

## UBUSHINJACYAHA v. HABYARABATUMA

[Rwanda URUKIKO RW'IKIRENGA – RPAA0006/GEN/CS (Kanyange, P.J.,  
Nyirandabaruta na Karimunda, J.) 17 Ukuboza 2015]

*Amategeko Mpanabyaha – Uburyozwacyaha bw'umuyobozi – Haba hari uburyozwacyaha mu gihe umuyobozi yarazi cyangwa yashoboraga kumenya ko abo ayoboye bagiye gukora icyaha ntabakumire ndetse na nyuma yo kugikora ntabafatire ibihano.*

*Amategeko Mpanabyaha – Ishingiro ry'uburyozwacyaha ku muyobozi – Ntibukomoka ku byaha byakozwe n'abo ayobora ahubwo aba aryozwa kudashyira mu bikorwa inshingano ze zo kuyobora uko bikwiye.*

*Amategeko Mpanabyaha – Umuyobozi uryozwa icyaha – Habaho uburyozwacyaha kabone n'ubwo abo bayobozi baba batarashyizweho mu buryo bwemewe n'amategeko.*

**Incamake y'ikibazo:** Ubushinjacyaha bwa Gisirikare bwareze ACP Habyarabatumu Cyriaque kuba yari mu bateguye, abayoboye kandi bashyize mu bikorwa jenoside yakorewe Abatutsi, aho yafataga kandi agafunga ibyitso by'inkontanyi mu mwaka wa 1990, agatoza kandi agaha imbunda impunzi z'Abarundi i Nyaruteja n'Interahamwe kuri Stade Kamena; bumurega kandi ubufatanyacyaha mu bwicanyi bwakorewe ahantu hatandukanye, ubwo yirengagije gutabara abantu bari mu kaga bikabaviramo urupfu. Yakurikiranweho kandi kuba yatanze imbunda zo kwica abatutsi muri Butare na Gikongoro no kuba yarakoresheje Abajandarume yari ashinzwe kuyobora mu kwica Abatutsi muri Butare na Gikongoro.

Urukiko rwa Gisirikare rwamuhamije icyaha cy'ubufatanyacyaha mu bwicanyi bwakorewe Abatutsi bari bahungiyeye i Cyahinda bishwe n'Abajandarume yari yoherereje, rumuhanisha igifungo cya burundu no kunyagwa impeta za gisirikare naho ibindi byaha rubimuhanaguraho. Habyarabatumu Cyriaque n'Ubushinjacyaha bajuririyeye Urukiko Rukuru rwa Gisirikare, rwemeza ko ubujurire bwe nta shingiro bufite, naho ubw'Ubushinjacyaha bufite ishingiro kuri bimwe, rumuhanisha igifungo cya burundu y'umwihariko no kunyagwa impeta za gisirikare.

Habyarabatumu ntiyishimiye imikirize y'urubanza, arujuririra muri uru Rukiko, avuga ko yahaniwe kugira uruhare mu iyicwa ry'impuzi z'i Cyahinda kandi atari ahari, no kuba Urukiko rwaramuhamije icyaha rugenekereje ndetse akaba asanga ntacyo yari gukora kuko yari atakiri umuyobozi muri Butare. Uhagarariye Ubushinjacyaha avuga ko dosiye igaragaraza ko ku wa 19/4/1994 nyuma ya saa sita aribwo Habyarabatumu Cyriaque yamenye ko yimuwe kandi icyo gihe akaba yari ataramenya uzamusimbura kuko nta hererekanya bubasha ryari ryagakozwe kubera ko Major Rusigariye Alfred wagombaga kumusimbura yari atarahagera, ko rero ubuyobozi butasigiwe Sous Lieutenant Ngaboyisonga nk'uko Habyarabatumu Cyriaque abivugaga kuko atari we bari gukorana ihererekanya bubasha.

**Incamake y'icyemezo:** 1. Haba hari uburyozwacyaha mu gihe umuyobozi yarazi cyangwa yashoboraga kumenya ko abo ayoboye bagiye gukora icyaha ntabakumire ndetse na nyuma yo kugikora ntabafatire ibihano. Bityo, kuba uregwa yarahaye abajandarume imbunda zikomeye batagiye ku rugamba, ntagire n'icyo ababuzwa cyerekeranye n'ubuzima bw'impunzi yari azi ko buri mu kaga kubera ko yari yahigereye akabona imirambo y'impunzi zishwe n'izakomerekejwe n'Abajandarume, byerekana ko yari azi cyangwa yashoboraga kumenya ko izo mpunzi zishobora kwicwa n'abo bajandarume, nyamara akaba ntacyo yakozwe ngo akumire ubwo bwicanyi butaraba. Kuba kandi uregwa atarabafatiye ibihano ahubwo

agategereza ko bahanwa n'utarabohereje, ntanasabe ko hakorwa iperereza ry'ubwo bwicanyi kugira ngo ababigizemo uruhare bakurikiranwe, bigaragaza ko yateshutse ku nshingano ze nk'umuyobozi.

2. Uburyozwacyaha ku muyobozi ntibukomoka ku kuba akurikiranyweho ibyaha byakozwe n'abo ayobora ahubwo aba aryozwa kudashyira mu bikorwa inshingano ze zo kuyobora uko bikwiye.

