA Ladislas yaragabye ibitero kuri paruwasi ya Cyahinda no ku misozi ya Gasasa, Nyakizu na Mwumba hakicwa abatutsi benshi barenga ibihumbi makumyabiri na bitanu (25 000) barimo Rutikanga Onesphore, Ruvugabigwi, Sharangabo Innocent, Sindayigaya, Mercianne, Wenceslas, Nyirabazungu Thérèse, Nyirabantu, Nyiramasahuku Domitila, Sebumba Stephano na Kamanzi Felicité yarakoze ubwe icyaha cya jenoside.

[221] Urukiko rusanga kandi ingingo Ingingo ya 9 igika cya mbere agace ka gatatu y’Itegeko Ngenga no 01/2012/OL ryo kuwa 2/05/2012 rishyiraho igitabo cy’amategeko ahana yarateganyaga ko icyitso ari uwafashije uwakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi, cyangwa uwoheje uwakoze icyaha. Uru rukiko rusanga kubera uburemere bw’ibyaha mpuzamahanga nka jenoside n’ibyaha byibasiye inyokomuntu n’uburyo bikorwamo aho hari abihisha inyuma y’abandi bakabibakoresha, aba bateye abandi gukora ibyo byaha cyangwa bakabategeka kubikora bagomba gufatwa nk’abakoze ibyo byaha ubwabo aho gufatwa nk’ibyitso kuko uruhare rwabo rusumba kure urw’ ibyitso.

[222] Urukiko rusanga ibi byo gufata uwoheje cyangwa uwateye abandi gukora icyaha nk’uwagikoze ubwe binateganywa mu mategeko mpanabyaha mpuzamahanga nk’amategeko agenga urukiko mpanabyaha mpuzamahanga rwashyiriweho u Rwanda[25], bikaba byaranasobanuwe n’inkiko mpanabyaha mpuzamahanga nko murubanza rwa Kamuhanda Jean de Dieu[26] n’urwa Muvunyi Tharcisse[27] aho basobanuye ko uburyo bwo gukora icyaha uri gatozi

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[25] Statut du Tribunal pénal international pour le Rwanda (TPIR) du 31 janvier 2010, l’article 6.1 : ” Quiconque a planifié, incité à commettre, ordonné, commis ou de toute autre manière aidé et encouragé à planifier, préparer ou exécuter un crime visé aux Articles 2 à 4 du présent Statut est individuellement responsable dudit crime”. Voir aussi l’article 7 du Statut du Tribunal pénal international pour l’ex Yugoslavie.

[26] ICTR-99-54A-T Le Procureur c/ Jean de Dieu KAMUHANDA du 22/01/2004, para 593-594, p.135 :” - “Inciter à commettre”, c'est provoqué autrui à commettre une infraction. Il n'est pas nécessaire que l'incitation soit directe et publique. Elle peut consister tant en un acte positif qu'en une omission. Pour qu'elle soit punissable, l'existence d'un lien de causalité entre l'incitation et la commission du crime doit être établie. - “Ordonner” réside dans le fait pour un individu d'user de sa position d'autorité pour forcer une personne placée sous son autorité à commettre une infraction. Il n'est pas nécessaire de démontrer l'existence d'un lien officiel de subordination pour conclure qu'un ordre a été donné, dès lors qu'il est établi que l'accusé occupait une position d'autorité l'habilitant à donner des ordres. La position d'autorité de la personne qui a donné l'ordre peut être déduite du fait que l'ordre a été exécuté. Jugement confirmé en appel dans l’affaire ICTR-99-54A-A Le Procureur c/ Jean de Dieu KAMUHANDA du 19/09/2005, para. 88, p.36 : “La Chambre d’appel considère, […], qu’il y a lieu de ne confirmer que la conclusion relative à la responsabilité pénale individuelle par lui encourue du fait d’avoir ordonné de commettre les crimes poursuivis”.

[27] ICTR-2000-55A-T Le Procureur c/ Tharcisse MUVUNYI du 12/09/2006, para.464-468, p.129, :” Encourt une responsabilité individuelle pour incitation à commettre un crime au sens de I'article 6.1 du Statut quiconque a encouragé, provoqué, et de quelque autre manière poussé autrui à commettre ledit crime. II peut s'agir d'un acte positif ou d'une omission coupable. Cette forme de participation à caractère incitatif doit avoir un lien substantiel de causalité avec la commission effective du crime. Elle diffère de I'incitation prévue à I'article 2.3 c) en ce sens qu'elle ne doit

burimo uwakanguriye abandi n'uwategetse kugikora, ndetse no mu mategeko y'ibindi bihugu nko mu Bufaransa aho uwakoresheje abandi icyaha cya jenoside afatwa nk'uwagikoze ubwe[28].

[223] Rusanga rero kuba NTAGANZWA Laslas yaragiye i Nkakwa agategeka konseye Ngendamagabo Théoneste kugarura abatutsi bahungiraga i Burundi amubwira ko bagiye kubatanga imbere bakazagaruka kubatera n'uko ari abanzi b'amahoro, bigatuma konseye yohereza abaturage kubagarura, bakagarura bamwe muri bo abagera kuri magana abiri (200) bakicwa nabwo agomba guhamwa n'icyaha cya jenoside kubera uko gutegeka no gutera abandi kugikora.

[224] Rusanga ibyo NTAGANZWA Ladislas n'abamwunganira bavuga ko atakurikiranwaho icyaha cya jenoside kuko kitari giteganyijwe mu mategeko y'u Rwanda, nta shingiro bifite kubera ko kuwa 12/02/1975 u Rwanda rwari rwaremeje amasezerano yo kuwa 09/12/1948 ku ikumira n'ihanwa rya jenoside. Byongeye kandi mu rwego mpuzamahanga jenoside ikaba ari icyaha, kigomba guhanwa n'ibihugu byose (jus cogens)[29] n'iyo byaba bitaragiteganyije mu mategeko yabyo nk'icyaha[30]. Ibi akaba ari nabyo byemejwe mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamanga rwashyiriweho u Rwanda nko mu rubanza rwa Kayishema Clément na Ruzindana Obed[31] ndetse no mu rubanza rwa Munyaneza Désiré rwaciwe n'Urukiko rw'ubujurire rwa Canada[32]. Urukiko rukaba rusanga rero Amasezerano ku ikumira n'ihanwa rya jenoside afatwa nk'amategeko yemewe nk'umuco mpuzamahanga ibihugu byose bigomba kubahiriza[33].

[225] Urukiko rusanga kandi ibyo NTAGANZWA Ladislas n'abamwunganira bavuga ko atahanirwa icyaha cya jenoside kubera ko nta gihano cyari giteganyirijwe icyo cyaha mu gihe cyakorwaga n'uko itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo y'amategeko ahana ritateganyije ingingo z'inzibacyuho zigaragaza uko icyaha cya jenoside cyakozwe muri Mata 1994 kigomba guhanwa, nabyo nta shingiro bifite kuko kuba yahanwa

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pas être directe ou publique. C'est ainsi que des formes d'incitation en privé, implicites ou feutrées peuvent engager la responsabilité d'un accusé au sens de I'article 6.1 si le Procureur peut prouver I'existence d'un lien de causalité entre ces actes d'incitation et la commission effective du crime".

[28] D'après les dispositions de l'article 211-1 du Code pénal français constitue un génocide le fait, en exécution d'un plan concerté tendant à la destruction totale ou partielle d'un groupe national, ethnique, racial ou religieux, ou d'un groupe déterminé à partir de tout autre critère arbitraire, de commettre ou de faire commettre, à l'encontre de membres de ce groupe, l'un des actes prévus par cet article.

[29] Blagojevic and Jokic, (Trial Chamber), January 17, 2005, para. 639 :"… It is widely recognized that the law set out in the convention reflect customary international law and that the norm prohibiting genocide constitutes jus cogens".

[30] M. Cherif BASSIOUNI, Introduction au droit international, Bruylant Bruxelles, 2001, P.75-76. « Le jus cogens implique non seulement son application universelle mais signifie aussi qu'il s'agit d'une norme obligatoire. A ce titre le jus cogens occupe la position hiérarchique la plus élevée parmis les autres normes. La conséquence de ce statut est que les normes de jus cogens sont considérées comme impératives et insusceptibles d'aucune dérogation». ; voir aussi p. 74 :« … Enfin, la qualification d'un crime comme relevant du jus cogens impose aux Etats une obligation erga omnes de ne pas accorder l'impunité aux contrevenants de ces crimes ».

[31] ICTR-95-1-T KAYISHEMA Clément na Ruzindana Obed, 21 mai 1999, p. 29, para 88 : « Le crime de génocide est considéré comme faisant partie intégrante du droit international coutumier qui, de surcroît, est une norme impérative du droit ».

[32] 500-10-004416-093 (500-73-002500-052) MUNYANEZA C.R du 7/05/2014, para. 26. "Quand aux crimes de génocide, le droit international coutumier reconnait ce crime depuis bien avant 1994, …..".

[33] ICTR-96-4- T Le Procureur c/AKAYEZU Jean Paul, du 2 septembre 1998, p. 204, para. 495: "La Convention sur le génocide est incontestablement considérée comme faisant partie du droit international coutumier, comme en témoigne l'avis consultatif rendu en 1951 par la Cour internationale de Justice sur les réserves à la Convention sur le génocide et comme l'a d'ailleurs rappelé le Secrétaire général des Nations Unies dans son rapport sur la création du Tribunal pénal international pour l'ex-Yougoslavie ».

hashingiwe ku mategeko yashyizeho ibihano nyuma bitanyuranyije n'amategeko ndetse n'amahame mpuzamahanga harebwe ibiteganywa n'ingingo ya 15 y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki igika cya kabiri by'uko nta kintu kibuza ko umuntu wakoze ikibujijwe cyangwa wanze gukora igitegetswe yacirwa urubanza agakatirwa ibihano ku bikorwa byafatwaga nk'ibyaha hakurikijwe amahame rusange n'amategeko yemewe mu bihugu byose[34]. Ibi bikaba binahura n'ibiteganywa n'ingingo ya 7 y'Amasezerano y'ibihugu by'iburayi y'uburenganzira bwa muntu[35].

[226] Byongeye kandi amategeko yagiyeho mu Rwanda nyuma ya 1994 ahana ibikorwa bigize icyaha cya jenoside byakozwe mu 1994 arimo Itegeko Ngenga N° 08/96 ryo ku wa 30 Kanama 1996 ryerekeye imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyokomuntu byakozwe kuva ku itariki ya mbere Ukwakira 1990 n'amategeko arebana n'inkiko Gacaca yateganyaga uko abakoze icyaha cya jenoside mbere y'uko ajyaho bagomba guhanwa. Ingingo ya 762 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo by'amategeko ahana y'inzibacyuho nayo iteganya uko abantu bakoze icyaha cya jenoside mu 1994 bakurikiranwa, kimwe n'ingingo ya 344 y'Itegeko N° 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

2. Icyaha cyo gushishikariza gukora jenoside

►Imiburanire y'ubushinjacyaha

[227] Ubushinjacyaha buvuga ko NTAGANZWA Ladislas hari amagambo yagiye avugira mu nama zitandukanye ashishikariza abaturage bari bazirimo gukora jenoside, nk'amagambo yavugiye nama yakoresheje ku biro bya komini kuwa 14/04/1994 abwira abari bayirimo kugota paruwasi ya Cyahinda kugira ngo hatagira umututsi uhunga n'uko bose bagomba kwicwa, ayo yavugiye uwo munsi i Nkakwa mu nama yakoresheje aturage akababwira ko nta mututsi ugomba kubacika kuko ari abanzi b'igihugu, bituma abahungaga bafatwa baricwa. Bunavuga ko mu gitondo cyo kuwa 15/04/1994 aturutse i Butare yahagaze kuri santeri ya Maraba hafi y'ivuriro abwira abari bahari gukora bivuga ko bagomba kwica abatutsi bose bo muri iyo segiteri, anababwira ko nagaruka adashaka ko hari umututsi uzaba ugihari, anababaza aho uyoye ibishingwe abishyira nabo bamusubiza ko babishyira mu gisimu.

