Urukiko Mpanabyaha Mpuzamahanga
Rwashyiriweho u Rwanda

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URUGEREKO RW'UBUJURIRE

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POROKIRERI

Aburana na:

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Urubanza No ICTR-96-4-A

INYANDIKO Y'URUBANZA MU BUJURIRE

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1. Urugereko rw'Ubujurire rw'Urukiko Mpanabyaha Mpuzamahanga 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 (hano hasi byitwa « Urugereko rw'Ubujurire", na «Urukiko ») rwashyikirijwe ubujurire na Jean-Paul Akayesu (« Akayesu », cyangwa « Ujurira») na Porokireri, bajuririra imikirize y'urubanza yo ku itariki ya 2 Nzeri 1998 (« Urubanza ») n'igenabihano ryo ku wa 2 Ukwakira 1998 (« Igenabihano ») byemejwe n'Urugereko rwa Mbere rw'Iremezo, Inteko ya mbere (« Urugereko rwa Mbere rw'Iremezo »), mu rubanza *Porokireri aburanamo na Jean-Paul Akayesu*, rufite No. ICTR-96-4-T.[97]

2. Rumaze kumva ababuranyi no gusuzuma imyanzuro yabo, Urugereko rw'Ubujurire **RUCIYE URU RUBANZA MU BURYO BUKURIKIRA:**

[97] Urubanza, *Porokireri aburana na Jean-Paul Akayesu, urubanza No. ICTR-96-4-T, 2 Nzeri 1998,* n'Igenabihano, Urubanza *Porokireri aburana na Jean-Paul Akayesu, urubanza No. ICTR-96-4-T, 2 Ukwakira 1998.* Urutonde rw'amazina yagiye akoreshwa hamwe n'impinamagambo biri ku mugereka C.

I. INTANGIRIRO

A. Urubanza mu Rugereko rwa Mbere rw'Iremezo.

3. Mu Nyandiko y'ibirego ya mbere, Porokireri yareze Akayesu nka Burugumesitiri wa Komine ya Taba, Segiteri ya Murehe, kuba yaritabiriye ibikorwa by'ubugome byakorewe muri iyo komine hagati y'itariki ya 7 Mata n'impera za Kamena 1994 ('Inyandiko y'ibirego ya mbere'). Akayesu yarezwe hashingiwe ku ngingo ya 6 1) ya Sitati (uburyozwacyaha bwa nyirubwite) ibyaha cumi na bibiri bitandukanye, Urukiko Mpuzamahanga rufitiye ububasha bwo kuburanisha ari byo : jenoside, icyaha gihanwa hashingiwe ku ngingo ya 2 3 e) ya Sitati (ikirego cya 1); kuba icyitso cy'abakoze jenoside, icyaha gihanwa hashingiwe ku ngingo 2 3 e) ya Sitati (ikirego cya 2); ibyaha byibasiye inyokomuntu, bihanwa hashingiwe ku ngingo ya 3 a), 3b) n'iya 3 f) (ibirego bya 3, 5,7, 9 na 11); gushishikariza ku buryo butaziguye kandi mu ruhame gukora jenoside, icyaha gihanwa hashingiwe ku ngingo 2 3 c) ya Sitati (ikirego cya 4); gukora ibikorwa binyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve yo mu wa 1949, nk'uko yasubiwemo mu ngingo ya 4 a) ya Sitati (ibirego bya 6, 8,10 na 12).[2]

4. Ku itariki ya 17 Kamena 1997, inyandiko ikubiyemo ibirego ya mbere yarahinduwe yongerwamo ibindi birego bitatu bishya: ubugizi bwa nabi bwibasire imyanya ndangagitsina, ubuhotozi n'ibikorwa bibabaza umubiri, byakozwe hagati y'itariki ya 7 Mata no mu mpera za Kamena 1994 (Inyandiko y'ibirego). Akayesu rero akaba yararezwe ibyaha byibasiye inyokomuntu (gusambanya ku gahato), bihanwa hakurikijwe ingingo ya 3 g) ya Sitati (ikirego cya 13), ibyaha byibasiye inyokomuntu (ibikorwa birenze kameremuntu), bihanwa hakurikijwe ingingo ya 3 i) ya Sitati (ikirego cya 14) n'ibikorwa binyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve yo mu wa 1949 n'ingingo 4 2) e) n'Inyongera yayo ya II, nk'uko byasubiwemo mu ngingo ya 4 e) ya Sitati (guhungabanya agaciro ka muntu, nko gusambanya ku gahato, ibikorwa bitesha

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[2] Nk'uko bivugwa mu Nyandiko y'ibirego ya mbere.

agaciro, bikoza isoni n'ibikorwa by'iterasoni) (ikirego cya 15).[3] Ibyo byaha akaba yabiryozwa ku giti cye hashingiwe ku ngingo ya 6 1) n'iya 6 3) za Sitati cyangwa se kuri imwe muri izo ngingo.

5. Akayesu yahakanye ibyaha byose bikubiye mu Nyandiko y'ibirego ya mbere (ku itariki ya 30 Gicurasi 1996) no mu yahinduwe (ku itariki ya 23 Ukwakira 1997). Urubanza rwatangiye ku itariki ya 9 Mutarama 1997 rupfundikirwa ku ya 26 Werurwe 1998, itariki abacamanza batangiriyeho kwiherera kugira ngo baruce.

6. Mu rubanza rwo ku itariki ya 2 Nzeri 1998, Urugereko rwa Mbere rw'Iremezo rwemeje ko Akayesu agomba kuryozwa ku giti cye, hashingiwe ku ngingo ngingo ya 6 1) ya Sitati, ibyaha bikubiye mu birego bikurikira:

Ikirego cya 1:	Jenoside.
Ikirego cya 4:	Guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside.
Ibirego bya 3, 5, 7, 9, 11, 13na 14:	Ibyaha byibasiye inyokomuntu.

7. Rwasanze adahamwa n'ibyaha bikubiye mu birego bikurikira:

Ikirego cya 2:	Kuba icyitso cy'abakoze jenoside.
Ibirego bya 6, 8, 10, 12 na 15:	Ibikorwa binyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve yo mu wa 1949. Ku birebana n'ikirego cya 15, ibikorwa binyuranye n'Inyongera ya II y'ayo Masezerano.

[3] Reba Inyandiko y'ibirego.

8. Uburyozwacyaha bwa Akayesu ku giti cye ni ubuteganywa gusa n'ingingo ya 6 1 ya Sitati. Mu rubanza rw'igenabihano rwo ku itariki ya 2 Ukwakira 1998, Akayesu yakatiwe ibihano byinshi by'igifungo, kuva ku myaka icumi kugeza ku gifungo cya burundu, kubera ibyaha byamuhamye. Urugereko rwa Mbere rw'Iremezo rwemeje ko ibyo bihano byose bikomatanywa, n'uko rukatira Akayesu igihano kimwe rukumbi cyo gufungwa burundu.

a. **Iburanisha mu bujurire** [4]

9. Akayesu na Porokireri bajuririye bose imikirize y'urubanza. Akayesu yajuririye kandi n'igihano yakatiwe.

10. Mu magambo make, impamvu z'ubujurire za Akayesu ziteye zitya[5] :

1. Akayesu yavukijwe uburenganzira bwo kunganirwa na avoka yihitiyemo.
2. Akayesu yavukijwe uburenganzira bwo kunganirwa na avoka ubishoboye.
3. Kutigenga no kubogama by'Urukiko.
4. Amakosa simusiga agaragara mu rubanza rumuhamya icyaha:

   a. Guhindura Inyandiko y'ibirego ya mbere mu buryo bunyuranyije n'amategeko.
   b. Gukoresha ku buryo butari bwo ubuhamya bwanditse bwatanzwe mbere.
   c. Kutubahiriza ibikurikizwa iyo hariho ugushidikanya kunyuze mu gaciro, amakosa simusiga mu rwego rw'ibyabaye.
   d. Gushingira ku bimenyetso bitatangiwe mu iburanisha.
   e. Ibindi bibazo

      i. Kwakira rubyibwirije raporo za anketi za Loni.
      ii. Gusemura
      iii. Inyandikomvugo zidahura n'ibyavuzwe
      iv. Ihererekanya ry' ibimenyetso
      v. Abatangabuhamya b'impuguke
      vi. Kurinda abatangabuhamya
      vii. Gushyira igitugu ku batangabuhamya no kwivanga k'Urukiko
      viii. Ibiganiro byabaye mu rukiko hagati y'umucamanza n'umutangabuhamya mu buryo budateganywa n'amategeko

5. Leta itagendera ku mategeko na busa
6. Ubuhamya butemewe kuko bushingiye ku nkuru mbarirano

[4] Amagambo arambuye yerekeye iyi miburanishirize ari ku mugereka A
[5] Muri rusange, impamvu z'ubujurire zasubiwemo hano nk'uko Akayesu yazitanze nuko Urugereko rw'Ubujurire rwazikubiye hamwe. Urutonde rurambuye rusubirwamo mu mugereka B.

7. Amakosa yagaragaye mu ibazwa ry'ingenzi n'irinyomoza
8. Gutanga mu buryo budakurikije amategeko ubuhamya bw'abagabo b'Ubwunganizi
9. Ibarwa umutangabuhamya wiswe DAAX yandikiye abacamanza
10. Gufungwa mu buryo bunyuranyije n'amategeko[6]
11. Kujuririra urubanza rw'igenabihano

   i. Kuba yaravukijwe uburenganzira bwo kugira umwunganira igihe cy'iburanisha ryabanjirije isomwa ry'urubanza rw'igenabihano, ku itariki ya 28 Nzeri 1998
   ii. Kuba yaravukijwe uburenganzira bwo kugira umwunganira mu gihe cy'iburanisha ryo ku wa 2 Ukwakira 1998
   iii. Igihano kidashyize mu gaciro kandi kidafite ishingiro

11. Ingingo z'ubujurire za Porokireri ziteye zitya[7]:

1. Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amategeko rukoresha inshoza "umukozi wa Leta" cyangwa uhagarariye Guverinoma mu kugena abantu bagomba kuryozwa ibikorwa binyuranyije ku buryo bukomeye n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve n'Inyongera yayo ya II (ibika 630-631; igika 640).

2. Ingingo ya mbere iramutse itakiriwe: Rumaze gukoresha inshoza y'"umukozi wa Leta cyangwa uhagarariye Guverinoma", Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'ibyabaye rwemeza ko Akayesu atabarirwaga mu bantu bashobora kuryozwa icyaha hashingiwe ku ngingo ya 4 (ibika 641-643).
3. Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amategeko ruvuga ko hagomba kuba hariho impamvu y'ivangura kugira ngo icyaha kivugwa mu ngingo ya 3 cyitwe icyaha cyibasiye inyokomuntu, ubwo rwemezaga ko "uwahohotewe agomba kuba yarishwe kubera impamvu z'ivangura zishingiye ku bwenegihugu bwe, ubwoko bwe, umutwe wa politiki arimo cyangwa idini arimo" (igika 590).

4. Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amategeko ruvuga ko 'gushishikariza'[8] guteganywa n'ingingo ya 6 1) kugomba kuba kutaziguye kandi kugakorerwa mu ruhame.

[6] Akayesu yasabye Urugereko rw'Ubujurire ko Icyemezo cyafashwe ku ya 22 Kanama 2000 cyasubirwamo. Muri icyo cyemezo icyifuzo cyo kongeramo iyo ngingo y'ubujurire nticyakiriwe. Reba agace kavuga ku birebana n'iyo mpamvu y'ubujurire.

[7] Zanditswe nk'uko Porokireri yazitanze mu nyandiko ye y'ubujurire.
[8] Umwimerere w'Inyandiko y'ubujurire bwa Porokireri yatanzwe mu Cyongereza. Ikoresha ijambo 'instigation'. Urugereko rero rwakoresheje iryo ijambo ry'umwimerere aho gukoresha iryahinduwe riri muri Sitati (incitation).

II. IBIBAZO RUSANGE BYABYUKIJWE MU BUJURIRE

A. Iyakirwa ry'ubujurire bwa Porokireri

1. Ibivugwa n'ababuranyi

12. Akayesu avuga ko ubujurire bwa Porokireri butagomba kwakirwa kubera ko nta kosa na rimwe mu yo Porokireri agereka ku Rugereko rwa Mbere rw'Iremezo riteganywa n'ibivugwa mu ngingo ya 24 ya Sitati.[9] Koko rero, mu makosa yose avugwa na Porokireri nta na rimwe rifite ingaruka ku rubanza kandi nta kintu na kimwe asaba cyagira icyo gihindura ku rubanza rwahamije ujurira icyaha. Akayesu yemera ko Urugereko rw'Ubujurire rwa TPIY rwasuzumye, mu rubanza rwa Tadic mu bujurire, ibibazo bitagengwa n'ingingo ya 25 ya Sitati ya TPIY ariko bikaba bifite icyo byunguye muri rusange ubukemuramanza bw'Urukiko.[10] Ariko Akayesu abona ko iby'urwo rubanza bigomba gutandukanywa n'ibimureba. Mu rubanza rwa Tadic mu bujurire, Urugereko rw'Ubujurire rwasuzumye ibibazo by'ingirakamaro muri rusange hamwe n'izindi mpamvu z'ubujurire zihuje koko n'ingingo 25 ya Sitati ya TPIY kandi mu rwego rw'Ubujurire bwihariye.[11] Bivuze ko niba muri uru rubanza Urugereko rw'Ubujurire ruhisemo kumva ubujurire bwa Porokireri, ruzaba runyuranyije rwose n'ingingo za Sitati, bityo rukaba rushyizeho urundi rwego rw'Ubujurire rudashingiye ku mategeko[12], rufite ububasha ngishwanama ku birebana n'ibibazo bibyutsa impaka zidafite akamaro mu

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9 Porokireri amaze gutanga imyanzuro ye, Akayesu yayishubije mu nyandiko yise '*Requete en irrecevabilité du Mémoire de l'Appelant et Mémoire de l'intimé'* aho asaba Urugereko rw'Ubujurire kutakira ubujurire bwa Porokireri. Reba umugereka A. Reba Igisubizo cya Akayesu, ibika 1-14 ; Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, urup. 4.

10 Inyandiko y'iyi ngingo ihuye n'iy'ingingo ya 24 ya Sitati ya TPIR.

11 Igisubizo cya Akayesu, igika 5.

12 Igisubizo cya Akayesu, igika 5.

rubanza kandi bya rusange.[13] Akayesu yibutsa ko mu mategeko y'ibihugu, inzego zisuzuma ibibazo bisa n'ibyo ziba zibyemerewe n'amategeko.

13. Akayesu avuga kandi ko impamvu zose z'ubujurire bwa Porokireri zirebana n'ibitekerezo by'ingoboka bidafite icyo bimariye urubanza. Akayesu abona ko Porokireri ashaka gusa kwagura ububasha bw'Urukiko[14] kuko mu bibazo byose nta na kimwe batumvikanaho cyangwa cyakurura impaka zifatika yaba yarabyukije, kandi ko ibisabwa kugira ngo urwego rw'Ubujurire rwakire ubujurire bisa nk'aho ntabiriho'[15]. Yishingikirije ku bukemuramanza bw'inkiko zo muri Kanada [*Canada*], Akayesu asobanura ko ihame riha ababuranyi urubuga rwo kuvuguruzanya mu gihe cy'iburanisha ari rimwe mu mahame y'ingenzi akoreshwa n'Urukiko, kandi ko kubera iyo mpamvu atagombye guhamagarwa mu mpaka zishingiye ku bibazo bidafite akamaro mu rubanza. Akayesu abona ko bene ibyo bibazo bidashobora ubwabyo kujuririrwa.[16]

14. Porokireri yemera ko amakosa avugwa ko yakozwe ku birebana n'impamvu ya mbere, iya gatatu ndetse n'iya kane y'ubujurire, adatesha ubwayo agaciro imyanzuro yafashwe mu

[13] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, igika 6. Icyo Porokireri asaba n'ishyirwaho ry'ubundi buryo bushya bwo kujurira budashingiye ku mategeko. Reba Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, ibika 8-9 : ' Niba ingingo ya Porokireri yemewe, izatuma habaho urundi rukiko rushya rw'Ubujurire, rudafite amategeko arugenga, rudafite aho rushingiye, rudafite n'umusingi.'

[14] Igisubizo cya Akayesu, igika 9.

[15] Igisubizo cya Akayesu, igika 9.

[16] Muri rusange, Akayesu avuga ko buri mpamvu yatanzwe na Porokireri irebana n'amakosa yavuzwe adafite ingaruka n'imwe ku cyemezo cy'Urugereko rwa mbere rw'íremezo kandi ko imyanzuro inengwa nk'igitekerezo gusa. Ku birebana n'impamvu ya mbere n'iya kabiri, avuga ko 'Amagambo y'Urukiko yerekeranye n'ikibazo cya manda asa naho atari ngombwa na *obiter* ; niyo Urugereko rutayitaho, ntacyo byahindura ku myanzuro y'Urukiko yo kudakoresha ingingo ya 4 kubera ko nta rusobekerane ruri hagati y'ibikorwa bivugwa n'intambara. Ubujurire rero ntacyo bumaze' (sic). Ku birebana n'impamvu ya gatatu y'ubujurire bwa Porokireri, Akayesu asanga Porokireri atanga ibisobanuro by'ingingo ya 3 by'igihe kiri mbere, n'umwanzuro avugamo nta ngaruka n'imwe ufite ku cyemezo cy'Urukiko cyangwa ku mwanzuro urebana n'iyi ngingo. Ntashaka rero kujya mu mpaka na Porokireri ku bibazo bidafitanye isano ritaziguye na dosiye ye kandi n'umwanzuro wavamo nta ngaruka wamugiraho. Porokireri asaba Akayesu kujya mu mpaka zo mu rwego rw'intiti zitamureba, ahubwo zireba abandi baregwa. Ntiyemera ibisobanuro Porokireri atanga ku ngingo ya 3 cyangwa ngo abirwanye. Amagambo anengwa na Porokireri nta ngaruka afite ku cyemezo cy'Urukiko kandi naho Urugereko rw'Ubujurire rwakongera kuyasuzuma ntacyo byahindura. Naho ku birebana n'impamvu ya kane y'ubujurire, Akayesu asanga, kimwe n'iya gatatu, ko 'icyo Porokireri ashaka nta ngaruka cyagira k'ujurira kandi ko byafasha Porokireri kwagura imyumvire ya Sitati yinjizamo ibyayihejwemo. Porokireri arashaka rero gukosora Sitati kubw'igihe kiri imbere'Reba Igisubizo cya Akayesu, igika 8. Reba kandi Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, ibika 10-11 : 'Ntabwo twashatse, Banyakubahwa Bacamanza, kubikora kandi ntabwo twatekereje ko mwashoboraga yenda guhitamo dosiye nziza kurushaho, igiweho impaka n'ababuranyi mu mpaka zinyomozanya'.

rubanza ku birebana no guhamya icyaha Akayesu, kandi ko adahuye ku buryo butaziguye n'ibiteganywa n'ingingo ya 24 ya Sitati[17]. Ariko yemeza ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa abyutsa ibibazo bikomeye ku bijyanye n'ubukemuramanza bw'Urukiko[18]. Porokireri avuga ko, n'ubwo ingingo ya 24 ya Sitati igena imiburanishirize mu bujurire, umurimo w'Urugereko rw'Ubujurire utagarukira gusa ku biteganywa n'iyo ngingo; ahubwo, rushobora gusuzuma ibibazo bitavugwa mu buryo bweruye muri iriya ngingo ya 24 ya Sitati. Mu yandi magambo, Urugereko rw'Ubujurire rushobora gusuzuma amakosa adashobora ubwayo gutesha agaciro icyemezo cyangwa se ngo atume hemezwa ko urubanza rwaciwe nabi[19]. Porokireri asanga Urugereko rw'Ubujurire rwari rukwiriye gukurikiza imitekerereze y'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa Tadic mu bujurire, maze rukavuga icyo rutekereza ku bibazo rubona ko bifitiye akamaro ubukemuramanza bw'Urukiko'[20].

15. Naho ku kibazo cyo kumenya uwemerewe gutanga bene ubwo bujurire, Porokireri avuga ko hakurikijwe imikorere y'inkiko zinyuranye z'ibihugu, ashobora gusaba inama ku birebana n'amategeko azajya akurikizwa mu nkiko.[21] Cyakora, Porokireri avuga ko niba Urugereko rw'Ubujurire rusanga atabyemerewe (kubera imiterere y'amakosa avugwa no kubera ko ayo makosa adateganyijwe n'ingingo ya 24 ya Sitati), ashobora, nk'umunutu

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[17] Imyanzuro ya Porokireri, igika 1.17 ; Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, urup. 291

[18] Imyanzuro ya Porokireri , igika 1.17. Porokireri avuga ko Urugereko rw'Ubujurire rwasuzumye ibibazo birebana n'amategeko nk'ibyo, ko kandi ko ari ngombwa ko rugira icyo ruvuga kuri icyo kibazo kubera impamvu zinyuranye. Atanga urugero rw'ingingo y'isano n'intambara rutangwa n'Urugereko rwa Mbere rw'Iremezo mu rubanza, ingingo yavuzwe n'izindi ngereko zambere z'iremezo : 'ku birebana n'ibibazo byose bikubiye mu mpamvu zacu enye z'ubujurire, turibwira ko ibyi bibazo bifitiye akamaro kanini ubukemuramanza bw'Urukiko kandi byatuma amategeko mpanabyaha mpuzamahanga arushaho gutera imbere no kumvikana neza. Izi mpamvu zose zirebana n'ibibazo by'amategeko bifitiye akamaro ingereko zose za mbere z'iremezo'. Reba Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo, imp. 29-30.

[19] Igisubizo kinyomoza cya Porokireri, ibika 2.5-2.6; Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 299-301.

[20] Yibutsa urubanza rwa *Tadic* mu bujurire, Porokireri yerekana ko 'byaba byiza Urugereko rw'Ubujurire rusuzumye ubujurire rugafata n'icyemezo cyakwifashishwa mu manza zizaburanishwa mu gihe kizaza n'Ingereko za mbere z'iremezo ndetse kikifashishwa n'ababuranyi (sic), Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 307-308. Reba muri rusange Igisubizo cya Porokireri, ibika 2.6 kugeza 2.8

[21] Igisubizo cya Porokireri, ibika 2.10-2.14 ; Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 304-307.

uregwa mu bujurire, kubyutsa ibyo bibazo. Mu gusoza, Porokireri avuga ko Urugereko rw'Ubujurire rushobora na ndetse rubyibwirije gusuzuma ibyo bibazo.[22]

2. Isesengura ry'Urugereko

16. Ingingo ya 24 ya Sitati yerekana impamvu ababuranyi bashobora gushingiraho bajuririra urubanza rwaciwe n'Urugereko rwa Mbere rw'Iremezo.[23] Umuburanyi ubyukije impamvu yo kujurira yihariye agomba kwerekana ko hari ikosa riteganywa n'iyi ngingo iteye itya:

> 1. Urugereko rw'Ubujurire rwakira ubujurire butanzwe n'abakatiwe n'inteko z'Urugereko rwa Mbere rw'Iremezo, cyangwa butanzwe na Porokireri, kubera impamvu zikurikira:
>
>   a) Ukwibeshya ku ngingo z'itegeko bituma icyemezo giteshwa agaciro, cyangwa
>   b) Kwatumye urubanza rucibwa nabi.
>
> 2. Urugereko rw'Ubujurire rushobora kwemeza, kuvanaho cyangwa se gukosora ibyemezo byafashwe n'inteko z'Urugereko rwa Mbere rw'Iremezo.

17. Ingingo ya 24 ya Sitati yerekana aho isuzumwa ry'ubujurire ritangirira n'aho rigarukira. Kuri iyi ngingo, Urugereko rw'Ubujurire rwemeranya n'ibyavuzwe n'Urugereko rw'Ubujurire rwa TPIY ko 'hakurikijwe ingingo ya 25 ya Sitati, Urugereko rw'Ubujurire rukosora *gusa* amakosa yakozwe mu rwego rw'amategeko yatuma icyemezo giteshwa agaciro cyangwa amakosa ku byabaye yatumye urubanza rucibwa nabi.' (ntibishimangiwe mu nyandiko y'umwimerere).[24] Ariko na none, Urugereko rw'Ubujurire rushimangira ko, rutarenze ku bubasha bwarwo nk'uko buteganywa na Sitati, rushobora, rubyibwirije, gusuzuma ibibazo ibi n'ibi, nk'uko Urugereko rw'Ubujurire rwa TPIY rwabyemeje mu rubanza rwa *Erdemovic*[25].

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[22] Igisubizo cya Porokireri, ibika 2.16-2.17.

[23] Mu rubanza rwa *Tadic* mu bujurire (ingoboka mbanzirizarubanza) Urugereko rw'Ubujurire rwa TPIY rwibukije ko ingingo 25 ya Sitati ya TPIY (twibutse ko iyo ngingo isa n'iya 24 ya Sitati ya TPIR) 'iteganya uburyo bwo kujurira bukurikizwa n'Urukiko[...] kandi [...] kandi ihuye n'Amasezerano Mpuzamahanga yerekeye uburenganzira mbonezamubano n'ubwa politiki, ashimangira uburenganzira bwo kujurira' (igika 4).

[24] Urubanza rwa *Furundzija* mu bujurire igika 40.

[25] Urugereko rw'Ubujurire rwa TPIY rwagize ruti : 'Urugereko rw'Ubujurire, rubyibwirije, rushingiye ku bubasha ruhabwa nk'urwego rw'Ubujurire, mu gihe rwari rumaze gushyikirizwa ubujurire n'umwe mu baburanyi, rwabyukije

18. Mbese Urugereko rw'Ubujurire rushobora gusuzuma amakosa yose bivugwa ko yaba yarakozwe mu rwego rw'amategeko? Mu ikubitiro, ingingo ya 24 1) ivuga gusa amakosa yakozwe mu rwego rw'amategeko ashobora gutesha agaciro icyemezo, ni ukuvuga amakosa, agira ingaruka ku cyemezo mpamyacyaha cy'Urukiko, iyo agaragaye. Nyamara, Urugereko rw'Ubujurire rwa TPIY rwemeye gusuzuma amakosa yari yakozwe mu rwego rw'amategeko kandi nta ngaruka yari afite ku cyemezo cy'Urugereko [rwa Mbere rw'Iremezo], adateganywa mu buryo bweruye n'ingingo za Sitati zigenga imiburanishirize mu bujurire. Mu rubanza rwa *Tadic*, Porokireri yari yatanze impamvu nyinshi z'ubujurire, harimo eshatu zabyutsaga muri rusange ibibazo byari bifitiye akamaro ubukemuramanza cyangwa imikorere y'Urukiko.[26] Porokireri yari yemeye ko icyemezo cy'Urugereko rw'Ubujurire kitazagira ingaruka iyo ari yo yose ku cyemezo cy'Urugereko rwa Mbere rw'Iremezo ku birebana n'ibyaha byahamye uwajuriye. Ariko Urugereko rw'Ubujurire rwatanze ibisobanuro bikurikira kuri buri mpamvu y'ubujurire:

> 247. Nta n'umwe mu baburanyi uvuga ko umwanzuro wafashwe n'Urugereko rwa rwa Mbere rw'Iremezo ko ibikorwa byibasiye inyokomuntu bidashobora gukorwa n'umuntu ku mpamvu ze bwite, waba waragize ingaruka ku cyemezo cy'Urukiko nk'uko biteganywa mu ngingo ya 25 1) ya Sitati. Cyakora, kubera ko ari ikibazo gifitiye inyungu rusange ubukemuramanza bw'Urukiko, ni ngombwa ko Urugereko rw'Ubujurire rugira icyo rukivugaho.
>
> [...]
>
> 281. Mu ikubitiro, usanga iyo mpamvu y'ubujurire idateganywa mu ngingo ya 25 ya Sitati. Nyamara nk'uko byari bimeze mu mpamvu y'ubujurire ibanziriza iyi, Urugereko rw'Ubujurire rusanga ari ikibazo gifitiye inyungu rusange ubukemuramanza bw'Urukiko. Urugereko ruzagira icyo rubivugaho.
>
> [...]
>
> 315. N'ubwo nta n'umwe mu baburanyi uvuga ko icyemezo kirebana n'amagambo yavuzwe mbere n'abatangabuhamya cyaba cyaragize ingaruka ku byemezo by'abacamanza birebana n'ikirego runaka cyangwa ku bujurire bushingiye ku ngingo ya 25 1), nyamara bose bemeranya ko ari ikibazo cy'ingirakamaro muri

ibibazo mbanzirizarubanza hakurikijwe ingingo ya 25 ya Sitati. Urugereko rw'Ubujurire rusanga ntaho Sitati cyangwa se Amategeko cyangwa mu mikorere y'imiryango mpuzamahanga cyangwa se amategeko y'ibihugu agena ko isuzuma ry'ubujurire rigomba kugarukira ku ngingo zavuzwe n'ababuranyi'. Reba Urubanza *Erdemovic* mu bujurire, igika 16.

[26] Izo mpamvu eshatu z'ubujurire zari ziteye zitya : impamvu ya gatatu y'ubujurire yanengaga Urugereko rwa Mbere rw'Iremezo kuba rwaribeshye ruvuga ko ibyaha byibasiye inyokomuntu bitabaho ku mpamvu bwite z'umuntu (Urubanza rwa *Tadic* mu bujurire, ibika 238-272) ; impamvu ya kane y'ubujurire yanengaga Urugereko rw'Ubujurire kuba rwaribeshye ruvuga ko ibyaha byose byibasiye inyokomuntu bisaba kugira ngo bibeho umugambi w'ivangura (Urubanza rwa *Tadic* mu bujurire, ibika 273-305) naho impamvu ya gatanu yarebanaga no kwanga icyifuzo cya Porokireri cyo gutanga ubuhamya bw'abagabo bashinjura 9. Urubanza rwa *Tadic* mu bujurire, ibika 306-326).

> rusange kirebana n'iburanisha mu Rukiko; bityo Urugereko rw'Ubujurire rukaba rugomba kukitaho [...]
>
> 316. Ingingo ya 25 ya Sitati ntiha na busa Urugereko rw'Ubujurire ububasha bwo kugira icyo ruvuga ku cyemezo cyafashwe n'Urugereko rwa Mbere rw'Iremezo nk'aho icyo cyemezo ari cyo cyajuririwe. Ariko ingingo irebana n'amategeko ivugwa aha ifite akamaro kandi bikaba byumvikana ko Urugereko rw'Ubujurire rugomba kugira icyo ruyivugaho.

19. Urugereko rw'Ubujurire ruremeranya n'iyo mitekerereze kandi, kimwe n'Urugereko rw'Ubujurire rwa TPIY, rusanga rufite ububasha bwo gufata ibyemezo bifitiye inyungu rusange ubukemuramanza bw'Urukiko n'ubwo ibyo bibazo bitagira ingaruka ku cyemezo cyagezweho n'Urugereko rwa Mbere rw'Iremezo.

20. Nyamara nk'uko Akayesu abivuga, Urugereko rw'Ubujurire rugomba kuzirikana itandukanyirizo riri hagati y'urubanza rwa *Tadic* n'uru rwaregewe. Muri uru rubanza, impamvu Porokireri atanga mu bujurire zirebana gusa n'ibibazo bya rusange. Ibyo ni byo shingiro ry'ubujurire bwa Porokireri. Mu rubanza rwa *Tadic* mu bujurire, ibyo bibazo byari bihari ariko kandi hari n'impamvu z'ubujurire zihujije n'ibisabwa n'ingingo ya 24 ya Sitati, ni ukuvuga ko zashoboraga kugira ingaruka ku cyemezo mpamyacyaha. Ikibazo rero ni ukumenya niba Urugereko rw'Ubujurire rushobora kwemera ubujurire bubyutsa ibibazo birengera ibiteganywa n'ingingo ya 24 ya Sitati cyangwa niba ibyo bibazo bigomba kuba bibangikanye rwose n'impamvu zo kujurira zujuje ibisabwa n'ingingo ya 24 ya Sitati.

21. Mu gusubiza icyo kibazo, byaba ngombwa kwibutsa ibyo Urugereko rw'Ubujurire rwa TPIY rwashingiyeho mu mitekerereze yarwo. Kubyutsa ibibazo by'ingirakamaro byaremewe mu rwego rwo guteza imbere ubukemuramanza bw'Urukiko. Nk'uko Urugereko rw'Ubujurire rwa TPIY rwabisobanuye, isuzumwa ry'ikibazo gifite akamaro muri rusange riba ngombwa igihe igisubizo kuri icyo kibazo ari kamara kugira ngo ubukemuramanza bw'Urukiko butezwe imbere, kandi iyo ari ingingo ikomeye irebana n'amategeko igomba gusuzumwa. Gusuzuma ikibazo cy'ingirakamaro muri rusange biba ngombwa iyo uzirikanye umurimo w'Urugereko rw'Ubujurire wo guhuriza mu mujyo

umwe amategeko akurikizwa. Urugereko rw'Ubujurire rugomba kuyobora ingereko za mbere z'iremezo mu myumvire y'amategeko. Uwo murimo w'ikirenga wo gusobanura amategeko akoreshwa n'Urukiko[27], ugomba kumvikana hifashishijwe imiterere yihariye y'Urukiko kandi hitaweho by'umwihariko ko rwashyiriweho impamvu runaka kandi mu gihe runaka. Nk'uko Porokireri abyerekana, "Urukiko niho rugitangira kandi Urugereko rw'Ubujurire rwaba rushyize mu gaciro ruramutse rwemereye ababuranyi kurugezaho ingingo z'amategeko zifite ingaruka ku bukemuramanza bw'Urukiko mu rwego rw'imigendekere myiza kandi iboneye y'ubutabera".[28]

22. Urugereko rw'Ubujurire ruributsa ko, kubera ko Urukiko ari urwego rw'ubutabera rudahoraho, rufite igihe rugomba gukoreramo kandi ntarengwa.[29] Byongeye kandi, ibyaha bivugwa muri Sitati bifite uburemere bwihariye kandi uburyo ubukemuramanza bw'Urukiko bubisobanura bifasha kunononsora muri rusange amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, kimwe n'amategeko mpanabyaha mpuzamahanga. Uko kuyasobanura kugomba gukorwa mu buryo buciye mu mujyo umwe. Urugereko rw'Ubujurire rwa TPIY rwashimangiye ko "uko kuyasobanura bizira uguhuzagurika gukenewe cyane kubera ibihe turimo birangwa n'ihindagurika ry'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara n'amategeko mpanabyaha mpuzamahanga. Ibyo bihe birangwa kandi n'uko ababuranyi, ari bo Porokireri n'ushinjwa, bakeneye kurushaho kumenya amategeko azakurikizwa mu kubacira imanza.[30] Bityo, Urugereko rw'Ubujurire rusanga iyo rwemeje kugira icyo ruvuga ku kibazo runaka gifite akamaro muri rusange, ruba rusohoje umurimo warwo wo guhuza amategeko.

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[27] Urubanza *Furundzija,* igika cya 35.

[28] Igisubizo cya Porokireri, igika 2.14.

[29] Ingingo ya mbere ya Sitati y'Urukiko ivuga ko : Urukiko Mpuzamahanga rwashyiriweho u Rwanda rushinzwe gucira imanza abantu bakekwaho kuba barakoreye mu Rwanda ibyaha by'itsembabwoko cyangwa ibindi byaha bikomeye binyuranye n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara n'Abanyarwanda bakekwaho kuba barabikoreye mu bihugu bituranye n'u Rwanda , hagati ya 1 Mutarama na 31 Ukuboza 1994, nk'uko bigenwa n'ingingo z'iyi Sitati'

23. Kuba ubujurire bwaba bushingiye ku bibazo by'ingirakamaro muri rusange ntibihindura imiterere y'ingingo igibwaho impaka iyo ubicukumbuye neza. Akayesu avuga ko, ubwo bujurire buramutse bwakiriwe, Urugereko rw'Ubujurire rwaba rwihaye ububasha rudafite kandi budateganywa muri Sitati. Urugereko rw'Ubujurire ruributsa ko isuzumwa ry'ibyo bibazo by'ingirakamaro muri rusange ritagamije gushyiraho ubundi buryo bushya bwo kujurira cyangwa urundi rwego ngishwanama. Urugereko rw'Ubujurire rw'Urukiko ntirufite ububasha ngishwanama busa n'ubufitwe n'Urukiko Mpuzamahanga rw'Umuryango w'Abibumbye[31] *[Cour internationale de justice]* cyangwa se inkiko zimwe z'ibihugu[32]. Nyamara ariko, rushobora guhitamo gusubiza ibibazo by'ingirakamaro muri rusange, ruramutse rusanze ikemurwa ryabyo rishobora guteza imbere byimazeyo ubukemuramanza bw'Urukiko. Gukoresha bene ubwo bubasha ntibisaba ko habaho impamvu zo kujurira zijyana rwose n'ibiteganywa n'ingingo 24 ya Sitati. Mu yandi magambo, Urugereko rukora uko rubyumva. Niba Urugereko rw'Ubujurire ruhisemo gusubiza ibibazo runaka, rushobora no guhitamo kutabisubiza. Icyo gihe (niba Urugereko rw'Ubujurire rutagize icyo ruvuga ku kibazo runaka rwashyikirijwe) icyemezo cy'Urugereko rwa Mbere rw'Iremezo ni cyo kizafatwa nk'aho ari cyo cy'Urukiko kuri icyo kibazo. Ubwo kizaba gifite rero uburemere.

[30] Urubanza rwa *Aleksovski* mu bujurire, igika 113.

[31] Imikorere iteganijwe mu ngingo ya 65 ya Sitati y'Urukiko Mpuzamahanga rw'Umuryango w'Abibumbye [Cour internationale de justice]. Buri rwego cyangwa umuryango bibyemerewe n'Amategekoshingiro y'Umuryango w'Abibumbye, bishobora gusaba Urukiko inama ku bibazo byose birebana n'Amategeko.

[32] Amategeko akoreshwa mu bihugu bivuga icyongereza abuza ubushinjacyaha kujurira iyo umuntu uregwa hashingiye ku nyandiko y' ibirego yahanaguweho icyaha cy'ubugome. Ariko, bushobora gushyikiriza ikibazo Urukiko rw' ubujurire kugira ngo rusobanure ingingo runaka y'amategeko. Icyo gihe, umuburanyi ntasabwa gusubiza ingingo ziba zabyukijwe n'ubushinjacyaha kuko ikigamijwe atari uguhindura icyemezo cy'urukiko rwaregewe, ahubwo ari ugusobanura amategeko kugira ngo bamenye uko azakoreshwa mu zindi manza zizaza. Igisubizo cy' Urugereko rw' ubujurire kizaba kirebana n' ibyemezo bizaza ntaho cyaba gihuriye n'urubanza ruburanwa. Reba Ingingo ya 36 ya *Criminal Justice Act 1972* nk'uko yavuguruwe na *Prosecution of Offences Act 1985* (Royaume Uni): ' Iyo umuntu waburanishijwe hashingiye ku nyandiko y'ibirego ahanaguweho (ibyaha byose, cyangwa se bimwe mu byo yaregwaga muri iyo nyandiko), *Attorney General* ashobora, mu gihe ashaka kumenya icyo Urukiko rw' ubujurire rutekereza ku ngingo y'amategeko yabyukijwe muri urwo rubanza, gushyikiriza ikibazo urukiko, na rwo rukagisuzuma rushingiye kuri iyi ngingo, maze rugatanga igitekerezo cyarwo' [Ingingo ya 36(1)]. Reba na *Criminal Procedure* (Scotland) Act 1995: ' 123. (1) Iyo umuntu aregwa hashingiwe ku nyandiko y' ibirego agizwe umwere, cyangwa agahamwa na bimwe mu byo aregwa, *Lord Advocate* ashobora gusaba Urukiko rukuru kumusobanurira ingingo y' amategeko irebana n' icyo kirego[…]' (Isemura).

24. Urugereko rw'Ubujurire ntirusuzuma rero ibibazo byose by'ingirakamaro muri rusange. Ni ngombwa kandi ko ibibazo byabyukijwe bigirira akamaro imikorere y'Urukiko mu rwego rw'ubucamanza kandi bigomba kuba bisobekeranye n'urubanza ruburanwa.

25. Muri uru rubanza, ibibazo byabyukijwe na Porokireri birebana mu mizi yabyo n'ibi bikurikira:

Icya mbere: Ikoreshwa n'Urugereko rwa Mbere rw'Iremezo ry'inshoza "umukozi wa Leta cyangwa uhagarariye Guverinoma" kugira ngo hamenyekane abantu bashoboraga kuryozwa ibikorwa bikomeye binyuranyije n'ingingo ya 3 ihuriweho n'amasezerano y'i Jeneve n'Inyongera yayo ya II''[33] ;

Icya kabiri: Ni ngombwa kugaragaza impamvu y'ivangura kugira ngo icyaha kivugwa mu ngingo ya 3 ya Sitati gifatwe nk'icyaha cyibasiye inyokomuntu;

Icya gatatu: Ikangurira ("instigation" mu Cyongereza) riteganywa n'ingingo ya 6 1) ya Sitati rigomba kuba ritaziguye kandi ryarakorewe mu ruhame.

26. Porokireri asobanura ukuntu ibibazo byose byabyukijwe bifitiye "akamaro rusange ubukemuramanza n'imikorere by'Urukiko"[34]. Ku birebana by'umwihariko n'ikibazo cya kabiri, Porokireri avuga ko "ibyaha byibasiye inyokomuntu bivugwa mu ngingo ya 3 ya Sitati bigaruka mu nyandiko zose z'ibirego zasohowe n'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda. Porokoreri abona ko bishoboka (kandi kuri we ni byo koko) ko imyanzuro y'Urugereko rwa Mbere rw'Iremezo ku birebana n'ibisabwa kugira ngo ubwicanyi bwitwe icyaha cyibasiye inyokomuntu, yafatwa no ku birebana n'ibindi byaha bivugwa mu ngingo ya 3 ya Sitati. Bikaba rero ngombwa gusobanura neza ibisabwa n'iyo ngingo, bityo hagatangwa umuyoboro Ingereko n'ababuranyi bagenderaho mu zindi manza".[35] Kubera ko ikangurira rivugwa mu ngingo

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[33] Icyo kibazo ni cyo kigize impamvu ya mbere y'ubujurire. Kiri hamwe n'iyindi mpamvu y'ubujurire y'insimbura yakomotse ku ikoreshwa ry'ingingo yasobanuwe n'Urugereko rwa Mbere rw'Iremezo: Porokireri avuga ko, rumaze gukoresha inshoza y' umukozi wa Leta cyangwa se uhagarariye guverinoma, Urugereko rwa Mbere rw'Iremezo rwibeshye ku birebana n'ibyabaye ruhamya ko Akayesu atabarirwaga mu bantu bashobora kuryozwa ibyo bakoze hakurikijwe ingingo ya 4.

[34] Imyanzuro ya Porokireri, igika 1.17

[35] Imyanzuro ya Porokireri, igika 4.5.

ya 6 1) ari kimwe mu bishingirwaho kugira ngo hagaragazwe uburyozwacyaha bwa nyirubwite nk'uko buteganywa na Sitati, Urugereko rwa Mbere rw'Iremezo kimwe n'ababuranyi bahungukira mu manza zizacibwa ejo hazaza Urugereko rw'Ubujurire ruramutse rukemuye icyo kibazo"[36].

27. Urugereko rw'Ubujurire rwemera ingingo za Porokireri kandi rusanga ibibazo byabyukijwe muri uru rubanza byujuje koko ibya ngombwa byavuzwe kugira ngo ibyo bibazo byakirwe. Koko rero ibibazo byose birebana no gusobanura mu rwego rw'amategeko ibyaha bimwe na bimwe bivugwa muri Sitati, bityo bikaba bijyana n'ububasha bw'Urukiko bushingiye ku kiburanwa. Byongeye kandi, bifitiye akamaro imiburanishirize y'Urukiko. Ikindi kandi, ibyo bibazo bisobekeranye byose n'urubanza ruburanishwa mu Rugereko rwa Mbere rw'Iremezo. Kandi koko byose birebana n'ibyangombwa Urugereko rwa Mbere rw'Iremezo rwashingiyeho mu gusobanura ingingo ya 3, iya 4 n'iya 6 ya Sitati.[37]

28. Kubera izo mpamvu zose zivuzwe haruguru, Urugereko rw'Ubujurire rurasuzuma rero impamvu enye z'ubujurire zatanzwe na Porokireri.

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[36] Imyanzuro ya Porokireri, igika 5.3.

[37] Urugereko rwa mbere rw' iremezo rusanga, ku birebana n' ikibazo cya mbere cyababjijwe: ' Urukiko rwanzuye kandi ko bitagaragaye ku buryo budashidikanywaho na gato ko Akayesu yari umwe mu ngabo z'igihugu cyangwa se ko yari mu butumwa bwemewe kandi bizwi ko ashyigikiye abari mu mirimo nk'umukozi wa Leta, cyangwa mu rwego rw'ubuyobozi cyangwa uhagarariye mu by'ukuri Guverinoma ' (igika 643 cy' Urubanza; ku kibazo cya kabiri, Urugereko rwa mbere rw' iremezo rwavuze ko, kuba Akayesu yaratanze itegeko ryo kwica Mutijima Simoni, Uwanyiligira Tadeyo na Kirizositome Yohani, n'impunzi umunani n'abarimu batanu, yari afite umugambi wihariye wo kubica, mu rwego rw'igitero rusange cyibasiye abaturage b'abasivili b' u Rwanda, kubera ubwoko bwabo' (ibika 650, 658 na 668 by' Urubanza); ku birebana n' ikibazo cya gatatu, Urugereko rwa Mbere rw'Iremezo rwasobanuye ko rwemeye nta gushidikanya na gato ko kubera amagambo yavuzwe haruguru, yavugiwe mu ruhame kandi ku karubanda, Akayesu agambiriye gucengeza mu buryo butaziguye mu bamwumvaga umutima mubi wo kurimbura Abatutsi. Ni yo mpamvu Urugereko rusanga ibyo bikorwa bigize icyaha cyo gushishikariza mu ruhame kandi mu buryo butaziguye gukora jenoside nk'uko rwagisobanuye haruguru. Byongeye kandi Urugereko rurasanga ko gushishikariza mu buryo butaziguye kandi mu ruhame gukora jenoside, nk'uko byakozwe na Akayesu, byaritabiriwe binatera irimbuka ry'Abatutsi benshi muri Komine ya Taba (ibika 674-675 by'urubanza).

B. Ibibazo by'ikubitiro byerekeranye n'ubujurire bwa Akayesu

1. Uburyo Akayesu yakoresheje

29. Mu kujurira kwe, Akayesu yagerageje kunenga urubanza rwose mu buryo bukurikira:

30. Icya mbere, Urugereko rw'Ubujurire rusanga Akayesu yaragerageje gushyira impamvu ze z'ubujurire mu nzego, ariko ashyira uburemere ku mpamvu ya mbere y'ubujurire (ko Urukiko rwaba rwaramuvukije uburenganzira bwo kunganirwa n'avoka yihitiyemo) no ku mpamvu ya kabiri y'ubujurire (ko Urukiko rwaba rwaramuvukije uburenganzira bwo kunganirwa n'avoka ubishoboye). Avuga ko Urukiko rwamuvukije uburenganzira bwo kunganirwa n'avoka yihitiyemo kandi ko abunganizi yagenewe na Gerefiye bari abaswa. Ku birebana n'iki kibazo cya nyuma, Akayesu avuga ko muri rusange, bamwunganira batamuburaniye neza; akavuga ko bigaragarira mu zindi mpamvu zatumye ajurira. By'umwihariko, Urugereko rw'Ubujurire rusanga buri gihe, mu bujurire, Akayesu avuga ko amakosa yakozwe n'Urugereko rwa Mbere rw'Iremezo mu rwego rw'amategeko no mu rwego rw'ibyabaye yatewe n'ubuswa bw'uwamwunganiraga kubera ko ntacyo yavugaga icyo gihe.[38] Kubera izo mpamvu, Urugereko rw'Ubujurire rusanga hakurikijwe icyo gitekerezo, izindi mpamvu z'ubujurire zirebana cyane cyane n'imiburanishirize zishingiye kuri izo ebyiri za mbere.

31. Icya kabiri, ku birebana n'ibigombwa gukosorwa kubera amakosa avugwa, Akayesu abona byakorwa mu buryo butatu: Avuga ko amakosa amwe n'amwe avugwa mu mpamvu ze z'ubujurire yashobora ubwayo, gutuma "ikurikiranacyaha rihagarara kubera ko ari bwo buryo bwonyine bushoboka kumurenganura" [39]; asaba "iseswa ry'urubanza" ku birebana

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[38] Ibirego byo kudashobora akazi bivugwa mu ngingo y'ubujurire ya 3 n'iya 11 zirasuzumirwa hamwe mu ngingo ya kabiri (Akayesu yavukijwe uburenganzira bwo guhabwa abamwunganira babishobye).

[39] Imyanzuro ya Akayesu, umutwe wa XV, igika 1. Akayesu ashyiramo impamvu ya mbere n'iya kabiri z'ubujurire (Akayesu yavukijwe uburenganzira bwo kunganirwa n'avoka yihitiyemo ; Akayesu yavukijwe uburenganzira bwo kugira umwunganizi ubishoboye), Impamvu ya gatatu y'ubujurire (kuba Urukiko rutigenga kandi rubogamye), Impamvu ya kane y'ubujurire (amakosa akomeye agaragara mu rubanza mpamyacyaha), Ingingo ya kane y'iyi

n'ibindi bihano byose yakatiwe.[40] Ku birebana n'impamvu ya munani y'ubujurire n'ibyo Urugereko rw'Ubujurire rwise "Ibindi bibazo", Akayesu avuga ko amakosa avugwa ari indi impamvu y'inyongera Urukiko rw'Ubujurire rwashingiraho maze "rugahagarika ikurikiranacyaha".[41]

32. Icya gatatu, Akayesu avuga ko Urugereko rw'Ubujurire rugomba gusuzumira hamwe, amakosa *yose* uko yakabaye yakozwe n'Urugereko rwa Mbere rw'Iremezo nk'uko abivuga mu mpamvu ze z'ubujurire. Aragira ati:

> Uko kutubahiriza amategeko kwatuma habaho urundi rubanza cyangwa icyemezo cyo guhagarika ikurikiranacyaha. Amakosa amwe n'amwe afashwe rimwe ku rindi ntiyatuma hafatwa icyemezo kidasanzwe cyo guhagarika ikurikiranacyaha. Ariko abumbiwe hamwe yose yatuma amategeko atubahirizwa. Buri kosa mu rwego rw'amategeko cyangwa mu rw'ibyabaye no guhungabanya uburenganzira bw'ujurira bigomba kwitonderwa kandi bihungabanya uburenganzira bwo kugira urubanza rutabogamye kandi ruboneye.[42]

33. Akayesu asanga izo mpamvu z'ubujurire zisuzumiwe zose hamwe (zidafashwe imwe ku yindi) n'amakosa yose avugwa akagaragazwa, Urugereko rw'Ubujurire rugomba gufata umwanzuro ko ayo makosa ari impamvu ihagije yo "gutegeka ko ikurikiranacyaha rihagarikwa burundu, agahita afungurwa".[43]

34. Urugereko rw'Ubujurire rubona ko ari ngombwa kongera gushimangira umurimo warwo mu miburanishirize mu bujurire hashingiwe ku ngingo ya 24 ya Sitati.

35. Muri rusange, ujurira ni we ugomba kugaragaza ko ikosa ryakozwe mu rwego rw'amategeko cyangwa rw'ibyabaye rishobora gutesha agaciro icyemezo cyangwa

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mpamvu ya nyuma y'ubujurire (ikimenyetso kitatanzwe mu iburanisha) n' impamvu ya cyenda y'ubujurire (ibaruwa umutangabuhamya wiswe DAAX yandikiye abacamanza). Reba na none Igisubizo cya Akayesu, igika 9.

[40] Imyanzuro ya Akayesu, umutwe wa XV, igika 3. Akayesu asaba na none ko Urugereko rw'Ubujurire rwemeza ko 'imyanzuro yihariye ikubiye muri iyi mitwe ishyigikiye igitekerezo cy'ishingiro cy' ujurira cyo guhagarika imiburanishirize'. Ibi bikubiyemo Impamvu ya kane y'ubujurire mu ngingo: ya mbere (ihindurwa ry' inyandiko y' ibirego ya mbere), iya kabiri (ubuhamya bwa mbere) n' iya gatatu (ugushidikanya kumvikana), iya gatandatu (ikimenyetso gishingiye ku mabwire) n' iya karindwi (kunyomoza).

[41] Imyanzuro ya Akayesu, umutwe wa XV, igika 4.

[42] Igisubizo cya Akayesu, igika 13. Reba na none Igisubizo cya Akayesu, ibika 7-13 muri rusange.

[43] Igisubizo cya Akayesu, igika 13.

rigatuma urubanza rucibwa nabi[44]. Mu yandi magambo, Urugereko rw'Ubujurire ntirwitabazwa buri gihe habayeho ikosa ryo mu rwego rw'amategeko cyangwa rw'ibyabaye[45]. Urugereko rw'Ubujurire ruzasuzuma icyo kibazo igihe bizaba ari ngombwa muri uru rubanza. Naho ku birebana n'ibyo Urugereko rw'Ubujurire rushobora gukora kugira ngo rurenganure uwajuriye, ingingo ya 24 2) ya Sitati nta kindi iteganya uretse "kwemeza kuvanaho icyemezo kinengwa n'umuburanyi cyangwa kugisubiramo".

36. Muri uru rubanza, Urugereko rw'Ubujurire rusanga ruzasuzuma mbere na mbere impamvu z'ubujurire Akayesu yavuzemo ko ikosa rivugwa ryagize ingaruka ku cyemezo cy'Urugereko rwa Mbere rw'Iremezo. By'umwihariko, ibyo bikaba ari ngombwa cyane cyane ku birebana n'impamvu ya kane n'iya munani z'ubujurire bwa Akayesu. Mu iburanisha mu bujurire, Urugereko rw'Ubujurire rwamenyesheje Akayesu ibibazo byagombaga gukusanyirizwa mu ngingo ya kane y'ubujurire[46]. Ni ibibazo bine by'ingenzi bikurikira Urugereko rw'Ubujurire ruzasuzuma nk'ingingo z'ubujurire zihariye imwe ku yindi:

1. Guhindura Inyandiko y'ibirego ya mbere mu buryo bunyuranyije n'amategeko.
2. Gukoresha ku buryo butari bwo ubuhamya bwanditse bwatanzwe mbere.
3. Kutubahiriza ibikurikizwa iyo hariho ugushidikanya kunyuze mu gaciro, amakosa simusiga mu rwego rw'ibyabaye.
4. Gushingira ku bimenyetso bitatangiwe mu iburanisha.

[44] Ihame rivuga ko ujurira ari we ugomba gutanga ibimenyetso by' ibirego bye ntabwo ryafatwa nk'aho ridakuka. Urugereko rw'Ubujurire rushobora, bibaye ngombwa, gukoresha ububasha bwarwo busesuye kuri iyo ngingo. Reba Urubanza rwa *Furundzija,* ibika 35-37, Urubanza rwa *Kambanda*, igika 98.
[45] Urubanza rwa *Furundzija* mu bujurire, ibika 36-37.
[46] Ibuvugwa n'Urugereko rw'Ubujurire. Urugereko rw'Ubujurire rurasanga Akayesu yaravanze impamvu z'ubujurire zikubiye mu Nyandiko ya mbere y'ubujuriren'iziri mu Nyandiko ya kabiri, ndetse rimwe na rimwe agafata impamvu iyi n'iyi yo mu nyandiko ya mbere cyangwa yo mu ya kabiri maze akavanamo ingingo. Akayesu yemeye uburyo Urugereko rw'Ubujurire rwabumbiye hamwe impamvu ze z'ubujurire bwe.

37. Urugereko rw'Ubujurire ruramenyesha ko, mu mpamvu ya kane y'ubujurire, hakubiyemo izindi nyinshi Akayesu yavuzeho cyane cyane mu mutwe wa cumi na gatatu w'Imyanzuro ye, ari na ho hari n'impamvu ya munani. Icyakora, Urugereko rusanga Akayesu yarakuyemo zimwe muri zo mpamvu z'ubujurire cyangwa yaraziretse[47]; zimwe zashyizwe mu ngingo zavuzwe mu zindi mpamvu z'ubujurire[48], na ho hakurikijwe icyemezo cyo ku wa 22 Kanama 2000, yimwe uburenganzira bwo gutanga izindi mpamvu ebyiri z'ubujurire.[49] Bityo rero, impamvu yaretse cyangwa izo atemerewe gutanga ntizizitabwaho.

38. Naho ubundi, hari "ibindi bibazo umunani"[50] Urugereko rw'Ubujurire rwakubiye mu mpamvu ya kane y'ubujurire, kandi rukaba rwarabifasheho icyemezo mu gihe rwasuzumaga impamvu ya munani. Akayesu ntavuga ko amakosa avugwa, afashwe

[47] Izo impamvu ni izi zikurikira : Impamvu ya 19, inyandiko y'ubujurire irebana n'indwara y'umutangabuhamya wiswe DFX , (Imyanzuro y' Akayesu, umutwe wa XIII, igika VII) ; Impamvu ya 30, Inyandiko ya mbere y'ubujurire n'impamvu ya 4 (z), Inyandiko ya kabiri y'ubujurire, irebana no kutemerwa n'Urugereko rwa Mbere rw'Iremezo kw'icyifuzo kirebana n'ubuhamya bw'ikinyoma bw'umugabo wiswe R. Urugereko rw'Ubujurire ruvuga ko ku birebana n'icyo kibazo, Akayesu yatangiye avuga ko yibeshye ku izina yari yise iyo mpamvu kandi ko yaje kurikuraho ariko ko na none akomeza gushimangira 'ko umutangabuhamya R. atagirirwa icyizere na gito'. Urugereko rw'Ubujurire nta mpamvu nimwe rufite yo gukomeza gusuzuma iyo mvugo idafite ishingiro, cyane cyane kubera ko iyo mpamvu y'ubujurire yakuwemo. (Imyanzuro ya Akayesu, umutwe wa XIII, igika XI, Impamvu ya 6 , Inyandiko ya mbere y'ubujurire irebana n'ishyigikirwa (Inyandiko ya Akayesu, umutwe wa XIII, igikaXIII) ; Impamvu ya kane (w), inyandiko ya kabiri y'ubujurire irebana n'ubuhamya (Imyanzuro ya Akayesu, umutwe wa XIII, igika XIV). Urugereko rw'Ubujurire rusanga impamvu y'ubujurire ya 28 y'inyandiko ya mbere y'ubujurire irebana n'icyo kibazo cya nyuma kandi ko igomba gushyirwa mu mpamvu zaretswe.

[48] Impamvu 33 y'Inyandiko ya mbere y' ubujurire na 4 cc) y'Inyandiko ya kabiri y'ubujurire zerekeye iherererekanya ry' ibimenyetso. Akayesu avuga ko iyo ngingo yavuzweho mu magambo arambuye mu mpamvu ya mbere y'ubujurire no mu ngingo ya kabiri y'impamvu ya kane y'ubujurire (Imyanzuro ya Akayesu, umutwe wa XIII, igika IV). Urugereko rw'Ubujurire rusanga Akayesu atarashyize impamvu 4 cc) mu mpamvu z'ubujurire zavuzwe haruguru. Bityo rero, Urugereko rw'Ubujurire ruyifata nk'imwe mu bindi bibazo. Impamvu z'ubujurire 26 z'Inyandiko ya mbere y'ubujurire na 4 y) y'Inyandiko ya kabiri y'ubujurire zinenga Urugereko rwa mbere rw' iremezo ko rwise jenerali Dallaire umutangabuhamya w'impunguke kandi atari we. Akayesu avuga ko iyo ngingo ivugwa mu magambo arambuye mu mpamvu ya kabiri y'ubujurire (Imyanzuro ya Akayesu, umutwe wa XIII, igika V). Ingingo 31 mu nyandiko ya mbere y'ubujurire irebana n'itakirwa n'Urugereko rwa Mbere rw'Iremezo ry'icyifuzo cy'uregwa cyo gusuzumisha mu baganga babigenewe, ku birebana by'umwihariko n'ikirego cya 15 cy'Inyandiko y' ibirego, ivugwa mu magambo arambuye mu ngingo ya 3 y'impamvu ya 4 y'ubujurire (Imyanzuro ya Akayesu, umutwe wa XII, igika X).

[49] Urugereko rw'Ubujurire ntirwasuzumye impamvu z'ubujurire zifitanye isano n'ubuhamya bwa Dogiteri Ruzindana Matiyasi, umutangabuhamya w' impuguke na Porokireri, M. Pierre Prosper (Imyanzuro ya Akayesu, umutwe wa XIII, igika V).

[50] Urugereko rw' ubujurire rurasanga Akayesu yaravuze mu magambo make cyane ibyo bibazo mu mutwe wa XIII w' Imyanzuro ye kandi ko nta ngingo ikomeye yerekanye haba mu Gisubizo cye kinyomoza cyangwa se mu iburana mu bujurire. Ingingo zatanzwe koko ni zo zonyine zashyizwe muri iyo nyandiko.

rimwe ku rindi yamubangamira ku buryo budasubirwaho kandi ko ahagije kugira ngo ateshe agaciro urubanza rwaciwe n'Urugereko rwa Mbere rw'Iremezo cyangwa se ngo abe yaratumye urubanza rucibwa nabi. Avuga rero ko adafite ibimenyetso byerekeranye n'ibyo anenga isemura ryabaye mu rubanza[51], ko ariko agitsimbaraye kuri iyo ngingo cyane cyane ku isuzuma ry'inyandikomvugo z'iburanisha zigaragaza ibibazo bikomeye byababayeho ku birebana n'isemura, kandi ko kubura inyandikomvugo z'iburanisha ry'urubanza rwe zizewe "kwamuteye ingorane, ariko ntashobora kwemeza ko ayo makosa yonyine yamukozeho cyangwa yabaye kamara[52], ko kandi nta kintu na kimwe mu nyandikomvugo z'iburanisha cyerekana ko umucamanza yaba yaragiranye, kabone n'inshuro imwe, ikiganiro n'umutangabuhamya mu buryo budakurikije amategeko kandi ko ibyo bitatesha urubanza agaciro, abona ko "ubwo buryo bwo gukora butemewe"[53]. Hari ibindi ujurira yavuze gusa, bidashyigikiwe n'ibintu yaba yarabonye, nk'ingingo zirambuye, cyangwa ngo yerekane akarengane yaba yaragize. Mu gisubizo cye ku myanzuro isubizo ya Porokireri, Akayesu arengurira kuri ibyo bibazo avuga "ku tundi tuntu tudafite akamaro kanini twakozwe mu buryo budakurikije amategeko"[54].

39. Porokireri yemeza ko muri rusange Akayesu atashoboye kwerekana ikosa runaka ryakozwe mu rwego rw'amategeko cyangwa se rw'ibyabaye, kandi ko agerageza gusobanura imvugo ze ariko adatanga ingingo n'imwe Porokireri ashobora gusubiza.[55]. Avuga ko Urugereko rw'Ubujurire rutagomba kwemera ibyo Akayesu avuga byose uko byakabaye.[56] Porokireri ntiyigeze agira icyo asubiza ku ngingo z'ujurira mu mizi yazo. Mu iburanisha mu bujurire, Akayesu yasubije agira ati:

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[51] Imyanzuro ya Akayesu, umutwe wa XIII, igika II. Ku birebana n'igika I (Urugereko rwa Mbere rw'Iremezo rwakoze amakosa yo kwemera raporo zimwe z' Umuryango w' Abibumbye), Akayesu avuga ko ' atazi ibyabaye byakoreshejwe mu rubanza rwe, ko rero adashobora kwemeza ko uko kwibeshya mu rwego rw'amategeko ari ko kwonyine kwamurenganije mu buryo budasubirwaho'.
[52] Imyanzuro ya Akayesu, umutwe XIII, igika III.
[53] Imyanzuro ya Akayesu, umutwe XIII, igika XII.
[54] Igisubizo kinyomoza cya Akayesu, igika 13.
[55] Igisubizo cya Porokireri, igika 14.3
[56] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 193. Porokireri avuga ko 'ujurira atashoboye gushyigikira ingingo ze mu myanzuro ye [Nk'uko Porokireri yabyerekanye mu mutwe wa 14 w'igisubizo cye]. Uwo munsi, ujurira nta zindi ngingo yerekanye zishyigikira imvugo ze cyangwa zimwe ziri mu mutwe wa 13 w'Imyanzuro ye. Ni yo mpamvu tuvuga ko izo ngingo zose zitagomba kwakirwa'.

> [Porokireri] yarenguriye ku bikubiye mu mutwe wa 13. Ni ibibazo byumvikana kandi byoroshye, amakosa amwe n'amwe adafitiwe ibimenyetso. [Twavuze ko nta gihamya bifite]. Ni ibindi bibazo, harimo amakosa, inenge, ntabwo twavuze ko bifite ingaruka ku rubanza. Ariko, ba Nyakubahwa Bacamanza, nk'abantu bize amategeko, ndibwira ko ari byiza kumva ko, mu gihe cy'isesengura, ari ngombwa kuzirikana ibigomba kuzirikanwa. Mwebwe nk'Abacamanza, ba Nyakubahwa Bacamanza, mugomba kumenya neza ibigomba kwitabwaho[57].

40. Icyokora, Akayesu yari yavuze muri rusange ko, asuzumiwe hamwe, amakosa avugwa ashobora kuba indi mpamvu yatuma umuntu yemeza ko « urubanza rugomba guhagarikwa »[58]. Akayesu ntiyavuze mu buryo bweruye ko izo mpamvu z'ubujurire zatuma zonyine arenganurwa mu buryo buteganywa n'ingingo ya 24 ya Sitati.

41. Kubera ibyo, Urugereko rw'Ubujurire rurasuzuma ibyo bibazo (nk'uko bimaze kuvugwa haruguru) n'ubujurire muri rusange mu buryo bukurikira. Rurabanza rusuzume ibyo rwemeye ko ari impamvu z'ubujurire bwa Akayesu, kugira ngo rugaragaze niba Urugereko rwa Mbere rw'Iremezo rwarakoze amakosa avugwa. Nyuma yaho, ni bwo ruzafata icyemezo cyo gusuzuma cyangwa kudasuzuma ibyo Akayesu yise «andi makosa matoya » ni ukuvuga ibindi bibazo, hamwe n'impamvu ya munani y'ubujurire. Ibyo birangiye, nibwo rero ruzasuzumira hamwe, niba ari ngombwa, andi makosa (aramutse atangiwe ibimenyetso).

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[57] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 231-232. Mu nyandiko y'icyongereza y'inyandikomvugo y'iburanisha (imp. 183-184), dusoma ibi bikurikira : "*[The Prosecution] referred to chapter 13, and chapter 13, we didn't develop it in a great deal terribly. And there are issues which are clear and simple. Some of the errors there's no proof of – we said there is no proof of it. Others are questions which are errors inappropriate. We did not say it affected the Judgment but, your Lordships, as jurists, I think it is important to understand what one can take judicial notice of, because if you take judicial notice of United Nations reports, you don't need trials."* The Appeals Chamber is of the opinion that the last sentence of this quotation should be rendered as follows: "[…] But as jurists, I believe it is important for us to know what can be judicially noticed, because if you take judicial notice of UN reports, then you do not need a trial". Urugereko rw'Ubujurire rusanga interuro ya nyuma y'iyi nyandiko igomba gusemurwa muri ubub buryo : '[...]nk'abanyamategeko, ni ngombwa kumenya ikitagomba kujyibwaho impaka n'ababuranyi kuko niba raporo za Loni zitagomba kugibwaho impaka, ni ukuvuga ko n'urubanza atari ngombwa'. Iki gitekerezo cya nyuma cyarebanaga n'impamvu y'ubujurire yavugaga ko Urugereko rwibeshye mu rwego rw'amategeko ubwo rwemera zimwe muri za raporo z'Umuryango w'Abibumbye. Imyanzuro ya Akayesu, umutwe wa XIII, igika 1. Reba kandi Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 117. : ' Umutwe wa 14...13, turabasaba kureba imyanzuro yacu, kubera ko nta gihe kinini dufite'. Nyamara inyandiko y'icyongereza iragira iti (ku rup. 85 : ' *Umutwe wa 13, ibyo turaba tubirekeye aho, kuko twavuze neza ko bidahagije'* "Chapter 13, *which we will leave you with that, because we've stated clearly there are not enough*".

b. <u>Imiterere y’igisubizo cya Porokireri</u>

42. Urugereko rw’Ubujurire rusanga, mu gisubizo cya Porokireri, asa nk’aho yihitiyemo, ku birebana na zimwe mu mpamvu z’ubujurire, gutoranya ibibazo yibwira ko Akayesu yabyukije muri iyo mpamvu kandi aba ari ibyo asubiza gusa. Byongeye kandi, nta kintu na kimwe yasubije ku « bindi bibazo » bivugwa mu mpamvu ya kane y’ubujurire cyangwa se mu ya munani. Aragira ati: « Niba Urugereko rw’Ubujurire rushaka kubona igisubizo cya Porokireri ku kindi kibazo icyo ari cyo cyose cyabyukijwe n’ujurira [...] Porokireri arasaba, ko yakwemererwa gutanga igisubizo cy’inyongera »[59].

43. Urugereko rw’Ubujurire rwongeye kwemeza ko uburenganzira Porokireri afite bwo gutanga igisubizo ku mwanzuro w’ujurira bwemezwa n’ingingo ya 112 y’Amategeko ivuga ko « Imyanzuro y’uwiregura mu bujurire, ikubiyemo ingingo zose zerekeranye n’amategeko n’ibyabaye, ishyikirizwa Ibiro bya Gerefiye mu gihe kitarenze iminsi 30 uhereye ku munsi uwajuriye yagereje imyanzuro ye kuri ibyo biro ». Amategeko ntateganya ko umuburanyi ahitamo ibibazo agomba gusubiza, yizera ko, niba aramutse yibeshye, ashobora kongera gutanga igisubizo cy’inyongera[60]. Kubera iryo hame, Porokireri aribeshya. Urugereko rw’Ubujurire rurasuzuma gusa ibikubiye mu gisubizo cya Porokireri hamwe n’ibyabyukijwe mu iburanisha mu bujurire.

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[58] Imyanzuro ya Akayesu, Umutwe XV, igika 4 : Ujurira arasaba uru Rugereko gufata imyanzuro ko andi makosa avugwamo ari impamvu y’inyongera yo guhagarika imiburanishirize’.
[59] Igisubizo cya Porokireri, igika 9.6. Reba kandi ibika 11.5-14.4.
[60] Haseguriwe icyemezo kirebana n’ icyifuzo gisaba kongererwa igihe, niba uruhande rubisaba rwerekana ingingo zigaragara rushingiraho, nk’uko bigenwa n’ ingingo ya 116 y’ Amategeko.

III. IMPAMVU Z'UBUJURIRE BWA AKAYESU

A. Impamvu y'ubujurire ya mbere: Akayesu yavukijwe uburenganzira bwo kunganirwa n'avoka yihitiyemo[61]

44. Muri rusange, Akayesu avuga ko Urugereko rwakoze ikosa mu rwego rw'amategeko kuko rwamuvukije uburenganzira bwo kwihitiramo umwunganira, ndetse n'uburenganzira bwo kwiburanira ubwe. Abona ko akarengane gakomoka kuri uko kutubahiriza amategeko kagombye gutuma ikurikiranacyaha rihagarara[62].