3. Ububasha bwo gukumira cyangwa guhana ibyaha busabwa abayobozi ntibugombera byanze bikunze ko uwo muyobozi aba ayobora mu buryo bwemewe n'amategeko, kuko mu gihe cy'amakimbirane, birashoboka ko abayobozi bishyiraho, habaho za Guverinoma zitemewe cyangwa ingabo n'imitwe yitwara gisirikare yishyizeho. Inzego z'ubuyobozi zishobora gushyirwaho huti huti, zishobora kuba ziri mu kajagari cyangwa zicyiyubaka. Kugirango icyo gihe amategeko yubahirizwe ni ngombwa ko abayoborwa n'abayobozi bafataga ibyemezo babazwa ibyo bakoze kabone n'ubwo abo bayobozi baba batarashyizweho mu buryo bwemewe n'amategeko.

**Ubujurire nta shingiro bufite.  
Urubanza rwaciwe n'Urukiko Rukuru rwa Gisirikare ntiruhindutse.  
Amagarama aherereye ku isanduku ya Leta.**

**Amategeko yashingiweho:**

Itegeko-Ngenga N°16/2004 ryo ku wa 19/6/2004 rigena imiterere, ububasha n'imikorere y'Inkiko-Gacaca, ingingo ya 51.

**Imanza zifashishijwe:**

Prosecutor v. Théoneste Bagosora and Anatole Nsengiyumva, ICTR (Appeal Judgment), Case N°. ICTR-98-41-A, 14 December 2011, para 697.

Prosecutor v. Krnojelac, ICTY, Appeal Chamber, 13/02/2003, para 171.

Prosecutor v. Mucic et al, ICTY (Appeal Chamber), judgment of 20 February 2001, paragraph 195.

**Ibitekerezo by'abahanga:**

An Introduction to International Criminal Law and Procedure, Cambridge: Cambridge University Press, 2010, p.399.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Uru rubanza rwatangiriye mu Rukiko rwa Gisirikare, Ubushinjacyaha bwa Gisirikare burega ACP Habyarabatuma Cyriaque kuba yari mu bateguye, abayoboye kandi bashyize mu bikorwa jenocide yakorewe Abatutsi, aho yafataga kandi agafunga ibyitso by'inkontanyi mu mwaka wa 1990, agatoza kandi agaha imbunda impunzi z'Abarundi i Nyaruteja n'Interahamwe kuri Stade Kamena; bumurega kandi ubufatanyacyaha mu bwicanyi bwakorewe ahantu hatandukanye, i Tumba, Kaminuza Nkuru y'u Rwanda (UNR), Matyazo, Rukira, Ngoma, Sahera, Kabutare, Nkomero, Kigembe na Kabakobwa, ubwo yirengagije gutabara abantu bari mu kaga bikabaviramo urupfu; yakurikiranweho kandi kuba yatanze

imbunda zo kwica Abatutsi muri Butare na Gikongoro no kuba yarakoresheje Abajandarume yari ashinzwe kuyobora mu kwica Abatutsi muri Butare na Gikongoro.

[2] Urukiko rwa Gisirikare rwamuhamije icyaha cy'ubufatanyacyaha mu bwicanyi bwakorewe Abatutsi bari bahungiyeye i Cyahinda bishwe n'Abajandarume yari yohereje, rumuhanisha igifungo cya burundu no kunyagwa impeta za gisirikare naho ibindi byaha rubimuhanaguraho.

[3] Habyarabatuma Cyriaque n'Ubushinjacyaha bajuririye Urukiko Rukuru rwa Gisirikare, rwemeza ko ubujurire bwe nta shingiro bufite, naho ubw'Ubushinjacyaha bufite ishingiro kuri bimwe, rumuhanisha igifungo cya burundu y'umwihariko no kunyagwa impeta za gisirikare.

[4] Mu gufata umwanzuro, Urukiko Rukuru rwa Gisirikari rwashingiye ku mpamvu y'uko Urukiko rwa Gisirikari rwibeshye ku ngingo yakoreshejwe mu guhana iki cyaha kuko hakoreshejwe ingingo ya 78 y'Itegeko Ngenga N°16/2004 ryo kuwa 19/6/2004 rigenga imiterere, ububasha n'imikorere by'Inkiko Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenocide n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'itariki ya 31 Ukuboza 1994 nk'uko ryahinduwe kandi ryujijwe kugeza ubu, iyo ngingo ikaba ihana abakoze ibyaha bya jenocide batarageza ku myaka 18 ariko bari barengeje imyaka 14 y'amavuko. Ruvuga ko kuba ushinjwa yari arengeje imyaka 18 y'amavuko igihe yakoraga ibyo byaha kuko yavutse 1955, ingingo igomba gukoreshwa ari iya 72 igika cya mbere cy'Itegeko-Ngenga N°16/2004 ryo kuwa 19/6/2004 ryavuzwe haruguru nk'uko ryahinduwe kandi rikuzuzwa n'ingingo ya 17 y'Itegeko Ngenga N°13/2008 ryo kuwa 19/5/2008.

[5] Rwasanze ku byerekeye impamvu nyoroshiyacyaha zagenwe n'Urukiko rwa Gisirikare, zituma ushinjwa ibyaha bya Jenocide agabanyirizwa ibihano, ziteganyijwe mu gika cya kabiri n'icya gatatu by'ingingo ya 72 y'Itegeko Ngenga N° 16/2004 ryo kuwa 19/6/2004 ryavuzwe haruguru ku bantu bemeye ibyaha, bakicuza bakagisabira n'imbabazi, ko izindi mpamvu iyo zihari hakurikizwa ingingo ya 81 y'iryo Tegeko Ngenga, ivuga ko iyo impamvu zihari hatangwa igihano gitoya cyateganyirijwe icyo cyaha, bityo ko Urukiko rwa Gisirikari rwibeshye rukoresha ingingo ya 82 y'Itegeko-Teka N°21/77 ryo kuwa 18/08/1977 rishyiraho Igitabo cy'amategeko ahana ibyaha bisanzwe.