[228] Buvuga kandi ko kuwa 21/04/1994 nabwo yakoresheje inama hafi y'ibiro bya komine avuga ko bagomba gutera ku musozi wa Gasasa, Nyakizu na Mwoya, ko no muri uko kwezi kwa kane hagati y'itariki ya 7 n'iya 30/04/1994, uwitwa Nshimiye ari kumwe na NTAGANZWA Ladislas mu modoka ya komine bazengurutse segiteri ya Nyagisozi ashishikariza abahutu kwica abatutsi, anababwira ko utabikora afatwa agafungwa.

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[34]Article 15 du Pacte international relatif aux doits civils et politiqe : " Rien dans le présent article ne s'oppose au jugement ou à la condamnation de tout individu en raison d'actes ou omissions qui, au moment où ils ont été commis, étaient tenus pour criminels, d'après les principes généraux de doit reconnus par l'ensemble des nations".

[35] Article 7 de la Convention européenne des droits de l'homme : "1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international. De même il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise. 2. Le présent article ne portera pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par les nations civilisées"

[229] Bukomeza buvuga ko icyaha cyo gushishikariza gukora jenoside giteganywa n'ingingo 132 (3)y'Itegeko Ngenga no01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko icyaha cyo gushishikariza abantu gukora jenoside gihanwa n'ubwo bitashyirwa mu bikorwa, ko gikorwa hifashishijwe amagambo, amashusho cyangwa inyandiko bishishikariza abandi gukora jenoside, ko ugikora aba afite ubushake bwo kurimbura abantu bose cyangwa bamwe muri bo bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini. Bukanavuga ko harebwe amagambo NTAGANZWA Ladislas yavuze agaragaza ko nawe yari afite ubwo bushake.

►Imyiregurire ya NTAGANZWA Ladislas

[230] NTAGANZWA Ladislas n'abamwunganira bavuga ko nta nama yigeze akoresha ku biro bya komini mu rwego rwo gukangurira abahutu kwica abatutsi, ko abavuga ko izo nama zabayeho birengagiza nkana ko iyo ziza kubaho byari kumenyekana bigatuma ubuyobozi bwa perefegitura buburizamo uwo mugambi uretse ko no muri icyo gihe gukoresha inama byari bibujijwe mu gihugu hose. Banavuga ko iyo inama yo kuwa 14/04/1994 iza kuba abatutsi bari kuyimenya kubera ko bamwe mu batangabuhamya bavuga ko icyo gihe abatutsi bari bakiri mu ngo zabo, ko bahungiye kuri paruwasi ya Cyahinda kuri 15/04/1994. Bavuga kandi ko ikigaragaza ko nta nama zo gushishikariza gukora jenoside zabaye muri Nyakizu ari uko abatutsi bahahungiye ubwabo bemeza ko NTAGANZWA yabakiriye abahumuriza ababwira ko ubwicanyi butazagera muri komini Nyakizu, ko iyo aza kuba hari aho yakoresheje inama avuga ko bagomba kwicwa batari kwemera kuhahungira, bigaragaza ko bahahungira bari bamufitiye icyizere kubera uko bari basanzwe bamuzi.

[231] Banavuga ko ubushinjacyaha bumurega kandi ko ubwo yanyuraga i Maraba avuye i Butare kuwa 15/04/1994 yashishikarije abahutu kwica abatutsi akoresheje ijambo gukora ariko bukaba butagaragaza igihe ryatangiriye gukoreshwa kugira ngo abaribwiwe bahite bumva ko ababwiye kwica abatutsi, ko batanabona uburyo umunyarwanda wamubwira iryo jambo akumva ko abwiwe kwica batutsi. Banavuga ko ubushinjacyaha budasobanura niba abatutsi bari mu nama buvuga ko yakoresheje i Nkakwa nabo barumvise avuga iryo jambo bakumva ko ashishikariza abari aho kubica.

UKO URUKIKO RUBIBONA

►Ku byerekeranye n'inama zivugwa ko NTAGANZWA Ladislas yakoresheje mbere y'ibitero by'i Cyahinda n'i Gasasa akazivugiramo amagambo ashishikariza abantu kwica abatutsi

[232] Umutangabuhamya DNE avuga ko kuwa 14/04/1994 hagati ya saa yine na saa tanu yagiye mu nama yabereye hepfo y'inzu y'inzuki, nko kuri metero icumi uvuye ku biro bya komini yari yakoreshejwe na NTAGANZWA Ladislas, Geofrey, Bazaramba François wari diregiteri w'amashuli n'abandi bababwira gutangira urugamba rwo kwica abatutsi bari barahungiye kuri paruwasi i Cyahinda, ko icyo gihe NTAGANZWA yari yambaye imyenda ya gisivili afite igitabo, arangije kuvuga umupolisi wari inyuma ye afite imbunda arayimuha. Avuga ko Bazaramba François yabasabyegutangatanga impande zose naho NTAGANZWA ababwira ko batera i Cyahinda bahica abatutsi n'uko bagota abatutsi ntihagire n'umwe ubacika, ko iyo nama irangiye nka saa tanu bahise bajya mu gitero i Cyahinda. Anavuga ko kuwa 15/04/1994 habaye inama ya

kabiri bayivamo nka saa tanu irenga, NTAGANZWA abajyana mu gitero i Gasasa/Nyakizu ababwira ko bajya gutera abatutsi bari bahahungiye, ko yari inyuma yabo agenda n'amaguru afite imbunda yakoresheje arasa impunzi.

[233] Urukiko rurebye uko DNE asobanura amagambo avuga ko NTAGANZWA Ladislas yavugiye mu nama zo kuwa 14/04/1994 no kuwa 15/04/1994, n'igihe avuga zabereye n'uko nta wundi mutangabuhamya uvuga ko yagiye muri izo nama akumva amagambo avuga ko NTAGANZWA yazivugiyemo, rusanga ubuhamya bwe butaba ikimenyetso kidashidikanywaho kigaragaza ko kuri ayo matariki, NTAGANZWA Ladislas yakoresheje inama ku nzu y'inzuki no ku biro bya komini mbere yo gutera i Cyahinda n'i Gasasa akazivugiramo amagambo ashishikariza abari bazirimo kwica abatutsi.

[234] Urukiko rusanga kandi ibyo ubushinjacyaha buvuga ko kuwa 21/04/1994 mbere yo gutera ku musozi wa Gasasa, Nyakizu na Mwoya i Gasasa, NTAGANZWA Ladislas yakoresheje inama hafi y'ibiro bya komine avuga ko bagomba gutera abatutsi bahahungiye, nta shingiro bifite kuko ayo magambo ariyo umutangabuhamya DNE avuga Ntaganzwa yavugiye mu nama yo kuwa 15/04/1994 mbere yo gutera i Gasasa kandi urukiko rukaba rwasanze kuri iyo tariki nta gitero cyabaye kuri iyo misozi.

[235] Rusanga n'ubuhamya bwa DHN butaba ikimenyetso kigaragaragaza ko Ntaganzwa yakoresheje inama ayivugiramo amagambo ashishikariza kwica abatutsi kuko yivuguruza hamwe avuga ko hagati y'itariki ya 16 na 17/04/1994 yagiye mu nama yabereye kuri komini yemerejwemo ko mu gitondo bazinduka bajya kwica abatutsi bari i Gasasa ahandi akavuga ko iyo nama itegura igitero cy'i Gasasa atayigiyemo kuko yari iy'abakonseye yari iyobowe na NTAGANZWA, ko ibyavugiywemo yabibwiwe na konseye ariko adasobanura amagambo yayivugiwemo.

►Ku byerekeranye n'amagambo ashishikariza abantu kwica abatutsi avugwa ko NTAGANZWA Ladislas yavugiye mu nama i Nkakwa

[236] Urukiko rusanga Sezibera Révérien atanga ubuhamya mu rukiko hamwe avuga ko NTAGANZWA Ladislas ageze i Nkakwa yabakoresheje inama ari abantu bagera kuri magana ane (400) abasaba kugarura abatutsi barimo bahungira i Burundi avuga ngo ntibabacike babice kuko ari abanzi b'amahoro, ahandi akavuga ko muri iryo joro yamubonye incuro eshatu agenda atunda abantu ababwira ngo mukore ; Abazwa mu iperereza ho yavuze ko yabonye abantu benshi bateraniye imbere y'inzu ya Maniraho ajya kureba ibyabaye ahasanga abantu bari hagati ya 100 na 150, barimo konseye Ngendamagabo Théoneste, abagabo n'urubyiruko b'abahutu n'impunzi z'abarundi nke, ko uwo munsi Ntaganzwa yahageze mu saa moya z'ijoro aherekejwe n'abajandarume icumi bose bafite intwaro ababwira kutareka abatutsi bahunga no kwica umututsi wese babona, ko yanavuze ko agiye kuzana abandi baturage bo kwica abatutsi kuko ari abanzi, ko nihagira uwanga kubafasha bamumuzanira akamwiyicira ubwe, ko amaze kuvuga ayo magambo yahise agenda, ko konseye nawe yababwiye ko burugumesiteri yavuze ko azana n'impunzi z'abarundi bakajya ku mugezi w'Akanyaru, akavuga ko impamvu yagiye mu bwicanyi ari ukubera amabwiriza ya NTAGANZWA na konseye.

[237] Urukiko rusanga Ruhinguka Vital we atanga ubuhamya mu rukiko yaravuze ko NTAGANZWA Ladislas yageze iwabo nka saa kumi n'imwe za nimugoroba, ahamagara konseye Ngendamagabo amubaza icyo barimo gukora kuko abatutsi bari bambutse i Burundi, avuga ko

abatutsi bagiye kubatanga imbere, bakazabahindukirana bagaruka kubatera, asaba ko abaturage bababakurikira bakabagarura uwanze gufasha abandi bakabimumenyesha, ahandi akavuga ko uwo konseye nawe yababwiraga gukora kuko ari amabwiriza yahawe na NTAGANZWA, ahandi nanone avuga ko NTAGANZWA yabasanze kuri santeri barimo kunywa inzoga abwira konseye kubwira abaturage kujya kugarura abatutsi, agasobanura ko NTAGANZWA yamuhamagaye amubaza ibyo barimo kandi abatutsi bamaze kubatanga imbere, Ngendamagabo ababwira gufata amafirimbi n’ingoma bakavuza induru kugira ngo abarundi babagarure.

[238] Rusanga abazwa mu bushinjacyaha yavuze ko NTAGANZWA Ladislas yaje iwabo i Nkakwa ahamagara konseye wabo amubwira guhamagara abaturage be ngo bajye gutangira abatutsi bari bahungiye i Burundi, anamubwira ko uwanga bamuha raporo bakazibonanira, konseye arabahamagara ababwira kwiruka bakajya ku Kanyaru gutangira abatutsi bahungiraga i Burundi, akanavuga ko yiboneye NTAGANZWA aha amabwiriza konseye.

[239] Abazwa nanone mu iperereza n’Intumwa z’urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda yaravuze ko hari ubwo NTAGANZWA Ladislas yaje i Nkakwa ari kumwe na Luwiri umushoferi we hamwe na burigadiye Innocent babasanga ahitwa i Mubuga ababwira ko ibintu byakomeye bagomba ‘’Gukora’’byasobanuraga kwica abatutsi, ko abatabikora abakandagira, anababwira ko abatutsi bashaka gufata ubutegetsi buri mu maboko y’abahutu, ko kuwa 14/04/1994 saa kumi n’ebyiri za mugitondo batangiye gutwika amazu muri Kaduha muri segiteri ya Nkakwa, ko babikoze kubera amabwiriza bari bahawe na NTAGANZWA Ladislas, ko na konseye Ngendamagabo yari yababwiye ko ari we wamuhaye ayo mabwiriza, ko bukeye kuwa 15/04/1994 hagati ya saa mbili na saa tatu za mugitondo bafashijwe n’impunzi z’Abarundi bishe abatutsi bagera kuri mirongo inani (80) bari baturutse i Kibeho, ko icyo gihe ari NTAGANZWA Ladislas wari watanze ayo mabwiriza abinyujije kuri konseye ariko ko babica atari ahari.