1. Uko ibintu byagenze n'imiburanishirize

45. Ku itariki ya 8 Werurwe 1996, Akayesu yasabye Gerefiye ko yagira umwunganira wishyurwa n'Urukiko. Ku ya 25 Mata 1996, Akayesu yasabye kunganirwa na Me Scheers[63]. Ku ya 10 Gicurasi 1996, Gerefiye yashyizeho Me Scheers kugira ngo yunganire Akayesu[64]. Me Karnavas, abyumvikanyeho na Me Scheers utari uhari, yunganiye Akayesu mu iburanisha ryo ku itariki ya 31 Ukwakira 1996[65]. Iburanisha ritangiye, Me Karnavas yasabye mu magambo kunganira Akayesu muri iryo buranisha

[61] Urutonde rw'impamvu z'ubujurire zikubiye muri iyi mpamvu rusange ziri ku mugereka B. Urugereko rw'Ubujurire rurasanga Akayesu ubwe yarakuye mu nyandiko y'ubujurire iyi mpamvu ikurikira : ' Ikindi gihe, ku ya 27 Mutarama 1997, Ujurira yasabye guhindurirwa avoka. Avoka umwe yemeye kumwunganira ku buntu ariko Urukiko ntirwabyemera. Uko ni ukwibeshya mu rwego rw'amategeko arebana n'ububasha bw'Urukiko, bikaba binyuranyije na Sitati y'Urukiko'. Ikindi kandi, Urugereko rw' ubujurire rurongeraho ko ku itariki ya 17 mata 2000, rwasabye Gerefiye guha ababuranyi kopi z'inyandiko zimwe zirebana n'urubanza rwaciwe n'Urugereko rwa mbere rw' iremezo. Reba Icyemezo cyo ku ya 17 Mata 2000. Nyamara, mu cyemezo cyo ku ya 22 Kanama 2000, rwanze icyifuzo cya Akayesu cyo cyasabaga kwandukura ibyavuzwe mu iburanisha ryo ku wa 22 Mutarama 1997, iyo nyandiko ikemerwa nk'ikimenyetso gishya, no kwemererwa guhindura inyandiko y'ubujurire kubera ko Ujurira atari yemerewe kuba muri iryo buranisha. Akayesu yifuza kongeraho impamvu y'ubujurire irebana n'ihitamo ry'umwunganira ashingiye ku nyandikomvugo y'iryo buranisha. Urugereko rw'Ubujurire ntirwasuzumye rero iyo mpamvu y'ubujurire.

[62] Imyanzuro ya Akayesu, Umutwe wa XV , igika 1.

[63] Yohani Pawulo Akayesu asaba ko yagenerwa umwunganira, byanditswe ku itariki ya 24 Kamena 1996.

[64] Kuva aho afatiwe muri Zambiya kugeza igihe Gerefiye amufashe nk'umutindi nyakujya, Akayesu yunganiwe na Me Lisulo, Me De Temmerman na Me Scheers.

[65] Urugereko rwa Mbere rw'Iremezo rwari rwakiriye ibarwa y'Avoka umwunganira, akaba yaravugaga ko atazashobora kuza mu iburanisaha ryo ku wa 31 Ukwakira 1996, kubera ibibazo by'amafaranga bitakemutse hagati

gusa. Yanasabye ko yagenwa n'Urukiko[66] nk'avoka mukuru, Akayesu ntiyabyanze[67]. Uwo munsi, Urugereko rwa Mbere rw'Iremezo rwategetse Gerefiye w'Urukiko gukura Me Scheers ku bwunganizi, no kugena Me Karnavas nk'avoka mukuru wa Akayesu[68]. Ku itariki ya mbere Ugushyingo 1996, Gerefiye w'Urukiko yagennye ku mugaragaro Me Karnavas kuba umwanganzi wa Akayesu, asezerera Me Scheers ku itariki ya 4 Ugushingo 1996.

46. Ku ya 11 Ugushyingo 1996, Akayesu yandikiye Urukiko arusaba ko Me Karnavas yakwamburwa uburenganzira bwo kumwunganira ; ku itariki ya 12 Ugushyingo 1996 asaba Gerefiye w'Urukiko ko Me Scheers ari we wamwunganira. Ku ya 20 Ugushyingo 1996, Urukiko rwasuzumye mu muhezo icyifuzo cya Akayesu kirebana no kudashaka ko Me Karnavas amwunganira. Mbere gato yo gupfundikira iburanisha, Urukiko rwambuye Karnavas uburenganzira bwo kunganira Akayesu, rusaba Gerefiye kumugenera undi mwunganizi mbere y'uko urubanza rutangira ku ya 9 Mutarama 1997[69].

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ye n'Ibiro bya Gerefiye, ariko ko uburenganzira bw'uregwa buzubahirizwa n'uzamusimbura by'agateganyo ariwe Me Karnavas, nk'avoka w'ubwunganizi.

66 Inyandikomvugo y'iburanisha, 31 Ukwakira 1996, urup. 57.

67 Inyandikomvugo y'iburanisha, 31 Ukwakira 1996, imp. 65 , 66 na 68.

68 Urugereko rwa Mbere rw'Iremezo rwagize ruti : 'Kubera ko Umwunganizi atitabye Urukiko ku itariki ya 31 Ukwakira 1996, itariki y'itangira ry'urubanza yagenwe n'icyemezo cy'Urugereko cyo ku ya 27 Nzeri 1996, kubera ibibazo by'amafaranga bitakemuwe hagati ya Gerefiye na we ; kubera ko ikibazo cyo kutumvikana ku by'amafaranga atari impamvu yumvikana yo kutaza mu itangiza ry'urubanza, kandi iyo tariki yari yashyizweho n'avoka amaze kubyemera; kubera ko, kubera izo mpamvu, kutitaba Urukiko k'umwunganizi, bishingiye ku mpamvu zidashobora kwemerwa kandi zitumvikana nk'uko biteganywa nk'uko bigenwa mu ngingo ya 19 y' Amabwiriza [arebana n'igenwa ry' abunganira abaregwa]'. Reba Icyemezo kirebana n'ihindura ry'avoka wagenwe n'isubikwa ry' urubanza, 31 Ukwakira 1996, urup.3.

69 Reba Inyandikomvugo y'iburanisha, 20 Ugushyingo 1996, urup. 101. Icyemezo cyafashwe mu magambo n'Urugereko cyakurikiwe n'ikindi kicyemeza n'icy'icyemezo mu nyandiko. Urugereko rwa Mbere rw'Iremezo rwagize ruti: 'kubera ko Yohani Pawulo Akayesu yasabye ko Me Karanavas yasimburwa kubera imyifatire ye idahwitse kubera ko atakizera na busa ko yamwunganira byimazeyo ; kubera ko Me Karnavas ahakana ibyo akemangwa byose na Yohani Pawulo Akayesu, ariko adahakana ibyo umukiliya we asaba, kandi ko yanabimwandikiye we ubwe ku itariki ya 15 Ugushyingo 1996.

[...] kubera ko Akayesu adashaka umwunganizi yahawe, Gerefiye agomba guhita abimenyesha Urukiko kandi agashimangira ko hashyirwaho byihutirwa umunsi w'iburanisha. Akayesu afite uburenganzira bwo kugira umwunganira yihitiyemo. Tugomba kubahiriza icyifuzo cye'; kubera ko, rutabogamiye ahari ho hose mu ihangana ry'Akayesu na Me Karnavas, Urukiko rurasanga kubera imiterere y'urubanza yatumye uregwa atagifitiye icyizere umwunganira, ari ibintu bidasanzwe, nk'uko biteganywa mu gika D) cy'ingingo ya 19 y'Amabwiriza, igena rero ibisabwa kugira ngo Urukiko rufate icyemezo cyo gusimbura avoka ; kubera ko Urukiko rusanga icyifuzo cya Akayesu cyo gusimbura umwunganizi wagenwe kigomba kubahirizwa'. Reba icyemezo cyakurikiye icyifuzo cy'uregwa cyo gusimbura avoka, 20 Ugushyingo 1996, urup.3.

47. Ku ya 22 Ugushyingo 1996, Gerefiye yagennye Me Tiangaye nk'avoka mukuru wa Akayesu. Ariko Akayesu yakomeje gushaka abandi bamwunganira, nka Me Lisulo[70]. Ku ya 16 Ukuboza 1996, Akayesu yandikiye Ibiro bya Gerefiye, avuga ko uwo yahisemo ari Me Scheers, ko kandi atishimiye kuba yakunganirwa na Me Tiangaye. Ku ya 27 Ukuboza 1996, Akayesu yasabye Gerefiye ko yakunganirwa n'undi avoka, Me Marchand. Ku ya 30 Ukuboza 1996, Gerefiye yasubije ibarwa yo ku ya 27 Ukuboza 1996, amenyesha Akayesu ko Me Tiangaye ari we uzamwunganira, abifashijwemo na Me Monthe.

48. Urubanza rwatangiye ku itariki ya 9 Mutarama 1997. Uwo munsi Akayesu yatanze icyifuzo gisaba kuvanaho abamwunganira, yongera no kwibutsa ko ashaka kunganirwa na Me Marchand. Ku ya 13 Mutarama 1997, yandikiye Perezida w'Urugereko, asaba ko yanyomoza ubwe abatangabuhamya batatu ba mbere kandi avuga ko ashaka kwiburanira ubwe. Urugereko rwa Mbere rw'Iremezo rwemeye icyo cyifuzo cyo ku wa 13 Mutarama 1997, ariko ruvuga ko, kubera imigendekere myiza y'ubutabera, abo abavoka babiri bazakomeza kunganira Akayesu kugeza igihe ruzakemurira burundu ikibazo cy'igenwa ry'abamwunganira[71]. Ku ya 16 Mutarama 1997, Urugereko rwafashe umwanzuro wo kutarikira icyifuzo cya Akayesu cyo guhindurirwa umwunganirwa kubera cyane cyane ko atashoboye kwerekana "impamvu zidasanzwe"zisabwa mu ngingo ya 19 A) y'Amabwiriza arebana n'igena ry'abunganizi[72]. Ku ya 21 Mutarama 1997, iburanisha ritangiye, Urugereko rwa Mbere rw'Iremezo rwamenyesheje Akayesu ko ashobora kunganirwa n'undi Avoka (ari we Me Marchand), mu gihe yemeye ko azamwunganira ku buntu[73]. Ku ya 31 Mutarama 1997, Akayesu yandikiye Perezida w'Urukiko

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[70] Uwo mwunganizi yari yaramuburaniye muri Zambia.

[71] Inyandikomvugo y'iburanisha, 13 Mutarama 1997, urup. 4.

[72] Urugereko rwa Mbere rw'Iremezo rugira ruti: ' kubera inyandiko nyinshi zanditswe na Akayesu yandikira Perezida w'Urukiko ku birebana n'isimburwa ry'avoka we, zirimo ibarwa yo ku wa 8 Mutarama 1997, avugamo ko atagikeneye ko Urukiko rusubiza inyandiko ze zinyuranye zirebana n'igenwa ry'umwunganira ; rumaze kubona ibyifuzo bikurikirana bya Akayesu bisaba ko ahindurirwa umwunganira, ibyifuzo Urukiko rwashubije inshuro ebyiri kubera ko ingingo ya 19 y'Amabwiriza yerekeye igenwa ry'avoka ikurikizwa gusa mu bihe bidasanzwe ; kubera ko Urukiko rusanga uregwa Yohani Pawulo Akayesu atagaragaje ko hari ibyo bintu bidasanzwe'. Reba Icyemezo Reba icyemezo cyakurikiye icyifuzo cya Akayesu cyo gusimbura avoka wagenwe, 16 Mutarama 1997, urup.2

[73] Perezida w'Urugereko rwa Mbere rw'Iremezo yagize ati : 'Uregwa avuga ko, uko abyumva, bisobanuye ko nta avoka ushobora kuza kumuburanira ku bwende bwe. Urukiko ruramumenyesha ko iyo myifatire atari yo. Ibiro bya Gerefiye byashatse gusa kumumenyesha ko Urukiko rushobora gusa kuriha avoka umwe wo kumuburanira, ariko na

amumenyesha ko anyuzwe n'abamwunganira, ariko ngo ari ukubera igitutu yashyizweho n'abo bavoka.

2. Ibivugwa n'ababuranyi

49. Akayesu avuga ko yavukijwe uburenganzira bwe bwo kwihitiramo ku bwende bwe umwunganira, n'ubwo kwiburanira ubwe. Akavuga ko ubwo burenganzira bwombi buteganywa n'ingingo ya 20 4) d) ya Sitati y'Urukiko.

a. Uburenganzira bwo kwihitiramo avoka umwunganira

50. Akayesu yibutsa ko Urukiko rwanze kumugenera abamwunganira babiri yari yihitiyemo (Me Scheers na Me Marchand) ngo kubera ko rutashoboraga guhemba undi avoka. Akerekana ko, n'ubwo Urukiko rwamuhakaniye, Ibiro bya Gerefiye byamugeneye abamwunganira babiri ku itariki ya 9 Mutarama 1997 (Me Tiangaye na Me Monthe), kandi we atarabashakaga. Akongeraho ko, kuri iyo tariki, amategeko yariho muri icyo gihe atemeraga ko umuntu yunganirwa n'abavoka benshi. Akayesu abona ko, ushingiye ku buryo Ibiro bya Gerefiye bisobanura Sitati, "usanga ubwo burenganzira bwo kwihitiramo umwunganizi bwabo butabaho kubera ko, uko abizi, abaregwa bose muri uru Rukiko ari abatindi nyakujya"[74].

none niba yirihiye avoka, cyangwa hakaboneka avoka umuburanira ku buntu, nta kibazo byatera. Bisa nk'aho ari uko biteye kuri Me Michel Marchan. Urukiko rumenyesha uregwa ko nta kibuza Me Michel Marchand kumwunganira niba yabikorera ubuntu cyangwa akamwiyishyurira. Cyokora n'ubwo Urukiko rutanze icyo gisubizo cyemerera Me Michel Marchand, agomba kuba abifitiye ubushobozi, ni ukuvuga ko agomba kwerekana impapuro zimwemerera kuba yaburana imbere y'Urukiko. Ni ibyo byemejwe, ariko mu gihe rugitegereje gusuzuma ubushobozi bwa Me Michel Marchand, urubanza rurakomeje', Inyandikomvugo y'iburanisha, 21 Mutarama 1997, imp. 1-3.

[74] Imyanzuro ya Akayesu, Umutwe wa II, igika cya 92

51. Yifashishije ubukemuramanza bw'Urukiko, Akayesu avuga ko uburenganzira bwo kwihitiramo ku bwende avoka butagomba guherera mu magambo gusa ahubwo bugomba kuba nyabwo[75]. Ingingo ya 20 ya Sitati, "ifite ingufu nk'iz'itegekonshinga"[76], ivuga ko umuntu wese ushinjwa ibyaha bikomeye nk'ibyo yagombye kwihitiramo ku bwende umwunganira mu rubanza rwose. Akayesu akavuga ko iyo myumvire ishyigikiwe cyane cyane nk'uko byakozwe ubwo hagenwaga abunganiye abaregwaga imbere y'Urukiko rw'i Nuremberg[77], kandi ko bihuje n'amategeko mpuzamahanga, cyane cyane ingingo zo mu Masezerano Mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki (Amasezerano Mpuzamahanga)[78].

52. Akayesu ashimangira kandi ko Ibiro bya Gerefiye byivuguruza mu myitwarire yabyo. Asobanura ko, mu iburanisha ryo ku itariki ya 31 Ukwakira 1996, Urukiko rwategetse ko yunganirwa n'avoka umwe gusa ariko nyuma y'amezi abiri, Gerefiye, "anyuranyije n'Amategeko", amugenera abavoka babiri bamwunganira na bo atari azi[79]. Avuga ko ubukererwe bw'urubanza butamuturutseho ahubwo bugomba kugerekwa ku nzego z'ubuyobozi bw'Urukiko, no kuri Porokireri watinze kumumenyesha ibimenyetso[80].

53. Akayesu avuga kandi ko, kuba yarahisemo avoka uyu cyangwa uriya mu bo yagejejweho n'Ibiro bya Gerefiye, bitavuga ko yabikoze ku bwende bwe bwe. Anavuga ko ibyo ari byo byose, byakozwe mu buryo budasanzwe[81]. Ku birebana na Me Karnavas, avuga ko "yari yugarijwe n'urubanza rwe, kandi ko uwo mu avoka yamwotsaga igitutu amubwira ko ashobora gukatirwa aramutse atemeye ko amubera avoka, ko rero ngo ari yo mpamvu

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75 Nk'Icyemezo Tadic (Ibimenyetso by'inyongera) ; "Decision on the Prosecution Motion to Resolve Conflict of Interest Regarding Attorney Borislav Pisarevic, *The Prosecutor v. Blagoje Simic, Milan Simic*, *Miroslav Tadic, Stevan Todorovic, Simo Zaric"*, Case No. IT 95-9-PT, ICTY Trial Chamber III of 25 March 1999, See "Akayesu's Brief ", Chapter 12, para. 70.

76 Imyanzuro ya Akayesu, umutwe wa II, igika 72.
77 Imyanzuro ya Akayesu, umutwe wa II, igika 73.
78 Imyanzuro ya Akayesu, umutwe wa II, igika 75.
79 Imyanzuro ya Akayesu, umutwe wa II, igika 85.
80 Igisubizo cya Akayesu, umutwe wa II, ibika 83-84. Reba kandi igisubizo cya Akayesu, ibika 18-24 ; Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp.56, 218.
81 Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 44

yamwemeye. “Amaze gusobanukirwa n’amafifiko ya Me Karnavas, yasabye ko uburenganzira yahawe yabwamburwa”[82]. Akayesu avuga ko amaze kubona ko Urukiko rukomeje kwanga kwakira icyifuzo cye kandi ku mpamvu zidafututse, yahebeye urwaje ariko ko uko kwemera kutafatwa na busa nk’aho yivukije uburenganzira bwe yakomeje kwimwa ubutitsa mu mezi yari ashize”[83]. Bityo rero, ngo ibyo yakoze byose byari ibintu bisanzwe kandi byumvikana umuntu azirikanye uko ibintu byari byifashe[84].

54. Byongeye kandi, Akayesu avuga ko yari mu kuri ubwo yasabaga akomeje ko yakunganirwa na Me Scheers kuko Urugereko rwa Mbere rw’Iremezo rutigeze rukura ku buryo bweruye Me Scheers ku rutonde rw’abashobora kumwunganira[85] kandi ko atigeze amenyeshwa ko Me Scheers yakuwe ku rutonde rw’abavoka[86].

55. Mu gusoza, Akayesu yifashishije urubanza rwa *Kambanda* mu bujurire avuga ko Urugereko rw’Ubujurire rutasgomba na gato gutekereza ko yivukije uburenganzira bwo kwerekana ko uburenganzira bwe bwabangamiwe, “kubera ko yagaragaje kenshi, haba mu nyandiko ndetse no mu magambo, ko atishimiye ibyo Ibiro bya Gerefiye bya mukoreye”[87].

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[82] Igisubizo cya Akayesu, igika 19. Akayesu abona ko guhitamo Me Karnavas byatewe n’ibihe. Akayesu yemera rero ko ‘ibyo yemeye ni uko Me Karnavas amwunganira gusa mu iburanisha ryo ku ya 31 Ukwakira 1996 ariko akagumana Me Scheers’. Reba Imyanzuro ya Akayesu, umutwe wa II, igika 87.

[83] Imyanzuro ya Akayesu, umutwe wa II, igika 91

[84] Akayesu asobanura imyifatire ye ku buryo bukurikira : « mbere, yashatse kugumana Me Scheers. Hanyuma ashaka kunganirwa na Me Lisulo wigeze kumuburanira muri Zambia kandi izina rye rikaba ryari ku rutonde rwa abavoka bashobora kugenwa.Yabwiye Me Tiangaye amaze kugenwa ko atamushira amakenga kandi ko atamushaka. Kandi yamubonye akanya gato gusa amaze kugenwa. Umwanya wose ubanziriza urubanza, Akayesu yumvaga ari wenyine : avoka Tiangaye yaje hasigaye iminsi mike ngo ururbanza rutangire. Umuryango we wari washakishije Me Marchand waje mu Rukiko ngo aburanire Akayesu. Urukiko ntirwemereye Me Marchand kugira icyo avuga. Akayesu yari yavuze ko abavoka be batari biteguye bihagije[...] Abo bavoka bombi, Tiangaye na Monthe, bagomba kwivana muri dosiye hakurikijwe amategeko agenga umwuga wabo’, Imyanzuro ya Akayesu, umutwe wa II, ibika 88-90.

[85] Mu gushyigikira ingingo ye, Akayesu yerekana icyemezo cy’Urugereko rwa Mbere rw’Iremezo kigira kiti‘[...] icyifuzo cyatanzwe mu Rukiko n’uregwa, gisaba ko Me Karanavas amwunganira ariko bitavuze ko Me Scheers avuyemo burundu, ko ashobora kuba uwungirije, mu gihe Amabwiriza ahindutse, Icyemezo kirebana n’isimbura ry’avoka wagenwe n’isubikwa ry ‘urubanza, 31 Ukwakira 1996, urup.3. Reba igisubizo cya Akayesu, igika 20. Akayesu avuga ko Urugereko rwa Mbere rw’Iremezo rwamuhaye icyizere ko Me Scheers yakongera kugenwa nk’avoka wungirije. Reba Inyandikomvugo y’iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 220.

[86] Igisubizo cya Akayesu, igika 21. Akayesu yongeraho ko atigeze abona inyandiko ikura Me Scheers ku rutonde rw’abavoka. Reba Inyandikomvugo y’iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 220

[87] Reba Inyandikomvugo y’iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 51.

56. Porokireri we yemeza ko ari Sitati ari n'Amategeko, nta na kimwe cyemerera uregwa utishoboye kunganirwa n'avoka yihiteyemo. N'ubwo ubukemuramanza bw'Urukiko bwemera ko uregwa ashobora kwerekana avoka yifuza mu gihe cyo kumugenera umwunganira[88], ubundi ihindurwa ry'avoka ribaho gusa iyo hari impamvu zidasanzwe. Kandi inyungu z'ubutabera ni imwe mu ngingo igomba kuzirikanwa mu gusuzuma ko hariho izo mpamvu zidasanzwe. Ikibazo gihari ni ukumenya niba koko guhindurirwa avoka bishobora kudindiza ku buryo butari ngombwa imiburanishirize[89]. Porokireri abona ko kubirebana n'icyo kibazo, imikorere y'Urukiko yubahirijwe kandi ko icyemezo cy'Urugereko rwa Mbere rw'Iremezo cyafashwe kubera inyungu z'ubutabera. Urugereko rwa Mbere rw'Iremezo rwakoresheje neza ububasha bwarwo busesuye ubwo rwasabaga Ibiro bya Gerefiye kwaka Me Scheers ububasha bwo kunganira Akayesu, igihe rwari rumaze kubona ko uwo Me Scheers atagaragaye mu iburanisha[90].

57. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwasanze ari ngombwa gutangiza urubanza ku itariki ya 9 Mutarama 1997: "hafashwe rero ingamba za ngombwa kugira ngo urubanza ruburanishwe neza"[91]. Muri izo ngamba, harimo kugenera Akayesu avoka wungirije. Porokireri ashimangira ko iryo genwa ritigeze ribangamira Akayesu ko ahubwo byamufashije kuko byatumye yitaba urukiko mu buryo bumeze neza kurushaho, ku itariki yari yashyizweho n'Urugereko rwa Mbere rw'Iremezo[92].

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88 "Decision on the Motions of the Accused for Replacement of Assigned Counsel", *The Prosecutor vs. Gérard Ntakirutimana*, Case Nos. ICTR-96-10-T and ICTR-96-17-T, Trial Chamber I, 11 June 1997, p. 6; "Decision on Request by Accused Mucić for Assignment of New Counsel", *Prosecutor vs. Zejnil Delalić et al.*, ICTY Case No. IT-96-21-T, 24 June 1996, para. 2.

89 Igisubizo cya Porokireri, igika 3.13.

90 Igisubizo cya Porokireri, urup. 3.23. Mu iburanisha mu bujurire, Porokireri yaravuze ati : « Me Scheers, ntiyashoboye kuba ari Arusha mu itangira ry'urubanza kubera impamvu ze bwite. Ku bw'ibyo yakuwe ku rutonde rw'abavoka. Nta kwibeshya rero mbona kwakozwe n'Urugereko.[Akayesu yihitiyemo Me Karnavas. M. Scheers yakuwe ku rutonde, iburanisha rirangiye', Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 163.

91 Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 165

92 Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.165.

b. Uburenganzia bwo kwiburanira

58. Akayesu yemeza ko Urugereko rwa Mbere rw'Iremezo rutigeze rugira icyo rubivugaho. Avuga ko yasabye kenshi ko yakwiburanira, ku itariki ya 17 Mutarama 1997, iya 21 Mutarama 1997 n'iya 5 Gashyantare 1997. Asanga rero Urugereko rwa Mbere rw'Iremezo rwarahisemo kutumva ibyifuzo bye. Yongeraho ko yarashoboye rwose kwiburanira kandi ko Urugereko rwa Mbere rw'Iremezo rutagombaga kumuhatira kunganirwa na avoka[93].

59. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo ari rwo rufite ububasha bwo kwemeza niba ari ngombwa ko uregwa yunganirwa n'avoka[94]. Aributsa ko, muri uru rubanza, mu gihe hari hategerejwe ko hafatwa icyemezo ku birebana n'ihindurwa ry'abamwunganira, Urugereko rwa Mbere rw'Iremezo rwemereye Akayesu kunyomoza abatangabuhamya[95]. Porokireri abona ko Urugereko rwa Mbere rw'Iremezo rwafashe icyemezo cyiza ubwo rwahatiraga Akayesu kunganirwa n'avoka. Icyo cyemezo gishingiye ku ngingo eshatu z'ingenzi. Iya mbere: Imyifatire ya Akayesu ntiyarisobanutse kandi yarahuzagurikaga kuko yasabaga kwiburanira no kunganirwa na avoka yihitiyemo. Iya kabiri, yaregwaga ibyaha bikomeye cyane biteganywa n'amategeko mpuzamahanga ibyo bituma ikibazo kiba insobe, byasaba rero ko agira umwunganira. Iya gatatu: Kuba yarasabye kenshi ko yakunganirwa byerekana ko yari abikeneye[96].

3. <u>Isesengura ry'Urugereko</u>

a. Ku birebana no kwihitiramo avoka

60. Muri rusange, kuba uregwa w'umutindi nyakujya yaba afite uburenganzira bwo kwihitiramo umwunganira bikurura ikibazo cyo guhuza ibintu bibiri : ku ruhande rumwe,

[93] Igisubizo cya Akayesu, ibika 26-27.
[94] Igisubizo cya Porokireri , ibika 3.25-3.41
[95] Mu iburanisha ryo ku ya 13 Mutarama 1997. Igisubizo cya Porokireri, urup. 3.41
[96] Igisubizo cya Porokireri, igika 3.42

ikibazo cy'urubanza ruboneye ku buryo uregwa yunganirwa neza, ku rundi ruhande, ikibazo cyo gukoresha mu buryo bukwiye umutungo w'Urukiko.

61. Urugereko rw'Ubujurire rusanga ubundi uburenganzira bwo kunganirwa na avoka ku buntu bitavuga ko umuntu aba afite uburenganzira bwo kumwihitiramo. Ubwo burenganzira buhabwa gusa abaregwa bashobora kwirihira ababunganira. Kuri iyi ngingo Urugereko rw'Ubujurire ruributsa imyanzuro yafashwe mu rubanza rwa *Kambanda* mu bujurire:

> Urugereko rw'Ubujurire rwifashisha […] igitekerezo cy'Urugereko rwa Mbere rw'Iremezo I, rwibanzeho mu rubanza rwa *Ntakirutimana* maze rwanzura, rugendeye ku gisobanuro kinonosoye cy'ingingo za Sitati n'Amategeko hamwe n'ibyemezo bifitanye isano n'iki kibazo bya Komite y'Uburenganzira bw'Ikiremwamuntu n'iby'inzego zubahiriza Amasezerano y'Ibihugu by'i Burayi Yerekeye Uburenganzira bw'Ikiremwamuntu, ko uburenganzira bwo kunganirwa ku buntu bitavuga uburenganzira bwo kwihitiramo umwunganizi[97].

62. Kugenera uregwa w'umutindi nyakujya umwunganizi bikorwa na Gerefiye w'Urukiko ahereye ku rutonde rw'abavoka bahari, abona ko babifitiye ubushobozi ashingiye byangombwa bisabwa n'Urukiko[98]. Ubundi, ukurikije uko bikorwa, uregwa w'umutindi nyakujya ashobora kwihitiramo muri abavoka bari ku rutonde kandi muri rusange Gerefiye yubahiriza icyifuzo cye[99] . Ariko uko biri kose, Urugereko rw'Ubujurire rusanga Gerefiye

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[97] Urubanza rwa Kambanda mu bujurire, igika 33.

[98] Ingingo ya 45 A) y'Amategeko ivuga ko 'Gerefiye afite ilisiti y'abavoka bavuga nibura rumwe mu ndimi zikoreshwa n'Urukiko, bujuje ibyangombwa bisabwa mu ngingo ya 44 y'iyo ngingo, bafite nibura imyaka 10 y'uburambe ku kazi ku birebana n'umurimo basabwa gukora kandi bakaba baramenyesheje ko bakwemera gushingwa n'Urukiko imirimo yo kunganira ukekwaho icyaha cyangwa uregwa udashoboye kwihembera umwunganira".

[99] Urugereko rw'Ubujurire ruragerageza koko rero kuzirikana imikorere y'Urukiko mu gusuzuma ibiri muri uru rubanza. Mu rubanza rurebana n'igenwa ry'umwunganizi, Urugereko rw'Ubujurire rwavuze ko 'the practice of the Tribunal has been to provide a list of approved counsel from which an accused may choose and that Mr. John Philpot was included in this list by the Registrar at the insistence of the Appellant that he desired that Mr. Philpot be assigned to him, and considering further that the Registrar thereby gave the Appellant a legitimate expectation that Mr. Philpot would be assigned to represent him before the Tribunal" Appeals Chamber, 27 July 1999, p. 2. See also "Decision on the Motions of the Accused for Replacement of Assigned Counsel", *The Prosecutor v. Gérard Ntakirutimana*, Case Nos. ICTR-96-10-T and ICTR-96-17-T, Trial Chamber I, 11 June 1997, p. 6; "Decision on Request by Accused Mucic for Assignment of New Counsel", *Prosecutor v. Zejnil Delalić et al.*, ICTY Case No. IT-96-21-T, 24 June 1996, para. 2."

atagomba kubahiriza byanze bikunze ibyifuzo by'uregwa w'umutindi nyakujya, ahubwo afite ububasha busesuye akoresha agamije kurengera inyungu z'ubutabera.

63. Muri uru rubanza, Urugereko rw'Ubujurire rusanga uburenganzira bw'uregwa nk'uko buteganywa n'ingingo ya 20 4) ya Sitati bwarubahirijwe. Urugereko rw'Ubujurire ruributsa ko Akayesu yasabye guhindurirwa abavoka bamwunganira inshuro eshatu, yandikiye inshuro nyinshi Perezida w'Urukiko na Gerefiye, kandi ko Urugereko rwa Mbere rw'Iremezo rwamwemereye inshuro ebyiri guhindura abavoka bamwunganiraga. Mu ikubitiro, Akayesu yasabye ko yakunganirwa na Me Scheers kandi Gerefiye yarabyubahirije ku itariki ya 10 Gicurasi 1996. Ni ukuvuga ko icyifuzo cya mbere cya Akayesu cyubahirijwe. Hanyuma Urugereko rwa Mbere rw'Iremezo rumaze gufata icyemezo ku italiki ya 31 Ukwakira 1996 cyo kwambura Me Scheers uburenganzira bwo kunganira Akayesu[100], Gerefiye yari mu kuri ubwo yasangaga ko uwo avoka atujuje ibisabwa n'Urukiko kugira ngo ashyirwe ku rutonde rw'abavoka, bityo akamuvana kuri urwo rutonde. Nta kuntu rero Akayesu yashoboraga kongera gusaba kugenerwa Me Scheers. Urubanza rumaze gutangira, Urugereko rwa Mbere rw'Iremezo rwagombaga kwita ku iyubahirizwa ry'uburenganzira bw'uregwa bw'uko urubanza rwaburanishwa mu buryo buboneye kandi vuba. Muri urwo rwego, kutemerera Me Marchand kunganira Akayesu byari bifite ishingiro cyane cyane ko, nk'uko Perezida w'Urugereko rwa Mbere rw'Iremezo yabivuze ku itariki ya 21 Mutarama 1997, kugeza kuri iyo tariki bari batarasuzuma niba uwo muvoka yari yujuje ibyangombwa bisabwa byo kugaragaza ubushobozi bwe. Bityo, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarashyize mu gaciro mu isuzuma ry'ibibazo byose haba mbere haba na nyuma y'itangira ry'urubanza. Rwakoresheje rero neza ingingo ya 19 1) ya Sitati[101], n'ingingo 19 A) y'Amabwiriza agenga igenwa ry'abunganizi. Urugereko rw'Ubujurire

[100] Reba Icyemezo kirebana ni ihindurwa ry'avoka wagenwe n'isubika ry'urubanza, Porokireri aburana na Yohani Paulo Akayesu, urubanza No ICTR-96—4-T, Urugereko rwa Mbere rw'Iremezo I, 31 Ugushyingo 1996.

[101] Ingingo ya 19 1) ya Sitati ivuga ko : « Urugereko rwa Mbere rw'Iremezo rugomba kureba ko urubanza rucibwa mu kuri kandi rugacibwa bwangu kandi byubahiriza ibiteganijwe mu Mategeko agenga imiburanishirize n'itangwa ry'ibimenyetso, uburenganzira bw'uregwa bukubahirizwa kandi abatangabuhamya n'aabakorewe ibyaha nabo bakarindwa'

ruributsa ko, hakurikijwe ingingo ya 19 y'Amabwiriza, kuvanaho avoka wagennwe bikorwa gusa "iyo hariho impamvu zidasanzwe"[102].

64. Ku birebana n'uru rubanza, Urugereko rw'Ubujurire rusanga hari hariho impamvu zumvikana zo kuvanaho abavoka babiri Akayesu yari yihitiyemo. Nta na rimwe Akayesu yerekanye ko yabangamiwe bikabije. Bityo, Urugereko rw'Ubujurire ntirwakiriye impamvu zose z'ubujurire bwa Akayesu zirebana n'ikibazo cyo guhitamo umwunganira. Byongeye kandi, rusanga ari ngombwa kugaragaza ko rudashyigikiye uko uregwa w'umutindi nyakujya yakoresheje ku buryo butandukira uburenganzira bwe bwo kunganirwa n'abavoka muri uru rubanza, kandi barihwa imari y'umuryango mpuzamahanga.

b. Uburenganzira bwo kwiburanira

65. Kubera ko Akayesu yasabye kenshi kunganirwa n'avoka yihitiyemo, Urugereko rw'Ubujurire rurasanga byari bikomereye Urugereko rwa Mbere rw'Iremezo kumenya ko ashaka rwose kandi ku buryo budakuka kwiburanira ubwe. N'ubwo yavuze kenshi ko ashaka kwiburanira, imyifatire ye imbere y'Urugereko yerekanaga ahubwo ko yashakaga kunganirwa. Byongeye kandi, Urugereko rw'Ubujurire rushimangira ko Urugereko rwa Mbere rw'Iremezo rwahaye Akayesu uburenganzira bwo kunyomoza umutangabuhamya wiswe K., mu gihe bari bategereje ko undi avoka agenwa. Akayesu rero nta gihamya yerekanye cy'amakosa yaba yarakozwe n'Urugereko rwa Mbere rw'Iremezo.

66. Urugereko rw'Ubujurire rusanga ibirego bya Akayesu bidafite ishingiro kandi Urugereko rwa Mbere rw'Iremezo rwarashyize mu gaciro iyo witegereje imiterere yihariye y'uru

[102] Ingingo ya 19 A) ivuga itya : 'Gerefiye ashobora : i) mu bihe bidasanzwe, abisabwe n'uregwa cyangwa se n'umwunganira, kumwambura ububasha bwo kumwunganira ; ii) Mu bihe bidasanzwe, kandi abisabwe n'umwunganizi mukuru, kwambura ububasha uwungirije umwunganira ; iii) mu gihe habonetse kutubahiriza Amategeko agenga umwuga, kwambura ububasha umwunganizi n'umwungirije.'

rubanza. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanze rero ingingo zose z'ubujurire zirebana n'uburenganzira bwo kwiburanira ubwe nta shingiro zifite.

B. Impamvu y'ubujurire ya kabiri: Akayesu yavukijwe uburenganzira bwo kunganirwa n'avoka ubifitiye ubushobozi[103]

67. Muri rusange, Akayesu avuga ko atahawe abamwunganira babishoboye. Asanga yaravukijwe uburenganzira bwo kwiburanira ubwe, agasaba rero Urugereko "gukosora iryo kosa rikomeye ry'imiburanishirize ruhagarika ikurikiranacyaha cyangwa bitaba ibyo, rugategeka ko urubanza rutangira bundi bushya"[104].

1. Ibivugwa n'ababuranyi

68. Akayesu avuga ko yavukijwe uburenganzira bwo kunganirwa ku buryo bwuzuye kandi buhamye no guhabwa avoka ubishoboye. Avuga ko avoka we Me Tiangaye n'uwari umwungirije ari we Me Monthe bari abaswa. Akayesu abona ko icyo kibazo kigomba gusuzumwa n'Urugereko rw'Ubujurire kubera isano itaziguye iri hagati y'ibitarakozwe n'abamwunganiye n'icyo byamwangirijeho, ni ukuvuga ikosa ryakozwe n'Urugereko rwa Mbere rw'Iremezo.

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[103] Impamvu z'ubujurire mu magambo arambuye zikubiye muri iyi mpamvu rusange ziboneka ku mugereka B. Mu nyandiko ya kabiri y'ubujurire, Akayesu avuga ko 'Uregwa ataburaniwe neza kubera ko yavukijwe uburenganzira bwe bwo guhabwa avoka ubishoboye cyangwa ukwiye, bituma urubanza rwose rwuzuramo amakosa menshi ariko atari yose kandi rucibwa nabi.' (aragira ati : ' amwe muri ayo makosa[...] Mu Myanzuro ye, Akayesu yerekana 'ibyo abamwunganira banengwa' kandi akavuga ko yerekana 'iby'ingenzi'(Imyanzuro ya Akayesu, mutwe wa III, igika 8). Kubera izo mpamvu, Urugereko rw'Ubujurire rwitaye ku mpamvu z'ubujurire ziri mu nyandiko ebyiri z'ubujurire hamwe n'ingingo zivugwa mu Myanzuro no mu Gisubizo bya Akayesu mu buryo bwa rusange kandi bwuzuzanya.Urugereko rw'Ubujurire rusanga Akayesu ataragarutse kuri zimwe mu ngingo z'ubujuriree yari yavuze mu nyandiko ya mbere cyangwa ya kabiri mu Myanzuro cyangwa se mu Gisubizo cye. By'umwihariko, 'Urugereko rwanze abatangabuhamya 19 b'imena b'ubwunganizi, ibi bikaba ari ikosa ry'Urukiko rinyuranyije na Sitati y'Urukiko (TPIR) kandi ribangamiye uburenganzira bw'ibanze bw'uregwa'(Inyandiko ya 1 y'ubujurire, umurongo wa 7) ; 'mu kwihutira kurangiza urubanza, Urukiko rwaburijemo iyunganirwa nyaryo rwanga kwakira nta mpamvu abatangabuhamya 14 b'imena bashinjura'. (Inyandiko ya 2 y'ubujurire, igika 4 v). Urugereko rw'Ubujurire ntabwo ruri bubisuzume.

a. Ibishingirwaho mu gusuzuma iyo ngingo y'ubujurire

69. Akayesu yibutsa ko ikosa rikomeye ry'abunganira abandi mu nkiko rishobora gutuma habaho akarengane bikaba impamvu yo kujurira. Yifashisha igitekerezo cy'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa Tadic[105]. Avuga ko ikibazo cy'abunganizi badashoboye akazi kabo gifitanye isano n'ihame ry'uko ababuranyi bahanganye bagomba guhabwa uburyo bungana[106].

70. Akayesu avuga ko ingingo zo mu rwego rw'amategeko zakwitabwaho kugira ngo umuntu ajuririre ubuswa bw'abavoka be, zagombye gusobanurwa hashingiwe ku isesengura ry'ubukemuramanza bw'Urugereko rw'Ubujurire rwa TPIY n'amahame yemewe muri rusange mu muryango w'amategeko witwa "*Common law"*[107]. Akayesu ashima imitekerereze y'inkiko zimwe z'ibihugu bifite amategeko ashingiye kuri *"Common law"* zihitamo "gusuzuma no kugenzura imyifatire mibi y'abavoka zidashingiye ku buziranenge bw'ibikorwa byabo, ahubwo zita ku kureba niba ibyo bikorwa hari ingaruka bifite ku mikirize y'urubanza ruboneye[108]. Akayesu abona ko uburangare n'amakosa by'abavoka be na byo byagombye gusuzumwa hazirikanwa ingaruka zabyo ku mikirize y'urubanza ruboneye[109].

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104 Imyanzuro ya Akayesu, Umutwe wa III, igika 48. Reba kandi umutwe wa XV, igika 1

105 Urugereko rw'Ubujurire rwa TPIY rugira ruti : 'ubusabane hagati y'umukiliya n'umuburanira ni ngombwa ku mikorere y'Urukiko Mpuzamahanga. Niba umwunganizi yarakoze adakurikije icyifuzo cy'ujurira, umuntu yavuga ko uregwa yemeye iyo mikorere yenda atseta ibirenge iyo ntacyo yabivuzeho muri icyo gihe keretse mu bihe bimwe na bimwe bidasanzwe kandi ntabiboneka muri uru rubanza'. Cyakora iryo hame ntiryubahirizwa iyo hari ibimenyetso bicukumbuwe by'ubuswa bukabije byerekana ko uregwa ashobora kuba yarabangamiw. Icyemezo kirebana n'icyifuzo cy'ujurira gisaba kongererwa igihe no gutanga ibimenyetso by'inyongera, Porokireri aburana na Dusko Tadic, urubanza No. IT-94-1-A, Urugereko rw'Ubujurire rwa TPIY, 15 Ukwakira 1998, ['Icyemezo Tadic (Ibimenyetso by'inyongera)'], igika 65.

106 Yongeye na none kwerekana ibikubiye mu bukemuramanza bw'Urugereko rw'Ubujurire rwa TPIY, na bwo bushingiye ku bukemuramanza bw'Urukiko rwita ku Burenganzira bw'ikiremwamuntu mu bihugu by'i Burayi (CEDH), Akayesu yerekana ko ihame ryo 'kugira uburyo bungana' bivuga ' guha buri muburanyi uburyo, rushyize mu gaciro, bwo kwiregura, harimo n'ibimenyetso-ku buryo uwo baburana aba atagira icyo amurusha', Icyemezo Tadic (Ibimenyetso by'inyongera), igika 48

107 Imyanzuro ya Akayesu, Umutwe wa III, ibika 39-48.

108 Imyanzuro ya Akayesu, Umutwe wa III, igika 43.

109 Igisubizo kinyomoza cya Akayesu, umutwe wa III, igika 38.

71. Porokireri we, yafahsishije ubukemuramanza bw'Urugereko rw'Ubujurire rwa TPIY, by'umwihariko ku cyemezo cyafashwe mu rubanza rwa Tadic (ibimenyetso by'inyongera), abona ko ujurira ari we ugomba kwerekana amakosa akomeye yakozwe mu rwego rw'akazi n'abamwunganira kandi akerekana ko umuntu ashobora gukenga ku buryo bushyize mu gaciro ko haba harabayeho amakosa mu ikiza ry'urubanza[110]. Porokireri asanga kandi kuba ujurira akomoza ku mitekerereze y'inkiko z'ibihugu bigendera ku mategeko ya *"Common law"* kandi *z*ifite ibindi zigenderaho[111], byerekana ko ashaka gusa kwigizayo ingingo ya mbere yerekanywe n'Urugereko rw'Ubujurire rwa TPIY. Nyamara Akayesu ntiyerekanye muri uru rubanza "impamvu zikomeye zatuma Urugereko rw'Ubujurire rudakurikiza icyemezo cyafashwe mbere ku kibazo nk'icyo"[112]. Porokireri ashyigikiye rero ko ingingo zigomba gukurikizwa muri uru rubanza ari izisobanurwa n'Urugereko rw'Ubujurire rwa TPIY.

b. Ibimenyetso birebana no kuba Avoka adashoboye akazi

72. Urugereko rw'Ubujurire rwanze kwakira inyandiko Akayesu yakoze hejuru y'indahiro irebana n'ubuswa bw'avoka umwunganira. N'ubwo iyo nyandiko ye itakiriwe, Akayesu avuga ko ashobora kwerekana ko uburenganzira bwe butubahirijwe yitwaje amabaruwa abiri yandikiye Perezida w'Urukiko: imwe ni iyo ku wa 9 Mutarama 1997, indi ni iyo ku wa 18 Nzeri 1998.[113]

73. Akayesu avuga ko:

1) Kutitegura kwa avoka[114] (kudasuzuma Inyandiko y'ibirego, kuba badafite ingamba bagenderaho, no kubura abakozi bo gukora iperereza, etc...[115]) n'andi makosa [116], bishobora gutuma umuntu atekereza ko hari ho akarengane. Nk'uko abibona:

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[110] Icyemezo Tadic (ibimenyetso by'inyongera), igika 49
[111] Igisubizo cya Porokireri, igika 49
[112] Urubanza rwa Aleksovski mu bujurire, igika 108.
[113] Igisubizo kinyomoza cya Akayesu, igika 40.
[114] Yerekana ibarwa yo ku wa 9 Mutarama 1997.

Urubanza rukomeye nk'uru, ruteguwe nabi, rutangira nta batangabuhamya bashinjura, nta bakozi bo gukora iperereza, nta ngamba zigenderwaho, ari nk'ikinamico cyangwa ubutabera bwa nyirarureshwa bahamagaramo uregwa kuza kureba abatangabuhamya ba Porokireri aho biyereka, nta kintu ashobora guhindura. Ihame ry'uko ababuranyi bahanganye bagomba guhabwa uburyo bungana ntiryubahirijwe na busa[117].

2) Kuba hatarabyukijwe ibibazo birebana no kutubahiriza uburenganzira bwe bw'ibanze. Ikibazo cyo gufungwa kwe, cyaba kitarabyukijwe n'abamuburaniraga[118], cyari "ingingo ikomeye kandi ifite ireme"[119]. Akayesu avuga ko yavukijwe gutanga ingingo zari gutuma ikurikiranacyaha rihagarikwa, bityo rero kuba abavoka be bataragize icyo babivugaho byaba byarabaye nyirabayazana y'akarengane[120].

3) Kudakorana n'ujurira no kutamugira inama ku buryo bukwiye [121].

4) Kudakorera hamwe, kubera ko mu mikorere yabo bagendaga basimburanwa kandi badahuza ibikorwa[122]. Akayesu avuga ko iyo mikorere ibangamiye ubwayo uburenganzira

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[115] Akayesu yongera gutsindagira amakosa y'abavoka yo kudafata abakora anketi ngo kubera impamvu z'ibanga n'ingaruka y'iyo myitwarire : kuba atarabonye abatangabuhamya be beza bamushinjura no kuba abatangabuhamya baje batarabajijwe bikwiriye. Avuga ko abavoka be batigeze bashaka abatangabuhamya bashinjura mu kwezi kwa mbere n'ukwa kabiri 1997 no kuba baratanze abagabo badahagije kandi badashoboye. Imyanzuro ya Akayesu, umutwe wa III, igika 11.

[116] Mu gisubizo cye kinyomoza, Akayesu avuga : "igihe gito cyo gutegura dosiye ye, kubura abakora anketi, kutamenya amateka y'u Rwanda, impinamyanzuro yo mu ikubitiro ijegajega, kuba nta ngamba, ubuswai', Igisubizo kinyomoza cya Akayesu, igika 41. Mu iburanisha mu bujurire, yibukije '[...] kutitegura, no kuba nta buhamya bwatanzwe, nta buhamya bw'abagabo kuri bimwe mu byo aregwa, no kuba abavoka be bataravuganaga, umwe ntiyamenyaga iby'undi akora. Ubundi bazaga bacyererewe. Ntibagaruke. Ntibakurikize amabwiriza ye. Kubera ko Akayesu yarazi bamwe muri abo batangabuhamya, kandi yari azi impamvu ituma babeshya. Yari azi uko yabanyomoza, ariko abavoka ntibakurikiza amabwiriza ye', Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.74.

[117] Igisubizo kinyomoza cya Akayesu, igika 43.

[118] Kuri iyo ngingo, Akayesu atandukanya ibyemezo byafashwe na Me Scheers n'ibyafashwe na b'avoka be babiri yagenewe. Asobanura ko 'avoka Scheers wunganira ujurira yari yerekanye ko ifatwa ritubahirije amategeko mu cyifuzo cye gikubiye mu ngoboka mbanzirizarubanza yo ku wa 30 Gicurasi 1996 no mu ibazwa ryo ku wa 26 Nzeri 1996 nk'uko dosiye ibyerekana. Porokireri yari yasubije mu nyandiko ku byo ujurira yakemangaga. Ubwo ni bwo havuzwe ikibazo cyo kutubahiriza amategeko, n'ubwo kitacukumbuwe byimazeyo. Ujurira avuga ko abavoka yatsindiriwe bagombaga gusuzuma no gushimangira iyo ngingo', Igisubizo kinyomoza cya Akayesu, ibika 44-45.

[119] Igisubizo kinyomoza cya Akayesu, igika 46.

[120] Igisubizo kinyomoza cya Akayesu, igika 46.

[121] Imyanzuro ya Akayesu, Umutwe wa III, igika 15. Akayesu abona ko ibarwa yo ku wa 9 Mutarama 1997 n'iyo ku wa 18 Nzeri 1998 zirimo ingingo zumvikana neza kuri icyo kibazo, Reba Igisubizo kinyomoza cya Akayesu, igika 48

bw'uregwa kubera ko, aho kugira abavoka babiri mu by'ukuri, asa nk'uwari ufite avoka umwe uri ku izamu wagendaga asimburanwa n'undi, kandi bombi bava mu bihugu bibiri bitandukanye, badahabwa inyandikomvugo z'iburanisha batagiyemo, bityo ntibagire icyo bamenya ku byabaye. Iyo mikorere ni mibi, irutwa n'iyo gukoresha avoka umwe kuko we nibura aba akurikirana imiburanishirize y'urubanza mu ntera yarwo yose[123]. Akavuga ko inenge y'iyo mikorere "yagaragaye" mu ibazwa rya Jenerali Dallaire[124].

5) Gukererwa no gusiba kw'abavoka[125]. Gukererwa no gusiba kwabo kwa buri gihe bituma uregwa arushaho "kumva ko arengana"[126] kandi bibangamira ishyirwa mu bikorwa ry'ihame ry'ingenzi rirebana n'ubusabane bugomba kuranga avoka n'uwo yunganira kandi nyamara iryo hame ryaremejwe n'Urugereko rw'Ubujurire rwa TPIY [127].

6) Kudategura ubuhamya bw'ujurira kugira no abashe kuvuguruza ibivugwa na Porokireri[128]. Akayesu avuga ko urubanza rurimo ibintu atigeze atangaho ubuhamya[129].

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[122] Akayesu abona ibarwa yo ku wa 18 Nzeri 1998, ishyigikira bimwe mu birego biri muri iyo ngingo. Reba Igisubizo kinyomoza cya Akayesu, igika 52.

[123] Igisubizo kinyomoza cya Akayesu, igika 49. Muri rusange, Reba Imyanzuro ya Akayesu, umutwe II, ibika16-20. Akayesu avuga ko uburyo bwashyizweho n'abavoka be 'bwemejwe atabizi, bwari bunyuranyije n'ibyifuzo bye kubera ko abo bavoka abombi bagomba gukorana kugira ngo bahurize ibitekerezo n'ibikorwa byabo hamwe. Ibyo byatumye habaho gusubika iburanisha'. (igika 16). Mu gushyigikira iyo ngingo avuga ibintu byinshi byabaye mu iburanisha, byerekana ko nta bwumvikane bwari hagati ya abavoka be kandi bakundaga gusiba. (ibika 17-18).

[124] Imyanzuro ya Akayesu, Umutwe wa III, igika 20.

[125] Imyanzuro ya Akayesu, Umutwe wa III, ibika 21-24. Akayesu atanga, urugero, isiba ry'abavoka be mu iburanisha ryo ku itariki ya 10 Werurwe 1997, aho bagombaga kumva ingingo z'ababuranyi ku cyifuzo cyari cyatanzwe n'Ubwunganizi ku ya 29 Mutarama 1997. Asobanura ko 'kumva ababuranyi, kutashoboye gukorwa ku itariki ya 10 Werurwe, 1997, kubera ibr rya baavoka yahatiwe, ryakozwe hashize umwaka, ni ukuvuga ku italiki ya 6 Werurwe1998', Igisubizo kinyomoza cya Akayesu, igika 54.

[126] Igisubizo kinyomoza cya Akayesu, igika 55; Inyandikomvugo y'iburanisha mu bujurire, I Ugushyingo 2000, urup. 71.

[127] Aha asubira mu magambo y'Urugereko rw'Ubujurire rwa TPIY rugira ruti : 'ubusabane hagati y'uburanirwa n'umuburanira ni ngombwa ku mikorere y'Urukiko Mpuzamahanga'', Icyemezo *Tadic*, (ibimenyetso by'inyongeraho), igika 65. Reba igisubizo kinyomoza cya Akayesu , igika 58.

[128] Imyanzuro ya Akayesu, Umutwe wa III, ibika 25-27. Akayesu avuga ko ibarwa yo ku ya 18 Nzeri 1998 ishyigikira iyo mvugo.

[129]Avuga ibika 254, 267, 307, na 406 by'urubanza. Abona ko 'ari amakosa akomeye y'abavoka : kutamureka ngo atange ubuhamya bwe ku birego bw'ubwicanyi (ibika 254, 267 na 307) cyangwa iterabwoba (igika 406) mu gihe yarafite ibyo yireguza mu Rukiko', Igisubizo kinyomoza cya Akayesu, igika 63.

Yongeraho ko kudategura ubuhamya bwe ari ikosa rikomeye ryakozwe n'abavoka be, cyane cyane ko nta n'abatangabuhamya bashinjura bari bahari[130].

7) Kudakurikiza amabwiriza y'ujurira no kutamwunganira mu buryo bushimishije[131]. Akayesu avuga ko « ibibazo bikwiye kandi bifite akamaro bitabajijwe abatangabuhamya bashinja n'ubwo yabigezaga ku bavoka kandi akabasaba kubibaza »[132].

8) Kutamenyesha Ujurira uburyo bacunga dosiye ye[133]. Akayesu avuga ko abavoka be "batamumenyesheje icyo bari bagamije, ingamba zabo, umurongo w'imyiregurire bagenderaho cyangwa ingingo zo kwiregura, ibibazo byihishe inyuma y'urubanza, imiterere y'amategeko n'impamvu z'imyitwarire yabo"[134]. Akayesu yongeraho ko abamwunganiraga "bagiye mu nama ntegurarubanza yo ku itariki ya 29 Ugushyingo 1996, mu iburanisha ryo ku ya 23 Mutarama 1997 no mu nama ntegurarubanza yo ku itariki ya 6 Gashyantare 1998 atabizi"[135].

9) Kutabyutsa ibibazo ibi n'ibi mu gihe gikwiye[136].

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[130] Igisubizo kinyomoza cya Akayesu, igika 64. Mu iburanisha mu bujurire, abunganira Akayesu bavuze bati: 'Nta gushidikanya ko mugiye gusoma ubuhamya bwa Akayesu ; hari impapuro 180 z'amagambo ya Akayesu. Ntabwo ariko uregwa agomba gutanga ubuhamya[...]Akayesu ntiyavuze ibyo yabonye ku birebana n'iyicwa ryakorewe abavandimwe ba Karangwa no ku iterwa n'iterabwoba byakorewe K. Iyicwa ry'abavandimwe ba Karangwa ni imwe mu ngingo zikomeye z'urubanza. Ubuhamya Akayesu yatanze ntibwashoboye gusubiza ibirego yarezwe', Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urupapuro 67. Reba Inyandikomvugo y'iburanisha mu bujurire 1 Ugushyingo 2000, imp. 68-69.

[131] Imyanzuro ya Akayesu, Umutwe wa III, ibika28-29. Akayesu asanga ingingo ze zishingiye ku byabaye biri mu ibaruwa yo ku wa 18 Nzeri 1998.

[132] Imyanzuro ya Akayesu, Umutwe wa III, igika 29. Muri rusange, Akayesu yaba yarashatse kubaza abatangabuhamya ibibazo batabajijwe n'abamwunganira. Ariko aha avuga ko 'kumusaba kwerekana ko gushobora kubona ikimenyetso cy'inyongeraho cyangwa gutesha agaciro abatangabuhamya biba byaragize ingaruka ku rubanza ari ugusaba ikintu kidashoboka'. Igisubizo kinyomoza cya Akayesu, igika 59.

[133] Imyanzuro ya Akayesu, Umutwe wa III, igika 30.

[134] Imyanzuro ya Akayesu, Umutwe wa III, igika 30.

[135] Igisubizo kinyomoza cya Akayesu, igika 67.

[136] Imyanzuro ya Akayesu, Umutwe wa III, igika 31. Mu Myanzuro ye, Akayesu yibutsa ibiba byaratumye abamwunganira bagira icyo bibaza : 1. Porokireri ntiyatanze ubuhamya bw'abagabo be ; 2) Porokireri abaza abatangabuhamya be, ibibazo bisa n'ibibabwira ibyo bagomba gusubiza; 3) Urugereko rurabuza abamwunganira kubaza ibibazo bituma bamenya icyo bari busubize mu inyomoza; 4) Abavoka ntiberekana ibogama rya Madamu Desforges, watanzwe nk'impuguke; 5) Impuguke ziratandukira ; 6) Abacamanza bavuga mu rwego rw'amategeko ibidakwiriye; 7) Abacamanza bahabwa ubuhamya mu mwiherero, Ujurira atabizi; 8) Porokireri ushinzwe iyi dosiye abifitemo inyungu. Abona ko ibi bitakozwe bigaragara muri dosiye. Reba igisubizo kinyomoza cya Akayesu, igika 70.

10) Kudashakisha aho abatangabuhamya bo gushinjura baherereye (kugira ngo bafate ubuhamya bwabo bwanditse kandi babazane kubutanga). Akayesu agaya abavoka be batasabye ishyirwaho ry'abapererezi yaba umwe cyangwa benshi kugira ngo babafashe mu kazi kabo k'iperereza[137]. Aha ashaka kwerekana "uburangare n'umwete muke w'abavoka be, no kugaragaza ko atahawe umwanya wo gutanga ibimenyetso bye[138].

11) Kwigizayo abatangabuhamya bamwe cyangwa kutabonana nabo kubera uburangare n'umwete muke[139].

74. Porokireri avuga ko ingingo za Akayesu zidakwiye kwakirwa kubera impamvu nyinshi zikubiye mu ncamake ikurikira:

1) Porokireri abona ko inyinshi mu ngingo za Akayesu zidashyigikiwe n'ikimenyetso na kimwe[140]. Amabaruwa abiri Akayesu ashingiraho (nyuma y'aho Urugereko rw'Ubujurire rwangiye kwakira ubuhamya bwe yatanze hejuru y'indahiro) nta kamaro afite kandi adakwiye kwakirwa. Ibarwa yo ku itariki ya 9 Mutarama 1997 yerekana gusa ko Akayesu atigeze yinubira imyifatire y'umwunganira, naho iyo ku ya 18 Nzeri 1998 yemewe gusa nk'ikimenyetso cy'inyongera gishyigikira ingingo y'ubujurire irebana n'ihitamo ry'umwunganira (impamvu ya kabiri y'ubujurire, ntishimangira na gato impamvu y'ubujurire irebana n'ubuswa bwe, impamvu ya gatatu y'ubujurire)[141]. Byongeye kandi, Porokireri avuga ko ibarwa imwe rukumbi y'ujurira idashobora kwemerwa nk'ikimenyetso cyagira agaciro ako ari ko kose[142].

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137 Imyanzuro ya Akayesu, Umutwe wa III, ibika 32-34. Akayesu avuga ko ibarwa yo ku wa 18 Nzeri 1998 'itanga urutonde rw' abatangabuhamya bashinjura yahaye abamwunganira', ariko ntibarukurikije. Reba Igisubizo kinyomoza cya Akayesu, igika 72.
138 Igisubizo kinyomoza cya Akayesu, igika 74.
139 Imyanzuro ya Akayesu, Umutwe wa III, igika 74.
140 Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, imp.169,188 na 192.
141 Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, urup.185.
142 Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, urup.187.

2) Porokireri avuga na none ko ingingo zimwe za Akayesu (zatangiwe ibimenyetso bidashingiye kuri ariya mabaruwa abiri) zishingiye ku myumvire itandukira y'urubanza cyangwa y'inyandikomvugo z'iburanisha.

3) Mu gusoza, Porokireri avuga ko ingingo za Akayesu zidafite shinge na rugero.

75. Porokireri asanga Akayesu atarashoboye kwerekana uburangare bw'abavoka be kandi ntabwo yerekanye ko Urugereko rwa Mbere rw'Iremezo rwashoboraga kugira icyo rushidikanyaho ku myitwarire yabo[143]. Porokireri yemera ko nta ngamba nziza zariho mu kunganira Akayesu kandi yemera na none ko gukererwa no gusiba kw'abavoka be byerekana uburangare bwabo[144] ariko ko ibyo bitavuze byanze bikunze ko yarenganijwe[145]. Porokireri asanga ahubwo Perezida w'Urugereko rwa Mbere rw'Iremezo yarayoboye neza iburanisha mu gihe yagobokaga Akayesu mu ibazwa ry'abatangabuhamya[146].

2. Isesengura ry'Urugereko

76. Urugereko rw'Ubujurire ruributsa ko abaregwa b'abatindi nyakujya bafite uburenganzira bwo kugenerwa ababunganira babishoboye. Kuri iyi ngingo, ruributsa imyanzuro rwafashe mu rubanza rwa *Kambanda:* Ukunganirwa nyako n'avoka wagenwe kugomba gukorwa hakurikijwe amahame arebana n'uburenganzira bw'uregwa, cyane cyane ihame ry'uko ababuranyi bahanganye bagomba kugira uburyo bungana[147]. Ruributsa ko uburenganzira bw'abaregwa b'abatindi nyakujya bwo kunganirwa n'abavoka babishoboye bwemejwe n'ingingo z'Amasezerano Mpuzamahanga (ingingo ya 14)[148],

[143] Igisubizo cya Porokireri, igika 4.65.
[144] Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, imp.180-190.
[145] Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, imp.171-172.
[146] Inyandikomvugo y'iburanisha mu bujurire, I Ugushyingo 2000, urup. 184.
[147] Urubanza rwa Kambanda mu bujurire, igika 34, cyane cyane inyandiko 49.
[148] Komite yita k'Uburenganzira bw'ikiremwamuntu yashyikirijwe ibibazo byinshi birebana n'ubuswa bw'avoka aho umukiliya umwe yavuze ko urubanza rwabogamye, hakurikijwe n'ibivugwa mu ngingo ya 14 y'igika 3 d) cya PDCP.

n'Amasezerano y'i Burayi arengera ikiremwamuntu (ingingo ya 6)[149], n'Amasezerano y'Amerika yerekeranye n'uburenganzira bw'ikiremwamuntu (ingingo ya 8).

77. Ku birebana n'ibigomba kwitabwaho mu gusuzuma niba avoka umwunganira ari umuswa, Urugereko rw'Ubujurire rwemera izashingiweho n'Urugereko rw'Ubujurire rwa TPIY mu cyemezo cyafashwe mu rubanza rwa Tadic (ibimenyetso by'inyongera)[150]. Kuri iki kibazo, urwo Rugereko rwavuze ko ujurira winubira ubuswa bw'avoka umwunganira agomba kwerekana "ikosa rikomeye" yakoze mu rwego rw'akazi. Ashobora kugera kuri ibyo "yerekana ko amakosa yabaye mu rubanza yakomotse nta gushidikanya ku makosa y'uwo avoka"[151]. Koko rero:

> Kubera ko avoka waburaniraga ujurira yari yiyemeje kudatanga ibimenyetso, Urugereko rw'Ubujurire ntirushobora kubyemera nk'ibimenyetso by'inyongera, n'ubwo rwaba rudashyigikiye ibyo uwo mwunganizi yakoze. Ubusabane bugomba kuranga uregwa n'umwunganira ni ngombwa mu mikorere y'Urukiko Mpuzamahanga. Niba avoka yarakoze ibinyuranyije n'ibyo ujurira ashaka, kubera ko nta cyerekana ko ujurira yabyamaganye icyo gihe, umuntu ashobora kwibwira ko yabyemeye, keretse iyo habayeho impamvu runaka kandi na byo nta cyerekana ko zabayeho muri uru rubanza. *Ibimaze kuvugwa ntibikurikizwa iyo hagaragaye ubuswa bukabije bwaba bwaratumye uregwa abangamirwa*[152].

Mu rubanza *Hezekiak Price aburana na Jamaica*, aho urega yavuze ko urubanza rwe rwaciwe nabi kubera ubuswa bw'abamwunganira, Komite yavuze ko atari inshingano zayo zo gusuzuma uko abunganira abandi barangiza inshingano zabo kandi ko inkiko z'ibihugu zitagombaga gusuzuma gusa niba umwunganizi yaraganiriye n'uregwa ko zagombaga no kureba niba imyitwarire y'avoka yari ijyanye n'inyungu z'ubutabera. *Urubanza rwa Hezekiak Price na Jamaica*,Inyandiko y' Ihererekanya no 572/594 ya Komite y'uburenganzira bw'ikiremwa muntu, 20 Ugushyingo 1996, CCPR/C/58/D/572/1994, aho komite ivuga ko uwarezwe atunganiwe neza mu bujurire kandi ko ingingo ya 14 y'Amasezerano Mpuzamahanga yerekeye uburenganzira mbonezamubano n'ubwa politiki. *Reba na O. Brown na B.Paris baburana na Jamaica*, Inyandiko y'Ihererekanya no 665/1995 ya Komite y'uburenganzira bw'ikiremwamuntu, 05/08/99, CCPR/C/66/D/665/1995.

[149] Komisiyo y'i Burayi y'uburenganzira bw'ikiremwa muntu irashaka kumenya niba uburangare bw'abavoka b'uregwa bushobora gutuma Leta ibiryozwa. Kubera izo mpamvu, iyo komisiyo isuzuma niba inkiko z'ibihugu zarafashije uregwa mu buryo bukwiye. Reba *Koplinger aburana na Austria*, Komisiyo y'i burayi y'uburenganzira bw'ikiremwa muntu, Icyemezo 1850/63, (kutakirwa kw'icyifuzo). Mu rubanza F. yaburanye n'Ubusuwisi, Komisiyo yagize iti: " ni inshingano z'abategetsi bashinzwe, mu rwego rw'imanza, gutera inkunga ku buntu ababuranyi no kugenera uregwa umwunganira, gukora ku buryo uregwa yunganirwa koko ku buryo bukwiye". *Reba F. aburana n'Ubusuwisi*, Komisiyo y'iburayi y'uburenganzira bw'ikiremwa muntu, Icyemezo 9 Gicurasi 1989, Icyifuzo 12152/86.

[150] Icyemezo *Tadic (*ibimenyetso by'inyongera), ibika 46-50.

[151] Icyemezo *Tadic* (ibimenyetso by'inyongera), ibika 46-50.

[152] Icyemezo *Tadic* (ibimenyetso byiyongereye), igika 65 (inyandiko yo munsi y' urupapuro ntihari).

78. Mu yandi magambo, Sitati y'Urukiko ihesha uregwa w'umtindi nyakujya uburenganzira bwo kunganirwa n'avoka ubishoboye. Uwo avoka afatwa nk'ubishoboye keretse iyo hatanzwe ibimenyetso bibigaragaza ukundi. Kenshi uregwa agomba kwerekana ko yabangamiwe, nk'uko bisobanurwa mu cyemezo cyafashwe mu rubanza rwa Tadic rwavuzwe haruguru; iyo bigenze bityo, Urugereko rw'Ubujurire rugomba kwemera ko uregwa yavukijwe uburenganzira bwe agenerwa na Sitati. Igisigaye ni ukumenya niba ubuswa bugaragara bw'avoka hari icyo bubangamiraho uburenganzira uregwa agenerwa na Sitati bwo kunganirwa n'avoka ubishoboye, mu gihe uwo uregwa ntacyo yatakaje.

79. Muri uru rubanza, Akayesu yaba se yarashoboye kwerekana ko abavoka be bari abaswa? Urugereko rw'Ubujurire rwasuzumye ibimenyetso byose byatanzwe na Akayesu mu gushyigikira ingingo ze. Ntirwazirikanye gusa ingingo ziri muri iyi mpamvu y'ubujurire, ahubwo rwanasuzumye n'izindi zatanzwe mu zindi impamvu z'ubujurire. Koko rero, nk'uko Urugereko rw'Ubujurire rwabivuze mbere, Akayesu asanga iyi mpamvu y'ubujurire irebana n'ikosa rikomeye ryatuma ikurikiranacyaha rihagarikwa; ibyo bisobanura ko ubuswa bw'umwunganizi butavugwa gusa muri iyi mpamvu y'ubujurire, ko buvugwa no mu zindi nyinshi, nko mu mpamvu ya 4 y'ubujurire (ingingo ya 3), iya 6, iya 8 n'iya 9.

80. Urugereko rw'Ubujurire rusanga Akayesu atarashoboye kwerekana ubuswa bw'abavoka be (mu buryo Urukiko rubyumvamo): nta rugero na rumwe rugaragaza ko abavoka bakoze ikosa rikabije mu kazi kabo ku buryo ryaba ryaratumye haba amakosa mu mikirize y'urubanza.

81. Mbere na mbere, amabarwa yo ku itariki ya 9 Mutarama 1997 no ku ya 18 Nzeri 1998[153] Akayesu yandikiye Perezida, ntabwo ari ibimenyetso bihagije. Urugereko rw'Ubujurire

[153] Ibarwa yo ku wa 18 Nzeri 1998 yemewe gushyirwa muri dosiye n'Urugereko rw'Ubujurire mu cyemezo cyarwo cyo ku wa 17 Mata 2000. Porokireri avuga ko iyo barwa yemewe nk'ikimenyetso cyiyongereyeho mu gushyigikira ingingo ya mbere y'ubujurire (Akayesu yavukijwe uburenganzira bwo kunganirwa n'abavoka yihitiyemo) ko idashobora rero gufatwa nk'ikimenyetso gishyigikira iyi ngingo y'ubujurire. Reba igisubizo kinyomoza cya Akayesu

ntirwafata imvugo yivugiye ubwe mu rubanza rwo mu rwa Mbere rw'Iremezo nk'ikimeneytso kigaragaza ubuswa bw'abavoka be. Ahubwo ziriya barwa zombi zigaragaza gusa uburyo Akayesu yari atsimbaraye ku isezererwa ry'abunganizi yari yagenewe. Bityo rero, ntabwo ari ibimenyetso bihagije kandi bikwiye kuko biba biturutse k'uwajuriye ubwe.