[6] Habyarabatuma Cyriaque ntiyishimiye imikirize y'urubanza RPA 0001/GEN/010/HCM rwaciye ku wa 29/09/2011 n'Urukiko Rukuru rwa Gisirikare, arujuririra muri uru Rukiko, avuga ko yahaniwe kugira uruhare mu iyicwa ry'impuzi z'i Cyahinda kandi atari ahari, no kuba Urukiko rwaramuhamije icyaha rugenekereje ndetse akaba asanga ntacyo yari gukora kuko yari atakiri umuyobozi muri Butare.

[7] Urubanza rwaburanishijwe mu ruhamwe kuwa 2/11/2015 Habyarabatuma Cyriaque yunganiwe na Me Bimenyimana Emmanuel naho Ubushinjacyaha buhagarariye na Lt. Nzakamwita Faustin, Umushinjacyaha wa Gisirikari.

## **II. IBIBAZO BIGARAGARA MU RUBANZA N'ISESENGURWA RYABYO**

**II.1. Kumenya niba Habyarabatuma Cyriaque yari Umuyobozi wa Jandarumori ya Butare mu gihe impuzi zari zarahungiyeye i Cyahinda zicwaga.**

[8] Habyarabatuma Cyriaque avuga ko mu ma saa cyenda z'amanywa yo ku wa 18/04/1994 ari bwo yohereje Sous-Lieutenant Majoro i Cyahinda, we asigara i Butare, uwo mugoroba aba ari bwo abona ubutumwa bw'uko yimurirwe i Kigali, bukeye azinduka agenda kubera ko ibyemezo bya Gisirikare bihita byubahirizwa (effet immédiat), ubuyobozi abusigira Sous-Lieutenant Ngaboyisonga waje gusimburwa na Major Rusigariye Alfred nyuma y'iminsi ibiri; ko nubwo yemera ko Sous-Lieutenant Majoro yoherezwa i Cyahinda yari agikuriye Jandarumori ya Butare, ibyo kwica impunzi z'i Cyahinda atabimenye kuko nta mugambi bacuranye, atari agihari kandi niyo aza kuba agihari ntacyo yari kubikoraho kubera ko nta bubasha yari akimufiteho kuko yari yimuwe, kutubahiriza amabwiriza amwimura ahubwo aricyo cyaha, ko iby'ubwicanyi bw'izo mpunzi yabimenye ku wa 26/04/1994 agarutse i Butare mu gahushya k'amasaha make yemerewe kugira ngo akore ihererekanya bubasha na Major Rusigariye Alfred, byose bigaragaza ko Sous-Lieutenant Majoro ari we ukwiye kubazwa ibyo yakozwe, we akagirwa umwera kuko batari bafatanyije uwo mugambi.

[9] Me Bimenyimana Emmanuel avuga ko ubwicanyi bw'impunzi bwabaye Habyarabatuma Cyriaque yatumweho n'Ubuyobozi bwa Jandarumori (Etat major) kujya gukomereza imirimo ye i Kigali, bigaragaza ko iyimurwa rye n'irya Prefet wa Butare ryabaye ku wa 19/04/1994 ariryo ryateye icyuho cyatumye ubwicanyi bw'Abatutsi butangira icyo gihe, bityo Urukiko Rukuru rwa Gisirikare rukaba rwaramuhamije icyaha rugenekereje kubera ko ubwicanyi bukorwa yari yaravuye ku buyobozi bwa jandarumori ya Butare.

[10] Uhagarariye Ubushinjacyaha avuga ko dosiye igaragaraza ko ku wa 19/4/1994 nyuma ya saa sita aribwo Habyarabatuma Cyriaque yamenye ko yimuwe kandi icyo gihe akaba yari ataramenya uzamusimbura kuko nta hererekanya bubasha (hand over) ryari ryagakoze kubera ko Major Rusigariye Alfred wagombaga kumusimbura yari atarahagera, ko rero ubuyobozi butasigiwe Sous Lieutenant Ngaboyisonga nk'uko Habyarabatuma Cyriaque abivugaga kuko atari we bari gukorana ihererekanya bubasha.

[11] Akomeza avuga ko kuba Habyarabatuma Cyriaque yarohereje Sous-Lieutenant Majoro i Cyahinda we agasigara i Butare bitavugaga ko atashoboraga gutanga amabwiriza kuko isasu rya mbere ritari kuraswa atabizi, bivugaga ko iyo aba atifatanyije nabo yari kurara abakuyeyo, kandi ko igihe abajandarume bazanaga imirambo ya bagenzi babo basanze akiri mu Kigo nk'uko byemejwe na Cpl Dufitumukiza Anaclet, ntiyabwirira Major Rusigariye Alfred ko Abajandarume yohereje i Cyahinda bakoze amahano, ko kugeza ubu nta kimenyetso atanga cy'uko yari i Kigali, usibye ko niyo yagaragaza ko yari i Kigali bitamuvanaho uburyozwacyaha kubera ko yari akiri Umuyobozi bitewe n'uko yari atarasimburwa, bityo akaba akwiye kubiryoza.

