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Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda

UMURYANGO W'ABIBUMBYE

URUGEREKO RW'UBUJURIRE

Umwimerere: Igifaransa n'icyongereza

Abacamanza: Claude Jorda, Perezida w'Inteko
Lal Chand Vohrah
Mohamed Shahabuddeen
Rafael Nieto-Navia
Fausto Pocar

Gerefiye: Agwu U. Okali

Itariki: 19 Ukwakira 2000

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Yohani Kambanda (Ujurira) **aburana na** **Porokireri**

Urubanza N° ICTR 97-23-A

INYANDIKO Y'URUBANZA MU BUJURIRE

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AMASHAKIRO

AMASHAKIRO .... **Error! Bookmark not defined.**

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INTANGIRIRO

A. Imiburanishirize

1. Urugereko rw'ubujurire rw'Urukiko Mpanabyaha Mpuzamahanga (muri uru rubanza, uru rukiko mpanabyaha mpuzamahanga ruritwa « Urukiko ») rushinzwe gucira imanza abantu bakekwaho kuba barakoreye mu Rwanda ibyaha bya jenoside cyangwa ibindi byaha bikomeye binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara n'Abanyarwanda bakekwaho kuba barabikoreye mu bihugu bituranye n'u Rwanda hagati y'itariki ya 1 Mutarama n'iya 31 Ukuboza 1994, rwashyikirijwe ubujurire bwa Yohani Kambanda (« Ujurira ») ajuririra urubanza rugena igihano rwaciwe n'Urugereko rwa mbere rw'iremezo I rw'Urukiko (« Urugereko rwa mbere rw'iremezo ») ku itariki ya 4 Nzeri 1998 (« Urubanza »)[1]. Ibyiciro by'ingenzi by'imiburanishirize birasobanurwa mu mirongo ikurikira:

2. Ku itariki ya 1 Gicurasi 1998, Ujurira yemeye ibyaha bitandatu akurikiranyweho bikubiye mu nyandiko y'ibirego, ari byo: jenoside, ubwumvikane bugamije gukora jenoside, guhamagarira abantu ku mugaragaro kandi mu buryo butaziguye gukora jenoside, kuba icyitso cy'abakoze jenoside, icyaha cyibasiye inyokomuntu cy'ubuhotozi n'icyaha cyibasiye inyokomuntu cy'itsembatsemba. Urugereko rwa mbere rw'iremezo rwakiriye ubwemeracyaha bwa Yohani Kambanda. Ku itariki ya 3 Nzeri 1998, habaye iburanisha ribanziriza isomwa ry'urubanza. Urubanza rwasomwe bukeye bwaho, Ujurira akatirwa igihano cy'igifungo cya burundu.

3. Ku itariki ya 7 Nzeri 1998, Ujurira yajuririye igihano yakatiwe[2] atanga impamvu enye z'ubujurire. Inyandiko ye y'ubujurire imaze kwakirwa, Ujurira yatanze inyandiko

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[1] « Urubanza rugena igihano », *Urubanza rwa Yohani Kambanda*, Urubanza N° ICTR-97-23-S, Urugereko rwa mbere rw'iremezo I, 4 Nzeri 1998.

[2] « Inyandiko y'ubujurire ku gihano cyatanzwe n'Urugereko rwa mbere rw'iremezo I (Ingingo ya 24 ya Sitati n'ingingo ya 108 A) y'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso) ».

y'ubujurire y'inyongera isaba kongeraho indi mpamvu y'ubujurire.[3] Nyuma yaho, umwunganira amaze guhindurwa, yatanze inyandiko ya kabiri y'ubujurire yongeramo izindi mpamvu eshatu zitarebana n'igihano yahawe, ahubwo zigamije gutesha agaciro ubwemeracyaha bwe.[4] Muri iyo nyandiko, havugwamo ko : «Ujurira ntasaba gusa ko igihano yakatiwe cyavanwaho, ahubwo icy'ingenzi asaba ni uko Urugereko rw'ubujurire rwatesha agaciro ubwemeracyaha bwe kandi rugategeka ko urubanza ruburanishwa bundi bushya ».[5]

4. Mu cyemezo cyarwo cyo ku ya 8 Ukuboza 1999, Urugereko rw'ubujurire rwemereye Ujurira kongera mu nyandiko ye y'ubujurire impamvu enye nshya, rumutegeka kandi kurugezaho inyandiko y'ubujurire ikomatanya izo mpamvu zose zakiriwe uko ari umunani. Iyo nyandiko y'ubujurire yatanzwe ku itariki ya 8 Gashyantare 2000 inagaragaza ikijya kumera nk'icyifuzo gisaba kongeramo igice cy'impamvu y'ubujurire. Urugereko rw'ubujurire rwamwemereye icyo cyifuzo ku ya 18 Gicurasi 2000. Iyo nyandiko y'ubujurire yuzuye, irimo n'icyo gice cy'impamvu, yitwa « Inyandiko y'ubujurire ikomatanyije ».

5. Ku itariki ya 7 Werurwe 2000, Perezida w'Urugereko rw'ubujurire yashinze Umucamanza Rafael Nieto-Navia gutegura urubanza mu bujurire, hakurikijwe ingingo ya 108 *bis* y'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso y'Urukiko («Amategeko »). Kuva icyo gihe, Umucamanza Nieto-Navia ni we wagiye akemura ibibazo byose byerekeranye n'imiburanishirize y'urwo rubanza.

6. Ku itariki ya 30 Werurwe 2000, Ujurira yashyikirije Urukiko imyanzuro ishyigikira Inyandiko y'ubujurire ikomatanyije (« Imyanzuro y'Ujurira »). Icyo gihe yatanze n'icyifuzo cyo gushyikiriza Urugereko rw'ubujurire ibimenyetso bishya («Icyifuzo cyo gutanga ibimenyetso bishya»)[6]. Muri icyo Cyifuzo, Ujurira asaba Urugereko rw'ubujurire

[3]« Inyandiko y'inyongera y'ubujurire ku gihano cyatanzwe n'Urugereko rwa mbere rw'iremezo I, yatanzwe hakurikijwe Ingingo ya 24 ya Sitati, n'iya 108 A) y'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso », ku itariki ya 25 Nzeri 1998.
[4]« Inyandiko y'inyongera y'ubujurire ya kabiri » yatanzwe ku itariki ya 24 Ugushyingo 1999.
[5] Ni kimwe no haruguru, urup. 2
[6]« Icyifuzo gisaba gutanga ibimenyetso by'inyongera mu rwego rw'ubujurire hakurikijwe ingingo ya 115 y'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso ».

kwakira inyandiko zimwe na zimwe zerekeranye n'impamvu eshatu z'ubujurire zigamije gusaba kuvanaho icyemezo kimuhamya icyaha, kandi agasaba kwemererwa guhamagaza abatangabuhamya barindwi imbere y'Urugereko rw'ubujurire. Rumaze gusuzuma ingingo z'ababuranyi zatanzwe kuri icyo kibazo, Urugereko rw'ubujurire rwemereye (Icyemezo ku bimenyetso bishya)[7] Ujurira gutanga ubuhamya ku kibazo cyo kumenya niba ubwemeracyaha bwe bwarabaye ku bushake, azi neza icyo akora, nta rujijo ruburimo, kandi bwarashingiye ku byabaye bifatika bishobora kugaragaza ikorwa ry'icyaha n'uruhare rw'Uregwa mu ikorwa ryacyo. Muri icyo cyemezo, Urugereko rw'ubujurire rwangiye Ujurira gutanga ibimenyetso bishya.

7. Porokireri yatanze imyanzuro y'ubujurire ye isubiza iy'Ujurira ku itariki ya 2 Gicurasi 2000 (Imyanzuro y'ubujurire ya Porokireri)[8], Ujurira amusubiza ku itariki ya 16 Gicurasi 2000 (Igisubizo cy'Ujurira ku myanzuro ya Porokireri)[9]. Iburanisha ryashyizwe kuva ku itariki ya 27 kugeza ku ya 30 Kamena 2000, Arusha.[10] Ku itariki ya 25 Kamena 2000, Porokireri yatanze icyifuzo gisaba Urugereko rwa mbere rw'iremezo gutegeka Gerefiye w'Urukiko Mpanabyaha Mpuzamahanga rw'Icyahoze Cyitwa Yugosilaviya (TPIY) gutanga amakuru amwe n'amwe[11]. Mu iburanisha ryo ku ya 28 Kamena 2000, Porokireri yaretse icyo cyifuzo. Ku itariki ya 26 Kamena 2000, imihango y'iburanisha iraye iri butangire, Porokireri yatanze, nyuma y'amasaha asanzwe yo gutanga inyandiko nk'izo, «Imyanzuro y'inyongera» igizwe, hamwe n'imigereka yayo, impapuro zibarirwa mu magana. Urugereko rw'ubujurire ntirwakoresheje iyo nyandiko y'inyongera mu ikemura ry'uru rubanza.

8. Iburanisha ryabaye ku itariki ya 27 n'iya 28 Kamena 2000. Rumaze kwemeza igihe iburanisha rigomba kumara rubyumvikanyeho n'ababuranyi, Urugereko rw'ubujurire

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[7] « Icyemezo (ku cyifuzo cy'Ujurira cyerekeranye n'iyemerwa ry'ibimenyetso bishya) » cyo ku ya 13 Kamena 2000.

[8] « Imyanzuro ya Porokireri Isubiza Imyanzuro y'agateganyo y'Ujurira Yohani Kambanda cyo ku ya 30 Werurwe 2000.

[9] « Ibuvugwa n'Ujurira ku Myanzuro ya Porokireri » byatanzwe ku itariki ya 2 Gicurasi 2000 (Igihe cyatanzwe mu Cyemezo cy'Urugereko cyo ku itariki ya 10 Gicurasi 2000 cyarongerewe kugeza ku itariki ya 16 Gicurasi).

[10] « Icyemezo ku bujurire (imiburanishirize n'igitabo cy'ubujurire cy'Ujurira) », 2 Kamena 2000.

[11] « Icyifuzo cya Porokireri gishingiye ku ngingo ya 54 n'iya 117 z'Amategeko gisaba Urugereko gutegeka Gerefiye wa TPIY kumuha amakuru yerekeye ifungwa rya Kambanda ».

rwemeje ko, hakurikijwe icyemezo cyarwo kirebana n'ibimenyetso bishya by'urubanza, ubuhamya bw'Ujurira buzibanda gusa ku kumenya niba ubwemeracyaha bwe bwarabaye ku bushake, azi neza icyo akora, nta rujijo ruburimo, kandi niba bwarashingiye ku bikorwa bigaragaza icyaha n'uruhare rw'Uregwa mu ikorwa ryacyo.[12]

9. Urugereko rw'ubujurire ruciye urubanza ku buryo bukurikira :

B. <u>Inyandiko y'ubujurire</u>

10. Inyandiko y'ubujurire ikomatanyije ikubiyemo impamvu z'ubujurire zikurikira, zishingiye ku makosa yo mu rwego rw'amategeko Ujurira avuga ko yakozwe n'Urugereko rwa mbere rw'iremezo:

(1) Urugereko rwa mbere rw'iremezo ntirwazirikanye ko Ujurira yavukijwe uburenganzira uregwa wese afite bwo kunganirwa n'avoka yihitiyemo.

(2) Ntirwazirikanye ko Ujurira yafungiwe ahandi hatari muri gereza y'Urukiko mu buryo bunyuranyije n'amategeko.

(3) Rwemeye agaciro k'Amasezerano y'ubwemeracyaha rutabanje gusuzuma neza ko bwabaye ku bushake, Uregwa azi neza icyo akora, nta rujijo ruburimo kandi bushingiye ku bikorwa bifatika bigaragaza icyaha n'uruhare rw'Uregwa mu ikorwa ryacyo, hifashishijwe ibimenyetso bidafitanye isano, cyangwa se habanje gusuzumwa ko ababuranyi bumvikanye koko ku bikorwa urubanza rushingiyeho.

(4) Ntirwubahirije ihame rusange ry'amategeko rivuga ko ubwemeracyaha, nk'impamvu yoroshya uburyozwacyaha, bugomba gutuma igihano kigabanuka.

(5) Rwirengagije ingingo ya 23 1) na 2) ya Sitati y'Urukiko (Sitati) n'ingingo ya 101 B) ii) na iii) z'Amategeko ziteganya ko hagomba kuzirikanwa, mu igena ry'igihano,

[12] Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup. 11, umurongo wa 3 n'ikurikira.

impamvu nyoroshyacyaha, imibereho bwite y'uregwa, agaciro k'ubufatanye uregwa yagiranye na Porokireri, kimwe n'urutonde rusange rw'ibihano by'igifungo bitangwa n'inkiko zo mu Rwanda.

(6) Ntirwaciye urubanza kandi ngo runagene igihano cyihariye kuri buri cyaha gikubiye mu nyandiko y'ibirego, kandi buri kirego cyarashinjaga Ujurira icyaha cyihariye.

(7) Rwatanze igihano gikabije kuremera.

(8) Rwafashe uguceceka k'Ujurira, igihe yabazwaga niba nta cyo yongeraho mbere y'uko bamucira urubanza, nk'impamvu ituma igihano cyitagabanywa.

Ujurira yanise impamvu ya (8) ikosa rishingiye ku byabaye.

11. Mu myanzuro ye, Ujurira yasabye Urugereko rw'ubujurire kuvanaho icyemezo kimuhamya icyaha no gutegeka ko haba urubanza rushya hashingiwe ku mpamvu z'ubujurire kuva ku ya (1) kugera ku ya (3) zatanzwe haruguru, cyangwa bitaba ibyo, igihano kigasubirwamo hashingiwe ku mpamvu kuva ku ya (4) kugera ku ya (8).

I. IMPAMVU YA MBERE Y'UBUJURIRE : UBURENGANZIRA BWO KWIHITIRAMO UMWUNGANIRA

A. Ingingo z'ababuranyi

12. Ujurira, ari we Yohani Kambanda, avuga ko Urugereko rwa mbere rw'iremezo rwakoze ikosa ryo mu rwego rw'amategeko kuko rwirengagije ko yavukijwe uburenganzira bwe bwo kwihitiramo umwunganira. Avuga ko yasabye inshuro nyinshi ko yakunganirwa na Avoka Scheers, Ibiro bya Gerefiye bikamumwima bikamuha Avoka Inglis. Ku bw'Ujurira, uko kumwima avoka, kwagombye kuba kwaramaganywe n'Urugereko rwa mbere rw'iremezo, kwabangamiye uburenganzira bwo kunganirwa n'avoka yihitiyemo, bityo bikaba byarabangamiye uburenganzira bwe bwo kugira urubanza ruboneye.[13]

13. Porokireri asanga Ujurira yarivukije uburenganzira bwe bwo kubyutsa icyo kibazo imbere y'Urugereko rw'ubujurire, kuko mbere na mbere yemeye ku buryo bugaragara guhabwa Avoka Inglis kugira ngo amwunganire, icya kabiri akaba ataragaragaje imbere y'Urugereko ko atemeye avoka bamugeneye. Uretse n'ibyo kandi, Porokireri avuga ko Uregwa w'umukene nyakujya nta burenganzira afite bwo kwihitiramo umwunganira.[14]

14. Ku bw'Ujurira, ihame ryo kureka kwiyambaza avoka n'iryo kumuhabwa bigomba gusuzumwa hifashishijwe ibintu bibiri byaranze uru rubanza: icya mbere, Ujurira asanga atabonye uko ageza ikibazo cye ku Rugereko rwa mbere rw'iremezo; icya kabiri, avuga ko atunganiwe mu rwego rw'amategeko ku buryo bukwiye kandi bumufitiye akamaro.[15]

B. Isesengura

15. Urugereko rw'ubujurire ruributsa mbere na mbere uko byagenze n'imihango yakurikijwe mu ishyirwaho rya Avoka Inglis, wunganiye Ujurira.

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[13] Imyanzuro y'Ujurira, ibika 13-22.
[14] Imyanzuro ya Porokireri, ibika 4.1-4.54
[15] Igisubizo cy'Ujurira ku myanzuro ya Porokireri, ibika 8-20.