[240] Umutangabuhamya DND uvuga ko yari kumwe na NTAGANZWA Ladislas bajya i Nkakwa we yavuze ko kuwa 14/04/1994, NTAGANZWA Ladislas yazengurutse amasegiteri ya komini Nyakizu afite indangururamajwi ahamagarira abaturage kujya gutabara i Nkakwa, ko yaje i Nyagisozi hafi yaho yacururizaga mu masaa kumi n’ebyiri n’igice amushyira mu modoka barajyana bageze i Nkakwa bahasanga abantu barimo uwitwa Maniraho wari diregiteri w’amashuli ababwira ko yamenye ko izo mpunzi zirimo guhungira i Burundi ari abatutsi, ko batagomba kubacika ngo bagende, ko icyo gihe abaturage n’insoresore z’abarundi bahise bazikurikira kugira ngo bazigarure kuko zari zageze ku Kanyaru, we na NTAGANZWA mu ma saa mbili z’ijoro basubira i Nyagisozi. Abazwa mu iperereza yavuze ko kuwa 14/04/1994 nimugoroba babwiwe n’umwana wari uvuye i Viro ko hari impunzi z’abatutsi ziganjemo abasore n’abakobwa zaturukaga mu makomini yegeranye na Nyakizu zanyuraga muri santeri ya Viro zikomeza zijya i Nkakwa zishaka kwambuka ngo zijye i Burundi, ko nyuma y’aho gato NTAGANZWA yafashe imodoka azenguruka abwira abaturage gutabara i Nkakwa avuga ko hatewe, arabafata ari kumwe n’abandi baturage n’abajandarume babashyira mu modoka baragenda bajya i Nkakwa, bageze kuri santeri hafi y’Akanyaru NTAGANZWA yegeranya abantu yahasanze abakoresha inama ababwira ko izo mpunzi zitagomba kubacika, ko bo bahise bagaruka i Nyagisozi basiga abo baturage bamanutse bagiye kuzitangira.

[241] Urukiko rusanga hagendewe ku byo abatangabuhamya bavuga, nta kimenyetso kidashidikanywaho kigaragaza ko kuwa 14/04/1994, NTAGANZWA Ladislas ageze i Nkakwa yakoresheje inama abaturage ababwira kujya kugarura abatutsi bahungiraga i Burundi no kubica

kuko abatangabuhamya Sezibera Révérien, Ruhinguka Vital na DND, bavuga ko bari bahari, batabihurizaho kuko Sezibera avuga ko yabakoresheje inama ababwiriramo kujya kugarura abatutsi no kubica, Ruhinguka Vital we akavuga ko NTAGANZWA ahageze yahamagaye konseye Ngendamagabo Théoneste amubwira kujya kugarura abatutsi bahungiraga i Burundi kuko bari bagiye kubatanga imbere, bakazabahindukirana baje kubatera,uyu nawe abwira abaturage kubakurikira bakabagarura naho DND akavuga ko bageze i Nkakwa bahasanze abantu NTAGANZWA ababwira ko yamenye ko izo mpunzi zirimo guhungira i Burundi ari abatutsi, ko batagomba kubacika ngo bagende.

[242] Urukiko rukaba rusanga isesengura ry'ubuhamya ritagaragaza ku buryo budashidikanywaho ko ageze i Nkakwa yakoresheje inama abaturage yahasanze ayivugiramo ku buryo butaziguye amagambo abashishikariza kugarura abatutsi bahungiraga i Burundi no kubica ahubwo rigaragaza ko kuwa 14/04/1994, NTAGANZWA Ladislas yagiye i Nkakwa abwira konseye wa segiteri kugarura abatutsi bahungiraga i Burundi, uyu nawe abwira abaturage kujya kubagarura nyuma barabica.

►Ku byerekeranye n'inama ivugwa ko NTAGANZWA Ladislas yakoresheje i Maraba ashishikariza abaturage kwica abatutsi

[243] Urukiko rusanga nanone nta kimenyetso kidashidikanywaho ubushinjacyaha bwatanze kigaragaza ko kuwa 15/04/1994, Ntaganzwa Ladislas avuye i Butare yageze i Maraba ku Mugano ashishikariza abaturage yahasanze kwica abatutsi ababwira "gukora", anababaza aho uyoye ibishingwe abishyira bakamusubiza ko babishyira mu gisimu kuko urukiko rwasanze abatangabuhamya barimo DHN, Rugimbana Appolinaire na Banganakwinshi Louis wabajijwe mu iperereza bavuga ko bari aho i Maraba bivuguruza kubyo bavuze mu rukiko no mu iperereza, ntibanahurize ku magambo nyayo NTAGANZWA yaba yarahavugiye naho DND we abazwa n'urukiko akaba atemeza ko uwo munsi avanye na NTAGANZWA Ladislas i Butare amutwaye mu modoka hagati ya saa tatu na saa yine bahagaze i Maraba kuko aho avuga bahagaze ari mu Ryabidandi, barakomeza bajya i Nyagisozi kuri santeri hafi y'aho NTAGANZWA yari atuye.

►Ku byerekeranye no kuba NTAGANZWA Ladislas yarazengurutse segiteri Nyagisozi ashishikariza kwica abatutsi

[244] Urukiko rusanga kandi nta kimenyetso ubushinjacyaha bwatanze kigaragaza ko mu kwezi kwa kane hagati y'itariki ya 7 n'iya 30/04/1994, NTAGANZWA Ladislas ari kumwe n'uwitwa Nshimiye mu modoka ya komine bazengurutse segiteri ya Nyagisozi, Nshimiye ashishikariza abahutu kwica abatutsi, anababwira ko utabikora afatwa agafungwa kubera ko aho ubushinjacyaha bugaragaza ko Nshimiye wari umwarimu yajyanye na Ntaganzwa ari i Nkakwa nk'uko byemezwa n'umutangabuhamya Sezibera Révérien ariko uyu akaba atavuga ko hari icyo Nshimiye yahavugiye.

UKO URUKIKO RUBIBONA KU BYEREKEYE AMATEGEKO

[245] Urukiko rusanga NTAGANZWA Ladislas yararezwe icyaha cyo gushishikariza abantu gukora jenoside hashingiwe ku ngingo ya 132 (3)y'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko icyaha cyo gushishikariza abantu gukora jenoside gihanwa n'ubwo bitashyirwa mu bikorwa, ko gikorwa hifashishijwe amagambo,

amashusho cyangwa inyandiko bishishikariza abandi gukora jenoside, rusanga haranashingiwe kandi ku ngingo ya 3 y'Amasezerano Mpuzamahanga yo kuwa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside u Rwanda rwashyizeho umukono kuwa 12/02/1975 iteganya icyo cyaha iyo gikozwe mu buryo butaziguye kandi mu ruhame[36].

[246] Urukiko rusanga icyo cyaha gikorwa hifashishijwe amagambo, amashusho, inyandiko zikwirakwijwe, ibikangisho cyangwa ubundi buryo bw'itumanaho bikorewe mu ruhame cyangwa mu nama bishishikariza abandi gukora jenoside nk'uko byagiye bisobanurwa mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda[37]. Ingingo ya 132 (3) y'Itegeko Ngenga no01/2012/OL ryo kuwa 02/05/2012 ryavuzwe nayo iteganya ko icyaha cyo gushishikariza abantu gukora jenoside gikorwa hifashishijwe amagambo, amashusho cyangwa inyandiko ariko itavuga ko gikorwa mu buryo butaziguye kandi mu ruhame nk'uko bimeze mu masezerano Mpuzamahanga yo kuwa 09/12/1948 yavuzwe. Bityo rero urukiko rurebye uburyo icyo cyaha gikorwamo hakurikijwe amategeko y'u Rwanda cyangwa amategeko mpuzamahanga, rusanga icyaha cyo gushishikariza abantu gukora jenoside giteganyijwe mu mategeko ry'u Rwanda nacyo kigomba kuba gikozwe mu buryo butaziguye kandi mu ruhame nk'uko bimeze muri masezerano ku ikumira n'ihanwa ry'icyaha cya jenoside ibihugu byose bigomba kubahiriza.

[247] Urukiko rusanga uretse igikorwa cyo gushishikariza gukora jenoside, ugikora agomba no kuba afite ubushake bwo gushishikariza kuyikora kandi akaba afite n'ubushake bwo gukora jenoside[38]. Ibi ni nabyo byagarutsweho n'abahanga mu mategeko bavuga ko ugikora aba azi kandi yagambiriye gukora ibikorwa bigize icyo cyaha kandi afite ubushake bwo kurimbura itsinda ryose cyangwa bamwe mu barigize[39].

[248] Urukiko rusanga rero hashingiwe ku bimaze gusobanurwa nta kimenyetso kidashidikanywaho kigaragaza ko NTAGANZWA Ladislas yakoresheje inama azivugiramo

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[36] L'article 3 de la Convention pour la prévention et la répression du crime de génocide prévoit que seront punis les actes suivant : … ; c) L'incitation directe et publique à commettre le génocide ; …

[37] ICTR-96-14-T, Le Procureur c/ NIYITEGEKA Eliezer du 16/05/2003, p.104, para 431 :"S'agissant de l'élément « public » de l'incitation, la Chambre saisie a déclaré qu'« il [pouvait] être plus particulièrement examiné à la lumière de deux facteurs : le lieu où l'incitation a été formulée et le fait de savoir si l'assistance a été ou non sélectionnée ou limitée ». Entrent dans cet élément les propos tenus à haute voix dans un lieu public de même que les émissions radiodiffusées à l'intention du grand public par des moyens tels que les organes de presse. La Chambre saisie a considéré qu'il était « approprié d'évaluer le caractère 'direct' d'une incitation à la lumière d'une culture et d'une langue données », faisant remarquer que « le même discours prononcé dans un pays ou dans un autre, selon lepublic, sera ou non perçu comme 'direct'. La Chambre saisie de ladite espèce a de plus rappelé qu'« une incitation peut être directe et néanmoins implicite ». L'élément moral dudit crime réside dans l'intention d'amener directement, ou de provoquer autrui, à commettre un génocide, et son auteur doit être animé de l'intention spécifique au génocide. Attendu qu'il entre dans la catégorie des infractions formelles, (inchoatives), le crime d'incitation est punissable même si le résultat escompté n'a pas été obtenu". Voir aussi ICTR-96-4-T, Le Procureur c/ Jean Paul AKAYESU du 2 Septembre 1998, p. 225, para. 559 et ICTR-97-32-I Le Procureur c/ Georges Ruggiu, du 1er juin 2000, para 17

[38]ICTR-2001-72-T, Le Procureur c. Simon BIKINDI du 2 Septembre 2008, p.133, para 419:"Commet Ie crime d'incitation directe et publique à commettre Ie genocide la personne qui agit avec I'intention d'inciter directement et publiquement autrui à commettre Ie génocide, ce qui suppose I'existence d'une intention génocidaire". Infraction formelle, I'incitation directe et publique à commettre Ie génocide est punissable même si aucun acte de Génocide n'en a résulté".

[39] WERLE Gerhard, Principles of International Criminal Law, T.M.C. Asser Press, The Hague, 2005, p. 212 , para. 627, :"The mental element of incitement to genocide requires that the perpetrator intentionally and knowingly commit the material element of crime (…) and act with intent to destroy a group in whole or in part".

amagambo ashishikariza abari bazirimo ku buryo butaziguye kandi mu ruhame kwica abatutsi cyangwa kuba hari amasegiteri ya komini Nyakizu yazengurutsemo ashishikariza kubica.