## **UKO URUKIKO RUBIBONA**

[12] Habyarabatuma Cyriaque avuga ko ubutumwa bumwimura yabubonye k'umugoroba wo ku wa 18/04/1994, nyamara muri dosiye bigaragara ko yavugiye mu Bushinjacyaha bwa Gisirikare ko ku wa 19/04/1994 ari bwo yabonye telegaramu imusaba kuba yageze ku Kacyiru saa munani z'amanywa, kandi ko atahise asimburwa ( " Le 19/04/1994, j'ai reçu un telegramme de l'EM/GDN (Etat Major/ Gendarmerie Nationale) qui m'appelait à Kacyiru au plus tard à 14 h00 comme Commandant d'Unité sans me faire remplacer" (côtes 2, 19 na 24), naho abajijwe niba hari za bariyeri zari mu Mujyi wa Butare nyuma y'urupfu rwa Juvénal Habyarimana, asubiza muri aya magambo « yego, nyuma y'uko ngiye i Kigali ku wa 19/04/1994 (Après mon départ pour Kigali le 19/04/1994) ( côte ya 21).

[13] Urukiko rurasanga Habyarabatuma Cyriaque ari we wafashe icyemezo cyo kohereza abajandarume i Cyahinda, akaba yari akiri i Butare impunzi zari zahungiyeye i Cyahinda zicwa kubera ko yivugira ko yahavuye ku wa 19/04/1994 izo mpunzi zaraye zicwa n'abajandarume yohereje. Kuba yarabonye ubutumwa bumwimurira i Kigali ku wa 18/04/1994 akaba atari byo byatuma ataryozwa ubwicanyi bwakozwe n'abajandarume yohereje, kubera ko yivugira ko atahise agenda cyangwa ngo asimburwe, bivuze ko igihe cyose yari agihari yabayoboraga, uretse ko niyo ahita agenda cyangwa agasimburwa bitari kumubuza gufata ibyemezo cyangwa gusaba uwamusimbuye gufata ibyemezo bikumira cyangwa bihagarika ubwo bwicanyi, kuba ntacyo yakozwe akaba yarateshutse ku nshingano ze nk'Umuyobozi ushyira mu gaciro, akaba akwiye kubiryoza.

## **II.2. Kumenya niba Habyarabatuma Cyriaque yari azi cyangwa ashobora kumenya ko Abajandarume yohereje i Cyahinda bari bwoze impunzi z'Abatutsi zahahungiyeye.**

[14] Habyarabatuma Cyriaque avuga ko yemera ko ku wa 18/4/1994 yohereje abajandarume i Cyahinda, ariko ko atabatumye kwica impunzi zariyo, ko nawe yafatwaga nk'icyitso cy'Abatutsi ari nacyo cyatumye we na Perefe wa Butare bahindurwa ndetse na murumuna we akicwa, ko kuva ubwicanyi bwatangira atigeze agira umugambi wo kwica Abatutsi, ko ibi byemezwa n'ibaruwa Perefe yamwandikiye amushimira imikoraniye ye myiza n'Ubutegetsu kandi bigashimangirwa n'ubushakashatsi bwakozwe na André Guchaoua wemeza mu gitabo cye Rwanda 1994: Les politiques du génocide à Butare guhera ku mpapuro za 250 kugeza kuri 303, ko nta bwicanyi bwabaye i Butare Habyarabatuma Cyriaque akiyobora jandarumori yaho. Habyarabatuma avuga ko guhera ku wa 18/04/1994 akimara kwimurirwa i Kigali, ubuyobozi bwahawe Sous-Lieutenant Ngaboyisonga waje gusimburwa na Major Rusigariye, ko n'ubwo ubwo impunzi z'abatutsi zicwaga i Cyahinda nawe yari agihari atari akihayobora kandi ko atatumye abajandarume kwica, akaba asaba uru Rukiko gukosora amakosa yakozwe n'Urukiko Rukuru rwa Gisirikare rumuhamya kandi rumuhanira icyaha atakoze, akarenganurwa.

[15] Me Bimenyimana Emmanuel avuga ko Habyarabatuma Cyriaque yahamijwe icyaha cy'ubwicanyi bw'impunzi zari i Cyahinda kandi nta ruhare na ruto yabugizemo, ko ibivugwa ko yahaye abajandarume intwari ngo bajye kwica abantu i Cyahinda ari ibinyoma kubera ko Cpl Dufitumukiza Analet yavuze ko nta mabwiriza yo kwica Major Habyarabatuma yigeze aha abajandarume yohereje i Cyahinda, ko kandi iyo aza kuba afite umugambi w'ubwicanyi atari kubura umututsi n'umwe yica kubera ko, nk'uko Ubushinjacyaha bubivugaga, ubwicanyi bwatangiyeye ku wa 07/4/1994, kandi kugeza ku wa 18/04/1994 nta Mututsi wari wakishwe i Butare, Ubushinjacyaha bukaba butagaragaza kandi ko Habyarabatuma Cyriaque yatanze amabwiriza yo kwica impunzi cyangwa ko abajandarume yohereje i Cyahinda bari basanzwe bazwiho ibikorwa by'urugomo ku buryo uwabohereje yari guteganyaga ko bakora ubwo bwicanyi, kandi ko Habyarabatuma Cyriaque atashoboraga guhana abajandarume bakoze ubwicanyi, kuko nta bushobozi bujyanye n'ubuyobozi yari agifite kuko yari yahinduriwe imirimo, byose bigaragaza ko Urukiko Rukuru rwa Gisirikare rwirengagije ihame ry'uko uburyozwacyaha ari gatozi ku wakoze icyaha, bigatuma Habyarabatuma Cyriaque ahanirwa icyaha cyakozwe na Sous-Lieutenant Majoro.