16. Hagati y'itariki ya 18 Nyakanga 1997 igihe yafatwaga, n'ukwezi kwa Werurwe 1998, Ujurira ntiyifuje kunganirwa na avoka ; yavugaga ko azamwitabaza igihe azasanga ari ngombwa.[16] Ku itariki ya 11 Kanama 1997, mu ibaruwa yandikiye Gerefiye, Ujurira yavuze ku buryo bweruye ko aretse uburenganzira bwe bwo kunganirwa na avoka, yongera kubishimangira mu magambo mu iburanisha ryabaye ku itariki ya 14 Kanama[17] n'iya 16 Nzeri 1997[18] imbere y'Urugereko rwa mbere rw'iremezo. Ku itariki ya 18 Ukwakira 1997, Ujurira yashyikirije Urukiko inyandiko yise « *Renonciation temporaire au droit à l'assitance d'un conseil de la défense* » [Kureka by'igihe gito uburenganzira bwo kunganirwa]. Muri iyi nyandiko, yongeye kwemeza ko adakeneye kunganirwa.[19]

17. Ku itariki ya 5 Werurwe 1998, Ibiro bya Gerefiye n'Ujurira bandikiranye amabaruwa atatu. Ibiro bya Gerefiye mbere na mbere byabajije Ujurira niba yakwemera ko bimushakira umwunganira mu kurengera inyungu ze.[20] Ujurira yahise abisubiza ko yifuza kunganirwa na Avoka Scheers.[21] Iki cyifuzo Ibiro bya Gerefiye byahise bicyanga kubera ibihano Urugereko rwa mbere rw'iremezo I rwafatiye Avoka Scheers mu mwaka wa 1996.[22]

18. Nyuma y'andi mabaruwa Ujurira n'Ibiro bya Gerefiye bandikiranye, buri ruhande rusobanura igitekerezo cyarwo rutsimbarayeho, Ibiro bya Gerefiye byashyikirijwe ibaruwa y'Ujurira yo ku itariki ya 20 Werurwe 1998 iteye itya :

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[16] Ku itariki ya 22 Nyakanga 1997, mu ibaruwa yandikiye Gerefiye, yagize ati : « Igihe nzakenera kunganirwa, nifuza ko nazunganirwa na Avoka Johan Scheers, ataba uwo nkunganirwa n'undi wazobereye mu mategeko ahana ya « *Common Law* » kandi uvuga igifaransa ».

[17] Iburanisha ryo ku ya 14 Kanama 1997 : Urugereko rwa mbere rw'iremezo rwasuzumye Icyifuzo cya Porokireri gisaba ko ukekwaho icyaha Yohani Kambanda yongererwa igifungo cy'agateganyo hakurikijwe ingingo ya 40 *bis* y'Amategeko. Reba inyandikomvugo y'iburanisha (mu rurimi rw'icyongereza), 14 Kanama 1997, urup. 5

[18] Iburanisha ryo ku ya 16 Nzeri 1997:Urugereko rwa mbere rw'iremezo rwasuzumye Icyifuzo cya Porokireri gisaba ko igifungo cy'agateganyo cyongerwa hakurikijwe ingingo ya 40 *bis* y'Amategeko. Reba inyandikomvugo (mu rurimi rw'icyongereza), 16 Nzeri 1997, urup. 6.

[19] Ibaruwa Yohani Kambanda yandikiye Gerefiye w'Urukiko ku itariki ya 18 Ukwakira 1997 iri mu « Igisubizo cya Gerefiye ku Myanzuro y'Ujurira », cyatanzwe ku ya 29 Kamena 1999 (Umugereka 1).

[20] Ibaruwa ya Jean Pelé Fometé yandikiye Yohani Kambanda ku ya 5 Werurwe 1998 mu « Igisubizo cya Gerefiye ku Myanzuro y'Ujurira », cyatanzwe ku ya 29 Kamena 1999 (Umugereka 2a).

[21] Ibaruwa Yohani Kambanda yandikiye Jean Pelé Fometé ku ya 5 Werurwe 1998 mu «Igisubizo cya Gerefiye ku Myanzuro y'Ujurira », cyatanzwe ku ya 29 Kamena 1999 (Umugereka 2b).

[22] Ibaruwa Jean Pelé Fometé yandikiye Yohani Kambanda ku ya 5 Werurwe 1998 mu « Igisubizo cya Gerefiye ku Myanzuro y'Ujurira », cyatanzwe ku ya 29 Kamena 1999 (Umugereka 2c).

> Maze kumenya ko Avoka Johan Scheers nari natumye gusaba kunyunganira atakiri kuri lisiti ya ba avoka bemewe n'Urukiko, maze no gusuzuma umwirondoro wa Avoka Olivier Michael Inglis nashyikirijwe; nta nzitizi mbona zabuza uyu Avoka Inglis kunyunganira.[23]

19. Ku itariki ya 25 Werurwe 1998, asubiza Gerefiye wamusabaga kuvuga icyifuzo cye mu buryo butaziguye, Ujurira yandikiye Gerefiye ibaruwa iteye itya :

> […] Nongeye gushimangira icyifuzo cyanjye cyo kunganirwa na Avoka Olivier Michael Inglis.[24]

20. Avoka Inglis yashyizweho ku itariki ya 27 Werurwe 1998 kugira ngo yunganire Ujurira. Iburanisha ry'urubanza mu mizi yarwo ryabaye ku itariki ya mbere Gicurasi 1998[25] no ku ya 3 n'iya 4 Nzeri 1998[26]. Hahise amezi ane hagati y'iburanisha rya mbere n'irya kabiri. Ku ya 11 Nzeri 1998, icyumweru kimwe nyuma y'isomwa ry'urubanza mu Rugereko rwa mbere rw'iremezo I, n'iminsi ine nyuma y'itangwa ry'inyandiko y'ubujurire, Ujurira ni bwo yasabye ko Avoka Inglis yasimburwa.

21. Atanga ubuhamya bwe imbere y'Urugereko rw'ubujurire, Ujurira yasobanuye ko yari yemeye kunganirwa na Avoka Inglis gusa kubera ko yari yizeye ko Avoka Scheers azamwungiriza, noneho abonye ko icyifuzo cye cyo kunganirwa na Avoka Scheers kitagishobotse, yemera kunganirwa na Avoka Inglis.[27]

22. Urugereko rw'ubujurire rusanga Ujurira atarigeze na rimwe abyutsa imbere y'Urugereko rwa mbere rw'iremezo ikibazo cy'ihitamo ry'umwunganira n'ubwo yabiboneye umwanya inshuro nyinshi. Kandi koko, nyuma y'ishyirwa ry'umukono ku Masezerano y'ubwemeracyaha ku itariki ya 29 Mata 1998, Ujurira yitabye Urugereko rwa mbere rw'iremezo inshuro eshatu : inshuro ya mbere hari ku itariki ya mbere Gicurasi 1998 ; iya

[23] Ibaruwa Yohani Kambanda yandikiye Jean Pelé Fometé ku ya 20 Werurwe 1998 mu « Igisubizo cya Gerefiye ku Myanzuro y'Ujurira», cyatanzwe ku wa 29 Kamena 1999 (Umugereka 2g).
[24] Ibaruwa Yohani Kambanda yandikiye Jean Pelé Fometé ku ya 25 Werurwe 1998 mu « Igisubizo cya Gerefiye ku Myanzuro y'Ujurira», cyatanzwe ku ya 29 Kamena 1999 (Umugereka 2h).
[25] Ku itariki ya 1 Gicurasi 1998 ni ho Kambanda yitabye Urukiko bwa mbere.
[26] Iburanisha ryo ku ya 3 Nzeri 1998 ryabanjirije isomwa ry'urubanza nk'uko bitegenywa mu ngingo ya 100 y'Amategeko, iryo ku ya 4 Nzeri 1998 ryabaye iry'icibwa ry'urubanza.
[27] Igisubizo cy'Ujurira ku Myanzuro ya Porokireri, igika cya 15 ; Inyandikomvugo y'iburanisha [FR], 27 Kamena 2000, urup. 36.

kabiri hari ku itariki ya 3 Nzeri 1998 nyuma y'amezi ane ; inshuro ya gatatu hari ku itariki ya 4 Nzeri 1998. Muri izo nshuro eshatu zose, Ujurira ntiyigeze na rimwe agaragaza ko atishimiye umwunganira yahawe.[28] Byongeye kandi, yemereye Perezida w'Urugereko rwa mbere rw'iremezo ko afite umwunganira igihe yari abimubajije.[29]

23. Ujurira avuga ko Urugereko rwa mbere rw'iremezo rwari ruzi neza uko ibintu byifashe kuko rwari rufite amabaruwa abiri, iyo ku ya 17 Werurwe 1998, n'iyo ku ya 6 Mata 1998 Avoka Scheers yandikiye Perezida w'Urukiko.[30] N'ubwo Ujurira atigeze atanga ingingo n'imwe y'amategeko ashingiraho, avuga ko Urugereko rwa mbere rw'iremezo rwagombaga kuba rwarabyukije ikibazo cyerekeye umwunganira, bityo akaba atishimiye icyo yise « terera iyo » y'abacamanza.[31] Urugereko rw'ubujurire ntirushobora kwemera iyo ngingo kuko ikemanga ububasha busesuye bw'Urugereko rwa mbere rw'iremezo bwaje kwibutswa n'Urugereko rw'ubujurire rw'Urukiko Mpanabyaha Mpuzamahanga rw'Icyahoze Cyitwa Yugosilaviya, rwafashe icyemezo gikurikira mu rubanza rw'*Aleksovski* :

> Igihe ujurira nta kibazo na kimwe abajije, Urugereko rwa mbere w'iremezo nta shingano rufite yo kumusobanuza.[32]

Ujurira ni we ufite inshingano yo kugaragariza Urugereko rwa mbere rw'iremezo ibyo akeka ko binyuranyije na Sitati n'Amategeko by'Urukiko, Urugereko rwa mbere rw'iremezo rukabimenyeshwa mu buryo bukwiye kandi butaziguye hakurikijwe imihango yabugenewe.[33]

[28] Inyandikomvugo y'iburanisha, 1 Gicurasi 1998 ; Inyandikomvugo y'iburanisha, 3 Nzeri 1998 ; Inyandikomvugo y'iburanisha, 4 Nzeri 1998.
[29] Mu by'ukuri, igihe Ujurira yitabaga urukiko bwa mbere, Perezida w'Urugereko rwa mbere rw'iremezo yabwiye Yohani Kambanda amagambo akurikira : « […] Ndasaba Uregwa kuvuga niba ubu afite avoka umwunganira », noneho uregwa aramusubiza, ati : « Yego, Bwana Perezida ». Reba Inyandikomvugo y'iburanisha, 1 Gicurasi 1998, urup. 24.
[30] Imyanzuro y'Ujurira, igika cya 15 ; Inyandikomvugo y'iburanisha, 27 Kamena 1998, urup. 24.
[31] Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup. 54.
[32] «Icyemezo cyafashwe ku bujurire bwa Porokireri ku byerekeranye n'iyemerwa ry'ibimenyetso », *Urubanza rwa Aleksovski*, Urubanza no IT-94-1-A, Urugereko rw'ubujurire, 16 Gashyantare 1999, igika cya 19.
[33] Ku byerekeye iki kibazo, reba nk'*Urubanza rwa Kayishema na Ruzindana* mu rw'remezo, Urubanza n^0 ICTR-95-1-T, Urugereko rwa mbere rw'iremezo II, 21 Gicurasi 1999, igika cya 64.

24. Ujurira ntiyigeze ashyikiriza Urugereko rwa mbere rw'iremezo, mu buryo bweruye, ikibazo cy'ihitamo ry'umwunganira, akaba kandi atiyambaje inzira y'ubujurire iteganywa n'ingingo ya 12 y'Amabwiriza agenga ishyirwaho ry'abunganira abaregwa.[34]

25. Kuba Ujurira atarigeze yanga icyemezo cya Gerefiye imbere y'Urugereko rwa mbere rw'iremezo nta mpamvu zihariye zindi zibimubujije, bisobanura ko yaretse uburenganzira bwe bwo gutanga icyo kibazo ho impamvu y'ubujurire ifite ishingiro.[35] Muri uru rubanza, Urugereko rw'ubujurire rwemera imyanzuro ikurikira y'Urugereko rw'ubujurire rw'Urukiko Mpanabyaha Mpuzamahanga rw'Icyahoze Cyitwa Yugosilaviya mu rubanza rwa *Tadić:*

> Ujurira ni we ufite inshingano zo kugaragariza mu maguru mashya Urugereko rwa mbere rw'iremezo ibibazo afite kugira ngo rushobore gusuzuma ko hari umuti Amategeko cyangwa Sitati biteganya. Ntashobora rero gusaba ko ikibazo atabyukije mu rw'iremezo, cyakwakirwa bwa mbere mu rwego rw'ubujurire ngo asabe kuburanisha bundi bushya […][36]

26. Na none, mu rubanza rwa *Kovačević*, mu gusubiza ikibazo cyo kumenya niba mu iburanisha mu Rugereko rwa mbere rw'iremezo, Ubushinjacyaha bwaragerageje kwishakira indonke, urwo rugereko rwashubije mu magambo akurikira :

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[34] « Ingingo ya 12 : Kujuririra icyemezo cyo kutagenerwa avoka

A) Iyo abonye banze ko ahabwa avoka, ukekwaho icyaha ajuririra Perezida icyemezo cya Gerefiye. Perezida ashobora kugishyigikira cyangwa se agategeka ko hagenwa avoka.

B) Iyo uregwa yimwe avoka, ashobora, mu gihe yitabye urukiko bwa mbere, kujuririra icyemezo cya Gerefiye mu rugreko rwa mbere abinyujije mu bibazo mbanziriza rubanza. Urugereko rwa mbere rushobora gushyigikira icyemezo cya Gerefiye cyangwa rugategeka ko hagenwa avoka.

C) Amaze kwitaba bwa mbere, uregwa ajuririra icyemezo cyo kutagenerwa umwunganira abinyujije mu bibazo mbanziriza rubanza mu rugereko rwa mbere rw'iremezo bitarenze iminsi mirongo itandatu nyuma y'uko yitabye urukiko bwa mbere, ariko mbere y'uko urubanza ruburanishwa mu mizi yaryo ».

[35] *Urubanza rwa Furundžja* mu rw'iremezo, Urubanza N° IT-95-17/1-A, Urugereko rw'ubujurire, 21 Nyakanga 2000, igika cya 174.

[36] *Urubanza rwa Tadić* mu bujurire, Urubanza N° IT-94-1-A, Urugereko rw'ubujurire, 15 Nyakanga 1999, igika cya 55.

> Mu cyemezo cyarwo, Urugereko rwa mbere rw'iremezo ntirwavuze ko Uregwa yari yinubiye ko Ubushinjacyaha bwishakiraga indonke, bityo ntirwagira n'icyo rubivugaho. Ku bw'ibyo, uru Rugereko ntiruha agaciro ibyo Ubwunganizi buvuga ko Ubushinjacyaha bwishakiraga indonke.[37]

27. Igitekerezo cy'Urugereko rw'ubujurire gihuje n'icy'Akanama k'uburenganzira bw'ikiremwamuntu kashyizweho hakurikijwe Amasezerano mpuzamahanga yerekeye uburenganzira bw'abantu mu mibereho na politiki, kemeza ibi bikurikira mu byo kiboneye :

> Uretse igihe ashoboye kwerekana impamvu zidasanzwe, [umuburanyi] ntiyemerewe kubyutsa mu rwego rw'ubujurire ibibazo atabajije mu rubanza mu rw'iremezo.[38]

28. Muri uru rubanza, Ujurira asanga ihame ryo kwanga guhabwa umwunganizi rigomba gusobanurwa hifashishijwe impamvu idasanzwe ari yo ubuswa bw'umwunganira.[39] Urugereko rw'ubujurire rurashimangira mbere na mbere ko mu myanzuro cyangwa se mu mvugo z'Ujurira, ikibazo cy'ubuswa bw'umwunganira kitagaragara na rimwe nk'ingingo uretse no kuba cyaba impamvu y'ubujurire yihariye. Bityo rero, ibivugwa n'Ujurira kuri iyi ngingo ntibyumvikana na busa. Mu buhamya bwe, Ujurira yagaragaje koko nk'ubuke bw'inama yagiranye na avoka we, kudashishikarira dosiye ye no kutayimenya neza.[40] Urugereko rw'ubujurire rusanga ibyo ari byo byose, Ujurira atarashoboye kugaragaza ubuswa bw'umwunganira ashingiye ku ngingo zihamye no ku byabaye bifatika. Ahubwo rufite inyandiko zigaragaza ko avoka w'Ujurira yakoze imirimo ye uko bisanzwe.[41] Urugereko rw'ubujurire rero ntirushobora kwemera ibyo Ujurira avuga ; rurasanga atarashoboye kugaragaza impamvu zidasanzwe zatuma iryo hame ryo kureka uburenganzira bwo kunganirwa rititabwaho.