82. Akayesu yongeye kwerekana bimwe mu bice by'urubanza, nk'ibika bya 30, 254, 257, 307 na 406, byafatwa nk'ibimenyetso ko abamwunganiraga bari abaswa. Urugereko rw'Ubujurire ntirushobora kwemera iyo mvugo. Biriya bika ntibyerekana na gato ko abunganiraga Akayesu bakoze ikosa rikabije mu rwego rw'akazi kabo. Koko rero, ntawahera ku gika cya 30 cy'urubanza ngo avuge ko hatabayeho ingamba mu gutegura imyiregurire[154]. Ku birebana n'ibindi bika, Urugereko rw'Ubujurire rusanga biterekana "amakosa y'ingutu y'abavoka", nko "kuba batararetse uwo bunganiraga ngo atange ubuhamya ku birego by'ubwicanyi (ibika 254, 267 na 307) cyangwa by'iterabwoba (ibika bya 406) igihe yari afite ingingo zo kwireguza imbere y'Urugereko"[155]. Ibyo bice by'urubanza bisobanura gusa aho agaciro kabwo gatangirira n'aho kagarukira. Kuba uregwa atarashoboye gusubiza ibirego bimwe na bimwe ntibivuze ko byafatwa nk'ikimenyetso cy'ubuswa bw'abavoka be.

83. Ku birebana n'ibice by'inyandikomvugo bivugwa na Akayesu[156], Urugereko rw'Ubujurire rusanga biterekana neza ko hari ikosa rikabije ryaba ryarakozwe mu rwego

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kuri iyo ngingo, Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp.229-230. Urugereko rw'Ubujurire ntirubyemera. Icyemezo cyo ku wa 17 Mata 2000 kirumvikana neza : Urugereko rw'Ubujurire rwategetse Ibiro bya Gerefiye gushyikiriza ababuranyi kopi y'iyo baruwa no kuyishyira muri dosiye y'ubujurire. Ishobora rero gukoreshwa ku mpamvu zoze z'ubujurire kubera ko ari kimwe mu bigize dosiye y'ubujurire.

[154] Akayesu avuga ko ibyo Urugereko rwa mbere rw' iremezo ruvuga ko 'rwose nk'uko Urugereko rwabibonye, ingingo zo kwiregura zigizwe nuko uregwa atishe, atakubise, atakoze ibikorwa by'urugomo bisagarira igitsina cyangwa ngo ategeke ko ibyo byose bikorwa nk'uko abiregwa mu nyandiko y'ibirego' byerekana ko Urugereko rwa mbere rw' iremezo 'rwagize ibibazo byo kumenya icyo ubwunganizi bwashakaga kugeraho', bikaba byerekana ko nta ngamba bwari bufite. Reba Igisubizo kinyomoza cya Akayesu, igika 41.

[155] Igisubizo kinyomoza cya Akayesu, igika 63.

[156] Akayesu avuga iburanisha ryo ku wa 16 Mutarama 1997, 27 Mutarama 1997, 28 Ukwakira 1997, 31 Ukwakira 1997, 9 Gashyantare 1998, 25 Gashyantare 1998, 12 Werurwe 1998 na 19 Werurwe 1998.

rw'akazi[157]. Byongeye kandi, Akayesu ntiyafashe bimwe muri byo uko bigomba gufatwa koko kandi rimwe na rimwe Urugereko rusanga mu nyandikomvugo z'iburanisha amakuru avuguruzanya. Nk'urugero, niba abavoka b'Akayesu batari bahari mu ntangiriro y'iburanisha ryo ku itariki ya 19 Werurwe 1998 kandi bikaba byaramaganywe ku mugaragaro na Perezida w'Urukiko, biragaragara ko na none nk'uko Perezida abyivugira, ko "kuva urubanza rwatangira", abavoka bunganira Akayesu berekanye ko bafite ubushake bwo gufatanya na we"[158]. Ku birebana n'imyifatire y'abavoka mu rubanza, nko kuba bataratumye hategurwa neza ibazwa rinyomoza biciye mu mucyo cyangwa kuba ntacyo bavuze ku iyakirwa ry'ubuhamya bushingiye ku nkuru mbarirano, Urugereko rw'Ubujurire rusanga nta cyemeza ko abavoka batabikoze bishingiye ku ngamba bumvikanyeho n'uregwa. Na none, iyo Akayesu yemeza ko hari ibibazo bitabajijwe kubera ubuswa bw'abamwunganiraga[159], nta kigaragaza ko batari babyumvikanyeho na we. Bityo rero, kuba abavoka b'Akayesu batarabajije ibibazo runaka cyangwa batarabibyukije ntibyafatwa nk'ikimenyetso cy'ubuswa bwabo[160]. Urugereko rw'Ubujurire rwongeraho ko, uko biri kose, Urugereko rwa Mbere rw'Iremezo rutari rufite inshingano yo gukemura ikibazo cyo kwinumira kw'abavoka bunganira uregwa kandi babikoze ku bushake bwabo. Rushobora kugoboka gusa mu gihe rubonye ko hari imyifatire ibabaza cyangwa isebanya[161].

[157] Nk'urugero, icyererwa ndetse rya buri gihe risa n'iryatewe na taransiporo (Inyandikomvugo y'iburanisha), 25 Gashyantare 1998, urup. 4) cyangwa ubwumvikane bucye bw'abavoka n'umukiliya wabo (Inyandikomvugo y'iburanisha, 31 ukwakira 1997, imp. 140-141) si ibimenyetso bihagije nk'uko Urugereko rw'Ubujurire rubibona.

[158] Kandi koko, Perezida w'Urukiko yaravuze ati : 'ndumva ibyo uvuga ari byo, kuva mu itangiriro, tuzi ko werekanye ubufatanye. Ni yo mpamvu Abacamanza batangajwe no kubona mu mpera z'urubanza, mu bihe bikomeye nk'ibi, habaho ibintu nkibi byabaye muri iki gitondo, babona ari ibintu bibasuzuguza cyane, kuko abacamanza bibwira ko muri iki gitondo, ari ho uba waje saa tatu n'igice gusobanura ibibazo byawe byaba ngombwa no gusaba isubikwa rw'urubanza, maze abacamanza bakabifataho umwanzuro. Ndumva nagombaga kugira icyo mbivugaho', Inyandikomvugo y'iburanisha,19 Werurwe 1998, imp. 111-112.

[159] Urugero, gufungwa binyuranyije n'amategeko. Reba kuri iyo ngingo, impamvu ya 10 y'ubujurire.

[160] Urugero, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rutemereye ababuranyi kubyutsa inzitizi kandi koko nta n'imwe yabyukijwe. Aha aranenga umwunganira, Urukiko na Porokireri. Reba impamvu ya 6 y'ubujurire.

[161] Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarakoze neza umurimo warwo wo gusuzuma ugenwa n'amategeko, rwihaniza abunganira uregwa. Kubera ko abunganira batitabiriye iburanisha ryo ku wa 19 Werurwe 1998, Urugereko rwa Mbere rw'Iremezo rwarabihanije, rukurikije ingingo ya 46 A) y'Amategeko, ruvuga ko rushobora kubafatira ibihano kandi ruvuga ko : imyifatire y'abo bavoka bombi muri uru rubanza ituzuyemo agasuzuguro gusa ahubwo ibangamiye n'imiburanishirize n'inyungu z'ubutabera'. Reba Kwihaniza abunganira uregwa, 19 Werurwe 1998, urup. 2.

84. Kubera izo mpamvu zose, Urugereko rw'Ubujurire rusanze impamvu zose z'ubujurire zirebana n'ubuswa bw'abavoka nta shingiro zifite.

C. Impamvu y'ubujurire ya gatatu: Kuba Urukiko rutigenga kandi rubogamye[162] .

85. Akayesu avuga ko Urukiko rwamuburanishije rufite aho rubogamiye kandi rutigenga, ko rero ataburanishijwe mu buryo buboneye, ko kubera iyo mpamvu, ibyemezo by'Urukiko byamuhamije ibyaha bigomba "guseswa, rukemeza ko Porokireri atsinzwe burundu[163]".

86. Iyo mpamvu y'ubujurire yavuzwe bwa mbere mu nyandiko y'ubujurire bw'Akayesu ya kabiri [164]. Mu cyifuzo cye cyo ku itariki ya 7 Ukuboza 1999[165], Akayesu yasabye guhindura iyo mpamvu kugira ngo yongeremo ibindi bika byinshi, kandi atange n'inyandiko 24 ho ibimenyetso by'inyongera. Mu Cyemezo cyo ku itariki ya 22 Kanama 2000, Urugereko rw'Ubujurire rwanze kwakira ibyo byifuzo byombi.

87. Porokireri avuga ko, kubera ko Akayesu yashingiye ku nyandiko 24 kandi zitarakiriwe, "nta kintu na kimwe kiri muri dosiye y'ubujurire gishyigikira ibyo [ujurira] avuga. Kubera ko rero nta kintu na kimwe mu byabaye kiri mu myanzuro y'Akayesu gishyigikira ibyo avuga, Porokireri asanga bitagomba kwakirwa ntawiriwe abitindaho"[166]. Bityo, Porokireri nta ngingo n'imwe yatanze nk'igisubizo kuri icyo kibazo.

88. Urugereko rw'Ubujurire rusanga Akayesu, mu gisubizo cye ku myanzuro ya Porokireri isubiza, ntacyo yavuze ku ngingo za Porokireri kandi, n'ubwo yakomoje kuri iyo

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[162] Impamvu z'ubujurire mu magambo arambuye ziboneka mu mugereka B.
[163] Imyanzuro ya Akayesu, Umutwe wa VI, igika 22.
[164] Urugereko rw'Ubujurire rusanga zimwe mu ngingo zavuzwe mu magambo arambuye mu nyandiko ya mbere y'ubujurire kandi zirebana n'ikibazo rusange cyerekeranye no kwigenga no kutabogama by'Urukiko zitavuzwe mu Myanzuro ya Akayesu (cyane cyane nk'Umugereka uri mu mutwe wa VI). Dushobora rero kuvuga impamvu 9, 29 na 34.
[165] Icyifuzo cyo kuvugurura inyandiko y'ubujurire ku birebana no kutabogama no kwigenga by'Urukiko no kongera izindi mpamvu z'ubujurire.
[166] Igisubizo cya Porokireri, ibika 7.3 ; 7.4.

mpamvu y'ubujurire mu iburanisaha mu bujurire[167], ntiyasobanuye neza uko abibona cyangwa ngo abitindeho ukundi. N'ubwo, nk'uko Porokireri abyibutsa, ibimenyetso byatanzwe na Akayesu mu gushyigikira ingingo ze bitarakiriwe n'Urugereko rw'Ubujurire ku itariki ya 22 Kanama 2000, ariko na none rwemera ko rwashyikirijwe iyo mpamvu y'ubujurire mu buryo bukurikije amategeko. Bityo rero, Urugereko rw'Ubujurire ntirushobora kwemera igitekerezo cya Porokireri cyo kutakira iyo mpamvu y'ubujurire hashingiwe kuri iyo ngingo. Rurasubiza rero ingingo zatanzwe mu gushyigikira izo mpamvu, ariko na none byumvikane neza ko hagomba gusuzumwa gusa ingingo zivugwa mu Myanzuro y'Akayesu n'izindi ariko zidashingiye gusa kuri bya bimenyetso rwanze kwakira. Kuri ibyo, ruributsa inshingano z'ujurira zo kurushyikiriza ibimenyetso bihagije bigaragaza ko habayeho ikosa mu rwego rw'amategeko cyangwa rw'ibyabaye, ryatumye urubanza rucibwa nabi cyangwa ryatuma icyemezo cyafashwe giteshwa agaciro.

89. Mu ncamake, atanga ingingo zikurikira[168]:

a. <u>Urukiko rwari rubogamye kandi ntirwigengaga</u>

i. *<u>Ibivugwa n'Akayesu kuri iyi ngingo</u>*

90. Akayesu avuga ko amagambo amwe n'amwe yavuzwe n'abacamanza, biherereye cyangwa mu ruhame, yerekana ko bari bafite aho babogamiye kandi anyuranyije n'inshingano bahawe zo kwigenga no guca imanza bararamye[169]. Avuga kandi ko

[167] Mu bujurire, Akayesu yaravuze ati : 'ubwo rero ni njyewe uzitangira inyinshi mu mpamvu z'ubujurire, kandi dushobora kugaruka ku ngingo ya 3 n'iya 5. Dushobora kujya impaka kuri izo ngingo kubera ko icyemezo mwafashe ku wa 22 Kanama, gituma dukekeranya ku buryo twakwerekana icyo kibazo'. Reba Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 28.
[168] Urugereko rw'Ubujurire rusanga Akayesu atarashatse gukurikirana ingingo irebana n'imiterere y'Urukiko, ingingo yavuze mu nyandiko ye ya mbere y'ubujurire. Avuga mu myanzuro ye ko adashaka gusesengura iyo ngingo kubera ko icyemezo cyo ku wa 2 Ukwakira 1995 cy' Urugereko rw'Ubujurire rwa TPIY mu rubanza Porokireri aburana na Tadic gisa nk'aho cyakemuye ikibazo. Arashaka ahubwo gusesengura iyindi ngingo shingiro : Urukiko ntirwubahiriza inshingano y'ibanze [yo kutabogama no kwigenga]. Reba Imyanzuro ya Akayesu, umutwe wa VI, igika 2.
[169] Imyanzuro ya Akayesu, Umutwe wa VI, igika 4. Urugereko rw'Ubujurire rusanga Akayesu ataravuze mu Myanzuro ye impamvu y'ubujurire yari yavuze mu nyandiko ye ya kabiri y'ubujurire. Iyo mpamvu yari iteye itya : '

habayeho "igitutu n'amafifiko bidasanzwe" byabangamiye ubwigenge bw'Urukiko. Nk'ikimenyetso, yerekana urubanza rwa Barayagwiza mu bujurire rwo ku itariki ya 31 Werurwe 2000, akavuga ko "rudakosora ukwivanga, igitutu n'amafifiko [...] byagiye bibaho mu gihe cyashize"[170]. Akayesu ashimangira « amagambo asebanya kandi y'ibinyoma ya Gerefiye, avuga ko ayo magambo anyuranyije bikabije n'inshingano zo kudasamara mu rubanza kandi akabangamira ukutabogama n'ubwigenge by'Urukiko »[171].

ii. Isesengura ry'Urugereko

91. Nk'uko Urugereko rw'Ubujurire rwa TPIY rwabivuze, umucamanza cyangwa se Urugereko rw'Urukiko bafatwa nk'aho ntaho babogamiye, ari yo mpamvu kugaragaza ko hari uwabogamye bigomba gutangirwa ibimenyetso bihamye kandi bihagije. Kuri iki kibazo, Urugereko rw'Ubujurire rwemera ibyasobanuwe n'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa Furundzija ku birebana n'ibigomba kwitabwaho mu kureba niba harabayeho ukubogama:

> [...] Umucamanza afatwa iteka nk'umuntu udafite aho abogamiye, bikaba byaremewe n'ubukemuramanza bw'Urukiko kimwe n'amategeko y'ibihugu[172].
>
> Hatabonetse ikimenyetso cyerekana ko atari ko bimeze, ni ngombwa kwiyumvisha ko abacamanza b'Urukiko mpuzamahanga "bashobora kwitandukanya n'imyumvire cyangwa amarangamutima ayo ari yo yose bitagize icyo bimarira urubanza". Ujurira ni we ugomba kwerekana ibimenyetso bihagije byo kwemeza Urugereko rw'Ubujurire ko uwo mucamanza uvugwa yabogamye mu gihe cy'urubanza rwe. Ntibyoroshye kuvuguruza iryo hame[173].

Umucamanza Laiti Kama yagumye gufata ubutitsa ujurira nk'aho atari umwere. Ubwo abagabo benshi bivugwa ko bibasiwe n'ibikorwa by'ubugizi bwa nabi bushingiye ku gitsina, batangaga ubuhamya bwabo. Umucamanza Kama yavuze ko yifatanyije na bo mu kababaro mbere y'uko ubwunganizi bugira icyo buvuga. Ubwo yerekanye ko bavugaga ukuri. Ubwunganizi bwamaganye icyo kimenyetso cyemewe n'Urukiko mu guca urubanza kwarwo. Yemera ko abo bagabo bari abo kwizerwa, umucamanza yanyuranyije n'ihame ry'uko umuntu afatwa nk'umwere igihe cyose atarakatirwa, bityo bituma urubanza rwose rwuzura inenge'. Urugereko rw'Ubujurire ntiruri busuzume iyo ngingo ariko rurerekana aho ihuriye n'indi yavuzwe mu ngingo ya 3 y'impamvu y'ubujurire ya 4 yashubijwe n' Urugereko rw'Ubujurire. Reba ingingo zatanzwe mu mpamvu y'ubujurireirebana n'ibika 12A ; 12B by'Inyandiko y'ibirego (ibirego birebana n'ubugizi bwa nabi bwibasira imyanya ndangagitsina).

170 Imyanzuro ya Akayesu, Umutwe wa VI, igika 12.

171 Imyanzuro ya Akayesu, umutwe wa VI, igika 13.

172 Urubanza rwa *Furundzija,* igika 196.

92. Muri uru rubanza, Akayesu yatanze ingingo ze mu buryo bwa rusange cyane kandi mu bigambo gusa ku buryo zitahungabanya ihame ry'uko umucamanza afatwa nk'umuntu udafite aho abogamiye. Ingingo zirebana n'amagambo abogamye ngo yaba yaravuzwe n'abacamanza bamwe b'Urukiko ntizishyigikiwe n'ibimenyetso kandi ntizacukumbuwe bihagije. Ikindi kandi, nta cyemeza ko haba harabaye ibintu by' « amafifiko » bikozwe n'Urukiko, cyangwa se ko haba harabaye « kwivanga » cyangwa « igitutu » bikozwe n'umutegetsi uwo ari we wese. Kubera izo mpamvu, Urugereko rw'Ubujurire ntirwakiriye iyo mpamvu, bigaragara rwose ko idafite ishingiro.

b. <u>Ikurikiranacyaha rirangwa n'ivangura</u>

i. <u>*Ibivugwa na Akayesu kuri iyi ngingo*</u>

93. Akayesu avuga ko Urukiko rukurikirana gusa "abatsinzwe" mu ntambara yo mu Rwanda, ntirukurikirane abakoze "ibyaha byo gutsembatsemba Abahutu", bahawe rwose "ubudahangarwa busesuye" bwo kudakurikiranwa[174]. Avuga ko ibyo bigaragaza ukubogama mu guhana ibyaha byakorewe mu Rwanda mu gihe kivugwa. Kuri we, ibyo ngo bitandukanye n'ibikorwa na TPIY aho abantu bo mu "mpande zombi", harimo n'abategetsi b'abakorowate [Croates] bakurikiranwe.

ii. <u>*Isesengura ry'Urugereko*</u>

94. Urugereko rw'Ubujurire ntirushobora kwemera ingingo y'Akayesu ivuga ko ngo kudakurikirana ababa barakoze ibyaha byibasiye Abahutu byerekana ukubogama k'Urukiko. Kuri iki kibazo, Urugereko rw'Ubujurire ruributsa ko Porokireri[175] ari we "ushinzwe gukora iperereza" ku byaha bikomeye byinjira mu bubasha bw'Urukiko, no

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[173] Urubanza rwa *Furundzija* mu bujurire, igika 197
[174] Reba Umugereko B. Imyanzuro ya Akayesu, umutwe wa VI, ibika 5-8.
[175] Ingingo 15 ya Sitati.

"kuregera Urukiko ababikoze". Ni na we kandi ugomba "guha agaciro amakuru yahawe cyangwa yashatse, maze akemeza niba ari ngombwa gukurikirana umuntu runaka"[176]. Kuri iyi ngingo, Urugereko rw'Ubujurire rwemeranya n'isesengura ryakozwe n'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa Celebici, aho rugira ruti:

> Ukurikije uko ibintu byifashe, kandi ni nako bimeze mu ikurikirana ry'imanza z'inshinjabyaha mu bihugu byinshi, urwego rushinzwe gukurikirana ibyaha rufite umutungo w'amafaranga udahagije n'abakozi badahagije ku buryo bidashoboka ko rukurikirana abakoze ibyaha bose rufitiye ububasha bwo gukurikirana. Rugomba rero guhitamo ibyaha rugomba gukurikirana n'ababikoze bagomba kubishinjwa. Nta gushidikanya ko Porokireri ari we ufite ububasha busesuye ku birebana no gufata iya mbere mu ikurikiranwa ry'abakoze ibyaha n'ikorwa ry'inyandiko z'ibirego[...][177]

95. Ibivugwa na Akayesu ko kudakurikirana ababa barakoze ibyaha byibasiye Abahutu byerekana ukubogama k'Urukiko, nta muntu ushyira mu gaciro wabishyigikira mu gihe nta kimenyetso na kimwe ubivuga abitangira.

96. N'aho Porokireri yaba yarakoze ivangura mu mikorere ye y'ikurikiranacyaha, Akayesu ntiyigeze yerekana ko hari isano iri hagati y'iyo mikorere n'ukubogama k'Urukiko avuga. Byongeye kandi, Akayesu ntiyerekanye aho ibyo bihuriye n'urubanza rwe, ni ukuvuga aho iyo mikorere ya Porokireri yamubangamiye ku buryo byatuma umuntu avuga ko ikurikiranwa rye ridashingiye ku mategeko. Akayesu ntiyeretse Urugereko rw'Ubujurire niba icyo kibazo yarakibyukije mu Rugereko rwa Mbere rw'Iremezo, kuko ari ho yagombaga kukibyutsa. Nta n'ubwo yerekanye ukuntu iyo mikorere ya Porokireri ifite cyangwa yagize ingaruka mu ifatwa ry'abandi bantu. Urugereko rw'Ubujurire ruributsa ibyavuzwe n'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa *Celebici*:

> [...] ku kimenyetso cy'umugambi w'ivangura, hagomba kwiyongeraho ikindi cy'ingaruka z'ivangura rya Porokireri; mu yandi magambo, hagomba kugaragazwa ko abandi bantu bo mu madini atandukanye cyangwa se bakomoka mu bwoko butandukanye baba barakoze ibyaha nk'ibye ariko ntibakurikiranwe[178].

97. Kubera izo mpamvu zose, Urugereko rw'Ubujurire rusanze iyo ngingo nta shingiro ifite.

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[176] Ingingo 171 ya Sitati.
[177] Urubanza rwa *Celebici* mu bujurire, igika 602.
[178] Urubanza rwa *Celebici* mu bujurire, igika 613.

c. Imikorere y'Urukiko n'ukuntu intambara yo mu Rwanda ifatwa

i. *Ibivugwa n'Akayesu*

98. Akayesu avuga ko imikorere y'Urukiko ubwayo isa n'iyerekana ko atashoboraga gucirwa urubanza mu buryo buboneye. Porokireri ubwe yiyemereye mu rubanza ingorane yahuye nazo mu gihe cyo gukora iperereza[179]. Mu gushyigikira imvugo ye ko atashoboraga gucirwa urubanza mu buryo buboneye, Akayesu atanga urugero rw'ibibazo umutangabuhamya wiswe DAAX yahuye na byo ngo kuko uwo mutangabuhamya yafashwe agafungwa ubwo yasubiraga mu Rwanda amaze gutanga ubuhamya mu rukiko[180]. Akayesu avuga kandi ko Urukiko rudashobora gukora mu buryo bukwiye mu gihe rudafite ububasha bwo guhatira umutangabuhamya runaka kurwitaba[181].

99. Akayesu abona kandi ko Urukiko rwafashe intambara yo mu Rwanda mu buryo butari bwo. Urugereko rw'Ubujurire rusanga ariko Akayesu, mu myanzuro ye y'ubujurire, atarashyizemo ingingo nyinshi yari yatanze mu gushyigikira ibyo avuga[182]. Ntabwo rero rusuzuma izo ngingo. Imyanzuro ya Akayesu mu bujurire isubiramo gusa ingingo ivuga ko Urukiko rwafashe umwanzuro utari wo ku birebana n'imbarutso y'intambara yo muri

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[179] Akayesu avuga iburana ryo ku wa 17 Kamena 1997 aho Porokireri yavuze ingorane yahuye na zo mu gukora anketi, zatumye atinda guhindura inyandiko y'ibirego ya mbere. Avuga ko yakoze anketi ariko nta kintu yashoboraga kuvuga muri Werurwe, Mata, cyangwa muri Gicurasi, ntibyari byoroshye kubera ko u Rwanda rwari mu rwego rwa IV kubirebana n'umutekano; ibyo bivuze ko abakoraga za anketi batashoboraga kugenda badafite abantu babarindira umutekano b'Umuryango w'Abibumbye'. Kuri iyo ngingo, reba ibyavuzwe mu magambo arambuye ku ngingo irebana n'impamvu y'ubujurire yerekana ko inyandiko y'ibirego ya mbere yahinduwe mu buryo bunyuranyije n'amategeko (ingingo ya mbere y'impamvu ya 4 y'ubujurire.

[180] Imyanzuro ya Akayesu, Umutwe wa VI, ibika 9-10.

[181] Avuga ko Urukiko rudakora kubera ko rudafite ububasha bwo guhatira abatangabuhamya kwitaba Urukiko. Urukiko rufite gusa ububasha, n'ubwo bunengwa mu rwego rw'amatageko, bwo gutegeka ifatwa ry'ukekwaho ibyaha mu gihugu runaka no ku muzana, yenda mu nzira zidakurikije amategeko, ku cyicaro cy'Urukiko Arusha. Ubusumbane bw'ubwo bubasha bwombi – ububasha nyabwo bwo gufata abaregwa ku ruhande rumwe, no kudashobora guhatira abagabo kurwitaba bibangamira ubwunganizi ku buryo budasubirwaho'. Reba umugereka B.

[182] Izo ni ingingo ziteye zitya (ziri mu nyandiko ya kabiri y'ubujurire) : Urukiko rwaribeshye mu mategeko no mu rw'ibyabaye rufata intambara ya 1994 nk'intambara yabaye hagati y'abanyagihugu. [igika n] ; Urukiko rwaribeshye bikomeye rufata umwanzuro ko hagomba gutandukanywa intambara yabaye hagati ya *Front Patriotique Rwandais* (FPR) na *Forces Armées Rwandaises* (FAR) n'intambara hagati y'abantu bigaragara neza ko atari abarwanyi [igika o] ; Urukiko rwaciye urubanza ku kitaregewe, rwemeza ko mu Rwanda habaye mu nyito y'amategeko itsembabwoko ryibasiye Abatutsi mu Rwanda hagati ya Mata na Nyakanga 1994 [igika q)]Reba umugereka B.

Mata 1994, ari yo « guhanuka » kw'indege ya Perezida. Akayesu avuga ko Urukiko rwibeshye mu rubanza, « aho rwavuze inshuro icyenda zose ko indege ya Perezida yahanutse igasandara ku itariki ya 6 Mata 1994, kandi atari uguhanuka, ahubwo yarahanuwe n'abagizi ba nabi bayirashe igisasu cyitwa (missile sol-air). Icyo gikorwa cy'ubugizi bwa nabi, ari na cyo mbarutso y'intambara ishingiye ku moko na politiki kuva muri Mata 1994, cyiswe izina ritari ryo bituma igenagaciro ry'ibimenyetso ryuzuramo inenge »[183].

ii. Isesengura ry'Urugereko

100. Kuri iyi ngingo, Urugereko rw'Ubujurire rusanga Akayesu atarerekanye akarengane yaba yaragize mu rubanza rwe. Yatanze ingingo ze muri rusange ku buryo zitasuzumwa neza n' Urugereko rw'Ubujurire. Ku byerekeranye n'imvugo za Porokireri zirebana n'ingendo yakoreye mu Rwanda n'ingorane yahuye na zo mu iperereza, Akayesu ntiyerekanye akamaro k'urwo rugero yatanze. Nta n'ubwo kandi yerekanye ukuntu ibyo avuga ku buhamya bwa DAAX, ari urugero rufatika ko atashoboraga gucirwa urubanza mu buryo buboneye. Ku kibazo kirebana ngo n'uko hafashwe umwanzuro unyuranyije n'ukuri ku byerekeye ihanuka ry'indege ya Perezida, rusanga kitaracukumbuwe mbere hose, bityo rero ntigishobora kuzirikanwa n'Urugereko rw'Ubujurir. Ni yo mpamvu rutakiriye iyi ngingo ya nyuma.

101. Bityo rero, kubera ko ingingo zatanzwe zidahagije, Urugereko rw'Ubujurire rusanze impamvu zose z'ubujurire zirebana n'ukubogama k'Urukiko nta shingiro zifite.

[183] Reba umugereka B.

D. Impamvu y'ubujurire ya kane: Amakosa akomeye mu rubanza rumuhamya icyaha[184]

1. Ingingo ya mbere: Guhindura Inyandiko y'ibirego ya mbere mu buryo bunyuranyije n'amategeko[185]

102. Muri rusange, Akayesu asanga Urugereko rwarakoze amakosa ku birebana n'ingingo y'itegeko, igihe rwemereraga Porokireri guhindura Inyandiko y'ibirego kugira ngo yongeremo ibirego bitatu birebana n'ibyaha byibasira imyanya ndangagitsina. Asaba rero Urugereko rw'Ubujurire « kuvanaho ibihano byose birebana n'ibyo byaha no kwemeza ko Porokireri atsinzwe burundu kuri ibyo birego »[186].

a. Ingingo z'ababuranyi

103. Akayesu avuga ko mu iburanisha ryo ku itariki ya 17 Kamena 1997, Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amategeko rwemera rukererewe ko Inyandiko y'ibirego ya mbere ihindurwa. Muri iryo buranisha, Porokireri yashyikirije, mu magambo, Urugereko rwa Mbere rw'Iremezo, icyifuzo cyo guhindura iyo Nyandiko y'ibirego. Nyamara ku mugoroba w'umunsi wabanjirije iryo buranisha ni ho Porokireri yari yahaye avoka we kopi ya bimwe mu byavuzwe n'abatangabuhamya na kopi y'Inyandiko y'ibirego yahinduwe. N'ubwo avoka w'Akayesu yabyamaganye akanasaba gutanga imyanzuro yanditse kugira ngo aburane urubanza mu mizi yarwo, Urugereko rwa mbere rwemeye ihindurwa ry'Inyandiko y'ibirego nta mpaka zibaye[187].

104. Ku bw'ibanze, Akayesu avuga ko iryo hindurwa ryabaye ritinze ryamubangamiye cyane, kubera uruhurirane rw'impamvu nyinshi:

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[184] Akayesu yavuze iyo mpamvu y'ubujurire mu nyandiko ya 2 y'ubujurire yemezwa abacamanza batangiye kuburanisha.
[185] Reba umugereka B ku birebana n'impamvu z'ubujurire zerekeranye n'icyo kibazo.
[186] Imyanzuro ya Akayesu, Umutwe wa V, igika19 ; Imyanzuro ya Akayesu, Umutwe wa XV,igika 3.

Itariki iyo Nyandiko y'ibirego yahinduriweho. Iryo hindura ryabaye Urugereko rwaramaze kumva abatangabuhamya bose bashinje ku birebana n'icyo cyaha cyihariye (ari bo abiswe J na H). Byongeye kandi, igihe Inyandiko y'ibirego yahindurwaga, abo batangabuhamya bari barasubiye mu Rwanda[188]. Akayesu ntiyashoboye kubanyomoza nyuma y'ihindurwa ry'Inyandiko y'ibirego[189], nta n'ubwo yashoboye kubikora ubwo batangaga ubuhamya bwabo[190] ku birebana n'ibikorwa byibasira imyanya ndangagitsina. Ntabwo rero byashobotse kubanyomoza igihe bari imbere y'Urukiko ku birebana n'ibyo byaha kuko bitari mu Nyandiko y'ibirego ya mbere. Urugereko rwa Mbere rw'Iremezo ntaho rero rwashingiye rumugaya ko atanyomoje abo batangabuhamya ku birebana n'ibyo byaha [191].

Inyandiko y'ibirego yahinduwe yafashe « isura nshya »[192]. Iyi Nyandiko ivuga ku bintu byabaye hagati yitariki ya 7 Mata n'impera za Kamena 1994, ubwo rero irenga igihe cyari cyagenwe n'Inyandiko y'ibirego ya mbere, ni ukuvuga amatariki ya 18,19 na 20 Mata 1994. Akayesu asanga iyo Nyandiko y'ibirego nshya ituma « imiterere y'urubanza ihinduka byimazeyo »[193].

105. Haramutse hatitawe ku bimaze kuvugwa, Akayesu yongeraho indi mpamvu yatumye arushaho kubangamirwa : gukererwa amezi 19, ni ukuvuga hagati y'ifatwa rye n'itariki yo

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[187] Imyanzuro ya Akayesu, Umutwe wa V, ibika 4-6.
[188] Imyanzuro ya Akayesu, Umutwe wa V, igika 16 ; Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.87
[189] Igisubizo kinyomoza cya Akayesu, igika 79.
[190] Igisubizo kinyomoza cya Akayesu, igika 78.
[191] Akayesu avuga igika 453 cy'Urubanza kigira kiti : 'mu gufata imyanzuro mu rwego rw'ibyabaye, Urugereko rwasuzumye rwitonze inyomoza ry'abatangabuhamya bashinja n'ibimenyetso byatanzwe n'Ubwunganizi. Ku birebana n'inyomoza, Urugereko rusanga Ubwunganizi butaranenze ubuhamya bw'umugabo wiswe J cyangwa ubw'uwiswe H ku birebana n'isambanywa ku gahato n'ubwo Urugereko rubyibwirije, rwabajije abo batangabuhamya bombi ku birebana n'ubwo buhamya', Imyanzuro ya Akayesu, umutwe wa V, igika 16.
[192] Imyanzuro ya Akayesu, Umutwe wa V, igika 16.
[193] Igisubizo kinyomoza cya Akayesu, igika81. Mu iburanisha mu bujurire, Akayesu yavuze ko 'hariho ihinduka mu rwego rw'ibyaha, mu gihe cy'amezi atatu, ku birebana n'ubugizi bwa nabi buvugwa bwibasiye igitsina, Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo, 2000, urup. 87.

guhindura Inyandiko y'ibirego[194]. Akayesu avuga ko, « iyo Porokireri aza gushyiraho umwete, aba yaratanze ibyo birego mbere yaho »[195].

106. Akayesu avuga ko ibyo byamuteye akarengane kadafite igaruriro kandi ko ihindurwa ry'Inyandiko y'ibirego ryatumye avutswa uburenganzira bwe bwo kunganirwa ku buryo bwuzuye kandi buhamye[196]. Akayesu avuga ko, mu bukemuramanza bw'Urukiko, no mu mategeko y'abongereza, abanyamerika n'abanyakanada[197], ingingo imwe gusa ari yo yemewe kugira ngo Inyandiko y'ibirego ihindurwe: Kutabangamira uregwa[198] . Kubera ako « karengane gakomeye »[199], asaba, mu cyimbo cy'indishyi, Urugereko rw'Ubujurire kuvanaho ibihano byose yakatiwe ku bikorwa by'urugomo byibasira imyanya ndangagitsina[200].

107. Porokireri asanga mbere na mbere Akayesu atarashoboye kwerekana ko yarenganyijwe, ko rero atari ngombwa gusubiza iyo ngingo[201]. Uko biri kose, Porokireri abona ko Akayesu atashoboye kwerekana ko ihindurwa ry'Inyandiko y'ibirego ritagombaga kwakirwa[202], kabone n'iyo yashingira ingingo ze ku bukemuramanza bw'Urukiko [kandi na bwo ntibwifashishijwe uko bwakabaye]. Ikindi kandi, ngo Akayesu ntiyagaragaje ko isubikwa ry'urubanza rwe kuva ku itariki ya 29 Nzeri kugeza ku ya 23 Ukwakira 1997, byarukerereje bikabije[203].

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194 Igisubizo kinyomoza cya Akayesu, ibika 76-80.
195 Imyanzuro ya Akayesu, Umutwe wa V, igika 5 ; Igisubizo cya Akayesu , igika 80.
196 Imyanzuro ya Akayesu, Umutwe wa V, igika 19.
197 Imyanzuro ya Akayesu, Umutwe wa V, ibik 10-14.
198 Imyanzuro ya Akayesu, Umutwe wa V, ibika 10-14.
199 Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo, 2000, urup. 88.
200 Imyanzuro ya Akayesu, umutwe wa V, igika 19.
201 Igisubizo cya Porokireri, igika 6.4.
202 Igisubizo cya Porokireri, igika 6.7.
203 Igisubizo cya Porokireri, igika 6.8. Porokireri arishingikiriza icyemezo cyafashwe mu magambo n'Urugereko rwa Mbere rw'Iremezo ku itariki ya 17 Kamena 1997 aho urwo Rugereko rwafashe umwanzuro wo gusubika itariki yo kuburana rukayishyira ku wa 22 Ukwakira 1997', CRA, 17 Kamena 1997. Reba icyemezo cyanditse : Kwemererwa guhindura Inyandiko y'ibirego , 17 Kamena 1997, urup. 3. Mu by'ukuri, urubanza rwasubukuwe ku ya 23 Ukwakira 1997.

108. Porokireri avuga kandi ko ingingo ya 50 y'Amategeko imwemerera guhindura Inyandiko y'ibirego iyo hari ibimenyetso bibonetse nyuma y'isohoka ryayo. Muri uru rubanza, mu itangira rya za anketi ze yari afite inkuru zerekeranye n'ibikorwa by'urugomo byibasira imyanya ndangagitsina byakorewe ku biro bya komine. Ariko izo nkuru ntizari zifite gishyigikira ku buryo zashoboraga gushingirwaho ngo bitume Akayesu aregwa ibyo byaha. Porokireri yiyemeje guhindura Inyandiko y'ibirego ya mbere aho aboneye ibimenyetso bigaragaza ku buryo buhagije uruhare rwa Akayesu mu gusambanya ku gahato no mu bindi bikorwa by'ubugizi bwa nabi byibasira imyanya ndangagitsina byakorewe muri Taba (by'umwihariko, ubuhamya bw'abagabo biswe J na H bwatumye atajijinganya ko ibyaha byibasira imyanya ndangagitsina byari byarakozwe[204]. Porokireri yongeraho ko inkiko nyinshi zo mu bihugu zemera ko Inyandiko y'ibirego ishobora guhindurwa urubanza rwaratangiye[205]. Byongeye kandi, ibyahinduwe mu Nyandiko y'ibirego ntibyahinduraga imiterere y'ikirego mu mizi yacyo, kandi nta n'ubwo byose byari bishya[206].

109. Mu gusoza, Porokireri yemera ko abunganira Akayesu batanyomoje abatangabuhamya J na H, nk'uko bigaragara mu rubanza. Ariko, Urugereko rwa mbere, mu guha agaciro ibimenyetso, rwabajije abatangabuhamya ibibazo ku bikorwa bivugwa ko byakozwe na Akayesu, maze rugaragaza ku buryo budashidikanywaho, kandi rwifashishije ubundi buhamya bwinshi, ko ibirego birebana n'ibikorwa by'ubugizi bwa nabi byibasira imyanya ndangagitsina byakorewe muri Taba byatangiwe ibimenyetso[207].

[204] Igisubizo cya Porokireri, igika 6.13.
[205] Igisubizo cya Porokireri, ibika 6.14-6.22.
[206] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 197-200.
[207] Igisubizo cya Porokireri, ibika 6.24-6.26.

b. Isesengura ry'Urugereko

i. Kuba nta mpaka zagiwe mbere y'uko Urugereko rwa Mbere rw'Iremezo rufata icyemezo.

110. Nyuma y'aho Porokireri atangiye icyifuzo cye cyanditse ku itariki ya 16 Kamena 1997 asaba Urugereko rwa Mbere rw'Iremezo kuburanisha vuba na bwangu ikibazo cyo guhindura Inyandiko y'ibirego ya mbere[208], Urugereko rwa Mbere rw'Iremezo rwateranye ku itariki ya 17 Kamena 1997 kugira ngo cyane cyane rwumve ababuranyi bose kuri icyo kibazo. Ubwo Porokireri yatanze ingingo ze, avoka arazisubiza. Ariko, avoka ntiyinjiye mu mizi y'ikibazo. Yavuze ko igihe yahawe ari gito kugira ngo asuzume inyandiko zatanzwe zishyigikira icyifuzo cya Porokireri, anasaba uburenganzira bwo gutanga imyanzuro yanditse.

111. Nyuma yo gusubika iburanisha akanya gato, Urugereko rwa Mbere rw'Iremezo rwemereye Porokireri guhindura Inyandiko y'ibirego ya mbere ariko agashyikiriza ubwunganizi inyandiko yahinduwe, na bwo bugenerwa igihe cy'amezi ane yo gutegura imyiregurire.

112. Urugereko rw'Ubujurire ruributsa ko uregwa wese afite uburenganzira bw'uko urubanza rwe ruburanishwa mu buryo buboneye. Nyamara ariko, muri uru rubanza, Urugereko rwa Mbere rw'Iremezo ntirwavukije burundu ubwunganizi uburenganzira bwo kugira icyo buvuga. Ikibazo ni ukumenya niba rwaracishije mu gaciro ubwo rwangaga gusubika urubanza, kuko biba byaratumye urubanza rukererwaho ibyumweru byinshi.

113. Akayesu avuga ko yavukijwe uburenganzira bwe bwo kwiregura mbere y'uko Inyandiko y'ibirego ihindurwa kubera ko igihe yahawe kitari gihagije. Urugereko rw'Ubujurire rusanga rutagomba gucukumbura iyo ngingo. Rusanga uregwa yarahakanye ibirego bishya yaregwaga kandi koko yabyireguyeho nta yindi nzitizi abyukije. N'iyo

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[208] Icyifuzo cya Porokireri cyo gusaba byihutirwa Urugereko rwa Mbere rw'Iremezo guhindura Inyandiko y'ibirego muri uru rubanza, 16 Kamena, 1997.

uburenganzira bw'uregwa bwaba bwarahungabanye, biragaragara ko abamwunganira bivukije uburenganzira bwose bwo kubyutsa icyo kibazo imbere y'Urugereko rw'Ubujurire.

114. Kubera izo mpamvu zose, Urugereko rw'Ubujurire rusanze ntacyo rwakwirirwa ruvuga ku ngingo zatanzwe kubera ko zidahagije, n'ubwo rwemera ko ruba rwarabyitwayemo ukundi iyo ruza kuba mu mwanya w'Urugereko rwa Mbere rw'Iremezo.

iii. <u>Ikibazo cyo kumenya niba Urugereko rwa Mbere rw'Iremezo rwri rufite ishingiro ryo gutanga uburenganzira bwo guhindura Inyandiko y'ibirego ya mbere no kumenya niba Akayesu yaba yaraharenganiye</u>

115. Mu cyemezo cyarwo cyo ku itariki ya 17 Kamena 1997, Urugereko rwa Mbere rw'Iremezo rwemeye ko icyifuzo cya Porokireri gifite ishingiro[209].

116. IIngingo ya 50 y'Amategeko yakurikizwaga mu kwezi kwa gatandatu 1997 yari iteye itya:

> Porokireri ashobora guhindura Inyandiko y'ibirego atabisabiye uburenganzira igihe cyose itaremezwa [n'umucamanza]. Nyuma yaho ntashobora kubikora keretse iyo abyemerewe n'umucamanza wari wayemeje cyangwa se, iyo iburanisha ryatangiye, n' Urugereko rwa Mbere rw'Iremezo. Iyo ahawe ubwo burenganzira, Inyandiko y'ibirego ihinduwe ishyikirizwa uregwa n'abamwunganira kandi, byaba ngombwa, itariki y'urubanza ikigizwayo kugira ngo abiregura babone umwanya wo kwitegura.

117. Urugereko rw'Ubujurire ruributsa ko iyo ngingo igomba kubahirizwa hakurikijwe ibivugwa mu ngingo 9 2) y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki, n'iya 19 n'iya 20 za Sitati y'Urukiko. Kuri ibyo, ruributsa icyemezo cyafashwe n'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa *Kovacevic*[210].

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209 Kwemererwa guhindura Inyandiko y'ibirego, 17 Kamena 1997, urup. 3

210 Icyemezo gitanga impamvu Urugereko rw'Ubujurire rwashingiyeho rufata itegeko ryo ku wa 29 Gicurasi 1998. Porokireri aburana na *Milan Kovacevic*, urubanza No. IT-97-24-AR73, Urugereko rw'Ubujurire rwa TPIY, 2 Nyakanga 1998.

118. Kugira ngo rumenye niba Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa rutanga uburenganzira bwo guhindura Inyandiko y'ibirego, Urugereko rw'Ubujurire rugomba kwita ku ngingo nyinshi zituma rushobora gusuzuma niba Akayesu hari icyo byamwangirijeho.

Uburemere bw'ibyasabiwe guhindurwa

119. Urugereko rwa Mbere rw'Iremezo rwemereye Porokireri kongera mu Nyandiko y'ibirego ibindi birego bitatu birebana n'ubugizi bwa nabi bwibasira imyanya ndangagitsina[211]. Inyandiko y'ibirego ya mbere yashinjaga Akayesu ibyaha 12. Yahinduwe kenshi ariko, nk'uko Urugereko rw'Ubujurire rubibona, ntibyatuma igira isura nshya rwose. Ibirego bitatu bishya birebana n'ahavugwa mu Nyandiko y'ibirego ya mbere (Komine ya Taba, cyane cyane ibiro bya komine) n'igihe ibyaha byakorewe (kuva muri Mata kugeza mu mpera za Kamena 1994). Inyandiko y'ibirego ya mbere yarahinduwe kugira ngo uruhare rwa Akayesu mu ikorwa ry'ibyaha byose bivugwa byakorewe muri Komine ya Taba, cyane cyane ku biro bya Komine rurusheho kumvikana neza. Urugereko rwa Mbere rw'Iremezo rero ntirwibeshye mu rwego rw'amategeko ruvuga ko imiterere y'ihindagurika ryakozwe ku Nyandiko ya mbere y'ibirego yari ikwiye kwihanganirwa[212].

Igihe Inyandiko y'ibirego yahinduriwe

120. Urugereko rw'Ubujurire ruributsa ko Porokireri afite ububasha bwo guhindura Inyandiko y'ibirego igihe cyose urubanza rukiburanishwa, haseguriwe ko agomba kubanza

[211] Ikirego cya 13 : ibyaha byibasiye inyokomuntu (gusambanya ku gahato), ibyaha bihanishwa ingingo ya 3(g) ya sitati y'Urukiko, ikirego cya 14 : ibyaha byibasiye inyokomumtu (ibindi bikorwa birenze kamere muntu), ibyaha bihanishwa ingingo ya 3 i) ya Sitati y'Urukiko ; ikirego cya 15 : ibikorwa binyuranyije n'ingingo ya 3 ihuriweho n'amasezerano y'i Jeneve n'ingingo ya 4(2) y'Inyongera yayo ya II, nk'uko yasubiwemo mu ngingo ya 4(e) (Guhungabanya agaciro ka muntu nko gusambanya ku gahato, gukora ibikorwa bimutesha agaciro, bimukoza isoni, ibikorwa by'iterasoni) ya Sitati y'Urukiko.

[212] Urugereko rw'Ubujurire rusubira mu magambo yavuzwe n'Urugereko rw'Ubujurire rwa TPIY , kugira ngo rusuzume niba ihindurwa ry'Inyandiko y'ibirego ryemewe n'Urugereko rwa Mbere rw'Iremezo ryari rifite ishingiro mu rwego rw'amategeko, rwibajije niba 'uburemere bw'ibisabwa guhindurwa bushobora kubyutsa inzitizi', icyemezo gitanga impamvu Urugereko rw'Ubujurire rwashingiyeho rufata itegeko ryo ku wa 29 Gicurasi 1998,

kubyemererwa n'Urugereko rwa Mbere rw'Iremezo. Nk'uko rwabivuze mu rubanza rwa Barayagwiza mu bujurire, iryo hindurwa ry'Inyandiko y'ibirego rishobora gukomoka kubyo anketi ya Porokireri yagezeho[213]. Urugereko rw'Ubujurire rwemera ko impamvu zatanzwe na Porokireri mu iburanisha ryo ku itariki ya 17 Kamena 1997 zerekanye ko gusaba guhindura Inyandiko y'ibirego bitinze byari bifite ishingiro. Porokireri yibukije Urugereko rwa Mbere rw'Iremezo uko yagiye akora iperereza rye, yerekana ukuntu umutekano utari wifashe neza mu Rwanda muri icyo gihe[214]. Byongeye kandi, ingingo Porokireri yatanze mu gushyigikira icyifuzo cye zari zihagije[215]. Bityo, Urugereko rwa Mbere rw'Iremezo rwari mu kuri ubwo rwemeraga ihindurwa ry'Inyandiko y'ibirego, n'ubwo ryakozwe bitinze.

121. Ku byerekeranye no kuba abavoka bunganira Akayesu batarashoboye kunyomoza abatangabuhamya biswe J na H ku byaha byibasira imyanya ndangagitsina (aba bagabo bari baratanze ubuhamya mu Rukiko mbere y'uko Inyandiko y'ibirego ihindurwa[216]), Urugereko rw'Ubujurire rusanga ari ngombwa kwerekana ibyitonderwa bikurikira. Urugereko rw'Ubujurire rwemera ko abavoka bunganira Akayesu batari gutekereza ko

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urubanza Porokireri aburana *na c. Milan Kovacevic*, urubanza No. IT-97-24-AR73, Urugereko rw'Ubujurire rwa TPIY, 2 Nyakanga 1998, ibika 22-25.

[213] Urubanza rwa Barayagwiza mu bujurire, igika 95.

[214] Porokireri yasobanuye mu rubanza rwo ku ya 17 Kamena 1997 ko za anketi za mbere zitahagije kwerekana ko uregwa afite uruhare mu bikorwa by'ubugizi bwa nabi bwibasiriye imyanya ndangagitsina. Yari yabonye ubuhamya bw'abagabo bakomoka mu miryango itabogamiye kuri Leta buvuga hejuru y'ubugizi bwa nabi bwibasiriye imyanya ndangagitsina bwabereye muri Komine ya Taba, bukaba bwarasuzumwe mu cyi ryo rya 1996. Nyumayaho, hashizweho itsinda mu Ukwakira 1996 kugira ngo rikore ku bibazo birebana n'ubugizi bwa nabi bwibasiriye imyanya ndangagitsina. Ariko ibimenyetso ntabwo byari bihagije, cyane cyane ko 'abategarugori bari bafite isoni zo kuvuga ihohoterwa bakorewe'. Nyuma y'ubuhamya bwa H (Werurwe 1996), Porokireri yahisemo gukomeza no gukora za anketi ze mu buryo bushya. Za anketi zarakomeje 'ariko byari bigoye kuvuga icyo ari cyo cyose muri Werurwe , Mata, cyangwa Gicurasi, ntibyari byoroshye kubera ko u Rwanda rwari mu rwego IV ku birebana n'umutekano, ibyo bivuze ko abakora za anketi batashoboraga kugenda gukora akazi kabo badafite ababarindira umutekano b'Umuryango w'Abibumbye[...]Gukora za anketi ku kibazo nk'icyo cyo kurinda abatangabuhamya[...] n'ababaherekeje bafite intwaro, ntabwo bikwiriye kuko bishobora gutuma abatanabuhamya bamenyekana'. Ni cyo cyatumye Porokireri akoresha izindi nzira kugira ngo yegere abatangabuhamya. Abakora za anketi bashoboye rero guhabwa ubuhamya bwoherejwe ku Biro bya Porokireri icyumweru kimwe mbere y'uko urubanza rwo ku ya 17 Kamena 1997.

[215] Ingingo z'ibimenyetso. Inyandiko z'ubuhamya zisibwemo ibishobora kugaragaza umwirondoro hakurikijwe icyemezo cy'abacamanza cyo guhisha umwirondoro cyo ku ya 27 Mutarama 1996. Ibyo bimenyetso byerekanywe imbere y'Urugereko ku ya 17 Kamena 1997. Reba Uruhushya rwo huhindura Inyandiko y'ibirego, 17 Kamena 1997, urupapuro rwa 2.

[216] J yitabye Urukiko ku itariki ya 27 Mutarama 1997, naho H arwitaba ku ya 7 Werurwe 1997, ni ukuvuga hasigaye hafi amezi atanu kuri J n'amezi atatu n'igice kuri H ngo Inyandiko y'ibirego ya mbere ihindurwe.

habaye ibikorwa by'urugomo rwibasira imyanya ndangagitsina Akayesu yarezwe nyuma y'uko Urugereko rwa Mbere rw'Iremezo rutanze uruhushya rwo guhindura Inyandiko y'ibirego ya mbere. Koko rero, mu buhamya bwanditse batanze mbere, abo batangabuhamya ntibavuga ibikorwa byo gusambanya ku gahato byakorewe mu biro bya komine cyangwa hafi yaho[217]. Mu buhamya bwabo mu Rukiko, ubwo J na H bavugaga ko mu biro bya komine, cyangwa hafi yaho muri Taba, hakorewe ibikorwa byo gusambanya ku gahato[218], Abacamanza babajije ibibazo kuri ibyo byaha, ariko abavoka bunganira Akayesu ntibanyomoza abo batangabuhamya kuri ibyo bikorwa byihariye. Cyakora, biragaragara ko nyuma yaho, abavoka bunganira Akayesu batasabye Urugereko rwa Mbere rw'Iremezo kongera guhamagaza abo batangabuhamya. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rutarakoze ikosa ryo mu rwego rw'amategeko ubwo mu myanzuro yarwo ku byabaye rwazirikanaga ko abavoka bunganira Akayesu «batigeze na rimwe barwanya ubuhamya J na H batanze ku bikorwa byo gusambanya ku gahato »[219], ndetse n'ubundi buhamya.

Kongera igihe cyahawe Akayesu

122. Mu cyemezo rwafashe ku itariki ya 17 Kamena 1997, Urugereko rwa Mbere rw'Iremezo rwongereye abavoka bunganira Akayesu amezi ane kugira ngo bategure neza ukwiregura, nk'uko biteganywa n'ingingo ya 50 y'Amategeko[220]. Urugereko rw'Ubujurire rusanga

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[217] Ikimenyetso gihamya N° 101 n'ikimenyetso gihamya N° 107.

[218]. Mu rw'iremezo J avuga ko umukobwa we y'imyaka itandatu yasambanyijwe ku gahato n'Interahamwe eshatu zari zije kwica se. H avuga ko nawe yasambanijwe ku gahato mu murima kandi ko yabonye abandi bagore b'Abatutsikazi basambanyirizwa ku gahato hafi cyane y'ibiro bya komine. Reba Urubanza mu rw'iremezo, igika 416

[219] Mu buryo busobanutse kurushaho, Urugereko rwa Mbere rw'Iremezo rugira ruti : "Mbere yo gufata imyanzuro, Urugereko rwabanje gusuzumana ubwitonzi inyandikomvugo z'ibaza rinyomoza ry'abatangabuhamya bashinja ryakozwe n'Ubwunganizi, ndetse runasuzuma ibimenyetso Ubwunganizi bwatanze. Ku byerekeye ibaza rinyomoza, Urugereko rusanga Ubwunganizi butarigeze na rimwe buhakana ubuhamya J na H batanze ku bikorwa byo gusambanya ku gahato n'ubwo Urugereko rwabajije ibibazo abo bagabo bombi kuri ubwo buhamya batanze mu Rukiko". Reba Urubanza mu rw'iremezo, igika 453

[220] Rumaze gutanga uruhushya rwo guhindura Inyandiko y'ibirego ya mbere, Urugereko "rwibukije Porokireri inshingano afite, nk'uko biteganywa n'ingingo ya 50 y'Amategeko, yo kumenyesha uregwa n'abamwunganira Inyandiko y'ibirego yahinduwe n'ibintu iryo hindura rishingiyeho, akabikora nta gukererwa kandi mu ndimi zombi zikoreshwa n'Urukiko". Rumaze gutanga urwo ruhushya, Urugereko "rwemeje ko urubanza ruzasubukurwa ku wa gatatu ku itariki ya 22 Ukwakira 1997, isaa tatu n'igice za mu gitondo". Reba Uruhushya rwo guhindura Inyandiko y'ibirego, 17 Kamena 1997.

icyo gihe gihagije. Rusanga kandi Akayesu yarisobanuye ku byo aregwa mu mizi yabyo kuko yahakanye ibyaha bishya ashinjwa, kandi na nyuma yaho ntiyarwanyije ko Inyandiko y'ibirego ya mbere ihindurwa[221]. Na none, ibyongewe mu nyandiko y'ibirego ntibikabije, kandi bihuje n'ibiteganywa n'ingingo 19 n'iya 20 za Sitati[222].

123. Kubera izo mpamvu, Urugereko rw'Ubujurire risanze ingingo zose z'ubujurire zerekeranye n'ihindurwa ry'Inyandiko y'ibirego ya mbere nta shingiro zifite.

2. Ingingo ya kabiri: kudaha agaciro gakwiye ubuhamya bwanditse bwatanzwe mbere

124. Akayesu agira ati:

> Urukiko rwaribeshye rufata icyemezo cya rusange cyo kwemera cyane ubuhamya butanzwe mu Rukiko kurusha ubwatangiwe hanze y'Urukiko. Igihe cyose hari ukwivuguruza hagati y'ubuhamya bwanditse bwatanzwe mbere n'ubwatangiwe mu Rukiko, Urugereko rugomba gusuzuma uko kwivuguruza kuri buri mutangabuhamya no kuri buri buhamya. Kubera ko rwafashe icyemezo rusange, Urukiko rwanyuranyije n'ihame rivuga ko uregwa aba ari umwere igihe cyose atarahamwa n'icyaha maze rushyira imbere, kandi bitemewe, ubuhamya bwatanzwe n'abagabo bashinja, bityo urubanza rucibwa nabi [223].

[221] Nk'urugero, Urugereko rw'Ubujurire ruributsa ibiteganywa n'ingingo ya 73 y' Amategeko yagenderwagaho muri Kamena 1997: "Hiseguriwe ibiteganywa n'ingingo ya 72, umwe mu baburanyi ashobora gushyikiriza Urugereko rwa Mbere rw'Iremezo icyifuzo kimwe cyangwa byinshi nyuma y'uko uregwa yitabye bwa mbere Urukiko. Urugereko ruhitamo niba icyifuzo kigomba gutangwa mu nyandiko cyangwa mu magambo"

[222] Kuri iyi ngingo, reba urubanza mu bujurire Urugereko rw'Ubujurire rwagendeyeho mu gufata Icyemezo cyo ku itariki ya 29 Gicurasi 1998 mu rubanza *Porokireri yaburanagamo na Milan Kovacevic*, urubanza N^{o}. IT-97-24-AR73, 2 Nyakanga 1998, ibika 26-33. Biragaragara rero ko Urugereko rwa Mbere rw'Iremezo rwazirikanye uburenganzira bw'Uregwa: "Kubera ko Urukiko ruzirikana ko uburenganzira bw'uregwa bugomba kujyana n'amahame yashyizweho n'ingingo ya 20 4) ya Sitati, iteganya ko, mu gaka a) ko uregwa agomba Kumenyeshwa bidatinze, mu rurimi yumva kandi ku buryo burambuye, imiterere y'ibyaha ashinjwa n'impamvu bashingiraho bamurega, no mu gaka b) gateganya ko agomba guhabwa igihe n'ibyangombwa akeneye kugira ngo ategure ukwiregura kwe kandi ashobore gushyikirana n'umwunganira yihitiyemo".

[223] Urugereko rw'Ubujurire rusanga iyi ari yo mpamvu y'ingenzi y'Ubujurire bwa Akayesu muri iki kiciro. Reba Umugereka B. Akayesu yanasabye uruhushya rwo guhindura iyo mpamvu y'ubujurire, kugira ngo ashyiremo ingingo ivuga ko Urugereko rwa Mbere rw'Iremezo rwibeshye rwemera ko mu buhamya bwe mu Rukiko, umutangabuhamya w'impuguke witwa Ruzindana Matiyasi avuga ku bibazo bitari mu rwego rw'ubumenyi bwe. Bimwe mu avuga harimo ko Abanyarwanda bashobora kuba bashaka kuvuga ukuri imbere y'Urukiko kuruta uko babikora imbere y'abakozi bashinzwe iperereza. N'ubwo izo ngingo ziri mu mutwe VIII w'Imyanzuro ya Akayesu(ibice bimwe by'igika 1, icya 6, icya 19 n'icya 22 byerekeranye na "*oath helping"* [ku ndahiro] , kubuza itangwa ry'ibimenyetso

125. Ahanini Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemeza ibyo yita « ihame » ry'uko ubuhamya abagabo batanze mu Rukiko bwakwizerwa cyane kurusha ubwanditse batanze mbere (uko ubuhamya burutana mu gaciro)[224]. Avuga kandi ko iyo abatangabuhamya bahakanye ko batanze ubuhamya bwanditse, Urugereko rwa Mbere rw'Iremezo ruba rukoze ikosa iyo rwanze gutegeka ko hatangwa ibimenyetso bigaragaraza ko abagabo batanze ubwo buhamya, ibyo bavugamo n'ukuri kwabwo. Mu gusoza, yongera ho ko atamenyeshejwe neza ibimenyetso.[225]

126. Porokireri avuga ko ibyo bibazo bya nyuma birebana n'itangwa ry'ibimenyetso, ko rero bidafitanye isano n'iyi ngingo y'ubujurire, bityo bikaba bitagombye kwakirwa[226]. Cyakora, Urugereko rw'Ubujurire si ko rubibona. Si ngombwa ko ingingo zose zishyigikira impamvu y'ubujurire zisobanurwa mu nyandiko y'ubujurire, kenshi iba ari ngufi. Biragaragara ko ibyo biterwa n'imiterere y'urubanza. Muri uru rubanza, Urugereko rw'Ubujurire rusanga ibyo bibazo bifitanye isano bihagije ku buryo byafatwa nk'ibishyigikira impamvu y'ubujurire y'ingenzi ivugwa haruguru[227].

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muri rusange k'ukwizerwa kw'abatangabuhamya mbere y'uko uko kwizerwa kurwanywa, no kuba umutangabuhamya adashobora kwiyambazwa ngo atange igitekerezo cye kugira ngo undi mutangabuhamya yemerwe kurushaho, igika 7, n'igice cy'igika 27), mu cyemezo rwafashe ku itariki ya 22 Kanama 2000, Urugereko rw'Ubujurire rwanze kwemera icyifuzo disaba uruhushya rwo guhindura iyi mpamvu y'ubujurire. Kubera iyo mpamvu, izo ngingo ntiziri busuzumwe. Akayesu avuga ko izi ngingo z'ubujurire zirebana n'itangwa ry'ibimenyetso zisubirwamo muri iki cyiciro. Imyanzuro ya Akayesu, umutwe wa XIII, igika IV. Cyakora, mu gusobanura iyi mpamvu y'ubujurire, Akayesu avuga gusa ingingo nto kurusha izindi zikubiyemo mu mpamvu ya 33 yo mu Nyandiko y'ubujurire ya mbere.

[224] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 6.

[225] Imyanzuro ya Akayesu, Umutwe wa VIII, ibika 4, 5. Akayesu avuga kandi ko ubuhamya bwanditse yahawe butari ndetse ko butarimo ibibazo byabajijwe abagabo.

[226] Igisubizo cya Porokireri, ibika cya 9.3, 9.4. Nyuma yaho, Porokireri nta ngingo n'imwe atanga mu asubiza. Mu gisubizo kinyomoza ibyo Porokireri avuga mu gisubizo cye, Akayesu avuga ko bigaragara ko ibibazo bifitanye isano. Yemeza ko Urugereko rwa Mbere rw'Iremezo rwashingiye k'ukuba nta nyandikomvugo z'ubuhamya zihari maze rwemeza politiki yarwo ku buhamya bwanditse bwatanzwe mbere. Ku byerekeye itangwa ry'ibimenyetso, Akayesu asanga rishyigikira impamvu y'ingenzi y'ubujurire bwe kandi "muri icyo gika cya 5 [cy'Imyanzuro ye] avuga ibintu bikwiye bigomba gukorwa igihe umugabo ahakanye ubuhamya bwanditse yatanze mbere cyangwa iyo hari ukwivuguruza hagati y'ubuhamya umugabo atanze mu Rukiko n'ubwanditse yatanze mbere. Ibyo avuga bishyigikira impamvu y'ubujurire y'ingenzi kandi bigatuma umuntu yibaza ku bivugwa gika cya 137 cy'Urubanza mu rw'iremezo aho Urugereko rutibaza ikibazo cyo kumenya niba rwarashoboraga cyangwa rwaragombaga guhamagaza abakozi bashinzwe iperereza na/cyangwa abasemuzi kugira ngo rugenzure ibivugwa mu buhamya n'ukuri", Igisubizo kinyomoza cya Akayesu, ibika 90, 91.

[227] Porokireri anavuga ibindi asanga bivugwa muri mpamvu nto y'ubujurire. Muri ibyo bibazo harimo ibivugwa ko Uregwa yavukijwe uburenganzira afite bwo guhabwa igihe n'ibyangombwa akeneye ngo ategure ukwiregura kwe, n'ikibazo kirebana n'uburenganzira bwo guhabwa, k'ubuntu, umwunganira ubishoboye. Avuga ko ibyo Urega avuga

127. Kubirebana n'icyemezo cyafatwa, Akayesu avuga ko ikosa ryakozwe ryamuteye akarengane kadafite igaruriro kandi ko ryahungabanyije uburenganzira bwe bwo gucirwa urubanza mu buryo buboneye[228]. Asaba Urugereko rw'Ubujurire gutegeka ko «urubanza ruseswa »[229]. Mu iburanisha mu bujurire, Akayesu yongeyeho ko urubanza rwose rushingiye kuri icyo kibazo[230]. Avuga ko « kubera iyo mpamvu, Urubanza rwose rugomba guseswa keretse Porokireri agaragaje ko nta ngaruka zabayeho. Nsanga iki kibazo gitesha agaciro urubanza rwose »[231].

a. Kuba Urugereko rwa Mbere rw'Iremezo rushyira imbere ubuhamya bwatanzwe mu Rukiko[232]

i. *Ingingo z'ababuranyi*

128. Akayesu avuga ko, n'ubwo adahakana ko Urugereko rwa Mbere rw'Iremezo rwasuzumye ukwivuguruza kuri hagati y'ubuhamya abagabo batanze mu Rukiko n'ubwanditse batanze mbere, mu « gusuzuma [ubuhamya bwanditse bwatanzwe mbere] urwo Rugereko rwagendeye ku ihame ry'amategeko ridashyize mu gaciro »[233]. Avuga ko Urugereko rwa

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ntaho bihuriye n'ikibazo cy'ingenzi ari cyo cyo gukoresha ubuhamya bwanditse bw'abagabo kandi ko, kubera iyo mpamvu, ntacyo abivugaho. Igisubizo cya Porokireri, igika 9.6. Urugereko rw'Ubujurire rusanga ibyo bibazo, nk'uko byavuzwe, bitavugwa muri iyi ngingo y'ubujurire nk'ibibazo binyuranye n'ibindi kandi ko, kubera iyo mpamvu, rutari bubisuzume nk'aho bitandukanye n'ibindi.

[228] Imyanzuro ya Akayesu, Umutwe wa III, igika 48

[229] Imyanzuro ya Akayesu, Umutwe wa III, igika 48

[230] Mu nyandikomvugo y'iburanisha iri mu cyongereza, handitse ko Uwunganira Akayesu yavuze ko icyo kibazo ari "cyo urubanza rwose rushingiyeho (*'central to the entire trial')*, Inyandikomvugo y'iburanisha mu bujurir, 1 Ugushyingo 2000, urup. 77. Iyo nteruro ntiri mu nyandikomvugo y'iburanisha iri mu gifaransa (mikoro y'umusemuzi yari ijimije), inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 107-108

[231] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 113-114. Reba na none Igisubizo Akayesu cya Akayesu kinyomoza ibyo Porokireri avuga mu gisubizo cye, igika 95 : "Ujurira yararenganijwe bikomeye biturutse ku buhamya bwa benshi mu bagabo b'abasiviri". Avuga ko iryo kosa "rigira ingaruka ku bimenyetso byose bityo icyemezo cyo kumuhamya icyaha ku birego byose kikaba kigomba gukurwaho".

[232] Mu Myanzuro ye, Akayesu avuga ko muri iyi mpamvu y'ubujurire havugwamo ibibazo bitatu : "kumenyekanisha ibimenyetso, ukwivuguruza hagati y'ubuhamya bwanditse n'ubwo abagabo batanze mu Rukiko n'agaciro ubuhamya bwanditse bwahawe". Imyanzuro ya Akayesu, Umutwe wa VIII, igika 3. Cyakora, Urugereko rw'Ubujurire rwavuze ko, hashingiwe ku ngingo z'Ujurira, ari ngombwa gusuzumira hamwe ibibazo bibiri bya mbere kuko icya gatatu ari cyo cy'ingenzi.

[233] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 107-108 [FR]. Mu gisubizo kimyomoza ibyo Porokireri avuga mu gisubizo cye, Akayesu yemeza ko "atigeze na rimwe avuga ko Urugereko rutazirikanye

Mbere rw'Iremezo rutafashe buri kimenyetso rwashyikirijwe ngo rugisuzume ukwa cyo[234]. Yemeza ko n'ubwo, inshuro imwe cyangwa ebyiri, rushingiye ku buhamya bwanditse bwatanzwe mbere, Urugereko rwanze kwakira ubuhamya bwatanzwe mu Rukiko, ibyo bitavuga ko Abacamanza batarimo kugendera kuri iryo hame [235]. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rutabanje gusuzuma agaciro kahabwa ubwo buhamya bwatanzwe mu Rukiko n'ak'ubwanditse bwatanzwe mbere ngo rubone kwemeza ubwakwizerwa[236]. Avuga ko ahubwo urwo Rugereko rwemeje ihame rusange, ahanini ryimakaza ubuhamya butangiwe mu Rukiko[237]. Yongeraho ko Urugereko rudashobora gufata ubuhamya bwatanzwe mbere ngo rubwange bwose uko bwakabye, « maze ngo ibyo bibe nk'ihame »[238]. Uregwa avuga ko bumwe mu buryo bwo kwerekana ko umutangabuhamya atakwizerwa ari ukugaragaza ko yivuguruje ugereranyije n'ibyo yavuze mbere. Akayesu avuga ko atashoboye kubigaragaza kubera ihame rusange y'Urugereko rwa Mbere rw'Iremezo ivuga ko ubuhamya butanzwe mu Rukiko busumbya agaciro ubwanditse bwatanzwe mbere[239].

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ubuhamya bwanditse abagabo batanze mbere. Yemeza ko Urugereko rwafashe politiki yo guha agaciro kanini ubuhamya butangiwe mu Rukiko igihe hari ivuguruzanya mu buhamya", (igika 93).

[234] Imyanzuro ya Akayesu, Umutwe wa III, igika 48

[235] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 82 rw'inyandiko iri mu cyongereza. Iyo ngingo ntabwo igaragara yose mu nyandiko y'igifaransa (urup.113)].

[236] Imyanzuro ya Akayesu, Umutwe wa VIII, ibika 6, 24. Avuga ko ari ngombwa kuzirikana ingufu n'inenge z'ubuhamya bwanditse n'ubwatanzwe mu Rukiko, ndetse n'impamvu ubwo buhamya buvuguruzanya, Imyanzuro ya Akayesu, Umutwe wa VIII, igika 8.

[237] Imyanzuro ya Akayesu, Umutwe wa III, igika 48. By'umwihariko, Akayesu avuga ko iyo politiki igaragarira mu bika 137, 140, 261 na 408 by'Urubanza mu rw'iremezo. Reba na none Inyandikomvugo y'iburanisha mu bujurire, Ugushyingo 2000, imp. 113, 114.