[249] Rusanga ariko amagambo yabwiye konseye Ngendamagabo Théoneste ari i Nkakwa yo kujya gutangira abatutsi bahungiraga i Burundi adahamagarira ku buryo butaziguye kandi mu ruhame gukora jenoside kubera ko urukiko rwasanze nta kimenyetso kigaragaza ko yayavugiye mu ruhame ahubwo ari amagambo yabwiye konseye ubwe, uyu nawe aba ari we ubwira abaturage kujya kubagarura, nyuma baranabica, urukiko rwasanze bigize bumwe mu buryo NTAGANZWA yakozemo icyaha cya jenoside kubera gutera cyangwa gutegeka abandi kugikora.[40]

3. Icyaha cyo kurimbura n'icyo kwica nk'ibyaha byibasiye inyoko muntu

►Imiburanire y'ubushinjacyaha

[250] Ubushinjacyaha burega NTAGANZWA Ladislas icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu buvuga ko hagati y'itariki ya 15 n'iya 18/04/1994 yagabye ibitero ku baturage b'abasivile barenga ibihumbi mirongo itatu (30 000) bari bahungiye kuri paruwasi ya Cyahinda hicwa abaturage benshi barimo abatutsi n'abandi, ko yagabye n'ibitero ku musozi wa Gasasa hari hahungiye abantu baturutse kuri paruwasi ya Cyahinda naho hagwa abaturage batari abasirikare barimo abatutsi barenga ibihumbi birindwi (7000). Bumurega kandi igitero cyo kuwa 17/04/1994 yagabye ku baturage bagera ku gihumbi (1 000) bari kuri santeri y'ubucuruzi yo mu Nkomero muri komini Kigembe aho yategetse abasirikare n'abajandarume kurasa imbaga y'abatutsi n'abandi bari aho ngaho, hagwa abatutsi benshi bagera ku gihumbi.

[251] Bunamurega icyaha cyo kwica nk'icyaha cyibasiye inyokomuntu kubera kwica abantu batatu bafatiwe kuri bariyeri y'i Musumba muri segiteri Yaramba, iyicwa rya Rwagasana Joseph wiciwe kuri bariyeri yo mu Ryabidandi n'iry'umusore wiciwe kuri bariyeri y'i Coko mu kwezi kwa gatanu 1994.

[252] Buvuga ko ibyo bitero yagabye ku baturage b'abasivile byari rusange kandi simusiga kuko muri ibyo bitero yagabye i Cyahinda, i Gasasa n'ahandi byarimo abasirikare, abajandarume, interahamwe n'impunzi z'abarundi bakoreshaga imbunda n'intwaro za gakondo azi neza ko

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[40] ICTR-99-52-A, Le Procureur C/ Ferdinand NAHIMANA et crts du 28 novembre 2007, para 678 & 679, p. 263-264,: "La Chambre d'appel considère qu'il faut distinguer l'incitation en vertu de l'article 6(1) du Statut de l'incitation directe et publique à commettre le génocide en vertu de l'article 2(3)(c) du Statut. Tout d'abord, l'incitation en vertu de l'article 6(1) du Statut est un mode de responsabilité ; la responsabilité d'un accusé ne peut être engagée que si l'incitation a dans les faits substantiellement contribué à la commission de l'un des crimes visés aux articles 2 à 4 du Statut. En revanche, l'incitation directe et publique à commettre le génocide en vertu de l'article 2(3) (c) est un crime en soi et il n'est pas nécessaire de démontrer qu'elle a dans les faits substantiellement contribué à la survenance d'actes de génocide. En d'autres termes, l'incitation directe et publique à commettre le génocide est une infraction formelle, punissable même si aucun acte de génocide n'en a résulté. Ceci est confirmé par les travaux préparatoires de la Convention sur le génocide, qui permettent d'affirmer que les rédacteurs de cette convention voulaient punir l'incitation directe et publique à commettre le génocide même si aucun génocide n'est commis, dans le but d'en prévenir la survenance. La Chambre d'appel remarque en outre – même si cela ne peut être considéré comme déterminant pour l'évaluation de l'état du droit international coutumier en 1994 – que le Statut de la Cour pénale internationale semble aussi prévoir qu'une incitation directe et publique à commettre le génocide engage la responsabilité pénale d'un accusé, même si elle n'a pas été suivie d'effets. Une seconde différence consiste en ce que l'article 2(3)(c) du Statut requiert que l'incitation à commettre le génocide soit directe et publique, alors que l'article 6(1) du Statut ne l'exige pas".

hahungiye abantu benshi, akanagira uruhare mu iyicwa ry'abantu bahunguga, ko uburyo ibyo bitero byakozwemo bugaragaza ko yari afite umugambi wo kurimbura no kwicwa abaturage batari abasirikare.

►Imyiregurire ya NTAGANZWA Ladislas

[253] NTAGANZWA Ladislas n'abamwunganira bavuga ko nta bitero bya rusange cyangwa bya simusiga yigeze agaba kuri paruwasi ya Cyahinda, ku musozi wa Gasasa no mu Nkomero ho muri komini ya Kigembe hari harahungiye abatutsi nk'uko ubushinjacyaha bubivuga, ko n'abatangabuhamya b'ubushinjacyaha batagaragaza uruhare rwe muri ibyo bitero kuko imvugo zabo zigaragaza ko hari abamubonye kuri iyo misozi uwo munsi abandi bakavuga ko uwo munsi bamubonye ahandi ku masaha amwe, ko bitari gushoboka ko aho hantu hose ahabera icyarimwe.

[254] Banavuga ko nta n'umugambi wo kurimbura abatutsi yari afite kuko icyamujyanye i Cyahinda kuwa 15/04/1994 ari ukuhageza abashinzwe umutekano no kuberekana mu mpunzi kugira ngo bamenye ko umutekano wabo witaweho, ariko abantu bari bihishe muri izo mpunzi aba ari bo bateza umutekano muke ubwo bicaga bamwe mu bajandarume.

[255] Bavuga kandi ko nta ruhare yagize mu iyicwa ry'abantu batatu biciwe kuri bariyeri y'i Musumba muri segiteri Yaramba kuko avuye i Butare yasanze bishwe umujandarume wabishe amusobanurira ko bari bafite ibimenyetso bigaragaza ko ari ingabo za FPR, ko icyo yakoze nk'umuyobozi yatanze raporo ku nzego zimukuriye. Bakomeza bavuga ko nta n'uruhare yagize mu iyicwa ry'umusore wiciwe kuri bariyeri i Coko kubera ko Coko iri muri komini Mubuga muri Gikongoro atayoboraga kandi hakaba hatagaragazwa aho yerekezaga icyo gihe. Bavuga nanone ko ibyo ubushinjacyaha buvuga ko yagize uruhare mu iyicwa rya Rwagasana atari byo kuko umutangabuhamya ubivuga yivuguruza, hamwe avuga ko babashoreye babajyana kuri komini aho burugumesitiri yari ari, ahandi akavuga ko yabasanze kuri bariyeri yo mu Ryabidandi.

[256] Basoza bavuga ko harebwe ibikorwa NTAGANZWA Ladislas aregwa bigize icyaha cya jenoside, basanga yagombye kuregwa jenoside, gushishikariza gukora jenoside no gusambanya ku gahato nk'icyaha kibasiye inyoko muntu aho kuba ibyaha bitanu kuko icyaha cya jenoside aregwa gikubiyemo icyaha cyo kwica n'icyo kurimbura nk'ibyaha byibasiye inyoko muntu, ko ibyo byaha ari nabyo bigaragara mu nyandiko y'ibirego yavuye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda.

UKO URUKIKO RUBIBONA

[257] Urukiko rusanga mu bikorwa bigize icyaha cya jenoside, ubushinjacyaha bunashingiraho burega NTAGANZWA Ladislas kurimbura nk'icyaha cyibasiye inyokomuntu ari ibitero byagabwe ku batutsi bari bahungiye kuri paruwasi ya Cyahinda hicwa abagera ku bihumbi makumyabiri na bitanu (25 000) no ku misozi biteganye ya Gasasa hiciwe abatutsi bagera ku bihumbi birindwi (7.000) n'igitero cyagabwe ku batutsi bagera ku gihumbi (1.000) bafatiwe ku Kanyaru, agategeka ko bajyanwa ku gasanteri ka Nkomero muri Kigembe, nyuma agategeka ko bicwa.

[258] Runasanga ibindi bikorwa bumurega nk'ibigize icyaha cya jenoside, bikanagira kwica nk'icyaha cyibasiye inyokomuntu ari iyicwa ry'abantu batatu bafashwe n'abaturage kuri bariyeri

y'i Musumba muri segiteri Yaramba n'iry'umusore wiciwe kuri bariyeri y'i Coko. Urukiko rusanga nanone ikindi gikorwa cy'ubwicanyi bumurega nk'ikigize icyaha cyibasiye inyokomuntu gusa ari iyicwa ry'umwana witwa Rwagasana Joseph wiciwe kuri bariyeri yo mu Ryabidandi.

[259] Urukiko rusanga ku birebana na Rwagasana Joseph wiciwe kuri bariyeri yo mu Ryabidandi bitasuzumwe ku birebana n'icyaha cya jenoside, umutangabuhamya DNF wenyine watanze ubuhamya kuri ubwo bwicanyi avuga ko ubwo bari bavuye muri komini Kigembe aho bari barahungiye bageze kuri bariyeri yo mu Ryabidandi abari bayiriho babahagaritse bababaza ibyangombwa bavuga ko bavumbuye inyenzi, nyuma y'iminota cumi n'itanu abapolisi bahageze bavuga ko NTAGANZWA yatanze amabwiriza y'uko mbere yo kwica abantu bafashwe bajya babanza kubaza kuri komini, ko nyuma NTAGANZWA yahabasanze ari mu modoka ya Samurai ahurujwe, amubaza aho avuye avuga ko yari azi ko nta mututsi wasigaye mu Gihugu, abwira "IPJ" ngo amubaze umwirondoro we n'amakuru y'aho yabaga, "IPJ" nawe amubaza niba hari amakuru y'inyenzi azi n'uko yabanaga nazo aramuhakanira. Anavuga ko icyo gihe yari kumwe na musaza we witwaga Rwagasana Joseph n'undi mugore witwa Mukandanga Astérie wari ufite umwana w'umukobwa, NTAGANZWA amubaza niba umwana w'umuhungu bari kumwe ari uwabo arabimwemerera, ahita abwira uwitwa Juma ko ari akanyenzi ngo akureho umwanda, nawe arakazunguza agakubita hasi agata mu cyobo.

[260] Rusanga DNF abazwa mu iperereza n'intumwa y'urukiko mpanabyaha mpuzamahanga kuwa 02/04/1999 ho yaravuze ko ubwo yari asubiye i Cyahinda ari kumwe na musaza we Rwagasana Joseph n'umugore witwa Astérie Mukandanga wari kumwe n'akana ke k'agakobwa bavuye i Kigembe aho bari barahungiye, bageze kuri bariyeri barabamenya bemeza kubajyana ku biro bya komini, bakimara kuhagera burugemesitiri ahita aza arabamenya, atangazwa n'uko bakiriho, ko musaza we wari ufite imyaka itandatu (6) yishwe ku mabwiriza ya NTAGANZWA Ladislas nyuma yo kumubaza niba ari umuhungu, amufata mu kaboko amujugunyira abicanyi, ababwira kumwica maze bamwica areba.

[261] Rusanga abazwa n'ubushinjacyaha ku wa 13/09/2016 nabwo yaravuze ko NTAGANZWA Ladislas yabasanze kuri bariyeri yo mu Ryabidandi ari kumwe na gasaza ke na Mukandanga Astérie wari kumwe n'agakobwa ke, ababaza aho baturutse n'icyo bari barahunze, amasubiza ko bahunze abantu bari bambaye amasashe, ahita abwira uwitwa Juma kwica gasaza ke, arakica agata mu cyobo cyari aho kuko kari agahungu.