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[37] « Icyemezo gisobanura icyafashwe n'Urugereko rw'ubujurire ku ya 29 Gicurasi 1998, *Urubanza rwa Kovacević*, urubanza N° IT-97-24-AR73, Urugereko rw'ubujurire, 2 Nyakanga 1998, igika cya 33.

[38] *Albert Berry aburana na Jamayika*, ikimenyetso N° 330/1998, ku itariki ya ya 26 Mata 1994, CCPR/C50/d/330/1988, igika cya 11.6. Reba kandi *Glenford Campbell aburana na Jamayika*, ikimenyetso N° 248/1987 ku itariki ya 30 Werurwe 1992.

[39] Igisubizo cy'Ujurira ku Myanzuro ya Porokireri, igika cya 12.

[40] Inyandikomvugo y'iburanisha, 27 Kamena 2000, imp. 41,42,43, 45,49,110 na 200 ; Inyandikomvugo y'iburanisha, 28 Kamena 2000, imp.7-30.

[41] Amasezerano y'ubwemeracyaha yashyizweho umukono n'Ujurira agaragaza mu gika cyayo cya 48 ibi bikurikira : « Njyewe, Yohani Kambanda, nemeje muri iyi nyandiko ko nasomye kandi nkanasuzumana ubwitonzi ibice byose by'aya Masezerano agamije kwemera icyaha kugira ngo nemere icyaha, ndi kumwe na Avoka wanjye Olivier Michael Inglis. Avoka Inglis yansobanuriye uburenganzira bwanjye, uburyo bwo kwiregura bushoboka n'ingaruka zo gukora aya Masezerano […] » Ikindi kandi, mu buhamya bwe, Ujurira yemeye ko Avoka Inglis yakoze akazi ke neza mu byerekeye ihererekanya ry'inyandiko zari zigenewe Yohani Kambanda (nk'amabaruwa abiri yerekeye ubwemeracyaha bwe), Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup. 190.

29. Bityo rero, Urugereko rw'ubujurire rusanze impamvu ya mbere y'ubujurire nta shingiro ifite kubera ko nta bisobanuro bihagije Ujurira yatanze.

30. Ibyo ari byo byose, n'iyo Urugereko rw'ubujurire rwasanga iyo mpamvu y'ubujire ifite ishingiro, ikigaragara muri dosiye ni uko Ujurira yabonye uburenganzira bwe bwose ku byerekeranye n'ukunganirwa kwe.

31. Yashoboye kunganirwa ku buntu na avoka bamugeneye ari we Avoka Inglis washyizweho na Gerefiye w'Urukiko ku itariki ya 27 Werurwe 1998. Kuri iyi ngingo, Urugereko rw'ubujurire rurifuza gutandukanya ibibazo bibiri byabajijwe bikomatanyijwe, ari byo icy'ubukene nyakujya n'icy'uburenganzira bwo kwihitaramo umwunganira.

32. Ku kibazo cy'ubukene nyakujya, Ujurira yamenyesheje Urugereko rw'ubujurire mu iburanisha ryo ku ya 27 Kamena 2000 ko yashoboraga kwirihira Avoka Scheers[42], agaragaza ko ikibazo cy'ubukene nyakujya kitigeze mu by'ukuri kimubaho.[43] Aho ibintu bigeze, nta mwanzuro Urugereko rw'ubujurire rushobora gufata ruhereye ku byo Ujurira avuga. Rusanga icyo kibazo cyarabyukijwe bitinze cyane kandi cyaragombaga kuba cyarabajijwe mu Rugereko rwa mbere rw'iremezo mbere y'iburanisha mu rw'ubujurire.

33. Ku byerekeye uburenganzira bwo kwihitiramo umwunganira, Ujurira asanga yaragombaga kubuhabwa kandi uko kutabwubahiriza bikaba binyuranyije n'uburenganzira bwe bwo kuburanishwa mu buryo buboneye.[44] Kuri iyo ngingo, Urugereko rw'ubujurire rwakurikije igitekerezo cy'Urugereko rwa mbere rw'iremezo I, rwibanzeho mu rubanza rwa *Ntakirutimana*[45] maze rwanzura, rugendeye ku gisobanuro kinonosoye cy'ingingo ya Sitati n'Amategeko[46], hamwe n'ibyemezo bifitanye isano n'iki

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[42] Inyandikomvugo y'iburanisha, 28 Kamena 2000, urup. 182.
[43] Igisubizo cy'Ujurira ku Myanzuro ya Porokireri, igika cya 20.
[44] Imyanzuro y'Ujurira, ibika 17-21.
[45] « Icyemezo ku byifuzo by'Uregwa byerekeranye n'ihindurwa ry'umwunganira yagenewe », *Urubanza rwa Ntakirutimana*, Urubanza TPIR-96-10-T, 11 Kamena 1997, urup.3.
[46] Isesengura ry'ingingo ya 20.4 d) ya Sitati rigaragaza ko ihitamo ry'uwunganira uregwa rikorwa n'ubuyobozi bw'Urukiko, ko atari uregwa w'umukene nyakujya. Iyo ngingo igomba gusomerwa hamwe n'ingingo ya 45 y'Amategeko n'iya 13 y'Amabwiriza agenga ishyirwaho ry'abunganira abaregwa ziteganya ko ari Gerefiye ufite

kibazo bya Komite y'Uburenganzira bw'Ikiremwamuntu[47] n'iby'inzego zubahiriza Amasezerano y'Ibihugu by'i Burayi Yerekeye Uburenganzira bw'Ikiremwamuntu,[48] ko uburenganzira bwo kunganirwa ku buntu bitavuga uburenganzira bwo kwihitiramo umwunganizi.

34. Icya nyuma, Ujurira yunganiwe ku buryo nyabwo.[49] Nk'uko Urugereko rw'ubujurire rwabivuze haruguru, ubuswa bw'avoka wunganiye Ujurira ntibwagaragajwe.

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ububasha bwo guhitamo uwo mwunganizi. Gerefiye rero nta nshingano zindi afite atari izo kugena avoka mu bari kuri lisiti ya ba avoka bashobora guhitwamo kandi nta kimuhatira gukurikiza ibyifuzo by'uregwa utishoboye.

[47] Nk'uko Komite y'Uburenganzira bw'Ikiremwamuntu ibibona, « Igika cya 3 d) cy'ingingo ya 14 [y'Amasezerano mpuzamahanga yerekeye uburenganzira bw'abantu mu by'imbonezamubano na politiki] ntiyemerera ukekwaho icyaha kwihitiramo umwunganira iyo amugenewe ku buntu » (*Osbourne Wright na Eric Harvey baburana na Jamayika*, Inyandiko N° 459/1991, 8 Ugushyingo 1995, CCPR/C/55/D/459/1991, igika cya 10.5. Reba kandi *Albert Berry aburana na Jamayika*, Inyandiko N° 330/1988, 26 Mata 1994, CCPR/C/50/D/330/1988, igika cya 11.6).

[48] Ingingo ya 6.3 c) y'Amasezerano y'ibihugu by'i Burayi Yerekeye Uburenganzira bw'Ikiremwamuntu (« Amasezerano ») iteganya ibyiciro bitatu by'uburenganzira binyuranye, ari byo: kwiburanira, kunganirwa n'avoka wihitiyemo, no gushobora kunganirwa ku buntu na avoka wagenwe. Reba ibyanditswe byerekeranye n'ubwo burenganzira mu gitabo cya Edmont Pettiti, Emmanuel Decaux, Pierre-Henri Imbert (dir), *Amasezerano y'ibihugu by'i Burayi Yerekeye Uburenganzira bw'Ikiremwamuntu, ibisobanuro ingingo ku yindi*, 1999, imp. 274-275. Nk'uko inzego zubahiriza Amasezerano zibibona, uburenganzira bwo kunganirwa na avoka umuntu yihitiyemo si ihame ridakuka (X aburana n'u Bwongereza), Komisiyo y'Ibihugu by'i Burayi Ishinzwe Uburenganzira bw'Ikiremwamuntu, icyemezo cyo ku ya 9 Ukwakira 1978, icyifuzo N° 8295/78 ; Croissant aburana n'u Budage, Urukiko rw'ibihugu by'i Burayi rw'Uburenganzira bw'Ikiremwamuntu, icyemezo mu bujurire cyo ku ya 25 Nzeri 1992, série A, N° 237-B igika cya 29). Iyo ngingo ntirikurikizwa mu byerekeye kunganirwa ku buntu. Mu by'ukuri, ingingo ya 6.3 c) « ntitanga uburenganzira bwo guhitamo avoka uzagenwa n'urukiko, nk'uko idatanga uburenganzira bwo kugishwa inama ku byerekeye ihitamo ry'avoka uzagenwa. » (X aburana n'u Budage, Komisiyo y'Ibihugu by'i Burayi y'Uburenganzira bw'Ikiremwamuntu, Icyemezo cyo ku ya 9 Gicurasi 1989, icyifuzo N° 6946/75 na F aburana n'u Busuwisi, Komisiyo y'Ibihugu by'i Burayi y'Uburenganzira bw'Ikiremwamuntu, Icyemezo cyo ku ya 9 Gicurasi 1989, icyifuzo N°12152/86. Ibyo ari byo byose, Ushinzwe kugena avoka afite ububasha busesuye : « [uburenganzira bwo kwihitiramo avoka] bufite aho bugarukira ku byerekeye kugenerwa avoka ku buntu kandi igihe […] inkiko zifite inshingano zo gukemura zikareba niba inyungu z'ubutabera zisaba ko uregwa ahabwa umwunganira. Mu gushyiraho avoka nk'uwo, inkiko z'ibihugu zigomba koko kuzirikana ibyifuzo by'uregwa […].Ariko zishobora no kutabyubahiriza igihe hari impamvu zifite ishingiro kandi zihagije zijyanye n'inyungu z'ubutabera » (Croissant aburana n'u Budage, Urukiko rw'Ibihugu by'i Burayi rw'Uburenganzira bw'Ikiremwamuntu, Icyemezo cyo ku ya 25 Nzeri 1992, série A, N° 237-B, igika cya 29).

[49] Ni ngombwa ko avoka wagenwe akora akazi ke. Nk'uko Komisiyo y'Ibihugu by'i Burayi Ishinzwe Uburenganzira bw'Ikiremwamuntu ibibona, abafite ububasha bwo kugena no gushyiraho umwunganizi ku buntu, ni bo bagomba kureba niba uwo bashyizeho arengera Uregwa mu buryo bukwiye ». (F. aburana n'u Busuwisi, Komisiyo y'Ibihugu by'i Burayi y'Uburenganzira bw'Ikiremwamuntu, icyemezo cyo ku ya 9 Gicurasi 1989, Icyifuzo N° 12152/86).

II. IIMPAMVU YA KABIRI Y'UBUJURIRE : GUFUNGWA BINYURANYIJE N'AMATEGEKO

A. <u>Ingingo z'ababuranyi</u>

35. Kubera icyemezo yafashe cyo gufatanya na Porokireri,[50] Ujurira yafungiwe ahanini ahantu hatari muri gereza y'Urukiko. Impande zombi zemera ko nyuma y'ifatwa rye ku itariki ya 18 Nyakanga 1997 no kuzanwa Arusha, Ujurira yabanje gufungirwa mu « nzu nziza irimo ibintu bihambaye» nk'ibyumweru bitatu.[51] Kuva tariki ya 3 kugera ku ya 27 Kanama 1997, yafungiwe muri gereza y'Urukiko.[52] Ku ya 27 Kanama 1997, yimuriwe i Dodoma ahaba kugera ku itariki ya 1 Gicurasi 1998 (ahindurirwa inzu yo kubamo nibura inshuro imwe).[53] Nyuma ni bwo yimuriwe muri gereza y'Urukiko Mpanabyaha Mpuzamahanga rw'Icyahoze Cyitwa Yugosilaviya i La Haye.

36. Ujurira avuga ko ifungwa rye muri Tanzaniya, ahatari muri gereza y'Urukiko, rinyuranije n'amategeko. Avuga ko Amategeko ateganya ko uregwa afungirwa muri gereza y'Urukiko, ko kunyuranya n'iryo tegeko hagomba icyemezo cy'Urukiko. Avuga ko ibyemezo byafashwe ku ifungwa rye byose byategekaga ko afungirwa muri « gereza y'Urukiko », akaba nta cyemezo cyatanzwe cyo kudakurikiza amategeko bityo gufungirwa hanze ya gereza y'Urukiko bikaba binyuranyije n'amategeko.[54]

37. Ujurira yemeza ko ifungwa rye rinyuranyije n'amategeko mpuzamahanga arengera ikiremwamuntu kuko yafungiwe ahantu « hadateganijwe n'amategeko ». Ashingira kuri raporo ya *Amnesty International* ishimangira ko amategeko mpuzamahanga ateganya ko abantu bafunzwe bagomba gufungirwa gusa muri za gereza zemewe.[55] Nk'uko iyo raporo

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[50] Nk'urugero, inyandikomvugo yo ku ya 4 Nzeri 1998, urup. 45, umurongo wa 24 : « Porokireri aremeza ko Yohani Kambanda yamufashije koko kandi kandi ko yamuhaye amakuru y'ingirakamaro ».
[51] Imyanzuro y'Ujurira, igika cya 6, Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup. 24, umurongo 11.
[52] Imyanzuro y'Ujurira, igika cya 6, Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup. 24 umurongo 21.
[53] Imyanzuro y'Ujurira, igika cya 6, Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup. 25 imirongo 10-20.
[54] Imyanzuro y'Ujurira, ibika 23-34.
[55] Igitabo cy'inyandiko z'amategeko cy'Ujurira, Inyandiko A-13.

ibivuga, ni « bumwe mu burenganzira remezo burwanya isagarira mu gufunga, irigiswa, ugufatwa nabi n'ukwirega ku gahato ». Ujurira asanga iryo tegeko ritarubahirijwe ku bimureba. Mu kwanzura, yemeza ko yafungiwe hanze ya gereza y'Urukiko mu buryo bunyuranyije n'Amategeko y'Urukiko n'andi mpuzamahanga arengera ikiremwamuntu, ibyo bikaba byaratumye ubwemeracyaha n'Amasezerano y'ubwemeracyaha bye bita agaciro.[56]

38. Mu Myanzuro y'ubujurire isubiza iy'Ujurira, Porokireri yemeza ko kuba Ujurira atarashyikirije Urugereko rwa mbere rw'iremezo icyo kibazo, yivukije uburenganzira bwe bwo kukibyutsa mu rw'ubujurire. Ashimangira ko iyo mpamvu y'ubujurire idashyigikiwe n'ibikubiye muri dosiye y'ubujurire. Avuga ko izo ngingo zombi ziramutse zitakiriwe, Urugereko rw'ubujurire rukwiye kwemeza ko iyo mpamvu y'ubujurire mu mizi yayo idafite ishingiro. Porokireri yemeza ko ari Amategeko ari n'ibyemezo by'Urukiko, nta na kimwe gitegeka ko imfungwa zifungirwa gusa muri gereza y'Urukiko, agahakana imvugo y'Ujurira yemeza ko mu mategeko mpuzamahanga hari ihame rivuga ko abantu bafunzwe bagomba gufungirwa muri za gereza zizwi ku mugaragaro.[57] . Icya nyuma, avuga ko Ujurira atagaragaje ko hari uburenganzira yavukijwe kubera ahantu yafungiwe.[58]

39. Mu myanzuro ye yanditse, Ujurira avuga ko ihame ryo kuba yarivukije ubwo burenganzira bwe ritagombye gukoreshwa kuko atari azi uburenganzira bwe ku byerekeranye n'aho agomba gufungirwa, cyane cyane ko, nk'uko bizwi, atari afite n'umwunganira.[59] Mu ibaza rinyomoza, yagaragaje ko ahantu yafungiwe hamuteye kubangamirwa bikabije, bituma ashyira umukono ku Masezerano y'ubwemeracyaha.[60]

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[56] Imyanzuro y'Ujurira, igika cya 36
[57] Imyanzuro ya Porokoreri, igika cya 4.56.
[58] Imyanzuro ya Porokireri, igika cya 4.85.
[59] Igisubizo cy'Ujurira ku Myanzuro ya Porokireri, igika 22.
[60] Inyandikomvugo y'iburanisha, 27 Kamena 2000, imp. 96 - 98.