[16] Avuga kandi ko asanga urubanza rwa Habyarabatuma Cyriaque rwafatwa kimwe n'urw'Ubushinjacyaha bwa Gisirikare bwareze General de Brigade Wislon Gumisiriza wari ukurikiranweho ubwicanyi bw'Abihaye Imana bwakozwe n'abasirikare yayoboraga, Urukiko rukemeza ko General de Brigade Wilson Gumisiriza atari azi cyangwa ashobora kumenya ko abasirikare be bari bukore ubwo bwicanyi, bivuze ko no kuri Habyarabatuma Cyriaque ariwo mwanzuro wagombye gufatwa kubera ko atari azi cyangwa ngo ashobore kumenya ko

Abajandarume yohereje kurinda impunzi bari buzice, bityo akaba asaba uru Rukiko gukosora ayo makosa uwo yunganira akagirwa umwere.

[17] Uhagarariye Ubushinjacyaha avuga ko Habyarabatuma Cyriaque kimwe n'umwunganira batavugisha ukuri, ko Habyarabatuma Cyriaque, nka "Commandant de Groupement", yajyanye na Prefet i Cyahinda ku wa 17/04/1994, yizeza impunzi ko azazohereza ubufasha, bukeye yoherezayo abajandarume yatumye kuzana imbunda zari mu nkambi n'imirambo y'abajandarume bari bahiciwe nk'uko Cpl Dufitumukiza Anaclet abyemeza, ko abo bajandarume boherejwe bahagurutse mu Kigo barakaye, bageze mu nkambi barasa impunzi, Habyarabatuma Cyriaque akaba ataregwa gutanga amabwiriza yo kwica impunzi, ahubwo aregwa kuba ataratanze amabwiriza yo kutica izo mpunzi z'Abatutsi, cyangwa se kwirengagiza gufata ingamba zari gutuma abo bajandarume batica Abatutsi bari bahungiye i Cyahinda, bityo ko agomba kubazwa ibyakozwe n'abo yohereje nk'uko biteganywa n'ingingo ya 53, igika cya 2, y'Itegeko-Ngenga N°16/2004 ryo ku wa 19/6/2004 rigena imiterere, ububasha n'imikorere y'Inkiko-Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenocide n'ibindi byaha byibasiye inyoko muntu byakozwe hagati ya 01/10/1990 na 31/12/1994.

## **UKO URUKIKO RUBIBONA**

[18] Ingingo ya 51 y'Itegeko Ngenga N°16/2004 ryo ku wa 19/6/2004 ryavuzwe haruguru iteganya ko: « hakurikijwe ibikorwa bigaragaza uruhare rwe mu gukora ibyaha biteganywa n'ingingo ya mbere y'iri Tegeko Ngenga, byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994, ushinjwa ashobora gushyirwa mu nzego zikurikirana : umuntu wari icyo gihe mu nzego z'ubuyobozi: mu rwego rw'Igihugu, urwa Perefegitura, urwa Superefegitura n'urwa Komini, mu mashyaka ya politiki, mu Gisirikare, muri Jandarumori, Polisi ya Komini, mu madini cyangwa mu mitwe yitwara gisirikari ku buryo butemewe n'amategeko, akaba yarakoze ibyo byaha cyangwa akoshya abandi kubikora, hamwe n'ibitso bye; 3° umwicanyi ruhara wamamaye aho yari ari cyangwa aho yanyuze kubera umwete. Naho ingingo ya 53 y'iryo Tegeko Ngenga iteganya ko icyitso ari umuntu watanze inkunga mu gukora icyaha, mu buryo ubwo ari bwo bwose, ku bantu bavugwa mu ngingo ya 51 y'iri Tegeko Ngenga. Kuba igikorwa icyo aricyo cyose cyateganyijwe n'iri Tegeko Ngenga cyarakozwe n'uyoborwa ntibibuza umuyobozi we kuryozwa icyaha cyakozwe mu gihe yari azi cyangwa yashoboraga kumenya ko uwo ateguka yari yiteguye gukora icyo cyaha cyangwa yagikoze, umuyobozi we ntabe yarafashe ibyemezo bikwiye kugira ngo abakoze icyaha bahanwe cyangwa abuze icyo cyaha gukorwa kandi yari abishoboye.

[19] Dosiye y'urubanza igaragaza ko uwitwaga Munyeshuli Protogène yavugiye mu Bushinjacyaha bwa Gisirikare ko impunzi z'i Cyahinda zabanje guhangana n'abajandarume, bicamo bamwe babarashishije imiheto, babambura n'imbunda ebyiri, aribwo ku wa 17/04/1994, Perefefu Habyarimana yazanye na Major Habyarabatuma Cyriaque, uyu akabizeza ko agiye guhindura abo bajandarume bicana akabohereza abazima bazabacungira umutekano, ariko bukeye ku wa 18/04/1994, aho kwimura Abajandarume bari bahari ahubwo akoherezayo abandi baje bitwaje imbunda za rutura (côtes 154-156), naho Rusatsi Jean akaba yaravuze ko abo bajandarume baje baturutse i Butare bafatanyije nabo bahasanze babagotera impande zose babarashisha imbunda nini n'intoya, abarokotse bicwa n'interahamwe (côte 151).