[262] Urukiko rusesenguye ubuhamya bwa DNF n'imvugo ze zo mu iperereza, rusanga bigaragaza uruhare rwa NTAGANZWA Ladislas mu iyicwa ry'umwana w'umuhungu witwa Rwagasana kuko DNF asobanura neza uburyo we n'abo bari kumwe bavuye aho bari barahungiye muri komini ya Kigembe, bagera kuri bariyeri yo mu Ryabidandi NTAGANZWA Ladislas arahabasanga abwira uwitwa Juma kumwica, uyu nawe aramwicwa amuta mu cyobo. Rusanga kandi ubuhamya bwe mu rukiko buhura n'ibyo yari yarasobanuye abazwa mu iperereza ku byerekeranye n'uruhare NTAGANZWA yagize mu iyicwa ry'uwo mwana Rwagasana Joseph.

[263] Urukiko rusanga ibyo NTAGANZWA Ladislas n'abamwunganira bavuga ko nta ruhare yagize mu rupfu rw'uwo mwana bashingira ku kuba DNF hamwe avuga ko byabereye kuri bariyeri yo mu Ryabidandi ahandi akavuga ko ari ku biro bya komini, nta shingiro bifite kuko haba mu iperereza no mu rukiko yakomeje kugaragaza uburyo Rwagasana yishwemo n'uruhare NTAGANZWA Ladislas yabigizemo. Bityo hashingiwe ku biteganywa n'ingingo ya 65 y'Itegeko

no 15/2004 ryo 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, uko kunyuranya nta ngaruka bifite ku ireme ry'ubuhamya. Ikindi kandi n'ibiro bya komini Nyakizu aho byari byubatse akaba ari aho mu Ryabidandi hari bariyeri nk'uko umutangabuhamya abisobanura n'uko urukiko rwabibonye ubwo rwajyaga kuhaburanishiriza.

[264] Urukiko rusanga ariko muri ibyo bikorwa bumurega ko bigize kurimbura no kwica nk'ibyaha byibasiye inyikomuntu hari ibyo urukiko rwasanze nta bimenyetso bidashidikanywaho bigaragaza ko NTAGANZWA Ladislas yabigizemo uruhare nk'uko byasobanuwe ku bijyanye n'ibikorwa bigize icyaha cya jenoside, ibyo akaba ari iyicwa ry'abantu bagera ku gihumbi (1.000) ubushinjacyaha buvuga ko biciwe muri santeri ya Nkomero kuwa 17/04/1994 n'iyicwa ry'umuntu utarameyekanye wiciwe kuri bariyeri y'i Coko.

KU BYEREKEYE AMATEGEKO

[265] Ingingo ya 120 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryashingiweho NTAGANZWA Ladislas aregwa yateganyaga ko icyaha cyibasiye inyokomuntu ari kimwe mu bikorwa birimo kwica no kurimbura bikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko, cyangwa idini. Ingingo ya 94 y'itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nayo iteganya icyaha cyibasiye inyokomuntu ariko yo ikaba idateganya ko abaturage batari abasirikare bagomba kuba bazira ivangura rishingiye ku bwenegihugu bwabo, ibitekerezo bya politiki, ubwoko, cyangwa idini uretse ku birebana n'igikorwa cyo gutoteza umuntu[41]. Iki cyaha kandi kinateganywa n'amategeko mpuzamahanga ashyiraho inkiko mpanabyaha mpuzamahanga[42].

[266] Urukiko rusesenguye izo ngingo, rusanga kurimbura ari kimwe mu bikorwa bigize icyaha cyibasiye inyokomuntu gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare. Urukiko rukurikije amategeko ashyiraho inkiko mpanabyaha mpuzamahanga n'ibyemezo byagiye bifatwa mu manza zaciwe n'izo nkiko, rusanga icyaha cyo kurimbura ari ukwica umubare munini w'abantu cyangwa kubashyira ubigambiriye, mu mibereho ishobora

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[41] Ingingo ya 94 y'itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko icyaha cyibasiye inyokomuntu ari kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare: 1º kwica; 2º kurimbura; 3º gushyira mu bucakara; 4º gutwara bunyago cyangwa kubimura ku ngufu aho bari batuye; 5º gufunga umuntu cyangwa kumwambura uburenganzira bwe bwo kujya aho ashaka mu buryo bunyuranyije n'amategeko; 6º kwica urubozo; 7ogusambanya ku gahato, ubucakara bushingiye ku gitsina, gukoresha uburaya ku gahato, guhagarika urubyaro ku gahato cyangwa ikindi gikorwa icyo ari cyo cyose cy'ihohotera rishingiye ku gitsina risa n'ibimaze kuvugwa; 8º gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiye ku rindi vangura iryo ari ryo ryose; 9º kurigisa abantu; 10º ivangura rishingiye ku ibara ry'uruhu; 11º ibindi bikorwa birenze kamere-muntu bisa n'ibimaze kuvugwa bikozwe ku bushake bigamije kubabaza cyangwa kwangiza bikabije umubiri cyangwa ubwenge.

[42] Ingingo ya 6 ya sitati ya nuremberg n'ingingo ya 3 ya sitati y'urukiko mpanabyaha mpuzamahanga rwashyiriweho u rwanda zisobanura ko icyaha cyibasiye inyokomuntu ari kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko cyangwa idini, nko kubica, kubarimbura, kubashyira mu bucakara, kubatwara bunyago cyangwa kubimura ku ngufu aho bari batuye n'ibindi. ibyo bisobanura bikaba binahura n'ibiteganywa n'ingingo ya 7 ya sitati y'i Roma usibye ko iyi ngingo itavuga ko abakorewe icyo cyaha bagomba kuba bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko cyangwa idini uretse ku birebana n'itotezwa nk'icyaha cyibasiye inyokomuntu.

gutuma harimbuka igice cyabo, nko kubicisha inzara cyangwa kutabavuza[43]. Urukiko rusanga Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze ari Yugosilaviya mu rubanza rwa Kristic rwarasobanuye ko kurimbura ari icyaha gitegurwa kigambiriye kurimbura abantu benshi, ko gishobora no gukorwa kidakorewe umubare munini w'abantu iyo ugikoze azi neza ko ibikorwa bye biri muri gahunda yo kurimbura imbaga.[44]

[267] Urukiko rurebye nanone mu manza zaciwe n'inkiko mpanabyaha mpuzamahanga, rusanga ibitero byitwa ko ari rusange iyo bikozwe ku rugero runini kandi bigendereye kwica umubare munini w'abantu, biba kandi ari simusiga iyo bigaragara ko bikorwa kuri gahunda yateguwe. Zinasobanura kandi ko abitwa abaturage batari abasirikare ari abasivile batari mu mirwano[45]. Ibi ni nabyo byasobanuwe n'urukiko rw'ikirenga rwo muri Canada mu rubanza Mugesera Léon[46]. Urukiko rusanga kandi ukora icyaha cyo kurimbura agomba kumenya cyangwa yaramenye ko igikorwa cye kiri mu rwego rw'ibitero rusange cyangwa byasimusiga byibasiye abaturage b'abasivile batari mu mirwano[47]. Rusanga nk'uko byasobanuwe mu manza zaciwe n'urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, ubushake bwo kurimbura ari ukwica umubare munini w'abantu no kwitabira ubwo bwicanyi.[48]

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[43]Statut de Rome art 7 2. « Par extermination on entend, notamment le fait d'imposer intentionnellement des conditions de vie, telles que la privation d'accès à la nourriture et aux médicaments, calculées pour entraîner la destruction d'une partie de la population ».

[44] « Le terme même d'extermination suggère fortement la commission d'un crime de grande ampleur, qui suppose à son tour un certain degré de préparation et d'organisation. Il convient toutefois de noter que l'extermination pourrait théoriquement être appliquée à la commission d'un crime qui n'est étendu mais qui consiste néanmoins en l'éradication d'une populaton entière, qui se distingue par des caracteristiques qui ne sont pas couvertes par la convention contre le génocide, mais est composé d'un groupe relativement restreint des personnes. En d'autres mots, alors que l'extermination implique généralement un grand nombre de victime, il peut être même constitué lorsque le nombre de victimes est plus restreint ». Jugement KRSTIC, para. 501.

[45] ICTR-98-44A-T, le Procureur c/ Juvénal KAJELIJELI du 1er Décembre 2003, para.871& 872, p. 182 : "L'interprétation du caractère « généralisé » de l'attaque, au sens de l'article 3 du Statut, diffère légèrement d'un jugement à l'autre rendu par les Chambres de première instance du Tribunal. Toutefois, elle renvoie dans tous les cas à l'envergure de l'attaque et parfois à la multiplicité des victimes. La Chambre, suivant dans ses grandes lignes la définition donnée dans les jugements Niyitegeka et Ntakirutimana, retient le critère selon lequel l'attaque en cause doit être perpétrée « à grande échelle et être dirigée contre un grand nombre de victimes ». La question de savoir si le terme «systématique » renferme nécessairement l'idée d'une politique ou d'un plan est controversée dans la jurisprudence du Tribunal de céans. Considérant qu'il ne renferme pas une telle idée, la Chambre fait sienne la solution retenue dans l'affaire Semanza par la Chambre de première instance III qui, souscrivant à la solution jurisprudentielle que la Chambre d'appel du TPIY avait dégagée dans l'affaire Kunarac, y a déclaré que «l'existence d'une politique ou d'un plan peut être pertinente quant à la preuve, en ce qu'elle peut servir à établir que l'attaque en cause était dirigée contre une population civile et qu'elle était généralisée ou systématique, mais qu'elle ne saurait être considérée en soi comme un élément constitutif distinct du crime ». Elle conclut que le caractère «systématique» de l'attaque, au sens de l'article 3 du Statut, s'entend du caractère organisé de celle-ci. La Chambre estime en dernière analyse que l'existence d'une ligne de conduite délibérée a également valeur probante si elle est établie".

[46] 2005SCC 40, MUGESERA v. Canada (Minister of Citizenship and Immigation), 28 June 2005, p. 74 para 154 & 155.

[47] ICTR-97-20-T, Le Procureur c. Laurent SEMANZA du 15 mai 2003, p. 91, para 332 : "L'accusé doit avoir eu connaissance du contexte général dans lequel s'inscrit l'attaque et savoir que ses actes font partie intégrante d'une attaque généralisée dirigée contre une population civile ". Voir aussi jugement Ntakirutimana, par. 803, jugement Bagilishema, par. 94 ; jugement Musema, par. 206 ; jugement Kayishema et Ruzindana, par. 134.

[48]Le procureur c/Laurent SEMANZA, ICTR du 15 /05/2003. Para 341 „ ....En l'espèce, la Chambre de première instance est d'avis qu'en l'absence d'une disposition expresse dans le Statut ou en droit international coutumier relative à cette question, la responsabilité pénale internationale doit être retenue uniquement à raison d'actes ou omissions intentionnels. En conséquence, la Chambre estime que l'élément moral du crime d'extermination réside dans l'intention de commettre un massacre ou d'y participer" ; ICTR-95-1-T, Le Procureur c/ KAYISHEMA Clément

[268] Urukiko rusanga icyaha cyo kwica nk'icyaha cyibasiye inyokomuntu cyo cyarasobanuwe n'urukiko mpanabyaha mpuzamahanga rwashyiriweho u Rwanda nk'igikorwa cyo kwica umuntu ku bushake mu buryo butemewe kigaragazwa no kuba hari umuntu wishwe kubera icyo gikorwa kandi uwabikoze akaba yari afite ubushake bwo kwica cyangwa kumukorera ibikorwa bibabaza umubiri azi ko byatera urupfu[49].