[238] Inyandikomvugo y'iburanisha mu bujurire, Ugushyingo 2000, imp. 112-113 [FR]

[239] Imyanzuro ya Akayesu, Umutwe wa III, igika 23. Akayesu avuga ko kwifashisha ubuhamya bwanditse bwatanzwe mbere bitabangamiye ihame ry'uko uregwa afatwa nk'umwere igihe atari yahamwe n'icyaha. Kubikora harimo uburanganzira bwo gusuzuma ibimenyetso n'abatangabuhamya hazirikanwa ubuhamya bwanditse batanze mbere kugira ngo umuntu agereranye ingufu n'inenge by'ubuhamya butanzwe mu Rukiko n'ubwanditswe bwatanzwe mbere, kimwe n'impamvu zatumye umuntu yivuguruza. Ibyo bigomba gukorwa kuri gahunda. Imyanzuro ya Akayesu, umutwe wa VIII, ibika 8, 23. Avuga ko : "Kubera ko rwemeje ihame rivuga ko ubuhamya butanzwe mu Rukiko bufite agaciro kabone n'iyo umugabo yaba yaratanze ubundi bwanditse bubuvuguruza, Urukiko rwanze kugendera kugendera ku ihame rivuga ko uregwa afatwa nk'umwere igihe cyose atarahamwe n'icyaha, ndetse no ku ihame ryo gushidikanya". Ihame Urukiko rwagombaga kwemeza ryagombaga guhura n'iryemezwa mu rubanza rwa Kayishema rivuga ko ivuguruzanya hagati y'ubuhamya butanzwe mu Rukiko n'ubuhamya bwanditse bwatanzwe mbere rigomba gutuma Urugereko rushidikanya kuri icyo kimenyetso. Byongeye kandi, iyo hari ukwivuguruza kwinshi, bigomba gutuma ubuhamya bwose umugabo yatanzwe bukemangwa".

129. Porokireri avuga ko, n'ubwo Uregwa atari ko abibona, imyanzuro y'Urugereko rwa Mbere rw'Iremezo yerekana ko rwasuzumye ubuhamya bwa buri mugabo ngo rurebe niba burimo ukwivuguruza n'ihuzagurika. Iyo myanzuro yerekana kandi ko Urugereko rutagendeye ku ihame ryo kwanga ubuhamya bwanditse abagabo batanze mbere rutabanje gusuzuma ukwizerwa kwabwo[240].

ii. Isesengura ry'Urugereko

130. Urugereko rwa Mbere rw'Iremezo rwasuzumanye ubushishozi ikibazo cy'ubuhamya bwanditse bwatanzwe mbere, runazirikana ukwivuguruza kugenda kugaruka hagati y'ubwo buhamya n'ubwatanzwe mu Rukiko[241]. Mu by'ukuri, Urugereko rw'Ubujurire rwibutsa ko, kubera ko mu iburanisha Akayesu yakunze kuvuga ko abatangabuhamya bivuguruje, « bitewe kandi n'imiterere yihariye y'ibyaha biregerwa », Urugereko rwa Mbere rw'Iremezo rwategetse Porokireri, « kuruha inyandikomvugo zose z'ubuhamya bw'abagabo zari zaramenyeshejwe Ubwunganizi »[242]. Rusobanura iki cyemezo rwafashe ku Cyifuzo cya Porokireri[243], Urugereko rwavuze ko ibyo byari bigamije « gutuma rukurikira neza ibivugwa n'ababuranyi no kureba ukwivuguruza kwaba kuri mu buhamya »[244]

240 Igisubizo cya Porokireri, igika 9.18. Porokireri avuga ko Akayesu yibeshya ku mitekerereze y'Urugereko rwa Mbere rw'Iremezo no ku myanzuro yarwo. Yongeraho ko mu by' ukuri, " Urugereko […] rwasuzumye, ingingo ku yindi, ivuguruzanya n'inyuranya (Ubwunganizi n' Ubushinjacyaha bagiye bavuga mu rubanza). Urugereko rwa Mbere rw'Iremezo ruvuga, mu buryo bwumvikana, ko ikigamijwe ari ukureba niba umutangabuhamya yakwizerwa". Igisubizo cya Porokireri, igika 9.11. Porokireri atanga ingero. Igisubizo cya Porokireri , ibika 9.12-9.18. Avuga ko, n'ubwo Akayesu atariko abibona, " Urugereko rwa Mbere rw'Iremezo rwasuzumye mu buryo bumwe ubuhamya bwanditse bwatanzwe mbere n'abagabo bashinjura n'abashinja". Igisubizo cya Porokireri, igika 9.19. Mu by'ukuri, muri icyo gika avuga ko Urugereko rwasanze hari abagabo bashinja batakwizerwa " kubera ukwivuguruza kuboneka hagati y'ubuhamya bwanditse batanze mbere n'ubwo batanze mu Rugereko".

241 Imyanzuro ya Akayesu, Umutwe wa VIII, igika 30.

242 Icyemezo cy'Urukiko ku Cyifuzo yatanze asaba ko Porokireri amuha inyandikomvugo y'ubuhamya bw'abagabo, 28 Mutarama 1997.

243 *Prosecution's motion to reconsider and rescind the order of 28 january 1997 for disclosure of witness statements* [Icyifuzo cya Porokireri gisaba gusubiramo no kuvanaho Icyemezo cyo ku itariki ya 28 Mutarama 1997 gitegeka kumenyekanisha ubuhamya bwanditse, 4 Gashyantare 1997.

244 Icyemezo ku Cyifuzo cyifuzo cya Porokireri gisaba gusubiramo no kuvanaho Icyemezo cyo ku itariki ya 28 Mutarama 1997 gitegeka kumenyekanisha ubuhamya bwanditse, 6 Werurwe 1997. Urugereko rwa Mbere rw'Iremezo rwasanze "[...] bitewe cyane cyane n'uko mu ibaza rinyomoza, Ubwunganizi bwakundaga kuvuga ukwivuguruza hagati y'ubuhamya bwanditse abagabo bahaye abakora iperereza bo mu Biro Porokireri n'ubwo

131. Mu nyandiko y'urubanza, Urugereko rwa Mbere rw'Iremezo rwatangiye ruvuga « ibibazo rusange byerekeranye n'itangwa ry'ibimenyetso »[245]. Mu ikubitiro, rwavuze ko « rwagennye agaciro ka buri buhamya bwatanzwe mu Rukiko n'aka buri kimenyetso gihamya hakurikijwe uko cyakwizerwa n'aho gihuriye n'ibivugwa mu rubanza »[246]. Rumaze kubona ko, mu ibaza rinyomoza, ababuranyi bombi bashingiye ku buhamya abagabo batanze mu Rukiko, Urugereko rwanzuye rugira ruti:

> Inshuro nyinshi, Ubwunganizi bwagaragaje uguhuzagurika n'ukwivuguruza hagati y'ubuhamya bwanditse abagabo batanze mbere n'ubwo batanze mu Rukiko. Urugereko rusanga ubwo buhamya bwanditse bwaratanzwe mu biganiro abashinzwe iperereza bo mu biro bya Porokireri bagiranye n'abatangabuhamya. Hafi y'ibyo biganiro byose byabaye mu rurimi rw'Ikinyarwanda, kandi Urugereko ntirwiboneye inyandikomvugo z'imyimerere z'ibyo biganiro mbere y'uko zihindurwa mu zindi ndimi. Kubera iyo mpamvu, Urugereko ntirwashoboye gusuzuma kamere n'imiterere by'ibibazo byabajijwe abagabo ; ntirwashoboye kandi no gusuzuma niba inyandiko y'umwimerere ihuye n'iyahinduwe mu rundi rurimi icyo gihe. Urugereko rwasuzumye kandi ibyo bintu binyuranye kandi bitajyanye hagati y'izo mvugo n'ubuhamya bw'abagabo batangiye mu rukiko ruzirikana igihe kiri hagati y'izo mvugo n'ubuhamya kugira ngo ukuri kugaragare ; ruzirikana ingorane zo kwibuka neza ibintu byose byabaye nyuma y'igihe kirekire nk'icyo, kimwe n'ibibazo byo guhindura mu zindi ndimi n'uko abatangabuhamya benshi batazi gusoma no kwandika, kandi bakavuga ko batashoboye kwisomera inyandiko y'ibyo bavuze. Ikindi kandi ni uko izo mvugo zitakozwe hejuru y'indahiro, imbere y'ubishinzwe kandi ubifitiye ububasha. Kubera iyo mpamvu, agaciro kazo, uko Urugereko rubibona, kaba kagabanutse cyane ukagereranyije n'ak'ubuhamya butangwa mu rukiko hejuru y'indahiro, binakubitiyeho ko buba bwaranyomojwe kugirango ukuri kugaragare[247].

132. Akayesu avuga ko interuro ya nyuma y'iki gika igaragaza ko Urugereko rwa Mbere rw'Iremezo rwagendeye ku ihamwe ryo guha agaciro kanini ubuhamya bwatanzwe mu Rukiko kurusha ubwanditse bwatanzwe mbere[248]. Urugereko rw'Ubujurire ntirweme ranya na we kandi rusanga nta kosa na rimwe riri muri uwo mwanzuro rusange w'Urugereko rwa Mbere rw'Iremezo. Uru Rugereko rushingira ku mpamvu zikurikira:

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batanze mu iburanisha, Urukiko rwategetse Porokireri kurushyikiriza za kopi z'inyandikomvugo z'ubuhamya bwanditse yamenyesheje Ubwunganizi kugira ngo rushobore gukurikira impaka z'ababuranyi, bityo rushobore kugenzura ukwivuguruza kwaba guhari". Urugereko rwa Mbere rw'Iremezo rwavuze ko icyo cyemezo gisobanura neza ko "Icyemezo cyo ku itariki ya 28 Mutarama 1997 kirebana gusa n'inyandikomvugo z'ubuhamya bwanditse bwamenyeshejwe Ubwunganizi". Byongeye kandi icyo Cyemezo cyavuzwe mu rwego rw'ibyo Akayesu avuga ku mpamvu ya munani y'ubujurire, aho avuga ko Urugereko rwa Mbere rw'Iremezo rwategetse ko Ubwunganizi bwategetswe kumenyekanisha ubuhamya bwose bwanditse bw'abagabo bashinjura. Urugereko rw'Ubujurire rwasobanuye uko ruri busuzume iyi mpamvu y'ubujurire.

[245] Urubanza mu rw'iremezo, igika 130

[246] Urubanza mu rw'iremezo, igika 131.

[247] Urubanza mu rw'iremezo, igika 137 (ntibishimangiwe mu nyandiko y'umwimerere)

[248] Imyanzuro ya Akayesu, Umutwe wa III, igika 48

birazwi neza ko Urugereko rwa Mbere rw'Iremezo rushinzwe, mbere na mbere, gusuzuma ibimenyetso byatanzwe mu rubanza no kugena agaciro byahabwa. Kuri iyi ngingo, Urugereko rw'Ubujurire rwa TPIY rwavuze kenshi ko rugendera ku ihame rusange rigira riti:

> Ingereko za mbere z'iremezo nizo zishobora gusuzuma neza ibimenyetso, nk'ubuhamya butanzwe mu Rukiko…. Urugereko rwa Mbere rw'Iremezo ni rwo rugomba kwemeza niba umutangabuhamya yakwemerwa cyangwa niba ibimenyetso byatanzwe byakwizerwa. Urugereko rw'Ubujurire rugomba rero, mbere na mbere, kwizera uko Urugereko rwa Mbere rw'Iremezo rwasuzumye ibimenyetso byatanzwe mu rubanza[249].

133. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwavuze ko rwagejejweho kenshi ikibazo cy'ukwivuguruza hagati y'ubuhamya bwanditse abagabo batanze mbere n'ubwo batanze mu Rukiko. Muri rusange, rwanzuye ruvuga ko « kubera uko ibintu bimeze rusanga ubwo buhamya bwanditse bufite agaciro gato ubugereranyije n'ubwatanzwe mu Rukiko, hejuru y'indahiro[250]. Urugereko rw'Ubujurire rusanga, mu rubanza uru n'uru, Urugereko rwa Mbere rw'Iremezo rushobora gufata umwanzuro rusange nk'uwo ko ariko bitavuga ko urwo Rugereko rwashyizeho ihame rugenderaho.

134. Ingingo ya 90 A) y'Amategeko ivuga ko « muri rusange, ingereko ziyumvira ubwazo abatangabuhamya kereka iyo Urugereko rutegetse ko umugabo atanga ubuhamya mu buryo buteganywa n'ingingo ya 71 »[251]. N'ubwo iryo hame rifite amarengayobora yemewe ari buzwe kuvugwaho hasi[252], ihame rusange ni uko inteko z'Urugereko rwa Mbere rw'Iremezo rw'Urukiko ziyumvira ubwazo abatangabuhamya mu buryo butaziguye. Urugereko rw'Ubujurire rusanga ubuhamya bwanditse bwatanzwe mbere n'abagabo bitabye Urukiko bugira akamaro gusa iyo bukenewe kugira ngo Urugereko

[249] Urubanza rwa Aleksovski mu bujurire, igika 63 ; Urubanza rwa Tadic mu bujurire, igika 64 ; Urubanza Furundzija mu bujurire, igika 37 : "impamvu ituma Urugereko rw'Ubujurire rudapfa gufata icyemezo cyo guhindura imyanzuro yo mu rwego rw'ibyabaye yafashwe n'Urugereko rwa Mbere rw'Iremezo irazwi : mu iburanisha abacamanza bo mu rw'iremezo baba baragize umwanya wo kwitegereza, mu buryo butaziguye, abatangabuhamya. Kubera iyo mpamvu, ni bo bashobora gufata icyemezo k'ukwizerwa k'umutangabuhamya n'ukwemerwa kw'ibimenyetso kurusha uko byakora n'abacamanza bo mu bujurire" ; Reba na none Urubanza Celebici mu bujurire, urup. 491.
[250] Urubanza mu rw'iremezo, igika 137
[251] Ingingo ya 90 A) y'Amategeko yerekeye ubuhamya bw'abagabo.
[252] Reba impamvu ya gatandatu y'ubujurire, yerekeranye n'ubuhamya butanzwe ku byo umuntu yumvanye abandi.

rusuzume ukwizerwa k'umutangabuhamya[253]. N'ubwo Akayesu asa n'utabyemera, ubwo buhamya bwanditse bwatanzwe mbere ntibwagombye, cyangwa ntibwashobora, muri rusange, kuba ikimenyetso kigaragaza ukuri kw'ibintu bibuvugwamo. Kubera iyo mpamvu, Urukiko rufata ubuhamya butanzwe mu iburanisha nk'ikimenyetso cyakwizerwa kurushaho.

135. Cyakora, nk'uko Urugereko rw'Ubujurire rwa TPIY rwabivuze, iyo ubuhamya bwanditse bw'abagabo bwamenyekanishijwe, « Urugereko rwa Mbere rw'Iremezo ruba rufite inshingano yo gusuzuma ibintu bibuvugwamo, rukagena ukwizerwa kw'abatangabuhamya maze rukemeza niba uregwa ari umwere cyangwa niba ahamwa n'icyaha »[254]. Urugereko rw'Ubujurire rusanga ahanini ari muri urwo rwego inteko z'Urugereko rwa Mbere rw'Iremezo zisuzuma ubuhamya bwose bwanditse bwatanzwe mbere. Kubera iyo mpamvu, Urugereko rwa Mbere rw'Iremezo ni rwo rugomba gusuzuma ibimenyetso rwashyikirijwe no kugena agaciro byahabwa, rukurikije imiterere ya buri rubanza, kugira ngo rurebe niba ubuhamya bwose bwatanzwe n'umugabo bujyanye n'urubanza kandi bwakwizerwa.

136. Muri uru rubanza, Urugereko rw'Ubujurire rusanga mu gusuzuma ibimenyetso, Urugereko rwa Mbere rw'Iremezo rwarashakaga kureba niba abatangabuhamya bakwizerwa. Ibi bigaragarira mu magambo ruvuga muri rusange no mu buryo rwasuzumye ibimenyetso mbere yo gutafa imyanzuro ku byabaye kuri buri kirego cyo mu

[253] Urubanza Kayishema/Ruzindana mu rw'iremezo, urup. 77. Reba Archbold 2000, ibika 8-130 : "mu manza nshinjabyaha, ukwivuguruza kugirira akamaro uregwa akamaro kandi ubuhamya bwanditse bwatanzwe mbere ntibushobora gufatwa nk'ikimenyetso cy'ukuri kw'ibubuvugwamo". (Isemurwa ritemejwe).

[254] Urubanza Tadic mu bujurire, igika 317. Uru Rugereko rusanga isesengurwa ryakozwe n'Urugereko rw'Ubujurire muri uru rubanza ryerekeye, ahanini, ububasha bwo gutegeka ko hamenyekanishwa ubuhamya bwanditse abagabo bashinjura batanze mbere kubera ibyavuzwe mu ibaza ry'ibanze. Cyakora, iryo hame rirebana na none no kumenyekanisha ubuhamya bwanditse bwatanzwe n'abagabo bashinja irebana n'itangwa ry'ubuhamya bw'abagabo bashinja, rituma Urugereko rwa Mbere rw'Iremezo rurangiza inshingano rufite yo "gusuzuma ukwizerwa kw'ibimenyetso byose rwashyikirijwe". Reba Urubanza rwa Tadic mu bujurire, igika 321. Urugereko rw'Ubujurire rusanga kandi ibyo Akayesu avuga mu mpamvu ye y'ubujurire bishingiye ku mitekerereze iri muri rubanza mu bujurire no rubanza rwa Kayishema na Ruzindana mu rw'iremezo, ibika 76-80, Imyanzuro ya Akayesu, umutwe wa VIII, ibika 9, 10.

Nyandiko y'ibirego[255]. Urugereko rwa Mbere rw'Iremezo rwagize ruti: « Mu gusuzuma ibimenyetso, hakurikijwe ihame rusange, Urugereko rwagennye agaciro kahabwa buri buhamya bwatanzwe mu Rukiko n'akahabwa buri kimenyetso gihamya, hashingiwe k'ukwizerwa kwacyo n'aho gihuriye n'ibivugwa mu rubanza »[256]. Nyuma yaho, nk'uko Porokireri yabivuze, Urugereko rwa Mbere rw'Iremezo rwasuzumye ubuhamya bwatanzwe mu Rukiko n'abagabo (bashinja n'abashinjura)[257] kandi rwashingiyeho mu guhamya Akayesu icyaha cyangwa kumugira umwere ku kirego iki n'iki. By'umwihariko, rwasobanuye imyanzuro rwafashe yerekeranye n'ukwivuguruza kuvugwa hagati y'ubuhamya bwanditse bwatanzwe mbere n'ibyo abagabo bavuze mu ibazwa rinyomoza[258]. Hari aho rwagiye rwemera ko ubuhamya bwanditse bwatanzwe bwakizwerwa kurusha ubwatanzwe mu Rukiko[259], ubundi ruhitamo ubuhamya bwatanzwe mu Rukiko maze rwemera ibisobanuro umutangabuhamya yatanze kuri uko kwivuguruza[260]. N'ubwo Akayesu abibona ukundi, Urugereko rw'Ubujurire rusanga iryo suzuma ritari ribogamye ku buryo ukwivuguruza kuvugwa mu buhamya bushinja kwaba kwarafashwe nk'aho kudakomeye naho ukuvugwa mu buhamya bushinjura kugafatwa nk'aho gukomeye[261]. Ahubwo Urugereko rwa Mbere rw'Iremezo rwasuzumye uko

[255] Imyanzuro yo mu rwego rw'ibyabaye iri mu gika cya 157 kugeza ku cya 460 by'Urubanza. Reba na none, muri rusange, ingingo ya gatatu y'impamvu ya kane y'ubujurire.
[256] Urubanza mu rw'iremezo, igika 131.
[257] Ibi binyuranye n'ibyo Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rutasuzumye kimwe ubuhamya bwanditse abagabo bashinja n'abashinjura batanze mbere. Imyanzuro ya Akayesu, Umutwe wa VIII, igika 30. Agira ati: "Urugereko rwakoresheje, mu buryo bubogamye, ihame ryarwo ryo guha agaciro ubuhamya bwanditse bwatanzwe mbere, kuko rwagiye kenshi runenga gusa abagabo bashinjura kuba baratanze ubuhamya bwanditse buvuguruza ubundi bari batanze ikindi gihee. Imyanzuro ya Akayesu, Umutwe wa VIII, igika 30.
[258] Reba na none, Urubanza mu rw'iremezo, igika 140.
[259] Reba na none, igika 185 cy'Urubanza mu rw'iremezo, aho Urugereko rwa Mbere rw'Iremezo ruvuga ko ku byerekeye ukwivuguruza hagati y'ubuhamya bwanditse R yatanze mbere n'ubwo yatanze mu Rukiko, "icyari kigamijwe cyari gusuzuma ukwizerwa k'uwo mugabo". Ruvuga ko n'ubwo uwo mugabo yivuguruza "ku munsi wagirira akamaro Uregwa, ubuhamya yatanze mu Rukiko bushimangira ibyo Uregwa avuga".
[260] Reba igika 261 cy'Urubanza mu rw'iremezo, aho Urugereko rwa Mbere rw'Iremezo ruvuga ko "rwemeye ibisobanuro Karangwa [umutangabuhamya ushinja] yatanze k'ukwivuguruza mu buhamya bwe. Ruvuga ko mu buhamya bwose yatanze yatanze mu Rukiko, uyu mugabo atigeze ahindagura imvugo ku byo yavuze ko abavandimwe be bapfuye bazize ibikomere batewe n'amasasu. Rwongeraho ko ubuhamya bwe bushimangirwa n'ubwa S". Mu gika gikurikiraho (262), urwo Rugereko rwanzura ruvuga ko "S yemeje, ku ngingo zose, ubuhamya Karangwa yatanze mu Rukiko". Mu gika cya 266, urwo Rugereko ruvuga kuba igisobanuro S atanga ku mpamvu atatanze ibisobanuro birambuye, byumvikana. Mu gika cya 454 n'icya 455, Urugereko rwa Mbere rw'Iremezo rwanzura ruvuga ko ukwivuguruza Ubwunganizi buvuga ku byerekeye abagabo batanze ubuhamya ku bikorwa by'urugomo rwibasira imyanya ndangagitsina nta kamaro gufite kandi ko atari kwinshi ku buryo byatuma abo bagabo batizerwa".
[261] Imyanzuro ya Akayesu, Umutwe wa III, igika cya 7

kwivuguruza rushingiye ku isuzuma rwakoze k'ukwizerwa k'ubuhamya bwose bwa buri mugabo[262]. Nk'urugero, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarafashe umwanzuro uvuga ko Akayesu yashoboye « gutuma rushidikanya » k'ukwizerwa k'umutangabuhamya ushinja, ku buryo Urugereko rutashoboraga kumuhamya icyaha ku bikorwa bivugwa mu gika cya 17 cy'Inyandiko y'ibirego[263]. Urugereko rwa Mbere rw'Iremezo rwanzuye rugira ruti : « n'ubwo rwakoresheje buri gihe ubushishozi mu kwemera ko ubuhamya bwanditse bwatanzwe mbere y'uko urubanza rutangira bwashingirwaho mu kurwanya ubuhamya abagabo batanze mu Rukiko, muri uru rubanza, ni ngombwa kwemera ko hari ukwivuguruza kwinshi cyane kandi gukomeye hagati y'ubuhamya umugabo wiswe X yatanze mu Rukiko n'ubwanditse yatanze mbere, ku buryo Urukiko rutabwizera mu gihe budafite ubundi bubushyigikira[264].

137. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro uvuga ko « kenshi » hagiye hagaragara ukwivuguruza[265]. Cyakora, Akayesu ahitamo ibyo avuga ibindi akabyihorera, kuko bigaragara ko ari we wari waravuze ko kwivuguruza byaba byarabaye « kenshi ».

138. Mu myanzuro ye, Akayesu avuga ahantu henshi yerekanye uko kwivuguruza[266]. Cyakora, ntagaragaza ukuntu Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ubwo rwasuzumaga ubwo buhamya, kandi ntanavuga ukuntu ibyo bintu byaba byaramurenganyije. Mu iburanisha mu bujurire, avuga ko afite ikaye yuzuyemo izindi ngero. Muri izo ngero

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[262] Urugereko rwa Mbere rw'Iremezo ruvuga ko "ukwizerwa kwa buri mutangabuhamya kugomba gusuzumwa hasizirikanwa imyitwarire y'uwo mugabo, ukudahuzagurika n'ukwizerwa cyangwa kutizerwa kw'ibisubizo yatanze hejuru y'indahiro". Urubanza mu rw'iremezo, igika cya 47.

[263] Urubanza mu rw'iremezo, igika cya 407

[264] Urubanza mu rw'iremezo, igika cya 408

[265] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 30; Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 108 (urupapuro. rwa 82 mu nyandiko iri mu cyongereza)

[266] Imyanzuro ya Akayesu, Umutwe wa VIII, ibika 5, 30. Akayesu atanga ingero z'ukwivuguruza hagati y'ubuhamya abagabo batanze mu Rukiko n'ubuhamya bwanditse batanze mbere, ku birebana na A, W, Z, V, G, E, J, R, Q, S, D (Ephrem Karangwa), U, A, JJ, OO, KK, NN, na PP.

avuga by'umwihariko iz'abatangabuhamya biswe D na S[267]. Hari ikindi gice cy'uru rubanza, Urugereko rw'Ubujurire rusuzuma birambuye ubuhamya abo bagabo bombi batanze mu Rukiko. Cyakora, kuri iyi mpamvu y'ubujurire Akayesu ntatanga ibimenyetso bigaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze andi makosa mu gusuzuma ubwo buhamya nk'uko abivuga[268].

139. Akayesu atanga ingero ebyiri (ubuhamya bwe n'ubwa DFX) zigaragaza ukuntu Urugereko rwa Mbere rw'Iremezo rutafashe mu buryo buboneye abatangabuhamya bashinjura[269]. Cyakora, no kuri iyi ngingo nta tanga ikimenyetso kigaragaza ko ibyo avuga ari ukuri.

140. Kuba rimwe na rimwe Urugereko rwa Mbere rw'Iremezo rwarashidikanyije k'ukwizerwa k'ubuhamya bwa Akayesu kubera, nk'urugero, ukwivuguruza hagati y'ubuhamya bwanditse yatanze mbere n'ubwo yatangiye mu Rukiko, ntibihagije mu kugaragaza ko Urugereko rutitwaye mu buryo buboneye, nk'uko Akayesu abivuga. Mbere na mbere, icyemezo nk'icyo kijyanye n'ububasha Urugereko rwa Mbere rw'Iremezo rufite bwo gusuzuma ibintu, ni ukuvuga uburenganzira n'inshingano byo kugira icyo ruvuga k'ukwizerwa kw'abatangabuhamya barwitabye.

141. Ku birebana n'umutangabuhmya wiswe DFX, Urugereko rwa Mbere rw'Iremezo ntirwafashe umwanzuro ku buryo bweruye k'ukwivuguruza kuri hagati y'ubuhamya bwanditse yatanze mbere n'ubwo yatangiye mu Rukiko, cyangwa ngo rufate mwanzuro ku buryo bweruye k'ukwizerwa kwe. Rwavuze gusa ko, ku byerekeye ibirego

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[267] Inyandikomvugo y'iburanisha mu bujurire 1 Ugushyingo 2000, imp. 108, 224-227 [FR]. Akayesu avuga kandi muri make ku buhamya D yatanze mu Rukiko (Mu Myanzuro ye, umutwe wa VIII, ibika 5, 30), cyakora ntatanga ingingo n'imwe.
[268] Nk'uko Porokireri abisobanura, Akayesu "yagombye kuba yarifashishije izi ngero zose ngo yerekane ko Urugereko rwakoze amakosa, mu itangwa ry'ibimenyetso", Inyandikomvugo y'iburanisha mu bujurire 1 Ugushyingo 2000, imp. 191,192. Mu nyandikomvugo y'iburanisha iri mu cyongereza, iyi nteruro yanditse itya: Akayesu *"ought to have used all these examples to establish that there was any failure on behalf of the Trial Chamber in the assessment of the evidence. He has not done so"* [Akayesu yagombye kuba yarifashishije izi ngero mu kugaragaza ko Urugereko rwakoze amakosa mu gusuzuma ibimenyetso, ariko ntiyabikoze] . Inyandikomvugo y'iburanisha mu bujurire 1 Ugushyingo 2000, urup. 148 [FR].
[269] Imyanzuro ya Akayesu, Umutwe wa VIII, igika cya 30.

by'urugomo rwibasira imyanya ndangagitsina, « abajijwe n'Urugereko, uwo mugabo yemeye ko mu buhamya bwanditse yahaye Ubwunganizi yavuze ko *Interahamwe* zafataga abakobwa beza b'Abatutsikazi zikabajyano iwazo kubagira abagore ku ngufu. Yemeye ko iyo myitwarire ishobora gufatwa nk' « igikorwa cy'urugomo rwibasira imyanya ndangagitsina kuko abo bakobwa batwarwaga ku gahato »[270]. Akayesu ntiyagaragaje neza ukuntu iyo myanzuro (cyangwa indi) yerekana ko Urugereko rwa Mbere rw'Iremezo rwitwaye mu buryo butaboneye.

142. Urugereko rw'Ubujurire rusanze nta kintu kigaragaza ko Urugereko rwa Mbere rw'Iremezo rwasuzumye ibimenyetso rwishyizemo ko rugomba kwanga ubuhamya bwose bwatanzwe mbere igihe rusanze hari ukuvugurzanya hagati yabwo n'ubutangiwe mu rukiko. Urugereko rw'Ubujurire rwemeye umwanzuro wafashwe mu rubanza rwa Kayishema/Ruzindana uvuga ko « ukwivuguruza gutuma haba ugushidikanya ku gaciro kahabwa igice runaka cy'ubuhamya, maze kwaba gukomeye bigatuma ubwo buhamya bwose bushidikanywaho »[271]. Cyakora, nk'uko byibukijwe haruguru, « Urugereko rw'Ubujurire rugomba ahanini kwemera isuzuma Urugereko rwa Mbere rw'Iremezo rwakoze ku bimenyetso byatanzwe mu rubanza »[272]. Akayesu ntagaragaza ukuntu Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu gusuzuma ibimenyetso, bityo akaba aterekana ukuntu yarenganijwe. N'ubwo Akayesu abibona ukundi, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarasuzumye neza ukwizerwa kw'abatangabuhamya rushingiye ku bimenyetso byinshi byatanzwe bivugwamo kuvuguruzanya hagati y'ubuhamya abagabo batanze mu Rukiko n'ubwanditse batanze mbere[273].

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[270] Urubanza mu rw'iremezo, igika cya 444.

[271] Urubanza rwa Kayishema/Ruzindana mu rw'iremezo, igika 77 Akayesu ashingiraho mu Myanzuro ye, Umutwe wa VIII, igika 23. Nk'uko bivugwa mu Rubanza rwa Celebici mu bujurire, igika 496 (igihe hagibwaga impaka k'ukwivuguruza kuri mu buhamya butanzwe mu Rukiko, muri rusange) : "ukwivuguruza mu buhamya gutuma "hagenwa agaciro ubwo buhamya bwahabwa. Cyakora uko kwivuguruza konyine ntiguhagije ngo ubuhamya bwose umugabo atanze mu Rukiko bwe kwizerwa".

[272] Urubanza rwa Aleksovski mu bujurire, urup. 63; Urubanza rwa Tadic mu bujurire, igika 64 ; Urubanza rwa Furundzija mu bujurire, igika 37.

[273] Muri rusange, reba urubanza rwa Celebici mu bujurire, ibika 496, 498.

143. Akayesu anenga kandi ingingo zitangwa n'Urugereko rwa Mbere rw'Iremezo mu gushyiraho iryo « hame ». Ibyo anenga birimo imyanzuro ya rwo yerekeranye n'igihe cyari gishize, imiterere y'ubuhamya buvugwa, n'ibibazo by'isemura. Akayesu avuga ko, bitumvikana ukuntu Urukiko rwavuga ko bikomereye cyane umutangabuhamya kwibuka ibintu bimaze imyaka myinshi bibaye ariko rwarangiza rukemeza ko ubuhamya uwo mugabo yatanze mu Rukiko bwakwizerwa kurusha ubwanditse yatanze mu gihe cyegeranye n'icyo ibyo avuga byabayemo. Avuga ko byaba byumvikana umuntu ahisemo ubuhamya bwatanzwe ku itariki yegeranye n'igihe ibintu byabereye, kuruta uko yakwemera ubuhamya butanzwe mu Rukiko hashize imyaka myinshi ibyo bintu bibaye[274]. Yongeraho ko, urebye imiterere y'ubuhamya bwatanzwe, abagabo benshi bari abantu bize, bumva igifaransa n'icyongereza bityo akavuga ko yumva ko bari bazi icyo bakora igihe batangaga ubuhamya[275].

144. Byongeye kandi, Akayesu anenga umwanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ruvuga ko, kubera ko bwatanzwe hejuru y'indahiro, ubuhamya butanzwe mu Rukiko bwakwizerwa cyane kurusha ubwanditse bwahawe abakozi b'iperereza[276]. Avuga ko iyo mitekerereze ituma umuntu yumva ko Urugereko rwa Mbere rw'Iremezo rwemera ko abatangabuhamya bashobora kuba barabeshye abakozi bashinzwe iperereza, bityo bakaba batakwizerwa[277].

145. Porokireri ntiyagize icyo avuga kuri ibi bimaze kuvugwa n'Ubwunganizi.

[274] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 48. Yemeza ibi bikurikira: "Ubusanzwe, ubuhamya bwanditse buhawe abakora iperereza ni bwo buba busobanutse kurushaho kuko butangwa mu gihe cyegeranye n'icyo ibintu byabayemo. Ni amakosa guha agaciro kanini ubuhamya butanzwe mu iburanisha hashingiwe ku mpamvu zitangwa n'Urukiko".Igisubizo Akayesu atanga anyomoza ibyo Porokireri avuga mu gisubizo cye, igika 93 d).

[275] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 7. Avuga kandi ko Urugereko rwa Mbere rw'Iremezo ruba rwarasuzumye ko abatangabuhamya baba barumvikanye ku byo bavuze, mbere y'uko bitaba Urukiko cyangwa igihe bazaga kurwitaba, kurusha uko byaba byarabaye mbere y'uko baha ubuhamya bwanditse abakoraga iperereza. Urugereko rw'Ubujurire rusanga ibyo Ujurira avuga nta shingiro bifite muri iyi mpamvu y'Ubujurire. Akayesu nta tanga impamvu n'imwe yari gutuma Urugereko rwa Mbere rw'Iremezo ruzirikana ibyo bintu.

[276] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 27.

[277] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 7, 27 na 28 ; Igisubizo cya Akayesu kinyomoza ibyo Porokireri avuga mu gisubizo cye, igika 93 a)

146. Akayesu ntagaragaza ahantu na hamwe iryo suzumwa ryakozwe kuri ubwo buryo, n'ingaruka iyo myanzuro ishobora kuba yaramugizeho. Ibyo ari byo byose, Urugereko rw'Ubujurire rusanga nta kosa na rimwe Urugereko rwa Mbere rw'Iremezo rwakoze mu mitekerereze ya rwo rusange yerekeranye no gusuzuma muri rusange ukwizerwa k'ubuhamya n'ibintu bigomba kuzirikanwa muri iryo suzuma. Nk'uko bivugwa haruguru, Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro ko rugomba gusumana ubushishozi uguhuzagurika n'ukwivuguruza hagati y'ubuhamya bwanditse bwatanzwe mbere n'ubwatanzwe mu Rukiko, ruzirikana igihe gishize ibintu bibaye n'ingorane abatangabuhamya bagira zo kwibuka ibintu byose byabaye, ibibazo by'isemura, kuba abatangabuhamya bamwe batarize no kuba ubuhamya bwanditse butaratanzwe hejuru ndahiro[278]. Birigaragaza rero ko Urugereko rwa Mbere rw'Iremezo rwafashe imyanzuro ishyize mu gaciro. Byongeye kandi, urwo Rugereko rwanzuye rugira ruti:

> Abenshi mu batangabuhamya bitabye Urugereko bari abantu biboneye n'amaso yabo cyangwa biyumviye ubwabo ibyo batangagaho ubuhamya. Ubuhamya bwabo bwari bushingiye ku bikorwa bifitanye isano n'ibyaha biri mu Nyandiko y'ibirego. Muri uru rubanza, Urugereko rwasanze hari ibintu bimeze nk'ibivuguruzanya cyangwa nk'ibinyuranyije n'ukuri hagati y'ubuhamya bwatanzwe hejuru y'indahiro mu rukiko n'ibyo abo bagabo babwiye mbere Porokireri cyangwa ubwunganizi. Ibyo ari byo byose, ibyo ntibihagije kugira ngo umuntu yemeze ko abo bagabo batanze ubuhamya bw'ikinyoma muri uru rubanza. Koko rero, akenshi ubuhamya burakemangwa kubera uko ubutanga ashobora kwibeshya. Umutangabuhamya yitabaza cyane cyane ibyo yafashe mu mutwe n'ibyo yabonye, kandi akenshi uwo mutwe n'ayo maso bitenguha nyirabyo, akaba ariyo mpamvu ubuhamya bukunze kunengwa. Bityo, ni imbonekarimwe kugira ngo ubuhamya ku byo umuntu yanyuzemo bube ntamakemwa. Ariko rero guhita umuntu avuga ko habaye ubuhamya bw'ikinyoma agendeye ku kuvuguruzanya no kudasobanura ibintu kimwe, byaba nko kwemeza ko umuntu wagize intege nke mu bushobozi bwe bwo kubona ibintu aba akoze icyaha. [279].

147. Urugereko rw'Ubujurire rusanga nta kosa na rimwe riri muri iyi mitekerereze. Nk'uko bivugwa haruguru, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo ari rwo rufite ububasha busesuye bwo gusuzuma ibimenyetso maze rukanga cyangwa rukemera ubuhamya bw'umugabo, rumaze kumubona no kumwumva (ndetse n'abandi batangabuhamya), no kumwitegereza mu ibaza rinyomoza. Urugereko rwa Mbere rw'Iremezo rufata icyemezo kuri buri buhamya ukwabwo, ariko ruzirikana ubwo

[278] Urubanza mu rw'iremezo, igika cya 137.
[279] Urubanza mu rw'iremezo, igika cya 140, reba na none igika cya 445.

buhamya bwose. Urugereko rw'Ubujurire rusanga ibintu byavuzwe haruguru, bizirikanwa muri rusange n'Urugereko rwa Mbere rw'Iremezo igihe rusuzuma ubuhamya, bishyize mu gaciro kandi bikwiye. Mu by'ukuri, ni ibintu bizirikanwa n'inteko z'Urugereko rwa TPIY n'urwa TPIR kandi Urugereko rw'Ubujurire rwa TPIY ruherutse kubyemeza[280].

b. *Kumenyekanisha ibimenyetso, n'ubuhamya butatangiwe mu iburanisha*

i. *Ingingo za Akayesu*[281]

148. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kuko rwanze gutegeka ko amenyeshwa inyandiko y'ibibazo byabajijwe abatangabuhamya, kaseti zafatiweho amajwi mu itangwa ry'ubuhamya, n'inyandiko z'abakoze iperereza. Avuga ko ibyo bimenyetso byari gutuma, nk'urugero, agenzura ko isemura ryakozwe neza.[282] Avuga ko, kubera ko rwanze gutegeka ko amenyeshwa ibyo bintu, « Urukiko rwamuvukije uburenganzira n'inshingano afite byo gupererereza no kugenzura ibimenyetso ».[283]

149. Akayesu avuga ko abagabo benshi bahakanye ibintu bimwe na bimwe mu biri mu buhamya bwanditse batanze imbere y'abakoze iperereza[284]. Avuga ko, buri gihe iyo umutangabuhamya yisubiragaho, Porokireri, Urukiko cyangwa se Ubwunganizi bagombaga gusaba ko uwakoze iperereza yangwa undi wese wanditse ubwo buhamya aza mu Rukiko kugira ngo agaragaze ko ubwo buhamya bwatanzwe koko ndetse anavuge niba ibibukubiyemo ari ibyo umugabo yavuze, akabikora atanga ibyo yanditse, inyanditko z'ibibazo byabajijwe, byaba ngombwa umusemuzi akemeza niba ibikubiye mu buhamya

[280] Urubanza rwa Celebici mu bujurire, ibika 496, 498.
[281] Nk'uko byasobanuwe haruguru, Porokireri ntacyo avuga kuri ibi bibazo.
[282] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 4.
[283] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 4. Avuga ko ubwo buhamya bwanditse "butari bwuzuye kandi ko butari burimo ibibazo byabajijwe".
[284] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 5

ari byo umutangabuhamya avuga[285]. Akayesu asanga Urugereko rwa Mbere rw'Iremezo rwagombye kuba rwarategetse ko ibyo bimenyetso bitangwa[286]. Abivuga muri aya magambo:

> Umuntu agomba kumva ko ibivugwa mu buhamya bwanditse bihuye n'ibyo mu buhamya butanzwe mu Rukiko. Iyo hari ukwivuguruza, biremewe gutanga ikimenyetso kitavuzwe muri ubwo buhamya. Ujurira avuga ko niba umukozi ushinzwe iperereza atarashoboraga gutanga ubuhamya kandi na Porokireri atemera ko ibyanditse mu buhamya ari ibyo umugabo yavuze, Urukiko rwagombaga kwanga ubwo buhamya bwose cyangwa igice cyabwo cyangwa rugategeka ko ikurikiranacyaha rihagarara kubera ko Ujurira adashobora kwiregura mu buryo bwuzuye kandi buhamye[287].

ii. Isesengura ry'Urugereko

150. Urugereko rw'Ubujurire rusanga ibibazo bivugwa hano « bifitanye isano cyane ku buryo byafatwa nk'aho bishyigikira ikibazo cy'ingenzi »[288]. Kubera iyo mpamvu, Urugereko rw'Ubujurire rugiye kubisuzuma mu mizi yabyo. Cyakora, rusanga byungirije impamvu y'ingenzi rwanze kwakira nk'uko byavuzwe haruguru.

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[285] Imyanzuro ya Akayesu, Umutwe wa VIII, ibika 5, 11.Muri iki gika cya nyuma, Akayesu avuga ko "Yumva uwunganira uregwa agomba gusaba ko abatanze ubuhamya bwanditse bitaba Urukiko kugira ngo bemeze ibyo bavuze"(sic). Avuga ko ukuri k'ubuhamya bwanditse bwatanzwe muri uru rubanza kwagombye kuba kwaragaragajwe kuko ku byerekeye ukwizerwa kw'abagabo, hari ukwivuguruza gukomeye hagati y'ubuhamya bwatanzwe mu Rukiko n'ubuhamya bwanditse bwatanzwe mbere. Imyanzuro ya Akayesu, Umutwe wa VIII, igika 13. Reba kandi ibika 24, 25 n'inyandikomvugo y'iburanisha mu bujurire 1Ugushyingo 2000, urup. 112.

[286] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 11. Akayesu avuga ko : "Umuti rukumbi uhari uri mu bivugwa mu Mutwe wa 8, igika 25, w'Imyanzuro y'Ujurira. Muri icyo gika, Ujurira asaba Urugereko gusuzumana ubwitonzi ubuhamya bwanditse imbere y'uwabwanditse kandi hifashishijwe inyandikomvugo y'ubuhamya igaragaza ibibazo byabajijwe". Igisubizo kinyomoza cya Akayesu, igika 94.

[287] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 25. Ku buryo butaziguye, Akayesu avuga ku bintu byabaye mbere byerekeranye n'ibaza rinyomoza ry'abatangabuhamya ugereranyije n'ubuhamya bwanditse batanze mbere bubuguruzanya. Avuga kandi k'ukwereka abagabo ubuhamya batanze mbere no ku itangwa "ry'ibimenyetso bidafitanye isano n'ubuhamya" kubera ko hari ubuhamya bwatanzwe mbere buvuguruza ubwo". Imyanzuro ya Akayesu, umutwe wa VIII, ibika 12-18. Avuga ko isuzuma ry'ibyo bintu byose rigaragaza ko "icya mbere, ubuhamya bwanditse bwatanzwe mbere ari ngombwa mu gusuzuma ukwizerwa kw'abatangabuhamya; icya kabiri, iyo umugabo ahakanya ko hari ubuhamya yatanze, biremewe kandi ni byiza gutanga ikimenyetso kidafitanye isano n'ubuhamya kugira ngo ukuri kugaragare. Iryo suzuma rikorwa hakurikijwe imiterere ya buri buhamya". Imyanzuro ya Akayesu, Umutwe wa VIII, igika 18. Reba na none Igisubizo cya Akayesu kinyomoza ibivugwa na Porokireri, igika 94.

[288] Reba igika 128.

151. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu cyemezo rwafashe ku itariki ya 31 Ukwakira 1996 kuko rwanze gutegeka Porokireri kumenyekanisha amakaseti yafatiweho amajwi mu buhamya, ibibazo byabajijwe n'abakozi bashinzwe iperereza ndetse n'inyandiko banditse[289]. Cyakora, Akayesu yahisemo uburyo asobanura ibintu byabaye uwo munsi kandi hano ni ngombwa kwibutsa uko iburanisha ryagenze n'imyanzuro isobanutse yafashwe n'Urugereko rwa Mbere rw'Iremezo.

152. Urubanza rwa Akayesu rwagombaga kuba rwaratangiye ku italiki ya 31 Ukwakira 1996[290]. Avoka Karnavas wunganiraga Akayesu icyo gihe yasabye ko rusubikwa avuga ko, nk'urugero, Porokireri atubahirije neza ibiteganywa n'Amategeko ku byerekeye kumenyekanisha ibimenyetso[291]. Urugereko rwa Mbere rw'Iremezo rwemeye icyo Cyifuzo maze rutegeka Porokireri kubahiriza inshingano ye yo kumenyekanisha ibimenyetso nk'uko abitegekwa n'ingingo ya 66 y'Amategeko. Urugereko rw'Ubujurire rusanga nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze muri icyo Cyemezo cyangwa mu mpamvu zatumye rugifata.

153. N'ubwo Akayesu abibona ukundi, Urugereko rw'Ubujurire rusanga Icyemezo Urugereko rwa Mbere rw'Iremezo rwafashe ku itariki ya 31 Ukwakira 1996 kitanga kwakira, ku buryo budasubirwaho, Icyifuzo avoka wunganiraga uregwa yatanze asaba guhabwa ibyo bimenyetso. Muri rusange, avoka Karnavas yavugaga ko Porokireri atamenyekanishije ibimenyetso byose, maze by'umwihariko asaba guhabwa kaseti zafatiweho amajwi mu itangwa ry'ubuhamya n'inyandiko z'ibibazo abagabo babajijwe, kubera ko yabonaga ko afite uburenganzira bwo kubihabwa[292]. Ni ngombwa kwibutsa ko urubanza rutari rwagatangira kandi ko icyo Cyifuzo cyari cyerekeranye na bene ibyo bimenyetso

[289] Imyanzuro ya Akayesu, Umutwe wa VIII, igika cya 4.
[290] Urubanza, igika cya 14.
[291] Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, imp. 8-10 (mu gifaransa) n'imp. 6-8 (mu cyongereza)
[292] Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, imp. 8-10, 13-21, 27-31, 43-45, 50-54, 59, 61-63, 76, 79-80, 83-84, 86. Mu nyandikomvugo y'iburanisha iri mu cyongereza: imp. 6-7,10, 12-16, 22-25, 33-34, 39-42, 46-49,59,61, 64-66.

byagaragaraga ko byari bikenewe rwose, aho kurebana n'ubuhamya bw'umugabo runaka.

154. Mbere na mbere, Urugereko rwa Mbere rw'Iremezo rwavuze ko Akayesu yari afite uburenganzira bwo kumenyeshwa ibimenyetso byose bishinja nk'uko Amategeko abiteganya[293]. Urugereko rwa Mbere rw'Iremezo rwagize ruti:

> ... icya mbere, keretse haramutse hatanzwe ikimenyetso cyo kubivuguruza, kugeza ubu Amategeko ntateganya ko baguha amakaseti yafatiweho ubuhamya abagabo batanze. Icya kabiri, Porokireri natanga ibimenyetso, agahamagaza abatangabuhamya bashinja n'impuguke, mufite uburenganzira bwo kunyomoza abo batangabuhamya n'izo mpuguke. Kubera iyo mpamvu, kujya kubaza impuguke cyangwa abagabo bashinja nta kamaro byagira ubu. Icya gatatu, ubuhamya bwanditse abagabo batanze mbere busemurwa n'abasemuzi babirahiriye. Mufite uburenganzira bwo kunyomoza abo batangabuhamya. Muri izi manza, umuburanyi ashobora kubaza ibibazo, nk'uko bigenda mu muryango w'amategeko witwa « C*ommon Law* ». Iyo Porokireri ahamagaje abatangabuhamya, Ubwunganizi bufite uburenganzira bwo kubanyomoza. Ndumva rero mufite uburenganzira buhagije buteganywa n'amategeko, ku byerekeranye no kunyomoza abatangabuhamya[294].

155. Urugereko rwa Mbere rw'Iremezo rwavuze ko Amategeko adateganya ihererekanya rya kaseti zafatiweho amajwi mu buhamya bw'abagabo. Rwavuze kandi ko ubwo buhamya busemurwa n'abasemuzi barahijwe kandi ko uburenganzira bw'uregwa bwubahirizwa kuko abatangabuhamya banyomozwa. Urugereko rw'Ubujurire rusanga nta kosa riri muri iyi myanzuro.

156. Muri iryo buranisha, Akayesu yakomeje asaba Urugereko rwa Mbere rw'Iremezo gutegeka ko ahabwa inyandiko y'ibibazo byabajijwe abatangabuhamya. Urugereko rwa Mbere rw'Iremezo rwamushubije muri aya magambo:

> Ndakumenyesha ko n'ubwo nakoresheje ijambo wakoresheje mu kanya, utagomba kubuza Urukiko gukora imirimo yarwo. Urukiko rugomba gusuzuma ibivugwa n'Ubwunganizi n'akamaro kabyo maze rukabihuza n'ibimenyetso bishinjura wavuze. Urukiko ruzagira umwanya wo kureba niba koko ibyo bimenyetso ari ubuhamya bwanditse bw'abagabo cyangwa niba ari kaseti zafatiweho amajwi mu ibazwa ry'abatangabuhamya. Uwo ni

[293] Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, urup. 45 [FR].
[294] Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, urup. 55 n'izikurikira [FR]. Reba na none urup. 44 [FR].

> umurimo w'Urukiko. Cyakora, umutangabuhamya nahamagazwa mu Rukiko na Porokireri, mufite uburenganzira bwo kunyomoza uwo mutangabuhamya ku buryo wenda ushobora gusanga abeshya. Uzi neza imiterere y'amategeko y'Abanyamerika kubera ko uyavuga. Ni ibyo nashakaga kuvuga. [295]

157. Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro rumaze kugereranya ibivugwa na Akayesu n'ibivugwa na Porokireri. N'ubwo icyo gihe Urugereko rwa Mbere rw'Iremezo rwanze kwakira icyo cyifuzo, Urugereko rw'Ubujurire rusanga ibyo bitavuga ko nta bindi byifuzo rwari kwakira nyuma. Mu byo rwavuze, Urugereko rwa Mbere rw'Iremezo rwagize ruti: « Urukiko ruzagira umwanya wo kureba niba koko ari ubuhamya bwanditse bw'abagabo cyangwa niba ari kaseti zafatiweho amajwi mu ibazwa ry'abatangabuhamya. Ibyo ntimushobora kubikora mu mwanya w'urukiko ». Iyo biza kugaragara ko hari ubuhamya bwanditse butuzuye kandi ko, kubera iyo mpamvu, ubwunganizi bwarenganijwe, Urugereko rwashoboraga kwemera ikindi cyifuzo gishya cya Akayesu. Cyakora, birumvikana ko ibyo byari guterwa n'imiterere y'urubanza.

158. Nyuma yaho muri iryo buranisha, Akayesu yongeye gusaba guhabwa kaseti zafatiweho amajwi mu ibazwa ry'abatangabuhamya bashinja. Urugereko rwa Mbere rw'Iremezo rwavuze ko rutagendereye gushyiraho urubibi ntarengwa mu burenganzira bw'Ubwunganizi. Ahubwo rwategetse ibi bikurikira:

> Niba atarabikora, Porokireri agomba kumenyesha avoka wunganira uregwa ibimenyetso amategeko amusaba kumenyekanisha. [296]

159. N'ubwo urebye ntawakwemeza ko Porokireri yari afite amakaseti yafatiweho amajwi y'abatangabuhamya bashinja, Urugereko rwa Mbere rw'Iremezo rwavuze ko n'iyo Porokireri yari kuba afite ibyo bimenyetso Amategeko atamutegeka kubitanga[297]. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rwasabye Porokireri, mu buryo butaziguye, kumenyekanisha ibimenyetso byose byafasha uregwa gutegura imyiregurire ye. Rwamenyesheje Akayesu ko afite uburenganzira bwo kubonana na Porokireri mbere

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[295] Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, urup. 60.
[296] Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, imp. 70-71 [FR]
[297] Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, imp. 76-86 [FR]

y'uko urubanza rutangira mu gihe hari ibimenyetso atari yabona, cyangwa agashyikiriza Urugereko rwa Mbere rw'Iremezo ibyifuzo byose bijyanye n'icyo kibazo.[298]

160. Urugereko rw'Ubujurire rusanga nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze kuri icyo kibazo. N'ubwo Akayesu abibona ukundi, Urugereko rw'Ubujurire rusanga icyo cyemezo cyari rusange ku buryo cyarebaga n'icyifuzo cyose cyari gutangwa nyuma gisaba kumenyeshwa ibimenyetso bibura, mu gihe Akayesu yari kugaragaza ko ibyo bimenyetso ari ingirakamaro mu kwiregura kwe ku ngingo runaka. Ibyo ariko ntibivuga ko Urugereko rwa Mbere rw'Iremezo rugomba guhita rwakira icyifuzo cyose gisaba kumenyeshwa ibimenyetso. Amategeko ateganya, mu magambo asobanutse, inshingano za Porokireri kandi Akayesu ntiyagaragaje ko, muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rufata umwanzuro uvuga ko icyo gihe Porokireri atari ategetswe kumenyekanisha ibimenyetso bisabwa. Iyo biza kuba ngombwa cyangwa, ku ngingo runaka, Akayesu agashobora kugaragaza ko atumva ibyo aregwa, icyo gihe hari gufatwa umwanzuro utandukanye n'uwo. Akayesu yari afite uburenganzira busesuye (kuko Urugereko rutigeze rumugenera urubibi ntarengwa kuri iyo cyo kibazo) bwo gusaba ibisobanuro Urugereko rwa Mbere rw'Iremezo. Umuntu yakumva ko icyo gihe Urugereko rwa Mbere rw'Iremezo ruba rwarasuzumye icyo kibazo mu mizi yacyo maze rukaba rwafata icyemezo gitandukanye n'icyo rwafashe. Cyakora, ibyo ntibivuga ko rwari kwemera, byanze bikunze, icyifuzo cy'Uregwa. Akayesu ntagaragaza na rimwe ko yakoresheje ubwo burenganzira bwe[299].

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[298] Urugereko rw'Ubujurire rusanga, mu iburanisha ryose, Akayesu yarakomeje gusaba, by'umwihariko, guhabwa kaseti zafatiweho amajwi mu buhamya bwanditse abagabo bashinja batanze. Aho gufata icyemezo cyanga cyangwa cyemera icyo cyifuzo, Urugereko rwa Mbere rw'Iremezo rwahisemo gusubiramo ko Porokireri afite inshingano yo kumenyesha Uregwa ibimenyetso byatuma ategura ukwiregura kwe. Rwanzuye ruvuga ko nabona Porokireri atubahiriza iyo nshingano, Akayesu agomba kubimenyesha Urugereko rwa Mbere rw'Iremezo. Inyandikomvugo y'iburanisha mu bujurire, 31 Ukwakira 1996, imp. 80-86 [FR].

[299] Nyuma y'iburanisha rwo ku itariki ya 31 Ukwakira 1996, Akayesu nta rugero na rumwe atanga rw'igihe yaba yarasabye Urugereko rwa Mbere rw'Iremezo guhabwa ibindi bimenyetso cyangwa ibisobanuro ku buhamya bwanditse bw'umugabo. Urugereko rwa Mbere rw'Iremezo rwari rwarabwiye Akayesu ko nabona adafite ibimenyetso byose akeneye azabirumenyesha. Akayesu ntavuga igihe Umwunganira yaba yarabikoze.. Ku itariki ya 29 Ugushyingo 1996, niho Avoka mushya wunganira Akayesu yaje bwa mbere mu iburanisha. Urugereko rwa Mbere rw'Iremezo rwongeye gutegeka Porokireri kubahiriza inshingano afite zo kumenyekanisha ibimenyetso maze rusaba Ubwunganizi kurumenyesha buramutse busanze hari ibimenyetso bibura. N'ubwo ntawari gutekereza ko uwo Avoka atanga icyifuzo cyerekeye ibimenyetso muri iyo nama itegura urubanza (kubera ko yari yaraye abibonye), Urugereko rwa Mbere rw'Iremezo rwavuze, mu buryo butaziguye, ko naramuka abisabye, cyangwa afite ingorane ku

161. Akayesu avuga ko hari ukwivuguruza hagati y'icyemezo Urugereko rwa Mbere rw'Iremezo rwafashe ku itariki ya 31 Ukwakira 1996 n'imyanzuro ya rwo iri mu nyandiko y'urubanza. Avuga ko Urugereko rwivuguruje ubwo, ku itariki ya 31 Ukwakira 1996, rwemezaga ubuhamya bwatanzwe mbere bwasemuwe n'abasemuzi barahijwe (rushaka kuvuga ko bwakwizerwa) ariko mu nyandiko y'urubanza rukavuga ko ubwo buhamya butakwizerwa kubera ibibazo by'isemura[300]. Akayesu asanga Urugereko rwa Mbere rw'Iremezo rwarivuguruje kandi ubwo ku itariki ya 31 Ukwakira 1996 rwangaga gutegeka Porokireri kumenyekanisha inyandiko z'ibibazo byabajijwe abatangabuhamya cyangwa amakaseti yafatiweho amajwi y'abatangabuhamya ubwo babazwaga (ruvuga ko ruzasuzuma ukwizerwa kw'abatangabuhamya), nyamara mu nyandiko y'urubanza rukanzura ruvuga ko « rutashyikirijwe inyandikomvugo z'umwimerere z'ubwo buhamya, ahubwo rukabona ubwo buhamya mu zindi ndimi bwasemuwemo » bityo « rukaba rutarashoboye gusuzuma imiterere y'ibibazo byabajijwe abatangabuhamya cyangwa ngo rusuzume ukwizerwa ku isemura ryakozwe icyo gihe »[301].

162. Kuri iki kibazo na none, Akayesu asesengura umwanzuro w'Urugereko rwa Mbere rw'Iremezo wo ku itariki ya 31 Ukwakira 1996 ashingiye kuri bimwe yihitiyemo yirengagije ibindi biwukubiyemo. Urwo Rugereko rwasobanuye neza ko ubuhamya bw'abagabo bwasemuwe n'abasemuzi barahijwe. Cyakora, nk'uko twabibonye, rwabivuze mu rwego rw'impaka ku cyifuzo Akayesu yari yatanze icyo gihe. Urugereko rwa Mbere rw'Iremezo rwatanze impamvu rushingiraho kandi imwe muri izo mpamvu ni uko abasemuzi basemuye ubwo buhamya bari bararahijwe. Rwavuze rero ko ubuhamya bw'abagabo bugomba guhita bufatwa nk'aho bwakwemerwa. Urugereko rw'Ubujurire rusanga nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze rufata uwo mwanzuro.

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bimenyetso yahawe, rwari gukoresha indi nama itegura urubanza mbere y'uko urubanza rutangira ku itariki ya 9 Mutarama 1997. Inyandikomvugo y'iburanisha, 29 Ugushyingo 1996, imp. 24-25, 27 (Inyandikomvugo y'iburanisha iri mu cyongereza. Nta nyandikomvugo y'iryo buranisha iri mu gifaransa). Akayesu ntiyereka Urugereko rw'Ubujurire icyifuzo na kimwe yaba yaratanze nyuma y'iyo tariki.

[300] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 24. Reba Igisubizo cya Akayesu kinyomoza ibyo Porokireri avuga mu gisubizo cye, igika 93 b).

163. Ku birebana n'inyandikomvugo z'ubuhamya bwanditse bw'abagabo, n'inyandiko z'ibibazo byabajijwe, Urugereko rw'Ubujurire rusanga ku itariki ya 31 Ukwakira 1996 Urugereko rwa Mbere rw'Iremezo nta kosa rwakoze rwanga gutegeka Porokireri guha Akayesu ibyo bimenyetso. Cyakora, iyo ibyo bimenyetso biza kuba ari ngombwa mu gusuzuma ukwizerwa k'umutangabuhamya runaka, ruba rwarategetse ko bitangwa. Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo rwasuzumye icyo kibazo hamwe n'ibindi bibazo byinshi mu rwego rwo kugena agaciro k'ibimenyetso byose rwashyikirijwe. Kuri ubwo buhamya bwose, ntirwigeze rwanzura ruvuga ko ibyo bimenyetso byaburaga bityo ngo rwange kwakira ubuhamya bwanditse bwatanzwe mbere. Ibyo ari byo byose, Urugereko rw'Ubujurire rusanga Akayesu ataratanze ikimenyetso kigaragaza ko yarenganijwe biturutse ku buryo ubuhamya bwatanzwe mbere bwumvikanyemo.

164. Mu gusoza kuri iki kibazo, Akayesu avuga ko iyo umutangabuhamya ahakanye ko yavuze ikintu runaka mu buhamya yatanze mbere, Porokireri, Urukiko cyangwa Ubwunganizi bagomba gusaba uruhushya rwo guhamagara umukozi wakoze iperereza kugira ngo yemeze ko ubuhamya bwatanzwe koko kandi ko ibibukubiyemo ari ibyavuzwe n'uwo mutangabuhamya[302]. Na none, Akayesu ntatanga urugero na rumwe rugaragaza aho ibyo bintu byagombaga gukorwa, cyangwa ngo atange ikimenyetso na kimwe kigaragaza ko yaba yararenganijwe[303]. Ntanatanga urugero na rumwe rugaragaza ko yaba yaratanze icyo cyifuzo maze Urugereko rwa Mbere rw'Iremezo rugakora ikosa ryo kwanga kucyakira.

165. Urugereko rw' Ubujurire rusanze iyi ngingo yose uko yakabaye nta shingiro ifite.

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[301] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 24. Hasubirwamo ibivugwa mu rubanza mu rw'iremezo, igika 137.
[302] Imyanzuro ya Akayesu, Umutwe wa VIII, igika 5.
[303] Akayesu agira ati : "Niyo mpamvu, nk'urugero, umugabo yahakanye ko yatanze ubuhamya bwanditse kandi mu Rukiko yari yaremeje ko yabutanze". Imyanzuro ya Akayesu , umutwe wa VIII, igika 5. Mu bisobanuro byo munsi ku rupapuro Akayesu avuga ku mutangabuhamya D no ku nyandikomvugo y'ubuhamya yatanze ku italiki ya 6 Gashyantare 1997. Ntasobanura impamvu ikimenyetso nk'icyo cyari gusabwa ku byerekeye uwo mutangabuhamya.

166. Nk'uko byavuzwe haruguru, birashoboka kenshi ko, mu Rugereko rwa Mbere rw'Iremezo, umutangabuhamya avuguruza ibyo yavuze mu buhamya yatanze imbere y'abakoze iperereza, kandi abikora mu ibaza rinyomoza. Icyo gihe, nk'uko byavuzwe haruguru, Urugereko rwa Mbere rw'Iremezo rugomba gusuzuma ukwizerwa k'uwo mutangabuhamya kubera ko rwakurikiranye ibazwa rye ry'ibanze n'ibazwa rinyomoza kandi, byaba ngombwa, rukagereranya ubuhamya yatanze mu Rukiko n'ukwivuguruza kuvugwa, rubuhuza n'ubw'abandi batangabuhamya batanze mu Rukiko. Hari ikibazo cyo kumenya uburemere bwahabwa ukwivuguruza mu gihe hasuzumwa ukwizerwa k'ubuhamya bwose. Mu by'ukuri, ukwivuguruza gushobora gutuma Urugereko rushidikanya ku gaciro kahabwa igice runaka cy'ubuhamya cyangwa ubuhamya bwose igihe bukubiyemo ibintu bivuguruzanya ku buryo bukomeye[304] Icyo cyemezo kijyanye n'ububasha Urugereko rwa Mbere rw'Iremezo rufite bwo gusuzuma ibimenyetso. Si ngombwa ko Porokireri cyangwa Urugereko rwa Mbere rw'Iremezo ubwa rwo basaba ko hatangwa ibimenyetso by'inyongera kugira ngo Urugereko rushobore gufata icyemezo.

167. Cyakora, Urugereko rw'Ubujurire rwemera ko urebye uregwa afite uburenganzira bwose bwo gushyikiriza Urugereko rwa Mbere rw'Iremezo ibyifuzo ashaka. N'ubwo muri uru Rukiko bitamenyerewe ko umugabo atanga ubuhamya bukubiyemo ibintu atavuze mbere, ntibivuga ko Urugereko rugomba kwanga kwakira icyifuzo cyose gisaba ko ubwo buhamya butangwa. Ahubwo, nk'uko bimeze mu manza zose, Urugereko rwa Mbere rw'Iremezo rugomba gufata icyemezo rushingiye ku bikorwa rwaregewe[305].

168. Cyakora, ibyo Akayesu avuga biri mu rwego rusange. Avuga ko iyo umutangabuhamya ahakanye ko yatanze ubuhamya, uwakoze iperereza agomba guhamagazwa mu Rukiko. Yifashisha ubukemuramanza avuga ko buteganya ko, mbere yo gusaba ko hatangwa ubuhamya bukubiyemo ibintu bitavuzwe mbere, « hagomba kugaragazwa ishingiro

[304] Urubanza rwa *Kayishema/Ruzindana* mu rw'iremezo , igika 77, Akayesu ashingiraho mu Myanzuro ye, umutwe wa VIII, igika 23.

[305] Akayesu yemera ko Urugereko rwa Mbere rw'Iremezo rugomba gufata icyemezo nk'icyo rukurikije imiterere y'ubuhamya. Imyanzuro ya Akayesu, umutwe wa VIII, igika 18. Agira ati: "...iyo umugabo ahakana ko hari ubuhamya yatanze, biremewe kandi ni byiza gutanga ikimenyetso kidafitanye isano n'ubuhamya kugira ngo ukuri kugaragare. Iryo suzuma rikorwa hakurikijwe imiterere ya buri buhamya".

ry'icyo cyemezo »[306]. Rutiriwe rugira icyo ruvuga ku ikoreshwa ry'ikigenderwaho nk'icyo mu Rukiko, Urugereko rw'Ubujurire rusanga Akayesu adasabanura ukuntu hashingiwe ku bintu nk'ibyo ku birebana n'umugabo runaka watanze ubuhamya bushinjura. Kubera iyo mpamvu, Akayesu ntagaragaza itariki runaka yaba yarashyikirijeho Urugereko rwa Mbere rw'Iremezo icyifuzo gisaba guhabwa ibimenyetso binyomoza[307] cyangwa ngo yerekane ko Urugereko rwa Mbere rw'Iremezo rwagombye kuba rwarategetse, rubyibwirije, ko ibyo bimenyetso bitangwa ariko ntirubikore. Akayesu ntagaragaza ko kuba ibyo bimenyetso bitaratanzwe byaba byaramurenganyije. Umuntu yaba yibeshye yemeje ko ibimenyetso nk'ibyo bigomba gusabwa mu manza zose.

c. Umwanzuro w'Urugereko

169. Urugereko rw'Ubujurire ntirurwanya ibyo Akayesu avuga ko ubuhamya bwanditse bwatanzwe mbere ari ikintu gikomeye mu gusuzuma ukwizerwa kw'abatangabuhamya. Urugereko rwa Mbere rw'Iremezo na rwo rwemeye akamaro k'ubwo buhamya. Cyakora, Urugereko rw'Ubujurire rusanga Akayesu ataragaragaje ko Urugereko rwa Mbere rw'Iremezo rutasuzumye neza ubuhamya bwatanzwe mu Rukiko, cyangwa ngo agaragaze ko urwo Rugereko rwamurenganyije cyangwa ngo rubogame mu gusuzuma ukwizerwa kw'abatangabuhamya. Muri urwo rwego, ntanagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoresheje ihame ritemewe mu gusuzuma ubuhamya bwanditse bwatanzwe mbere.

170. Kubera izo mpamvu, ingingo z'ubujurire zivugwa muri iki cyiciro ntashingiro zifite.

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[306] Imyanzuro ya Akayesu, umutwe wa VIII, igika 17...

[307] Ku byerekeranye n'uko uwakoze iperereza yagombaga kwitaba Urukiko, mu bisobanuro byo hasi ku rupapuro Akayesu avuga umutangabuhamya wiswe D (Ephrem Karangwa) we asanga yaba yarahakanye ko yahaye ubuhamya umupererezi. Avuga ibyo, Akayesu yumvikanisha umupererezi yagombye kuba yarahamagawe kugira ngo barebe niba ibyo D avuga mu Rukiko ari ukuri. Imyanzuro ya Akayesu, umutwe wa VIII, igika 5. Mu bujurire, Akayesu ntavuga igihe yatangiye icyo cyifuzo, kandi uretse ibyo avuga muri rusange muri iyi nyandiko, ntagaragaza impamvu n'imwe yari gutuma uwo mupererezi ahamagazwa.

3. Ingingo ya gatatu: Kudakurikiza ihame risaba gushingira ku bimenyetso umuntu ushyira mu gaciro atashidikanyaho, amakosa akomeye yo mu rwego rw'ibyabaye[308]

171. Mu gushyigikira iyi mpamvu y'ubujurire, Akayesu atanga ingingo nyinshi zirimo iz'ingenzi zikurikira[309]:

> Urukiko rwamuhamije icyaha rushingiye k'ukuvuga ko bishoboka ko yakoze icyaha aho gukoresha ihame risaba gushingira ku bimenyetso "bidashidikanywaho na gato".
>
> Urukiko rwafashe ubuhamya bwinshi uko butari. Nk'urugero, hari aho rwanzuye ruvuga ko Ujurira yahize Abatutsi kandi, nk'uko ibimenyetso bibigaragaza, yarashakishaga abacengezi ba FPR ;
>
> Urugereko ntirwazirikanye ukuntu ibintu byinshi abatangabuhamya bashinja bavugaga imikoreshereze ye y'igihe bitashobokaga ;
>
> Urugereko rwamuhamije icyaha rushingiye gusa ku buhamya bw'abagabo bashinja, rwanga kwakira ubuhamya bw'abagabo bashinjura;
>
> Urugereko rwahaye kenshi agaciro ubuhamya buterekeranye n'urubanza;
>
> Urugereko ntirwazirikanye ukwivuguruza gukomeye kuri mu buhamya bushinja;
>
> Urugereko rwarivuguruje ku ngingo nyinshi zo mu rwego rw'ibyabaye;
>
> Urugereko rwanze kwakira, nta mpamvu zifatika, icyifuzo cy'Uregwa gisaba ko rwakohereza intumwa ahantu hakorewe ibyaha kugira ngo abahanga basuzume icyishe abantu.

172. Mbere na mbere Urugereko rw'Ubujurire rusanga zimwe muri izi ngingo (mu by'ukuri zivugwa mu ntangiriro y'Umutwe wa X w'Imyanzuro ya Akayesu) zidasobanurwa birambuye mu Myanzuro ya Akayesu cyangwa mu Gisubizo cye ku myanzuro isubiza ya Porokireri, kandi ko zitavuzweho mu iburanishwa mu bujurire[310]. Byongeye kandi, mu

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[308] Urugereko rw'Ubujurire rusubiramo amagambo Akayesu avuga mu Myanzuro ye. Rusanga yarashakaga kuvuga ko Urugereko rutakoresheje ihame risaba gushingira ku bimenyetso bidashidikanywaho na gato, bityo rukaba rwarakoze amakosa akomeye yo mu rwego rw'ibyabaye.

[309] Reba Umugereka B.