[20] Nteziryayo Jean Baptiste nawe yavugiye mu Bushinjacyaha bwa Gisirikare ko Perefefu w'Abajandarume bageze i Cyahinda, impunzi zibereka imirambo

n'inkomere by'impunzi bikomoka ku mirwano yari imaze iminsi ibiri hagati y'impunzi, Abajandarume n'Interahamwe, babemerera kubahindurira ababacungira umutekano, ariko muri iryo joro abo bayobozi bajemo imirwano irakomera bashobora kwica abajandarume babiri no kubambura imbunda, bukeye (kuvuga ku wa 18/04/1994) haza abandi bajandarume biyongera ku bari bahasanzwe, bagota inkambi mu ma saa tatu za mugitondo, barasa baturutse impande zose bakoresheje imbunda zitigeze zikoreshwa mbere, abarokotse bicwa n'interahamwe zarimo n'Abarundi (côtes 128-130).

[21] Dosiye y'urubanza igaragaza kandi ko Caporal Dufitumukiza Anaclet nawe yemeje mu Bushinjacyaha bwa Gisirikare ko Abajandarume bahuriye hamwe impunzi zari i Cyahinda bashaka kuzambura intwari za gakondo zari zifite, impunzi zica abajandarume babiri zibatemye, zibambura n'imbunda, bukeye (ku wa 18/04/1994) aba ari bwo Major Habyarabatura Cyriaque yafashe "Section" y'abo bajandarume bishwe iyobowe na Sous-Lieutenant Majoro abaha imbunda zikomeye [za mitrailleuses n'izindi] "ngo bazambure [impunzi] imbunda bazane n'abo ba GDS [gendarmes] bapfuye", ko abo bajandarume bahamaze iminsi itatu kandi ko haguye abantu benshi (côte 192).

[22] Urukiko rurasanga ibimaze kuvugwa haruguru bigaragaza ko Major Habyarabatura Cyriaque yafashe icyemezo cyo kohereza abajandarume i Cyahinda nyuma y'uko abari yo barwanye n'impunzi z'Abatutsi zikicamo babiri, zikabambura n'imbunda, guhitamo koherezayo abajandarume bo muri "Section" yiciwe bagenzi babo, no kubaha imbunda zikomeye zirimo "mitrailleuse", akabatura kuzana imirambo y'Abajandarume n'imbunda byafashwe n'izo mpunzi z'Abatutsi, anasanzwe azi ko muri icyo gihe Abatutsi bahigwaga kandi bakicirwa ubusa, bivuguruzwa ibyo avuga ko abo bajandarume bari bagiye kubungabunga umutekano w'izo mpunzi (côte 27), bityo nubwo avuga ko atatumye abo bajandarume kwica izo mpunzi, kuba yarabahaye imbunda zikomeye batagiye ku rugamba, ntagire n'icyo ababura cyerekeranye n'ubuzima bw'impunzi yari azi ko buri mu kaga kubera ko yari yahigereye akabona imirambo y'impunzi zishwe n'izakomerekejwe n'Abajandarume, byerekana ko yari azi cyangwa yashoboraga kumenya ko izo mpunzi zishobora kwicwa n'abo bajandarume, nyamara akaba ntacyo yakoze ngo akumire ubwo bwicanyi butaraba.

[23] Urukiko rurasanga kandi ibyo Habyarabatura Cyriaque na Me Bimenyimana Emmanuel bavugaga ko ihame ry'uko uburyozwacyaha ari gatozi ryahonyanzwe n'Urukiko Rukuru rwa Gisirikare nta shingiro bikwiye guhabwa kubera ko Habyarabatura Cyriaque akurikiranyweho, nk'umuyobozi, uburyozwacyaha ku cyaha mpuzamahanga cya jenocide, ku birebana n'icyo cyaha, Urukiko Mpuzamahanga rw'icyahoze cyitwaga Yugoslavia (ICTY) rukaba rwaremeje ko ihame ry'uko abayobozi mu Gisirikare no mu zindi nzego bashobora kuryozwa ibikorwa by'abo bayobora rimaze gushinga imizi mu masezerano no mu muco mpuzamahanga kandi ko uburyozwacyaha k'umuyobozi bitavugaga ko aba akurikiranyweho ibyaha byakozwe n'abo ayobora ahubwo aba ariyozwa kudashyira mu bikorwa inshingano ze zo kuyobora uko bikwiye<sup>1</sup>, bikongera bikemezwa n'Urukiko Mpuzamahanga rwashyirirweho u Rwanda mu rubanza Ubushinjacyaha bwaburanaga na Bagosora Théoneste na Anatole

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<sup>1</sup> "The principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary international law." Prosecutor v. Mucic et al, ICTY (Appeal Chamber), judgment of 20 February 2001, paragraph 195. "where superior responsibility is concerned, an accused is not charged with the crime of his subordinates but with his failure to carry out his duty as a superior to exercise control." Prosecutor v. Krnojelac, ICTY, Appeal Chamber, 13/02/2003, para 171.