[269] Urukiko rusanga Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwarasobanuye ko kurimbura no kwica nk'ibyaha byibasiye inyokomuntu bihurira ku kuba bikorwa mu bitero rusange cyangwa bya simusiga bikorewe abasivile ariko ku cyaha cyo kurimbura hakiyongeraho ko hicwa umubare munini w'abantu cyangwa umubare muto ariko icyari kigenderewe ari ukwica umubare munini nko mu rubanza rwa Musema Alfred rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda aho rwasobanuye ko ibikorwa byinshi by'ubwicanyi bifatirwa hamwe bikagira icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu[50]. Abahanga mu mategeko nabo bemeza ko icyaha cyo kurimbura imbaga kigaragarira mu kuba ushinjwa yarishe muri gahunda yo kwica umubare munini w'abantu, ko atari ngombwa ko ushinjwa ku giti cye aba yarishe umubare munini w'abantu ahubwo icyangomba ari uko aba yari azi ko hariho gahunda yo kwica imbaga y'abantu[51]. Mu rubanza rwa Clément Kayishema na Obed Ruzindana, Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda naho rwasobanuye ko ushinjwa ashobora guhamwa n'icyaha cyo kurimbura hashingiwe ku kuba yarishe umuntu umwe gusa, apfa kuba yarabikoze azi neza ko ibikorwa bye biri muri gahunda yo kurimbura imbaga[52].

[270] Urukiko rusanga ibitero byagabwe ku baturage muri komini Nyakizu byarakozwe ku rugero runini birimo abasirikare, abajandarume, interahamwe n'impunzi z'abarundi, bikagera ahantu henshi harimo kuri paruwasi ya Cyahinda, imisozi biteganye n'ahandi, byica abantu benshi barenga ibihumbi makumyabiri na bitanu (25 000), binagenda bibakurikira aho bahungiraga hose kandi biba mu bihe byegeranye byari rusange. Harebwe nanone ko mbere y'uko ibyo bitero bitangira, NTAGANZWA Ladislas yagiye kuzana abajandarume i Butare, nyuma haza koherezwa abasirikare bo kubafasha bakoresheje intwaro ziremereye n'uko muri komini Nyakizu hari haranashyizweho bariyeri zo gutangira abatutsi bahungaga, bigaraza ko ibyo bitero byari simusiga kuko ibi bigaragaza ko ari ibitero byakozwe byateguwe.

& RUZINDANA Obed du 21/05/1999 , Para 144 „ L'élément psychologique constitutif de l'extermination exige que l'accusé participe dans l'intention de donner la mort, ou en faisant preuve d'une insouscience grave, peu importe que la mort résulte ou non d'un tel acte oud'une telle omission ou de telles actes ou omission; en étant conscient du fait que ledit acte ou ladite omission ou lesdits actes ou omissions s'inscrivent dans le cadre d'une tuerie à grande échelle"; voir aussi affaire le Procureur c/ Eliezer NIYITEGEKA, Para 454 et NAHIMANA Ferdinad , BARAYAGWIZA Jean Bosco & NGEZE Hassan du 03/12/2003, Para 1062

[49]Le Procureur Akayesu Jean Paul, para. 589, voir aussi ICTR-96-3-T Le Procureur c/ RUTAGANDA Georges du 6/12/1999, para 80.

[50] ICTR-96-13-T, MUSEMA Alfred, 27/01/2000 , para.956, "…. a series of acts of murder, as alleged in different paragraphs of the Indictment, were held collectively to constitute an act of extermination".

[51] Robert Cryer et al., An Introduction to International Criminal Law and Procedure, Cambridge University press, New York, 2007, p.202 « both tribunals jurisprudence and the ICC elements indicate that extermination involves killing by the accused within a context of mass killing. The first and major difference between murder and extermination is that extermination requires a surrounding circumstance of mass killing. The perpetrator need not carry out the mass killing personally; he only needs to know of the context of mass killing »

[52] ICTR-95-1-T, Clément KAYISHEMA and Obed RUZINDANA, par.147. « An actor may be guilty of extermination if he kills, or creates the conditions of life that kills, a single person providing the actor is aware that his act(s) or omission(s) forms part of a mass killing event »

[271] Urukiko rusanga NTAGANZWA Ladislas yari afite ubushake bwo kurimbura abaturage bo mu bwoko bw'abatutsi batari abasirikare bishwe muri ibyo bitero byasobanuwe harebwe uburyo ibyo bitero byakozwemo hicwa abantu benshi, abarokotse bikabakurikira aho bahungiraga, hakanarebwa uburyo NTAGANZWA Ladislas yandikaga amabaruwa n'amatangazo agaragaza ko abari bahungiye kuri paruwasi ya Cyahinda ari inyenzi, akanagaragaza ko bazikuriye mu misozi zahungiyemo n'uko yasabye intwaro abayobozi bamukuriye, akagera n'aho azisaba perezida w'interahamwe ku rwego rw'igihugu, ndetse no mu nama yakoreshaga zafatiwemo ibyemezo byo gushyiraho amarondo na za bariyeri kugira ngo bashakishe abo yitaga inyenzi aho bari hose.

[272] Urukiko rusanga rero, nk'uko byasobanuwe, kuba NTAGANZWA Ladislas yaragabye ibitero kuri paruwasi ya Cyahinda ahari hahungiye abatutsi bagera ku bihumbi mirongo itatu (30.000) bikica abaturage benshi b'abasivile, abarokotse ibitero bikabakurikira aho bari bahungiye ku misozi iteganye na Cyahinda naho hakicwa abantu benshi no ku kuba yaragize uruhare mu iyicwa ry'abantu batatu bafatiwe kuri bariyeri y'i Yaramba babita inyenzi-inkotanyi ndetse n'umwana witwa Rwagasana Joseph wiciwe kuri bariyeri yo mu Ryabidandi agomba guhamwa n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu hashingiwe ku biteganywa n'ingingo ya 120 2o y'Itegeko Ngenga n° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana . Rusanga atahamwa no kwica nk'icyaha cyibasiye inyokomuntu kuko n'aho yagiye agira uruhare mu kwica umubare muto nk' abantu batatu biciwe i Yaramba na Rwagasana Joseph wiciwe kuri bariyeri yo mu Ryabidandi aregwa nk'ibikorwa bigize icyo cyaha byari muri gahunda yo kurimbura abaturage b'abasivile bo mu bwoko bw'abatutsi.

[273] Urukiko rusanga ibyo NTAGANZWA Ladislas n'abamwunganira bavuga by'uko atagombye kuregwa icyaha cyo kurimbura no kwica nk'ibyaha byibasiye inyokomuntu ngo anaregwe icyaha cya jenoside hashingiwe ku bikorwa bimwe n'uko inyandiko y'ibirego y'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ibyo byaha bibiri bitarimo, nta shingiro bifite kuko muri iyo nyandiko ibyo byaha bigaragaramo. Ikindi kandi mu rwego rw'amategeko hakaba nta kibuza ko umuntu yaregwa icyaha cya jenoside, kwica no kurimbura nk'ibyaha byibasiye inyokomuntu hashingiwe ku bikorwa bimwe kuko ibigize ibyo byaha bitandukanye n'inyungu biregera nazo zikaba zitandukanye; kuko ku cyaha cya jenoside, itegeko rirengera itsinda ry'abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini naho ku cyaha cyibasiye inyokomuntu , itegeko rikaba rirengera abaturage batari abasirikare bibasirwa mu bitero rusange cyangwa bya simusiga. Kugira ngo rero uhamwe n'ibyo byaha ahanwe uko bikwiye agomba guhanirwa ibyo byaha byose. Kuba umuntu yakurikiranwaho ibyo byaha hashingiwe ku bikorwa bimwe bihura n'ibyemejwe n'urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'urwashyiriweho icyahoze ari Yugusalaviya nko mu rubanza rwa Kamuhanda Jean de Dieu n'urwa Celebici[53].

4. Icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyoko muntu

►Imiburanire y'ubushinjacyaha

[274] Ubushinjacyaha buvuga ko gusambanya ku gahato abagore b'abatutsikazi byakozwe mu bitero rusange cyangwa byasimusiga byibasiye abaturage batari abasirikare bazira ubwoko bwabo. Bugasobanura ko NTAGANZWA Ladislas yagize uruhare mu bikorwa byo gusambanya abagore

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[53] ICTR-99-54A- T, LE Procureur c. Jean de Dieu KAMUHANDA, 22 janvier 2004, p.132, para.577-582.

b'abatutsikazi muri Nyakizu no mu nkegero zaho nk'abafatiwe kuri bariyeri yo mu Ryabidandi barimo umugore witwa Mukandanga Astérie yahaye abatwa barimo abitwa Kazoviyo na Karemera ngo bamujyane bamukoreshe icyo bashaka nibarangiza bamwice, baramujyana barara bamusambanyiriza hafi y'inzu y'umugenzacyaha (Inspecteur de Police Judiciaire), bukeye bwaho baramwica umurambo we bawusanga kuri bariyeri. Bunavuga ko NTAGANZWA ari kuri iyo bariyeri hari umukobwa wari warahawe izina rya ARH abazwa mu iperereza, nyuma mu rukiko agahabwa izina rya DNF kubera impamvu z'umutekano we, yahaye umusore witwa Habibu mu rwego rwo kumugororera kubera uruhare yagize mu kwica abantu benshi, amumarana amezi arenga abiri yaramugize umugore.

[275] Buvuga kandi ko ubushake bwo gukora icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu bugaragarira ku kuba NTAGANZWA Ladislas yaratanze abo bagore ngo basambanywe azi neza ko ari abaturage b'abasivile bo mu bwoko bw'abatutsi bari bibasiwe n'ibitero rusange cyangwa bya simusiga.

►Imyiregurire ya NTAGANZWA Ladislas

[276] NTAGANZWA Ladislas n'abamwunganira bavuga ko ibivugwa n'ubushinjacyaha ko yahaye uwitwa Habibu umugore wari wahawe izina rya ARH mu iperereza mu rwego rwo kumugororera kuko yari yarishe abantu benshi atari byo kuko uretse no kuba ataramumuhaye nta nibyo yigeze yumva, ko ari amakuru yamenye ari gusoma ikirego cy'ubushinjacyaha, ko byongeye kandi bitumvikana ukuntu ubushinjacyaha buvuga ko hari abagore bishwe abitegetse ngo niburangiza buvuge ko yatanze uburenganzira bwo gutunga uwo nguwo we ntiyicwe.

[277] Bakomeza bavuga ko imvugo z'uwo mugore uvuga ko yasambanyijwe ku gahato zivuguruzanya kuko hamwe avuga ko yasanze abantu kuri bariyeri, baramushorera bamugeza ku biro bya komini aba ari ho NTAGANZWA abasanga, ahandi akavuga ko we, gasaza ke, Astérie Mukandanga n'agakobwa ke yabasanze kuri bariyeri yo mu Ryabidandi, aha abatwa Astérie kugira ngo bamusambanye, bucya bamwishe, ko adasobanura niba yarabasanze kuri komini akabasubiza kuri iyo bariyeri. Bavuga ko iyo hagira abagore b'abatutsikazi basambanywa ku gahato umuyobozi wamusimbuye muri Nyakizu atari kubura kubimenya kuko abazwa mu iperereza yavuze ko nta bikorwa byo gufata ku ngufu azi byabaye muri Nyakizu ndetse no mu ikusanyamakuru rya Gacaca ryabaye aho DNF yari atuye bitari kubura kuvugwamo iyo aza kuba yarasambanyijwe.

[278] Byongeye kandi ko barebye ibiteganywa n'ingingo ya 120 igika cya 7 y'Itegeko Ngenga no 1/2012/OL ryo kuwa 02/05/2012 ubushinjacyaha bushingiraho bumurega basanga NTAGANZWA Ladislas atagombye kuregwa icyaha cyo gusambanya abagore ku gahato kubera ko ubushinjacyaha buvuga ko uwasambanyije DNF ari uwitwa Habibu, akaba ari nawe babanye igihe kirenze amezi abiri, ko ari we rero wagombye kubiregwa.