B. Isesengura

40. Imvugo y'Ujurira ko yahatiwe gushyira umukono ku Masezerano y'ubwemeracyaha irabyutsa ikibazo cyo kumenya niba ubwemeracyaha bwarakozwe ku bushake, ibi Ujurira akaba abihakana mu mpamvu ya gatatu y'ubujurire, aho kuba ikibazo nyirizina cyo kumenya niba ifungwa rye ryarakozwe mu buryo bunyuranyije n'amategeko. Ibi bibazo Urugereko rw'ubujurire rurabisuzuma mu mutwe ukurikira w'uru rubanza. Mu by'ukuri, hashingiwe ku cyemezo cyafashwe n'Urugereko mu magambo ku byerekeranye n'ibyabaye birebana n'ubuhamya bugomba gutangwa n'Ujurira,[61] ni muri urwo rwego rw'impamvu ya gatatu y'ubujurire Urugereko rushobora gusuzuma ibyo Ujurira avuga.

41. Urugereko rw'ubujurire rwasobanuye haruguru ingaruka zo kudashyikiriza Urugereko rwa mbere rw'iremezo ikibazo iki n'iki. Ubusanzwe, umuburanyi uwo ari we wese udashyikirije ikibazo iki n'iki Urugereko rwa mbere rw'iremezo ntashobora kukibyutsa mu bujurire. Kunyuranya n'iryo hame bishoboka gusa igihe bitewe n'impamvu zidasanzwe nko kuba bitarashobotse rwose kubikora mbere. Uruhande rubisaba ni rwo rugomba kumvisha Urugereko ko izo mpamvu koko zidasanzwe.

42. Ujurira yitabye Urukiko inshuro eshanu: ku ya 14 Kanama 1997, ku ya 16 Nzeri 1997, ku ya 1 Gicurasi 1998, ku ya 3 n'iya 4 Nzeri 1998. Yemeye icyaha ubwo yitabaga Urukiko bwa mbere ku itariki ya 1 Gicurasi 1998. Ntiyigeze yinubira na rimwe aho afungiye n'uburyo yari afunzwemo.

43. Ujurira yemera ihame rusange ryo kwivutsa uburenganzira ryavuzwe haruguru. Mu myanzuro ye yanditse, yasobanuye ko ritagomba gukurikizwa kuko atari azi uburenganzira bwe igihe yitabaga Urugereko rwa mbere rw'iremezo, bityo rero akaba atarashoboraga kugaragaza ko butubahirijwe. Ibyo ngo bikaba byaratewe n'uko atari yunganiwe n'uwo yihitiyemo no kuba yari afungiye « ahantu kure ».[62]

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[61] Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup.11.
[62] Igisubizo cy'Ujurira ku Myanzuro ya Porokireri, igika cya 22.

44. Mu iburanisha, abajijwe impamvu atigeze amenyesha Urukiko ibibazo bye ku byerekeranye n'ukuntu yari afunzwe, Ujurira yatanze igisobanuro kinyuranye, avuga ko guceceka kwe kwatewe n'uko yari abangamiwe bikabije. Ariko, nk'uko Porokireri abivuga, ku itariki ya 1 Gicurasi 1998, Ujurira yari azi ko agomba kuva i Dodoma yerekeza i La Haye kandi koko yari muri urwo rugendo. N'ubwo yari azi ko yari avuye i Dodoma kandi ko imibereho ye yari yahindutse, Ujurira ntiyashyikirije Urugereko rwa mbere rw'iremezo icyo kibazo ku itariki ya 1 Gicurasi 1998. Bamubajije impamvu yabimuteye, Ujurira yasubije muri aya magambo:

> Nari nzi ko bazanyimura, ariko byari bitarakorwa. Nta burenganzira nari mfite bwo kuvuga icyo ntekereza. Iyo biba ibyo, mba narabikoze muri Nzeri, ariko no muri Nzeri sinabikoze.[63]

45. Urugereko rw'ubujurire rero rwashyikirijwe ingingo ebyiri zivuguruzanya. Ujurira ntiyari azi uburenganzira bwe, bituma atamenyesha Urugereko rwa mbere rw'iremezo ko butubahirijwe, cyangwa se yari abuzi ariko ntiyashobora kuvuga icyo atekereza kubera guhangayika.

46. Izo ngingo zombi nta shingiro zifite. Ingingo ya mbere irashaka kuvuga ko Ujurira atabyukije ikibazo cy'ifungwa rye ngo rinyuranyije n'amategeko, imbere y'Urugereko rwa mbere rw'iremezo kubera ko atunganirwaga n'uwo yihitiyemo. Ujurira yunganirwaga na avoka washyizweho kandi yemeye kuva ku ya 27 Werurwe 1998. Nk'uko byagaragajwe haruguru ku byerekeye impamvu ya mbere y'ubujurire, Urugereko rw'ubujurire rurasanga igenwa ry'uwo avoka ryarakozwe hashingiwe ku ngingo ya 20 ya Sitati no ku mategeko mpuzamahanga arengera uburenganzira bw'ikiremwamuntu. Ingingo y'Ujurira ivuga ko yaba yarimwe umwunganira, nta wayiheraho ngo yemeze byanze bikunze ko Avoka Inglis atari ashoboye akazi. Ibyo ari byo byose Urugereko rw'ubujurire rwo rusanga Avoka Inglis yari abifitiye ubushobozi. Ujurira rero ntashobora kwitabaza ubushobozi buke bw'umwunganira kugira ngo asobanure impamvu yatumye atagaragaza ko ifungwa rye ryari rinyuranyije n'amategeko.

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[63] Inyandikomvugo y'iburanisha, 27 Kamena 2000, urup. 161, imirongo 9-15.

47. Ingingo ya kabiri Urugereko rw'ubujurire rushaka gusuzuma, rumaze kugezwaho ubuhamya bw'Ujurira, ishingiye ku kubangamirwa bikomeye Ujurira avuga byamubayeho mu gihe cyose cyabanjirije isomwa ry'urubanza rwe. Urugereko rw'ubujurire rufata nk'ikibazo gikomeye imvugo iyo ari yo yose yerekeranye n'agahato gashyirwa ku bantu bashyikirijwe Urukiko. Ariko Ujurira ntiyashoboye kugaragaza ko yashyizweho agahato nk'ako. Kuvuga mu buryo budafututse ko atashoboye kuvuga icyo atekereza ntibisobanura ko ihame ryo kudakoresha uburenganzira ritakurikizwa. Mu gufata uyu mwanzuro, Urugereko rw'ubujurire rurazirikana amashuri n'uburambe mu kazi by'Ujurira, akaba ari na byo byatumye ashingwa imirimo ya Minisitiri w'Intebe w'igihugu cye.

48. Kubera ko Ujurira atigeze atanga impamvu n'imwe ifatika yamuha uburenganzira budasanzwe bwo kubyutsa bwa mbere ikibazo mu bujurire, Urugereko rusanze iyi mpamvu y'ubujurire nta shingiro ifite.

III. IMPAMVU YA GATATU Y'UBUJURIRE : AGACIRO K'UBWEMERACYAHA

A. Incamake y'ibibazo byabyukijwe

49. Ibibazo Ujurira abyutsa ku birebana n'ubwemeracyaha bwe bishobora kugabanywamo ibice bibiri. Icya mbere, Ujurira avuga ko Urugereko rwa mbere rw'iremezo rwakoze ikosa mu rwego rw'amategeko rwemera agaciro k'Amasezerano y'ubwemeracyaha rutabanje gusuzuma niba ubwo bwemeracyaha 1) bwarakozwe ku bushake, 2) bwarakozwe Ujurira azi neza icyo akora, kandi/cyangwa 3) nta rujijo ruburimo. Icya kabiri, Ujurira avuga ko Urugereko rwa mbere rw'iremezo rwakoze ikosa mu rwego rw'amategeko kubera ko rutabanje gusuzuma niba hari ibyabaye bihagije bigaragaza ibyaha bivugwa n'uruhare Ujurira yabigizemo.[64]

50. Ujurira yifashisha ingingo ya 62 y'Amategeko uko yahinduwe ubu (Kwitaba Urukiko bwa mbere k'uregwa) mu gika cyayo B) itegenya ko iyo uregwa yemeye icyaha, Urugereko rugomba kumenya neza ko ubwemeracyaha bwe : i) bwabaye nta gahato kandi ku bwende ; ii) bwabaye azi neza icyo yiyemeje ; iii) nta rujijo buteye ; iv) bushingiye ku bimenyetso bihagije mu kugaragaza icyaha n'uruhare uregwa yagize mu ikorwa ryacyo, hifashishijwe ibimenyetso bifatika cyangwa mu gihe rubona ko hagati y'uregwa na Porokireri nta kunyuranya gukomeye kuriho ku birebana n'uko ibintu byagenze. Iyo rusanze izo ngingo zuzuye, rushobora kwemeza ko uregwa ahamwe n'icyaha.

51. Porokireri asanga ibi Ujurira avuga nta shingiro bifite kandi bishaka kwemeza ko Urugereko rwa mbere rw'iremezo, mu kwakira ubwemeracyaha, « rwarengereye ububasha bwarwo ». Porokireri asanga Ujurira afite imyumvire idahwitse y'ibigenderwaho mu guhindira icyemezo cyafashwe kuri iki kibazo, akavuga ko Urugereko rutarengereye ububasha bwarwo bityo rukaba nta kosa rwakoze mu rwego rw'amategeko. Avuga kandi ko Ujurira atagaragaje cyangwa ngo asobanure igikorwa cyangwa icyemezo

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[64] Imyanzuro y'Ujurira, urup. 10 n'izikurikira

na kimwe cyaba kiranga iryo rengera avuga, cyangwa ngo yerekane ko ibyo byaba byaratumye abangamirwa.[65]

52. Byongeye kandi, Porokireri yemeza ko kuba Ujurira atarashyikirije icyo kibazo Urugereko rwa mbere rw'iremezo, yivukije uburenganzira bwe bwose bwo gutesha agaciro ubwemeracyaha bwe kuko nta kibazo na kimwe yabajije gihakana ubwemeracyaha bwe haba mu bihe biteganijwe haba n'igihe bwemerwaga n'Urugereko rwa mbere rw'iremezo.[66] Porokireri yibutsa ko Amasezerano y'ubwemeracyaha yumvikanyweho n'Ujurira, Avoka we, na Porokireri ku itariki ya 29 Mata 1998 ; ko ku itariki ya 1 Gicurasi 1998, Ujurira yemereye imbere y'Urugereko rwa mbere rw'iremezo ko yashyize umukono kuri ayo Masezerano kandi ko ku ya 3 Nzeri 1998, nyuma y'amezi ane, mu iburanisha ribanziriza isomwa ry'urubanza rwe, Ujurira nta cyo yanenze ku gaciro k'ubwemeracyaha bwe cyangwa ku Masezerano y'ubwemeracyaha. Bityo rero, Ujurira ntiyavuga ko « Urugereko rwa mbere rw'iremezo rwakoze ikosa ku kibazo atigeze arushyikiriza, bikaba rero bigaragaza ko hashobora gukurikizwa ihame ryo kwivutsa uburenganzira bwe ku byerekeranye n'iyi mpamvu y'ubujurire ».[67]

53. Asubiza Imyanzuro y'ubujurire ya Porokireri, Ujurira yemeje ko ihame rusange ryo kwivutsa uburenganzira ridashobora gukoreshwa muri uru rubanza, maze muri rusange asaba Urugereko rw'ubujurire kugendera ku rubanza rwa *Erdemović,* akavuga gusa ko muri urwo rubanza ihame ryo kwivutsa uburenganzira ritari ikibazo.[68]

54. Urugereko rw'ubujurire rusanga ihame ryo kwivutsa uburenganzira ritari ikibazo mu rubanza rwa *Erdemović,* kubera ko muri urwo rubanza, Urugereko rwemeje ko avoka wunganiraga uregwa atari asobanukiwe neza, akaba rero atarashoboraga na we gusobanurira uwo yunganiraga.

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[65] Imyanzuro ya Porokireri, ibika 4.89-4.91
[66] Ni kimwe no haruguru, igika cya 4.92
[67] Ni kimwe no haruguru, igika cya 4.93 n'icya 4.94
[68] Igisubizo cy'Ujurira ku Myanzuro ya Porokireri, igika cya 16 n'icya 24.

55. Urugereko rw'ubujurire rusanga Ujurira yarabonye kenshi uburyo bwo kubaza ibyo bibazo ashingiraho avuga ko ubwemeracyaha bwe nta gaciro bufite, ariko akaba yarabikoze gusa nyuma yuko akatiwe igihano cyo gufungwa burundu. Kuba Ujurira nta gisobanuro gifatika atanga ku mpamvu zamubujije kubyutsa, adatinze, mu Rugereko rwa mbere rw'iremezo ikibazo cy'agaciro k'ubwemeracyaha bwe, Urugereko rw'ubujurire rushobora kwemeza ko Ujurira yivukije ubwo burenganzira bwo gushobora kukibyutsa nyuma yaho. Nyamara ariko, kubera ko Urugereko rw'ubujurire ari rwo rwego rwa nyuma Ujurira, wakatiwe gufungwa burundu amaze kwemera ibyaha, ashobora kwiyambaza, kubera kandi ko ibibazo yabyukije muri uru rubanza bifite akamaro rusange ku birebana n'imirimo y'Urukiko, rusanga rugomba gusuzuma agaciro k'ubwemeracyaha bw'Ujurira.

B. Ese ubwemeracyaha bwabaye ku bwende ? Ese bwabaye azi neza icyo akora ? Ese ntibwarimo urujijo ?

1. *Ese ubwemeracyaha bwe bwabaye ku bwende ?*

(a) Ingingo z'ababuranyi

56. Ku birebana no kumenya niba ubwemeracyaha bwe bwarabaye ku bwende, Ujurira avuga ibi bikurikira: « Kugira ngo habeho ubushake, hagomba ingingo ebyiri. Iya mbere, Uregwa agomba kuba afite ubushobozi n'ubwenge byo kumva ingaruka z'ibikorwa bye igihe yemera icyaha. Iya kabiri, ubwo bwemeracyaha ntibugomba guturuka ku iterabwoba iryo ari ryo ryose cyangwa ku isezerano rindi ritari icyizere cyo kugabanyirizwa igihano. »[69]

57. Ingingo yonyine yatanzwe n'Ujurira ashimangira imvugo ye ko atemeye icyaha ku bushake ikubiye mu magambo akurikira :

[69] Imyanzuro y'Ujurira, igika cya 39.

> Nk'uko bigaragara mu bikorwa no mu mvugo ze, Kambanda yafungiwe kandi abarizwa aho yari afungiwe […] hatemewe. Ni muri icyo gihe kandi yari afunzwe yashyize umukono ku Masezerano y'ubwemeracyaha atari kumwe n'umwunganira yihitiyemo. Ingaruka z'icyo gikorwa zasuzumwe mu mutwe wa 4, impamvu ya kabiri y'ubujurire.
>
> Kuba yarimwe umwunganira yihitiyemo kandi agafungirwa kure y'abandi ahantu hatemewe, bivuga ko Kambanda yashyize umukono ku Masezerano ku gahato kubera uko ibintu byari byifashe. Mu yandi magambo, ntiyashoboraga kwishyira no kwizana ku buryo yashobora guhitamo uko ashaka.
>
> Kubera ko ibintu ari uko byari bimeze, Urukiko rwagombaga gukora anketi zicukumbuye kurushaho.[70]

58. Mu ibaza rinyomoza, Ujurira yamenyesheje Urukiko ko ahantu yari afungiye hagize uruhare mu kumubuza amahoro, bikaba ari byo byatumye agomba gushyira umukono ku Masezerano yo kwemera icyaha.[71] Bityo, yemeza ko ubwemeracyaha bwe butakozwe mu by'ukuri ku bushake, kuko ayo Masezerano yashyizweho umukono mu buryo we yabonaga ari agahato.