Nsengiyumva aho urwo Rukiko rwemeje ko Bagosora Théoneste akwiye kuryozwa kuba atarakumiriye ubwicanyi bw'abasiviri bwakozwe n'abasirikare yari ashinzwe kuyobora.<sup>2</sup>

[24] Urukiko rurasanga abahanga mu mategeko mpanabyaha mpuzamahanga nabo bemeza ko ihame ry'uburyozwacyaha bw'abayobozi kubera ibyaha byakozwe n'abo bayobora ari umwihariko w'amategeko mpanabyaha mpuzamahanga rikaba ritari mu mategeko mpanabyaha y'ibihugu, muri iki gihe rikaba rimaze gukomera mu mucu mpuzamahanga, kandi ko uburyozwacyaha k'umuyobozi bukomoka k'ubushake bwo kudafata icyemezo nyamara ari mu gihe umuyobozi asabwa gufata icyemezo, bikaba byafatwa kimwe n'ubwujiracyaha cyangwa uburangare mu kubahiriza inshingano,<sup>3</sup> byose bishimangira ko Habyarabatuma Cyriaque akwiye kuryozwa ibikorwa bya jenocide byakozwe n'Abajandarume yohereje i Cyahinda ku wa 18/04/1994.

[25] Urukiko rurasanga kandi urubanza rwa Brigadier General Wilson Gumisiriza, Habyarabatuma Cyriaque n'umwunganira basaba ko uru rukiko rwashingiraho rwemeza ko Habyarabatuma Cyriaque atari azi cyangwa ngo ashobore kumenya ko abajandarume yohereje i Cyahinda bari bwo impunzi, rudahuye n'uru rubanza, kubera ko nk'uko byagaragajwe haruguru, Habyarabatuma Cyriaque yari azi ko abatutsi barimo guhigwa bakicwa, azi ko impunzi z'abatutsi zari zahungiyeye i Cyahinda ubwazo zirimo kwicwa, ni nawe wohereje abajandarume bishe izo mpunzi z'abatutsi kandi abohereza azi cyangwa ashobora kumenya ko izo mpunzi zishobora kwicwa, bitandukanye n'ibyemejwe mu rubanza rwa Brigadier General Wilson Gumisiriza, ko atari azi cyangwa ashobora kumenya ko abasirikare be bari bukore ubwo bwicanyi.

### **II.3. Kumenya niba nyuma y'ubwicanyi bw'impunzi z'i Cyahinda, Habyarabatuma Cyriaque yarateshutse ku nshingano yo gufatira ibyemezo abajandarume bakoze ubwo bwicanyi.**

[26] Habyarabatuma Cyriaque na Me Bimenyimana Emmanuel umwunganira bavuga ko ku wa 19/4/1994 ubwo Habyarabatuma na Prefet wa Butare bimurwaga ariho ubwicanyi bwatangiyeye, ko iyimurwa ryabo ryatanze icyuho ku bashakaga gukora jenocide, kandi ko guhera icyo gihe kugeza ku wa 26/04/1994, aje gukorana iherekanyabubasha na Major Rusigariye Alfred, yari ataramenya amakuru y'uko izo mpunzi zishwe, kandi ko icyo gihe nta bubasha yari igifite kuri «unité» y'i Butare ku buryo yari guhana abishe impunzi z'i Cyahinda kubera ko yari yaravuye ku buyobozi bw'iyi «unité» uhereye ku wa 19/04/1994, byose bigaragaza ko Urukiko Rukuru rwa Gisirikare rwaciye urubanza rugenekereje, bityo akaba asaba uru Rukiko gukosora ayo makosa akagirwa umweme.

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<sup>2</sup> “The Appeals Chambers affirms the Trial Chamber’s findings that he [Bagosora Théoneste] is liable under Article 6(3) of the Statute for failing in his duty to prevent the killings of Prime Minister Agathe Uwilingiyimana, Joseph Kavaruganda, Frédéric Nzamurambaho, Landoald Ndasingwa, and Faustin Rucogoza, as well as the crimes committed at Centre Christus, Kabeza, Kibagabaga Mosque, the Saint Josephite Centre, Karama Hill, Kibagabaga Catholic Church, and Gikondo Parish.” *Reba Prosecutor v. Théoneste Bagosora and Anatole Nsengiyumva*, ICTR (Appeal Judgment), Case N°ICTR-98-41-A, 14 December 2011, para 697.

<sup>3</sup> The concept of superior responsibility is an original creation of international criminal law for which there are no paradigms in national legal systems... \*It is today entrenched firmly in customary international law.” Reba Gerhard Werle, *Principles of International Criminal Law*, The Hague: Asser Press, 2005, pp. 128-137 na “Command responsibility moves from deliberate failure to intervene despite a duty to do so, which fall close to traditional complicity ideas, to in essence, conduct which is close to, if not the same as negligent dereliction of duties.” Robert Cryer, *An Introduction to International Criminal Law and Procedure*, Cambridge: Cambridge University Press, 2010, p.399.



[27] Uhagarariye Ubushinjacyaha avuga ko Urukiko Rukuru rwa Gisirikare rwerekanye ko iyo Habyarabatumu Cyriaque asiga ahanyye bariya bajandarume yari kuba yerekanye ko atari afatanyije umugambi nabo, ko no ku wa 18/04/1994 yashoboraga kurara abavanye i Cyahinda, bigaragaza ko igihe cyose yari akiri mu Kigo, Sous-Lieutenant Ngaboyisonga ntacyo yari gukora, ko ibyo avuga ko yahise atanga ubuyobozi cyangwa atabonye umwanya wo guhana bidashoboka kubera ko nta na rimwe Sous-lieutenant ashobora gufata ubuyobozi Major agihari, kandi Caporal Dufitumukiza Anaclet yivugiyeye ko abajandarume bagarukana imirambo basanze Habyarabatumu Cyriaque agihari, bityo akaba asaba uru Rukiko kwemeza ko nta kugenekereza kwabayeho mu rubanza rujuririrwa, imikirize yarwo ikagumaho.