UKO URUKIKO RUBIBONA

[279] Urukiko rusanga DNF atanga ubuhamya mu rukiko yaremeje ko ubwo bari bageze kuri bariyeri yo mu Ryabidandi, NTAGANZWA yahabasanze maze abaza abatwa bari bashungereye barimo Karemera na Kazoviyo niba bazi uko umugore w'umututsikazi amera, abaha umugore witwa Astérie Mukandanga bari bavanye i Kigembe ngo bamujyane bamukoreshe icyo bashaka nibarangiza bamwice, ko amaze kumutanga abagore b'abatwakazi bari aho bamwambuye ibitenge,

bamujyana mu kizu cyari aho yambaye ubusa, ko nyuma yumvise ataka cyane, abatwa barimo kumusambanya bamukuranwaho, ko yagumye kumwumva ataka ijoro ryose. Anemeza ko bukeye mu gitondo yasanze intumbi ye ku muhanda bamutaye mu cyobo bashyizemo abandi.

[280] Urukiko rusanga DNF anavuga ko we NTAGANZWA Ladislas yamubajije aho yari ari avuga ko bari bazi ko nta mututsi wasigaye mu gihugu, maze abwira IPJ ngo amubaze umwirondoro we n’amakuru y’aho yabaga, nawe amubaza niba hari amakuru y’inyenzi azi n’uko yabanaga nazo aramuhakanira, uwo munsi arara kwa IPJ, mu gitondo haza umupolisi amubwira ko NTAGANZWA amushaka barajyana, ahageze ahasanga abantu benshi b’urubyiruko, maze amuha umusore witwa Habibu ngo amujyane babane nko kumugororera kubera ko yishe abantu benshi, Habibu amujyana kwa nyina bamarana amezi abiri(2) babana nk’umugore n’ umugabo, ko nyuma baje guhungira ku Gikongoro aho yakuwe n’abasirikare b’inkotanyi.

[281] [281] Rusanga abazwa mu iperereza n’intumwa y’urukiko mpanabyaha mpuzamahanga kuwa 02/04/1999, aho yari yahawe izina rya ARH, yaravuze ko umugore witwa Astérie Mukandanga bavanye aho bari barahungiye i Kigembe, yahagurutse agiye gusuhuza NTAGANZWA amubwira ko adakeneye ko amusuhuza, ko yicara hasi kuko agomba kwicwa maze amuha abatwa nk’igihembo cy’ibyo bakoze mu bwicanyi ababaza niba barigeze bumva uko umugore w’umututsikazi amera, ababwira ko bamufata bakamukoresha icyo bashaka. Rusanga yaranavuze ko uwo munsi NTAGANZWA yabajije urubyiruko rwari imbere y’ibiro bya komini uwigaragaje cyane mu bwicanyi kandi utarahembwa, haza benshi ariko ahamagara uwitwa Habibu aba ariwe amuha nk’igihembo kubera ko yari yarigaragaje mu bwicanyi, amujyana iwabo babana nk’umugabo n’umugore mu gihe kigera ku byumweru bibiri cyangwa bitatu, nyuma bahungira ku Gikongoro aho babanye kugera mu mpera z’ukwezi kwa karindwi 1994, ko mu icyo gihe Habibu yakoreshaga umubiri we uko abishatse, ko iyo nzira y’umusaraba yamaze nk’amezi abiri, atwara inda ya Habibu, nyuma abyara umwana w’umuhungu.

[282] Rusanga kandi DNF abazwa n’ubushinjacyaha kuwa 13/09/2016, yaravuze ko ubuhamya yatanze abazwa n’intumwa z’Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda kuwa 02/04/1999 ariko hari ibyo yavuze mbere banditse cyangwa bumvise nabi bakabyandika uko bitari, ko abamubajije yababwiye ko Habibu yamubohoje bakabana igihe kingana nk’amezi abiri, ariko ko umwana yabyaye atari uwa Habibu kuko yamubyaye muri 1995 amubyaranye n’umusirikare. Rusangayaranongeyeho ko ubwo bari kuri bariyeri yo mu Ryabidandi NTAGANZWA agategeka ko IPJ amukorera inyandikomvugo mbere y’uko amubaza yari yasize avuze ko agomba guhabwa Habibu amugororera nk’urubyiruko rwishe abantu benshi, iryo joro arara kwa IPJ, bukeye mu gitondo Habibu aza kumutwara, ko iwe yahamaze amezi abiri abana nawe nk’umugabo n’umugore, baza kuhava bajya ku Gikongoro.

[283] Urukiko rurebye uburyo DNF asobanura ibyamubayeho we na mugenzi atanga ubuhamya mu rukiko no mu imvugo ze mu iperereza agaragaza uburyo bageze kuri bariyeri yo mu Ryabidandi NTAGANZWA Ladislas agaha Astérie Mukandanga abatwa barimo Karemera na Kazoviyo, bakarara bamusambanya bugacya bamwishe n’uko nawe yahawe uwitwa Habibu bakabana mu gihe cy’amezi abiri nk’umugabo n’umugore, bose ababaha abagororera kubera ko bishe abantu benshi, rugasanga ubuhamya bwe ari ikimenyetso kigaragaza ko NTAGANZWA Ladislas yagize uruhare mu isambanywa ku gahato ry’abo bagore.

[284] Urukiko rusanga ibyo NTAGANZWA Ladislas n'abamwunganira bavuga ko ubuhamya bwa DNF butashingirwaho kuko yivuguruza ku byerekeranye n'aho NTAGANZWA yabasanze kugira ngo abatange kuko hamwe avuga ko yabasanze kuri bariyeri mu Ryabidandi ahandi akavuga ko bamusanze ku biro bya komini, nta shingiro bifite kuko, nk'uko byasobanuwe, aho mu Ryabidandi ni naho ibiro bya komini byari byubatse, kuba rero yavuga kuri bariyeri ashaka kuvuga ku biro bya komini bitatesha ireme ubwo buhamya kubera ko urebye igihe gishize n'ingaruka ibyo atanga ho ubuhamya byamugizeho, kuba yavuga ku biro bya komini cyangwa kuri bariyeri yo mu Ryabidandi atari inenge kubera ko ari ahantu hegeranye cyane hari urugendo rw'iminota nk'itatu nk'uko yabisobanuye atanga ubuhamya ndetse n'urukiko ubwo rwajyaga kuburanishiriza muri Nyakizu rwiboneye ko aho mu Ryabidandi ari naho ibiro bya komini byari byubatse.

[285] Urukiko rusanga kandi ibyo bavuga ko DNF adasobanura neza uburyo yamuhayemo Habibu kuko mu iperereza yavuze ko bari imbere y'ibiro bya komini yahamagaye agatsiko k'abicanyi akabaza utarahembwa bavuga ko ari uwitwa Habibu naho abazwa mu rukiko avuga ko ari abapolisi baje kumubwira ko NTAGANZWA amushaka bamusanze aho yari yaraye kwa IPJ baramumushyira amuha Habibu nabyo bitatesha agaciro ubuhamya bwa DNF kuko ikigaragara mu mvugo ze haba mu rukiko cyangwa mu iperereza ari uko yasobanuye ku buryo bwumvikana uko NTAGANZWA Ladislas yamuhaye Habibu akamugira umugore mu gihe cy'amezi abiri; uburyo bavuga yamumuhayemo n'aho yamumuhereye bikaba bitatesha ireme ubwo buhamya.

[286] Urukiko rusanga nanone ibyo NTAGANZWA Ladislas n'abamwunganira bavuga ko DNF adasobanura neza uburyo abazwa n'intumwa z'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda yavuze ko yatwaye inda ya Habibu naho abazwa n'ubushinjacyaha akavuga ko umwana yabyaye mu 1995 yamubyaranye n'umusirikare, nabyo bitatesha ireme ubuhamya kuko abazwa mu bushinjacyaha kuwa 13/06/2016 yasobanuye neza ko Habibu yamubohoje bakabana amezi agera kuri abiri, nyuma akabyarana n'umusirikare, urukiko rukaba rusanga rero yarakosoye ibyari byaranditswe uko atabivuze.

[287] Urukiko runasanga n'ibyo bavuga ko iyo hagira abagore basambanya ku gahato muri Nyakizu bitari kubura kuvugwa mu ikusanya makuru rya gacaca n'abayobozi bamusimbuye, nabyo nta shingiro bifite kuko kuba bitavugwa muri gacaca cyangwa ngo hagire abandi babivuga atari impamvu igaragaza ko muri Nyakizu hatabayeho gusambanya abagore ku gahato kuko kuba DNF avuga ko ubwe yasambanyijwe ari ikigaragaza ko byabayeho kandi n'uburyo asobanura uko byagenze urukiko rukaba rwasanze bifite ireme. Ikindi kandi kuba yaba ari we wenyine ubivuga bikaba bitanyuranyije n'itegeko kuko ingingo ya 65 y'Itegeko no 15/2004 yo kuwa 12/06/2004 ryekereye ibimenyetso mu manza n'itangwa ryabyo iteganya ko urukiko rutitsitsa ku mubare w'abatangabuhamya, ahubwo rwita cyane cyane ku bumenyi bwabo bw'ibyabaye no ku buryo bavuga uko byagenze. Iby'uko ubuhamya bw'umuntu umwe bushingirwaho n'urukiko mu kugaragaza ibyabaye bitabaye ngombwa ko hagira ubundi bubushimangira byaba ari ubuhamya bwatanzwe n'uwakorewe ihohotera rishingiye ku gitsina cyangwa no ku bindi byaha bihura n'ibyemejwe mu rubanza rwa Musema rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda nko mu rubanza rushingiye ku byemejwe mu rubanza rwa Akayesu n'urwa Rutaganda[54].

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[54] ICTR-96-13-T, Le Procureur c. Alfred MUSEMA, 27 janvier 2000, p. 22, para. 45.

KU BYEREKEYE AMATEGEKO

[288] Ingingo ya 120 y'Itegeko Ngenga No 1/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana agace ka karindwi iteganya icyaha cyo gusambanya ku gahato nka kimwe mu bikorwa bigize icyaha cyibasiye inyokomuntu bikorwa mu bitero rusange cyangwa bya simusiga byibasira abaturage batari abasirikare bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko cyangwa idini naho ingingo ya 94 y'Itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange yo ikaba iteganya icyaha cyo gusambanya ku gahato nka kimwe mu bikorwa bigize icyaha cyibasiye inyokomuntu bikorwa mu bitero rusange cyangwa bya simusiga byibasira abaturage batari abasirikare.

[289] Urukiko rusanga mu mategeko y'u Rwanda, ibisobanuro bijyanye no gukoresha undi imibonano mpuzabitsina ku gahato bigaraga mu ngingo ya 196 y'Itegeko Ngenga no 1/2012/OL ryo kuwa 02/05/2012 ryavuzwe ivuga ko gukoresha imibonano mpuzabitsina ku gahato ari ugukoresha undi muntu imibonano mpuzabitsina nta bwumvikane bubayeho, hakoreshejwe imbaraga, iterabwoba cyangwa uburiganya. Runasanga kandi ingingo ya 134 y'Itegeko Nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange yo isobanurako gukoresha undi muntu imibonano mpuzabitsina ku gahato ari ugushyira igitsina mu gitsina, mu kibuno cyangwa mu kanwa k'undi muntu cyangwa gushyira urugingo urwo arirwo rwose rw'umubiri w'umuntu cyangwa ikindi kintu icyo aricyo cyose mu gitsina cyangwa mu kibuno by'undi muntu nta bwumvikane bubayeho, hakoreshejwe imbaraga, iterabwoba, uburiganya, ububasha amufiteho cyangwa abikoze ku bw'intege nke z'uwakorewe icyaha. Urukiko rusanga iki gisobanuro gihura n'ibyemejwe mu manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda nko mu rubanza rwa Kamuhanda Jean de Dieu[55] n'urwa Karemera Edouard na Ngirumpatse Mattieu[56] zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda. Rusanga ukora icyaha cyo gusambanya ku gahato aba afite ubushake bwo gukoresha undi imibonano mpuzabitsina azi neza ko uyikoreshwa atabyemeraga[57].