59. Porokireri avuga ko ingingo eshatu za ngombwa kugira ngo ubwemeracyaha bwemerwe, zagaragajwe mu rubanza rwa *Erdemović*, ahavugwamo ko kugira ngo ubwemeracyaha bugire agaciro, bugomba gukorwa ku bushake, gukorwa umuntu azi neza icyo akora, kandi bukaba butarimo urujijo. Porokireri yemera ingingo y'Ujurira ivuga ko kugira ngo ubwemeracyaha bube bwakozwe ku bushake, ari ngombwa ko Ujurira aba afite «ubushobozi n'ubwenge byo kumva ingaruka z'ibikorwa bye igihe yemera icyaha, akongeraho ko ubwo bwemeracyaha butagomba guturuka ku iterabwoba iryo ari ryo ryose cyangwa ku isezerano rindi ritari icyizere cyo kugabanyirizwa igihano ».[72]

60. Porokireri avuga ko ikibazo kirebana n'ubushobozi n'ubwenge by'Ujurira kitigeze kibyutswa na rimwe kandi ko, nk'uko bigaragara mu nyandikomvugo y'iburanisha ryo ku itariki ya 1 Gicurasi 1998, Ujurira yivugiye ibi bikurikira : « Mfata icyemezo cyo

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[70] Ni kimwe no haruguru, igika cya 41.
[71] Inyandikomvugo y'iburanisha, 27 Kamena 2000, imp. 101-105.
[72] Imyanzuro ya Porokireri, ibika 4.98 na 4.99, byavuye mu *Rubanza rwa Erdemović* mu bujurire, « Igitekerezo cyihariwe cy'Abacamanza McDonald na Vohrah », Urubanza N° IT-96-22-A, Urugereko rw'ubujurire, 7 Ukwakira, igika cya 8 n'icya 9.

kwemera icyaha, nabikoze nzi icyo nkora kandi mbishaka, nta wabimpatiye »[73]. Porokireri asanga kandi mu iburanisha ryabanjirije isomwa ry'igihano ryo ku itariki ya 3 Nzeri 1998, Avoka wunganira Ujurira yaratangaje ko ubwemeracyaha bwabaye mu kuri, ku bushake, Ujurira azi icyo akora, atari uburyo bwo kwishakira inyungu idasanzwe iyi n'iyi.[74] Icya nyuma, Porokireri asanga mu Masezerano yo kwemera icyaha Ujurira yasinyeho yarivugiye ubwe ko yemeye icyaha kugira ngo ukuri kumenyekane.[75]

(b) Imyanzuro yo mu rwego rw'amategeko

61. Urugereko rw'ubujurire rusanga ingingo za ngombwa kugira ngo amasezerano y'ubwemeracyaha yemerwe ari uko mbere na mbere uwemera icyaha agomba kuba yumva ingaruka zabyo, icya kabiri agasinya amasezerano yo kwemera icyaha nta gahato na busa ashyizweho. Iyo myumvire ihuje n'ikubiye mu gitekerezo cyihariye cy'Abacamanza McDonald na Vohrah mu rubanza rwa *Erdemović*, kivuga ko kugira ngo ubwemeracyaha bube bukozwe ku bushake, bugomba kuzuza ingingo ebyiri ari zo: « uregwa agomba kuba afite ubushobozi n'ubwenge bituma yumva ingaruka z'uko kwemera icyaha, kandi ubwemeracyaha ntibube ingaruka z'iterabwoba cyangwa isezerano rindi ritari icyizere cyo kugabanyirizwa igihano ».[76]

62. Mu ngingo z'Ujurira, nta kigaragaza ko yigeze abyutsa ikibazo cy'uko amerewe mu mutwe cyangwa ngo yumvishe Urukiko ko atari amerewe neza. Nta kintu na kimwe kandi gishobora gutuma umuntu avuga ko atasobanukiwe n'ingaruka z'ubwemeracyaha bwe. Ahubwo, Ujurira yasobanuye gusa ko yari yihebye kandi ahangayitse kubera impamvu zo kuba yari afungiye kure y'abandi. Urugereko rw'ubujurire rusanga kuba yari Minisitiri w'intebe, Ujurira yaragombaga kuba amenyereye gufata ibyemezo biremereye mu bihe bikomeye. Urugereko rw'ubujurire rusanga ibyo yemeza bidahagije na busa kugira ngo bishimangire ibyo avuga ko ubwo yemeraga icyaha, atashoboraga kumva ingaruka zabyo.

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[73] Ni kimwe no haruguru, igika cya 4.100 n'icya 4.101, inyandikomvugo y'iburanisha, 1 Gicurasi 1998, urup. 30, imirongo 14 - 25.

[74] Ni kimwe no haruguru, igika cya 4.103, byavuye mu Nyandikomvugo y'iburanisha, 3 Nzeri 1998, urup. 30, umurongo 25, n'urup. 31, imirongo 1-8.

[75] Ni kimwe no haruguru, igika cya 4.104, byavuye mu Masezerano y'uburyo bwo kuburana, igika cya 2 n'icya 4

[76] *Urubanza rwa Erdemović* mu bujurire, Igitekerezo cyihariye cy'Abacamanza McDonald na Vohrah, igika cya 10.

63. Urugereko rw'ubujurire rusanga kandi Ujurira atavuga ko mu buryo ubwo ari bwo bwose, yaba yarashyizweho iterabwoba cyangwa akagira ikindi yizezwa kugira ngo yemere icyaha. Niba aho kuburana Ujurira yaremeye icyaha, yizeye ko azahabwa igihano cyoroheje, ubu si bwo yahakana kuba yaremeye icyaha ku bushake kubera ko yakatiwe igihano cyo gufungwa burundu amaze kwemera ibyaha byinshi bya jenoside n'ibyaha byibasiye inyokomuntu.

64. Urugereko rw'ubujurire rusanga ibyo Ujurira avuga ko atemeye icyaha ku bwende bwe nta shingiro bifite, bityo rukaba rwanze iyi ngingo ye.

2. *<u>Ese yemeye icyaha azi neza icyo akora</u> ?*

(a) <u>Ingingo z'ababuranyi</u>

65. Ku kibazo cyo kumenya niba yeremeye icyaha yabisobanuriwe neza, Ujurira avuga ko inkiko zose zigendera kuri *common law*, zisaba ko umuntu wemera icyaha agomba kuba azi imiterere n'ingaruka zo kwemera icyaha kimwe n'ibyaha nyabyo yemera.[77] Atanga urugero rw'urubanza rwa *Erdemović* ruvugwamo ibi bikurikira:

> «ni ngombwa ko kugira ngo kwemera icyaha bigire agaciro uregwa abikora azi neza icyo akora, ni ukuvuga asobanukiwe :
>
> (a) Imiterere y'ibyaha ashinjwa kimwe n'ingaruka zo kwemera icyaha muri rusange;
>
> (b) Imiterere y'ibirego binyuranye, aho bitaniye, kimwe n'ingaruka zo kwemera buri cyaha mu byo aregwa».[78]

66. Ujurira kandi yifashisha ibikubiye mu gitekerezo cyihariye kandi kinyuranye n'icya bagenzi be cy'Umucamanza Cassese mu rubanza rwa *Erdemović*, biteye bitya: "Kwemera icyaha bigomba gukorwa umuntu azi neza icyo akora n'ingaruka zabyo mu rwego rw'amategeko. Kwakira ubwemeracyaha bikozwe uregwa atazi neza icyo akora byaba ari

[77] Imyanzuro y'Ujurira, igika cya 42, byavuye mu *Rubanza rwa Erdemović* mu bujurire*,* Igitekerezo cyihariye cy'Abacamanaza McDonald na Vohrah, igika cya 14.
[78] Ni kimwe no haruguru, igika cya 45, byavuye mu *Rubanza rwa Erdemović* mu bujurire, Igitekerezo cyihariye cy'Abacamanza McDonald na Vohrah, igika cya 14.

ukuyobya ubutabera. By'umwihariko, ibyo byatuma uburenganzira bw'uregwa buvugwa mu ngingo ya 21 3) ya Sitati, bwo gufatwa nk'umwere kugeza ubwo ibyaha bimuhamye hakurikijwe ibiteganywa na Sitati y'Urukiko, buhungabana cyangwa buburizwamo.[79]

67. Ujurira yongera kwemeza ko atunganiwe ku buryo buboneye. Avuga ko avoka wamwunganiye mu Rugereko rwa mbere atakoze akazi ke neza mu kurengera inyungu ze, kandi ko mu gihe cy'imyaka ibiri yabonanye na we isaha imwe gusa. Yongeraho ko uwo avoka atize dosiye yose, atakoze iperereza kandi atasuzumye imiterere y'urubanza kugira ngo agire Kambanda inama zimufitiye akamaro. Ni yo mpamvu Kambanda yemeye ibyaha atazi neza icyo akora kuko atari azi imiterere y'ibirego yashinjwagwa kandi adasobanukiwe n'ibirebana no kwemera icyaha kwe.[80]

68. Ujurira avuga ko « Kambanda atasobanuriwe na avoka we kimwe n'Urugereko rwa mbere rw'iremezo », ngo kubera ko « Urukiko rwagize umwete muke wo kumumenyesha neza ingaruka zo kwemera icyaha kwe ku byerekeye igihano cy'igifungo » kandi ko ngo « Uregwa yagombaga kumenyeshwa neza ko yemera icyaha, igihano cyonyine yashoboraga guhabwa cyari gufungwa burundu, kandi ko amasezerano yo kwemera icyaha atashoboraga na busa kuba impamvu nyoroshyagihano kubera uburemere bw'ibyaha yashinjwaga ».[81]

69. Ujurira ashimangira ko Urugereko rwa mbere rw'iremezo « rwagombaga gukora iperereza ku bwunganizi bw'ujurira » kuko imikorere ya avoka itari iboneye; rwagombaga kwita kurushaho ku mikorere y'ubwo bwunganizi. [82]

70. Porokireri yemeranwa n'Ujurira ko, kugira ngo bamenye niba kwemera icyaha byakozwe cyangwa bitakozwe ku bushake, hakwifashishwa ubukemuramanza bw'urubanza rwa E*rdemović*, buvuga ko « uregwa agomba gusobanukirwa n'imiterere y'ibyaha ashinjwa

[79]Ni kimwe no haruguru, byavuye mu *Rubanza rwa Erdemović* mu bujurire, Igitekerezo cyihariye kandi kinyuranye n'icy'abandi cy'Umucamanza Cassese, igika cya 10.
[80] Ni kimwe no haruguru, ibika 48-50.
[81] Ni kimwe no haruguru, igika cya 51, byavuye mu nyandikomvugo y'iburanisha, 3 Nzeri 1998, imp. 42 na 43.
[82] Ni kimwe no haruguru, ibika 53 - 56.

kimwe n'ingaruka zo kwemera icyaha muri rusange ».[83] Porokireri asanga ariko bigaragara neza mu rubanza rwa *Erdemović* ko umwunganizi muri urwo rubanza atumvaga neza ingingo ibyaha bishingiyeho. Ayo makosa yagaragarije Urugereko rw'ubujurire ko avoka atashoboraga gusobanurira neza uregwa imiterere y'ibyaha yashinjwaga.[84]

71. Porokireri avuga ko urubanza rwa *Erdemović* rutandukanye n'uru, kubera ko muri uru rubanza Ujurira aterekana amagambo cyangwa igikorwa na kimwe gishobora kugaragaza ko hari ibyo avoka we mu Rugereko rwa mbere rw'iremezo atamenye neza cyangwa atasobanuriye Ujurira ku buryo buhagije.[85]

72. Asubiza ibyavuzwe n'Ujurira ko Urugereko rwa mbere rw'iremezo rutamusobanuriye neza, Porokireri yasabye Urugereko rw'ubujurire kureba inyandikomvugo y'iburanisha ryo ku itariki ya 1 Gicurasi 1998, aho Perezida w'Urugereko yabajije Ujurira iki kibazo: « Ese wumvise neza imiterere y'ibirego uregwa kimwe n'ingaruka yo kwemera icyaha kwawe? » Ujurira yashubije muri aya magambo: « Bwana Perezida, numvise neza imiterere y'ibirego nshinjwa kandi nzi neza ingaruka zose zo kwemera cyaha kwanjye »[86]

73. Ku byerekeye ibyo Ujurira avuga ko Urugereko rwa mbere rw'iremezo rwagombaga kumumenyesha ku buryo butaziguye ingaruka zo kwemera icyaha kwe n'ibihano by'igifungo yakatirwa, ngo kandi ko rwagombaga kumenya niba avoka umwunganira akora akazi ke ku buryo buhagije, Porokireri asanga ingingo z'Ujurira nta shingiro zifite. Asanga ahubwo ibibazo Urugereko rwa mbere rw'iremezo rwabajije byo kumenya niba yaremeye icyaha azi neza icyo akora bihagije.[87]

74. Mu gisubizo cye ku Myanzuro ya Porokireri, Ujurira yongeye kwemeza ko atunganiwe neza kandi ko « byagaragaye ko Avoka Inglis atari afite ubushobozi ba avoka bunganira

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[83] Imyanzuro ya Porokireri, igika cya 4.110, avuga *Urubanza rwa Erdemović* mu bujurire, Igitekerezo cyihariye cy'Abacamanza McDonald naVohrah, igika cya 14, kimwe n'Imyanzuro y'Ujurira, igika cya 45.
[84] Ni kimwe no haruguru, igika cya 4.111, byavuye mu *Rubanza rwa Erdemović* mu bujurire, Igitekerezo cyihariye cyatanzwe n'abacamanza McDonald na Vohrah, ibika 16 -19.
[85] Ni kimwe no haruguru, ibika 4.112 na 4.113.
[86] Ni kimwe no haruguru, igika cya 115, byavuye mu Nyandikomvugo y'iburanisha, 1 Gicurasi 1998, igika cya 33.
[87] Ni kimwe no haruguru, ibika 4.117 - 4.119

abaregwa mu manza mpanabyaha bagomba kuba bafite ».[88] Nyuma, yongeyeho ko n'ubwo haba haragaragaye ubushobozi buke bw'uwunganiraga Ujurira ku byerekeye ubwemeracyaha bwe, urubanza rwa Kambanda rwashoboraga kuburanwa, ibyo ariko bigatuma ubwemeracyaha bwe buta agaciro.[89] Ujurira nta ngingo n'imwe atanga ishimangira ibyo yemeza ko urubanza rwe rwashoboraga kuburanwa, ibi bikaba ahari bishatse kuvuga ko yari afite ingingo zo mu rwego rw'amategeko yakwireguza ibyo yashinjwaga.

(b) Imyanzuro yo mu rwego rw'amategeko

75. Urugereko rw'ubujurire ruremeranya n'ababuranyi ko ingingo zigomba gukurikizwa kugira ngo bamenye niba uregwa yaremeye icyaha azi neza icyo akora ari izashyizwe ahagaragara n'Abacamanza McDonald na Vohrah mu rubanza rwa *Erdemović*, ari byo ko uregwa agomba gusobanukirwa n'imiterere n'ingaruka zo kwemera icyaha muri rusange, imiterere y'ibyaha binyuranye aregwa, aho bitaniye n'ingaruka zo kwemera icyaha kuri buri kirego ubwacyo.[90]

76. Urugereko rw'ubujurire ntirushobora gushyigikira Ujurira aho avuga ko Urugereko rwa mbere rw'iremezo rwagombaga kwitonda rukamenya ko « uregwa yasobanukiwe neza ko kwemera icyaha kwe nta kindi byari kumugezaho kitari ugukatirwa igihano cyo gufungwa burundu kandi ko amasezerano yo kwemera icyaha atashoboraga na gato kuba impamvu yo kugabanyirizwa igihano bitewe n'uburemere bw'ibyaha aregwa. »[91] Urugereko rwa mbere rw'iremezo ntirugomba byanze bikunze kumenyesha uregwa igihano ashobora gukatirwa. Imiburanishirize igomba gusuzumirwa hamwe, harimo n'ingingo z'ababuranyi. Inyandikomvugo z'iburanisha zigaragaza ko ababuranyi bombi bemeye ko uregwa ashobora gukatirwa igihano cy'igifungo cya burundu. Iyi ngingo ntawayihakanye. Igihe Ujurira yasubizaga Urugereko agira, ati « Ndumva neza ingaruka zo kwemera

[88] Igisubizo cy'Ujurira, igika cya 27.
[89] Ni kimwe no haruguru, igika cya 29.
[90] *Urubanza rwa Erdemović* mu bujurire, Igitekerezo cyihariye cy'Abacamanza McDonald na Vohrah, ibika 14 - 19.
[91] Imyanzuro y'Ujurira, igika cya 51, n'ibice by'inyandikomvugo y'iburanisha, 3 Nzeri 1998, imp. 42 na 43.

icyaha kwanjye », Urugereko rwabonye ko ibyo bisobanura ko yumvaga ko ashobora no gufungwa burundu.

77. Ujurira nta kintu na kimwe kihariye agaragaza gishobora gushimangira imyiregurire ye ivuga ko avoka wamwunganiraga atari azi imiterere y'ibirego yashinjwaga kimwe n'ingaruka zo kwemera icyaha, bityo akaba atarashoboraga kugira icyo amusobanurira mu buryo bunononsoye. Mu rubanza rwa *Erdemović*, ibisubizo byatanzwe n'Uregwa ku bibazo by'Urugereko rwa mbere rw'iremezo[92] byagaragaje ko atumvaga imiterere y'ibirego ashinjwa kimwe n'ingaruka zo kwemera icyaha. Naho muri uru rubanza, Ujurira yagaragaje neza imbere y'Urugereko rwa mbere rw'iremezo, ko yari azi neza ibyo akora n'ingaruka zabyo.