[310] Izo ngingo n'izi zikurikira: Urukiko rwahinduye ubuhamya bwinshi rubuvuga uko butari, nko kuba rwaranzuye ruvuga ko Ujurira yashakishije Abatutsi mu gihe, ukurikije ibimenyetso, yarashakishaga abacengezi ba FPR. Mu rw'iremezo, Urugereko rwafashe imyanzuro irimo amakosa kubera kutamenya imiterere ya Komine ya Taba. Byongeye kandi, ntirwazirikanye ibintu byinshi bidashoboka abatangabuhamya bashinja bavuga k'ukuntu Uregwa

ntangiriro izo ngingo zivugwa mu magambo rusange ku buryo, mu gihe zidasobanuwe cyangwa ngo hatangwe ingero zizishyigikira, Urugereko rw'Ubujurire rudashobora kwemeza neza icyo zishingiyeho mu rwego rw'amategeko cyangwa rw'ibyabaye. Kubera izo mpamvu, Urugereko rw'Ubujurire ntiruzisuzuma.

173. Akayesu avuga ko hakozwe amakosa yo mu rwego rw'amategeko n'urw'ibyabaye[311] ku buryo yumva ayo makosa yagombye gutuma havanwaho imyanzuro yafashwe ku byerekeye ibika 12A, 12B, 14 na 18 by'Inyandiko y'ibirego[312].

a. Ibyo Urugereko rw'Ubujurire rushobora gusuzuma mu bujurire

174. Mbere yo gusuma ingingo za Akayesu, Urugereko rw'Ubujurire rugiye kugira icyo ruvuga kubyo yavuze mbere byerekeranye n'ibyo rushobora gusuzuma mu bujurire. Ikibazo gihari ni ukumenya ibigenderwaho Urugereko rw'Ubujurire rugomba gukoresha mu gusuzuma amakosa yaba ayo mu rwego rw'amategeko cyangwa ayo mu rw'ibyabaye, yaba yarakozwe n'Urugereko rwa Mbere rw'Iremezo.

175. Akayesu yifashisha ubukemuramanza bwa TPIY ku mahame akoreshwa yerekeranye no kuba umuntu afatwa nk'umwere igihe icyaha kitaramuhama, n'ayerekeranye n'inshingano Porokireri afite yo kugaragaza ibyo aregera[313]. By'umwihariko, avuga ko amahame yakoreshejwe n'Urugereko rwa Mbere rw'Iremezo, mu rubanza Porokireri yaburanagamo na Delalic na bagenzi be, agomba « kugenderwaho muri ubu bujurire »[314]. Asobanura ko adasaba Urugereko rw'Ubujurire gusubira mu byabaye byose bivugwa mu rubanza cyangwa gushingira ku bisabwa kugira ngo hubahirizwe ihame ryo guca

yakoresheje igihe cye. Mu guca urubanza, Urugereko rwashingiye k'ubuhamya bushinja maze rwanga gushingira no k'ubw'abagabo bashinjura. Urugereko rwarivuguruje ku ngingo nyinshi zerekeranye n'ibyabaye.

[311] Mu by'ukuri, Akayesu asobanura ko "Urugereko rwibeshye mu rwego rw'amategeko ku byerekeye umuburanyi ufite inshingano yo gutanga ibimenyetso. Hari igihe rwagiye rufata icyemezo rushingiye ku bintu bivuguruza ubuhamya, maze bituma Uregwa aharenganira cyane", Imyanzuro ya Akayesu, umutwe wa X, igika 2

[312] Imyanzuro ya Akayesu, Umutwe wa XV, igika 3

[313] Imyanzuro ya Akayesu, Umutwe wa X, ibika 4, 5

urubanza mu buryo bushyize mu gaciro nk'uko bivugwa mu rubanza rwa Tadic n'urwa Aleksovski zaciwe n'Urugereko rw'Ubujurire rwa TPIY. Avuga ko we afite uko abona ku buryo bunyuranye n'ibikubiye muri izo manza :

> Muri uyu mutwe, ibyifuzo by'Ujurira ntibishingiye k'ukuvuga ko hafashwe imyanzuro idashyize mu gaciro nk'uko bisobanurwa n'Urugereko rw'Ubujurire mu rubanza rwa Tadic n'urwa Aleksovski. Imyanzuro yo mu rwego rw'ibyabaye yafashwe n'Urukiko ivugwa muri uyu mutwe irafutamye kubera amakosa akomeye yo mu rwego rw'amategeko cyangwa urw'ibyabaye nk'uko biteganywa n'ingingo ya 24 ya Sitati[315].

176. Mbere na mbere, Urugereko rw'Ubujurire rusanga Akayesu asobanura nabi ibiteganywa na Sitati n'ubukemuramanza by'Urukiko[316]. Mu by'ukuri, yitiranya ingingo y'itegeko rigenga ubujurire (ingingo 24 ya Sitati) n'ikoreshwa mu rubanza mu rw'iremezo. Iyo avuga urubanza rwa Delalic na bagenzi be, aba ashaka ko hakoreshwa ibigenderwaho mu gusuzuma ibimenyetso mu rw'Iremezo[317]. Ibyo bintu bigenderwaho ntibijyanye n'inshingano yihariye y'Urugereko rw'Ubujurire.

177. Nk'uko biteganywa na Sitati, ndetse n'Urugereko rw'Ubujurire rwa TPIY rukaba rwarabishimangiye, ubujurire si urubanza rushya[318]. Urugereko rw'Ubujurire rwakira gusa ubujurire butanzwe hashingiwe ku ngingo ya 24 ya Sitati. Ibigenderwaho bikoreshwa n'Urugereko rw'Ubujurire mu gusuzuma amakosa yo mu rwego rw'ibyabaye cyangwa urw'amategeko bigaragazwa n'ubukemuramanza butayegayezwa

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[314] Imyanzuro ya Akayesu, Umutwe wa X, igika 5

[315] Imyanzuro ya Akayesu, Umutwe wa X, igika 8.

[316] Mu by'ukuri, asobanura ko : "ibyo Ujurira asaba muri uyu Mutwe bidashingiye ku myanzuro yo mu rwego rw'ibyabaye avuga ko idashyize mu gaciro nk'uko byasesenguwe n'Urugereko rw'Ubujurire [mu rubanza rwa Tadic n'urwa Aleksovski]. Imyanzuro ishingiye ku byabaye ivugwa muri uyu mutwe irakosamye kubera amakosa yo mu rwego rw'amategeko cyangwa rw'ibyabaye akomeye nk'uko biteganywa n'ingingo ya 24 ya Sitati", Imyanzuro ya Akayesu, umutwe wa X, igika 8.

[317] Ingingo 87 A) iteganya ibi bikurikira : "Nyuma y'imyanzuro ya nyuma y'ababuranyi, Perezida w'Urugereko rwa Mbere rw'Iremezo apfundikira iburanisha, hanyuma Urugereko rukiherera kugira ngo ruce urubanza. Uregwa ahamwa n'icyaha gusa iyo benshi mu bagize Urugereko rwa Mbere rw'Iremezo basanze icyaha kimuhama nta gushidikanya na gato". (ntibishimangiwe mu nyandiko y'umwimerere)

[318] Urubanza rwa Tadic (ibimenyetso by'inyongera), igika 41.Byongeye kandi, mu rubanza rwa Furundzija Urugereko rw'Ubujurire rwa TPIY rwevuze ibi bikurikira : "Urugereko rw'Ubujurire rusanga Ujurira nta shingiro afite iyo avuga ko ingano y'ubujurire yagombye kuba ari nini ku buryo hashobora kubaho urubanza rushya. Uru Rugereko ntirukora nk'Urugereko rwa Mbere rw'Iremezo rwa kabiri. Nk'uko biteganywa n'ingingo ya 25 ya Sitati [ya TPIY], Urugereko rw'Ubujurire rukosora gusa amakosa yo mu rwego rw'amategeko atuma icyemezo cyafashwe gita agaciro kandi yatumye urubanza rucibwa nabi". Reba Urubanza rwa *Furundzija* mu bujurire, igika 40.

bw'Urugereko rw'Ubujurire rwa TPIY. Muri urubanza, Urugereko rw'Ubujurire rwibukije ibyo bintu bigenderwaho kandi rurabishimangira.

178. Ku byerekeye amakosa yo mu rwego rw'ibyabaye, Urugereko rw'Ubujurire rwemeza ko ibisabwa kugenderwaho ari ukureba niba umwanzuro unengwa unyuze mu gaciro cyangwa utakanyuzemo, kubera ko « Urugereko rw'Ubujurire rudashobora gukuraho icyemezo cy'Urugereko rwa Mbere rw'Iremezo kuri buri kosa ryo mu rwego rw'ibyabaye, keretse iyo iryo kosa ryatumye urubanza rucibwa nabi (*miscarriage of justice*) »[319]. Kubera iyo mpamvu, Ujurira ni we ugomba kugaragaza ko Urugereko rwakoze ikosa kandi ko iryo kosa ryatumye urubanza rucibwa nabi. Urugereko rw'Ubujurire rwa TPIY rwakoresheje kenshi icyo gisabwa kugenderwaho gishobora kuvugwa mu magambo make akurikira:

> [...] igisabwa kigomba kugenderwaho mu kureba niba haratanzwe ibimenyetso bihagije kugira ngo uregwa ahamwe n'icyaha ni uko nta mucamanza wo mu rw'iremezo ushyira mu gaciro wari gufata umwanzuro uhamya uwo muntu icyaha nta gushidikanya na gato. Iyo Ujurira adashoboye kugaragaza ko nta mucamanza usuzuma ibyabaye ushyira mu gaciro wari kwemeza, nta gushidikanya na gato, ko uregwa ahamwa n'icyaha, nk'uko Urugereko rwa Mbere rw'Iremezo rwabikoze, hagomba kuba hari ibimenyetso bihagije kugira ngo ahamwe n'icyo cyaha nta gushidikanya na gato. Icyo gihe, ikigenderwaho mu mategeko cy'uko ibimenyetso bigomba kuba bihagije nta kamaro kiba kigifite, bityo ubujurire ntibwakirwa. Cyakora, iyo ujurira ashoboye kugaragaza ko, hashingiwe ku bimenyetso byatanzwe, nta mucamanza usuzuma ibyabaye wari kumuhamya icyaha, ubujurire burakirwa maze akagirwa umwere. Icyo gihe, mu bujurire si ngombwa kureba niba hari ibimenyetso umucamanza usuzuma ibyabaye yari gushingiraho (biramutse byemewe) ngo afate uwo mwanzuro[320].

179. Ku byerekeye amakosa yo mu rwego rw'amategeko, Urugereko rw'Ubujurire rusanga inshingano Ujurira afite yo gutanga ibimenyetso itandukanye ho gato, n'ubwo Ujurira agomba mu buryo bumwe kugaragaza amakosa yakozwe n'Urugereko rwa Mbere rw'Iremezo maze agatanga ingingo zishyigikira ibyo avuga:

> Umuburanyi uvuga ko habaye ikosa mu rwego rw'amategeko agomba gutanga ingingo zishyigikira ibyo avuga. Cyakora, iyo izo ngingo zidahagije ntibivuga ko aba atarubahirije inshingano afite, kubera ko Urugereko rudahita rwanga kwakira ubujurire bwe. Mu

[319] Urubanza rwa *Furundzija* mu bujurire, igika 37.

[320] Urubanza rwa Celebici mu bujurire, ibika 434, 435,; reba na none Urubanza rwa *Aleksovski* mu bujurire, igika 63; Urubanza rwa *Furundzija* mu bujurire, igika cya 37.

by'ukuri, rubyibwirije, Urugereko rw'Ubujurire rushobora kwakira, kubera impamvu zinyuranye, ibivugwa byerekeranye n'amakosa yo mu rwego rw'amategeko[321].

b. Ibibazo byabyukijwe na Akayesu

180. Mu bujurire, Akayesu anenga imyanzuro y'Urugereko yerekeye ibika bine by'ingenzi by'Inyandiko y'ibirego (igika cya 12A, 12B, 14 n'icya 18). Abikora ashaka kugaragaza, muri rusange, ko urubanza rwe « rwaciwe nabi » kandi ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa akomeye yo mu rwego rw'ibyabaye[322]. Urugereko rw'Ubujurire ruraza kugira icyo ruvuga ku byo ababuranyi bavuga kuri ibyo bika byo mu Nyandiko y'ibirego. Bityo rero, Urugereko rurasuzuma niba icyifuzo cya Akayesu gisaba kurenganurwa gifite ishingiro, ni ukuvuga ibyo asaba ko Urugereko rw'Ubujurire rwakuraho imyanzuro yafashwe ku byabaye yerekeranye n'ibika byo mu Nyandiko y'ibirego bivugwa haruguru[323].

i. Igika cya 12A n'icya 12B by'Inyandiko y'ibirego: ibirego byerekeranye n'urugomo rwibasira imyanya ndangagitsina[324]

[321] Urubanza rwa *Furundzija* mu bujurire, igika cya 35.
[322] Imyanzuro ya Akayesu, Umutwe wa III, igika cya 48
[323] Imyanzuro ya Akayesu, Umutwe wa III, igika 48
[324] Igika cya 12 A cy'Inyandiko y'ibirego kigira kiti : "hagati y'italiki ya 7 Mata n'impera za Kamena 1994, abasiviri amagana (bazajya bitwa "abasiviri bakuwe mu byabo") bahungiye kuri biro bya komine. Abenshi muri bo bari Abatutsi. Mu gihe bahungiraga ku biro bya komine, insoresore zitwara gisirikare zo muri ako gace na/cyangwa abapolisi ba komine bitwaje imbunda batwaraga kenshi abakuwe mu byabo b'igitsina gore maze bakabakorera urugomo rwibasira imyanya ndangagitsina ndetse/cyangwa bakabakubitira mu mazu y'ibiro bya komine cyangwa hafi yaho. Kenshi, abo basiviri bakuwe mu byabo n'itambara bihotorerwaga mu mazu y'ibiro bya komine cyangwa hafi yaho. Abagore benshi bahatiwe gukorerwa ibikorwa byinshi by'urugomo rwibasira imyanya ndangagitsina, byakorwaga n'abantu barenze umwe. Kenshi iyo babaga bakora ibyo bikorwa by'urugomo rwibasira imyanya ndangagitsina, ababikoraga ni nako bateraga ubwoba ababikorerwa bababwira ko babica cyangwa bakabateza ububabare bukomeye bw'umubiri. Abakuwe mu byabo b'igitsina gore bahoranaga ubwoba igihe cyose kandi imibereho yabo y'umubiri n'iyo mu mutwe yarangiritse kubera ibikorwa by'urugomo rwibasiye igitsina, gutotezwa, no kwicwa". Mu gika 12B cy'Inyandiko y'ibirego handitse ngo : "Jean Paul Akayesu yari azi ko ibyo bikorwa by'urugomo rwabisira imyanya ndangagitsina, iryo toteza n'ubwo buhotozi byakorwaga kandi hari igihe yari aho byakorwaga. Jean Paul Akayesu yorohereje abantu gukora ibyo bikorwa by'urugomo rwibasira imyanya

181. Akayesu avuga ko hakozwe amakosa menshi yo mu rwego rw'ibyabaye n'urw'amategeko. Urugereko rw'Ubujurire ruributsa ingingo ababuranyi batanga kuri buri kosa rivugwa.

a. <u>Igika cya 460 cy'inyandiko y'Urubanza mu rw'iremezo</u>

182. Igika cya 460 cy'urwo rubanza giteye gitya:

> Kubera ubuhamya butaziguye bwatanzwe n'abagore biboneye kandi bagakorerwa ibikorwa by'urugomo rwibasira imyanya ndangagitsina muri Taba no ku biro bya komine, kandi batangaje hejuru y'indahiro ko Uregwa yari ahari, akanabona ibyabaga, Urugereko ntirwemera ibivugwa n'uregwa kuri icyo kibazo. N'ubwo Uregwa avuga ko ibirego ashinjwa ari ibinyoma byambaye ubusa, Ubwunganizi ntibwatanze ikimenyetso na kimwe gishyigikira ibivugwa n'Uregwa. Kubera ko hatanzwe ibimenyetso byinshi bihamya ushinjwa ibyaha, n'ubwo abihakana, Urugereko ntirwemera ubuhamya bwe. Kuba abagore barakoze imyigaragambyo, bakanakora urugendo ruva i Kigali kugera muri Taba, ntibishobora kuba ikimenyetso ko ibyo bikorwa byo gusambanya ku gahato bitabayeho. Imyanzuro y'Urukiko ishingiye ku bimenyetso byatanzwe muri uru rubanza. Kubera ko Uregwa ahakana atsemba ko nta bikorwa by'urugomo rwibasiye imyanya ndangagitsina byakorewe ku biro bya komine, yivukije uburenganzira bwo kuba yashobora kuburana avuga ko ibyo bikorwa byaba byarabaye atabizi.

ii. Ibivugwa n'ababuranyi

183. Akayesu avuga ko inyandiko y'urubanza iri mu gifaransa igomba gufatwa nk'aho ari yo igenderwaho kuko ari yo imucira akari urutega kurusha indi[325]. Nyamara, amagambo avuga ngo « Urugereko ntirubona uko rwafata ibivugwa n'Uregwa", ari mu gika cya 460 cyo mu nyandiko y'urubanza iri mu gifaransa, ashobora kuba agaragaza ugushidikanya ku buryozwacyaha bw'Uregwa bwerekeranye n'ibikorwa by'urugomo rwibasira imyanya

ndangagitsina, iryo toteza n'ubwo buhotozi, kandi Jean Paul Akayesu yashishikarije abantu gukora ibyo bikorwa, iryo toteza n'ubwo buhotozi kubera ko atabihagaritse".

[325] Imyanzuro ya Akayesu, Umutwe wa X, igika cya 12 ; Igisubizo cya Akayesu kinyomoza ibyo Porokireri avuga mu Gisubizo cye, igika 103.

ndangagitsina muri Taba. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo kutemera ibyo yavuze[326].

184. Porokireri avuga ko inyandiko y'Urubanza mu rw'iremezo iri mu cyongereza ari yo y'umwimerere, kandi ko muri iyo nyandiko bitanditse gutyo. Ibyo ari byo byose, Porokireri avuga ko Akayesu aterekana ikosa Urugereko rwakose n'ukuntu iryo kosa avuga ryari gutuma icyemezo cyafashwe mu rubanza giteshwa agaciro[327].

iii. Isesengura ry'Urugereko

185. Urugereko rw'Ubujurire rwemeje ko inyandiko y'umwimerere y'Urubanza mu rw'iremezo ari iri mu cyongereza, kandi ibyo ntawabishidikanyaho[328]. Urugereko ntirwemera ingingo ya Akayesu ivuga ko inyandiko yagombye kugenderwaho ari iyanditse mu rurimi avuga kandi yumva[329]. Inyandiko y'urubanza y'umwimerere niyo yonyine igomba kugenderwaho.

186. Kugira ngo rumenye niba Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa ryo mu rwego rw'amategeko, Urugereko rw'Ubujurire rugomba gusuzuma igika cya 460 cyo mu nyandiko y'urubanza iri mu cyongereza. Icyo gika kigira kiti:

> Kubera ubuhamya butaziguye bwatanzwe n'abagore biboneye kandi bagakorerwa ibikorwa by'urugomo rwibasira imyanya ndangagitsina muri Taba no ku biro bya komine, kandi batangaje hejuru y'indahiro ko Uregwa yari ahari, akanabona ibyabaga, *Urugereko ntirwemera ibivugwa n'uregwa kuri icyo kibazo*. N'ubwo Uregwa avuga ko ibirego ashinjwa ari ibinyoma byambaye ubusa, Ubwunganizi ntibwatanze ikimenyetso na kimwe

326 Igisubizo cya Akayesu kinyomoza ibyo Porokireri avuga mu gisubizo cye, igika 102.
327 Igisubizo cya Porokireri, ibika 11.13, 11.16.
328 Ikibihamya n'amagambo ari hejuru iburyo ku rupapuro rwa mbere rw'Urubanza mu rw'iremezo (umwimerere : Icyongereza), yerekana ko Urugereko rwa Mbere rw'Iremezo ruvuga ko iyo nyandiko ari yo izajya igenderwaho.
329 Kuri iyi ngingo, Urugereko rw'Ubujurire rusanga hari itandukaniro hagati y'inyandiko y'Urubanza mu rw'iremezo n'Inyandiko y'ibirego. Mu by'ukuri, Urugereko rwa Mbere rw'Iremezo rwavuze ko, ku byerekeye "itandukaniro rinini riri hagati y'inyandiko iri gifaransa n'iri mu cyongereza" y'igika 14 cy'Inyandiko y'ibirego, " [….] ari ngombwa kugendera ku nyandiko iri mu gifaransa kubera koIInyandiko y'ibirego yasomewe Uregwa mu gifaransa igihe yitabaga Urugereko bwa mbere, kandi Uregwa n'Abamwunganira bavuze igifaransa mu gihe cy'mpaka. By'umwihariko, iyo nyandiko niyo igomba gukoreshwa kubera ko amahame rusange y'amategeko ategeka ko mu manza nshinjabyaha, hakoreshwa inyandiko iri rurimi uregwa yumva". Reba Urubanza mu rw'iremezo, igika 319.

gishyigikira ibivugwa n'Uregwa. Kubera ko hatanzwe ibimenyetso byinshi bihamya ushinjwa ibyaha, n'ubwo abihakana, Urugereko ntirwemera ubuhamya bwe. Imyanzuro y'Urugereko ishingiye ku bimeneytso byatanzwe mu iburanisha ry'uru rubanza. Kubera ko Uregwa ahakana atsemba ko nta bikorwa by'urugomo rwibasiye imyanya ndangagitsina byakorewe ku biro bya komine, yivukije uburenganzira bwo kuba yashobora kuburana avuga ko ibyo bikorwa byaba byarabaye atabizi (ntibishimangiye mu nyandiko y'umwimerere).

187. Mu by'ukuri, biragaragara ko, mu nyandiko iri mu cyongereza, igisobanuro cy'interuro Akayesu anenga gitandukanye n'ikiri mu nyandiko iri mu gifaransa. Mu nyandiko iri mu cyongereza, Urugereko rwa Mbere rw'Iremezo rusobanura ko rutemera ubuhamya bw'Uregwa. Ntiruvuga na rimwe ko rushidikanya ko ahamwa n'icyaha cyangwa ko rutazi « icyo rwabivugaho ». Urugereko rw'Ubujurire rwongeraho ko, mu by'ukuri, igika cya 460 ari nk'incamake y'imyanzuro yo mu rwego rw'ibyabaye, Urugereko rwafashe ku byerekeye ibyaha byibasiye imyanya ndangagitsina. Muri iyo ncamake, Urugereko rushyira hamwe ubuhamya bw'Uregwa « n'ubuhamya bunyuranye butaziguye bwatanzwe n'abagore biboneye ibikorwa by'urugomo rwibasira imyanya ndangagitsina »[330]. Muri icyo gika, Urugereko rwa Mbere rw'Iremezo ruvuga inshuro ebyiri[331] ko rutemera ubuhamya bwa Akayesu. Kubera iyo mpamvu, iyo umuntu asomye icyo gika kinengwa, ahita abona ko ibyo Akayesu avuga ko Urugereko rwagize ugushidikanya nta shingiro bifite.

188. Urugereko rw'Ubujurire rusanze rero urwa Mbere rw'Iremezo nta kosa rwakoze kuri iki kibazo.

[330] Imikorere y'Urugereko rwa Mbere rw'Iremezo rwakoze rirumvikana. Urwo Rugereko rusuzuma y'ubuhamya bwose rwumvise (kandi rwagize icyo ruvugaho mbere mu rubanza kuva ku gika cya 416 kugera ku cya 448) maze rugasoza imyanzuro yo mu rwego rw'ibyabaye (ibika 449-459), ruvuga ko "imyanzuro y'urukiko ishingiye ku bimenyetso byatanzwe mu rubanza" (mu nyandiko iri mu cyongereza handitse ngo, '*the findings of the Chamber are based on the evidence which has been presented in trial').*

b. Ubuhamya bw'Uregwa

i. Ibivugwa n'ababuranyi

189. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemeza ko yahakanye ko ibikorwa byibasiye imyanyandagitsina byakozwe. Kuri iyi ngingo, avuga ku gika cya 460 (kivugwa haruguru) n'icya 32 cy'Urubanza mu rw'iremezo[332]. Ni byo ko ubuhamya bw'Uregwa bushobora kuba butandukanye n'ibyo Urugereko rubuvugaho. Uregwa ashobora kuba atarahakanye atsemba ko ibikorwa by'urugomo rwibasira imyanya ndanga gitsina byabaye[333].

190. Porokireri anenga ingingo za Akayesu. Yifashisha ibice bimwe na bimwe by'ibaza ry'ingenzi n'ibaza rinyomoza Akayesu yakorewe ku itariki ya 12 n'iya 13 Werurwe 1998, asanga bigaragaza ko nta kosa Urugereko rwakoze kuri icyo kibazo[334].

ii. Isesengura ry'Urugereko

191. Mu ibaza ry'ibanze, Akayesu yabajijwe ikibazo gikurikira : "Tubwire icyo uzi ku bikorwa byo gusambanya ku gahato byabereye muri Taba mu gihe cy'ibyabaye", maze asubiza muri aya magambo:

> […] Mu izina ry'Imana ishobora byose, kuri jye icyo kirego ni igihimbano. Sinigeze mbona cyangwa numva ko hari umugore waba warasambanyirijwe ku gahato ku biro bya

[331] Reba interuro ya mbere n'iya gatatu z'igika cya 460.

[332] Mu gika cya 32 cy'Urubanza handitse ngo : «Ku byerekeye ibikorwa by'urugomo rwibasira imyanya ndangagitsina, ibivugwa n'Ubwunganizi bitandukanye gato n'ibivugwa ku bwicanyi no ku ikubitwa kuko bwemera ko habayeho ubwicanyi n'ibikorwa byo gukubita abantu, ariko bugahakana ko ibikorwa by'urugomo rwibasiye igitsina byakorewe ku biro bya komine. Mu buhamya yatanze mu Rukiko, Uregwa ahakana atsemba ko ibikorwa byo gusambanya abantu ku gahato byakorewe ku biro bya komine. Yongeraho ko n'igihe atari ahari ntabyabaye. Urugereko rusanga Uregwa ahakana atsemba ibikorwa atazi neza".

[333] Imyanzuro ya Akayesu, Umutwe wa X, igika 14 ; Igisubizo cya Akayesu kinyomoza ibyo Porokireri avuga mu Gisubizo cye, igika 104.

[334] Igisubizo cya Porokireri, ibika 1.17-11.23.

> komine. Nta n'ubwo nigeze mbibwirwa n'abapolisi banjye kubera ko ntabaga ndi ku biro bya komine buri gihe. Sinigeze na rimwe mbibona cyangwa mbyumva.[335]

192. Imvugo Akayesu yakoresheje asubiza icyo kibazo nta rujijo ruyirimo[336]. Mu ibaza rinyomoza, yemeje ko yamenye ko habaye ibikorwa byo gusambanya ku gahato mu gihugu hose, by'umwihariko i Kigali[337]. Ariko ku byerekeye ibyabereye muri Komine ya Taba, ari byo byari bishishikaje cyane Urugereko rwa Mbere rw'Iremezo, kubera ko hari igika bivugwamo cy'inyandiko y'ibirego, Akayesu yahakanye atsemba ndetse asubiramo inshuro nyinshi ko ntacyo azi ku bikorwa by'urugomo rwibasiye imyanya ndangagitsina byakorewe muri Komine ye:

> […] Ariko nta muntu wambwiye ko muri komine yacu habereye ibikorwa byo gusambanya ku gahato bivugwa hano, kandi nta muntu wambwiye ko abagore basambanyijwe ku gahato. Byongeye kandi na njye sinigeze nibonera umugore wasambanyijwe cyangwa urimo gusambanywa ku gahato [338] […].
>
> […] Kuri jye, ni ikirego kandi niba mubinyemereye, njye nk'uregwa, mbona icyo kirego ari igihimbano kandi ejo narahiye mu izina ry'Imana ishobora byose. Ndi umukirisitu kandi nkomeje kubivuga […][339].
>
> […] Birashoboka, cyakora rwose nta muntu wigeze ambwira ko ahantu aha n'aha bafashe abagore cyangwa abakobwa bakabasambanya ku gahato gutyo. Ariko sinavuga ko nari ahantu hose. Birashoboka ko byaba byarabaye ariko nta muntu wabimbwiye […][340]

193. Ubwo rero amagambo ya Akayesu arumvikana neza. Ni byo koko ko yavuze ko atigeze amenya ko hari ibikorwa by'urugomo rwibasiye imyanya ndangagitsina byaba byarakozwe. Urugereko rw'Ubujurire rusanze rero nta kosa na rimwe Urugereko rwa Mbere rw'Iremezo rwakoze.

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335 Inyandikomvugo y'iburanisha, 12 Werurwe 1998, urup. 243.
336 Akayesu yasubiyemo ijambo ry'umugereka "nta na rimwe" inshuro zirenga eshanu. Reba inyandikomvugo y'iburanisha, 12 Werurwe 1998, imp. 243, 244.
337 Inyandikomvugo y'iburanisha, 13 Werurwe 1998, urup.219
338 Inyandikomvugo y'iburanisha, 13 Werurwe 1998, urup. 221
339 Inyandikomvugo y'iburanisha, 13 Werurwe 1998, urup.226
340 Inyandikomvugo y'iburanisha, 13 Werurwe 1998, urup.234

c. Ukutabogama kw'abacamanza b'Urugereko rwa Mbere rw'Iremezo

194. Ibyo Akayesu avuga kuri iyi mpamvu y'ubujurire byerekeye ibyo abacamanza babiri b'Urugereko rwa Mbere rw'Iremezo mu iburanisha (Umucamanza Pillay n'umucamanza Kama) bavugaga cyangwa ibibazo babazaga.

a. Ibyo ababuranyi bavuga ku magambo y'Umucamanza Pillay

195. Akayesu avuga ko "Urukiko rwari rwamwijunditse ku busa"[341]. Atanga urugero rw'ikibazo cyerekeye urugomo rwibasiye imyanya ndangagitsina umucamanza Pillay yabajije umutangabuhamya kandi urubanza ariho rwari rugitangira, mu gihe nta wundi mutangabuhamya wari wakavuga ko habaye urugomo rushingiye ku myanya ndangagitsina i Taba, ndetse ibyo byaha bitari mu Nyandiko y'ibirego[342]. Asanga icyo kibazo kigaragaza ko Umucamanza Pillay yari abogamye ku kibazo cyihariye cy'ibikorwa by'urugomo rwibasiye imyanya ndangagitsina byakorewe i Taba.

196. Porokireri ashingira ku ihame rusange rirebana n'ukutabogama k'umucamanza rivugwa n'Urugereko rw'Ubujurire mu rubanza rwa Furundzija maze akavuga ko, hakurikijwe icyo cyemezo, Akayesu agomba kugaragaza ko umucamanza yabogamye. Porokireri

[341] Imyanzuro ya Akayesu, Umutwe X, igika 15.
[342] Imyanzuro ya Akayesu, Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 105. Icyemezo cya Akayesu cyo kugumishaho (cyangwa gukuraho) iyo mpamvu y'ubujurire nticyumvikana neza. Mu myanzuro ye asubiza agira ati: "ndemera, kuri bimwe, ibyo Porokireri avuga ariko ndemeza ko umucamanza Pillay nta mpamvu n'imwe yari afite yo kubyutsa icyo kibazo mu ntangiriro y'urubanza kubera ko urugomo rwibasiye imyanya ndangagitsina rutari mu bikorwa Ujurira ashinjwa kandi nta mutangabuhamya n'umwe wari warabivuze mbere y'itariki ya 17 Mutarama 1997"(igika 105). Urugereko rw'Ubujurire rusanga kandi mu iburanisha mu bujurire, Uwunganira Akayesu yaravuze ati: "Twagize icyo tuvuga k'umucamanza Pillay, kandi twemera igisobanuro Porokireri yatanze. Mu Cyongereza, iyo nteruro igira iti: *We made a comment about Judge Pillay which the Prosecutor clarified us on and we accept the correction*". Reba inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, urup. 93 [FR](urup.66 [ENG].

avuga ko Akayesu atashoboye kubyerekana[343]. Byongeye kandi, inyandiko y'icyongereza y'ibyavuzwe n'umucamanza Pillay igaragaza ko uyu mucamanza atavugaga ku gikorwa cyihariye[344].

ii. Isesengura ry'Urugereko ku magambo y'Umucamanza Pillay

197. Mbere na mbere, Urugereko rw'Ubujurire ruributsa ikibazo Akayesu arwanya. Ku itariki ya 17 Mutarama 1997, umugabo witwa Zacharia yatanze ubuhamya mu Rugereko rwa Mbere rw'Iremezo. Arangije kubazwa iibaza rinyomoza, umucamanza Pillay yaramubajije ati: "Wigeze ubona ibikorwa byo gusambanya ku gahato?" Umutangabuhamya yarashubije ati: "Oya ntabyo nzi". Umucamanza Pillay yarongeye aramubaza ati: "Nibura se hari uwakubwiye iby'ibyo bikorwa byo gusambanya ku gahato, iby'urwo rugomo rwibasiye imyanya ndangagitsina?"Icyo kibazo cya nyuma nicyo Akayesu anenga. Akayesu asanga kuba umucamanza Pillay yarakoresheje ikinyazina nyereka "ibyo" bigaragaza ko yari abogamye, cyangwa ko nibura yavugaga ibintu azi ko byabaye.

198. Urugereko rw'Ubujurire rusanga, mu nyandikomvugo y'iburanisha iri mu rurimi rw'icyongereza, icyo kibazo cy'Umucamanza Pillay cyarabajijwe muri aya magambo: "*Any report of incidence of rape that you have heard*?". Umucamanza rero ntiyakoresheje na rimwe ikinyazina nyereka. Icyo kibazo kibajijwe mu mvugo idafite aho ibogamiye kimwe n'ibindi bibazo byose Umucamanza Pillay yabajije icyo gihe[345]. Umucamanza Pillay ntiyavugaga ikirego cyihariye ahubwo yavugaga muri rusange.

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343 Imyanzuro ya Porokireri isubiza, ibika. 11.24-11.32
344 Imyanzuro ya Porokireri isubiza, igika. 11.31.
345 Muri uru rubanza, ikibazo umucamanza Pillay yabajije cyari mu rwego rw'ikibazo rusange kurushaho cyabajijwe umutangabuhamya wiswe Zacharia ku byerekeye ibyaha byibasiye inyokomuntu byakorewe mu Rwanda. Mu by'ukuri aragira ati: "Dogiteri, Porokireri yatubwiye ko mwaje gutanga ubuhamya ku byaha byibasiye inyokomuntu biteganywa n'ingingo ya 3. Ngiye rero gusoma iyo ngingo hamwe na mwe kugira ngo ndebe niba mwarabonye ibyo bintu. Mu buhamya bwanyu mwavuze ibyo byaha byose byibasiye inyokomuntu ariko hari ibyo mutavuze […] tugiye rero kureba lisiti y'ibyaha byibasiye inyokomuntu, nk'urugero ubuhotozi. Mwigeze mwumva bavuga

199. Urugereko rw'Ubujurire ruvuga ko iyo umuburanyi anenga igice cy'inyandikomvugo, ibyiza ari ukugendera ku nyandiko iri mu rurimi rwakoreshejwe n'uwabajije ikibazo cyangwa uwavuze amagambo arwanywa. Muri uru rubanza, Umucamanza Pillay akoresha ururimi rw'icyongereza.

200. Kubera ko iki kibazo cyabajijwe mu cyongereza cyumvikana, kandi iyi ngingo ikaba nta shingiro ifite, Urugereko rw'Ubujurire rwanze kwakira ibyo Akayesu.

iii. Ibivugwa n'ababuranyi ku magambo y'Umucamanza Kama

201. Akayesu anenga amagambo yavuzwe n'Umucamanza Kama mu ibaza rinyomoza ry'umutangabuhamya wiswe JJ. Mu by'ukuri, Perezida w'Urugereko rwa Mbere rw'Iremezo yaciye mu ijambo Uwunganira Akayesu aramubaza ati: Ese ibyo ni ngombwa? Baramusambanyije cyane ku gahato inshuro 4, 5, 6, 7…ku buryo atakibyibuka". Akayesu avuga ko "Umucamanza yari yarangije […] kwemeza ko yizera uwo mutangabuhamya kandi ko atifuza ko uwo mutangabuhamya yabazwa ibibazo byashoboraga kumubangamira"[346]

202. Porokireri avuga ko ibyo Akayesu avuga bitagomba kwakirwa. Mu ibaza rinyomoza, Uwunganira Akayesu yabajije umutangabuhamya inshuro nyinshi niba yarasambanyijwe ku gahoto, amubaza n'ibindi bisobanuro ku rugomo yagiriwe rwibasiye imyanya ndangagitsina. Porokirireri yongeraho ko, nk'uko biteganywa n'ingingo ya 90 F) y'Amategeko y'Urukiko, Urugereko rwa Mbere rw'Iremezo rufite inshingano zo

ubuhotozi?"Hashize iminota mike amaze kuvuga ubuhotozi n'ibikorwa by'urugaraguro, Umucamanza Pillay, ashyize mu gaciro, yabajije umutangabuhamya kugira icyo avuga ku kuba harabayeho ibikorwa byo gusambanya ku gahato. Reba inyandikomvugo y'iburanisha, 17 Mutarama 1997, imp. 64, 65.

[346] Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 106. Mu iburanisha mu bujurire, Akayesu yavuze ko "Icyo gihe umucamanza Kama yari yararangije kwemeza ko ubuhamya bw'abo bantu ari ukuri. Muri uru rubanza yemeje ibyo bintu mbere y'uko Akayesu atanga ubuhamya mu Rukiko. Twabwiye Urugereko ko umucamanza Kama yari yararangije gufata icyemezo". Inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, imp. 93 na 94.

kugenzura uko ibaza rinyomoza rikorwa. Bityo rero, Urugereko rwakoze akazi karwo ruca mu ijambo Uwunganira uregwa[347]

iv. Isesengura ry'Urugereko ku magambo y'Umucamanza Kama

203. Urugereko rw'Ubujurire ruributsa ko mu byo abacamanza biyemeje batangira imirimo yabo, harimo kutabogama[348]. Ibigenderwaho mu nshingano yo kutabogama, nk'uko biteganywa muri Sitati[349], byasobanuwe n'Urugereko rw'Ubujurire rwa TPIY, mu magambo akurikira:

> Umuntu yavuga ko umucamanza atagomba kugendera ku byo yishyizemo, kandi koko rero nta kintu na kimwe kigomba gusa nk'aho kigaragaza ko abogamye. Kubera ibyo, Urugereko rw'Ubujurire rusanga rugomba kugendera ku mahame akurikira kugira ngo rusobanure kandi rukoreshe inshingano yo kutabogama ivugwa muri Sitati :
>
> A. Umucamanza aba abogamye iyo hagaragajwe ko afite uruhande ashyigikiye.
>
> B. Haba hariho ukubogama:
>
> i) Iyo umucamanza ari umuburanyi mu rubanza, iyo afite inyungu z'amafaranga cyangwa z'umutungo mu mikirize yarwo cyangwa iyo icyemezo cye gishobora gushyigikira inyungu afatanije n'umwe mu baburanyi. Iyo bimeze gutyo, umucamanza ava mu rubanza nta mpaka.

[347] Imyanzuro ya Porokireri isubiza, ibika 11.33-11.36

[348] Ingingo ya 14 y'Amategeko, yerekeye indahiro mu ruhame igira iti: "Mbere yo gutangira imirimo ye, umucamanza wese agomba kurahira muri aya magambo: 'Ndahiriye ku mugaragaro kuzatunganya imirimo nshinzwe no kuzarangiza inshingano zanjye z'umucamanza w'Urukiko Mpanabyaha Mpuzamahanga 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; ibyo byose nzabikora nta guhemuka, mu bwitange, nta kubogama na gato kandi nkurikije umutimanama wanjye'". Ingingo ya 15 A) y'Amategeko yongeraho iti: "Umucamanza ntashobora kuburanisha urubanza afitemo inyungu cyangwa ikindi kintu icyo ari cyo cyose ahuriyeho cyangwa yahuriyeho na rwo cyatuma abogama. Icyo gihe uwo mucamanza agomba kwikura urubanza. Iyo umucamanza yiyemeje kwikura urubanza ruri mu Rugereko rwa Mbere rw'Iremezo, Perezida agena undi mucamanza wo mu Rugereko rwa Mbere rw'Iremezo wo kumusimbura. Iyo ari umucamanza wo mu Rugereko rw'Ubujurire wiyemeje kwikura urubanza, Perezida w'Urugereko rw'Ubujurire agena undi mucamanza wo kumusimbura".

[349] Mu by'ukuri iyo nshingano iteganywa na Sitati. Ingingo ya 12 1) ya Sitati ivuga ko "Abacamanza bagomba kuba abantu b'inyangamugayo, b'abanyakuri, b'indahemuka kandi bafite ubushobozi bwa ngombwa butuma mu bihugu byabo bahabwa imirimo y'ubucamanza yo mu rwego rwo hejuru. [….]".

ii) Iyo, ukurikije uko ibintu biteye, umuntu wese ushyira mu gaciro kandi ukurikira ashobora kugira impungenge ko hariho ukubogama.[350]

204. Muri uru rubanza, Urugereko rw'Ubujurire rusanga Akayesu ataragaragaje ko Umucamanza Kama yari abogamye. Urugereko rw'Ubujurire ntirushobora kugendera gusa ku bivugwa na Akayesu na bwo bike, cyane cyane ko abivuga mu magambo adosobanutse neza.[351] Nta na rimwe Akayesu yasobanuye impamvu Umucamanza Kama yaba yarashatse kurengera umutangabuhamya wabazwaga cyangwa impamvu uwo Mucamanza yaba yarahise yizera ubuhamya bwe. Bityo rero, Urugereko rw'Ubujurire ntirushobora kugira icyo ruvuga ku birego nk'ibyo bikomeye mu gihe Akayesu atabitangira gihamya.

205. Byongeye kandi, Urugereko rw'Ubujurire ntirubona ikosa Umucamanza Kama yakoze cyangwa aho ibyo yavuze binyuranyije n'amategeko. Urugereko ruributsa ko amagambo y'umucamanza agomba gushyirwa mu rwego nyarwo yavuzwemo. Umucamanza Kama yayoboraga iburanisha. Mu ibaza rinyomoza, Ubwunganizi bwabajije JJ inshuro yasambanyijwe ku gahato. Perezida abonye ko uwo mutangabuhamya atashubije icyo kibazo ku buryo bwumvikana, yarongeye arakimubaza[352]. Nyuma y'ibibazo bike by'inyongera kandi ashingiye ku byavuzwe n'umutangabuhamya, Perezida yanzuye avuga ko uwo mutangabuhamya yasambanyijwe nibura inshuro zirindwi, hatabariwemo inshuro uwo mutangabuhamya atibukaga[353]. Nyuma, Ubwunganizi bwasubijwe ijambo bukomeza ibaza rinyomoza. Kubera ko umutangabuhamya yabajijwe ibibazo byinshi kubirebana niba abamusambanyije ku gahato barakoresheje agakingirizo, yabajijwe mu buryo buziguye inshuro yasambanijwe ku gahato. Perezida w'Urugereko yongeye gufata

[350] Urubanza rwa Furundzija mu bujurire, igika 189.
[351] Akayesu arasobanura ati: "Umucamanza yemeza ko byari ibihe bibabaje ku mutangabuhamya, ko bari baramusambanyije cyane ku gahato ku buryo icyo kibazo kitakongera kubazwa, ko ahubwo bahindura hakabazwa ibindi. Biragaragara ko yemeraga ibyo uwo mutangabuhamya avuga. Ni nde muntu ukurikira uzi imiterere y'uru rubanza, harimo n'inshingano abacamanza bafite yo kutabogama, utatekereza ko na mbere y'uko abagabo bashinjura batanga ubuhamya bwabo, Umucamanza Kama yari yarangije kwizera ko ibyo umutangabuhamya wiswe JJ avuga ari ukuri? […] Ahubwo uwo mucamanza yari yarangije kwerekana ko yemera ibyo umutangabuhamya avuga kandi ko yashakaga ko atabazwa ibibazo byari kumutera ipfunwe icyo gihe. Iryo kosa ritera inenge isuzuma ry'ubuhamya bw'umugabo wiswe JJ wari warangije kwizerwa Mbere y'ubuhamya bw'abagabo bashinjura". Reba. Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika 107
[352] Inyandikomvugo y'iburanisha, 24 Ukwakira 1997, urup.15

ijambo asaba Ubwunganizi "kugerageza kwihuta"[354]. Ubwunganizi bwashubije ko "bwasanze mu byo umutangabuhamya avuga harimo ukwivuguruza"[355]. Icyo gihe nibwo Perezida yavuze iyi nteruro Akayesu arwanya "Ese ni ngombwa? Yasambanyijwe ku gahato cyane ku buryo atibuka inshuro, zaba 4, 5, 6 cyangwa se 7."

206. Urugereko w'Ubujurire ruributsa ko hakurikijwe uko ibintu bisanzwe bigenda muri uru Rukiko, muri rusange, Urugereko rwa Mbere rw'Iremezo rugenzura ibaza ry'ibanze n'ibaza rinyomoza ry'abatangabuhamya. Ingingo ya 90 E) y'Amategeko y'Urukiko yashyizweho ku itariki ya 8 Kamena 1998 yemeje iyo mikorere yari isanzwe[356]. Muri uru rubanza, Urugereko rw'Ubujurire rusanga Umucamanza Kama atarirengagije ikibazo Ubwunganizi bwari bwabajije mbere. Ahubwo yasabye ubwe umutangabuhamya gusobanura neza ibyo avuga. Urugereko rw'Ubujurire rusanga rero Perezida w'Urugereko yaraciye mu ijambo Uwunganira uregwa amaze kubona ingorane umutangabuhamya yari afite zo kwibuka neza inshuro yasambanyijwe ku gahato no kubona ko Ubwunganizi bubaza ibisobanuro bitari ngombwa. Rusanga rero Perezida w'Urugereko yarakoze imirimo ye mu buryo bushyize mu gaciro. Urugereko rw'Ubujurire rusanga Umucamanza Kama yarashatse kuvuga ko imvugo y'umutangabuhamya yerekana ko yasambanyijwe ku gahato inshuro nyinshi ku buryo atashoboraga kwibuka neza inshuro byabaye.

207. Kubera izo mpamvu zose, Urugereko rw'Ubujurire rusanga nta kosa na rimwe Urugereko rwa Mbere rw'Iremezo rwakoze kuri icyo kibazo.

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353 Inyandikomvugo y'iburanisha, 24 Ukwakira 1997, urup.20
354 Inyandikomvugo y'iburanisha, 24 Ukwakira 1997, urup.23
355 Inyandikomvugo y'iburanisha, 24 Ukwakira, 1997, urup.23
356 Mu by'ukuri ingingo ya 90 E) igira iti: "Urugereko rugenzura uburyo ibazwa ry'abatangabuhamya n'itangwa ry'ibimenyetso bikorwa n'uburyo bikurikirana […]".

d. Amagambo yakoreshejwe mu Kinyarwanda avuga gusambanya ku gahato

i. Ingingo z'ababuranyi

208. Akayesu ashingira ku bika bya 146, 152, 153 na 154 by'inyandio y'urubanza. Mu gika cya 146, Urugereko rwa Mbere rw'Iremezo ruvuga amagambo amwe yakoreshejwe n'abatangabuhamya n'akoreshwa mu kinyarwanda avuga gusambanya ku gahato[357]. Urugereko ruvuga ko imyanzuro yarwo ishingiye ku buhamya bwa Mathias Ruzindana. Akayesu avuga ko uwo mugabo, mu buhamya bwe, atavuze ayo magambo yerekeye gusambanya ku gahato. Mu bika bya 152, 153 na 154 by'inyandiko y'urubanza, Akayesu avuga ko amagambo yemejwe n'Urugereko rwa Mbere rw'Iremezo nta mpuguke yayasuzumye mu gihe ubuhamya bwatangwaga. Ibimenyetso Urugereko rwabonye (nko kubaza abasemuzi bemewe b'Urukiko) ntibiri mu nyandikomvugo y'iburanisha, bityo Akayesu akaba adashobora kugira igisubizo abitangaho, n'ubwo Urugereko rwavuze ko bifite akamaro[358].

209. Porokireri aributsa ko mu Rugereko rwa Mbere rw'Iremezo abagabo bashinja n'abashinjura bageze kuri 20 batanze ubuhamya ku bikorwa by'urugomo rwibasiye imyanya ndangagitsina. Nta na rimwe Abunganira uregwa babwiye Urugereko ko amagambo yakoreshejwe n'abo batangabuhamya atavugaga gusambanya ku gahato. Byongeye kandi, biragaragara ko abatangabuhamya biswe J, H,JJ, OO, KK, NN, na PP ibyo bavugaho atari imibonano mpuzabitsina ikozwe ku bushake ahubwo ari ugusambanya ku gahato[359].

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[357] Imyanzuro ya Akayesu, Umutwe X, igika 17; Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika.108.

[358] Imyanzuro ya Akayesu, Umutwe X, igika 19; Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika 108.

[359] Imyanzuro ya Porokireri isubiza, ibika 11.37-11.39.

ii. Isesengura ry'Urugereko

210. Igika cya 146 cy'inyandiko y'Urubanza kigira kiti:

> Amagambo *Inkotanyi*, *Inyenzi*, *icyitso/ibyitso*, *Interahamwe* n'imvugo zakoreshejwe mu kinyarwanda zisobanura "gusambanya ku gahato", asobanurwa mu buryo bwihariye mu bika bikurikira kubera akamaro bifitiye imyanzuro y'Urugereko. Kugira ngo rushobore kumva icyo ayo magambo asobanura, Urugereko rwashingiye cyane cyane ku buhamya bwa Mathias Ruzindana, umutangabuhamya w'impuguke mu by'isesengurandimi. Urugereko rurasanga imikoreshereze n'ibisobanuro by'ayo magambo n'izo mvugo bigomba kumvikana hakurikijwe uko ibintu byari byifashe muri icyo gihe.

211. Urugereko rw'Ubujurire rusanga Akayesu yaribeshye ku gisobanuro kiri mu gika kimaze kuvugwa. N'ubwo umuntu asomye gusa icyo gika ashobora kumva ko Urugereko rwa Mbere rw'Iremezo rwashingiye gusa ku buhamya Mathias Ruzindana yatanze mu Rukiko, kugira ngo rusobanure amagambo yose avugwa mu nteruro ya mbere harimo no "gusambanya ku gahato", iyo umuntu asomye igice cyose cy'inyandiko y'Urubanza cyerekeye isemura uvana mu kinyarwanda ujyana mu gifaransa no mu cyongereza asanga atari ko ibintu biteye. Mu by'ukuri, Urugereko rwa Mbere rw'Iremezo rwashingiye ku buhamya umugabo w'impuguke yatanze mu Rukiko mu gusobanura gusa amagambo *Inkotanyi, inyenzi, icyitso/ibyitso* n*'Interahamwe,* nk'uko bigaragara kuva ku gika cya 147kugera ku cya 151 by'inyandiko y'urubanza. Nta na rimwe Urugereko rwakoresheje ubuhamya bwa Mathias Ruzindana mu gusobanura amagambo y'ikinyarwanda yakoreshejwe avuga "gusambanya ku gahato". Mu bika by'inyandiko y'urubanza byahariwe igisobanuro cy'ayo magambo nta na hamwe bavugamo ubuhamya bw'uwo mugabo w'impuguke[360]

212. Byongeye kandi, kuri icyo kibazo cya nyuma, Urugereko rw'Ubujurire ntirubona ukuntu kubaza abasemuzi b'Urukiko bemewe no gukoresha

[360] Reba ibika 152-154, Urubanza mu rw'iremezo

Inkoranyamagambo y'Ikigo gishinzwe Ubushakashatsi mu by'Ubuhanga [INRS] ari ikosa rikomeye. Urugereko rwa Mbere rw'Iremezo rwagaragaje ko ruzi kandi rwitondera ikibazo cy'isemura. Nk'urugero, "ruzi ko hashobora kuba amakosa mu gusemura amagambo umutangabuhamya yavuze mu kinyarwanda uyashyira mu cyongereza"[361]. Akayesu avuga ko atashoboye kunenga ibisobanuro Urugereko rwatanze kuri ayo magambo kubera ko ibyo bisobanuro bitari mu nyandikomvugo y'iburanisha. Urugereko rw'Ubujurire rusanga ibyo avuga nta shingiro bifite. Nk'uko Porokireri abivuga, abagabo benshi bashinja n'abashinjura batanze ubuhamya mu |rukiko ku kibazo cy'ibikorwa by'urugomo byibasiye imyanya ndangagitsina ariko, mu iburanisha mu Rugereko rwa Mbere rw'Iremezo, nta na rimwe Akayesu yavuze ko ijambo ry'ikinyarwanda ryakoreshejwe nabi cyangwa ngo avuge ko abatangabuhamya batavugaga gusambanya ku gahato.

213. Kubera rero ko nta ngingo iyo ariyo yose ifatika ujurira atanga, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo nta kosa rwakoze.

214. Kubera iyo mpamvu, Urugereko rw'Ubujurire ntirwemeye ingingo zose Akayesu atanga ku myanzuro ishingiye ku byabaye yafashwe n'Urugereko rwa Mbere rw'Iremezo yerekeye igika cya 12A n'icya 12B by'Inyandiko y'ibirego.

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[361] Mu by'ukuri hari igika Urugereko rwahariye ingorane ziboneka mu isemura. Mu gika cya 145, rugira ruti: "abatangabuhamya benshi bakoresheje ururimi rw'ikinyarwanda. Urugereko rusanga guhindura ubuhamya bwatanzwe mu magambo buva mu kinyarwanda bushyirwa muri rumwe mu ndimi zikoreshwa n'Urukiko bitaroroshye, cyane cyane kubera ko iyiganteruro n'imvugo isanzwe mu rurimi rw'ikinyarwanda ari insobe kandi biruhije kubishyira mu gifaransa cyangwa mu cyongereza. Izo ngorane zagize ingaruka ku biganiro abakoze iperereza bagiranye n'abatangabuhamya aho babasanze mbere y'urubanza, no ku isemura ry'ibaza ry'ibanze n'ibaza rinyomoza mu rubanza. Mu rukiko, ubuhamya bwinshi bwatanzwe mu rurimi rw'ikinyarwanda, bubanza gusemurwa mu gifaransa mbere yo gushyirwa mu cyongereza. Iyo mikorere yashobora kubyara amakosa mu gusemura mu rurimi rw'icyongereza amagambo yavuzwe mu ntangiriro mu kinyarwanda. Niyo mpamvu igihe inyandikomvugo zo mu cyongereza n'izo mu gifaransa zabaga zitandukanye, Urugereko rwagenderaga ku nyandikomvugo yanditse mu gifaransa. Rimwe na rimwe, iyo Urugereko rwasangaga amagambo yavuzwe ari kamara kugira ngo rubone uko rufata icyemezo ku byabaye cyangwa ku byerekeye amategeko, amagambo yakoreshejwe yandukuwe mu rubanza uko ari mu kinyarwanda, ururimi rw'umwimerere".

ii. Igika cya 14 cy'Inyandiko y'ibirego: inama yabereye i Gishyeshye no guhamagarira abantu gukora jenoside yakorewe Abatutsi muri Taba[362]

215. Akayesu avuga ko hakozwe amakosa abiri y'ingenzi mu bika bya 349, 361 na 362 by'inyandiko y'urubanza. Muri rusange, avuga ko "kugira ngo hemezwe, nta gushidikanya na gato, ko abantu bahamagariwe gukora jenoside, ibimenyetso byatanzwe byagombaga kuba ari simusiga, bihuye kandi bitavuguruzanya. Kuri we, Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kuko rwatekereje ibintu bitabaye maze rukanzura ruvuga ko abantu bahamagariwe gukora jenoside cyangwa kwica Abatutsi"[363]. Akayesu yongeraho ko asanga iryo "ari ikosa rikomeye cyane kurusha ayandi ryatumye urubanza rudacibwa neza"[364].

a. Igika cya 349 cy'Inyandiko y'urubanza

216. Igika cya 349 cy'inyandiko y'urubanza kigira kiti :

> Urugereko rusanga, ku byerekeye ibyanditse mu gika cya 14 cy'Inyandiko y'ibirego bidahagije gusa kwerekana ko iyo nama y'i Gishyeshye yaba yarahuriranye n'itangira ry'ubwicanyi bw'Abatutsi muri Taba, gusa ko hagomba kwerekanwa *isano yaba iri hagati* y'amagambo Ushinjwa yavugiye muri iyo nama n'itangira ry'ubwicanyi. [Ntibishimangiwe mu yandiko y'urubanza]

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[362] Igika cya 14 cy'Inyandiko y'ibirego kigira kiti : "Mu gitondo cyo ku itariki ya 19 Mata 1994, nyuma y'iyicwa rya Karera, Jean-Paul Akayesu yayoboye wenyine inama muri Segiteri ya Gishyeshye maze avuga ko ashyigikiye iyicwa rya Sylvère Karera kandi asaba akomeje abaturage kwica ibyitso bya FPR. Abantu baraho bari bumvise ko ashaka kuvuga Abatutsi. Iyo nama yitabiriwe n'abantu barenga 100. Kwica Abatutsi muri Taba byatangiye hashize igihe gito iyo nama irangiye".

[363] Imyanzuro ya Akayesu, Umutwe X, igika 32

[364] Inyandikomvugo y'uburanisha (mu bujurire), 1 Ugushyingo 2000, urup.101. Akayesu asobanura ko igika cya 14 cy'Inyandiko y'ibirego kivuga ku cyaha cyo gushishikariza abantu gukora jenoside. Avuga ko, "ari […] ikintu cy'ingenzi mu imyanzuro yafashwe ishingiye ku byabaye birebana na jenoside", Inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, urup.102

i. Ibivugwa n'ababuranyi

217. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwashishikajwe gusa no gusaba ko hatangwa ikimenyetso cyerekana isano yaba iri hagati (mu cyongereza "*possible causal link*") y'inama n'itangira ry'ubwicanyi. Asanga rero mu gusuzuma ibikorwa bivugwa mu gika cya 14 cy'Inyandiko y'ibirego[365], Urugereko rwarashingiye kuri icyo kimenyetso aho gushingira ku kimenyetso "kidashidikanywaho na gato".

218. Porokireri avuga ko Akayesu ashyira amagambo y'Urugereko mu rwego rutayavuzemo. Igika kivugwa n'Akayesu kigomba gusomerwa hamwe n'igika n'icya 362 cy'Urubanza mu rw'iremezo kugira ngo umuntu yumve icyo Urugereko rwa Mbere rw'Iremezo rwashakaga kuvuga ku byerekeranye no kuba amagambo ya Akayesu afitanye isano n'ibyabaye[366]. Porokireri yongeraho ko icyaha cyo gushishikariza abantu, ku buryo butaziguye kandi mu ruhame, gukora jenoside gishobora kubaho kabone n'iyo jenoside yaba itakozwe, nk'uko Urugereko rwa Mbere rw'Iremezo rwabivuze mu gika cya 561 n'icya 562[367].

(ii) Isesengura ry'Urugereko

219. Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo rugomba gukurikiza ingingo ya 87 y'Amategeko y'Urukiko, ivuga ko Porokireri agomba gutanga ibimenyetso bitarimo ugushidikanya na gato by'ibyo arega ushinjwa.

220. Urugereko rw'Ubujurire rusanga gukoresha amagambo "yaba iri" bitari bikwiye kuko ashobora kudahita yumvikana neza. Mu by'ukuri, ayo magambo ashobora gutuma umuntu yumva ko Urugereko rwa Mbere rw'Iremezo rwakoresheje ikigenderwaho

[365] Imyanzuro ya Akayesu, Umutwe X, igika 23 .
[366] Imyanzuro ya Porokireri isubiza, ibika 11.41-11.44
[367] Imyanzuro ya Porokireri isubiza, igika 11.47-11.50

kijenjetse kurusha ikigenderwaho cy'uko ibintu bigomba kuba bidashidikanywaho na gato, kuko rwasabye Porokireri kugaragaza isano "yaba iri" hagati y'ibyo bintu aho kumusaba kugaragaza iyo sano, ku buryo budashidikanywaho na gato. Urugereko rw'Ubujurire rusanga muri uru rubanza icyo ari gisobanuro cya nyirarureshwa kandi kidafite ishingiro.

221. Mu by'ukuri, nk'uko Porokireri abivuga, Akayesu ntiyumvise icyo gika mu rwego nyakuri kigomba gushyirwamo. Icyo gika kigomba gusomwa hazirikanwa ibika bikurikiraho, by'umwihariko igika cya 362 kigira kiti:

> Mu gusoza, Urugereko, rushingingiye ku buhamya bwinshi butanyomojwe ku buryo buhamye n'Ubwunganizi no ku byo Ushinjwa yiyemereye ubwe, ruremera nta gushidikanya na gato ko amagambo Ushinjwa yavuze mu nama ku itariki ya 19 Mata yatumye hakorwa ubwicanyi rusange muri Taba.

222. Biragaragara kandi ko mu myanzuro rwafashe ku byabaye, Urugereko rwa Mbere rw'Iremezo rwasuzumye ibimenyetso rwashyikirijwe (abatangabuhamya biswe C, W, A, N, ubuhamya bw'Uregwa ubwe, ubw'umugabo wiswe V n'ubwa Joseph Matata) rushingiye ku ihame rivugga ko ibimenyetso bigomba kuba bidashidikanywaho na gato. Ibika bya 359, 360 na 361 by'inyandiko y'urubanza birasobanutse kuri icyo kibazo. Mu gika cya 359, Urugereko rwa Mbere rw'Iremezo ruvuga ko "rwemeye *nta gushidikanya na gato* ko Uregwa yari i Gishyeshye mu gitondo cya kare ku itariki ya 19 Mata 1994 aho yasanze hateraniye abantu barenga ijana bakikije umurambo w'umusore w'Interahamwe kandi ko yaboneyeho umwanya wo gufata ijambo mu ruhame […]".Urugereko rwongeraho ko *rwemeye nta gushidikanya na gato* ko, nka Burugumesitiri n'umuyobozi w'abaturage, Uregwa yayoboye inama n'impaka byakurikiyeho".

Mu gika cya 360, Urugereko "rusanga [..] kubera ko nta kimenyetso simusiga gihari, Porokireri ataragaragaje, nta gushidikanya na gato, ko Ushinjwa yashyigikiye mu ruhame icyicwa rya Sylvère Karera mu nama yabereye i Gishyeshye". Mu gika cya 361, handitsemo ko, "Rumaze gusuzuma agaciro k'ubuhamya bwose busobanuye kandi

buhuye, Urugereko rwemeye, nta gushidikanya na gato, ko ushinjwa yasabye abaturage ku mugaragaro kunga ubumwe kugira ngo bikize umwanzi umwe rukumbi ari we cyitso cy'Inkotanyi". Rwongeraho ko " Rushingiye ku buhamya buhuye bwakomeje gutangwa mu rubanza rwose no ku bisobanuro rwahawe na Ruzindana, witabye Urukiko nk'umutangabuhamya w'impuguke mu by'isesengurandimi, Urugereko rwemera nta gushidikanya na gato ko abaturage bumvise ko Ushinjwa ahamagarira abantu kwica Abatutsi. Urugereko rwemera nta gushidikanya na gato ko Ushinjwa ubwe yari azi neza ingaruka z'amagambo ye ku baturage kandi ko yari azi neza ko guhamagarira abantu kurwanya ibyitso by'Inkotanyi, byari kumvikana ko ari ukubahamagarira kwica Abatutsi muri rusange" (ntibishimangiwe mu nyandiko y'umwimerere)

223. Mu nyandiko y'urubanza, nta kintu na kimwe kirimo cyatuma umuntu ashidikanya ko ruriya Rugereko rwubahirije ingingo ya 87 A) y'amategeko, kandi iyo umuntu asomye ibika bikurikira igika cya 146 asanga rwarakoresheje uko bikwiye ihame rikurikizwa rivuga ko Urugereko rwemera ibimenyetso iyo bitarimo gushidikanya na gato. Byongeye kandi, Akayesu ntiyahaye Urugereko rw'Ubujurire izindi ngero zerekana ko urwa Mbere rw'Iremezo rwaba koko rwaranyuranyije n'ingingo y'Amategeko y'Urukiko imaze kuvugwa.

224. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanze Urugereko rwa Mbere rw'Iremezo nta kosa rwakoze.

b. <u>Igika cya 361 n'icya 362 by'inyandiko y'urubanza</u>

225. Igika cya 361 kigira kiti :

> Ku byerekeranye n'uko muri icyo giterane Ushinjwa yaba yarashishikarije abaturage kwica ibyitso bya FPR, Urugereko rumaze gusuzuma agaciro k'ubuhamya bwose busobanuye kandi buhuye, ruremera nta gushidikanya na gato ko Ushinjwa yasabye abaturage ku mugaagaro kunga ubumwe kugira ngo bikize umwanzi umwe rukumbi, ariwe icyitso cy'Inkotanyi. Rushingiye ku buhamya buhuye bwatanzwe mu rubanza rwose no ku bisobanuro rwahawe na Ruzindana, witabye Urugereko nk'umutangabuhamya

> w'impuguke mu by'isesengurandimi, Urugereko ruremera, nta gushidikanya na gato ko abaturage bumvise ko Ushinjwa ahamagarira abantu kwica Abatutsi. Urugereko ruremera nta gushidikanya na gato ko Ushinjwa ubwe yari azi neza ingaruka z'amagambo ye ku baturage kandi ko yari azi neza ko guhamagarira abantu kurwanya ibyitso by'Inkotanyi, byari kumvikana ko ari ukubahamagarira kwica Abatutsi muri rusange.

226. Igika cya 362 kigira kiti :

> Mu gusoza, Urugereko, rushingiye ku buhamya bwinshi butanyomojwe ku buryo buhamye n'ubwunganizi no ku byo Ushinjwa yiyemereye ubwe, ruremera nta gushidikanya na gato ko amagambo Ushinjwa yavuze mu nama yo ku itariki ya 19 Mata 1994 yatumye hakurikiraho ubwicanyi rusange bwakozwe muri Taba.

i. Ibivugwa n'ababuranyi

227. Akayesu avuga ko mu bika bimaze kuvugwa hakozwe amakosa atatu. Ayo makosa yerekeye ubuhamya bwa Mathias Ruzindana, ubundi buhamya buvugwa ko "buhuye" n'ibivugwa ko Akayesu "abwemeza".

228. Ku byerekeye ubuhamya bwa Mathias Ruzindana, mbere na mbere Urugereko rw'Ubujurire ruributsa ko ku itariki ya 22 Kanama 2000 rwanze icyifuzo cya Akayesu gisaba guhindura inyandiko ye y'ubujurire ku kibazo cy'ubwigenge bw'Urukiko kugira ngo yamagane ubuhamya bwa Bwana Pierre Prosper nk'impuguke mu isesengurandimi n'imibanire y'abantu n'ubuhamya bwa Mathias Ruzindana nk'umugabo w'impuguke[368]. Mu by'ukuri, ingingo Akayesu atanga asaba guhindura inyandiko y'ubujurire zirasa n'izo avuga mu myanzuro ye.

229. Ku byerekeye ubundi buhamya, Akayesu avuga ko ubwo buhamya (ni ukuvuga ubwa C, N, A, Z, na E) buvuguruzanya ku byerekeye itariki inama yabereyeho, ku bantu Akayesu yibasiye mu ijambo rye no ku muntu ugomba gufatwa nk'umwanzi[369]. Kuri iyo ngingo, ntasaba Urugereko rw'Ubujurire "kongera gusuzuma ibimenyetso byatanzwe cyangwa se

[368] Icyemezo, 22 Kanama 2000
[369] Imyanzuro ya Akayesu, Umutwe X, igika 29. Mu by'ukuri asobanuro ko ku bwe "ubuhamya butavugaga bimwe ku buryo buhagije kugira ngo hemezwe ko Ujurira yahamagariraga abantu ku buryo bweruye kwica Abatusi", Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, 112.

kwemeza ko abacamanza batashyize mu gaciro. Ashingiye ku myanzuro y'Urukiko, arasaba uru Rugereko kwemeza ko, mu cyiciro cy'urubanza cyerekeye igika cya 14 cy'Inyandiko y'ibirego bigaragara ko nta gihamya yatanzwe na gato ku gitekerezo cyihariye uregwa yari afite cyo kwica Abatutsi[370].

230. Porokireri aributsa ko ikigomba gukurikizwa kuri iki kibazo ari ukureba niba imyanzuro irwanywa "yarafashwe ntacyo ishingiyeho", nk'uko Urugereko rw'Ubujurire rubisobanura mu rubanza rwa *Tadic*[371]. Abatangabuhamya bashinja bose bavuga bimwe ku bikubiye mu magambo Akayesu yavugiye muri iyo nama. Byongeye kandi, Akayesu ntagaragaza ko hatubahirijwe ihame ryo kudashidikanya na gato ku buryo umuntu wese ushyira mu gaciro wari kubona ibimenyetso nk'ibyo yari gufata umwanzuro utandukanye n'uwafashwe n'Urugereko rwa Mbere rw'Iremezo[372].

231. Ku byerekeye ubuhamya bwe, Akayesu avuga ko atemeye cyangwa ngo yemeze ko hari amagambo ye afitanye isano n'ubwicanyi bwabereye muri Taba nk'uko Urugereko rwa Mbere rw'Iremezo rwaba rwarabivuze mu gika cya 362 cy'Inyandiko y'urubanza[373]. Nyamara, Porokireri avuga ko ibyo Akayesu yahakanye mu buhamya yatanze ari ibirebana gusa n'ibikubiye mu ijambo yavugiye muri iyo nama[374].

ii. Isesengura ry'Urugereko

232. Icya mbere, ku byerekeye ubuhamya bwa C, N, A, Z, V N na E batavuga bimwe ku bantu Akayesu yibasiye no ku muntu yitaga umwanzi mu ijambo rye, Urugereko rw'Ubujurire ruributsa ko ubujurire butagamije kuburanisha urubanza bundi bushya. Kuri iki kibazo,

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[370] Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 115

[371] Nk'uko bivugwa n'Urugereko rw'Ubujurire rwa TPIY, "[…] ikigenderwaho nyirizina mu kureba niba bikwiye kwemeza imyanzuro ishingiye ku byabaye yafashwe n'Urugereko rwa Mbere rw'Iremezo ni ukureba niba umwanzuro wafashwe ntaho ushingiye ku buryo utashobora gufatwa n'umuntu wese ushyira mu gaciro", Urubanza rwa *Tadic mu bujurire,* igika 64.

[372] Imyanzuro ya Porokireri isubiza, igika 11.52.

[373] Koko rero, Urugereko rwa Mbere rw'Iremezo rwakoresheje amagambo akurikira : "nk'uko uregwa yabyemeje". Reba inyandiko y'Urubanza mu rw'iremezo, igika 362. Reba Imyanzuro ya Akayesu, Umutwe X, ibika 30 na 31; Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 116.

Urugereko rw'Ubujurire rugendera ku ihame rikurikira : " Abacamanza bo mu rw'Iremezo nibo bagomba kumva, bagasuzuma kandi bakagena agaciro k'ibimenyetso byatanzwe mu iburanisha […]. Iyo bigaragaye ko nta muntu n'umwe ushyira mu gaciro wari kwemera ibimenyetso Urugereko rwa Mbere rw'Iremezo rwashingiyeho, icyo gihe nibwo bwonyine Urugereko rw'Ubujurire rushobora gusesa umwanzuro w'Urugereko rwa Mbere rw'Iremezo rukawusimbuza uwarwo"[375].