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[55] ICTR-99-54A- T, Le Procureur c/ Jean de Dieu KAMUHANDA, du 22 Janvier 2004, para. 707, p.158, : "La Chambre d'appel a repris à son compte cette définition qui a été considérablement remaniée et complétée en ces termes par la Chambre de première instance II du TPIY dans le Jugement Kunarac : L'actus reus du crime de viol en droit international est constitué par la pénétration sexuelle, fit- elle légère : a) du vagin ou de l'anus de la victime par le pénis ou tout autre objet utilisé par le violeur ; ou b) de la bouche de la victime par le pénis du violeur ou de tout autre objet utilisé par lui dès lors que cette pénétration sexuelle se fait sans le consentement de la victime. Le consentement à cette fin doit être donné volontairement et résulter de l'exercice du libre-arbitre de la victime. Il est évalué au vu des circonstances".

[56] ICTR-98 -44-T, le Procureur C/ Edouard KAREMERA et Matthieu NGIRUMBATSE, 2 Février 2012, para.1676,p.359, : " Le viol constitutif de crime contre I'humanité consiste en la pénétration sexuelle non consentie, fût-elle légère, du vagin ou de I'anus de la victime par le pénis du violeur ou partout autre objet utilisé par lui, ou de la bouche de la victime par le pénis du violeur. Le consentement à cette fin doit être donné volontairement et résulter de l'exercice du libre arbitre de la victime. Le défaut de consentement peut se déduire de circonstances marquées par l'emploi de la coercition et dans lesquelles un véritable consentement était impossible. L'emploi de la force ou la menace de son emploi constitue certes une preuve incontestable de I'absence de consentement, mais l'emploi de la force n'est pas en soi un élément constitutif du viol.

[57] Idem, para. 1677, p. 359, : "L'accusé doit avoir l'intention de procéder à cette pénétration sexuelle prohibée tout en sachant qu'elle se produit sans le consentement de la victime. Sa connaissance du non-consentement peut être établie s'il s'avère qu'il était au courant de l'existence de circonstances coercitives excluant la possibilité que la victime ait donné un consentement veritable". Voir aussi ICTR-99-54A- T, Le Procureur c/ Jean de Dieu KAMUHANDA, du 22 Janvier 2004, para. 708, p.158.

[290] Urukiko rusanga harebwe ko NTAGANZWA Ladislas yatesheje agaciro abo bagore basambayijwe ku gahato ari bo DNF na Mukandanga Astérie abwira abo abahaye ko ari ukubagororera kubera uruhare bagize mu bwicanyi no kugira ngo bumve uko abatutsikazi bamera, hakanarebwe ko muri Nyakizu hagabwaga ibitero rusange kandi bya simusiga byibasiraga abaturage b'abasivili bo mu bwoko bw'abatutsi nawe yagizemo uruhare, bigaragaza ko atanga abo bagore yari afite ubushake bw'uko bakoreshwa ku gahato imibonano mpuzabitsina.

[291] Urukiko rusanga rero kuba NTAGANZWA Ladislas yarahaye Astérie Mukandanga abatwa kugira ngo bamusambanye bumve uko umugore w'umututsikazi amera bakarara bamusambanya no kuba yarahaye DNF uwitwa Habibu kugira ngo amugire umugore akamumarana amezi arenga abiri, bose akabatanga mu rwego rwokubagororera kubera uruhare bagize mu bwicanyi, agomba guhamwa n'icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyoko muntu kubera uko gutegeka cyangwa gutuma abo bagore basambanywa ku gahato.

5. Ku byerekeranye n'ibihano ku byaha bihama NTAGANZWA Ladislas

[292] Ubushinjacyaha buvuga ko NTAGANZWA Ladislas yakoze ibyaha biremereye, bigira ingaruka ku muryango nyarwanda kuko hishwe umubare munini w'abatutsi bo muri komini Nyakizu n'abo mu makomini bihana imbibi bari barahungiye. Bunavuga ko mu buhamya bwatanzwe hagaragaramo ko kuri paruwasi ya Cyahinda haguye abarenga ibihumbi makumyabiri na bitanu (25 000) naho ku musozi wa Gasasa hicirwa abagera ku bihumbi birindwi (7.000) ndetse n'abandi bagiye bicirwa ahantu hatandukanye. Buvuga kandi ko nk'umuntu wari Burugumesitiri yari umuntu ukomeye ku rwego rwa komini ufata ibyemezo bikomeye ariko aho gukoresha ubwo bubasha yari afite abungabungira umutekano abantu bari bamuhungiyeho, yabukoresheje mu kubagabaho ibitero, ubwe agenzura, anatanga amabwiriza y'uko abatutsi bicwa.

[293] Busaba ko yahanishwa igifungo cya burundu kuri buri cyaha aregwa kubera uburemere bwabyo n'ububasha yari afite. Buvuga ko kubera ko ibyo byaha bigize impurirane mbonezamugambi binganya uburemere kuko byose bihanisha gufungwa burundu, NTAGANZWA Ladislas yahanishwa igifungo cya burundu nk'uko biteganywa n'ingingo ya 61 na 62 z'itegeko no 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[294] NTAGANZWA Ladislas n'abamwunganira bavuga ko ibyaha byose ubushinjacyaha bumurega byo gukora jenoside, gushishikariza abantu gukora jenoside, kurimbura, kwica no gusambanya ku gahato nk'ibyaha byibasiye inyokomuntu nta na kimwe yakoze, ko asaba urukiko kwakira ikirego cy'ubushinjacyaha ariko rukavuga ko nta shingiro gifite, rugategeka ko agizwe umwere, akarekurwa urubanza rukimara gusomwa.

UKO URUKIKO RUBIBONA

[295] Urukiko rusanga NTAGANZWA Ladislas yararezwe hashingiwe ku Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana cyateganyaga igifungo cya burundu cy'umwihariko ku byaha yarezwe, arikko icyo gifungo cya burundu cy'umwihariko k'uregwa wahamwe n'icyaha mu rubanza rwimuriwe mu Rwanda kikaba cyari cyaravuyeho[58].

[58] Ingingo ya 5 bis Itegeko ngenga n° 08/2013/ol ryo kuwa 16/06/2013 rihindura kandi ryuzuza Itegeko ngenga n° 31/2007 ryo kuwa 25/07/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya

Rusanga mu gusaba ibihano hashingirwa ku biteganywa n'Itegeko no 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange riteganya ko uwahamijwe icyaha cya jenoside ahanishwa igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha[59].

[296] Hashingwe ku bitenywa n'ingingo ya 334 y'itegeko no 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange60, rusanga Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 ryavuzwe ari ryo rigomba gushingirwaho mu igenwa ry'igihano NTAGANZWA Ladislas yahanishwa kubera ko Itegeko no 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange mu igenwa ry'ibihano ritemera ko uwahamijwe icyaha cya jenoside agabanyirizwa ibihano kubera impamvu nyoroshyacyaha ndetse ko no ku birebana n'icyaha cyibasiye inyokomuntu naryo siryo riteganya igihano gito ku cyateganywaga n'itegeko ngenga no 01/2012/OL ryo kuwa 02/05/2012 ryavuzwe kuko ayo mategeko yombi ateganya igihano cy'igifungo cya burundu kuri icyo cyaha.

[297] Urukiko rusanga, nk'uko byasobanuwe, NTAGANZWA Ladislas ahamwa n'icyaha cya jenoside kubera kwica abatutsi giteganywa n'ingingo ya 114 y'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana. Rusanga anahamwa n'icyaha cyo kurimbura no gusambanya ku gahato nk'ibyaha byibasiye inyokomuntu biteganywa n'ingingo ya 120 2o na 7o y' iryo Tegeko Ngenga. Rusanga adahamwa n'icyaha cyo gushishikariza abantu gukora jenoside n'icyo kwica nk'icyaha cyibasiye inyokomuntu kuko rwasanze ibikorwa ubushinjacyaha bushingiraho bukimurega biri mubigize kurimbura nk'icyaha cyibasiye inyoko muntu.

[298] Urukiko rusanga ibyaha bihama NTAGANZWA Ladislas bigize impurirane y'imbonezamugambi kuko byakozwe mu mugambi umwe wo kwibasira abatutsi. Hashingiwe rero ku biteganywaga n'ingingo ya 84 y'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 ryavuzwe ivuga ko iyo ku gikorwa kimwe gusa cyangwa byinshi, uwakoze icyaha yari guhanishwa ibihano byinshi byo gufungwa cyangwa by'ihazabu, umucamanza amuhanisha igihano kiruta ibindi yongera igihe cyangwa umubare bitewe n'uburyo ibyaha byakozwe ariko ntarenze urugero ntarengwa wongeyeho icya kabiri (1/2) cy'icyo gihano kirushije ibindi gukomera. Urukiko rusanga kuba buri cyaha kimuhama gihanishwa igifungo cya burundu, agomba guhanishwa igifungo cya burundu kuko ibihano kuri ibyo byaha byose binganya uburembere.

[299] Urukiko rurasanga nubwo ari ubwa mbere NTAGANZWA Ladislas ahamwe n'ibi byaha ariko harebwe uburemere bwabyo n'ingaruka byagize ku muryango nyarwanda aho abatutsi benshi bo muri komini Nyakizu yayoboraga n'abari bahahungiye bishwe abandi bagasambanywa ku gahato n'uko yari afite ububasha nka Burugumesitiri akabukoresha atuma abandi bakora ibyaha atagomba kugabanyirizwa igihano. Urukiko rusanga kuba mu igenwa ry'igihano iyo hari impamvu

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ko: "Uregwa wahamwe n'icyaha mu rubanza rwimuriwe mu Rwanda ruvuye mu Rukiko Mpanabyaha rwashyiriweho u Rwanda cyangwa mu kindi gihugu, ntashobora guhanishwa igifungo cya burundu cy'umwihariko".

[59] Ingingo ya 92 y'itegeko no 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko: " Umuntu wese ukoze kimwe mu bikorwa bivugwa mu ngingo ya 91 y'iri tegeko aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha".

60Ingingo 334 y'itegeko no 68/2018 ryo kuwa 30/08/2018 riteganya ibyaha n'ibihano muri rusange iteganya ko: "Ingingo zose z'amategeko abanziriza iri kandi zinyuranyije na ryo zivanyweho. Icyakora, icyaha cyakozwe mbere y'uko iri tegeko ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda gihanwa hakurikijwe itegeko ryakigengaga keretse mu gihe iri tegeko riteganya ibihano byoroheje".

nkomezacyaha n’impamvu nyoroshyacyaha mu guhana harebwa uburemere bw’ibyaha bihama uregwa bihura n’ibyemejwe mu rubanza rwo kugena igihano rwa Jean Paul Akayesu rwaciwe n’urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda kuwa 02 ukwakira 1998.

III. ICYEMEZO CY’URUKIKO

[300] Rwemeje ko NTAGANZWA Ladislas ahamwa n’icyaha cya jenoside;

[301] Rwemeje ko anahamwa no kurimbura no gusambanya ku gahato nk’ibyaha byibasiye inyokomuntu;

[302] Rwemeje ko adahamwa n’icyaha cyo gushishikariza abantu gukora jenoside n’icyo kwica nk’icyaha cyibasiye inyokomuntu;

[303] Ruhanishije NTAGANZWA Ladislas igihano cy’ igifungo cya burundu;

[304] Rutegetse ko asonerwa amagarama y’urubanza kubera ko aburana afunze;

[305] Rwibukije ko kujurira bikorwa mu gihe cy’ukwezi kumwe kubarwa uhereye igihe urubanza ruciriweho.