78. Urugereko rw'ubujurire rusanze rero iyo ngingo ivuga ko kwemera icyaha byakozwe Ujurira atazi neza icyo akora nta shingiro ifite.

3. *Ese mu bwemeracyaha bwe nta rujijo rwarimo?*

(a) Ingingo z'ababuranyi

79. Ku birebana no kumenya niba ubwemeracyaha bwe bwarimo urujijo, Ujurira yifashisha urubanza rwa *Erdemović* ahavuga ko: « Igihe uregwa yemeye icyaha, ariko agashaka no gutanga impamvu zatumye agikora, ku buryo mu rwego rw'amategeko usanga bihwanye no kwiregura, urukiko rugomba kwanga ubwemeracyaha bwe maze akaburanishwa, izo mpamvu yireguza zigasuzumwa mu rubanza».[93] Ujurira ariko ntasobanura icyo ayo magambo yo muri urwo rubanza yamumarira mu rubanza rwe. Mu yandi magambo, Ujurira ntavuga ko yasobanuye cyangwa yatsimbaraye ku mpamvu z'ibikorwa bye ku

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92 Bityo abacamanza McDonald na Vohrah bashimangiye by'umwihariko igika cya 16 cy'Igitekerezo cyabo cyihariye ko kwemera icyaha byashoboraga kuba byarakozwe atazi neza icyo akora n'ingaruka zabyo kubera ko, ku ruhande rumwe, igihe Urugereko rwa mbere rw'iremezo rwabazaga uregwa niba yumva ingaruka zo kwemera icyaha, igisubizo yatanze kitari gihagije, kandi, ku rundi ruhande, inyandikomvugo y'iburanisha igaragaza ko avoka wunganiraga uregwa atumvaga mu by'ukuri imiterere yo kwemera icyaha.

93 Imyanzuro y'Ujurira, igika cya 58, byavuye mu *Rubanza rwa Erdemović* mu bujurire. Igitekerezo cyihariye cy'Abacamanza McDonald na Vohrah, igika cya 29.

buryo umuntu yabifata nk'aho ari uburyo bwo kwiregura. Bityo rero, nta mpamvu yumvikana ituma Ujurira yifashisha ibivugwa mu rubanza rwa *Erdemović*.

80. Ujurira atanga kandi urugero rw'inyandikomvugo y'iburanisha ryo ku itariki ya 1 Gicurasi 1998, aho Perezida w'Urugereko, igihe yabazaga Ujurira niba kwemera icyaha kwe nta rujijo rurimo, yamusobanuriye ibi bikurikira: « Aha turashaka kumenya niba uzi neza ko udashobora nyuma kubyutsa ingingo n'imwe yo kwiregura inyuranije n'ubwemeracyaha bwawe. Ese ibyo urabizi? »[94] Ujurira yemeza ko « igisobanuro cya Perezida ku byerekeye ubwemeracyaha butarimo urujijo, kitari gihwitse ». Mu yandi magambo, avuga ko iyo aza kwiregura mu buryo ubwo ari bwo bwose, ubwemeracyaha bwe bwari gufatwa nk'uburimo urujijo, ko nta wabicurika rero ngo avuge ko ubwemeracyaha bwe butarimo urujijo kandi atarigeze yiregura. Urukiko rwagombye kuba rwararushijeho gukurikirana ikibazo, rukabaza uregwa niba hari ibimenyetso afite bimushinjura ku byaha bitandatu bikubiye mu nyandiko y'ibirego.[95]

81. Porokireri asanga Ujurira avuga ko ubwemeracyaha bwe bwarimo urujijo kubera ko Perezida yakoze ikosa mu kumusobanurira icyo amagambo « butarimo urujijo » ashatse kuvuga. Porokireri avuga ko iyo usuzumye amagambo uko Perezida yayavuze, usanga bigaragara ko yasobanuriye Ujurira icyo «butarimo urujijo » bishatse kuvuga.[96]

82. Porokireri agaragaza kandi ko « kuba Ujurira nta kibazo yigeze abyutsa mu gihe cy'amezi ane hagati y'itariki ya 1 Gicurasi 1998 ubwo yemeraga icyaha, n'iya 4 Nzeri 1998 akatirwa, byerekana neza ko ubwemeracyaha bwe butarimo urujijo. »[97]

83. Mu gisubiza Imyanzuro y'ubujurire ya Porokireri, Ujurira asobanura ko impamvu atabajije ibibazo muri icyo gihe cy'amezi ane hagati yo kwemera icyaha no gukatirwa, ari

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[94] Ni kimwe no haruguru, igika cya 59, byavuye mu nyandikomvugo y'iburanisha, 1 Gicurasi 1998, urup. 34.
[95] Ni kimwe no haruguru. ,igika cya 59
[96] Imyanzuro ya Porokireri, ibika 4.120 - 4.122.
[97] Ni kimwe no haruguru, igika cya 4.123.

uko atari afite avoka umwunganira neza. Avuga ko kuba atarabyukije icyo kibazo bidasobanura ko ubwemeracyaha bwe butarimo urujijo, nk'uko Porokireri abyemeza.[98]

(b) Imyanzuro mu rwego rw'amategeko

84. Urugereko rw'ubujurire rusanga, nk'uko byasobanuwe n'abacamanza McDonald na Vohrah mu rubanza rwa *Erdemović* « Kugira ngo hemezwe ko ubwemeracyaha butarimo urujijo, ni ngombwa mbere na mbere gusuzuma niba bwaraherekejwe cyangwa bwararanzwe n'amagambo asobanura ibyabaye byafatwa nko kwiregura mu rwego rw'amategeko ».[99]Urugereko rwemeye iyo myumvire.

85. Urugereko rw'ubujurire rusanga nta wemeza ko Ujurira yakomeje gusobanura ibikorwa bye, haba igihe cyo kwemera icyaha cyangwa igihe cy'iburanisha ryo kumukatira. Rusanga kandi nta wemeza ko Ujurira yitabaje imyiregurire iyo ari yo yose yatuma umuntu ahamya ko ubwemeracyaha bwe burimo urujijo. Ikindi kandi, inyandikomvugo zigaragaza ko Ujurira atigeze agerageza gusobanura ibikorwa bye cyangwa kwiregura.

86. Urugereko rw'ubujurire rusanga na none n'ubwo Ujurira yemeye icyaha agakora n'Amasezerano y'ubwemeracyaha, nk'uko bigaragara mu Nyandiko y'urubanza, Urugereko rwa mbere rw'iremezo:

> rwarashatse ariko kugenzura agaciro k'ubwo bwemeracyaha. Ni muri urwo rwego rwabajije Uregwa niba :
>
> i) yaremeye icyaha ku bushake, mu yandi magambo, niba yarabikoze nta gahato kandi azi icyo akora, nta terabwoba ashyizweho kandi nta n'icyo bamusezeranyije ;
>
> ii) yarumvise neza imiterere y'ibyaha ashinjwa kimwe n'ingaruka z'ubwemeracyaha bwe ;
>
> iii) ubwemeracyaha bwe butarimo urujijo, mu yandi magambo, niba yari azi ko ubwemeracyaha budashobora kubangikanywa n'indi myiregurire iyo ari yo yose yabuvuguruza.
>
> Kuri ibyo bibazo byose, Uregwa yashubije yemera. Ni yo mpamvu Urugereko rwahise rufata icyemezo gikurikira :…[100]

[98] Igisubizo cy'Ujurira, igika cya 31.
[99] *Urubanza rwa Erdemović* mu bujurire*,* Igitekerezo cyihariye cy'Abacamanza McDonald na Vohrah, igika cya 31.
[100] Urubanza mu rw'iremezo, ibika 6 na 7.

87. Urugereko rw'ubujurire rusanga Urugereko rwa mbere rw'iremezo rwarafashe umwanya uhagije wo kubaza ibibazo no gusuzuma imyifatire y'Ujurira, ku buryo rwasanze Ujurira yaremeye icyaha ku bushake, yarabikoze azi neza icyo akora kandi ubwemeracyaha bwe butarimo urujijo. Bityo rero, Urugereko rw'ubujurire rusanze ibyo Ujurira avuga ko ubwemeracyaha bwe bwarimo urujijo cyangwa se ko bwari bufite indi nenge iyo ari yo yose, nta shingiro bifite.

C. Ese hari ibyabaye bihagije ubwemeracyaha bushingiyeho?

1. Ingingo z'ababuranyi

88. Ujurira avuga ko ingingo ya 62 B) iv) y'Amategeko itegenya ko Urugereko rwa mbere rw'iremezo rugomba kumenya neza niba ubwemeracyaha « bushingiye ku bikorwa bihagije bigaragaza icyaha n'uruhare rw'uregwa mu ikorwa ryacyo, hitawe ku ibimenyetso bifatika cyangwa mu gihe rubona ko hagati y'uregwa na Porokireri nta kunyuranya gukomeye guhari ku birebana n'uko ibintu byagenze ». Ujurira yifashisha kandi ibyo yakuye mu mategeko yitwa « *Federal Rules of Civil Procedure* » akurikizwa muri Leta Zunze Ubumwe za Amerika na « *Criminal Pleadings in Canada* » maze akemeza ko « n'ubwo Urukiko rwakwakira ubwemeracyaha, mbere yo gufata icyemezo, rugomba gusuzuma niba uko kwemera icyaha gushingiye ku bikorwa », kandi ko ibimenyetso bimwe by'urubanza bigomba gushyikirizwa Urukiko « kugira ngo rushobore gusuzuma niba ubwemeracyaha bwakwakirwa ».[101]

89. Porokireri avuga ko « ubwemeracyaha bw'Ujurira bwari bushingiye ku bikorwa bihagije »[102] akemeza ko « inyandikomvugo igaragaza ko Urugereko rwa mbere rw'iremezo rutarengereye ububasha bwarwo igihe rwemezaga ko hari ibyabaye bihagije ubwemeracyaha bw'Ujurira bushingiraho ». Avuga kandi ko Urugereko rwa mbere rw'iremezo rwashingiye ku ngingo zirebana n'ibyabaye n'izo mu rwego rw'amategeko

[101] Imyanzuro y'Ujurira, ibika 60 - 62.
[102] Imyanzuro ya Porokireri, igika cya 4.127.

zerekeye ubwemeracyaha, rushingira no ku Masezerano y'ubwo bwemeracyaha.[103] By'umwihariko, Porokireri asobanura ko ibyabaye bikubiye mu Masezerano yo kwemera icyaha no mu nyandiko y'ibirego bihagije ku buryo byashimangira ubwemeracyaha, kandi ingingo zigize urubanza, cyane cyane izirebana n'ibyabaye, ababuranyi bombi bakaba bazemeranywaho. [104]

90. Porokoreri atanga urugero rw'icyiciro cya III cy'Amasezerano yo kwemera icyaha, cyiswe « Ibyabaye bishingirwaho », aho Ujurira yemera ko Porokireri aramutse agomba gutanga ibimenyetso, ibyabaye kimwe n'ibivugwa mu bika kuva ku cya 3.1 kugera ku cya 3.20 by'Inyandiko y'ibirego byabonerwa gihamya ku buryo budashidikanywaho. Byongeye kandi, Ujurira yivugira ko adahakana ibyo bikorwa. Ishingiro ry'ibyo bikorwa ryasobanuwe nyuma mu bika kuva ku cya 18 kugera ku cya 40 mu Masezerano yo kwemera icyaha.[105] Porokireri atanga ibisobanuro kuri bimwe mu bikorwa bivugwa mu Masezerano yo kwemera icyaha bitagibwaho impaka, ibyinshi muri byo bikaba ari ibikorwa by'ubugome byihariye byakozwe n'Ujurira ari gatozi.[106]

91. Porokireri kandi yifashisha Urubanza rwa *Jelisić*, aho Urugereko rwa mbere rw'iremezo rw'Urukiko Mpanabyaha Mpuzamahanga Rwagenewe Icyahoze Cyitwa Yugosilaviya rwasanze ubwemeracyaha ubwabwo budahagije kugira ngo uregwa ahamwe n'icyaha, « kuko ari ngombwa ko abacamanza babona mu miterere y'urubanza icyo bashingiraho, mu rwego rw'amategeko cyangwa rw'ibyabaye, bemeza ko uregwa ahamwa n'icyaha ».[107] Porokireri yemeza ko muri urwo rubanza rwa *Jelisić*, Urugereko rwa mbere rw'iremezo, mu kwakira ubwemeracyaha bw'uregwa, rwazirikanye ko Porokireri n'ubwunganizi bemeranywaga ku byabaye byose bikubiye mu rubanza. Urugereko kandi rwagiye kenshi rwifashisha inyandiko yiswe « Ibikorwa bishingirwaho» mu gusuzuma niba ingingo zatanzwe mu bwemeracyaha zihagije ku buryo zashingirwaho mu guhamya

[103] Ni kimwe no haruguru, igika cya 4.133.
[104] Ni kimwe no haruguru, igika cya 4.134 (biciyeho akarongo mu nyandiko y'umwimerere)
[105] Ni kimwe no haruguru, igika cya 4.138.
[106] Ni kimwe no haruguru, ibika 4.139 na 4.140
[107] Ni kimwe no haruguru, igika cya 4.141, byavuye mu *Rubanza rwa Jelisić*, igika cya 11 n'inyandiko ya 9.

uregwa icyaha.[108] Porokireri yemeza ko ibikorwa bivugwa mu Masezerano yo kwemera icyaha no mu Nyandiko y'ibirego bihagije ku buryo ubwemeracyaha bubishingiyeho butacyemangwa.[109]

2. Imyanzuro yo mu rwego rw'amategeko

92. Urugereko rw'ubujurire rusanga Inyandiko y'ibirego, ikubiyemo ibyaha bine bya jenoside n'ibyaha bibiri byibasiye inyokomuntu yaremejwe n'Umucamanza Ostrovsky ku itariki ya 16 Ukwakira 1997. Ku itariki ya 1 Gicurasi 1998, ubwo yitabaga Urugereko rwa mbere rw'iremezo ubwa mbere, Ujurira yemeye ibyaha ashinjwa muri iyo Nyandiko y'ibirego. Urugereko rw'ubujurire kandi ruzirikana ibyemejwe mu rubanza mu rw'iremezo aho bavuga ko « rumaze gusuzuma agaciro k'ubwemeracyaha, rwifashishije cyane cyane amasezerano yabaye hagati ya Porokireri ku ruhande rumwe n'Uregwa n'umwunganira ku rundi ruhande, yashyizweho umukono n'impande zombi, Urugereko rw'iremezo rwahamije Uregwa ibyaha yashinjwaga byose nk'uko bikubiye mu Nyandiko y'ibirego. »[110]

93. Urugereko rw'ubujurire rusanga kandi ababuranyi barumvikanye ku byabaye urubanza rushingiyeho no ku ruhare rw'Ujurira mu ikorwa ry'ibyaha ashinjwa nk'uko bikubiye mu Nyandiko y'ibirego kandi Ujurira akaba yarabyiyemereye mu Masezerano yo kwemera icyaha. Ahangaha, Urugereko rw'ubujurire ntirushobora kwemeza ko ibikorwa by'ibanze byahereweho mu guhamya icyaha Ujurira ku byaha aregwa mu nyandiko y'ibirego bidahagije, ibyo byaha ujurira akaba yarabyemeye ubwo yakoraga Amasezerano yo kwemera icyaha no mu gihe yemeraga icyaha kubera ko ababuranyi bumvikanye ku buryo bweruye ku byabaye urubanza rushingiyeho no ku byaha bivugwa.

94. Urugereko rw'ubujurire rusanze ibyo Ujurira avuga ko Urugereko rwa mbere rw'iremezo rutari rufite ingingo zihagije zituma rumuhamya icyaha rushingiye ku bwemeracyaha bwe, bidafite ishingiro.

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[108] Ni kimwe no haruguru, igika cya 4.141, byavuye mu R*ubanza rwa Jelisić* mu rw'iremezo, N° IT-95-T, Urugereko rwa mbere rw'iremezo I, 14 Ukuboza 19999, igika cya 25.
[109] Ni kimwe no haruguru, igika cya 4.142.
[110] Urubanza mu rw'iremezo, igika cya 4.

95. Rumaze kubona ko ingingo zatanzwe n'Ujurira kuri iki kibazo zidafite ishingiro, Urugereko rw'ubujurire rwanze iyi mpamvu y'ubujurire.