233. Muri uru rubanza, Akayesu ntiyagaragaje ko Urugereko rwa Mbere rw'Iremezo rutagombaga kwemeza ko ubuhamya bwavuzwe butavuguruzanya. Akayesu atanga urugero rw'ubuhamya bwa C, N, A, Z, V na E batanze mu Rukiko, yibutsa gusa mu magambo make cyane kuri buri mugabo, uko byagenze atanga ubuhamya n'amagambo amwe yavuze mu buhamya bwe. Ujurira avuga gusa ko "ibimenyetso byatanzwe byerekana ko yabwiye abaturage ko bagomba kwishyira hamwe bakarwanya uwateye igihugu cyangwa FPR, cyangwa Inkotanyi. Kuvuga ayo magambo bikaba bisa nk'aho ntacyo byari bitwaye urebye uko ibintu byari biteye muri icyo gihe"[376]. Akayesu ntasobanura impamvu avuga ko imyanzuro y'Urugereko rwa Mbere rw'Iremezo irimo amakosa cyangwa idafite ishingiro. Ibyo aribyo byose, Urugereko rw'Ubujurire rusanga ibika byo mu nyandiko y'urubanza bivugwamo abo batangabuhamya banengwa bidatuma umuntu ashidikanya ko ubuhamya bwatanzwe mu Rugereko buhuye, nibura ku byerekeyeranye n'igisobanuro cy'ayo magambo Akayesu yavuze muri iyo nama ndetse n'uko yakumvikana. Urugereko rwa Mbere rw'Iremezo rwasobanuye neza ibikubiye muri buri buhamya bwatanzwe kuri iki kibazo kandi biragaragara ko umwanzuro warwo mu gika cya 361 wumvikana ndetse ukagira ishingiro[377].

234. Kubera iyo mpamvu, bitewe n'uko Akayesu adatanga ibisobanuro byumvikana, Urugereko rw'Ubujurire rusanze ibyo avuga nta shingiro bifite.

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374 Imyanzuro ya Porokireri isubiza, igika cya 11.52
375 Urubanza rwa *Tadic* mu bujurire, igika cya 64. Reba kandi Urubanza rwa *Celebici* mu bujurire, igika cya 435.
376 Imyanzuro ya Akayesu, umutwe X, igika cya 29
377 Rushinginye ku buhamya buhuye bwakunze gutangwa mu iburanisha ryose, rushingiye kandi ku bisobanuro bya Ruzindana, wahamagajwe nk'umugatangabuhamya w'impuguke mu by'isesengurandimi, Urugereko rwemera, nta gushidikanya na guto ko abaturage bumvise ko Uregwa yabahamagariraga kwica Abatutsi.

235. Icya kabiri, ku byerekeye ubuhamya bw'Uregwa, Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo ari rwo rufite inshingano zo kumva, gusuzuma no kugena agaciro kahabwa ibimenyetso rushyikirijwe mu iburanisha. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwasanze, nta gushidikanya na gato, ubuhamya bwa Akayesu, kimwe n'ubw'abandi bagabo, burimo ibintu byatumye rwemeza ko hari " amagambo Uregwa yavuze mu nama yo ku itariki ya 19 Mata 1994 afitanye isano n'ubwicanyi rusange bwakurikiyeho muri Taba". Urugereko rw'Ubujurire rusanga uwo mwanzuro ushyize mu gaciro. Ibaza ryakozwe na Porokireri anyomoza Akayesu rigaragaza ko koko Akayesu adahakana, ku buryo bwumvikana, ko hashobora kuba hari isano hagati y'amagambo arwanya FPR n'iyicwa ry'Abatutsi:

> **Ikibazo**: Ikibazo cyanjye ni iki kandi ndagusaba kumva neza. Waba wemera ko kwita umuntu icyitso cya FPR ari kimwe no kumukatira urwo gupfa, wemera ko uwo muntu yashoboraga kwica ?
>
> **Igisubizo :** Nibyo koko, birumvikana ko bishobora gushyira umuntu mu makuba.
>
> **Ikibazo**: […] Ndashaka kugaruka ku byo umaze kuvuga nsanga byakwitabwaho cyane. Kwita umuntu icyitso cya FPR cyangwa kuvuga ko afite intwaro cyangwa ikintu nk'icyo, wemera ko ibyo bintu byashoboraga guhungabanya umutekano w'abaturage muri komine ?
>
> **Igisubizo :** Ugiye mu baturage ukavuga ngo : umugabo uyu n'uyu ni icyitso cya FPR, bivuga ibintu byinshi, birumvikana ko umuntu ashobora gupfa […]
>
> **Ikibazo** : Ese abaturage bakumva Burugumesitiri kurusha undi muntu, aramutse avuze ibyo bintu, nk'urugero, agize icyo avuga k'umuntu runaka aho kuvuga undi ?
>
> **Igisubizo**: Si ku muntu gusa, abaturage bakurikira cyane ibyo umutegetsi avuze, nk'urugero, burugumesitiri. Burugumesitiri aramutse avuze ayo magambo…aramutse avuze umuntu birumvikana ko bakurikira ibyo avuga bashishikaye.[…]
>
> **Igisubizo**: Burugumesitiri aramutse agiye mu baturage akavuga ati : abantu aba n'aba ni Abatutsi, ni ibyitso bya FPR, birumvikana ko yaba arimo gutunga agatoki kandi ko ingaruka zabyo ni uko abo bantu bakwicwa.[…][378]

236. Urugereko rw'Ubujurire ruributsa ko aka gace kamaze kuvugwa kakuwe mu gice cy'ibaza rinyomoza Akayesu, cyerekeye by'umwihariko inama yo ku itariki ya 19 Mata 1994. Urugereko rusanga mu myazuro ye, Akayesu avuga ikindi gice cy'ubuhamya bwe

[378] Inyandikomvugo y'iburanisha, 13 Werurwe 1998, imp.101-173

cyerekeye ibaruwa ya Minisitiri w'Intebe yasomeye mu ruhame ihamagarira abaturage kwisuganya ngo barwanye umwanzi. Ubwo Perezida w'Urugereko rwa Mbere rw'Iremezo yamubazaga niba "abantu bamwe barashobogoraga" kumva ibikubiye muri iyo barwa "nk'uruhushya rwo kurwanya ibyitso by'Inkotanyi, Akayesu koko yarabihakanye[379]. Ariko, ku nama yo ku itariki ya 19 Mata 1994 ivugwa mu gika cya 14 cy'Inyandiko y'ibirego, Akayesu ntiyahakanye ku buryo bweruye isano iri hagati y'amagambo yavuze n'ubwicanyi bwakurikiyeho.

237. Kubera iyo mpamvu, mu myanzuro yarwo yo mu rwego rw'ibyabaye yerekeye igika cya 14 cy'Inyandiko y'ibirego, nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze rushyira ubuhamya bw'Uregwa mu mubare w'ubundi buhamya rwashingiyeho rwemeza ko "amagambo Uregwa yavugiye mu nama yo ku itariki ya 19 Mata 1994 afitanye isano n'ubwicanyi rusange bwakurikiyeho muri Taba". Bityo, Urugereko rw'Ubujurire rusanze ibivuwa na Akayesu nta shingiro bifite.

238. Urugereko rw'Ubujurire rusanga rero nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze. Kubera iyo mpamvu rwanze kwakira ingingo zose Akayesu atanga ku birebana n'igika cya 14 cy'Inyandiko y'ibirego.

[379] Inyandikomvugo y'iburanisha, 13 Werurwe 1998, imp.133-136

iii. Igika cya 18 cy'Inyandiko y'ibirego: guhotora abavandimwe ba Ephrem Karangwa no gusenya inzu ye[380]

a. Ibivugwa n'ababuranyi

239. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa mu gusuzuma ubuhamya abagabo batanze ku ihotorwa ry'abavandimwe ba Ephrem Karangwa n'isenywa ry'inzu ye. Avuga ko ibivugwa mu gika cya 18 cy'Inyandko y'ibirego bidashyigikirwa n'ubuhamya abagabo batanze mu Rukiko, burimo ubwa Ephrem Karangwa. Akayesu asaba Urugereko rw'Ubujurire kumugira umwere ku cyaha gikubiye mu kirego cya 5 kubera ko "yahamijwe icyo cyaha mu buryo butemewe n'amategeko kandi budashyize mu gaciro, ukurikije ko ibyavuzwe n'umutangabuhamya w'ingenzi bidashoboka"[381].

240. Icya mbere, ku byerekeye ukuntu iyicwa ry'abavandimwe ba Ephrem Karangwa n'uruhare Akayesu yagize mu rupfu rwaboo, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwafashe uko bitari ubuhamya bwa Ephrem Karangwa ndetse ko rwibeshye ku byabaye bivugwa, kuko rwemeye ibyavuzwe n'uwo mutangabuhamya kandi rutaragombaga kubyemera. Akayesu avuga ko hari ukwivuguruza hagati y'ubuhamya bwanditse Ephrem Karangwa yatanze mbere n'ubwo yatanze mu Rugereko rwa Mbere rw'Iremezo[382]. Nk'uko rubivuga mu gika cya 260 n'icya 261 by'inyandiko y'urubanza,

[380] Igika cya 18 cy'Inyandiko y'ibirego kigira kiti: " Ku itariki ya 19 Mata 1994, cyangwa ahagana kuri iyo tariki, babiherewe amabwiriza na Jean-Paul Akayesu, abagabo bahize Ephrem Karangwa, batwika inzu ye n'iya nyina. Nyuma yaho bagiye gusaka kwa muramu wa Karangwa, muri Komini ya Musambira bahasanga abavandimwe ba Karangwa batatu, ari bo Simon Mutijima, Thaddée Uwanyiligira na Jean Chrysostome Gakuba, bagerageje guhunga ariko Jean-Paul Akayesu akoresheje ifirimbi, abwira abatuye muri ako gace ko abo bavandimwe barimo kugerageza guhunga maze ategeka abantu kubafata. Abo bavandimwe ba Karangwa bamaze gufatwa, Jean-Paul Akayesu yategetse ko bicwa kandi nawe abigiramo uruhare".

[381] Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 129.

[382] Imyanzuro ya Akayesu, Umuntwe X, ibika 38-40. Mu gisubizo cye, Akayesu yongeyeho ati: "Hano Urugereko rwahawe ubuhamya bubiri butandukanye ku iyicwa ry'abo bantu kandi rwaribeshye ku bimenyetso maze rukora amakosa rwemeza ko Karangwa yahakanye ubuhamya bwe yatanze mbere. Nk'uko Urugereko rwagombaga kuba rwaramenye ko Karangwa yari yaratanze ubuhamya mu Gushyingo 1995 avuga ko yabonye Akayesu arasa umuvandimwe we naho abandi bavandimwe be babiri bakicishwa imihoro ubwo bageragezaga guhunga,

urwo Rugereko rwazirikanye ukwivugururza kuri mu buhamya uwo mugabo yatanze, ariko rwemeje ko yakwizerwa kuko ibyo avuga byemezwa n'undi na S. Akayesu avuga ko S yavuze, mu buryo butandukanye n'ubwa Karangwa, ukuntu abavandimwe b'uyu Karangwa bishwe ku buryo asanga abo bagabo bombi batavuga bimwe[383]. Byongeye kandi, Akayesu avuga ko ku itariki ya 17 Gashyantare 1998, Urugereko rwa Mbere rw'Iremezo rwanze kwakira icyifuzo cy'Ubwunganizi gisaba ko hakorwa isuzuma ngo hagaragazwe icyishe abo bantu kandi iryo suzuma ryarashoboraga gutuma hagerwa ku myanzuro ikwiye[384]. Icya kabiri, ku byerekeye gutwika inzu y'uyu mutangabuhamya, Akayesu avuga ko ibyo avuga bidashoboka urebye ahantu yari ari. Ngo kubera ko yari nko muri metero zitari munsi ya 500[385], ntiyashoboraga kubona cyangwa kumva ibyaberaga iwe, nko kubona ko Akayesu yari aho hantu[386].

241. Ku byerekeye ukwivuguruza hagati y'ubuhamya bwanditse Karangwa yatanze mbere n'ubwo yatanze mu Rukiko, Porokireri, ashingiye ku rubanza rwa *Kayishema/Ruzindana*[387], avuga ko umutangabuhamya yabyisobanuyeho kandi akabyumvisha Urukiko rwaje gusanga ibyo avuga byemezwa n'undi mutangabuhamya. Byongeye kandi, umutangabuhamya ntiyivuguruje mu ibaza ry'ibanze n'irinyomoza[388]. Ku byerekeye ubuhamya bw'abahanga mu by'ubuvuzi Akayesu yasabye ngo hagaragazwe icyishe abo bantu, Porokireri asanga icyemezo cy'Urugereko rwa Mbere rw'Iremezo gifite ishingiro kubera ko ahantu abavandimwe ba Karangwa baba barahambwe hataburuwe imirambo maze igahambwa bundi bushya. Byongeye kandi, Akayesu ntasobanura ubwoko bw'amakosa Urugereko rwa Mbere rw'Iremezo rwakoze

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rwagombaga gukemanga ubuhamya bw'uwo mugabo wari usanzwe ari umugenzacyaha, ubusanzwe wagombye gutanga ubuhamya butagira amakemwa (igika 123).

383 Imyanzuro ya Akayesu, Umutwe X, ibika 41- 44.

384 Imyanzuro ya Akayesu, Umutwe X, igika 46.

385 Avuga itandukanirizo hagati y'imibare iri mu nyandikomvugo yo mu cyongereza n'iri mu y'igifaransa yavugiwe mu Rukiko n'umutangabuhamya wiswe D, Akayesu yanzura avuga "intera Karangwa avuga yari hagati y'ahantu yari yihishe n'aho inzu yari iri itari metero 150, ko ahubwo yari nka metero 500 cyangwa zirenga". Reba igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 126.

386 Imyanzuro ya Akayesu, Umutwe X, igika 48.

387 Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo ruvuga ko "atari ngombwa ko ubuhamya buba bufite ubundi bubwemeza kugira ngo bufatwe nk'aho ari ingirakamaro". Urubanza rwa *Kayishema/Ruzindana*, ibika 76-80.

388 Imyanzuro ya Porokireri isubiza, ibika 11.70, 11.71.

rwanga gutegeka ko hakwifashishwa ubuhamya bw'abahanga[389]. Ku byerekeye itwikwa ry'inzu ya Karangwa, Porokireri avuga ko mu gufata imyanzuro ku byabaye, Urugereko rwa Mbere rw'Iremezo rwashyize mu gaciro rushingira ahanini ku buhamya bw'uwo mugabo. Byongeye kandi, uwo mutangabuhamya ntiyivuguruje kuri icyo kibazo haba mu buhamya bwanditse yatanze mbere cyangwa mu bwo yatanze mu Rukiko mu ibaza rinyomoza[390].

b. Isesengura ry'Urugereko

242. Icya mbere, ku byerekeye ukuntu abavandimwe ba Ephrem Karangwa bapfuye, Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo ari rwo rusuzuma nta gushigikanywaho na gato ukwizerwa k'umutangabuhamya warwitabye. Urugereko rw'Ubujurire rureba gusa niba imyanzuro yo mu rwego rw'ibyabaye yafashwe n'Urugereko rwa Mbere rw'Iremezo ishyize cyangwa idashyize mu gaciro.

243. Muri uru rubanza, ubuhamya Ephrem Karangwa yatanze mu Rukiko buvuguruzanya koko, kuri bimwe, n'ubuhamya bwanditse yahaye abakozi bo mu biro bya Porokireri bashinzwe iperereza. Uko kwivuguruza kurebana, by'umwihariko, n'intwaro yakoreshejwe mu kwica abavandimwe be[391]. Mu ibaza rinyomoza, Karangwa yemeje ko mu ibaza ry'ibanze yavuze ko abavandimwe be batatu bicishijwe amasasu kandi yemera ko yabwiye abakozi bashinzwe iperereza ko babiri muri abo bavandimwe be bicishijwe

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389 Imyanzuro ya Porokireri isubiza, ibika 11.75, 11.76.

390 Imyanzuro ya Porokireri isubiza, igika cya 11.71

391 Mu buhamya yatanze mu Rukiko ku itariki ya 6 Gashyantare 1997, Karangwa yavuze ko amaze kubona Akayesu afite imbunda, amaze no kumva Akayesu avuga ngo "ni ukubarasa", "yibwiye ko Akayesu yarashe". Reba inyandikomvugo y'iburanisha, 6 Gashyantare 1997, imp.65-68 n'imp.117-178. Avuga ko abavandimwe be batatu bicishijwe amasasu. Ariko mu buhamya bwanditse yatanze mbere, Ephrem Karangwa yagize ati : "Ndi aho nari nihishe, nabonye Akayesu arasa umuvandimwe wanjye Jean Chrysostome akoresheje imbunda ye. Nabonye abandi bavandimwe banjye babiri bagerageza guhunga ariko abantu ba Akayesu barababafata maze babicisha imihoro: (ikimenyetsogihamya nº 105). Ubwo buhamya buvuga ko umuvandimwe wa Karangwa umwe ari we waba yararashwe. Ubwunganizi bwatsindagiye uko kwivuguruza mu ibaza rinyomoza ry'umugatangabuhamya. Ku kibazo cyo kumenya niba yaribukaga yaribukaga ubuhamya yatanze mbere, uwo mutangabuhamya yemeye ko yabwiye ayo magambo abakozi bashinzwe iperereza ("Yego narabivuze"). Reba Inyandikomvugo y'iburanisha, 6 Gashyantare 1997, urup.178

imipanga[392]. Uwo mutangabuhamya yasobanuye impamvu yivuguruje mu magambo ye[393]. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarazirikanye ukwivuguruza hagati y'ubuhamya bwanditse uwo mugabo yatanze mbere n'ubwo yatangiye mu Rukiko. Urugereko rwasanze uko kwivuguruza kutatuma uwo mutangabuhamya atizerwa maze rwemera, nta gushidikanya na gato, igisobanuro yatanze:

> Urugereko rwa Mbere rw'Iremezo rwemera ibyo Karangwa yavuze asobanura impamvu ubuhamya bwe butandukanye kandi rusanga mu buhamya bwe bwose, Karangwa atarigeze ahindura ibyo yavuze ko barumuna be bishwe barashwe kandi ibyo bikaba bishimangirwa n'umutangabuhamya S. [394]
>
> […] Urugereko rusanga Karangwa yarasubiyemo neza ibyo yiboneye n'amaso ye, nta gukabya cyangwa se urwango. Rwemera ko ibyo uwo mugabo yatanzeho ubuhamya yashoboraga kubibona no kubyumva[395].

244. Ku byerekeye umutangabuhamya wiswe S, Urugereko rw'Ubujurire ntirwemera ibyo Akayesu avuga ko ubuhamya bwa Karangwa n'ubw'uwo mugabo "butandukanye cyane ku buryo ibivugwamo ari bintu bitumvikana" kandi ko ari "ubihimbano"[396]. Iyo umuntu asomye ndetse akagereranya ubwo buhamya bwombi, asanga buvuga bimwe ku bintu by'ingenzi byerekeye ukuntu abavandimwe batatu ba Karangwa bishwe: S yemeza ubuhamya Karangwa yatanze ku modoka yakoreshejwe[397], ku bantu b'ingenzi bari aho

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[392]Kuri icyo kibazo, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rutavuze uko bikwiye ubuhamya bwa Karangwa, kubera ko mu gika cya 260 [cy'inyandiko y'Urubanza mu rw'iremezo] rwemeza ko mu ibaza rinyomoza, " Karangwa yahakanye ko yabwiye Porokireri ibyo bintu" ko ahubwo yashimangiye ibyo yavugiye mu Rukiko ko abavandimwe be batatu bose bicishijwe amasasu". N'ubwo uwo mutangabuhamya atahakanye ku buryo bugaragara amagambo yabwiye abakozi bashinzwe iperereza ubwo Uwunganira uregwa yamwibutsaga ibyo yavuze, ndetse akanemera ko yavuze ayo magambo, uwo mutangabuhamya yahise asobanura impamvu z'uko kwivuguruza kandi ubuhamya yatanze mu Rugereko ntiyabugarutseho.

[393] Umutangabuhamya yagize ati : "Muri icyo gihe iyo bicaga abantu, iyo bamaraga kwica bannyegaga abo bishe bakagaragura imirambo. Mureke mbabwire ko banataburuye amagufa y'abantu, bakayatemagura gato bannyega abantu kubera gusa ko bari Abatutsi". Reba Inyandikomvugo y'iburanisha, 6 Gashyantare 1997, urup.178.

[394] Urubanza mu rw'iremezo, igika cya 261

[395] Urubanza mu rw'iremezo, igika cya 262

[396] Imyanzuro ya Akayesu, Umutwe X, igika cya 44

[397] Inyandikomvugo y'iburanisha, 5 Gashyantare 1997, urup.22 (umutangabuhamya wiswe S) n'Inyandikomvugo y'iburanisha, 6 Gashyantare 1997 (umutangabuhamya Karangwa), urup.59.

gihe icyo cyaha cyakorwaga[398], k'ukuba hari agatsiko k'abantu kakikije abo bavandimwe batatu[399], ku itegeko Akayesu yatanze ryo kubarasa[400], no ku ntwaro zakoreshejwe[401].

245. Na none, Urugereko rw'Ubujurire rusanga icyemezo Urugereko rwa Mbere rw'Iremezo rwafashe cyo kutiyambaza ubuhamya bw'abahanga mu by'ubuvuzi cyari gikwiye kandi gifite ishingiro[402].

246. Icya kabiri, ku byerekeye gutwika inzu ya Karangwa n'iya nyina, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarafashe umwanzuro ushyize mu gaciro. Rushingiye ku buhamya bwa Karangwa, mu byo avuga hakaba harimo ikintu cy'ingenzi cyemejwe n'abandi batangabuhamya (ibyo Akayesu yari yambaye uwo munsi), Urugereko rwashoboye kugaragaza ko "inzu ya Karangwa n'iya nyina zashenywe n'abantu Akayesu yategekaga, kandi na we ahibereye ubwe[403]. Na none, nk'uko Porokireri abivuga, Karangwa yakomeje gutanga amakuru amwe ku byerekeranye n'icyo kibazo aho yabajijwe hose, haba imbere y'abashinzwe iperereza b'Urukiko[404], haba no mu ibaza ry'ibanze[405] cyangwa se irinyomoza[406].

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[398] Inyandikomvugo y'iburanisha, 5 Gashyantare 1997, urup.23 (S) n'Inyandikomvugo y'iburanisha, 6 Gashyantare 1997 (Karangwa), urup.64.
[399] Inyandikomvugo y'uburanisha, 5 Gashyantare 1997, urup.31 (S), n'Inyandikomvugo y'iburanisha 6 Gashyantare 1997 (Karangwa), urup.66.
[400] Inyandikomvugo y'uburanisha, 5 Gashyantare 1997, urup.49 (S), n'Inyandikomvugo y'iburanisha 6 Gashyantare 1997 (Karangwa), urup.67.
[401] Inyandikomvugo y'uburanisha, 5 Gashyantare 1997, urup.53 (S), n'Inyandikomvugo y'iburanisha 6 Gashyantare 1997 (Karangwa), urup.67.
[402] Ku itariki ya 17 Gashyantare 1998, Urugereko rwa Mbere rw'Iremezo rwafashe icyemezo gikurikira ku cyifuzo cyatanzwe n'Ubwunganizi busaba ko hashyirwaho abahanga mu by'ubuvuzi bo gusuzuma imirambo itatu ivugwa: "kubera igihe kirekire cy'imyaka 4 gishize ibikorwa bibaye, kandi hagati aho ibisigazwa byinshi by'imibiri yari mu byobo rusange, hakubiyemo byanze bikunze n'iby'iyari itabye hafi y'ibiro bya Komini ya Taba, ikaba yarataburuwe ikongera igashyingurwa, Urukiko rusanga kwiyambaza bushya abahanga mu by'ubuvuzi nta cyo byaba bimaze, kandi atari ngombwa mu kugaragaza ukuri. Urukiko rusanga ahubwo ibyo Ubwunganizi buvuga byaba bifite ireme ku byerekeranye no kugenzura ukwizerwa kw'abatangabuhamya bamwe na bamwe, ariko bikaba bitagenderwaho ngo hafatwe icyemezo cyo gutaburura imirambo kugira ngo isuzumwe n'abahanga mu by'ubuvuzi nk'uko byasabwe". Reba Icyemezo ku cyifuzo cy'Ubwunganizi gisaba kujya aho icyaha cyakorewe no kugena abahanga mu by'ubuvuzi bo gukora isuzuma, 17 Gashyantare 1998.
[403] Urubanza mu rw'Iremememezo, igika cya 268.
[404] Ikimenyetso gihamya nº 105.
[405] Inyandikomvugo y'iburanisha, 6 Gashyantare 1997, imp.43-53.
[406] Inyandikomvugo y'uburanisha, 6 Gashyantare 1997,imp.162-168.

247. Kubera izo mpamvu zose zimaze kuvugwa, Urugereko rw'Ubujurire rusanze ibivugwa na Akayesu ku gika cya 18 cy'Inyandiko y'ibirego nta shingiro bifite. Bityo rero, ibyo Akayesu avuga byose mu mpamvu ya gatatu y'ubujurire ntibyakiriwe.

4. Ingingo y'ubujurire ya kane : Ibimenyetso bitatanzwe mu iburanisha[407]

248. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo gushingira ku bimenyetso bitatanzwe mu iburanisha ry'urubanza rwe, maze rukabiheraho mu gufata icyemezo ku kibazo-shingiro ry'urubanza rwe. Avuga ko ari « ikosa mu rwego rw'amategeko (*Guca urubanza rurenganya*) ryatuma icyo cyemezo gita agaciro »[408]. Akayesu avuga ko akarengane yagize gakwiye gushingirwaho kugira ngo "kumukurikiranaho ibyaba bihagarare"[409].

a. Ibivugwa n'ababuranyi

249. Akayesu avuga ko :

> Urukiko rwaciye urubanza rushingiye ku bimenyetso bitatanzwe mu rubanza rwe, ndetse bigakorwa adahari kandi atabizi[410].

250. By'umwihariko, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwashingiye kubimenyetso bitatanzwe mu rubanza rwe maze rukemeza ko, kimwe n'abandi ba

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[407] Reba umugereka B. Mu cyemezo cyo ku itariki ya 24 Gicurasi 2000, Urugereko rw'Ubujurire rwemereye Akayesu guhindura iyo ngingo y'ubujurire. Na none muri icyo cyemezo, Urugereko rwemeye ko amapaji amwe y'inyandikomvugo y'iburanisha ryo ku itariki ya 14 Ukwakira 1997 mu rubanza *Porokireri aburanamo na Georges Rutaganda*, No ICTR-96-3-T ashyirwa muri dosiye ariko rwanga kwakira ibindi byifuzo byinshi birimo icyasabaga gushyira muri dosiye ubuhamya bwatanzwe hejuru y'indahiro. Mu cyemezo rwafashe ku itariki ya 12 Nyakanga 2000, Urugereko rw'Ubujurire rwemereye Porokireri gushyira muri dosiye ibindi bice by'inyandikomvugo y'iburanisha ry'uwo munsi muri urwo rubanza (Reba Umugereka A).

[408] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 2.

[409] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 26 ; Umutwe XV, igika 1 n'ibivugwa na Akayesu , ibika 13 na 135. Urugereko rw'Ubujurire rusanga muri icyo gika cya nyuma Akayesu avuga ko : «Ku buryo bw'ingoboka, Urugereko rushobora gukuraho urubanza rwaciwe mu rw'Iremezo maze rugategeka ko ruburanishwa bundi bushya ». Cyokora Urugereko rw'Ubujurire rusanga ibyo Akayesu asaba bivuguruzanya n'izindi ngingo atanga zisaba kurenganurwa, Imyanzuro ya Akayesu mu bujurire, Umutwe XV, igika 2, aho Akayesu avuga ko « Uko kurenganurwa ntibisabwa n'Ujurira nk'uburyo bwo gukemura ikibazo bujyanye n'uko ibintu biteye ».

[410] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika. 1.

Burugumesitiri na ba Perefe, nyuma y'inama y'itariki ya 18 Mata 1994 yahinduye imyitwarire ye ku byerekeye jenoside[411]. Agira ati :

> Urugereko rwa Mbere rw'Iremezo rwanyuranyije n'ihame shingiro cyangwa ndakuka ritegeka umucamanza guca urubanza ashingiye ku bimenyetso byatanzwe mu iburanisha, aho gushingira ku byo azi ku giti cye yavanye ahandi[412].

251. Akayesu avuga, ahanini, ko Abacamanza bagize Inteko y'Urugereko rwa Mbere rw'Iremezo, bashakishije ibimenyetso by'inyongera byerekeye urubanza rwe, babisabye umugabo watanze ubuhamya mu rundi rubanza urwo Rugereko rwaburanishaga, ni ukuvuga urubanza Porokireri yaburanagamo Georges Rutaganda, urubanza No ICTR-96-3-T (« Urubanza rwa *Rutaganda* »)[413]. By'umwihariko, yemeza ko ku itariki ya 14 Ukwakira 1997, ubwo umutangabuhamya w'impuguke witwa Filip Reynjtens (« umutangabuhamya w'impuguke ») yitabaga urukiko mu rubanza rwa *Rutaganda*, Perezida w'Urugereko rwa Mbere rw'Iremezo yahise ahindura umurongo w'ubuhamya bw'uwo mugabo amubaza ibibazo ku bivugwa ko ababurugumesitiri bahinduye imyitwarire yabo nyuma y'inama yabereye i Gitarama ku itariki ya 18 Mata 1994[414]. Akayesu avuga ko uwo mutangabuhamya w'impuguke yavuze ko koko nyuma y'iyo nama bamwe mu ba burugumesitiri bahinduye imyitwarire yabo. Yavuze ko azi ko mu rubanza rwa Akayesu Urugereko rwa Mbere rw'Iremezo rwari rukeneye kumenya amakuru ku ihinduka ry'imyifatire y'ababurugumesitiri[415]. Akayesu avuga ko icyo kibazo kitarebaga urubanza rwa *Rutaganda*[416]. Ahubwo cyari cyerekeye urubanza rwe[417].

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[411] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 2.
[412] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 23 (ibisobanuro byo hasi ku rupapuro ntibyongewemo).
[413] Mu rubanza rwa *Rutaganda*, Urugereko rwa Mbere rw'Iremezo, I rwari rugizwe n'abacamanza bamwe n'abari mu rubanza rwa Akayesu aribo Laïty Kama (Perezida), Lennart Aspegren na Navanethem Pillay.
[414] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, XI, igika 8.
[415] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 9.
[416] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, ibika 9 na 10. Akayesu « asaba Porokireri kubwira Urugereko ahantu, niba hariho, mu nyandikomvugo y'urubanza rwa Georges Rutaganda, hari ibintu bivugwa na Perezida », ni ukuvuga muri rusange, aho ahavugwa iyo mihindukire y'imyifatire. Ibisabwa biramutse bidahari, Ujurira avuga ko Urugereko rw'Ubujurire rugomba kwanzura ko ibibazo byabajijwe byari byerekeye urubanza rwa Akayesu, kuko arirwo rubanza rwonyine rrundi rwaburanishwaga n'Urukiko icyo gihe. Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 12. Reba nanone igisubizo cya Akayesu , igika 133 n'inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, imp. 114-116 (urup. 83 mu nyandiko iri mu rurimi rw'icyongereza).
[417] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, ibika 10 -12. Akayesu avuga ko ibyavuzwe na Perezida w' Urugereko mu buhamya bw'umutangabuhamya w'impuguke, by'umwihariko ubwo yavugaga « ikibazo cyakunze

252. Akayesu avuga ko ibibazo Perezida w'Urugereko yabajije ubwo uwo mutangabuhamya w'impuguke yatangaga ubuhamya mu Rukiko byari byerekeye ikibazo-shingiro cy'urubanza rwe[418]. Urugereko rwaba rwaragendeye kuri icyo kibazo-shingiro mu mwanzuro rwafashe uri mu nyandiko y'urubanza aho rwemeza ko yahinduye imyifatire nyuma y'inama yo ku itariki ya 18 Mata 1994[419]. Ashingira ku mpamvu y'uko atari ahari ubwo Urugereko rwa Mbere rw'Iremezo rwumvaga ibyo yita ubuhamya bukomeye bwatanzwe n'umutangabuhamya w'impuguke[420]. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwafashe imyanzuro rushingiye ku buhamya rwumvise adahari[421], bwatanzwe mu byo yita « iperereza ryakozwe n'Urukiko ku bikorwa urubanza rwe rushingiyeho »[422], akaba ataramenyeshejwe ubwo buhamya ndetse ntanahabwe n'umwanya wo kunyomoza uwo mutangabuhamya[423]. Asanga Urugereko rwa Mbere rw'Iremezo rwarapfobeje uburenganzira umuntu afite bwo kuburanishwa nta karengane kandi mu ruhame[424]. Akayesu avuga kandi ko, mu gihe uwo mugabo w'impuguke yasozaga ubuhamya bwe mu Rukiko, Urugereko rwa Mbere rw'Iremezo rwamwemereye kugira « icyo avuga kibangamira urubanza rwe » (*sic*)[425].

253. Akayesu avuga ko kubera ko rwabonye ibimenyetso muri ubwo buryo, ni ukuvuga adahari, Urugereko rwa Mbere rw'Iremezo rwamuvukije uburenganzira bwe bwo kunyomoza umutangabuhamya, bityo runyuranya n'uburenganzira shingiro afite. Avuga

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kugaruka mu iburanisha » mu rubanza rwa *Rutaganda*, ntibyari byerekeye urwo rubanza ahubwo byari byerekeye urubanza rwe.

[418] Akayesu avuga ko « Ibyo Porokireri yavuze (byemewe n'Urukiko) byashakaga kwerekana ko yakoze byinshi ngo arengere Abatutsi nyamuke kugeza ku itariki ya 18 Mata 1994. Nyuma y'iyo tariki, ngo yaba yarahindutse maze agashaka gutsemba Abatutsi ». Imyanzuro y'ubujurire ya Akayesu, Umutwe XI, igika 14.

[419] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 14.

[420] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 15.

[421] Akayesu avuga ko hashingiwe ku ngingo ya 80 y'Amategeko (agenga «Umutekano mu cyuma cy'iburanisha »), yari afite uburenganzira bwo kuba ahari ubwo umutangabuhamya w'impuguke yatangaga ubuhamya ku kibazo kireba urubanza rwe. Imyanzuro ya Akayesu mu bujurire, Umutwe XI, ibika 17 na 18.

[422] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 15.

[423] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, ibika 15, 17- 20. Akayesu agira ati : «Mu iburanisha, uko Urugereko rwitwaye bisa no kumva ubuhamya mu muhezo babihishe uregwa ; iburanisha rigomba kubera mu ruhame, uregwa ahari ». Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 22. Reba nanone igisubizo cya Akayesu , igika 135 n'inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, urup. 116.

[424] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 21.

[425] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 16.

rero ko Urugereko rwamurengayije, rukabogama kandi ntirwazirikana inshingano yo guca urubanza ku buryo buboneye[426].

254. Muri rusange, Porokireri arwanya imyumvire ya Akayesu ku nyandikomvugo y'iburanisha mu rubanza rwa Rutaganda kimwe n'ibyo avuga ku byabaye. Porokireri avuga ko, uretse ko n'ubwo Akayesu atariko abibona, ibibazo Perezida w'Urugereko rwa Mbere rw'Iremezo yabajije umutangabuhamya w'impuguke byarebaga urwo rubanza [rwa Georges Rutaganda], kubera ko byari bigamije kumvikanisha uko ibintu byari bimeze ubwo Georges Rutaganda yakoraga ibikorwa yaregwaga[427]. Porokireri asanga ibibazo byabajijwe na Perezida w'Urugereko rwa Mbere rw'Iremezo byari bigamije gusa gusobanura ibintu byabaye byerekeranye gusa n'urwo rubanza kandi ntibyarenze urwo rwego ngo bivuge ku bintu byerekeye urubanza rwa Akayesu[428].

255. Porokireri avuga ko, mu nyandikomvugo y'iburanisha, nta kintu na kimwe cyemeza ibivugwa ko abaza umutangabuhamya w'impuguke mu rubanza rwa Rutaganda, Perezida w'Urugereko rwa Mbere rw'Iremezo yashakaga ibimenyetso byerekeye urubanza rwa Akayesu[429]. Mu by'ukuri, Porokireri yemeza ko Perezida w'Urugereko yasobanuye ko adashaka kubaza umutangabuhamya w'impuguke ibibazo byerekeye urubanza rwa Akayesu[430]. Porokireri avuga ko, ntawe ubimubajije, umutangabuhamya w'impuguke yivugiye ko ubuhamya bwe bushobora kugira akamaro mu rubanza rw'Ujurira ariko ntiyagira ikindi abivugaho[431]. Porokireri asanga kuba, mu rubanza rwa Rutaganda, Abacamanza barasanze ubuhamya bw'umutangabuhamya w'impuguke bukubiyemo amakuru muri rusange, biterekana ko rwashingiye ku bimenyetso byatanzwe muri urwo

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[426] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 25.

[427] Imyanzuro ya Porokireri isubiza, igika. 12.4. Porokireri avuga ko « uregwa muri uru rubanza yakoze ashishikaye mu kwezi kwa Mata kose kugeza mu ntangiriro za Gicurasi. Perezida w'Urugereko yari afite uburenganzira bwo kubaza ikibazo cyose asanga kijyanye n'urubanza kugira ngo yumve ibyo uregwa yakoze muri jenoside yabaye mu Rwanda mu kwezi kwa Mata 1994 ».

[428] Imyanzuro ya Porokireri isubiza, umutwe XI, ibika 12.4- 12.2. Ku gika 12.9, havugwa ko : « Muri dosiye nta kintu nta kimwe cyerekana ko Perezida w'Urugereko mu rubanza rwa Rutaganda yabajije umutangabuhamya w'impuguke kugira ngo abone ibimenyetso byerekeye urubanza rwa Akayesu».

[429] Imyanzuro ya Porokireri isubiza, igika 12.9

[430] Imyanzuro ya Porokireri isubiza, ibika 12.11-12.12.

[431] Imyanzuro ya Porokireri isubiza, igika 12.10.

rubanza ngo ruhamye Akayesu icyaha[432]. Mu gusoza kuri icyo kibazo, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwashingiye ku bimenyetso byinshi kugira ngo rwemeze ko Akayesu yahinduye imyitwarire nyuma y'inama yo ku itariki ya 18 Mata 1994[433]. Porokireri asanga Urugereko rwa Mbere rw'Iremezo rwarerekanye, mu buryo bwumvikana, icyo rwashingiyeho mu myanzuro yarwo kandi ntaho rwigeze rushingira ku buhamya umugabo w'impuguke yatanze mu rubanza rwa *Rutaganda*.

1. Isesengura ry'Urugereko

256. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwafashe icyemezo rushingiye ku buhamya bukomeye bwatanzwe adahari bityo uburenganzira afite bwo kuburanishwa ku buryo buboneye bukaba butarubahirijwe kubera ko yavukijwe uburenganzira bwe bwo kunyomoza umutangabuhamya. Urugereko rw'Ubujurire rwemera ko, muri rusange, uregwa afite uburenganzira bwo kunyomoza umutangabuhamya wese umushinja. Ubwo burenganzira buteganywa n'ingingo ya 20 4) e) ya Sitati n'iya 85 B) y'Amategeko y'Urukiko[434]. Ikibazo ni ukumenya niba, muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa ruvutsa Akayesu uburenganzira afite bwo kunyomoza umugabo ushinja. Mu byo rusuzuma, Urugereko rw'Ubujurire rugomba kureba niba hari ibimenyetso byatuma umuntu avuga ko Urugereko rwa Mbere rw'Iremezo rwabajijie umutangabuhamya w'impuguke ku bibazo birebana n'urubanza rwa Akayesu. By'umwihariko, rugomba kureba niba Urugereko rwa Mbere rw'Iremezo rwarazirikanye

[432] Imyanzuro ya Porokireri isubiza, igika 12.14.
[433] Imyanzuro ya Porokireri isubiza, igika 12.16. Porokireri yanavuze ko Akayesu avuga ko inyandikomvugo y'iburanisha mu rubanza rwa Rutaganda iri mu rurimi rw'icyongereza irimo amakosa kandi ko kubwe, iyo nyandikomvugo yagombye kuvuga neza ko Perezida w'Urugereko yabajijie ikibazo yavuze ko cyakunze kugaruka « mu iburanisha ryose » atari mu rubanza rwe rwonyine [rwa Akayesu]. (Imyanzuro ya Porokireri isubiza, ibika 12.6- 12.8). Porokireri yananiwe, ku buryo bugaragara, gutandukanya ibivugwa na Akayesu mu myanzuro kuri iyi mpamvu y'ubujurire n'ibyo avuga mu cyifuzo cye gisaba guhindura iyo mpamvu (Icyifuzo gisaba kongera igihe cy'ubujurire no kwemera ikindi kimenyetso gishya mu bujurire hashingiwe ku ngingo z'i 115 na 116 z'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso). Biragaragara ko ujurira yaretse iyo mpamvu yihariye, hashingiwe ku cyemezo Urugereko rwafashe ku itariki ya 24 Gicurasi 2000 rwanga icyifuzo Akayesu yatanze asaba gukosora dosiye ye.(Reba na none Imyanzuro ya Akayesu mu bujurire isubiza, igika 134).
[434] Uburenganzira bwo kunyomoza umutangabuhamya buteganywa hiseguriewe amarengayobora ku mahame y'ubuhamya butaziguye mu iburanisha. Ayo marengayobora akaba avugwa hano hasi mu isesengura ry'Urugereko ku buhamya abagabo batanga ku byo bumvise. Ariko, kuri iki kibazo ayo marengayobora ntiyakoreshwa kubera ko ibyo bimenyetso byaba byaramenyekanishijwe ubwo umugabo yatangaga ubuhamya mu Rukiko. Byongeye kandi,

ubwo buhamya mu guhamya Akayesu ibyaha ku birego bijyanye na bwo biri mu Nyandiko y'ibirego.

257. Urugereko rw'Ubujurire rusanga ababuranyi bombi bashingira, ahanini, k'ukwivuguruza basanga mu isemura ry'amagambo yavuzwe na Perezida w'Urugereko ku mpapuro zanditseho ibirebana n'iyi ngingo mu nyandikomvugo y'iburanisha iri mu rurimi rw'icyongereza mu rubanza rwa *Rutaganda*[435]. Urugereko rw'Ubujurire rushimangira ko Urukiko rukoresha icyongereza n'igifaransa[436]. Inyandikomvugo zifatwa muri izo ndimi zombi iyo umugabo atanga ubuhamya. Ariko, nk'uko bimeze muri uru rubanza, hari imvugo zivuguruzanya kandi zirebana nyirizina n'imitereke y'ikibazo cyabyukijwe kuri iyi ngingo y'ubujurire. Urugereko rw'Ubujurire rurashingira ku nyandikomvugo y'iburanisha yafashwe mu rurimi Perezida w'Urugereko yakoresheje, ni ukuvuga igifaransa[437].

258. Urubanza rwa Georges Rutaganda rwatangiye ku itariki ya 18 Werurwe 1997 rurangira ku ya 17 Kamena 1999[438]. Rwahuriranye rero gato n'urwa Akayesu rwatangiye ku itariki ya 9 Mutarama 1997 rukarangira ku ya 16 Werurwe 1998. Ibazwa ry'ingenzi ry'umutangabuhamya w'impuguke muri uru rubanza ryabaye ku itariki ya 14 Ukwakira 1997. Akayesu avuga ko Perezida w'Urugereko yahise ahindura umurongo umutangabuhamya w'impuguke yatangagaho ubuhamya, akareka ibibazo birebana n'urubanza rwa *Rutaganda*, maze « akavuga ibirebana n'urubanza rwa Jean-Paul Akayesu »[439].

259. Mbere na mbere, nta kimenyetso na kimwe Akayesu yatanze (ndetse ntiyanasabye uruhushya rwo kugitanga) kigaragaza uburyo umutangabuhamya w'impuguke yaba

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Porokireri asa n'aho atasabye ko, ubuhamya umugabo w'impuguke yatanze mu rubanza rwa Rutaganda bwashyirwa muri dosiye ya Akayesu, nk'urugero, bugashyirwamo nk'ubuhamya bushingiye ku nkuru mbarirano.

[435] Nk'urugero, Imyanzuro ya Porokireri isubiza, ibika 12.4-12.5 (ashingiye ku nyandiko yo mu cyongereza), ibika. 12.11-12.13 (ashingiye ku nyandikomvugo iri mu rurimi rw'igifaransa). Imyanzuro ya Akayesu mu bujurire (ashingiye muri rusange ku nyandikomvugo y'iburanisha ziri mu rurimi rw'igifaransa), Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri , ibika 133, 134.

[436] Ingingo ya 3 A) y'Amategeko.

[437] Reba na none Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika cya 133.

[438] Urubanza rwa *Rutaganda*, igika cya 11.

[439] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 8.

yaratandukiriye cyane ku byo yavugagaho. Icya kabiri, inyandikomvugo y'iburanisha igaragaza neza ko, n'ubwo Akayesu atari ko abibona, Perezida w'Urugereko rwa Mbere rw'Iremezo atahise ahindura umurongo w'ibyagibwagaho impaka mu iburanisha[440]. Ahubwo umutangabuhamya w'impuguke yari amaze gusubiza ikibazo abajijwe n'umucamanza Aspegren. Perezida w'Urugereko yavuze ko agiye gusubika iburanisha, ko ariko yongeraho ko mbere yo kubikora hari ikibazo ashaka kubaza umutangabuhamya w'impuguke[441]. Nta kimenyetso na kimwe Akayesu atanga kigaragaza ko Perezida w'Urugereko « yahinduye umurongo w'ibyavugwagaho muri icyo gihe ».

260. Naho ku bivugwa ko Perezida w'Urugereko yaba koko yarashakaga gusa ibimenyetso byerekeye urubanza rwa Akayesu, Urugereko rw'Ubujurire rusanga nta kintu na kimwe kitumvikana mu byavuzwe mbere y'ibibazo Perezida yabajije. Mu by'ukuri, Perezida w'Urugereko yagize ati : « Ngiye gusaba Porofeseri, ngiye kumubaza ikibazo cyakunze kugaruka mu rubanza »[442]. Mu cyongereza, iyo nteruro yasemuwe mu buryo bukurikira : « *I would like to ask him a question which has been recurring throughout this trial* »[443]. Urugereko rw'Ubujurire rusanga iyo nteruro yumvikana kandi, byanze bikunze, yerekeye urubanza rwarimo kuba (ni ukuvuga urubanza rwa *Rutaganda*). Rusanga kandi iyo nteruro irebana n'ikibazo Perezida w'Urugereko yasangaga "cyarakunze kugaruka mu rubanza ». Mu by'ukuri, Perezida w'Urugereko yakomeje agira ati :

> Mu kanya mwabivuze, Guverinoma yimukiye *i Gitarama*. Ndashaka kumenya impamvu Guverinoma yimukiye i Gitarama. Nyuma havuzwe isano iri hagati yo kuba Guverinoma yarimukiye i Gitarama n'ijambo ryaba ryaravugiwe mu nama y'abaperefe n'aba burugumesitiri. Nyuma y'iryo jambo abantu babonye abaperefe n'ababurugumesitiri benshi bahindura imyifatire. Mbere yaho basaga n'abarinze abaturage ariko nyuma y'iyo nama barabahinduka. Mbere yo gusubika iburanisha ndashaka ko mugira icyo mubivugaho[444]

261. Aha Perezida w'Urugereko arasa n'ugaragaza isano isano iri hagati y'ibibazo abaza n'ibyavuzwe mbere mu iburanisha. Nta kimenyetso na kimwe Akayesu atanga kigaragaza

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[440] Akayesu avuga ko Perezida w'Urugereko « yahise ahindura ibyarimo kuvugwa kugira ngo bareke dosiye ya Rutaganda maze bavuge ibya dosiye ya Akayesu ». Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika cya 8.
[441] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, imp. 73 (ENG) na 84 (FR).
[442] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, urup. 84 (FR).
[443] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, urup. 73 (ENG).

ko icyo kibazo kitakunze kugaruka mu rubanza rwaburanishijwe n'Urugereko rwa Mbere rw'Iremezo, haba muri rusange cyangwa igihe umutangabuhamya w'impuguke yatangaga ubuhamya. Urugereko rw'Ubujurire rusanga Akayesu avuga ko Porokireri agomba kugaragaza ahantu icyo kibazo kigenda kigaruka mu nyandikomvugo y'iburanisha mu rubanza rwa *Rutaganda*[445]. Kubera ko Porokireri atashoboye kubikora, Akayesu asanga umwanzuro ukwiye gufatwa ari uko Perezida w'Urugereko yavugaga ku rundi rubanza, ni ukuvuga urwa Akayesu[446]. Urugereko rw'Ubujurire ntirwumva ibintu kimwe na Akayesu. Kubera iyo mpamvu rugasanga, hataragaragajwe, nk'uko abyemeza, ko « ntaho ibibazo bya Perezida byari bihuriye n'ibaza ry'ibanze » ry'umutangabuhamya w'impuguke[447].

262. Akayesu avuga ko bigaragara ko Perezida w'Urugereko yavugaga ku rubanza rwe kubera ko ibibazo byabajijwe bitari bifitanye isano n'Urubanza rwa Rutaganda ahubwo bikaba byararebaga gusa urubanza rwe. Urugereko rw'Ubujurire si rwo rugomba kwemeza niba ibyavuzwe n'umutangabuhamya w'impuguke mu rubanza rwa *Rutaganda* byari byerekeye urwo rubanza kubera ko atari rwo rurimo kuburanishwa. Urugereko rw'Ubujurire rusanga gusa atari ikintu kidasanzwe cyangwa kitemewe ko Ingereko za Mbere z'Iremezo za TPIY na TPIR zivuga, muri rusange, amavu n'amavuko cyangwa inkomoko y'ibyabaye mu cyahoze cyitwa Yugosolaviya cyangwa mu Rwanda, kugira ngo rwumve neza imibereho bwite y'uregwa ruburanisha[448]. Kuri icyo kibazo, Urugereko

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[444] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, imp. 84, 85 (mu gifaransa ; ntibishimangiwe mu nyandiko y'umwimerere).

[445] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 12. Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri ku muanzuro isubiza ya Porokireri, igika 132.

[446] Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 132 ; Inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, imp. 114- 115 (Reba by'umwihariko inyandiko iri mu rurimi rw'icyongereza, imp. 83- 84)

[447] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 8.

[448] Kuri icyo kibazo, Urugereko rw'Ubujurire rusanga umutangabuhamya w'impuguke arangije gutanga ubuhamya mu Rukiko, Perezida w'Urugereko yaravuze ati : « Biranshimishije kubabwira ko twamenyeye byinshi mu buhamya bwanyu kuko, uretse ibivugwa mu rubanza rwa Georges Rutaganda, bwatumye tumenya uko ibintu byari bimeze muri rusange muri icyo gihugu ». Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1999, urup. 125 (FR). Urugereko rw'Ubujurire rusanga kandi , nk'uko Akayesu yabivuze (Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri , igika 133), ibyanditswe mu cyongereza ku magambo ya Perezida bitandukanye kubera ko bigaragaza ko Perezida w'Urugereko yaba yarabonye ko ubuhamya bw'umugabo bwaba bwatumye Urugereko rwa Mbere rw'Iremezo « *in the context of the trial of Georges Rutaganda… to have an overview of the general situation in the country* ». (p. 115). Nk'uko Perezida w'Urugereko yabivuze mu gifaransa, Urugereko rw'Ubujurire rushingira, nk'uko rwabivuze, ku nyandiko y'igifaransa bityo rukabona mu byavuzwe icyifuzo cy'Urugereko rwa Mbere rw'Iremezo cyo kumenya muri make amavu n'amavuko n'ishingiro ry'ibyabaye.

rw'Ubujurire rwemeranya na Porokireri ko Perezida w'Urugereko yari afite uburenganzira bwo kubaza ibibazo byose bijyanye n'urubanza kugira ngo yumve ibikorwa Georges Rutaganda yakoze mu gihe cya jenoside yabaye mu Rwanda muri Mata 1994. Byongeye kandi, Urugereko rw'Ubujurire rusanga kuba mu rubanza rwa Rutaganda Urugereko rwa Mbere rw'Iremezo rwaravuze ko ubuhamya umugabo w'impuguke yatanze mu Rukiko bwatumye « rwumva uko ibintu byari bimeze muri rusange muri icyo gihugu » kandi « Urukiko rwahamenyeye amakuru menshi»[449], bitavuga ko amakuru rwahawe yakoreshejwe mu guhamya icyaha Akayesu [450].

263. Akeyesu avuga ko bigaragara ko iryo perereza ryakozwe n'Urugereko rwa Mbere rw'Iremezo ryari rigamije kuvumbura ibintu birebana gusa n'urubanza rwe. Atanga urugero rw'uko mu buhamya bwe, umugabo w'impuguke yakomoje ku rubanza rwe [Akayesu]. Ubwo yavugaga, muri rusange, ibintu byabaye ku itariki ya 18 Mata 1994, umutangabuhamya w'impuguke yavuze ibikurikira ntawe ubimubajije: « Nta kindi nabivugaho. Yego nzi ko mukeneye ayo makuru mu rubanza rwa Akayesu ariko nta bisobanuro birambuye mbifiteho »[451]. Perezida w'Urugereko yafashe ijambo avuga ko yashakaga gusa « kumenya amakuru muri rusange»[452]. Perezida w'Urugereko yasobanuye neza ko adashaka amakuru na make yerekeye urubanza rwa Akayesu kandi, ibyo aribyo byose, umutangabuhamya w'impuguke yavuze ko nta bisobanuro birambuye afite[453]. Nk'uko bigaragaragara, umutangabuhamya w'impuguke yakomoje ku rubanza rwa Akayesu ntacyo ashingiyeho kandi ntawe ubimubajije. Amagambo y'uwo mutangabuhamya ntagaragaza ibyo Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo, cyangwa Perezida warwo, bashakaga amakuru yerekeye urubanza rwe cyangwa ko hatanzwe ibimenyetso muri urwo rwego.

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[449] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, urup. 125 (Igifaransa).
[450] Imyanzuro ya Porokireri isubiza, igika 12.14.
[451]Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, urup. 86 (Igifaransa).
[452] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, urup. 86 (Igifaransa).
[453] Yavuze ko ashobora gusa gusobanura ko inama yabaye kandi ko « Hakurikijwe ibyabaye bisuzumwa mu Rukiko, bamwe mu baburugumesitiri bahinduye imyitwarire nyuma y'iyo nama », Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, urup. 86 (Igifaransa).

264. Kubera iyo mpamvu, nta kintu na kimwe Urugereko rw'Ubujurire rwashingiraho rwemeza ko, mu rubanza rwa Rutaganda, Urugereko rwa Mbere rw'Iremezo rwashatse cyangwa rwabonye ibimenyetso bireba gusa urubanza rwa *Akayesu*. Ibyavuzwe byakuruwe n'ikibazo cya Perezida w'Urugereko, byerekeye amagambo rusange ariko Urugereko rwa Mbere rw'Iremezo ntirwashakaga guhuza n'urubanza rwa Akayesu. Umuntu rero yavuga ko ibyo byavuzwe hagamijwe gusa gushakisha amakuru rusange.

265. Akayesu avuga kandi ko ubuhamya umugabo w'impuguke yatanze mu rubanza rwa Akayesu ari ikintu cy'ingenzi Urugereko rwa Mbere rw'Iremezo rwashingiyeho mu kwemeza, ku ruhande rumwe, ko yahinduye imyitwarire nyuma y'inama yo ku itariki ya 18 Mata 1994, no kumuhamya, ku rundi ruhande, icyaha ku birego byinshi, igihe cyose hagaragazwaga ko yakoze ibikorwa nyuma y'iyo tariki[454]. Nta kimenyetso na kimwe Akayesu atanga gishyigikira ibyo avuga kandi ntiyerekana ahantu na hamwe mu nyandiko y'urubanza umuntu yashingiraho ashyize mu gaciro (cyangwa mu buryo budakuka) avuga ko Urugeregeko rwa Mbere rw'Iremezo rwashingiye ku buhamya umugabo w'impuguke yatanze mu rubanza rwa *Rutaganda* mu kwemeza ko imyifatire ya Akayesu yahindutse nyuma y'itariki ya 18 Mata 1994. Ahubwo, nk'uko Porokireri abivuga, « Urugereko rwa Mbere rw'Iremezo ruvuga, ku buryo bwumvikana, icyo rwashingiyeho rufata umwanzuro kandi ntirukomoza na rimwe ku buhamya bwatanzwe mu Rukiko mu rubanza rwa *Rutaganda* ku itariki ya 14 Ukwakira 1997»[455].

266. Ku byerekeye igika cya 12 cy'Inyandiko y'ibirego[456], Urugereko rwa Mbere rw'Iremezo rusanga umuntu ashobora « gutandukanya igihe cy'imbere y'itariki ya 18 Mata 1994 n'icy'inyuma yayo, kuko kuri iyo tariki aribwo i Murambi muri Gitarama habereye inama simusiga yahuje abari bagize Guverinoma y'agateganyo n'Ababurugumesitiri. Porokireri avuga ko nyuma y'italiki ya 18 Mata 1994, Ushinjwa yahinduye ku buryo bugaragara

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[454] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, ibika 14, 15.
[455] Imyanzuro ya Porokireri isubiza, igika 12.19.
[456] Dore igika kijyanye n'ibyo bivugwa: « N'ubwo yari afite ububasha bwa ngombwa bwo kubikora kandi biri no mu nshingano ze, Jean-Paul Akayesu ntiyigeze na rimwe agerageza, mu buryo ubwo aribwo bwose, kuburizamo ubwicanyi bwakorewe Abatutsi muri Komini. Byongeye kandi ntiyigeze na rimwe asaba inkunga y'abategetsi bo muri ako karere cyangwa b'igihugu kugirango ahagarike imvururu ».

imico n'imyitwarire bye»[457]. N'ubwo Urugereko rwa Mbere rw'Iremezo rwasanze ibimenyetso byinshi bigaragaza ko mbere y'itariki 18 Mata 1994, Akayesu yaburijemo ibikorwa by'imvururu muri Komine ya Taba[458], rwanzuye rugira ruti :

> Ibimenyetso byinshi cyane byatanzwe byerekana ko imyifatire y'Ushinjwa yahindutse rwose nyuma y'iyo nama yo kuwa 18 Mata 1994. Ndetse n'abatangabuhamya biswe E, W, PP, V na G basobanuye ukuntu Ushinjwa yakoranye n'Interahamwe muri Taba nyuma y'iyo tariki.[459]

267. Urugereko rwa Mbere rw'Iremezo rwashingiye kandi ku buhamya bwatanzwe mu Rukiko na A, DAX, DBB, R, DAAX, DCC, DCX na JJ mu gusuzuma ukwivuguruza n'ubuhamya bushinjura[460]. Kubera iyo mpamvu, Urugereko rwa Mbere rw'Iremezo rwemeje:

> « […] nta gushidikanya na gato, ko nyuma y'itariki ya 18 Mata 1994, imyifatire y'Ushinjwa yahindutse, kandi ko kuva kuri iyo tariki, atigeze agerageza guhagarika ubwicanyi bwibasiraga Abatutsi muri Komini ya Taba. Ndetse hari ibimenyetso bigaragaza ko, atamenye gusa ko ubwo bwicanyi bukorwa ngo anabwibonere, ahubwo yabugizemo uruhare, akanategeka abantu kubukora.[…] Hagaragajwe, nta gushidikanya na gato, ko yahisemo ku bushake kugira uruhare mu bikorwa by'urugomo byibasiraga Abatutsi, aho kubibakiza ».[461]

268. Urugereko rw'Ubujurire rwanzura ruvuga ko nta kintu na kimwe kigaragaza ko Urugereko rw'Ubujurire rwafashe uwo mwanzuro rushingiye ku buhamya bw'umugabo w'impuguke. Uyu mugabo ntiyatanze ubuhamya mu rubanza rwa *Akayesu.* Kubera iyo mpamvu, Urugereko ntirwanyuranyije n'ingingo ya 20 4) e) ya Sitati n'iya 85 B) y'Amategeko y'Urukiko, ziteganya ko uregwa afite uburenganzira bwo kunyomoza abatangabuhamya bashinja. Byongeye kandi, Urugereko ntirwanyuranyije na rimwe n'ihame rusange[462] rivuga ko uregwa afite uburenganzira bwo kuba ahari mu rubanza rwe. Urugereko rw'Ubujurire rusanga nta gice na kimwe cy'urubanza rwa Akayesu cyaburanishirijwe mu rubanza rwa *Rutaganda*. Nta kosa na rimwe Akayesu yatangiye ikimenyetso.

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457 Urubanza mu rw'iremezo, igika cya 183.
458 Urubanza mu rw'iremezo, ibika 184-186 na 192.
459 Urubanza mu rw'iremezo, igika cya 187.
460 Urubanza mu rw'iremezo, ibika 187-191.
461 Urubanza mu rw'iremezo, igika cya 193.
462 Ihame rishobora kutubahirizwa hakurikijwe ibiteganywa n'ingingo ya 80 y'Amategeko.

269. Mu gusoza kuri iki kibazo, Urugereko rw'Ubujurire ruributsa muri make[463] ko, nk'uko byemejwe n'Urugereko rw'Ubujurire rwa TPIY, umuntu agomba guhera ku gitekerezo kivuga ko « bikwiye kwiyumvisha ko abacamanza b'Urukiko mpuzamahanga 'badashobora kugendera ku myumvire iyo ariyo yose y'umuntu ku giti cye idafite aho ihuriye n'urubanza, uretse gusa mu gihe hatangwa nk'ikimenyetso cyo kuvuguruza iryo hame' »[464]. Mu yandi magambo, umuntu agomba kwiyumvisha ko Abacamanza ba TPIY n'ab'uru Rukiko batabogamye[465]. Ku byerekeye ibivugwa muri uru rubanza, birakwiye kwibutsa by'umwihariko ko abacamanza ari « *abacamanza b'umwuga, bahamagariwe kuburanisha imanza nyinshi zishingiye ku byabaye bimwe [cyangwa se zikomoka ku byabaye bifite inkomoko imwe], kandi ko bakwiye kwizerwa kubirebana n'uburyo bakoresha ubwenge bwabo mu gusesengura ibimenyetso bigendana n'urubanza bashyikirijwe* »[466]. Kenshi Abacamanza b'uru Rukiko n'aba TPIY baburanisha imanza nyinshi igihe kimwe kandi, urebye uko ziteye, zivuga ku bibazo bimwe bigenda bigira aho bihurira byanze bikunze. Uretse mu gihe haba hari ikimenyetso kibinyomoza, umuntu yavuga ko kubera amashuri bize n'imirimo bakoze, abacamanza bafata ibyemezo ku bibazo byose bashyikirijwe batabogamye kandi bashingiye gusa ku bimenyetso byashyizwe muri dosiye y'urubanza. Akayesu ntiyagaragaje ko abacamanza bashyize mu rubanza rwe ibimenyetso byatanzwe mu rundi rubanza kandi ko babishingiyeho mu myanzuro yabo.

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463 Kuri iyo ngingo rumaze kumva ibyo Akayesu avuga ko « Imyitwarire y'Urugereko rwa Mbere rw'Iremezo inyuranyije n'imikirize myiza y'imanza cyangwa ya magambo akomeye cyane avuga ko « ubutabera butagomba gukorwa gusa, ko ahubwo bigomba kugaragara bya nyabyo kandi ku buryo budashidikanywaho ko bukorwa koko ». Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 24 (ibisobanuro byo hasi ku rupapuro ntibyongewemo).

464 Urubanza rwa *Furundzija* mu bujurire, igika 197, hifashishijwe ibivugwa mu rubanza *President of the Republic of South Africa and Others v. South African Rugby Football Union and Others, Judgement on Recusal Application*, 1999 (7) BCLR 725 (CC) [urubanza Perezida w'Afurika y'Epfo na bagenzi be baburana n'Ishyirahamwe ry'umupira wa *Rugby* ryo muri Afurika y'Epfo, Urubanza rwerekeye ubwihane], 3 Kamena 1999, igika 48.

465 Urubanza rwa *Furundzija* mu bujurire, igika 196 : « Urugereko rw'Ubujurire rusanga umucamanza ari umuntu ugomba gufatwa ko ntaho abogamiye ». Reba na none, urubanza rwa *Celebici* mu bujurire, ibika 683 na 697. Ingingo 12 1) ya Sitati.

466 Icyemezo ku cyifuzo cyihana umucamanza wo mu Rugereko rwa Mbere rw'Iremezo cyatanzwe na Momir Tali}, *Porokireri aburana na Radoslav Brđanin et Momir Talic,* urubanza No. IT-99-36-PT, 18 Gicurasi 2000, igika 17, ruvugwa mu rubanza rwa *Čelebići* mu bujurire, igika 700.

270. Mu gusoza kuri iki kibazo, Akayesu avuga ko umutangabuhamya w'impuguke yemerewe « atihanganirijwe na gato » kuvuga ibintu bibangamiye urubanza rwe[467]. Akayesu ntatanga ingingo n'imwe yo mu mizi y'urubanza ishyigikira ibyo avuga kandi arasa n'aho yatoranyije mu nyandikomvugo y'iburanisha, ibice avugaho atitaye ku bindi. Urugereko rw'Ubujurire rwifuza gushyira ibyo bintu birwanywa mu rwego byavuzwemo. Mu gihe hapfundikirwaga ibaza rinyomoza, Perezida w'Urugereko yavuze ko Ubwunganizi buteganya kunyomoza umutangabuhamya w'impuguke ku itariki yari kugenwa nyuma[468]. Hagiwe impaka ku itariki uwo mutangabuhamya yari kugarukiraho, maze avuga [umutangabuhamya] ingendo yateganyaga gukora muri rusange kandi yabivuze muri aya magambo :

> Bwana Perezida hari ikindi kintu nshaka kuvuga gishobora kugira ingaruka ku kibazo cy'itariki. Avoka Monthe wunganira Akayesu, yendebye inshuro ebyiri. Hasigaye amezi abiri. Nibwira ko namwumvishije ko ntaba umutangabuhamya ushinjura ukwiye, ariko Avoka Monthe yasaga naho agikomeje igitekerezo cyo kumpamagaza nk'umutangabuhamya ushinjura … wenda umuntu yagerageza gushyira hamwe ibyo bintu byombi…. Mbibwiye Urukiko kuko ari ikintu gishobora gukemura ibyo bibazo birebana n'ingengabihe.[469]

271. Urugereko rw'Ubujurire rusanga umutangabuhamya w'impuguke yaravuze gusa ibyo bintu mu rwego rw'impaka zerekeye gushyiraho itariki yari kongera gutangiraho ubuhamya mu Rukiko. Yabivuze ntawe ubimubajije bityo Akayesu akaba yibeshya avuga ko Urugereko rwa Mbere rw'Iremezo rwemereye uwo mutangabuhamya w'umpuguke kuvuga ibyo bintu « rutamucyashye na gato» [470]. Nta kintu na kimwe cyatuma umuntu atekereza ko ibyo uwo mutangabuhamya yavuze byazirikanywe cyangwa bigashingirwaho n'Urugereko rwa Mbere rw'Iremezo ku buryo, nk'uko Akayesu ashaka kubivuga, byaba byaratumye arenganywa ku buryo ubwo ari bwo bwose.

272. Mu kwanzura, Urugereko rw'Ubujurire rusanga Akayesu ataragaragaje ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa. Iyo mpamvu y'ubujurire nta shingiro ifite rero.

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[467] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, igika 16.
[468] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, urup. 119 (Igifaransa).
[469] Inyandikomvugo y'iburanisha (urubanza rwa *Rutaganda*), 14 Ukwakira 1997, imp. 121-122 (Igifaransa).
[470] Imyanzuro ya Akayesu mu bujurire, Umutwe XI, ibika 2 na 16.

5. Ibindi bibazo[471]

273. Akayesu avuga ko ari ibibazo byo « kudakurikiza amategeko » ariko bidafite agaciro kanini. Haruguru, hari aho Urugereko rw'Ubujurire rwavuze haruguru uko ruteganya gusuzuma ibibazo bivugwa ko bijyanye n'iyi mpamvu y'ubujurire. Urugereko rw'Ubujurire ruzasuzuma ibyo bibazo rumaze gusuzuma ingingo z'ingenzi z'ubujurire[472].

E. Impamvu y'ubujurire ya gatanu: Kuba igihugu kitagendera ku mategeko na gato

274. Nk'impamvu y'ubujurire yihariye, Akayesu avuga ko igihugu kitagenderaga ku mategeko na mba, maze akagira ati :

> Urukiko rwashyizweho kugira ngo u Rwanda rube igihugu kigendera ku mategeko no guca umuco wo kudahana. Kuva mu mwaka wa 1994, himakajwe umuco wo kudahana ukingira ikibaba abanyagitugu bashyashya b'abicanyi kubera ibikorwa bakoze mu Rwanda, n'ibyo bakoze mu burasirazuba bwa Kongo-Zaïre mu mpera z'umwaka wa 1996, uwa 1997 na 1998. Porokireri Mukuru, umucamanza mu bujurire, Louise Arbour wo muri Kanada yashyizeho umupolisi w'umunyakanada witwa Pierre Duclos, uzwiho kuba yarahimbye ibimenyetso mu rubanza rwa Matticks. Bwana Duclos yashinzwe « gukora iperereza » k'uwahoze ari Minisitiri w'Intebe Jean Kambanda. Imyifatire y'Urukiko n'ubuyobozi bwarwo, no kuvutsa uregwa uburenganzira bwe byagambiriwe nk'uko bivugwa muri iyi nyandiko y'ubujurire, ntibyakwemerwa na rimwe muri Kanada cyangwa mu Rukiko rw'Ubujurire rwa Ontario aho Madamu Louise Arbour yari umucamanza mbere yo gufata ikiruhuko ngo abe Porokireri. Uregwa afite uburenganzira bwo kugarurirwa icyubahiro cye nk'ikiremwamuntu no gusubizwa ubwigenge bwe (*sic*) [473].

275. Iyi mpamvu y'ubujurire, ivugwa mu nyandiko ya kabiri y'ubujurire bwa Akayesu ntiyasobanuwe haba mu myanzuro ye, haba mu gisubizo cye ndetse no mu iburanisha mu bujurire. Kubera iyo mpamvu, Porokireri ntiyigeze agira icyo ayivugaho.

276. Urugereko rusanga rutagomba kwakira iyo ngingo y'ubujurire bityo rukaba rutaza kuyisuzuma.

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471 Reba umugereka B.
472 Reba ibika 38-41.
473 Reba umugereka B.

F. Impamvu y'ubujurire ya gatandatu: ubuhamya bushingiye ku nkuru mbarirano bwatanzwe mu buryo butemewe[474]

277. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu buryo rwasuzumye ubuhamya bushingiye ku nkuru mbarirano abatangabuhamya batanze. Ku ruhande rumwe, avuga ko imisuzumire y'ubwo buhamya ubwayo idahagije guhamya ko urubanza rwaciwe nabi cyangwa ko habaye ikosa rishingiye ku ngingo y'itegeko[475], ariko ku rundi ruhande akavuga ko Urugereko rw'Ubujurire ruramutse rwemeye iyo ngingo y'ubujurire, uwo mwanzuro warwo watesha agaciro icyemezo cyamuhamije icyaha gikubiye mu kirego cya 12 cy'Inyandiko y'ibirego»[476].