## UKO URUKIKO RUBIBONA

[28] Dosiye y'urubanza igaragaza ko abazwa mu Bushinjacyaha bwa Gisirikare, Caporal Dufitumukiza Anaclet yavuze ko na nyuma y'iherekanyabubasha na Major Rusigariye, yabonaga Habyarabatumu Cyriaque afite ijamba muri « unité » ya Butare (côte 191), nawe (Habyarabatumu Cyriaque) akaba yemera ko yari “Commandant” wa Jandarumori ya Butare kugeza agiye gukorera i Kigali ku wa 19/04/1994 mu ma saa ine cyangwa saa tanu, kandi ko kugeza ku wa 26/04/1994 akora iherekanyabubasha na Major Rusigariye Alfred yari atarasimburwa (côtes 19-20, 24, 686). Bigaragara kandi ko imbere y'Urukiko Rukuru rwa Gisirikare yabajijwe niba abajandarume bishe abantu i Cyahinda barahanwe, asubiza ko habayeho « débordement » abajandarume bakica abaturage n'abaturage bakica abajandarume ariko ko Major Rusigariye Alfred wamusimbuye yahanyye Sous-Lieutenant Majoro wari uyoboye abo bajandarume bishe impunzi, ko icyatumye atamwihanira ari uko yari afite byinshi mu mutwe (côtes 684-687).

[29] Urukiko rurasanga ubwicanyi bw'i Cyahinda bwo ku wa 18/04/1994 bwarakozwe n'Abajandarume boherejwe na Habyarabatumu Cyriaque wivugira ko kugeza ku wa 26/04/1994 yari atarasimburwa, byumvikanisha ko kugeza icyo gihe yari agifatwa nkaho ariwe Muyobozi Mukuru wa Jandarumori ya Butare (Commandant de fait) kabone n'ubwo yari yoherejwe gukorera ku Cyicaro Gikuru cya Jandarumori, ibi bigashimangirwa n'impvugo ya Caporal Dufitumukiza Anaclet uvuga ko na nyuma y'iherekanyabubasha babonaga Habyarabatumu Cyriaque akibafiteho ijamba kandi yari atakibayobora, byose bigaragaza ko amabwiriza yari gutanga yari kubahirizwa, bityo mu gihe atakumiriye ubwicanyi, ntanafatire abajandarume yohereje i Cyahinda babukoze ibihano ahubwo agategereza ko bahanwa n'utarabohereje, ntanasabe ko hakorwa iperereza ry'ubwo bwicanyi kugira ngo ababigizemo uruhare bakurikiranwe, bigaragaza ko yateshutse ku nshingano ze nk'Umuyobozi.

[30] Urukiko rurasanga uyu murongo ari nawo wemejwe n'Urukiko Mpanabyaha Mpuzamahanga rw'icyahoze cyitwa Yugoslaviya aho rwavuze ko “ububasha bwo gukumira cyangwa guhana ibyaha busabwa abayobozi butagombera byanze bikunze ko uwo muyobozi aba ayobora mu buryo bwemewe n'amategeko. Mu makimbirane y'iki gihe, birashoboka ko abayobozi bishyiraho, habaho za Guverinoma zitemewe cyangwa ingabo n'imitwe yitwara gisirikare yishyizeho. Inzego z'ubuyobozi zishobora gushyirwaho huti huti, zishobora kuba ziri mu kajagari cyangwa zicyiyubaka. Kugirango icyo gihe amategeko yubahirizwe ni ngombwa ko abayoborwa n'abayobozi bafataga ibyemezo babazwa ibyo bakoze kabone nubwo abo bayobozi baba batarashyizweho mu buryo bwemewe n'amategeko.”<sup>4</sup>

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<sup>4</sup> “The principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary international law.” Prosecutor v. Mucic et al, ICTY (Appeal Chamber), judgment of 20 February 2001, paragraph 195. “where superior responsibility is

[31] Hashingiwe ku byagaragajwe byose, Urukiko rurasanga nk'uko byemejwe n'Urukiko Rukuru rwa Gisirikare, Habyarabatumu Cyriaque ahamwa n'icyaha cy'ubufatanyacyaha mu cyaha cya jenocide yakorewe impunzi z'Abatutsi zari zarahungiyeye i Cyahinda, bityo ubujurire bwe bukaba nta shingiro bufite.

### **III. ICYEMEZO CY'URUKIKO**

[32] Rwemeye ko ubujurire rwashyikirijwe na Assistant Commissioner of Police Habyarabatumu Cyriaque nta shingiro bufite.

[33] Rwemeje ko urubanza no RPA/GEN0001/010/HCM rwaciye n'Urukiko Rukuru rwa Gisirikari ku wa 29/9/2011 rudahindutse.

[34] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta kuko Habyarabatumu Cyriaque afunze.

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concerned, an accused is not charged with the crime of his subordinates but with his failure to carry out his duty as a superior to exercise control.”Prosecutor v. Krnojelac, ICTY, Appeal Chamber, 13/02/2003, para 171.