IV. IMPAMVU Y'UBUJURIRE YA KANE, IYA GATANU, IYA GATANDATU, IYA KARINDWI N' IYA MUNANI

A. Intangiriro

96. Ujurira yasabye ko ruramutse rutakiriye icyifuzo cye cy'iremezo cyo kuvanaho icyemezo kimuhamya ibyaha ngo urubanza ruburanishwe bundi bushya, Urugereko rw'ubujurire rwavanaho kandi rugahindura igihano uko cyakabaye kubera impamvu eshanu[111] (impamvu y'ubujurire ya 4, iya 5, iya 6, iya 7 n'iya 8 z' inyandiko y'ubujurire ikomatanyije). Ujurira nta ngingo n'imwe atanga yo gushyigikira izo mpamvu, haba mu myanzuro y'ubujurire ye cyangwa mu gusubiza iya Porokireri.[112] Byongeye kandi, igihe Urugereko rwamuhaga umwanya wo kubikora mu iburanisha, Ujurira yatanze gusa ingingo imwe y'inyongera. Avoka yavuze mu izina ry'uwo yunganira ko n'ubwo « Bwana Kambanda atashatse kugaruka ku gihano cy'igifungo », ubufatanye bw'Ujurira na Porokireri bwagombaga kumubera ingingo y'ingenzi yo kumugabanyiriza igihano, ikaba rero igomba kuzirikanwa.[113] Porokireri avuga ko kubera ibyo, iyo mpamvu y'ubujurire igomba kutakirwa ngo isuzumwe mu mizi yayo.[114]

97. Urugereko rw'ubujurire rusanga ingingo ya 111 y'Amategeko iteganya ku buryo bweruye ko « imyanzuro y'Ujurira iba ikubiyemo ingingo zose zerekeranye n'amategeko n'ibyabaye ». N'ubwo iyo ngingo iteganya ko « Urugereko rw'ubujurire rushobora gufata icyemezo rushingiye gusa ku myanzuro yanditse rwashyikirijwe n'ababuranyi », ingingo ya 114 y'Amategeko iteganya na none ko Urugereko rushobora gufata icyemezo cyo kuburanisha mu ruhame. Ababuranyi bashobora gushyikiriza Urugereko rw'ubujurire ingingo zose bifuza kwitabaza kuri buri mpamvu y'ubujurire, batanga imyanzuro yabo mu nyandiko cyangwa mu magambo.

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[111] Imyanzuro y'Ujurira, imp. 18 na 19.

[112] Asubiza Imyanzuro ya Porokireri, Ujurira avuga ko bareba ibyo yavuze mu Myanzuro y'Ujurira kandi ko yizigamiye uburenganzira bwo gutanga, mu gushimangira impamvu z'ubujurire bwe bwo kutemera igihano, ibimenyetso byose by'inyongera yasanga byamugirira akamaro, ikirego cye cy'ibanze cyerekeye impamvu z'ubujurire kuva ku ya 1 kugeza ku ya 3 kiramutse kitakiriwe (igika cya 34)

[113] Inyandikomvugo y'iburanisha, 28 Kamena 2000, urup. 46.

[114] Imyanzuro ya Porokireri, ibika 4.1444, 4.161, 4.165, 4.167 - 4.169 na 4.171, n'inyandikomvugo y'iburanisha, 28 Kamena 2000, imp. 160 - 164.

98. Nyamara ariko, ku byerekeye amakosa yo mu rwego rw'amategeko, ingingo z'ababuranyi zishobora kutanononsora icyibazo cyose uko giteye. Icyo gihe, Urugereko rw'ubujurire, nk'urwego rwa nyuma rw'Urukiko, ni rwo rugomba kugaragaza ko ujurira atsinze rushingiye ku mpamvu zindi zitari izo yatanze: *jura novit curia* [Urukiko rusobanura amategeko]. Kubera ko Urugereko rw'ubujurire rutagendera gusa ku ngingo z'ababuranyi, rugomba no gusuzuma ikibazo cyose kibyukijwe mu rwego rw'ubujurire kabone n'iyo nta ngingo z'ishingiro zatanzwe. Mu yandi magambo, ihame rivuga ko umuburanyi watanze ikirego agomba gutanga ingingo zigishyigikira, si kamara : nta wavuga ko ikirego kigomba kuburiramo byanze bikunze kubera ko kitatangiwe ingingo zigishyigikira.

99. Muri uru rubanza, kubera ko Ujurira yatanze izo ngingo mu nyandiko y'ubujurire ikomatanyije, Urugereko rw'ubujurire rurakoresha ububasha busesuye rufite, maze rusuzume agaciro k'izo ngingo.

B. Impamvu ya gatandatu y'ubujurire

100. Ujurira yahamwe n'ibyaha bitandatu byerekeranye na jenoside n'ibyaha byibasiye inyoko-muntu, ahanishwa igihano kimwe rukumbi cyo gufungwa burundu. Nk'uko byanditse mu nyandiko y'ubujurire ikomatanyije, Ujurira yemeza ko :

> Urugereko rwa mbere rw'iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera ko rutageneye buri cyaha kiri mu nyandiko y'ibirego igihano cyihariye, kandi buri kirego gikubiyemo icyaha cyihariye.

Ujurira avuga ko iyi mpamvu idakeneye gusobanurwa, ko ariko ashobora kwifashisha ibyabaye bindi by'inyongera bishyigikira impamvu ze z'ubujurire icyifuzo cye cy'iremezo kiramutse kitakiriwe.[115] Mu iburanisha, uwunganira Ujurira yavuze neza ko Kambanda atashatse kugaruka ku gihano yakatiwe. [116]

101. Kugira ngo umuntu amenye niba ibihano bikomatanyije bitanyuranyije n'amategeko, agomba kugendera ku biteganywa n'ingingo za Sitati n'Amategeko zikurikira :

[115] Imyanzuro y'Ujurira, igika cya 63.
[116] Inyandikomvugo y'iburanisha, 28 Kamena 2000, urup. 47.

Sitati

Ingingo ya 22 : Imikirize y'urubanza

Urugereko rwa mbere rw'iremezo ruca imanza kandi rugahana abantu bahamwe n'ibyaha bikomeye binyuranyije n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara […]

Ingingo ya 23 : Ibihano

[…] Mu kugena igihano icyo ari cyo cyose, Urugereko rwa mbere rw'iremezo ruzirikana ibintu binyuranye, nk'uburemere bw'icyaha n'imibereho y'uwakatiwe. […]

Amategeko

Ingingo ya 101 : Ibihano

[…] C) Iyo ibihano ari byinshi, Urugereko rwa mbere rw'iremezo rwemeza niba ibyo bihano bigomba kurangizwa kimwe nyuma y'ikindi, cyangwa se niba bigomba kurangirizwa icyarimwe […]

102. Urugereko rusanga nta ngingo n'imwe ya Sitati cyangwa y'Amategeko ihatira ku buryo bweruye Urugereko rwa mbere rw'iremezo kugena igihano kuri buri cyaha gihama uregwa. Nyamara ariko, umuntu ashingiye ku magambo « ibihano byinshi » na « kimwe nyuma y'ikindi » avugwa mu ngingo ya 101 C), ashobora kubona ko Amategeko ashimangira ihame ryo kugenera buri cyaha igihano kihariye.

103. Urugereko rw'ubujurire rusanga kuri icyo kibazo Sitati yanditse mu magambo yaguye ku buryo bitabuza ko hatangwa igihano kimwe rukumbi, icyemezo cyo gutanga cyangwa cyo kudatanga icyo gihano kigafatwa n'Urugereko rwa mbere rw'iremezo mu bushishozi bwarwo. Urugereko rw'ubujurire rwemeye ingingo ya Porokireri ivuga ko nta kibuza Urugereko rwa mbere rw'iremezo gukatira uregwa igihano kimwe gikomatanyije ku byaha byose bimuhama.[117]

104. Mu gusuzuma niba Urugereko rwa mbere rw'iremezo rufite ubwo bubasha, umuntu ashobora kureba imikorere y'uru Rukiko kimwe n'iy'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho Icyahoze Cyitwa Yugosilaviya. Mu rubanza rw'*Akayezu*,

[117] Imyanzuro ya Porokireri, igika cya 4.164.

Urugereko rwa mbere rw'iremezo I, n'ubwo rwagennye ibihano bitandukanye, rwasobanuye neza ibiteganywa n'Amategeko ruvuga ko Urukiko :

> …rushobora gutanga igihano kimwe rukumbi ku byaha byose, cyangwa ibihano byinshi, byumvikana ko muri uru rubanza Urugereko ruzemeza niba bigomba kurangizwa kimwe nyuma y'ikindi cyangwa se niba bigomba kurangirizwa rimwe.[118]

105. Mu rubanza rwa *Rutaganda*, Porokireri yasobanuye ko Urugereko rwa mbere rw'iremezo ari rwo rufite ububasha bwo guhitamo itangwa ry'igihano kimwe rukumbi cyangwa ry'ibihano byinshi. Igitekerezo cye giteye gitya : « Ku kibazo cyo gutanga ibihano byinshi Rutaganda <u>ashobora</u> gukatirwa, nk'uko bitegenywa mu ngingo ya 101 C) y'Amategeko… ».[119] Urugereko rwemeye, mu buryo buziguye, ubwo buryo bwo kumva amategeko igihe rwakoreshaga ububasha busesuye bwarwo maze rukagenera uwakatiwe igihano kimwe rukumbi ku byaha byose bimuhama, kandi Porokireri yari yamusabiye igihano kihariye kuri buri cyaha.

106. Urugereko rwa mbere rw'iremezo I rwagennye kandi igihano kimwe rukumbi mu rubanza rwa *Musema*[120] n'urwa *Serushago* [121]aho abaregwa bahamwe n'ibyaha bikubiye mu birego binyuranye.

107. Mu Rukiko Mpanabyaha Mpuzamahanga Rwashyiriweho Icyahoze Cyitwa Yugosilaviya, iyo mikorere yo gutanga igihano gikomatanyije ntikunze kuboneka. Kugeza ubu yagaragaye mu rubanza rwa *Jelisić*[122]n'urwa *Blaškić* zaciwe n'Urugereko rwa mbere rw'iremezo I. Mu gika cya 805 cy'Urubanza rwa *Blaškić* [123], bavuga ko :

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[118] Icyemezo kirebana n'igenabihano, *Urubanza rwa Jean-Paul Akayesu* mu rw'iremezo, Urubanza ICTR-96-4-T, Urugereko rwa mbere rw'iremezo I, 2 Ukwakira 1998, igika cya 41.

[119] « Urubanza n'igenabihano », *Urubanza rwa Rutaganda* mu rw'iremezo, Urubanza N° TPIR-96-3-T, Urugereko rwa mbere rw'iremezo I, 6 Ukuboza 1999, igika cya 463 (ntibiciweho umurongo mu nyandiko y'umwimerere).

[120] « Urubanza n'igihano », *Urubanza rwa Musema* mu rw'iremezo, Urubanza N° TPIR-96-13-T, Urugereko rwa mbere rw'iremezo I, 27 Mutarama 2000, urup. 294.

[121] *Urubanza rwa Serushago* mu rw'iremezo, Urubanza N° TPIR-98-39-S, Urugereko rwa mbere rw'iremezo I, 5 Gashyantare 1999, urup. 15.

[122] *Urubanza rwa Jelisić* mu rw'iremezo, Urubanza N°. IT-95-10-T, Urugereko rwa mbere rw'iremezo I, 14 Ukuboza 1999.

[123] *Urubanza rwa Blaškić* mu rw'iremezo, Urubanza N° IT-95-T, Urugereko rwa mbere rw'iremezo I, 3 Werurwe 2000.

> Urugereko rusanga ibitegenywa mu ngingo ya 101 y'Amategeko bitabuza igenenwa ry'igihano kimwe rukumbi ku byaha byinshi.

108. Ikindi kandi, Urugereko rw'ubujurire rusanga kugena igihano kimwe rukumbi ku byaha byinshi ari byo Urukiko mpuzamahanga rwa gisirikari rw'i Nuremberg rwakoresheje.[124]

109. Biragaragara rero ko Urugereko rwa mbere rw'iremezo rufite ububasha bwo gutanga igihano kimwe cyangwa byinshi mu gihe uregwa ahamwa n'ibyaha bikubiye mu birego binyuranye. Ikibazo ni ukumenya icyo Urugereko rushingiraho mu gukoresha ubwo ububasha bwarwo busesuye ruhitamo itangwa ry'igihano kimwe rukumbi.

110. Kuri icyo kibazo, Urugereko rw'ubujurire rusanga Urugereko rwa mbere rw'iremezo I rw'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho Icyahoze Cyitwa Yugosilaviya ku bijyanye n'imiterere yihariye y'urubanza rwa *Blaškić,* rwaravuze ko:

> …ibyaha Uregwa akurikiranyweho byahawe inyito nyinshi zitandukanye, ariko bikaba byose biri mu murongo umwe w'ibikorwa by'ubugome, byakorewe mu karere k'igihugu kazwi, mu gihe urebye kirekire […] Kubera urwo ruhurirane rw'ibintu, Urugereko rusanga hakwiye kugenwa igihano kimwe rukumbi ku byaha byose bihama Uregwa.

Iyo myumvire ni yo yakoreshejwe mu rubanza rwa *Jelisić*.[125]

111. Urugereko rw'ubujurire ruremera imyumvire yakoreshejwe mu rubanza rwa *Blaškić*, ko igihe ibyaha uregwa akurikiranyweho, uko byakwitwa kose mu rwego rw'amategeko, biri mu murongo umwe rukumbi w'ibikorwa by'ubugome, byakorewe mu karere n'igihe runaka, hashobora gutangwa igihano kimwe rukumbi ku byaha byose bihama uregwa, iyo Urugereko rwa mbere rw'iremezo rubyemeje. Ikibazo ni ukumenya niba uru rubanza rwujuje izo ngingo ngenderwaho.

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[124] Nk'urugero, reba *The Justice case: Josef Altstötter & others* ; *Urubanza rwa Milch* n'*Urubanza rwa Friedrich Flick na bagenzi be batanu* (Urukiko rwa gisirikari rwa Leta Zunze Ubumwe z'Amerika, Nuremberg,1947).

[125] *Urubanza rwa Jelisić* mu rw'iremezo*,* Urubanza N° IT-95-T, Urugereko rwa mbere rw'iremezo I, 14 Ukuboza 1999, igika cya 137.

112. Ujurira yemeye kandi ahamwa n'ibyaha bitandatu bishingiye ku ngingo ya 2 (Jenoside) n'iya 3 (Ibyaha byibasiye inyokomuntu) za Sitati. Ibyaha akurikiranyweho byakorewe mu Rwanda mu gihe runaka (1994) bikaba kandi biri mu murongo umwe rukumbi w'ibikorwa by'ubugome byakozwe mu rwego rw'igitero rusange kandi kiri kuri gahunda cyagabwe ku basiviri b'Abatutsi mu Rwanda kigamije kubica. Urugereko rw'Ubujurure rusanga umuntu arebye ibintu uko byari byifashe, byari bikwiriye kugena igihano kimwe rukumbi ku byaha bitandukanye byahamye Ujurira.

113. Rumaze gusanga ingingo zatanzwe n'Ujurira nta shingiro zifite, Urugereko rw'ubujurire ntirwemeye iyi mpamvu y'ubujurure bwe.

C. <u>Impamvu y'ubujurire ya kane, iya gatanu, iya karindwi n' iya munani</u>

114. Mu mpamvu y'ubujurire ya kane, iya gatanu, iya karindwi n'iya munani, ikibazo cy'ingenzi Ujurira avuga ni uko Urugereko rwa mbere rw'iremezo ngo rwakoze ikosa ryo mu rwego rw'amategeko, ngo kuko rutarazirikanye zimwe mu mpamvu ngabanyagihano, maze rukamukatira igihano gikabije. Ujurira avuga ko Urugereko rwa mbere rw'iremezo rwakoze ikosa ngo kubera ko rutafashe ubwemeracyaha bwe nk'impamvu nyoroshyacyaha, bityo ngo rumugabanyirize igihano. Avuga kandi ko Urugereko rwa mbere rutazirikanye imibereho ye bwite n'ubufatanye bukomeye yagiranye na Porokireri (akaba yaremeye kandi kuzabukomeza no mu bihe bizaza[126]), kandi mu kumugenera igihano rukaba ngo rutarazirikanye imikorere rusange ikurikizwa mu nkinko zo mu Rwanda mu byerekeye kugena ibihano by'igifungo.