I. *Ibivugwa n'ababuranyi*

278. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemera, muri rusange, ubuhamya abagabo batanze mu Rukiko kandi bushingiye ku nkuru mbarirano rutubahirije ibiteganywa n'ingingo ya 89 C) y'Amategeko y'Urukiko kandi rutazirikanye ibigomba kubahirizwa ngo ubuhamya umuntu atanze ku byo yumvise bwemerwe nk'uko bivugwa mu cyemezo cyafashwe mu rubanza rwa *Tadic*[477]. Ni gutyo ubuhamya bushingiye ku nkuru mbarirano bwagiye bwakirwa mu rubanza rwose batabanje kureba niba bwakwizerwa[478]. Avuga ko, n'ubwo byari byasobanuwe mu rubanza ko byari ngombwa ko ubuhamya bushingiye ku nkuru mbarirano busuzumanwa ubwitonzi atari ko byagenze[479]. Avuga ko Urugereko rwa Mbere rw'Iremezo rutemereye ababuranyi kuvuga

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[474] Icyemezo cyo ku itariki ya 24 Gicurasi 2000 cyemereye Akayesu kongera icyo cyiciro mu mu ngingo y'ingenzi y'ubujurire. Mu myanzuro ye, Akayesu avuga nanone ingingo ebyiri z'ubujurire zari mu nyandiko ye ya mbere y'ubujurire. Reba umugereka B.

[475] Imyanzuro ya Akayesu, Umutwe IX, igika 14.

[476] Imyanzuro ya Akayesu, Umutwe IX, igika 3.

[477] Impamvu y'ingenzi y'ubujurire bwa Akayesu. Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika. 1. Urugereko rw'Ubujurire rusanga, uretse intangiriro y'ibisobanuro atanga kuri iyo ngingo y'ubujurire mu iburanisha ry'ubujurire, Akayesu atarigeze avuga ibintu byumvikana. Akayesu avuga ko ibiteganywa n'Amategeko bidakaze nk'ibiteganywa mu miburanishirize y'imanza s'inshinjabyaha mu nkiko zigendera ku mategeko ashingiye kuri « *common law »,* ariko ko n'ubwo ibintu bimeze gutyo hari inshingano ikomeye yo kugenzura ukuri kw'ibimenyetso. Mu yandi magambo, Akayesu avuga ko muri rusange, mu iburanisha « bitari byemewe kurwanya ubuhamya bushingiye ku nkuru y'imbarirano». Inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, imp. 122-123.

[478] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, ibika 3,12 na 13.

[479] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, ibika 2 na 3.

ibyo banenga[480] kandi ko kubera iyo mpamvu ababuranyi batagize ikintu na kimwe banenga. Kuri icyo kibazo, ibyo anenga byerekeye Umwunganira, Urukiko ndetse na Porokireri[481]. Ashingiye ku bukemuramanza bwa TPIY, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rugomba kugenzura uburyo ibimenyetso byabonetsemo n'ibikubiye mu buhamya, ndetse no kuzirikana « ukuri kw'ibimenyetso, rukareba niba byaratanzwe ku bushake ndetse rukareba n'ukwizerwa kwabyo »[482].

279. Mu gutanga urugero ku myitwarire y'Urugereko rwa Mbere rw'Iremezo ku buhamya bwatanzwe bushingiye ku nkuru mbarirano, Akayesu avuga ko urwo Rugereko rwanze kwakira ubuhamya umugabo ushinjura wiswe DJX yatanze mu Rukiko ku bintu bibiri[483]. Yemeza ko Urugereko rwa Mbere rw'Iremezo rwanze kwakira ubuhamya bwatanzwe n'uwo mugabo kuri ibyo bintu rutabanje kureba niba bwakwizerwa[484]. Avuga ko iryo

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[480] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika 4. Akayesu ntiyasobanuye icyo kibazo muri iyo mpamvu y'ubujurire. Ariko, Urugereko rw'Ubujurire rusanga, mu gushyigikira ibyo avuga, Akayesu avuga ku nyandikomvugo y'iburanisha ryo ku itariki ya 5 Gashyantare 1997. Ibyo avuga byerekeye ibyavuzwe na Porokireri mu ibaza rinyomoza ry'umutangabuhamya ushinja wiswe S. Perezida w'Urugereko yasabye Porokireri kuba aretse kugira icyo abivugaho (byerekeye gukosora ibyo Uwunganira uregwa yari amaze kuvuga), kugira ngo azabivugeho mu ibaza ry'inyongera. Yagize ati : « Ndabirwanya, mu gihugu cyanjye ibyo bintu ntibibaho mu iburanisha. Ubwo rero ntibyumvikana na none. Ndashaka kuvuga ahandi». Inyandikomvugo y'iburanisha, 5 Gashyantare 1997, urup. 161. Ni muri urwo rwego yavuzemo ibyo bintu kandi ibyo aribyo byose nta sano n'imwe byari bifitanye n'ikibazo cyavuzwe muri iyo mpamvu y'ubujurire.Ibyo aribyo byose, Akayesu ntatsimbaraye kuri icyo kibazo.

[481] Imyanzuro ya Akayesu, Umutwe IX, igika ibika 4 na 14 : Akayesu « anenga Urukiko, abamwunganira na Porokireri kubera uburyo budahwitse basesenguye ubuhamya bushingiye ku nkuru mbarirano ». Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 96. Ibyo avuga by'uko uwamwunganiraga atari ashoboye akazi bisuzumwa mu rwego rw'ingingo ya kabiri y'ubujurire. Imyanzuro ya Akayesu mu bujurire. Umutwe IX, igisobanuro 7, Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igisobanuro 44. By'umwihariko, ruributsa ko kuba uwunganira uregwa ataragize icyo avuga ku iyakairwa ry'ubuhamya bushingiye ku nkuru mbarirano bitavuga ko adashoboye akazi. Urugereko rw'Ubujurire ntirufite inshingano yo kugerageza kumva « ingamba » z'uwunganira uregwa mu rubanza uru n'uru.

[482] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika 6, ashingiye ku Cyemezo cy'Urugereko ku cyifuzo cy'Ubwunganizi kirebana n'ibimenyetso biziguye, *Porokireri aburana na Duško Tadic*, urubanza No. IT-94-1-T, Urugereko rwa Mbere rw'Iremezo, 5 Kanama 1996. Ashingira kandi ku rubanza rwa *Blaskic* no ku Cyemezo cy'Urugereko ku byifuzo Porokireri bwatanze mu magambo busaba kwemererwa gushyira ikimenyetso 155 muri dosiye y'ibimenyetso no gutegeka uregwa Zdravko Mučic gutanga umukono w'imyandikire ye, Porokireri aburana na *Zejnil Delalić na bagenzi be*, urubanza No. IT-96-21-T, 19 Mutarama 1998 (Imyanzuro ya Akayesu mu bujurire, Umutwe IX, ibika 7 na 9). Akayesu avuga kandi ko amategeko akoreshwa muri TPIY no muri uru Rukiko yagombye kuba amwe. Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika 5.

[483] Akayesu avuga ko Padiri wiswe DJX yamufashije guhosha imvururu mu baturage. Ubuhamya uwo mugabo yatanze mu Rukikko bwerekeye : 1) kuba Akayesu n'abapolisi baragerageje kuburizamo ubwicanyi, kugarura amahoro mu baturage no guhosha ubushyamirane, 2) kuba *Interahamwe* zarishe abapolisi no 3) kuba Akayesu yararokoye « uwitwa Gakwaya ». Imyanzuro ya Akayesu mu bujurire, Umutwe IX, ibika 15 na 16.

[484] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, ibika 14 -17. Mu gika 17, avuga ko « inshuro ebyiri, Urugereko rwanze ko hakorwa igenzura ryo kureba ukuntu umutangabuhamya yamenye ibyababaye ndetse rukanga ubuhamya

kosa ryaba, by'umwihariko, ryaratumye Urugereko rwa Mbere rw'Iremezo rwanga ubuhamya bushinjura ku birebana n'ikirego cya 12 cyo mu Nyandiko y'ibirego. Ngo kubera iyo mpamvu, ntiyagombaga guhamwa n'icyaha kuri icyo kirego[485]. Mu gusoza kuri iki kibazo, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo kwakira ubuhamya abagabo bashinja batanze bushingiye ku nkuru mbarirano nyamara rukanga kwakira ubw'abashinjura batanze nabo bashingiye kuri bene izo nkuru. Avuga ko ibyo bigaragaza ko Urugereko rwabogamye[486].

280. Muri rusange, Porokireri avuga ibintu bikurikira : Akayesu ntiyigeze asaba ko ibintu byakosorwa ku byerekeye iyo mpamvu y'ubujurire. Avuga gusa ko iryo kosa rituma « k'urugero, icyemezo kimuhamya icyaha gikubiye mu kirego cya 12 cy'Inyandiko y'ibirego kigira inenge ». Avuga ko Akayesu yagombye, « nibura gusobanura igice cy'inyandiko y'urubanza giterwa inenge n'amakosa avuga ». Ijambo « nk'urugero » akoresha (mu cyifuzo cye gisaba kurenganurwa) rituma umuntu yumva ko ibindi birego, bidasobanurwa, bishobora kurebwa na byo n'ayo makosa avuga. Porokireri avuga ko Akayesu yemeye ko kwemera ubuhamya bushingiye ku nkuru mbarirano ubwabyo bitatuma icyemezo cyafashwe gita agaciro; kandi ko Ubwunganizi butigeze bubyutsa icyo kibazo mu gihe cy'iburanisha. Porokireri asaba Urugereko rw'Ubujurire kutakira iyo ngingo y'ubujurire[487].

281. Porokireri avuga ko ari ukuyobya amarari gutanga urugero rwa DJX hagamijwe kwererekana ko, mu gusuzuma ubuhamya bushingiye ku nkuru mbarirano bwatanzwe n'abatangabuhamya bashinjura, Urugereko rwagendeye ku bisabwa kuzuzwa bigoranye kurushaho[488]. Avuga ko, n'ubwo Akayesu atari ko abibona, ubuhamya bwa DJX bwakiriwe n'Urugereko rwa Mbere rw'Iremezo kandi ko Akayesu yitiranya iyakirwa

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bushingiye ku nkuru mbarirano. Urugereko rwabikoze ntacyo rushingiyeho kandi rudakurikije amategeko, ku buryo bibangamiye inyungu z'ubwunganizi». Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 100.

[485] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika 18. Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 100. Akayesu avuga ko « Urugereko rwamurenganyije cyane mu gihe rwangaga kwemera ubuhamya bw'ingirakamaro bushingiye ku nkuru mbarirano kandi ari bwo bwari gutuma Urugereko rushidikanya ku myitwarire ye ku birebana n'Abatutsi no kuba yaragerageje kubarinda ».

[486] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, Igika 3.

[487] Imyanzuro ya Porokireri isubiza, ibika 10.4- 10.8.

[488] Imyanzuro ya Porokireri isubiza, igika. 10.24

ry'ibimenyetso no kubiha agaciro[489]. Porokireri asanga ikibazo cy'agaciro kahabwa ibyo bimenyetso kitavugwa muri iyi ngingo y'ubujurire[490]. Byongeye kandi, n'ubwo Urugereko rwa Mbere rw'Iremezo rwaba rwaranze kwakira ubwo buhamya, rwemeye ko, nk'uko umutangabuhamya yabivuze, mbere y'itariki ya 18 Mata 1994 Akayesu yagerageje kuburizamo ubwicanyi i Taba[491].

282. Porokireri avuga ko bigaragara ko mu iburanisha ryose Urugereko rwa Mbere rw'Iremezo rwazirikanye ibigomba gukurikizwa ngo ubuhamya bushingiye nkuru mbarirano bwakirwe kandi nta rugero na rumwe Akayesu atanga rw'ubuhamya, umugabo yatanze ku byo yumvanye abandi, bwaba bwaremewe ku makosa[492]. Porokireri aributsa ko mu iburanisha Akayesu nawe yasabye Urugereko kwakira ubuhamya bushingiye ku nkuru mbarirano[493]. Avuga ko «atari ukuri na gato» kuvuga ko Urugereko rwa Mbere rw'Iremezo rwaba rwarakiriye ubuhamya bwose abagabo bashinja batanze bushingiye ku nkuru mbarirano, ngo ariko rukanga kwakira ubw'abagabo bashinjura[494]. Avuga kandi ko Akayesu atatanze urugero na rumwe rw'imyanzuro ishingiye ku byabaye ifite inenge, by'umwihariko yerekana ko Urugereko rwemeye nta shingiro ubuhamya bw'umugabo uyu n'uyu bushingiye ku nkuru mbarirano. Mu gusobanura ibyo, Porokireri avuga ko mbere na mbere ibyo bitigeze na rimwe bibaho, kandi ko inyandiko y'urubanza nta mwanzuro n'umwe ku byabaye waba warashingiye gusa ku buhamya bw'umugabo bushingiye ku nkuru mbarirano[495]. Porokireri avuga ko « Urugereko rwa Mbere rw'Iremezo rwasuzumanye ubushishozi ubwo buhamya bushingiye ku nkuru mbarirano,

[489] Imyanzuro ya Porokireri isubiza, ibika 10.11 na 10.12.
[490] Imyanzuro ya Porokireri isubiza, igika 10.12
[491] Imyanzuro ya Porokireri isubiza, ibika 10.24 -10.26.
[492] Imyanzuro ya Porokireri isubiza, ibika 10.16 na 10.17.
[493] Imyanzuro ya Porokireri isubiza. igika 10.18.
[494] Imyanzuro ya Porokireri isubiza, ibika 10.21-10.23. By'umwihariko, Porokireri yifashisha ubuhamya abagabo bashinjura batanze mu Rukiko bavuga ku bika 12A na 12B byo mu Nyandiko y'ibirego. Akanavuga cyane cyane ko mu myanzuro ishingiye ku byabaye rwafashe ku birebana n'ibyo bika, Urugereko rwa Mbere rw'Iremezo rwazirikanye ubuhamya bushingiye ku nkuru mbarirano bwatanzwe n'abagabo icumi bashinjura.
[495] Imyanzuro ya Porokireri isubiza, igika 10.20. Porokireri yavuze ko yumva Urugereko rwa Mbere rw'Iremezo nta buhamya bushingiye ku nkuru mbarirano rwigeze rwemera mu buryo bunyuranyije n'ingingo ya 89 C. Avuga kandi ko ari ngombwa kuvuga ko mu gihe cyose cy'iburanisha, Ubwunganizi bwari bufite imyumvire nk'iye kuko mu rubanza, butigeze burwanya iyemerwa ry'ubuhamya bushingiye ku nkuru mbarirano. Imyanzuro ya Porokireri isubiza, igika. 10.17.

ndetse rukanabukoresha mu rwego rwo kureba ubuhamya bufite ubundi bubushyigikira»[496].

283. Mu gusoza kuri iki kibazo, Porokireri avuga ko mu iburanisha, Akayesu atarwanyije ukwemerwa k'ubuhamya bushingiye ku nkuru mbarirano, ko rero kubera iyo mpamvu yivukije uburenganzira bwe bwo kubyutsa icyo kibazo mu bujurire[497].

2. <u>Isesengura ry'Urugereko</u>

284. Mu ngingo zitangwa kuri iyi mpamvu y'ubujurire, Urugereko rw'Ubujurire rusanga havugwamo ibintu bibiri bitandukanye : Icya mbere, Ujurira avuga ko Urugereko rwa Mbere rw'Iremezo rwemeye kenshi ubuhamya bushingiye ku nkuru mbarirano mbere yo gusuzuma ko bwakwizerwa. Icya kabiri, avuga ko Urugereko rwa Mbere rw'Iremezo rwanze kwakira, nta mpamvu, ubuhamya bushingiye ku nkuru mbarirano, by'umwihariko iyo bwababaga butanzwe n'abagabo bashinjura[498].

285. Kubera ikibazo rusange kivugwa muri iyi mpamvu y'ubujurire, mbere yo gusuzuma ibintu binyuranye Akayesu avuga, Urugereko rw'Ubujurire rusanga ari ngombwa gusobanura amahame y'amategeko agenga iyakirwa n'igenagaciro by'ubuhamya bushingiye ku nkuru mbarirano butanzwe mu rukiko [499]. Nk'uko Porokireri abivuga, ni ngombwa gutandukanya ibyo bibazo byombi[500].

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[496] Imyanzuro ya Porokireri isubiza, igika 10.20.
[497] Imyanzuro ya Porokireri isubiza, 10.18.
[498] Imyanzuro ya Akayesu mu bujurire, umutwe IX, igika 3.
[499] Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo n'Urugereko rw'Ubujurire rwa TPIY zarasuzumye icyo kibazo ku buryo burambuye. Nk'urugereo reba: *Icyemezo cy'Urugereko ku cyifuzo cy'Ubwunganizi kirebana n'ibimenyetso biziguye, Porokireri aburana na c. Dusko Tadic*, urubanza nº IT-94-1-T, Urugereko rwa Mbere rw'Iremezo, 5 Kanama 1996 (nk'uko Akayesu abivuga mu myanzuro ye, umutwe IX, ibika 1 na 6) ; *Icyemezo cy'Urugereko ku cyifuzo cy'Ubwunganizi kirwanya iyakirwa ry'ubuhamya bushingiye ku nkuru mbarirano nta mbebya, habamu gusuzuma niba ari ibyo kwizerwa cyangwa se bifite ishingiro, Porokireri aburana na Tihomir Blaskic,* urubanza No IT-95-14-T, Urugereko rwa Mbere rw'Iremezo, 21 Mutarama 1998 ; urubanza rwa *Blaskic* ; *Icyemezo ku bujurire bwa Porokireri bwerekeye iyemerwa ry'ibimenyetso, Porokireri aburana na Zlatko Aleksovski,* urubanza No IT-95-14/1-AR73, Urugereko rw'Ubujurire rwa TPIY, 16 Gashyantare 1999 (« *Icyemezo mu rubanza rwa Aleksovski* ») ; *Icyemezo ku bujurire bwerekeranye n'inyandiko y'ubuhamya besatanzwe n'umutangabuhamya wapfuye,* Porokireri aburana na *Dario Kordic na Mario Cerkez*, urubanza No IT-95-14/2-AR73.5, Urugereko rw'Ubujurire rwa TPIY, 21 Nyakanga 2000 (« *Icyemezo cya mbere mu rubanza rwa Cordic* ») *n'Icyemezo cyo mu rw'Ubujurire cyerekeye gushyira muri dosiye inyandiko indwi z'ubuhamya bwatanzwe hejuru y'indahiro, hamwe n'ubundi buhamya bwanditse bwemejwe n'ubifitiye ububasha,Porokireri*

286. Muri rusange, Amategeko y'uru Rukiko, kimwe n'aya TPIY ateganya ko ubuhamya umuntu yitangiye mu iburanishwa ari bwo buhabwa agaciro kurusha ubwo yatanze mbere. Muri uru Rukiko, ibyo biteganywa ahanini n'ingingo ya 90 y'Amategeko y'Urukiko ivuga ko muri rusange, Ingereko zumva abatangabuhamya ubwabo[501] keretse iyo Urugereko rutegetse ko umugabo atanga ubuhamya mu buryo buteganywa n'ingingo ya 71 y'Amategeko y'Urukiko[502]. Ariko ingingo ya 89 C) y'Amategeko y'Urukiko iteganya na none ko « Urugereko rushobora kwakira ikimenyetso cyose rubona gifite agaciro »[503]. Iyo ngingo iha Urugereko rwa Mbere rw'Iremezo ububasha busesuye bwo kureba niba ibimenyetso ibi n'ibi byakwakirwa, kandi hakurikijwe ubukemuramanza bwa TPIY, « ingingo ya 89 C) y'Amategeko y'Urukiko iteganya ko Urugereko rwa Mbere rw'Iremezo rushobora kwakira ubuhamya bwose butangiwe ahandi hantu hatari mu iburanisha iyo rusanze bufite agaciro […] nk'uko biteganywa n'ingingo ya 89 C) y'Amategeko y'Urukiko, Ingereko za Mbere z'Iremezo zifite ububasha busesuye bwo kwakira ikimenyetso kiziguye rusanga gifititanye isano n'urubanza »[504]. Ariko ubwo bubasha bufite aho buhagararira, kuko abacamanza basanze «ukwizerwa k'ubuhamya gufite akamaro mu rwego rwo kubwakira, aho kugira akamaro gusa mu igenagaciro kabwo. Iyo nta cyerekena ko ikimenyetso cyakwizerwa, bishobora gutuma icyo

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aburana na Dario Kordic na Mario Cerkez, urubanza No IT-95-14/2-AR73.5, Urugereko rw'Ubujurire rwa TPIY, 18 Nzeri 2000 (« *Icyemezo cya kabiri mu rubanza rwa Kordic* »).

[500] Urugereko rw'Ubujurire rufite igitekerezo kimwe n'icya Porokireri ko Akayesu « yitiranya iyakirwa ry'ibimenyetso n'igenwa ry'agaciro byahabwa ». Reba igisubizo cya Porokireri, igika 10.12. Mu by'ukuri, Urugereko rw'Ubujurire rusanga mu gisubizo cye, Akayesu akomeze kwitiranya ibintu bibiri iyo asesengura ubuhamya umugabo wiswe DJX yatanze mu Rukiko. Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, ibika 99 na 100.

[501] Ingingo ya 90 A) y'Amategeko.

[502] Urugereko rw'Ubujurire ruributsa ko irindi rengayobora ku ihame rusange rivuga ko umugabo yitangira ubuhamya mu Rukiko ari ugutanga inyandiko y'ubuhamya bw'umugabo w'impuguke, iyo undi muburanyi avuze ko adashaka kunyomoza uwo mugabo (ingingo 94 *bis* y'Amategeko. Iyo ngingo yongewemo mu nama rusange y'abacamanza yo ku itariki ya 8 Kamena 1998, bityo ikaba itarashoboraga gukurikizwa mu rubanza rwa Akayesu).

[503] Ingingo ya 89 y'Amategeko igira iti : «A) Ku byerekeye ibimenyetso, amategeko avugwa muri iki cyiciro agenga imiburansihirize yose ibera mu Ngereko. Ingereko ntizigendera ku mategeko y'igihugu iki n'iki agenga ibimenyetso. B) Mu gihe aya Mategeko ntacyo abivugaho, Urugereko rwakiriye ikirego rukurikiza amategeko agenga ibimenyetso yatuma urubanza rucibwa mu buryo buboneye kandi bujyanye na Sitati n'amahame rusange y'amategeko. C) Urugereko rushobora kwakira ikimenyetso cyose rubona gifite agaciro. D) Urugereko rushobora gusaba ko ibimenyetso bibonekeye ahandi hatari mu rukiko bigenzurwa ko ari nyakuri ».

[504] Reba *Icyemezo cya kabiri mu rubanza rwa Kordic*, igika 24, havugwa *Icyemezo mu rubanza rwa Aleksovski* kivugwamo ko « kwakira ibimenyetso bishingiye ku nkuru mbarirano ari ibintu bisanzwe bikorwa mu Rukiko» (igika 15). Reba na none *Icyemezo cya mbere mu rubanza rwa Kordic*, igika 23.

kimenyetso nta « gaciro » kigira, bityo kikaba kitakwakirwa »[505]. Urugereko rw'Ubujurire rusanga ihame rigomba kubahirizwa kugira ngo hemezwe ko ikimenyetso kitakwakirwa, rikarishye. Mbere na mbere, hagomba kugaragazwa ko nta cyerekana ko icyo kimenyetso cyakwizerwa, ku buryo nta gaciro na gato gishobora kugira.

287. Urugereko rw'Ubujurire ruributsa ko mu bukemuramanza Akayesu avuga, no mu byemezo bivugwa haruguru, Urugereko rw'Ubujurire n'urwa Mbere rw'Iremezo zasuzumaga ibimenyetso bishingiye ku nkuru mbarirano, bikubiye mu nyandiko cyangwa mu buhamya, umuburanyi yasabye ko bishyirwa muri dosiye ariko undi muburanyi akaba atarashoboye kubibazo ibibazo binyomoza. Cyakora muri uru rubanza siko bimeze[506]. Muri rusange Akayesu anenga ko Urugereko rwakiriye ubuhamya abagabo batangiye mu Rukiko ku bintu batahagazeho ubwabo[507]. Urugereko rw'Ubujurire rusanga igihe umugabo atanze ubuhamya mu Rukiko, ubwo buhamya buba bwakiriwe kubera ko bushyirwa muri dosiye y'urubanza nk'uko bwanditswe mu nyandikomvugo y'iburanisha, kereka iyo undi muburanyi ahise agira icyo abuvugaho. Urugereko rw'Ubujurire rwa TPIY rwasanze « ko mu gusobanura ingingo ya 89 C) ari ngombwa gukora ku buryo Urugereko rushobora kumenya ko ibyo bimenyetso byakwizerwa »[508]. Aha ngaha, ni ngombwa mbere na mbere kubahiriza uburenganzira undi muburanyi afite bwo kunyomoza umugabo utanze ubwo buhamya bushingiye ku nkuru mbarirano[509]. Ubwo burenganzira buteganywa n'ingingo ya 20 4) e) ya Sitati[510] n'iya 85 B) y'Amategeko y'Urukiko[511]. Kubera izo mpamvu, n'ubwo buri gihe Urugereko rufata icyemezo

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[505] *Icyemezo cya mbere mu rubanza rwa Kordic,* igika 24.
[506] Reba *Icyemezo cya mbere mu rubanza rwa Kordic*, igisobanuro 21.
[507] Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika 12.
[508] *Icyemezo cya mbere mu rubanza rwa Kordic*, igika 22 (mu nyandiko yacyo iri mu cyongereza hakubiyemo ibikurikira : « Ingingo ya *89 (C) igomba kumvikana ko ikubiyemo imbibi ntarengwa Urugereko rwubahiriza mu kwemeza ko ibimenyetso birunyuze »* .
[509] Mu Cyemezo ku rubanza rwa *Aleksovski*, Urugereko rw'Ubujurire rwasanze « kudashobora kubaza iibaza rinyomoza umuntu watanze ubuhamya no kuba ubuhamya butanzwe n'umuntu wahagaze ku byabaye cyangwa utarabihagazeho bigomba kuzirikanwa mu kugena agaciro k'ubwo buhamya » (igika 15, igisobanuro kiri hasi ku rupapuro nticyifashishijwe).
[510] Ingingo ya 20 4 e) ya Sitati iteganya ko umuntu wese warezwe afite uburenganzira bwo kubaza cyangwa gushaka umubariza abatangabuhamya bamushinja, akemererwa ko abatangabuhamya bamushinjura bahamagarwa mu rukiko kandi bakabazwa, nk'uko bikorerwa abamushinja».
[511] Mu biteganywa n'ingingo ya 85 B) harimo ko «Nyuma y'ibibazo by'ibanze buri mutangabuhamya ashobora kunyomozwa no kubazwa ibibazo by'inyongera ».

rushingiye ku miterere y'urubanza, Urugereko rw'Ubujurire rusanga bitoroshye ko Urugereko rwa Mbere rw'Iremezo rwemeza ko nta bintu bihari bigaragaraza ko ubuhamya rumaze kumva bwakwizerwa ku buryo butagira agaciro, bitewe n'aho urubanza rugeze ubu, cyane cyane ko undi muburanyi atabirwanya[512].

288. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro ukurikira :

> 131. Mu gusesengura ibimenyetso, hakurikijwe ihame rusange, Urugereko rwahaye agaciro buri buhamya na buri kimenyetso gihamya rukurikije ukwizerwa n'akamaro kabyo, ku bivugwa mu rubanza [...] . Urugereko ruributsa ko Sitati y'Urukiko itarutegeka gukurikiza umuryango remezo w'amategeko uyu n'uyu kandi ko rutagomba kugendera ku mategeko y'igihugu iki n'iki yerekeranye n'itangwa ry'ibimenyetso. Hakurikijwe ingingo ya 89 y'Amategeko y'Urukiko agenga imiburanishirize n'itangwa ry'ibimenyetso, Urugereko rwakurikije amategeko y'itangwa ry'ibimenyetso rwabonaga yarufasha guca urubanza mu buryo buboneye kandi bujyanye na Sitati n'amahame rusange y'amategeko.
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> [...]
>
> 136. Urugereko, rukurikije ingingo ya 89, rwasanze rushobora kwakira ikimenyetso cyose rusanze gifite akamaro n'agaciro, gipfa gusa kuba kiri mu rwego rw'ibisabwa kugira ngo habeho urubanza ruciye ku buryo buboneye. Urugereko rusanga ubuhamya butangwa n'abantu batahagaze ku byabaye butakwigizwayo kubera ibyo gusa, rukaba rero, rusuzuma rwitonze buri kimenyetso nk'icyo ukwacyo, hakurikijwe ibiteganywa n'ingingo ya 89.[513]

289. Urugereko rw'Ubujurire rwanzura ruvuga ko bigaragara ko Urugereko rwa Mbere rw'Iremezo rwazirikanye ibintu bigomba kugenderwaho biteganywa n'ingingo ya 89 y'Amategeko y'Urukiko. By'umwihariko, rusanga Urugereko rwa Mbere rw'Iremezo rwarashyize mu bikorwa igitekerezo cyarwo cyo gusuzumana «ubushishozi » ubuhamya bushingiye ku nkuru mbarirano. Nta kosa na rimwe rigaragara Urugereko rw'Ubujurire rusanga muri iyo myanzuro rusange.

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[512] Icyemezo cya mbere mu rubanza rwa *Kordic*, igika 24.

[513] Urubanza mu rw'iremezo, ibika 131 na136. Urugereko rw'Ubujurire ruvuga na none ku buhamya bwa Dr Mathias Ruzindana wavuze ko « abatangabuhamya bashoboraga kutandukanya ibyo babonye n'ibyo bumvise». Kubera iyo mpamvu, Urugereko rwa Mbere rw'Iremezo rwavuze ko « mu gihe cyose cy'urubanza rwagerageje gutandukanya ibyo bintu bibiri ». Urubanza mu rw'iremezo, igika 155.

290. Nk'uko bivugwa haruguru, muri uru rubanza ibimenyetso bishingiye ku nkuru mbarirano Akayesu arwanya ni ibyatanzwe igihe abagabo batangaga ubuhamya mu Rukiko[514]. Abo bagabo batanze ubuhamya mu Rukiko ku ndahiro ndetse Akayesu yashoboraga kubanyomoza. Byongeye kandi, nk'uko bizwi, hafi y'abo bagabo bose batanze ubuhamya ku byo babwiwe n'abagabo babihagazeho. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanga ahanini Urugereko rwa Mbere rw'Iremezo ari rwo rufite ububasha bwo gusuzuma ubwo buhamya rukavuga niba bwakwizerwa bihagije ku buryo bwashyirwa muri dosiye nk'uko biteganywa n'amahame rusange agenga iyakirwa ry'ibimenyetso bishingiye ku nkuru mbarirano. Ibyo ari byo byose, Akayesu ntiyatanze urugero na rumwe rufatika rugaragaza ko ayo mahame atubahirijwe.

291. Akayesu ntavuga ko muri dosiye hashyizwemo ibimenyetso bishingiye ku nkuru mbarirano bidafitanye isano n'urubanza. Mu by'ukuri, nta rugero na rumwe atanga rw'ikimenyetso gishingiye ku nkuru mbarirano Urugereko rwa Mbere rw'Iremezo rwaba rwarakiriye mu buryo budakurikije amategeko. Akayesu ntanavuga ko Umwunganira yaba yararwanyije ko Urugereko rwa Mbere rw'Iremezo rwakira ikimenyetso runaka gishingiye ku nkuru mbarirano. Byongeye kandi, ntasobanura ku buryo bugaragara ukuntu yaba yararenganyijwe, kubera iyakirwa ry'ibimenyetso nk'ibyo. Avuga gusa ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa muri rusange. Ibyo avuga ntibihagije mu kwerekana ko iryo kosa rikomeye ku buryo Urugereko rw'Ubujurire rugomba kugira icyo rubikoraho. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanze Akayesu atagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa muri rusange ubwo rwakiraga ibimenyetso bishingiye ku nkuru mbarirano[515].

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[514] Akayesu avuga ibi bikurikira : « Mu rubanza, muri rusange ibimenyetso bishingiye ku nkuru mbarirano byaremewe ». Amagambo « wumvise abantu bavuga ko » yakunzwe gukoreshwa. Rimwe na rimwe, Urukiko cyangwa ababuranyi bagiye basobanura ko ubuhamya bwatanzwe bushingiye ku nkuru mbarirano cyangwa kubyo unutangabuhamya yiboneye ubwe ». Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika 12.

[515] Urugereko rw'Ubujurire rusanga mu byo Akayesu ashingiraho harimo n'urubanza rwa *Blaskic* akemeza ko muri urwo rubanza, « habayeho impaka zishyushye cyane ariko ko mu rubanza rwe nta mpaka zabaye ». Imyanzuro ya Akayesu mu bujurire, Umutwe IX, igika 8. Ariko, muri urwo rubanza, ahanini Urugereko rwa Mbere rw'Iremezo rwibanze ku iyakirwa ry'ibimenyetso bishingiye ku nkuru mbarirano byatanzwe mu nyandiko, yenda nk'inyandiko y'ubuhamya bw'umugabo wapfuye. Hagaragajwe aho urwo rubanza rutandukaniye n'uru.

292. Urugereko rw'Ubujurire rusanga kwakira ubuhamya bushingiye ku nkuru mbarirano bitavuga ko hagomba kugira umwanzuro runaka ufatwa mu gihe cyo kugena agaciro kabyo. Iyo Urugereko rwa Mbere rw'Iremezo rwakiriye ubuhamya bushingiye ku nkuru mbarirano ntibivuga ko ruba ruhise rwemera ko bwakwizerwa cyangwa ko hari agaciro bufite mu guhamya ibivugwa. Urugereko rwa Mbere rw'Iremezo rusuzuma ibyo bintu urubanza rurangiye igihe ruba rugena agaciro kahabwa ibimenyetso byose byatanzwe hakurikijwe urwego byatanzwemo, imiterere yabyo n'ukwizerwa k'umugabo wabitanze. Akayesu avuga ko mu iburanisha ryose Urugereko rwa Mbere rw'Iremezo rwitiranyije ukwakira ibimenyetso bishingiye ku nkuru mbarirano n'agaciro kabyo[516]. Urugereko rw'Ubujurire rwibukije mbere ko Urugereko rwa Mbere rw'Iremezo rwiyemeje gusuzumana « ubushishozi » ibimenyetso bishingiye ku nkuru mbarirano. Nta kimenyetso na kimwe Akayesu yatanze cyerekana ko Urugereko rwa Mbere rw'Iremezo rutabigenje gutyo. Urugereko rw'Ubujurire ntirubona rero impamvu rwakwanzura ruvuga ko Urugereko rwa Mbere rw'Iremezo rutubahirije ibyo rwari rwiyemeje[517].

293. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwarakiriye, bidakwiye, ubuhamya bushingiye ku nkuru mbarirano bwatanzwe n'abagabo bashinja ariko rukanga kwakira ubwatanzwe n'abashinjura. Nk'uko byasobanuwe, Akayesu ntatanga ingero zerekana ahantu Urugereko rwa Mbere rw'Iremezo rwaba rwarakiriye, bidakwiye, ibimenyetso nk'ibyo bishinja. Ahubwo, nk'uko Porokireri abivuga, Urugereko rwa Mbere rw'Iremezo rwakiriye ubuhamya bwinshi bushingiye ku nkuru mbarirano bwatanzwe mu Rukiko n'abagabo bashinja, bavuga ku bintu batiboneye ubwabo[518]. Iyo ngingo yonyine ubwayo ivuguruza ibyo Akayesu avuga. Cyakora, Akayesu ashingira ku rugero rwihariye aho

[516] Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika 100.

[517] Uko kwitondera ibintu kugaragara na none mu nyandiko y'urubanza no mu myanzuro imwe y'Urugereko rwa Mbere rw'Iremezo. Nk'urugero, ku byerekeye ibikorwa by'urugomo byibasira imyanya ndangagitsina ruvugwa kuva ku kirego cya 13 kugera ku cya 15 by'Inyandiko y'ibirego, Urugereko rwa Mbere rw'Iremezo rwanzuye ko « mu gusuzuma uruhare rw'Ushinjwa mu bikorwa by'urugomo byibasira imyanya ndangagitsina, no mu gusuzuma niba Uregwa ubwe yari azi ko bikorwa, Urugereko rwashingiye gusa ku bimenyetso bitaziguye kandi bidateye urujijo». Inyandiko y'urubanza, igika 451. Reba na none igika 460.

[518] Ni ukuvuga ko mu gusuzuma ibimenyetso, Urugereko rwa Mbere rw'Iremezo rushingira ku buryo bugaragara ku buhamya bwatanzwe, ntabwo rwirengagize. Nk'urugero reba inyandiko y'urubanza, ibika 439 (umutangabuhamya wiswe DBB), 444 (umutangabuhamya wiswe DFX), 445 (umutangabuhamya wiswe DEEX), 457 na 458 (ku buhamya abagabo bashinjura batanze mu Rukiko muri rusange. Byaragagaye ko bamwe muri abo abo bagabo batanze ubuhamya ku byo biboneye, abandi batanga ubuhamya bashingiye ku nkuru mbarirano).

avuga ko Urugereko rwa Mbere rw'Iremezo rwanze kwakira ubuhamya bwatanzwe mu Rukiko na DJX[519]. Avuga ko « Urukiko rutagenzuye ukwizerwa kw'amakuru uwo mutangabuhamya yatanze maze rwanga kwakira ubwo buhamya kandi nta mpamvu rushingiyeho ngo rubyange»[520]. Akayesu avuga ko «Uregwa yemerewe gutanga ibimenyetso bituma habaho ugushidikanya »[521]. Asanga « Urugereko rwaramurenganyije bikomeye kubera ko ngo rwanze kwakira ubuhamya bw'ingirakamaro bushingiye ku nkuru mbarirano bwari gutuma rushidikanya ku buryo yitwaye ku Batutsi, kimwe n'ubwo yatanze burebana n'ukuntu yagerageje kurengera Abatutsi»[522]. Avuga ko ako karengane « katumye ahamwa n'icyaha ku maherere, ku kirego cya 12 cyo mu Nyandiko y'ibirego »[523]. Urugereko rw'Ubujurire rusanga Ujurira yaratanze ingingo eshatu zishingiye ku buhamya uwo mugabo yatanze mu Rukiko.

294. Icya mbere, Akayesu asa n'uvuga ko urwo rugero rugaragaza ko mu gusuzuma niba ubuhamya bushingiye ku nkuru mbarirano abagabo bashinjura batanze bugomba kwakirwa, Urugereko rwa Mbere rw'Iremezo rwakoresheye ikigenderwaho gikarishye kurusha icyo rwakoresheje mu gusuzuma ubuhamya bw'abagabo bashinja[524].

295. Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo rwasanze Akayesu adahamwa n'icyaha kivugwa mu kirego cya 12, cyo mu Nyandiko y'ibirego[525]. Byongeye kandi, n'ubwo Akayesu atari ko abibona, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rutaranze kwifashisha ubuhamya bwose DJX yatanze

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519 Imyanzuro ya Akayesu, Umutwe IX, ibika 14-17. Porokireri avuga ko uru rugero rutagombaga gutangwa. Avuga ko ari rwo « rugero rukumbi rushingiye ku byabaye rwatanzwe mu gushyigikira ibyo avuga ko Urugereko rwa Mbere rw'Iremezo rwemeye, bidakurikije amategeko, ibimenyetso byatanzwe bishingiye ku nkuru mbarirano » kandi ko urwo rugero rureba ibivugwa ko Urugereko rwa Mbere rw'Iremezo rwanze kwemera ubuhamya uwo mugabo yatanze bushingiye ku nkuru mbarirano. Reba igisubizo cya Porokireri ku myanzuro ya Akayesu isubiza, ibika 10.9-10.12.

520 Imyanzuro ya Akayesu mu bujurire, Umutwe wa IX, igika cya 15.

521 Imyanzuro ya Akayesu, Umutwe wa IX, igika cya 18.

522 Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 100.

523 Imyanzuro ya Akayesu, Umutwe IX, igika cya 18.

524 Mu gika cya 99 cy'Igisubizo cye ku myanzuro ya Porokireri isubiza, Akayesu avuga ko « [...] ibivugwa ku mutangabuhamya wiswe DJX [...] bisa nk'ibyerekana ko Urugereko rwakoresheje nabi ayo mategeko».

525 Akayesu yagizwe umwere ku kirego cya 12 cy'Inyandiko y'ibirego, ari cyo cyo kunyuranya n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve (ibikorwa bikoranwe ubugome). Urugereko rw'Ubujurire rutekereza ko mu by'ukuri Akayesu yashakaga kuvuga igika cya 12 cy'Inyandiko y'ibirego.

mu Rukiko. Uyu mugabo yitabye Urukiko ku itariki ya 11 Gashyantare 1998[526]. Mu nyandiko y'urubanza, Urugereko rwavuze, by'umwihariko, ku buhamya uwo mugabo yatanze mu Rukiko, ubwo rwasuzumaga ibirego by'ubugizi bwa nabi bwibasiye imyanya ndangagitsina (kuva ku kirego cya 13 kugera ku cya 15 byo mu Nyandiko y'ibirego) n'igihe rwerekanaga umurongo Uregwa yagendeyeho mu kwiregura[527].

296. Bityo rero, Akayesu ntagaragaza ukuntu Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemera gushyira ubwo buhamya muri dosiye no kugena agaciro kabwo. Mu by'ukuri, mu gusuzuma ubwo buhamya ku birebana n'ibivugwa kuva ku kirego cya 13 kugera ku cya 15, Urugereko rwa Mbere rw'Iremezo rwavuze ko DJX yari akiri umwana, ko yari afite imyaka 12 mu gihe ibivugwa mu rubanza byababaga kandi ko atagiye ku biro bya komine muri icyo gihe [528]. Byongeye kandi, rwasuzumye ubuhamya uwo mugabo yatanze mu Rukiko rubugereranya n'ibindi bimenyetso rwashyikirijwe birebana n'ibyaha rwaregewe. Nta kigaragaza ko Urugereko rwa Mbere rw'Iremezo rwanze kwakira ubuhamya uwo mugabo yatanze mu Rukiko, bityo rukanga ko bushyirwa muri dosiye y'urubanza. Ibyo kandi ni nako bigaragara mu byo Akayesu avuga kuri icyo kibazo, Urugereko ruri busuzume nyuma.

297. Icya kabiri, Akayesu avuga ko uburyo DJX yafashwe ubwo yatangaga ubuhamya imbere y'Urugereko bugaragaza ukuntu urwo Rugereko rwakoze ivangura mu kwakira ubuhamya bushingiye ku nkuru mbarirano bwatanzwe n'abagabo bashinjura. Avuga ko Perezida w'Urugereko yaba yaraciye mu ijambo uwo mutangabuhamya ubwo yageragezaga gusubiza ibibazo ndetse akamwotsa igitutu ngo avuge niba yariboneye cyangwa atariboneye ibintu byabaye, maze uwo mutangabuhamya yasubiza ko atabyiboneye Perezida agasa nk'uwishimira icyo gisubizo[529]. Akayesu avuga ko inshuro ebyiri, Urugereko rwanze ko hagenzurwa ukuntu umugabo runaka yamenye ibyabaye maze rugahindukira rukanga kwakira ubuhamya yatanze bushingiye ku nkuru mbarirano.

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[526] Inyandikomvugo y'iburanisha, 11 Gashyantare 1998, imp. 45-71 [FR]
[527] Reba Urubanza mu rw'iremezo, ibika 443 na 458. Reba na none urwo rubanza, igika cya 36.
[528] Urubanza mu rw'iremezo, ibika 443 na 458.

Urugereko rwabikoze ku buryo budashyize mu gaciro kandi budakurikije amategeko, bityo rubangamira inyungu z'Ubwunganizi» (*sic*)[530].

298. Urugereko rw'Ubujurire rusanga ibyo Akayesu avuga nta shingiro bifite. Mu ibaza ry'ibanze, DJX yavuze ibyo yari azi kuri Akayesu muri rusange muri icyo gihe kivugwa. Perezida w'Urugereko ntiyamuciye mu ijambo mu ibaza ry'ibanze uretse ubwo yasabaga Uwunganira Akayesu ibisobanuro ku kibazo kimwe[531]. Mu ibaza rinyomoza, mu byo umutangabuhamya yasobanuye (asubiza ibibazo cyangwa abyivugiye ntawe umubajije) harimo ibikorwa bimwe cyangwa ibyabaye yavuzeho atiboneye ubwe[532]. Porokireri amubajije niba yarabonye Interahamwe zica abapolisi, umutangabuhamya yabaye nk'aho ahunga ikibazo noneho Perezida w'Urugereko amusaba kugisubiza. Umutangabuhamya yageze aho arasubiza, maze arangije Perezida w'Urugereko aravuga ati : « Nibyo »[533]. N'ubwo Akayesu ashaka kubyumvikanisha ukundi, nta kosa na rimwe Urugereko rw'Ubujurire rubona mu kubaza ibyo bibazo kandi rusanga umuntu atakumva ko ayo magambo agaragaza ko Perezida w'Urugereko rwa Mbere rw'Iremezo yari ashimishijwe cyangwa yishimiye igisubizo DJX atanze. Urugereko rusanga kandi ari n'uko biteye ku bibazo byinshi DJX yabajijwe kugira ngo asobanure niba yarabonye cyangwa atarabonye Akayesu arokora Gakwaya[534]. Rushingiye ku nyandikomvugo y'iburanisha, Urugereko rw'Ubujurire rusanga na none ahangaha bigaragara ko DJX yashatse guhunga ikibazo

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[529] Imyanzuro ya Akayesu, Umutwe IX, ibika 15-17. Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 99. Urugereko rw'Ubujurire rwumva ko aha Akayesu asa nk'uvuga ko Perezida w'Urugereko yabaye nk'uwishimye, urebye ukuntu asubiramo igisubizo uwo Perezida yahaye umutangabuhamya.

[530] Imyanzuro ya Akayesu, Umutwe IX, igika 17. Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 99. Avuga ko «Urukiko rwabujije umutangabuhamya gutanga ibisobanuro birambuye byari kugira akamaro, hakurikijwe ibyavuzwe mu rubanza rwa *Tadic* bigomba kugenderwaho, ukwizerwa kw'ayo makuru ku byo ujurira yakoze ngo arokore Gakwaya » (*sic*).

[531] Inyandikomvugo y'iburanisha, 11 Gashyantare 1998, imp. 51-53 [FR].

[532] Reba inyandikomvugo y'iburanisha, 11 Gashyantare 1998, urup. 58 [FR], aho umutangabuhamya avuga ati : « ..Oya sinashoboye kujya ku biro bya Komini ariko twamenyaga ibyahaberaga kuko abantu bajyagayo babitubwiraga, cyane cyane nk'ibyerekeye umutekano ». Reba na none imp. 61, 65, na 66-70[FR].

[533] Inyandikomvugo y'iburanisha, 11 Gashyantare 1998, imp. 67 na 68 [FR]. Dore ibyavuzwe muri iryo baza: Q : Wavuze ko abapolisi bishwe. Warabibonye n'amaso yawe ? Ndagusaba ngo usubize yego cyangwa oya. R. Sinshobora gusubiza yego cyangwa oya kubera ko nshobora gusobanura uko numvise cyangwa nabonye ibyo bintu. Q. Hari umuntu wabonye yica umupolisi? Subiza yego cyangwa oya.

R. *Interahamwe* zishe abapolisi. Bwana Perezida : Si ngombwa gutanga ibisobanuro. Ese yarabibonye cyangwa ntiyabibonye? Nta kindi. Umutangabuhamya : Numvise babivuga. Bwana Perezida : Ariko ntiyabibonye? Yarabibonye cyangwa ntiyabibonye? Umutangabuhamya : Narabyumvise. Bwana Perezida : Ariko ntiyabibonye? Umutangabuhamya : Sinabibonye. Bwana Perezida : Ni ibyo.

kandi ko Perezida w'Urugereko rwa Mbere rw'Iremezo yashakaga kumenya niba uwo mutangabuhamya yariboneye cyangwa atariboneye ubwe ibyabaye.

299. Nta kosa na rimwe cyangwa ukudakurikiza amategeko Urugereko rw'Ubujurire rubona mu kuba Porokireri cyangwa Urugereko rwa Mbere rw'Iremezo barashatse kumenya niba DJX yariboneye ubwe ibyabaye cyangwa niba yarabyumvanye abandi. Urugereko rwa Mbere rw'Iremezo ruba rukeneye gusobanukirwa kugira ngo rushobore kugena agaciro kahabwa ubuhamya rwumvise. N'ubwo Akayesu atabyemera, Urugereko rw'Ubujurire ntirwemera ko Urugereko rwa Mbere rw'Iremezo rwanze, inshuro ebyiri, ko « hagenzurwa ukuntu umutangabuhamya runaka yamenye ibyabaye maze rugahindukira rukanga kwakira ubuhamya yatanze bushingiye ku nkuru mbarirano »[535], cyangwa ko rwabujije DJX gutanga ibisobanuro birambuye « byari kugira akamaro » ku byerekeye Gakwaya[536]. Nyuma y'ibyo bibazo (Urugereko rw'Ubujurire rusanga bikwiye kandi bidashyira iterabwoba ku mutangabuhamya), Porokireri yashoje ibaza rinyomoza. Uwunganira Akayesu yavuze ko atifuza kubaza ibibazo by'inyongera maze Urugereko rusezerera rubwira umugabo ko arangije gutanga ubuhamya[537]. Urugereko rw'Ubujurire rusanga uburyo Urugereko rwa Mbere rw'Iremezo rwafashe ubwo buhamya butagaragaza na gato ko habayeho ivangura mu gusesengura ubuhamya bushingiye ku nkuru mbarirano bwatanzwe n'abagabo bashinjura, cyangwa ngo rugaragaze imyitwarire idakwiye ku birebana n'ubuhamya uwo mugabo yashoboraga gutanga.

300. Icya gatatu, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwanga kwakira ikimenyetso gishinjura cyatanzwe n'uwo mugabo. Avuga ko DJX yavuze ibintu binyomoza ibyo Porokireri avuga mu gika cya 12 cyo mu Nyandiko y'ibirego ko « Akayesu atigeze na rimwe agerageza kuburizamo ubwicanyi bwibasiye Abatutsi muri Komine [...] ». Akayesu yongeraho ko Urugereko rwa Mbere rw'Iremezo rwirengagije

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[534] Inyandikomvugo y'iburanisha, 11 Gashyantare 1998, imp. 68-70 [FR].
[535] Imyanzuro ya Akayesu, Umutwe IX, igika cya 17.
[536] Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika 99.
[537] N'ubwo umutangabuhamya yaje gusezererwa Mbere yo guha ijambo avoka ngo abaze ibibazo by'inyongera, Akayesu yari yemeje ko ko nta bindi bibazo afite byo kumubaza. Inyandikomvugo y'iburanisha, 11 Gashyantare 1998, imp. 70 na 71[FR].

gusuzuma ukwizerwa k'ubwo buhamya[538]. Porokireri avuga ko niyo Urugereko rwa Mbere rw'Iremezo ruza kuba rwaranze kwakira ubuhamya bw'uwo mugabo, « ntacyo byari kurenganyaho Uregwa», kuko n'ubundi mu nyandiko y'urubanza, Urugereko rwari rwamaze kwanzura ruvuga ko « ku byerekeye igihe DJX avugaho », hari ibimenyetso bifatika bigaragaza ko mbere y'itariki ya 18 Mata 1994, Akayesu yaburijemo ibikorwa by'ubugizi bwa nabi[539]. Cyakora Akayesu we avuga ko ubuhamya bw'umugabo mu Rukiko buvuga muri rusange ibintu byabaye mbere y'uko ava muri Komine ku itariki ya 28 Kamena 1998 [sic], kandi ko buvuguruza imyanzuro Urugereko rwa Mbere rw'Iremezo rwafashe kuri icyo kibazo. Byongeye kandi, Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rwaciye mu ijambo umutangabuhamya ubwo yageragezaga gusobanura ukuntu Akayesu yarokoye Gakwaya nyuma y'itariki ya 19 Mata 1994[540].

301. Urugereko rw'Ubujurire rwamaze kwemeza ko Urugereko rwa Mbere rw'Iremezo rutanze kwakira ubuhamya bwa DJX. Ibyo birahagije rero ngo rufate umwanzuro kuri icyo kibazo.

302. Mu ibaza ry'ibanze, DJX yatanze ubuhamya ku byabaye kugeza avuye i Taba (avuga ko yahavuye ahagana ku itariki ya 25 Kamena 1994[541]). Ababuranyi ntibumvikana ku gisubizo uwo mutangabuhamya yatanze mu ibaza rinyomoza, ubwo bamusabaga gusobanura igihe yavugagaho[542]. Rumaze gusuzuma inyandikomvugo y'iburanisha, Urugereko rw'Ubujurire rusanga muri rusange DJX yaravuze ibikorwa byabaye kugeza umunsi yaviriyeho muri Komine ya Taba.

303. Bityo rero, Urugereko rw'Ubujurire rusanga ubuhamya bw'uwo mugabo bwararebanaga n'ibintu byabaye mbere na nyuma y'itariki ya 19 Mata 1994. Urugereko rw'Ubujurire

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538 Imyanzuro ya Akayesu, Umutwe IX, igika 18. Akayesu yemeza ko « ubwo buhamya bwari kugira icyo buhindura ».

539 Imyanzuro ya Porokireri isubiza, igika 10.26. Hasubirwamo ibivugwa mu rubanza rwo mu rw'Iremezo, igika cya 192.

540 Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika. Cya 99.

541 Inyandikomvugo y'iburanisha, 11 Gashyantare 1998, urup. 53 [FR]. Reba na none imp. 58 na 60 (aho bavuga itariki ya 26 n'iya 28 Kamena) [FR].

542 Porokireri avuga ko mu Rukiko umugabo yatanze ubuhamya gusa ku byabaye hashize icyumweru kimwe cyangwa bibiri Perezida apfuye. Imyanzuro ya Porokireri isubiza ku myanzuro ya Akayesu isubiza, igika cya 10.26. Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika cya 99.

rusanga kandi Urugereko rwa Mbere rw'Iremezo rutaragarutse ku buryo bweruye ku buhamya bw'uwo mugabo ubwo rwasuzumaga ibivugwa mu gika cya 12 cyo mu Nyandiko y'ibirego, maze rugafata imyanzuro kuri icyo kibazo[543]. Ahubwo rwabuvuzeho mu ntangiriro z'inyandiko y'Urubanza mu rw'iremezo ubwo rwasobanuraga umurongo wo kwiregura Akayesu yafashe. Rwagize ruti :

> Ku byerekeye imvugo zihariye zikubiye mu Nyandiko y'ibirego, Ubwunganizi busobanura ko Akayesu atigeze ahindura imyifatire n'imyitwarire ye mbere na nyuma y'inama y abereye i Murambi ku itariki ya 18 Mata 1994. Haba mbere cyangwa nyuma y'iyo nama, yagerageje gukiza Abatutsi […] Abatangabuhamya biswe DIX na DJX nabo bumvise abantu bavuga ko Akayesu yakijije Abatutsi.[544]

304. Ibi na byo byerekana ko Urugereko rwa Mbere rw'Iremezo rutanze kwakira ubwo buhamya bwose nk'uko Ujurira abivuga. Ku byerekeye uko Urugereko rwa Mbere rw'Iremezo rwasuzumye igika cya 12 cy'Inyandiko y'ibirego, ni ngombwa kwibutsa ko urwo Rugereko rwagisuzumye mu byiciro bibiri bitandukanye, birebana n'ibyabaye mbere na nyuma y'itariki ya 19 Mata 1994. Rwafashe umwanzuro ukurikira :

> Urugereko rusanga ibivugwa mu gika cya 12 bidashobora kwemezwa byimazeyo. Nibyo koko ko hagati y'itariki ya 7 n'iya 18 Mata, Ushinjwa yagerageje kurinda abaturage ba komini ye. Biranagaragara kandi ko yitabaje abategetsi bo mu rwego rw'igihugu mu nama yo kuwa 18 Mata 1994. Bityo rero, Ushinjwa yagerageje koko kuburizamo ubwicanyi bwibasiraga Abatutsi muri komini ye, kandi ibyo ntawabihakana.[545]

305. Ku byerekeye ibyabaye nyuma y'itariki ya 18 Mata 1994, Urugereko rwa Mbere rw'Iremezo rwanzuye (kubera impamvu zisobanurwa mu nyandiko y'urubanza) ruvuga ko nyuma y'iyo tariki, Akayesu atashatse kuburizamo ubwicanyi bwibasiye Abatutsi muri Komine ye. Rwavuze ko « ibimenyetso byinshi byatanzwe bigaragaza » ko Akayesu yahinduye imyifatire ye nyuma y'inama yo ku itariki ya 18 Mata 1994. Kuri iyo ngingo rwibutsaga kandi ubuhamya abagabo bashinjura batanze mu Rukiko, nabo bavuga ko nyuma y'iyo atariki ataburijemo ubwicanyi[546].

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[543] Urubanza mu rw'iremezo, ibika 178-193.
[544] Urubanza mu rw'iremezo, igika cya 36.
[545] Urubanza mu rw'iremezo, igika 192.

306. N'ubwo umuntu yavuga ko Urugereko rwa Mbere rw'Iremezo rwagombye kuba rwarasobanuye neza impamvu rutazirikanye ubuhamya bwa DJX kuri icyo kibazo, ni na byo ko « mu nyandiko y'urubanza atari ngombwa ko Urugereko rwa Mbere rw'Iremezo rusobanura inzira yose runyuramo kugira ngo rugere ku mitekerereze ituma rufata imyanzuro iyi n'iyi »[547]. Nk'uko byavuzwe, nta kintu na kimwe kigaragaza ko Urugereko rwa Mbere rw'Iremezo rutakiriye ubuhamya DJX yatanze mu Rukiko kandi mu by'ukuri rwabuvuzeho mu nyandiko y'urubanza. Ku byerekeye agaciro Urugereko rwa Mbere rw'Iremezo rwahaye ubwo buhamya, Urugereko rw'Ubujurire rwongera kwibutsa ko «Urugereko rwa Mbere rw'Iremezo ari rwo, by'umwihariko, rufite inshingano yo kumva ubuhamya butanzwe mu rw'Iremezo, rukabusuzuma maze rukagena agaciro rwabuha »[548].

Urugereko rwa Mbere rw'Iremezo ni rwo rufata icyemezo k'ukwizerwa kw'ibimenyetso rwashyikirijwe, ruzirikana imiterere y'urubanza. Urugereko rwa Mbere rw'Iremezo rwasanze rushobora gufata imyanzuro kuri icyo gika rushingiye ku bimenyetso bifatika. Akayesu ntagaragaza ko Urugereko rwa Mbere rw'Iremezo rutasuzumye ibimenyetso byose rwashyikirijwe[549] cyangwa ko rwakoze ikosa rufata umwanzuro warwo cyangwa rutavuga, ku buryo bweruye, ku buhamya bwa DJX muri uwo mwanzuro[550]. Akayesu ntagaragaza ukuntu umwanzuro w'Urugereko rwa Mbere rw'Iremezo unyuranye n'uwari gufatwa n'urundi Rukiko rushyira mu gaciro. Byongeye kandi, ntagaragaza ko Urugereko rwa Mbere rw'Iremezo rwafashe uwo mwanzuro ari nk'inkurikizi y'uko rwanze kwakira ubwo buhamya bushingiye ku nkuru mbarirano, rugendeye ku kigenderwaho gikarishye kurusha icyo rwagendeyeho rusuzuma ubuhamya bw'abagabo bashinja.

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546 Urubanza mu rw'iremezo, ibika 187-193.

547 Urubanza rwa *Celebicii* mu bujurire, igika 481. Urugereko rwa Mbere rw'Iremezo ntirutegetswe gushyira mu nyandiko y'urubanza ibisobanuro birambuye ku cyo rutekereza kuri buri mutangabuhamya.

548 Urubanza rwa *Celebici* mu bujurire, ibika. 491 na 506 ; Urubanza rwa *Aleksovski* mu bujurire, igika 63 ; Urubanza rwa *Tadic* mu bujurire, igika 64.

549 Urubanza rwa *Celebici* mu bujurire, igika 481.

550 Urugereko rw'Ubujurire rusanga Akayesu avuga ko « Ujurira yemerwe gutanga ibimenyetso bituma abacamanza bashidikanya ». Imyanzuro ya Akayesu, Umutwe IX, igika 18. Nk'uko byasobanuwe, Akayesu aribeshya kuri iyo ngingo. Sibyo kuvuga ko mu bujurire ujurira atanga ibimenyetso agamije gusa gutuma abacamanza bashidikanya. Amahame akoreshwa mu gusuzuma ibimenyetso mu bujurire yasobanuwe hejuru kandi ujurira agomba kubahiriza inshingano ze kugirango ubujurire bwe bwakirwe.

307. Mu gusoza, Urugereko rw'Ubujurire rusanga mu byo Akayesu avuga hakubiyemo impamvu ebyiri z'ubujurire ziri mu nyandiko ye ya mbere y'ubujurire :

> Urugereko rwemeje mu ica ry'urubanza ko ibimenyetso bishingiye ku nkuru mbarirano ari ibyo kwizerwa.
>
> Urugereko rwemeje ko ubuhamya buziguye ari ubwo kwizerwa kandi budashyigikiwe n'ibimenyetso bifatika[551].

308. Urugereko rw'Ubujurire rusanga izo mpamvu z'ubujurire zitangwa muri rusange kandi nta zindi ngingo zisobanutse neza zizishyigikiye. Urugereko rw'Ubujurire rwamaze kubona ko Urugereko rwa Mbere rw'Iremezo rwasuzumye, uko bikwiye, ibimenyetso rwashyikirijwe kandi ko Akayesu atagaragaza ko atari ko byagenze.

309. Kubera ibyo, impamvu z'ubujurire zivugwa muri iki cyiciro nta shingiro zifite.

G) <u>Impamvu y'ubujurire ya karindwi: Amakosa yakozwe mu ibaza ry'ibanze no mu ibaza rinyomoza</u>

310. Akayesu atanga impamvu nyinshi z'ubujurire ku ibaza rinyomoza[552]:

> Urugereko ntirwemeye uburyo ba avoka bunganira bakora ibaza rinyomoza abatangabuhamya bashinjura, kandi Porokireri we yemererwa gukoresha ubwo buryo nta kibazo ku batangabuhamya bashinja.
>
> Ushinjwa yavukijwe uburengazira bwe bwo kunyomoza abatangabuhamya
>
> Mu ntangiriro y'urubanza, mu iburanisha ryo ku itariki ya 15 Mutarama 1997, Perezida Laity Kama yabujije Uregwa kubaza umutangabuhamya ushinja ibibazo bisa n'ibiganisha ku bisubizo. Umucamaza Kama yafashe icyemezo kimeze nk'ihame ridakuka kuri icyo kibazo. Uko kubuza umuburanyi kubaza ibibazo kunyuranyije n'amategeko. Ibibazo bisa n'ibiganisha ku bisubizo biremewe hafi iteka igihe cy'ibaza rinyomoza. Nyamara ariko, hari inshuro nyinshi muri uru rubanza Umucamanza Kama yemereye Porokireri kubaza abatangabuhamya be [bashinja] ibibazo bisa n'ibiganisha ku bisubizo. Ubusanzwe, ntabwo avoka [cyangwa Porokireri] yemerewe kubaza umutangabuhamya yahamagaje ibibazo bisa nk'ibiganisha ku bisubizo.

[551] Reba umugereka B.
[552] Akayesu yahawe uburenganzira bwo kongeramo indi mpamvu y'ubujurire kuri iki kibazo. Reba umugereka B.

311. Akayesu avuga ibibazo bibiri bitandukanye. Icya mbere, avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amateko kuko rwagabanyije igihe cyo kunyomoza. Icya kabiri, avuga ko rwamubujije, mu buryo bunyuranyije n'amategeko, kubaza ibibazo bisa n'ibibwira umutangabuhamya icyo agomba gusubiza. Akayesu avugako ayo makosa ahagije kugira ngo ibyemezo byamuhamije ibyaha ku birego byose biseswe[553].

1. <u>Imbibi ntarengwa mu ibaza rinyomoza</u>

a. Ibivugwa n'ababuranyi

312. Akayesu avuga ko ku itariki ya 14 Mutarama 1997, Urugereko rwa Mbere rw'Iremezo rwashyizeho imbibi ziruhije kubahiriza kandi zinyuranije n'amategeko ku ibaza rinyomoza igihe rwasabaga impande zombi kubaza ibibazo bifitanye isano itaziguye n'ibikorwa bivugwa mu Nyandiko y'ibirego. Akayesu avuga ko izo nzitizi zinyuranyije n'ingingo ya 20 ya Sitati n'iya 90 G) y'Amategeko y'Urukiko[554], ndetse zikanyuranya n'amategeko y'Abanyamerika, ay'Abongereza n'ay'Abanyakanada[555]. Avuga ko mu by'ukuri, izo nzitizi zimuvutsa uburenganzira bwe bw'ibanze bwo kunyomoza abatangabuhamya bashinja. Akayesu yongeraho ko ingaruka mbi ari nini cyane kubera nyine ko Abamwunganira batashoboye kubaza abatangabuhamya bashinja ibibazo by'ingeri nyinshi no gukoresha uburyo bwinshi bwashobokaga mu kwerekana ko abo batangabuhamya batakwizerwa ku byo bavuga byabaye bitari mu Nyandiko y'ibirego.[556]

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[553]Imyanzuro ya Akayesu, umutwe VII, igika 28; Imyanzuro ya Akayesu, umutwe XV, igika 3.

[554] Akayesu avuga ko ingingo ya 90 G) y'Amategeko, n'ubwo yemejwe gusa mu kwezi kwa Kamena 1998 (ikaba yari itarashyirwa mu bikorwa igihe amagambo anengwa yavugwaga), bitabuza ko ikurikizwa muri uru rubanza. Uko we abibona, "ishyirwaho ry'iyi ngingo ryaje rishimangira amahame asanzwe akoreshwa mu miryango y'amategeko ateganya ibaza rinyomoza.[…] Biraruhije kumva ko uburenganzira bwo kunyomoza ku bibazo bindi bitari mu Nyandiko y'ibirego bureba gusa imanza zaciwe nyuma ya Kamena 1998 ariko ntiburebe urubanza rw'ujurira". Reba Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, igika 84.

[555] Imyanzuro ya Akayesu, umutwe , igika 4. Akayesu avuga ko urubibi rukumbi ku ibaza rinyomoza ari urukubiye mu ngingo ya 90 G) y'Amategeko, yakomotse ku mategeko y'Abanyamerika, ahavuga ko ibibazo binyomoza bibazwa hazirikanwa ibyabajijwe mu'ibaza ry'ibanze. Reba inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.118.

[556] Imyanzuro ya Akayesu, umutwe VII, igika 5. Uko Akayesu we abibona, asanga ari uburyo bwo kuburizamo ibaza rinyomoza ku bibazo byose byaba ibya ngombwa cyangwa se iby'umugereka bishobora kubazwa mu rwego rw'ibaza

Bityo rero, Urugereko rwa Mbere rw'Iremezo rwavukijwe amakuru ya ngombwa mu kumenya niba ahamwa n'icyaha koko. [557]

313. Porokireri avuga ko Akayesu yumvise nabi, ku buryo bugaragara, imvugo ya Perezida w'Urugereko rwa Mbere rw'Iremezo[558]. Yongeraho ko ingingo ya 90 G) yemejwe muri Kamena 1998, bityo mu kwezi kwa Mutarama 1997 ikaba itarashoboraga gukurikizwa, bityo Akayesu akaba adashobora kwitwaza ko itubahirijwe.[559] Porokireri asanga ingingo ya 20 ya Sitati nayo yarubahirijwe. Byongeye kandi, Akayesu ntagaragaza ko hari icyo yatakaje.[560] Nta rugero atanga rw'amakuru ya ngombwa Urugereko rwa Mbere rw'Iremezo rwaba rwaravukijwe. Ntanagaragaza kandi ko hari umutangabuhamya waba utarizewe.

rinyomoza, kandi iri baza ritagomba kugarukira gusa ku bikorwa ushinjwa aregwa mu Nyandiko y'ibirego. Reba. Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.199.

[557] Imyanzuro ya Akayesu, umutwe VII, igika 25. Akayesu avuga kandi ko iyo ibaza rinyomoza riteguwe neza bituma urubanza rucibwa ukundi. Ageza ku Rugereko rw'Ubujurire ilisiti y'ibibazo byashoboraga kubazwa : « Ibibazo ku batangabuhamya b'abasivili n'abatangabuhamya b'impuguke byari kwibanda kuri ibi bikurikira : Uburyo umuryango w'umutangabuhamya runaka witabiriye ibirebana na FPR ; Kuba FPR yarashakishije abayoboke muri uwo muryango w'umutangabuhamya kuva mu wa 1989 ; ibikorwa by'umutangabuhamya kuva mu wa 1990 mu rwego rwa politiki mu Rwanda; uburyo abatangabuhamya bishyize hamwe mu matsinda, niba umutangabuhamya ari umwe mu bagize ayo matsinda agamije gutanga amakuru ku byabaye (kuri icyo kibazo cyihariye Akayesu yifashisha ibika bya 45,46 na 47 by'inyandiko y'urubanza, kandi akavuga ko Urugereko rwa Mbere rw'Iremezo rwanenze nta mpamvu ubwunganizi kuba butarabajije abatangabuhamya bashinja ku birebana n'ibintu bimwe na bimwe, nko kumenya niba ari « abayoboke » b'amashyirahamwe y'abatangabuhamya agamije gutanga amakuru ku byabaye) ; amasano ari hagati y'abatangabuhamya; ubuhamya bw'uwo mutangabuhamya mu zindi manza zabereye mu Rwanda; inyungu uwo mutangabuhamya afite yo gushinja uregwa no ku kuba yahamwa n'icyaha ; isano umutangabuhamya afitanye n'umutangabuhamya w'ingenzi Ephrem Karangwa; abantu bagendanye n'abatangabuhamya; itegura ry'ubuhamya (babuteguranye na nde ? ryari ? etc…); ukubogama k'umutangabuhamya w'impuguke Alison Des Forges, n'uruhare rwe kuva mu mwaka wa 1960. Reba Imyanzuro ya Akayesu, umutwe wa VII, igika 27.

[558] Imyanzuro ya Porokireri isubiza, igika 8.8. Porokirer asanga igice kivugwa na Akayesu ukubiyemo mu by'ukuri amabwiriza abiri yatanzwe na Perezida w'Urugereko rwa Mbere rw'Iremezo: mbere na mbere Prezida asaba Akayesu kutarenga urubibi rw'ibyabajijwe mu ibaza ry'ibanze. Icya kabiri amenyesha ababuranyi ko ibindi bibazo na byo bishobora kubazwa, keretse gusa mu gihe byaba bifashe isura y'ibisobanuro rusange.

[559] Imyanzuro ya Porokireri isubiza, Igika cya 8.11

[560] Imyanzuro ya Porokireri isubiza, igika cya 8.14

b. Isesengura ry'Urugereko

314. Ku itariki ya 14 Mutarama 1997, Perezida w'Urugereko rwa Mbere rw'Iremezo yavuze ibi bikurikira :

> Icyitonderwa cya kabiri kigenewe Uregwa: Uregwa agomba kubaza ibibazo binyomoza akurikije umurongo w'ibibazo byabajijwe na Porokireri, ni ukuvuga ko afite uburenganzira busesuye bwo kubaza icyo ashaka cyose kirebana n'ibisubizo atasobanukiweho neza. Ashobora no kubaza ibindi bibazo, bipfa gusa kuba atari ibitekerezo atanga. Nifuza kandi ko, yaba Porokireri, uregwa cyangwa avoka umwunganira, mwabaza umutangabuhamya ibibazo bifitanye isano itaziguye n'ibikorwa bivugwa mu Nyandiko y'ibirego kandi bitari ibisobanuro byo mu rwego rusange […][561].

315. Umuntu yakwibaza niba agendeye ku magambo yavuzwe na Perezida w'Urugereko rwa Mbere rw'Iremezo, Akayesu ashobora kuvuga ko yavukijwe uburenganzira bwe bwo kunyomoza abatangabuhamya bahamagawe mu Rukiko. Urugereko rw'Ubujurire rusanga igisubizo Akayesu adashobora kubivuga kubera impamvu nyinshi.