115. Kugira ngo ubujurire bwe bushingiye kuri izo ngingo bushobore kugira icyo bugeraho, Ujurira agomba kwerekana ko Urugereko rwa mbere rw'iremezo rwarengereye ububasha bwarwo busesuye bwo gufata icyemezo, ku buryo icyemezo cyafashwe ku gihano cyaba impfabusa. Agomba kandi kugaragaza ko igihano yahawe kirenze ububasha busesuye bw'Urugereko nk'uko buteganywa na Sitati n'Amategeko.

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[126] Inyandikomvugo y'iburanisha, 28 Kamena 2000, imp. 46 - 47.

116. Urugereko rw'ubujurire rusanga Sitati n'Amategeko bitegeka Urugereko rwa mbere rw'iremezo kuzirikana impamvu nyoroshyacyaha kimwe n'urutonde rusange rw'ibihano by'igifungo bikoreshwa n'inkiko z'u Rwanda[127]. Bityo rero, Urugereko runyuranije n'ibyo rwaba rukoze ikosa ryo mu rwego rw'amategeko. Mu byo ingingo ya 23 ya Sitati iteganya, harimo ko mu kugena igihano « Urugereko rwa mbere rw'iremezo rwifashisha urutonde rusange rw'ibihano by'igifungo bikoreshwa n'inkiko zo mu Rwanda » kandi ko mu kugena ibyo bihano Urugereko « ruzirikana ingingo zinyuranye zirimo uburemere bw'icyaha n'imibereho yihariye y'uwakatiwe »[128]. Ingingo ya 101 B) y'Amategeko iteganya ko :

> Mu kugena ibihano, Urugereko rwa Mbere rw'iremezo ruzirikana ibiteganywa n'ingingo ya 23 ya Sitati mu gika cya 2, ndetse n'ibi bikurikira:
>
> (i) Impamvu nyongeragihano ;
>
> (ii) Impamvu nyoroshyagihano harimo n'uburyo uregwa yafashije Porokireri mbere cyangwa nyuma y'uko icyaha kimuhama;
>
> (iii) Urutonde rusange rw'ibihano by'igifungo rukurikizwa n'inkiko zo mu Rwanda;
>
> (iv) Igihe uwahamwe n'icyaha yamaze muri gereza afungiwe icyo cyaha ku cyemezo cy'urukiko rw'igihugu iki n'iki, hakurikijwe ingingo ya 9 ya Sitati, igika cya 3).

117. Ingingo ya 101 B) y'Amategeko itegeka Urugereko rwa mbere rw'iremezo « kuzirikana » ibivuzwe haruguru, rutabikora rukaba rukoze ikosa ryo mu rwego rw'amategeko. Kuba iryo kosa ryatuma icyemezo cyafashwe kiba cyangwa kitaba impfabusa, ibyo ni ikindi kibazo.

118. Muri uru rubanza, Urugereko rwa mbere rw'iremezo rwazirikanye ubwemeracyaha bw'Ujurura kuri buri kirego, hamwe n'Amasezerano yo kwemera icyaha[129]. Muri ayo Masezerano, Ujurira yiyemereye neza ibikorwa byose bivugwa mu Nyandiko y'ibirego, kimwe n'uruhare yabigizemo nka Minisitiri w'Intebe. Yohani Kambanda yemera kuba, ari Minisitiri w'Intebe, yarashishikarije, agatera inkunga kandi agashyigira abaperefe, ababurugumesitiri n'abaturage mu bwicanyi bwibasiye abasivili, by'umwihariko Abatutsi

[127] Ingingo ya 23 1) ya Sitati.
[128] Ingingo ya 23 2) ya Sitati.
[129] Reba haruguru izindi ngero zerekeye amasezerano yo kwemera icyaha.

kimwe n'Abahutu batari intagondwa.[130] Urugereko rwazirikanye uburemere bw'ibyo byaha, rwanzura ruvuga ko kuba Ujurira yarakoresheje nabi umwanya w'ubutegetsi yarimo, akanatatira icyizere abaturage bari bamufitiye, kandi yari afite inshingano, nka Minisitiri w'Intebe, zo kurinda amahoro no kubungabunga umutekano, ibyo ari impamvu nyongeracyaha.[131] Rwasuzumye kandi impamvu nyoroshyacyaha zatanzwe n'Ujurira, ari zo: kwemera icyaha kwe, ukwicuza kwe avuga ko kugaragarira mu bwemeracyaha bwe, kimwe n'ubufatanye bwe na Porokireri.[132] Nyamara ariko, Urugereko rwasanze nta bisobanuro yatanze ku birebana no kuba, ku bwende bwe, yaragize uruhare muri jenoside. Ntiyagaragaje kandi akababaro cyangwa ngo yicuze cyangwa ngo yifatanye n'abakorewe ibyaha bo mu Rwanda, habe no mu gihe Urugereko rwabimuheraga umwanya mu iburanisha ryo ku itariki ya 3 Nzeri 1998.[133]

119. Rumaze gusuzuma ingingo zatanzwe n'ababuranyi, cyane cyane kuba Ujurira yarafatanije kandi azakomeza gufatanya na Porokireri, kuba kwemera icyaha kwe bishobora gutuma abandi bantu bemera uruhare bagize kandi uko kwemera icyaha ubwabyo bikaba ari impamvu nyoroshyacyaha, Urugereko rwa mbere rw'iremezo ntibyarubujije kwemeza ko, ruzirikanye uburemere kamere bw'ibyaha byakozwe n'umwanya w'ubutegetsi ukomeye Ujurira yarimo,[134] impamvu nyongeragihano zijyanye n'ibyaha by'ubugome yakoze, zirusha ingufu impamvu nyoroshyagihano, cyane cyane ko Ujurira, igihe yakoraga ibyo byaha, yari afite umwanya ukomeye muri Guverinoma.[135] Ujurira rero yakatiwe igihano cy'igifungo cya burundu.[136]

120. Inyandiko y'urubanza yerekana ko Urugereko rwa mbere rw'iremezo rwazirikanye rwose impamvu nyoroshyacyaha zatanzwe n'Ujurira n'izatanzwe na Porokireri, ruzirikana kandi ihame rivuga ko ubwemeracyaha, nk'impamvu nyoroshyacyaha, butuma igihano kigabanywa, n'urutonde rusange rw'ibihano by'igifungo bitangwa n'inkiko zo mu Rwanda. Urugereko rwa mbere rw'iremezo rwazirikanye ko Porokireri yarusabye

[130] Urubanza mu rw'iremezo, igika cya 39.
[131] Urubanza mu rw'iremezo, ibika 42 - 44.
[132] Urubanza mu rw'iremezo, igika cya 46.
[133] Urubanza mu rw'iremezo, igika cya 51.
[134] Urubanza mu rw'iremezo, igika cya 61.
[135] Urubanza mu rw'iremezo, igika cya 62.
[136] Urubanza mu rw'iremezo: Imikirize y'urubanza

« gufata nk'impamvu nyoroshyacyaha ikomeye, kuba Kambanda yarafatanyije na we ku buryo bukomeye, kandi akaba yari yemeye gukomeza gukorana na we no mu bihe bizaza »[137] Urugereko rwazirikanye kandi ubwemeracyaha bw'Ujurira no kuba Ujurira na Porokireri :

> …bombi ba[ra]sabye bakomeje Urugereko gufata ubwemeracyaha bwa Yohani Kambanda nk'uburyo bwo kwicuza, gusaba imbabazi n'ubushake bwo kwemera ko yakoze ibyaha. Urugereko ariko runazirikana ko kwemera icyaha bishobora no guterwa n'indi mpamvu itari ugushaka kwicuza ibyaha. Ruremera ariko ko inyishi mu nkiko mpanabyaha zo mu bihugu zifata ubwemeracyaha nk'impamvu ngabanyagihano igomba kwitabwaho.[138]

121. Byongeye kandi, ku birebana no kuzirikana urutonde rusange rw'ibihano by'igifungo bitangwa n'inkiko zo mu Rwanda, Urugereko rwa mbere rw'iremezo rwasesenguye icyo kibazo ku buryo burambuye mu bika kuva ku cya 18 kugera ku cya 25 by'Inyandiko y'urubanza, nyuma rufata umwanzuro ushyize mu gaciro ruvuga ko « uru rutonde rushobora kwifashishwa ariko ko bitavuga ko rugomba gukurikizwa byanze bikunze ».[139]

122. Bityo rero, Urugereko rw'ubujurire rusanze bigaragara ko Urugereko rwa mbere rw'iremezo rwarazirikanye buri mpamvu nyoroshyacyaha mu zavuzwe haruguru zatanzwe n'Ujurira, mbere yo gufata icyemezo, nk'uko bisabwa na Sitati n'Amategeko, rukaba rero nta kosa ryo mu rwego rw'amategeko rwakoze ku birebana n'iki kibazo.

123. Nyamara ariko, hari ikibazo cya kabiri cyo kumenya niba Urugereko rwa mbere rw'iremezo rwaritaye, uko bikwiye, kuri izo ngingo zimaze kuvugwa. Mu yandi magambo, ikibazo ni ukumenya niba Urugereko rwa mbere rw'iremezo rwarahaye impamvu nyoroshyacyaha agaciro zikwiye. Nk'uko Porokireri abibona, « Imyanzuro

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[137] Urubanza mu rw'iremezo, igika cya 47.
[138] Urubanza mu rw'iremezo, igika cya 52.
[139] Urubanza mu rw'iremezo, igika cya 23, bishingiye ku Cyemezo cy'Urugereko rwa mbere rw'iremezo cyafashwe mu *Rubanza rwa Erdemović* mu rw'iremezo, 1 Ugushyingo 1996. Reba kandi Icyemezo mu bujurire cyerekeye imanza zijyanye n'itangwa ry'igihano, *Urubanza rwa Tadić* mu rw'iremezo N°. IT-94-1-A na IT-94-1-A *bis*,Urugereko rw'ubujurire, 26 Mutarama 2000, igika cya 21 n'Impamvu z'ubujurire, *Urubanza rwa Serushago*, N° TPIR-98-39-A, Urugereko rw'ubujurire, 6 Mata 2000, igika cya 30.

y'Ujurira urebye ntivuga ko Urugereko rwa mbere rw'iremezo rutazirikanye impamvu nyoroshyacyaha, ivuga ahubwo ko Urugereko rutahaye izo mpamvu agaciro gahagije.[140]

124. Urugereko rwa mbere rw'iremezo rufite ububasha busesuye bwo kugena agaciro k'impamvu nyoroshyacyaha. Iyo Ujurira adatanze ingingo zigaragaza ko Urugereko rwa mbere rw'iremezo rwatandukiye mu gukoresha ubwo bubasha, ku buryo igihano rwagennye kiba kitajyanye n'uko Sitati n'Amategeko bibiteganya, iyo mpamvu y'ubujurire nta gaciro ihabwa.

125. Urugereko rw'ubujurire rusanga ibyaha Ujurira akurikiranyweho bifite uburemere bwihariye. Igihano gitanzwe kigomba kugaragaza uburemere bwihariye bw'umugambi mubisha. Urugereko rw'ubujurire rw'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho Icyahoze Cyitwa Yugosilaviya rwasanze « gusuzuma uburemere bw'imyifatire y'Uregwa ubusanzwe ni yo ngingo y'ibanze urukiko ruheraho mu kugena igihano gikwiye ».[141] Mu kugenera igihano Ujurira, Urugereko rwa mbere rw'iremezo rwasanze :

> (v) Ibyaha by'ubugome Yohani Kambanda ashinjwa bifite uburemere byihariye ; kuba byari rusange, byarabaye agahomamunwa kandi bikaba byari kuri gahunda, bituma bitera ishozi umuryango muntu ;
>
> (vi) Yohani Kambanda yakoze ibyo byaha by'ubugome abizi neza kandi yabigambiriye ;
>
> (vii) Ikindi kandi, nka Minisitiri w'Intebe, Yohani Kambanda yari afite inshingano n'ubushobozi byo kurengera Abanyarwanda, nyamara ararenga atatira icyo cyizere.[142]

126. Muri uru rubanza, Urugereko rwa mbere rw'iremezo rwagereranyije impamvu nyoroshyacyaha n'impamvu nyongeracyaha, maze rwanzura ko « impamvu nyongeracyaha zijyana n'ibyaha by'ubugome Yohani Kambanda yakoze, zisumba kure impamvu nyoroshyacyaha zimurengera, kandi ko kuba igihe Yohani Kambanda yakoraga

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140 Imyanzuro ya Porokireri, igika cya 4.152. Porokireri atanga iyi ngingo ku mpamvu y'ubujurire ya kane, ariko Urugereko rw'ubujurire rusanga iyo ngingo ijyana muri rusange n'ibibazo byose byabyukijwe muri uru rubanza.

141 *Urubanza rwa Aleksoski* mu bujurire, Urubanza N° IT-95-14/1-A, Urugereko rw'ubujurire, 24 Werurwe 2000, igika cya 182. Reba kandi *Urubanza rwa Delalić na bagenzi be* mu rw'iremezo, Urubanza N° IT-96-21-T, Urugereko rwa mbere rw'iremezo II, 16 Ugushyingo 1998, igika cya 1225; n'*Urubanza rwa Kupreškić na bagenzi be* mu rw'iremezo, Urubanza N° IT-95-16-T, Urugereko rwa mbere rw'iremezo II, 14 Mutarama 2000, igika cya 852.

142 Urubanza mu rw'iremezo, igika cya 61.

ibyo byaha by'ubugome, yari ashinzwe imirimo isumba iyindi muri Guverinoma, bituma bidashoboka koroshya igihano cye ».[143] Ni yo mpamvu rwakatiye Ujurira igihano cyo gufungwa burundu.[144] Urugereko rw'ubujurire rusanga icyo gihano gishingiye ku bubasha busesuye bugenwa na Sitati n'Amategeko. Ntirubona rero impamvu n'imwe yo kuvanaho icyemezo cyafashwe n'Urugereko rwa mbere rw'iremezo.

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[143] Urubanza mu rw'iremezo, igika cya 62.

[144] Inyandiko y'umwimerere y'urubanza yari mu rurimi rw'igifaransa. Mu nyandiko yo mu cyongereza, aka gace k'interuro kasemuwe ko ari « *life imprisonment »*. Urugereko ruragaragaza ko ari cyo gihano gisumba ibindi Urukiko rushobora gutanga kandi ko umusemuzi w'indimi yagombaga kuvuga « *imprisonment for ...the remainder of his life* » , nk'uko biteganywa mu ngingo ya 101 A) y'Amategeko. Rwongeye kwemeza ko icyo gihano gisumba ibindi Urukiko rushobora gutanga (kimwe n'ikindi gihano icyo ari cyo cyose cy'igifungo), kirangizwa hakurikijwe amategeko akurikizwa mu gihugu uwakatiwe afungiyemo, ariko bikagenzurwa n'Urukiko (Ingingo ya 26 ya Sitati). Icyo gihano cyo gufungwa gishobora kugabanywa igihe icyemezo nk'icyo giteganywa n'igihugu bireba kandi igihe Perezida w'Urukiko, amaze kugisha inama abacamanza, abyemeje (Ingingo ya 27 ya Sitati).

V. IMIKIRIZE Y'URUBANZA

URUGEREKO RW'UBUJURIRE

Rushingiye ku ngingo ya 24 ya Sitati n'iya 118 y'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso ;

Rumaze kubona imyanzuro y'ababuranyi yanditse n'iyatanzwe mu magambo mu iburanisha ryo ku itariki ya 27 n'iya 28 Kamena 2000 ;

Ruburanishiriza mu ruhame;

Rwemeje, ku bwumvikane bw'abacamanza, ko impamvu uko ari umunani zatanzwe mu ijuririra ry'icyemezo cyo ku itariki ya 4 Nzeri 1998 cyafashwe n'Urugereko rwa mbere rw'iremezo I nta shingiro zifite.

Rushimangiye ko Yohani Kambanda ahamwa n'ibyaha bikubiye mu birego byose akurikiranyweho;

Rushimangiye igihano yakatiwe cyo gufungwa burundu.

Bikozwe mu ndimi z'icyongereza n'igifaransa, ariko inyandiko yo mu rurimi rw'igifaransa ni yo igenderwaho.

Claude Jorda, Perezida w'Inteko
[umukono]

Lal Chand Vohrah
[umukono]

Mohamed Shahabuddeen
[umukono]

Rafael Nieto-Navia
[umukono]

Fausto Pocar
[umukono]

Bikorewe i La Haye (mu Buholandi), ku itariki ya 19 Ukwakira 2000.

[Ikirangantego cy'Urukiko]