316. Urugereko rw'Ubujurire rurongera kwibutsa ko ibice by'inyandikomvugo y'iburanisha bigomba mbere na mbere kumvikana hakurikijwe urwego birimo, kugira ngo umuntu yumve icyo amagambo ashidikanywaho yashatse kuvuga. Muri uru rubanza, iburanisha ryo ku itariki ya 14 Mutarama 1997 ryari rigenewe ibaza rinyomoza umutangabuhamya wiswe K, abazwa n'Akayesu ubwe[562]. Atangiza iburanisha, Umucamanza Kama yavuze ijambo ry'intangiriro rigenewe ababuranyi b'impande zombi maze abibutsa […] ingingo zimwe z'amategeko asanga ari ngombwa ko bazirikana[563], ni ukuvuga ingingo ya 77 n'iya 80 z'Amategeko y'Urukiko, kimwe n'amahame agenga itangwa ry'ibimenyetso.[564] Igice cya nyuma cy'ijambo rya Perezida cyarebaga, by'umwihariko, Uregwa. Icyo gihe

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[561] Inyandikomvugo y'iburanisha, 14 Mutarama 1997, imp. 8 - 9.

[562] Icyo gihe, Akayesu ubwe yanyomozaga umutangabuhamya wiswe K. Ku itariki ya 13 Mutarama 1997, mu gihr rwari rutegereje gufata Icyemezo ku Cyifuzo cyatanzwe na Akayesu cyo guhindura umwunganira, Urugereko rwemereye Akayesu kunyomoza abatangabuhamya bashinja, mu rwego rwo kugira ngo agire ibyo yongera ku bibabzo byabajijwe na avoka umwunganira. Icyo cyemezo cy'agateganyo cyaje kuvanwaho ku itariki ya 16 Mutarama 1997. Reba Icyemezo ku Cyifuzo cy'Uregwa gisaba guhindurirwa avoka yagenewe, 16 Mutarama 1997.

[563] Inyandikomvugo y'iburanisha, 14 Mutarama 1997, urup.2

[564] Inyandikomvugo y'iburanisha, 14 Mutarama 1997, imp.2- 6

nibwo Umucamanza Kama yibukije muri rusange amategeko agenga ibaza rinyomoza, anavuga amagambo Akayesu arwanya.

317. Ijambo rya Perezida ryari rigamije cyane cyane kunoza imiyoborere y'imiburanishirize mu Rugereko. Iryo jambo ryari rigenewe ababuranyi b'impande zose muri uru rubanza, ari bo Porokireri, Ushinjwa n'Abamwunganira. N'ubwo igice cya nyuma cy'ijambo rya Perezida cyarebaga, by'umwihariko, Uregwa (ibi bikaba byumvikana kubera ko Uregwa ari we wari ugiye kunyomoza umutangabuhamya), abantu bose bari muri urwo rubanza barebwaga n'iryo jambo ry'intangiriro rya Perezida w'Urugereko, ari na ryo Akayesu arwanya.

318. Kubera ko hamaze kwibutswa rero urwego Umucamanza Kama yavuzemo iryo jambo, biroroshye kurushaho gusobanukirwa icyo yashakaga kuvuga mu by'ukuri. Urugereko rw'Ubujurire rusanga bigaragara neza ko uwo Mucamanza, wayoboraga iburanisha, yashatse mu by'ukuri gutsindagira ko mu rwego rw'ibaza rinyomoza hari itandukanyirizo rikomeye hagati y'ibibazo bifitanye isano n'urubanza n'ibindi bitari gombwa byo mu rwego rusange. Mu yandi magambo, igihe Umucamanza Kama yasabaga ababuranyi kubaza ibibazo bifitanye isano itaziguye n'ibikorwa bikubiye mu Nyandiko y'ibirego, ababuza ibisobanuro byo mu rwego rusange, yibukije ko ibaza rinyomoza ritagomba gukererezwa n'ibibazo bitari ngombwa kandi bidafitanye isano n'urubanza. Ijambo ry'Umucamanza Kama rijyana n'inshingano ye nka Perezida w'Urugereko rwa Mbere rw'Iremezo yo kuburizamo ibaza rinyomoza ryaba ridafite akamaro kandi ridafite n'aho rihuriye n'urubanza. Ntabwo rwose iryo jambo ryari rigamije gushyira inzitizi ku ibaza rinyomoza.[565] Iryo jambo ryari rigamije gusa imiyoborere y'imiburanishirize ku buryo hataba impaka zidafite akamaro ku bibazo bidafitanye isano n'uru rubanza. Urugereko rw'Ubujurire rusanga Perezida w'Urugereko rwa Mbere rw'Iremezo yarubahirije

[565] Urubibi ntarengwa ku bibazo by'inyomoza narwo rwerekanwe neza na Perezida w'Urugereko, mbere gato y'uko avuga amagambo Akayesu anenga ubu. Perezida yagize ati :"Ikindi cya kabili cy'ingenzi Uregwa agomba kumenya ni uko ibibazo by'uregwa bigamije kunyomoza bigomba byanze bikunze kutrenga urubibi rw'ibyabajijwe na Porokireri, ni ukuvuga ko afite uburenganzira busesuye bwo gusobanuza icyabajijwe cyose asanga kitahawe igisubizo gihwitse". *Reba inyandikomvugo y'iburanisha 14, Mutarama 1997, urup.8.* Akayesu ntacyo anengaho ayo magambo ahuje neza n'amahame rusange akurikizwa mu ibaza rinyomoza.

inshingano ze mu kugenzura imigendekere y'ibaza ry'ibanze n'iy'ibaza rinyomoza, mu buhamya abagabo batanga mu Rugereko, nk'uko byemejwe kuva icyo gihe n'Amategeko y'Urukiko.[566] Bityo rero, ijambo ry'Umucamanza Kama nta nzitizi n'imwe idasobanutse ryashyize ku ibaza rinyomoza, kandi ntiryavukiye Akayesu uburenganzira bwe bwo kunyomoza abatangabuhamya bashinja.

319. Urugereko rw'Ubujurire rusanze kandi nta rugero na rumwe Akayesu atanga rwo kugaragaza ko yavukijwe, mu buryo bugaragara, uburengazira bwe bwo kunyomoza abatangabuhamya bashinja. Nta gice na kimwe cy'inyandikomvugo y'iburanisha avuga ngo agaragaze ikibazo runaka cyaba kitarakirwe nyuma y'ijambo ry'Umucamanza Kama. Ayakesu ntiyagaragaje rero ko yarenganijwe. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanze nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze kuri iki kibazo.

2. <u>Kubuzwa kubaza ibibazo bisa n'ibibibwira ubazwa icyo asubiza</u>

a. *Ibivugwa n'ababuranyi*

320. Akayesu avuga ko ku itariki ya 15 Mutarama 1997, Urugereko rwa Mbere rw'Iremezo rwamubujije, mu buryo bunyuranyije n'amategeko, kubaza ibibazo bisa n'ibibwira umugabo icyo asubiza igihe yanyomozaga umutangabuhamya ushinja. Yibutsa ko niba ibibazo bisa n'ibibwira umutangabuhamya igisubizo bitemewe mu ibaza ry'ibanze, muri rusange byemewe mu ibaza rinyomoza[567], nk'uko bimeze mu mategeko y'Abanyamerika,

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[566] Uduka F) na G) tw'Ingingo ya 90 y'Amategeko twemejwe ku itariki ya 8 Kamena 1998, duteganya ibi bikurikira : « F) Urugereko rugenzura ko ibazwa ry'abatangabuhamya n'itangwa ry'ibimenyetso bikorwa, n'uburyo bikurikirana kugira ngo i) ibazwa n'itangwa ry'ibimenyetso bigaragaze ukuri kandi ii) bidatesha igihe ku maherere. G) Ibazwa rinyomoza ryibanda gusa ku ngingo zavuzwe mu ibazwa ry'ingenzi cyangwa se zirebana no kwizerwa k'umutangabuhamya. Rusanze byagira akamaro, Urugereko rushobora kwemera ibibazo byerekeranye n'izindi ngingo, bigafatwa nk'aho ari ibaza ry'ibanze."

[567] Imyanzuro ya Akayesu, umutwe VII, igika 22; Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza, urup. 88.

ay'Abongereza n'ay'Abanyakanada. Byongeye kandi, avuga ko Urugereko rwa Mbere rw'Iremezo rwamubujije kubaza ibyo bibazo nyamara ntirwabibuza ubushinjacyaha[568].

321. Porokireri yibutsa, mbere na mbere, ko Akayesu aterekana aho ibyo avuga bishingiye muri dosiye[569], ndetse ntanerekane uko yarenganurwa ku karengane yaba yaragize.[570] Porokireri yongeraho ko nta ngingo n'imwe muri Sitati cyangwa mu Mategeko igenga ibibazo bisa n'ibibwira ubazwa icyo agomba gusubiza. Akayesu ashingira ku bukemuramanza bwo mu bihugu runaka ariko ntagaragaze ko Urukiko rwagombaga kubugenderaho muri uru rubanza[571]. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo ni rwo rufite ububasha busesuye bwo ku gena uburyo rusanga buboneye bwo kumva ubuhamya bw'abagabo[572] kandi, muri uru rubanza, Perezida yayoboye iburanisha ku buryo nyabwo[573]. Akayesu ntagaragaza rero ko yarenganijwe.

b. Isesengura ry'Urugereko

322. Ku itariki ya 15 Mutarama 1997, Perezida w'Urugereko rwa Mbere rw'Iremezo yavuze amagambo akurikira :

> […] Ndifuza kugira icyo mbwira Uregwa. Iyo ubajije ikibazo kigira kiti : " Igihe bagufataga bakujyanye mu ishyamba"? Iki nicyo bita ikibazo gisa n'ikibwira umuntu icyo asubiza. Umubwiye igisubizo. Ikibazo cyiza cyaba iki gikurikira : "Igihe bagufataga bakujyanye he?" Nakuretse uramubaza kandi unamubwira igisubizo 'ishyamba'. Ubutaha, ntumubaze ikibazo gisa n'ikimubwira icyo asubiza. Umubaze uti: "Bakujyanye he?" Arisubiriza.[574]

323. Urugereko rw'Ubujurire ruributsa ko Amategeko y'Urukiko atigeze na rimwe agira icyo ateganya cyihariye ku bibazo bisa n'ibibwira umugabo icyo asubiza. Ateganya ahubwo

[568] Imyanzuro ya Akayesu, umutwe VII, igika cya 7
[569] Imyanzuro ya Porokireri isubiza, igika cya 8.16
[570] Imyanzuro ya Porokireri isubiza, igika cya 8.18
[571] Imyanzuro ya Porokireri isubiza, igika cya 8.19
[572] Imyanzuro ya Porokireri isubiza, igika cya 8.20
[573] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.184
[574] Inyandikomvugo y'iburanisha , 15 Mutarama 1997. urup. 31

amahame rusange agenga ibaza ry'ibanze n'ibaza rinyomoza[575], kandi ayo mahame asa n'akomoka kuri *U.S Federal Rules of Evidence* [Amategeko agenga itangwa ry'ibimenyetso ya Leta z'Unze Ubumwe za Amerika][576]. Koko rero, ukurikije ayo mategeko, ibibazo bisa n'ibibwira ubazwa icyo agomba gusubiza muri rusange biremewe kandi bibazwa mu ibaza rinyomoza, ariko birabujijwe mu ibaza ry'ibanze. Cyakora, Urugereko rw'Ubujurire rwo rubona ko Amategeko y'Urukiko atangira gukurikizwa ari uko amaze kwemezwa. Ibisobanuro by'ingingo z'ayo Mategeko y'Urukiko bishobora gutangwa hifashishijwe amategeko agenderwaho n'igihugu iki n'iki ariko nta na rimwe agomba kuba munsi y'amategeko yo mu bihugu.[577]

324. Hari ikibazo cyo kumenya niba kuba, ku itariki ya 15 Mutarama 1997, Umucamanza Kama yarabujije Akayesu kubaza ibibazo bisa n'ibibwira umugabo icyo asubiza byararenganije Akayesu ku buryo byatesha agaciro icyemezo Urukiko rwafashe. Urugereko rw'Ubujurire rusanga icyemezo cy'Urugereko rwa Mbere rw'Iremezo kidashobora guteshwa agaciro n'uko hari utuntu duto urwo Rugereko rutubahirije mu gukoresha Amategeko y'Urukiko. Kugira ngo icyemezo gite agaciro, hagomba kugaragazwa ko, hashingiwe ku mikirize y'urubanza muri rusange, urwo Rugereko rukoresheje ubutabera. Icya mbere, muri uru rubanza, Akayesu ntagaragaza ko hari

[575] Aya mategeko yemejwe ku itariki ya 8 Kamena 1998. Igika cya F) cy'Ingingo ya 90 giteye gitya : « Urugereko rugenzura uburyo ibazwa ry'abatangabuhamya n'itangwa ry'ibimenyetso bikorwa n'uburyo bikurikirana kugira ngo :

i) ibazwa n'itangwa ry'ibimenyetso bigaragaze ukuri;
ii) bidatesha igihe ku maherere."

Igika cya G) cyo kigira kiti : "Ibazwa rinyomoza ryibanda gusa ku ngingo zavuzwe mu ibazwa ry'ingenzi cyangwa se zirebana no kwizerwa k'umutangabuhamya. Rusanze byagira akamaro, Urugereko rushobora kwemera ibibazo byerekeranye n'izindi ngingo, bigafatwa nk'aho ari ibaza ry'ibanze."

[576] Ingingo ya 611 y'itegeko rya Leta Zunze Ubumwe za Amerika ryerekeye ibimenyetso (*U.S. Federal Rules of Evidenec)* iteye itya : a) "Igenzura ry'Urukiko. Urukiko rugenzura rushyize mu gaciro uburyo abatangabuhamya babazwa ibibazo, uburyo ibimenyetso by'urubanza bitangwa n'uburyo bikurikirana ku buryo 1) ibyo bibazo n'itangwa ry'ibimenyetso bigaragaza ukuri, 2) bituma igihe kidatakara ku maherere, 3) abatangabuhamya barindwa ntibashyirweho igitutu cyangwa ngo basagarirwe. b) Igihe kigenewe ibaza rinyomoza. Ibaza rinyomoza ryibanda ku byavuzwe mu ibaza ry'ibanze cyangwa ku byerekeranye n'icyizere cyagirirwa abatangabuhamya. Urugereko rushobora, mu bwisanzure bwarwo, kwemere ko habazwa ibibazo ku bindi bintu, icyo gihe bigafatwa nk'aho ari ibaza ry'ibanze. c) Ibibazo bisa n'ibiganisha ku gisubizo. Ibibazo bisa n'ibiganisha ku gisubizo ntibyemewe igihe umutangabuhamya abazwa mu ibaza ry'ibanze. Ubusanzwe ariko, biremewe igihe cy'ibaza rinyomoza. Iyo ari ukubaza umutangabuhamya wigaritse umuburanyi wamuhamagaje, uw'urundi ruhande cyangwa se ushyigikiye urundi uruhande, ibibazo bifatwa mu rwego rw'ibaza ry'ibanze.

umurongo Urugereko rwa Mbere rw'Iremezo rwashyizeho muri rusange werekeye ibaza rinyomoza kandi rukawugenderaho mu rubanza rwose. Urugero rukumbi Akayesu atanga ni urw'ibyabaye ku itariki ya 15 Mutarama 1997. Nta rundi rugero atanga. Urugereko rw'Ubujurire rusaga kandi ijambo ryavuzwe n'Umucamanza Kama ku itariki ya 15 Mutarama 1997 ryari rigenewe Uregwa wenyine, ntiryari rigenewe abamwunganira cyangwa Porokireri. Ikindi kigaragara ni uko Akayesu atarenganijwe na rimwe mu iburanisha kuko ikibazo Perezida w'Urugereko yanze cyari cyabajijwe mbere, ndetse umutangabuhamya akaba yari yagishubije. Byongeye kandi, Akayesu ntagaragaza ko ijambo ry'Umucamanza Kama hari icyo ryamurenganijeho. Ntagaragaza ko nyuma y'icyo gihe atashoboye kunyomoza ku buryo nyabwo abatangabuhamya bose cyangwa abenshi muri bo. Urugereko rw'Ubujurire rusanga kandi, mu iburanisha mu bujurire, Akayesu yiyemerera ko abamwunganira babajije ibibazo bimwe na bimwe, bityo akaba atari ngombwa kuremereza ikibazo cyo kuba yarabujijwe kubaza ibibazo bisa n'ibibwira umugabo icyo asubiza[578].

325. Urugereko rw'Ubujurire rusanze rero Akayesu atagaragaza ko yarenganijwe ku buryo byatesha agaciro urubanza rwaciwe.

326. Kubera iyo mpamvu, hashingiwe ku myazuro yarwo ku kibazo cya mbere Akayesu avuga no ku kibazo cya kabiri, Urugereko rw'Ubujurire rusanze impamvu z'ubujurire zose zerekeye ibibazo binyomoza nta shingiro zifite.

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[577] Kuri iki kibazo, Urugereko rw'Ubujurire rwibukije ibiteganywa n'ingingo ya 89 A) y'Amategeko : "Ku byerekeye ibimenyetso, amategeko avugwa muri iki cyiciro agenga imiburanishirize yose ibera mu ngereko. Ingereko ntizigendera ku mategeko y'igihugu iki n'iki agenga ibimenyetso".
[578] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000. urup.122.

H. Impamvu y'ubujurire ya munani : Gushyikiriza Urukiko, mu buryo bunyuranyije n'amategeko, ubuhamya bwanditse bw'abagabo bashinjura[579]

327. Akayesu avuga ko icyo kibazo ari "ikosa ridakomeye". Urugereko rw'Ubujurire rwagaragaje mbere uburyo ruteganya gusuzuma ibibazo bikubiye muri iki cyiciro. Urugereko rw'Ubujurire ruzafata icyemezo kuri ibyo bibazo rumaze gusuzuma impamvu z'ubujurire z'ibanze[580].

I. Impamvu y'ubujurire ya cyenda: Ibaruwa DAAX yandikiye Abacamanza[581]

328. Iyi mpamvu y'ubujurire ireba ahanini ubuhamya bwatanzwe n'umugabo ushinjura wiswe DAAX, hamwe n'ibaruwa yaba yarohereje Abacamanza b'Urugereko rwa Mbere rw'Iremezo nyuma y'ubwo buhamya. N'Ubwo adasobanura niba ikosa avuga ko ryakozwe ari iryo mu rwego rw'amategeko cyangwa rishingiye ku byabaye, mu mwanzuro we Akayesu avuga ko iryo kosa ryaba rikosowe ari uko kumukirikiranaho ibyaha bihagaritswe, hakurikijwe ibyanditswe ku birebana n'kurengera mu miburanishirize.[582] Kuri we, ikosa ryakozwe rirahagije ubwaryo kugira ngo uwo muti w'ikibazo ube ari wo utangwa.[583]

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579 Mu cyemezo cyarwo cyo ku itariki ya 24 Gicurasi 2000, Urugereko rw'Ubujurire rwemereye Akayesu kongera iyo mpamvu y'ubujurire mu Nyandiko y'ubujurire. Reba umugereka B.

580 Reba ibika 38-41

581 Mu cyemezo cyo ku itariki ya 24 Gicurasi 2000, Akayesu yemerewe kongera iyo mpamvu y'ubujurire mu Nyandiko y'ubujurire . Reba umugereko B ku bindi bisobanuro birambuye.

582 Imyanzuro ya Akayesu, umutwe XII, igika 7. Mu by'ukuri, Akayesu ashingira ku mahame avuga mu mutwe wa IV w'Umwanzuro we, nyamara ntagaragaze ukuntu ayo mahame yakurikizwa muri uru rubanza. "Umuti watangwa ku kibazo nk'iki ni uguhagarika imiburanishirize hakurikijwe amahame yavuzwe mu mutwe wa IV werekeye inyungu zitabangikanywa." Icyifuzo cyo kongera mu Nyandiko y'ubujurire impamvu ivugwa mu mutwe wa IV nticyakiriwe n'Urugereko mu Cyemezo cyarwo cyo kuwa 22 Kanama 2000. Ariko, Urugereko rw'Ubujurire rwagaragaje ko muri rusange isesengura rikubiye muri uyu mutwe kimwe n'ubukemuramanza bwavuzwe, byerekeye ikibazo cyihariye cyabyukijwe muri iyo mpamvu y'ubujurire, ko kiterekeye rero ikibazo kigwaho ubu. Reba kandi Imyanzuro ya Akayesu, umutwe XII, igika 7, aho Akayesu avuga « akarengane kadafite igaruriro Uregwa yagize, bikomotse ku ibaruwa imushinja (urubanza rwashoboraga kuba rwaraciwe ukundi) ».

583 Imyanzuro ya Akayesu, umutwe XV, igika 1. Mu iburanisha mu bujurire, Akayesu nta ngingo zifite ishingiro yatanze ku byerekeye iyi mpamvu y'ubujurire, uretse kuvuga ngo: "Turekeye aho ku byerekeye umutwe wa XII werekeye umutangabuhamya wiswe DAAX. Icyo kibazo ntitwiririrwa tugisuzuma, turumva ko ari ikosa ryakozwe ariko ubwaryo rikaba atari impamvu ihagije yo guhagarika imiburanishirize. Uko tubibona, ni ikosa ryagombaga

1. Ibibazo byabyukijwe

329. Muri iyi mpamvu y'ubujurire, harasuzumwa ibibazo bibiri by'ingenzi: 1) inkurikizi (niba zarabayeho) z'ibaruwa DAAX yoherereje abacamanza b'Urugereko rwa Mbere rw'Iremezo nyuma y'ubuhamya bwe, 2) kureba niba ubuhamya bwa DAAX butari buhagije kandi niba bwaribanze gusa ku ngingo bukirengagiza izindi. Akayesu avuga ko, kubera ko ibintu byari byifashe gutyo, nta kuntu yari kuburanishwa urubanza nta kubogama.[584]

330. Mu ikubitiro, Urugereko rw'Ubujurire rusanga Akayesu yarabyukije ikibazo ngo cy'ifatwa rya DAAX asubiye mu Rwanda nyuma y'ubuhamya yari yatanze mu Rugereko rwa Mbere rw'Iremezo.[585] Akayesu avuga ko, asubiye i Kigali, uwo mutangabuhamya yafashwe, agafungwa n'abategetsi b'u Rwanda ku itariki ya 1 Gicurasi 1998.[586] Mu myanzuro we, Akayesu avuga ko yandikiye Gerefiye kuri icyo kibazo[587], ariko ko kugeza igihe yatangaga inyandiko ikubiyemo iyo myanzuro ye, Ibiro bya Gerefiye byari

kuba ryarashyizwe ahagaragara." Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 117 (aya magambo yavuzwe mu rurimi rw'Icyongereza, urup. 85). Ubwo Akayesu yamaze gutanga ingingo zisobanutse neza mu myanzuro ye, kandi akaba yaragaragaja mu gisubizo cye ku myanzuro ya Porokireri ko yongye kwemeza ingingo yatanze mu Myanzuro ye ijurira, Urugereko rw'Ubujurire ruzasuzuma iyo mpamvu y'ubujurire.

584 Imyanzuro ya Akayesu, umutwe XII, igika I.10.

585 Reba kandi imyanzuro ya Akayesu, umutwe VI, igika I.10, ku mpamvu ya 3 y'ubujurire bwe. Muri icyo gice, avuga ibi bikurikira: "Ikindi kandi, uwajuriye yifuza kugaragaza, yifashishije ibikorwa, ko ibyabaye bigendanye n'ubuhamya bwa DAAX (umutangabuhamya ushinjura) ku itariki ya 3 Werurwe 1998, bigaragaza kouwajuriye atashoboraga gucibwa urubanza ruri mu kuri kandi ruboneye, bitewe n'uko icyo gihe, uwo mutangabuhamya amaze gutanga ubuhamya bwe, yafashwe agafungwa asubiye mu Rwanda. Mu miburanire ye azerekana cyane cyane ukuntu yavukijwe uburenganzira bwe bwo guhamagaza abatangabuhamya be n'ubwo kwiregura, ibyo bikaba binyuranyije n'ibyemerewe ababuranyi nk'uko byashimangiwe n'Urugereko rw'Ubujurire rw'Urukiko rwa TPIY|". Porokireri we avuga ko muri uru rubanza ikibazo cyabyukijwe ari icyerekeye "ifungwa ry'umutangabuhamya DAAX mu Rwanda ariko uwajuriye nta ngingo n'imwe atanga kandi nta muti asaba ku birebana n'ibyo avuga." Imyanzuro ya Porokireri isubiza, igisobanuro 295.

586 Imyanzuro ya Akayesu, umutwe XII, igika I.9. Akayesu asobanura uburyo uwo mutangabuhamya yafashwe akagenda yimurirwa mu magereza menshi ava muri imwe ajya mu yindi, hashira amezi n'amezi akabona kujyanwa muri gereza ya Kimironko.

587 Akayesu arasaba uburenganzira bwo gushyira muri dosiye ibaruwa yo kuwa 19 Kamena 2000 yandikiye Gerefiye kuri icyo kibazo. Imyanzuro ya Akayesu, umutwe XII, igika 5. Nyuma iyo baruwa yashyizwe muri dosiye iba ikimenyetso gihamya gifite nº 51 mu gitabo cy'ubujurire cy'Uregwa, hari n'ibimenyetso gihamya bifite nº 30-53, imitwe 6 -14. Urugereko rw'Ubujurire rwabonye iyo baruwa kandi, ibyo ari byo byose, kubera impamvu zizasobanurwa nyuma, rwasanze nta shingiro ifite ku bibazo byabyukijwe muri iyi mpamvu y'ubujurire. Ni yo mpamvu atari ngombwa ko rufata icyemezo mu buryo busanzwe kuri icyo cyifuzo.

bitaremeza, nk'uko byabisabwaga n'Icyemezo cyo kuwa 24 Gicurasi 200[588], niba DAAX yarafunzwe koko n'abategetsi b'u Rwanda. Iryo fungwa ryaje kwemezwa nyuma na Gerefiye mu ibaruwa yo kuwa 20 Kamena 2000, ariko yometse kuri fagisi yo kuwa 13 Nyakanga 2000[589]. Cyakora, Urugereko rw'Ubujurire rusanga, aho amariye kubona iyo nkuru, haba mu gisubizo cye ku myanzuro isubiza iya Porokireri cyangwa se mu iburanisha mu Rugereko rw'Ubujurire[590], Akayesu ataragaragaje ukuntu ifungwa rya DAAX ari ngombwa ku kibazo kivugwa muri iyi mpamvu y'ubujurire[591]. Umuntu yibaza kandi icyo kibazo ku bindi bimenyetso Akayesu yasabye ko byashyirwa ahagaragara[592]. Akayesu ntagaragaza ukuntu ayo makuru ari ngombwa kuri iyi mpamvu y'ubujurire.[593] DAAX yatanze ubuhamya mu rukiko ku itariki ya 3 werurwe 1998 maze afatwa ku itariki ya 1 Gicurasi 1998, nyuma y'ubuhamya bwe. Kuri iyi mpamvu y'ubujurire, Akayesu ntagaragaza aho uru rubanza ruhuriye, ku ruhande rumwe, n'ibyemezo byafashwe byo kurinda umutekano wa DAAX igihe yatangaga ubuhamya mu Rukiko, n'ifatwa rye

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588 Mu Cyemezo cyo kuwa 24 Gicurasi 2000, Gerefiye yasabwe kwemeza, akurikije ibimenyetso byanditse yari afite muri icyo gihe, niba umutangabuhamya DAAX yarafunzwe koko n'abategetsi b'u Rwanda.

589 Akayesu yashyize iyo baruwa ibyemeza mu "Gitabo cye cy'ubujurire cy'inyongera, ikimenyetso gihamya", Ikimenyetso gihamya gifite nº 6, cyatanzwe ku itariki ya 13 Ukwakira 2000. Biragaragara ko n'ubwo iyo baruwa ari iyo kuwa 20 Kamena 2000, Gerefiye ntiyayohereje Akayesu mbere y'uko igihe cyo gutanga Umwanzuro we kirangira. Umuntu ashobora gusoma muri iyo baruwa ko "umutangabuhamya DAAX yari umukozi mukuru mu Rwanda akaba yarahamagawe kwitaba Urukiko bisabwe n'Ubwunganizi. Uwo mutangabuhamya yashyikirijwe urupapuro rumuhamagara nyuma y'impaka zabaye hagati ye n'Ishami rishinzwe gufashaabatangabuhamya n'abahohotewe. Nyuma, iryo Shami ryasabye Urugereko rwa Mbere rw'Iremezo, Inteko ya mbere, gufata ibyemezo by'inyongera byo kurinda umutekano w'uwo mutangabuhamya. Nyuma y'impaka zabereye mu muhezo, Urugereko rwakiriye icyo cyifuzo, rufata icyemezo rwasabwe gufata. Ubuhamya bwe burangiye, Umutangabuhamya DAAX yoherejwe i Kigali. Nyuma y'ukwezi kumwe yarafunzwe." Mu myanzuro ye, Akayesu avuga ibyo bikorwa mu magambo rusange, akanagira ati "n'ubwo uwo mutangabuhamya yari afite ubwoba kandi hariho n'akaga yashoboraga guhura nako nk'uko byasobanuwe n'Ishami rishinzwe gufasha abatangabuhamya n'abahohotewe, yemeye gutanga ubuhamya bwe". Imyanzuro ya Akayesu, umutwe XII, igika 1.5. Reba kandi ibika I.9 na V.

590 Mu Gisubizo cye ku myanzuro isubiza ya Porokireri (igika 136), Akayesu avuga gusa ko ashimangiye ingingo yatanze mu mutwe wa XII w'Imyanzuro ye, kandi akavuga ko kuba iyo baruwa yoherejwe n'umutangabuhamya DAAX itaramaganywe ku mugaragaro bihesha isura mbi ubutabera. Ibsiobanuro yatanze igihe cy'iburanisha mu bujurire yibukijwe mu byavuzwe hejuru.

591 Reba na none ku mpamvu ya 3 y'ubujurire bwa Akayesu.

592 Ni ukuvuga inyandikomvugo y'inama yabereye mu biro bya Perezida (n'ubwo Icyemezo cyo kuwa 24 Gicurasi 2000 kimwe n'amabaruwa yanditswe nyuma akomoza kuri Porokireri) n'icyifuzo cyatanzwe kuwa 18 Gashyantare 1998 n'Ishami rishinzwe gufasha abatangabuhamya n'abahohotewe. Mu bujurire, Akayesu yasabye ko izo nyandiko zombi zishyirwa ahagaragara. Ibiro bya Gerefiye byamugejejeho icyo Cyifuzo ku itariki ya 10 Nyakanga 2000, ariko biragaragara ko iyo nyandikomvugo y'inama itamushyikirijwe. Ibyo ari byo byose, Akayesu ntagaragaza ukuntu izo nyandiko zari ingirakamaro.

593 Akayesu avuga ibi bikurikira: "Urugereko rwazirikanye kandi ko Uregwa, azatanga ibimenyetso mu bujurire gihe azaba asobanura ingingo ze mu mizi yazo, ibyo bikaba bisaba ko hatangwa ibimenyetso n'inyandiko byavuzwe haruguru mu cyifuzo gissaba guhindura inyandiko y'ubujurire." Imyanzuro ya Akayesu, umutwe XII, igika 2.

nyuma y'ubuhamya bwe, ku rundi ruhande.[594] Urugereko rw'Ubujurire rusanga ayo makuru nta ho ahuriye n'urubanza. Ntirwirirwa rero rusuzuma izo nyandiko, cyangwa ibyabaye bizivugwamo.

a. Ibaruwa yo ku itariki ya 3 Werurwe 1998 yandikiwe Abacamanza bagize Inteko ya mbere y'Urugereko rwa Mbere rw'Iremezo.

331. Akayesu avuga ko urubanza rwe rufite inenge kubera ibaruwa DAAX yandikiye Abacamanza b'Urugereko rwa Mbere rw'Iremezo nyuma y'ubuhamya yatanze mu Rukiko ku itariki ya 3 Werurwe 1998 (Ibaruwa).[595] Avuga ko muri iyo baruwa, uwo umutangabuhamya yatangaga amakuru y'inyongera ku myifatire ya Akayesu mu gihe cy'ibyabaye mu mwaka wa 1994. Akayesu avuga ko ingingo eshanu zibukijwe cyangwa zashimangiwe muri iyo baruwa zabangamiye bikomeye urubanza rwe.

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[594] Nk'uko byavuzwe hano hejuru, Akayesu avuga na none iby'ifatwa ry'umutangabuhamya DAAX mu mpamvu ya 3 y'ubujurire bwe. Muri iyi mpamvu, mu gihe avuga ko bitashobokaga ko aburanishwa urubanza mu buryo buboneye kubera intambara yaberaga mu Rwanda, no kubera iterabwoba ryashyirwaga ku batangabuhamya bashobora gushinjura ndetse bamwe bakanicwa, anavuga kandi (na none mu magambo rusange rwose) ko abenshi mu batangabuhamya be bagize ubwoba ntibaza gutanga ubuhamya. Imyanzuro ya Akayesu, umutwe VI, umugereka, igika 1 L. Ikindi kandi, mu myanzuro ye ku bindi bibazo (umutekano w'abatangabuhamya), avuga ko Urugereko rwa Mbere rw'Iremezo rwashyize ahagaragara amakuru yerekeye abatangabuhamya barindiwe umutekano bigatera ubwoba abandi batangabuhamya yifuzaga guhamagaza mu rubanza. By'umwihariko, yatanze urugero rwo kuba abanyamakuru baramenyeshejwe izina ry'umugore we kimwe n'umwirondoro w'uwari Perefe wa Gitarama, n'urwo kuba Perezida w'Urugereko rwa Mbere rw'Iremezo yarashyize ahagaragara umwirondoro w'umutangabuhamya wiswe DFX (n'ubwo avuga ko Perezida yaje kubisabira imbanbazi nyuma). Atanga kandi urugero rw'umutangabuhamya DAAX, umwirondoro we washyizwe ahagaragara mu kinyamakuru *Hirondelle* cyo ku wa 6 werurwe 1998, kimwita "uwahoze ari umutegetsi mukuru". Imyanzuro ya Akayesu, umutwe XIII, igika 6. Urugereko rw'Ubujurire rwarangije gusobanura ukuntu ruteganya gusuzuma ibibazo byavutse muri iki gice cy'ubujurire bwa Akayesu. Rusanga ariko izo mvugo ari rusange, hatitawe ku bintu uko byifashe igihe zivugwamo, ko zidashyigikiwe n'ingingo n'imwe cyangwa urugero na rumwe rw'ibyo Akayesu cyangwa abamwunganira baba barageragеje gukora kugira ngo bahamagaze abatangabuhamya mu rukiko. Ntavuga igihe abo batangabuhamya baba barangiye gutanga ubuhamya n'impmavu yaba yarabibateye, kandi ntiyerekana uburyo ibyo bifitanye isano n'impamvu iyo ari yo yose y'ubujurire. Na none, Akayesu nta rugero na rumwe atanga rw'igihe yaba yarabibwiyeho Urugereko rwa Mbere rw'Iremezo arusaba ko rwategeka umutangabuhamya uyu n'uyu kurwitaba. Reba, muri rusange, ibisabwa kugira ngo hihutishwe itangwa ry'ibimenyetso mu manza no kugira ngo hafatwe ingamba zo kurinda umutekano n'izo guhatira abantu gukora ibi n'ibi: Icyemezo *Tadic* (ibimenyetso by'inyongera).

[595] Imyanzuro ya Akayesu, umutwe XII, igika 1. Bimeze nk'aho ari cyo kibazo cy'ingenzi gikubiye muri iyi mpamvu y'ubujurire kandi ni na cyo cyonyine Porokireri yashubijeho. Imyanzuro ya Porokireri isubiza, ibika 13.1 - 13.11.

332. Urugereko rusanze, mbere na mbere, Akayesu arusaba uburenganzira bwo kurushyikiriza iyo baruwa.[596] Porokireri ntahakana ko iyo baruwa iriho, kimwe n'ibiyikubiyemo, ndetse n'uko yoherejwe.[597] Urugereko rw'Ubujurire rusanga rero iyo baruwa yazirikanwa mu isuzumwa ry'iyi mpamvu y'ubujurire.[598]

333. Akayesu avuga ibikubiye muri iyo baruwa, ariko ibice bimwe byayo ni byo bifitanye isano n'ubuhamya DAAX yatanze mu Rugereko rwa Mbere rw'Iremezo.[599] Anenga ibibazo biyivugwamo avuga ko ari ikinyoma cyambaye ubusa cyangwa se gusebanya gushingiye ku nkuru mbarirano Uregwa atashoboye kwisobanuraho.[600] Ni muri urwo rwego yakomeje avuga ko ibyo byose ari ibikorwa bitindi bimukorerwa atabizi[601] bikaba byanduza isura ye […], mbese ko ari nko kumwubikira bakamutera icyuma mu mugongo".[602]

334. Akayesu avuga ko umuntu yabona ko Abacamanza (na Porokireri) babonye kandi basomye iyo baruwa.[603] Bityo rero, ngo ntibyashobokaga ko urubanza rwe rucibwa ku buryo buboneye, kubera impamvu zikurikira: Ibaruwa (uburyo bwo gutumanaho bw'umuntu hagati y'abantu ku giti cyabo) muri rusange ibangamiye uburenganzira bwe bwo gucirwa urubanza mu buryo butabogamye kandi mu ruhame; amabaruwa hagati y'umutangabuhamya ku giti cye n'Urugereko rwa Mbere rw'Iremezo, cyane cyane igihe

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[596] Imyanzuro ya Akayesu, umutwe XII, igika 5. Akayesu yatanze iyo baruwa kugira ngo ijye muri dosiye nk'ikimenyetso cy'urubanza gifite nº 49, kiri ku mugereka w'igitabo cy'ubujurire, ibimenyetso gihamya bifite nº 30 - 53, imitwe 6 - 14.
[597] Imyanzuro ya Porokireri isubiza, igika 13.3 - 13.11. Porokireri avuga ko "adahakana ko iyo baruwa yohererejwe Porokireri kimwe n'Ubwunganizi, igika 13.9.
[598] Mu Cyemezo cyarwo cyo kuwa 24 Gicurasi 2000, Urugereko rw'Ubujurire rwasanze Akayesu yarashoboraga gusaba ibiro bya Gerefiye kopi y'iyo baruwa kandi ko yari afite uburenganzira bwo gusaba ko yashyirwa muri dosiye y'ubujurire. Ibiro bya Gerefiye byumvise nabi Icyemezo cyo kuwa 24 Gicurasi 2000: ku ibaruwa yohererejwe Akayesu ku itariki ya 10 Nyakanga 2000, Gerefiye yometseho inyandiko yakekaga ko ari ikimenyetso gihamya gifite nº R1, cyari cyasabwe, kandi ahubwo cyari ikimenyetso kitigeze cyakirwa gifite nº R1 nk'uko cyavugwaga mu gice cya I cy'Icyemezo cyo kuwa 24 Gicurasi 2000.
[599] Imyanzuro ya Akayesu, umutwe XII, igika 1.7.
[600] Imyanzuro ya Akayesu, umutwe XII, igika 1.7 b) (yifashishije ikibazo cya kabiri cyabyukijwe).
[601] Imyanzuro ya Akayesu, umutwe XII, igika 1.7)c (yifashishije ikibazo cya 3 cyabyukijwe, gisa n'ibyo avuga anenga ku kibazo cya 4, igika 1.7)d).
[602] Imyanzuro ya Akayesu, umutwe XII, igika 1.7 (e).
[603] Imyanzuro ya Akayesu, umutwe XII, igika 1.8. Akayesu avuga ko : "Ujurira yabonye kopi ye kandi akaba anafite amakuru amwemeza ko iyo baruwa yasomwe n'abo igenewe".

uwo mutangabuhamya ari umukozi mukuru wa Leta, ni ibimenyetso bitakwakirwa kuko binyuranye n'ihame ry'ibanze rivuga ko mu manza nshinjabyaha, iburanisha ribera mu ruhame. Akayesu avuga ko yavukijwe uburenganzira bwo kunyomoza DAAX ku byo yanditse muri iriya baruwa ; ko urubanza ruba rutaraciwe uko rwaciwe iyo Akayesu aza kwiregura nyabyo ndetse akunganirwa mu buryo busesuye kandi butajenjetse ; Urukiko ntirwanenze iyoherezwa ry'iyo baruwa kandi nta ngamba n'imwe rwafashe kugira ngo hatagira urenganywa kubera iyo baruwa [604].

335. Porokireri avuga ko niba Akayesu ashaka kwitwaza ko habayeho kurengera mu miburanishirize, agomba kugaragaza ko urubanza rwakererewe bigatuma ruburanishwa ku buryo butaboneye, cyangwa se ko, ukurikije uko ibintu biteye muri uru rubanza, gukomeza kumuburanisha byabangamira ubutabera bw'Urukiko, kubera ikosa cyangwa ibyagombaga gukorwa bitakozwe mu gihe cy'imihango mbanzirizarubanza.[605] Porokireri ntahakana ko, muri rusange, bitemewe ko umuntu utari umuburanyi mu rubanza yohereza urukiko inyandiko ku giti cye *(ex parte)* zirebana n'ibibazo mu mizi yabyo bikigibwaho impaka.[606] Avuga ko ari ngombwa kwiyumvisha ko umucamanza w'umunyamwuga atazirikana ibaruwa nk'iyo, keretse hatanzwe ikimenyetso ko atari ko byagenze.[607] Porokireri asobanura ko Akayesu adatanga ikimenyetso na kimwe kigaragaza ko abacamanza baba barifashishije iyo baruwa mu guca urubanza. Porokireri asobanura ko, kimwe n'Ubwunganizi, yabonye iyo baruwa, ariko ko nta kibazo kiyerekeye cyigeze kibyutswa imbere y'Urugereko, ibyo bikaba ari ikimenyetso cy'uko

[604] Imyanzuro ya Akayesu, umutwe XII, igika 1.10 n'umutwe wa VI. Nk'uko byasobanuwe, ikibazo cy'ubuswa bw'uwunganira uregwa cyizwe cyane cyane mu mpamvu ya kabiri y'ubujurire bwa Akayesu.
[605] Imyanzuro ya Porokireri isubiza, igika 13.4. Mu iburanisha mu Rugereko rw'Ubujurire, Porokireri nta ngingo nshya n'imwe yatanze kuri iyi mpamvu y'ubujurire. Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 192 (mu Cyongereza, urup. 149).
[606] Imyanzuro ya Porokireri isubiza, igika 13.5.
[607] Imyanzuro ya Porokireri isubiza, igika 13.5-13.7. Porokireri gira ati: "kuba byonyine iyo baruwa yarohererejwe Urugereko kandi rukayakira, ntibisobanura rwazirikanye ibikubiye muri iyo baruwa […] nk'ikimenyetso cyashyizwe muri dosiye y'urubanza. Biramutse bigenze gutyo, umuntu uwo ari we wese ashobora gusabota urubanza urwo ari rwo rwose mu rukiko urwo ari rwo rwose, yohereza abacamanza basuzuma urwo rubanza ibaruwa ifitanye isano na rwo".

ababuranyi bumvaga kandi bemeraga ko Abacamanza batazita kuri iyo baruwa.[608] Porokireri asaba Urugereko kutakira icyifuzo gisaba ko imiburanishirize yahagarikwa.[609]

336. Urugereko rw'Ubujurire ntirwashyikirijwe ikimenyetso na kimwe kigaragaza ko hari umuburanyi uwo ari we wese wabyukije, mu buryo bweruye, ikibazo cy'ibaruwa n'ingaruka zacyo, mu Rugereko rwa Mbere rw'Iremezo.[610] Urugereko rw'Ubujurire rwa TPIY ruherutse kwemeza ihame rusange rikurikira: « iyo umuburanyi atagize icyo avuga ku kibazo cyariho mu gihe cy'iburanisha mu rwa Mbere rw'Iremezo, ntiyagombye kwemererwa kukibyutsa nyuma ari uko hamaze gufatwa umwanzuro unyuranye n'inyungu ze.»[611] Cyakora muri uru rubanza, ibaruwa yohererejwe Abacamanza kandi impande zombi ntizihakana ko bayibonye. Ni yo mpamvu, Urugereko rw'Ubujurire rusanga ikibazo cyarashyikirijwe urwa Mbere rw'Iremezo.[612] Byongeye kandi, uru rubanza rurangwa n' »impamvu zihariye » yashingirwaho ngo habe irengayobora ku ihame ryo kwivutsa uburenganzira.[613]

337. Ingingo Akayesu yireguza zishingiye cyane cyane ku byo akeka ku myanzuro cyangwa ku bikorwa by'Urugereko rwa Mbere rw'Iremezo nyuma yo kwakira iyo baruwa. Twibutse ko Akayesu ashingira ku kurengera mu miburanishirize asaba ko kumukurikiranaho icyaha byahagarara. N'ubwo urwego rw'ibyabaye atari rumwe atari imwe, Urugereko

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[608] Imyanzuro ya Porokireri isubiza, igika 13.8.
[609] Imyanzuro ya Porokireri isubiza, igika 13.11.
[610] Reba Imyanzuro ya Akayesu, umutwe XII, igika I.10 e), aho Akayesu anenga ubuswa bw'uwunganira uregwa kuri icyo kibazo (reba ibivugwa hano hasi).
[611] Urubanza rwa *Celebici*, igika 640. Reba kandi Urubanza rwa *Tadic* mu bujurire, igika 55, ruvugwa mu rubanza rwa *Kambanda* mu bujurire, igika 25.
[612] Reba Urubanza rwa *Tadic* mu bujurire, igika 55, ruvugwa mu rubanza rwa *Kambanda* mu bujurire, igika 25: "Umuburanyi ufite ikibazo ni we ugomba kubwira mu maguru mashya Urugereko rwa Mbere rw'Iremezo ko icyo kibazo kiriho kugira ngo rushobore kureba niba Amategeko cyangwa Sitati biteganya umuti w'ibyo bibazo. Urwo ruhande ntirushobora kwinumira, ngo noneho nyuma ruzasabe mu bujurire ko icyo kibazo kiburanishwa bushya […]".
[613] Mu rubanza rwa *Kambanda* mu bujurire, igika 25, Urugereko rw'Ubujurire rwagize ruti: "kuba Ujurira ntacyo yavuze ku Cyemezo cya Gerefiye imbere y'Urugereko rwa Mbere rw'Iremezo bisobanura ko yivukije uburenganzira bwe bwo kubyutsa icyo kibazo mu bujurire, keretse igihe haba hariho impamvu zidasanzwe" (Reba urubanza rwa *Furundzija* mu bujurire, igika 174). Urugereko rw'Ubujurire rusanze mu rubanza rwa *Celebici* mu bujurire, igika 649, Urugereko rw'Ubujurire rwa TPIY, ku birebana n'imwe mu mpamvu y'ubujurire, ntirwakiriye "impamvu zatanzwe na avoka wunganira uregwa […] asobanura impamvu atabyukije ikibazo imbere y'Urugereko rwa Mbere

rw'Ubujurire rwigeze gusuzuma ikibazo cyerekeye kurengera mu miburanishirize. Mu cyemezo rwafashe mu rubanza rwa *Barayagwiza*, icyo gihe rwemeye ko hakurikijwe ibirebana no « kurengera mu miburanishirize », hashobora gufatwa icyemeo cyo guhagarika ikurikiranacyaha ryatangiye mu buryo bwubahirije amategeko, iyo nyumva habayeho amakosa mu nyandiko y'ibirego yakozwe hakurikijwe ibiteganywa, ariko irimo amakosa kubera uburyo bwakoreshejwe mu yindi mihango y'iburanisha yakurikiyeho[614].

> Ni ngombwa gushimangira ko ibirebana no « kurengera mu miburanishirize » bishobora gushyirwa mu bikorwa mu bwisanzure bw'urukiko. Ni uburyo abacamanza bashobora kwemeza ko nta bubasha bafite, baramutse babonye ko uburenganzira bw'uregwa buhungabana ku buryo bukabije, bagasanga rero gushingira kuri ubwo bubasha bwabo byabangamira ubusugire bw'Urukiko.[615]

338. Umuntu yakwibaza niba kohereza iyo baruwa byaravukije Akayesu uburenganzira bwe ku buryo Urugereko rw'Ubujurire rugomba gusuzuma niba icyemezo cy'Urugereko rwa Mbere rw'Iremeza cyo kuburanisha ibyaha aregwa, cyangwa se icy'Urugereko rw'Ubujurire kirekeraho ibyemezo bimuhamya icyaha, « cyaba kibangamiye bikomeye ubusugire bw'ubucamanza ».[616]

339. Ni ngombwa kuvuga ko ubukemuramanza kuri iki kibazo bujyanye ahanini n'imyanzuro yagiye ifatwa irangwa n'akarengane gakabije. Muri rusange, inkiko zitabaza ihame ry'inenge mu miburanishirize iyo zisanze ari ngombwa ko uregwa arenganurwa iyo habayeho nk'urugero, ukurengera mu mu miburanishirize cyangwa akarengane. «Kurengera mu miburanishirizee » byasobanuwe nk'ikintu kibogamye kandi kirenganya, ku buryo urukiko rutakwemerera ubushinjacyaha gukomeza gukurikirana umuntu bushingiye ku birego bwatanze, kabone n'iyo byaba byubahirije amategeko ku zindi

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rw'Iremezo". Nyamara ariko, icyo gihe urwo Rugereko rwasuzumye impamvu y'ubujurire yatanzwe, nyuma rwemeza ko nta singiro ifite kubera ko uwayibyukije atagaragaje icyo yangirijwe (igika 615).

[614] Urubanza rwa *Barayagwiza* mu bujurire, igika 74. Hifashishijwe urubanza rwa *R. Latif*; *R. Shahzad*, [1996] 1 ALL ER 353, cyangwa "*House of Lords*" (mu rubanza rwa *R. v. Horseferry* Road Magistrates' Court [1993] 3 ALL ER 138) yatangaje ko "umucamanza afite uburenganzira busesuye bwo gusubika imiburanishirize igihe asanga bidashoboka guca urubanza ku buryo buboneye, cyangwa se asanga guca urwo rubanza binyuranyije n'inyungu za mu kurengera ubusugire bw'imikirize y'imanza nshinjabyaha mu gihugu".

[615] Urubanza rwa *Barayagwiza* mu bujurire, igika 74.

[616] Urubanza rwa *Barayagwiza* mu bujurire, igika 75.

ngingo."[617] Koko rero, Urugereko rw'Ubujurire rusanga Akayesu yiyemerera ubwe ko guhagarika urubanza ari irengayobora ridasanzwe mu gukemura ikibazo kivugwa cyo « kurengera mu miburanishirize ».[618] Cyakora muri uru rubanza, Akayesu avuga ko iyo ngamba idasanzwe yafatwa urebye uko ibintu byagenze muri uru rubanza.

340. Urugereko rw'Ubujurire rusanze Uregwa ari we ugomba kugaragaza ko habayeho inenge mu miburanishirize. Ikimenyetso kigaragaza iyo nenge gitangwa hakurikijwe imiterere y'urubanza muri rusange[619]. Urugereko rw'Ubujurire rusanga kandi ari ngombwa kurushaho ko Uregwa agaragaza ko yarenganinjwe. Kubera iyo mpamvu, "icyemezo cyo guhagarika urubanza kubera inenge iri mu miburanishirize […] nticyagombye gufatwa igihe hari ubundi buryo bwo kuburanisha urubanza mu buryo buboneye, « *cyane cyane igihe bitagaragajwe ko uregwa yarenganijwe* »[620].

341. Uru rubanza rufite ikintu cy'umwihariko kuko Akayesu atagaragaza ukuntu n'impamvu iryo hame ryo ku kurengera mu miburanishirize ryakoreshwa mu rubanza rwe. By'umwihariko, aho gusobanura ukuntu yarenganijwe n'uko iriya baruwa yoherejwe, Akayesu avuga gusa mu magambo rusange ko hari gufatwa icyemezo gitandukanye n'icyafashwe (ariko ntasobanura impamvu), ko yavukijwe uburenganzira bwe bwo

[617] Urubanza rwa *Hui-CH-Ming* aburana na *R* [1992] 1 A. C 34, PC. Reba kandi urubanza rwa *Connelly* aburana na *DPP,* [1994] AC, 1254 (HL): "urukiko rufite ububasha bwo kugenzura imiburanishirize yarwo no kwirinda ko yabamo inenge zatuma uregwa mu manza z'inshinjabyaha arenganywa cyangwa yigirizwaho nkana"; Urubanza rwa*DPP* aburana na *Humphreys* [1977] A. C 1 HL, urup. 55 E-G "Niba abacamanza bagomba gutekereza cyane mbere yo gufata icyemezo cyo guhagarika ikurikiranacyaha risa nk'irikurikije amategeko, byabangamira ubutabera baramutse babuze ubwisanzure ku buryo byatuma imiburanishirize y'imanza nk'izo ikomeza (n'ubwo ari nkeya cyane zifatwamo bene ibyo byemezo); Reba urubanza rwa *Barings Olc na bagenzi be (No. 2) Secretary of State for Trade and Industry* baburana na *Baker and others* [199] 1 AII E.R. 311, CA (Civ Div): "Icya ngombwa gisumba ibindi ni […] uko rubanda igirira icyizere abashinzwe ubucamanza. Urukiko rufite ububasha bwo guhagarika imiburanishirize, rugomba mu by'ukuri kubigenza gutyo, igihe rusanga ikomeje byabangamira ubusugire bw'urukiko, bikanagayisha ubucamanza […] mu maso y'umuntu wese ushyira mu gaciro; Urubanza rwa *R. Latif; R. Shahzad, [1996] 1 ALL ER 353:* "Mu gushyira ku munzani ingamba z'amategeko ahana n'iz'ubutabera, umucamanza agomba gusuzuma mu bwigenge niba harabaye inenge mu miburanishirize yatuma rubanda rugwa mu kantu kandi igatuma biba ngombwa ko ikurikiranacyaha rihagarikwa."

[618] Imyanzuro ya Akayesu, umutwe IV, igika 37, aho Akayesu yiyemerera ubwe ko guhagarika ikurikiranacyaha hashingiwe ku mpamvu ko habayeho kurengera mu miburanishirize atari umuti usanzwe w'icyo kibazo.

[619] Urubanza rwa *Archbold* 2000, ibika 4-51 na 4-57: "Buri rubanza rucibwa hakurikijwe ibikorwa byihariye by'urwo rubanza".

[620] Urubanza rwa *DPP* aburana na *Hussein*, *The Times*, *1 June 1994*, urubanza ruvugwa muri Archbold 2000, ibika 4 - 55 (ntibishimangiwe mu mwimerere).

kuburanishwa nta karengane kandi mu ruhame, ko bitewe n'iriya baruwa yoherejwe yavukijwe uburenganzira bwe bwo kunyomoza umutangabuhamya ku ngingo ziyikubiyemo. Akayesu yari kuba yaravukijwe ubwo burenganzira iyo ashobora kugaragaza, ku buryo butaziguye, ko ibikubiye muri iyo baruwa byakoreshejwe nk'ibimenyetso bimushinja. Kugeza ubu, nta kimenyetso na kimwe atanga kigaragaza ko Urugereko rwa Mbere rw'Iremezo, mu buryo ubwo ari bwo bwose, rwazirikanye ibikubiye muri iyo baruwa cyangwa se ko rwafashe icyemezo rubishingiyeho.

342. DAAX yatanze ubuhamya mu muhezo ku itariki ya 3 Werurwe 1998. Urugereko rwa Mbere rw'Iremezo rwavuze ibyerekeye ubuhamya bwe mu isuzuma rwakoze ku bika bya 3, 4[621], 12A[622] na 12B[623] by'Inyandiko y'ibirego. Imyanzuro y'Urugereko rwa Mbere rw'Iremezo ntikomoza, ku buryo butaziguye, kuri iriya baruwa kandi Akayesu ntagaragaza ko imyanzuro y'urubanza ikubiyemo bimwe mu bintu byavanywe muri iriya baruwa.[624] Nta kimenyetso na kimwe Akayesu atanga kigaragaza ko yaba yararenganijwe.

343. Urugereko rw'Ubujurire rwemeranya na Prokireri ko muri rusange «umuntu utari umuburanyi atemerewe kohereza Urukiko inyandiko ku giti cye *(ex parte)* zirebana n'ibibazo, mu mizi yabyo, bikigibwaho impaka.[625] Cyakora, kuba ibyo bintu byarabaye ntibihagije ngo urubanza rube rwahagarikwa. Nk'uko byavuzwe mbere, Abacamanza b'uru Rukiko ni Abacamanza b'umwuga. Ni ngombwa rero kugendera ku ihame rivuga

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[621] Urubanza mu rw'iremezo, igika 75.
[622] Urubanza mu rw'iremezo, ibika 185, 186 na 189.
[623] Urubanza mu rw'iremezo, igika 458. Urugereko rwa Mbere rw'Iremezo rwavuze gusa ko umutangabuhamya atashoboraga kumenya ibyakorerwaga ku biro bya komini kubera ko atari muri Komini ya Taba icyo gihe. Uwo mutangabuhamya yavuze kandi ko atongeye kubonana Akayesu nyuma yo kuwa 18 Mata 1994, mbere y'uko ubwicanyi butangira.
[624] Muri iyo baruwa, harimo ibibazo bitanu bishobora kuvugwa mu magambo magufi ku buryo bukurikira: 1) Kuki Akayesu yari yambaye ishati ya gisirikari afite n'imbunda; 2) Kuki uwahoze ari Burugumesitiri wa Komini ya Musambira avuga ko Akayesu yaba yafatanyije n'abandi gutera imiryango imwe n'imwe muri Musambira kandi akica Abatutsi bo mu miryango imwe n'imwe mu mugoroba wo ku wa 19 Mata 194; 3) Kuki Uregwa atigeze amenyesha Perefe ko igitero simusiga cy'Interahamwe kigiye kwibasira impunzi zimwe na zimwe kimwe n'imiryango imwe n'imwe ahubwo akamenyesha gusa ko hariho ibikorwa bimwe by'iterabwoba; 4) Kuki Akayesu atirukanywe ku kazi hakurikijwe icyifuzo cya Minisitiri umwe mu bari bagize Guverinoma ya Kambanda; hanyuma 5) Kuki Akayesu yagumanye n'Interahamwe kugera igihe yahungiye ari kumwe na zo kandi bizwi na bose ko abenshi mu ba burugumesitiri batitabiriye jenoside bagumye mu Rwanda "*ari uburyo bwo kwitandukanya na Guverinoma y'abicanyi, n'ubwo babikoze batinze bwose*". Reba imyanzuro ya Akayesu, umutwe XII, igika I.7.

ko basuzuma ibibazo byose bashyikirijwe bashingiye ku bimenyetso byatanzwe kandi byakiriwe mu rubanza, kandi ko badashobora kuzirikana ibimenyetso batashyikirijwe. Byongeye kandi, ni ngombwa kwiyumvisha ko bemeza ko uregwa ahamwa n'icyaha bashingiye gusa ku bimenyetso bahawe kandi bagasanga koko icyaha kimuhama nta gushidikanya na gato.[626]

344. Urugereko rw'Ubujurire rusanze Akayesu ataragaragaje ko kuba iriya baruwa yaroherejwe byabangamiye uburenganzira bwe bwo kunyomoza umutangabuhamya ushinja. Ntagaragaza ndetse kandi ko yanarenganijwe. Iyo ngingo rero nta shingiro ifite.

b. Ubuhamya bwa DAAX

345. Akayesu avuga kandi ko habaye akarengane mu rubanza rwe kuko ubuhamya bwa DAAX bwatanzwe mu muhezo ku itariki ya 3 Werurwe 1998. Avuga ko uwo mugabo yavuze gusa ku bintu « yihitiyemo atitaye ku bindi », akibagirwa kugira icyo avuga ku by'ingenzi, cyane cyane nko ku kuba mbere y'itariki ya 18 Mata 1994, Akayesu yarasabye abajandarume bo kuza kumufasha, no ku byo yavuze mu nama yabereye i Murambi ku itariki ya 18 Mata 1994.[627] Aha naho, Akayesu avuga ko ubwo buhamya bwatumye haba kubogamba mu rubanza rwe.[628] Porokireri ntiyasubije icyo kibazo.

346. Mbere na mbere, ni ngombwa gukeka ko Akayesu yagize uruhare mu cyemezo cyo guhamagaza uwo mutangabuhamya ushinjura. Birumvikana muri rusange ko icyemezo nk'icyo kireba gusa umuburanyi wiyemeje kwiyambaza umutangabuhamya, muri uru rubanza akaba ari Akayesu. Byongeye kandi, ni ngombwa gukeka ko uregwa afata icyemezo nk'icyo amaze gusuzuma amakuru kimwe n'ibimenyetso byose atekereza ko

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625 Imyanzuro ya Porokireri isubiza, igika 13.5. Reba kandi Imyanzuro ya Akayesu, umutwe XII, igika I.10.

626 Ingingo ya 87 A) y'Amategeko igira iti : "Nyuma y'imyanzuro y'ababuranyi, Perezida w'Urugereko rwa Mbere rw'Iremezo apfundikira iburanisha, hanyuma Urugereko rukiherera ngo ruce urubanza. Uregwa ahamwa n'icyaha gusa iyo benshi mu bagize Urugereko basanze icyaha kimuhama nta gushidikanya na gato".

627 Imyanzuro ya Akayesu, umutwe XII, igika 1.6.

628 Akayesu yavuze ko ibyo ari "uguteshukwa bikomeye". Imyanzuro ya Akayesu, umutwe XII, igika I.7.

umutangabuhamya ashobora gutanga mu buryo bunyuze mu gaciro, muri rusange amaze kuganira na we amaze no kwakira imvugo ye. Akayesu avuga ibi bikurikira:

> 2- Uwo mutangabuhamya, mu ikubitiro washoboraga kuba uwa Porokireri, yagombaga ubundi gutanga ubuhamya bushinja ariko ntiyahamagarwa na Porokireri kuko, ku ruhande rumwe, yashidikanyaga kuza gutanga ubuhamya kubera ubwoba, ku rundi ruhande ubuhamya bwe bwagombaga gushyigikira ibivugwa n'Ubwunganizi, hakurikijwe cyane cyane ibyo yari yaravuze mbere.
>
> 3- Kubera ko Porokireri atashakaga guhamagaza uwo mugabo, uwunganira Uregwa, utari washoboye gutumiza imbere y'Urugereko abatangabuhamya yifuzaga, yaramufashe kugira ngo atange ubuhamya bushinjura, nyuma y'uruhusa rwatanzwe n'Urukiko.[629]

347. Akayesu asobanura ko mu ikubitiro Porokireri yifuzaga guhamagaza DAAX nk'umutangabuhamya ushinja. Nyuma y'uko Porokireri aretse kumuhamagaza mu rukiko, Akayesu yasabye Urugereko rwa Mbere rw'Iremezo ko we yamuhamagaza akaza gushinjura. Biragaragara ko icyo cyemezo cyari gishingiye cyane cyane ku byo uwo mutangabuhamya yari yaravuze mbere Akayesu yasangaga byamufasha mu myiregurire ye. Urugereko rwakiriye icyo cyifuzo[630] maze uwo mutangabuhamya arahamagazwa. Ni muri urwo rwego hafashwe icyemezo cyo guhamagaza uwo mutangabuhamya mu Rukiko.

348. Nta muburanyi n'umwe ushobora gufora neza icyo umutangabuhamya azavuga mu Rukiko. Ni nk'umutego umuburanyi agomba kumenya ko ushobora kumushibukana. Icyo buri mutangabuhamya asabwa cyonyine ni igikubiye mu ndahiro akora ku mugaragaro mbere yo gutanga ubuhamya: "ndahiriye mu ruhame ko mvugisha ukuri, ukuri kose kandi ukuri gusa."[631] Kuba ubuhamya bw'uwo mugabo butaragaragaje neza ibyo Akayesu yari abutezeho, ntibimuha uburenganzira bwo kwemeza ko urubanza rwaciwe nabi cyangwa se ko rwabayemo inenge yatumye atarenganurwa uko bikwiye. Aha na none, byaba byiza

[629] Imyanzuro ya Akayesu, umutwe XII, ibika I.2 na I.3.
[630] Icyemezo ku Cyifuzo gisaba gutumiza abatangabuhamya bashinjura no kubungabunga umutekano wabo, cyafashwe ku itariki ya 2 Gashyantare 1998.
[631] Ingingo ya 90 B) y'Amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso (ubuhamya). Umutangabuhamya DAAX yari nk'abandi. Inyandikomvugo y'iburanisha, 3 Werurwe 1998, imp. 3 na 4 (mu muhezo).

kwibutsa ko Urugereko rwa Mbere rw'Iremezo rwashishoje mu gihe rwasesenguranga, rukanagena agaciro k'ubuhamya rwumvise, hakurikijwe urwego bwatanzwemo bwatanzwemo kandi hazirikanwa ubundi buhamya n'ibindi bimenyetso byatanzwe.

349. Urugereko rw'Ubujurire rusanze rutagomba kwakira iyo ngingo ya Akayesu.

2. Umwanzuro

350. Kubera impamvu zavuzwe haruguru, Urugereko rw'Ubujurire rusanze iyo mpamvu y'ubujurire nta shingiro ifite.

J. Impamvu ya cumi y'ubujurire: Gufungwa binyuranyije n'amategeko[632]

1. Amavu n'amavuko y'iyi mpamvu

351. Mu cyifuzo cyo ku itariki ya 2 Kamena 2000, mu byo Akayesu yasabye, harimo uruhushya rwo guhindura inyandiko ye y'ubujurire kugira ngo yongere mo impamvu y'uko yafunzwe mu buryo bunyuranyije n'amategeko.[633] Mu cyemezo cyarwo cyo ku itariki ya 22 Kanama 2000, Urugereko rw'Ubujurire rwasanze « ikibazo cy'uko yafungiwe muri Zambiya mu buryo bunyuranyije n'amategeko kitarigeze kuvugwa mu Rugereko rwa Mbere rw'Iremezo », « maze rwemeza ko icyifuzo cya Akayesu cyasabaga guhindura inyandiko y'ubujurire nta shingiro gifite ».[634]

352. Ku itariki ya 20 Ukwakira 2000, Akayesu yagejeje ku Rugereko rw'Ubujurire Icyifuzo gisaba ko Icyemezo cyo ku itariki ya 22 Kanama 2000 cyasubirwamo. Muri icyo Cyifuzo, yavugaga ko ikibazo cyo gufungwa mu buryo bunyuranyije n'amategeko n'icyo kuba

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[632] Reba Umugereka B.
[633] Imbonerahamwe y'ibyifuzo bitarafatirwa ibyemezo (mu gushyira mu bikorwa *"Gahunda y'ingengabihe"* yo ku wa 24 Gicurasi 200), yakozwe ku itariki ya 2 Kamena 2000. Mu ntangiriro, icyo cyifuzo cyari gikubiye mu kindi cyasabaga guhindura ubujurire ku byerekeye ukubogama n'ukutisanzura by'urukiko, kugira ngo hongerwemo impamvu nshya z'ubujurire, cyatanzwe ku itariki ya 7 Ukuboza 1999.
[634] Icyemezo cyo ku itariki ya 22 Kanama 2000.

ataramenyeshejwe bidatinze ibyaha aregwa byabyukijwe mu Rugereko rwa Mbere rw'Iremezo, n'ubwo byavuzwe mu gihe cy'itegurarubanza, ubwo hatangwaga Icyifuzo gisaba ko imiburanishirize yahagarikwa.[635] Rumaze kubona igisubizo cya Porokireri kuri icyo Cyifuzo cyasabaga gusubira mu Cyemezo[636], rumaze no kubona inyandiko ikubiyemo ibivugwa na Akayesu kuri icyo gisubizo cya Porokireri[637], ku itariki ya 1 Ugushyingo 2000, urubanza mu bujurire rutangiye, Urugereko rw'Ubujurire rwafashe icyemezo mu magambo cyo gukomatanya icyo cyifuzo n'urubanza mu mizi yarwo, maze rwemerera Ujurira gutanga, niba abyifuza, ingingo ze zishyigikira iyo mpamvu y'ubujurire. « Cyakora, birumvikana ko na Porokireri yagombaga na we gutanga igisubizo kuri izo ngingo».[638]

353. Mu iburanisha mu bujurire, Porokireri yabwiye Urugereko ko yifuza kurushyikiriza inyandiko zimwe zishyigikira igisubizo yatanze kuri iyo mpamvu y'ubujurire. Kubera ko Akayesu atabirwanyije, Urugereko rw'Ubujurire rwemereye Porokireri gutanga izo nyandiko.[639]

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[635] *Icyifuzo gisaba gukosora no guhindura bimwe mu Cyemezo cyo ku wa 22 Kanama 2000 (Icyemezo cyerekeye imbonerahamwe y'Ibyifuzo bitarafatirwa ibyemezo) (Impamvu: Guhindura inyandiko y'ubujurire,* cyatanzwe ku itariki ya 20 Uwakira 2000 ("Icyifuzo gisaba gukosora ibintu bimwe na bimwe"). Ni ngombwa kumenya ko icyo cyifuzo gisaba gukosora ibintu bimwe na bimwe cyatanzwe hashize hafi amezi abiri Icyemzo cyo ku wa 22 Kanama 2000 gifashwe. Byongeye kandi, icyo Cyifuzo cyatanzwe hasigaye igihe kitageze ku byumweru bibiri ngo urubanza ruburanishwe mu bujurire. Ku birebana no gutanga icyo Cyifuzo bakererewe, mu gika cya 10 cyacyo, Akayesu avuga ko n'iyo abamwunganira baza kuba barabonye ikosa muri icyo Cyemezo cyo ku itariki ya 22 Kanama 2000 kikimara gusomwa, ku itariki ya 16 Ukwakira 2000 cyangwa ahagana kuri iyo tariki aribwo batekereje ibyo "kujurira". N'ubwo icyo Cyifuzo cyatanzwe bitinze cyane, mu iburanisha mu bujurire, Urugereko rw'Ubujurire rwafashe icyemezo cyo kumva ingingo z'ababuranyi kuri icyo kibazo.

[636] *"Igisubizo cya Porokireri ku Cyifuzo gisaba gukosora ibintu bimwe na bimwe"*, cyatanzwe ku itariki ya 25 Ukwakira 2000.

[637] *Ibivugwa n'ujurira ku gisubizo cya Porokireri ku Cyifuzo gisaba gukosora ibintu bimwe na bimwe,* inyandiko yabyo yatanzwe ku itariki ya 26 Ukwakira 2000. *((Icyemezo cyerekeye imbonerahamwe y'Ibyifuzo bitarafatirwa ibyemezo) (Impamvu: Guhindura inyandiko y'ubujurire).*

[638] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 6 – 7.

[639] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp.149-152. Porokireri yatanze ibaruwa ya Minisiteri y'Ubutabera yo muri Zambiya yo ku itariki ya 5 Nzeri 2000, yari yometseho : kopi y'urubanza rw'Urukiko Rukuru rwa Zambiya yo ku itariki ya 1 Gashyantare 1996, icyifuzo cyasabaga ko hafatwa ibyemezo by'agateganyo cyo ku itariki ya 22 Ugushyingo 1995 cyatanzwe na Porokireri hakurikijwe ingingo ya 40 y'Amategeko, hamwe n'ubujurire ku cyemezo cy'Urukiko Rukuru rwa Zambiya cyo ku itariki ya 1 Gashyantare 1996, bwatanzwe mu izina rya Akayesu ku itariki ya 16 Gashyantare 1996. Na none, bisabwe na Akayesu, Porokireri yatanze kopi y'ibaruwa yari yagejeje kuri Minisitiri w'Ubutabera wa Zambiya asaba amakuru yerekeye ifatwa n'ifungwa bya Akayesu (Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 177-179, 2 Ugushyingo 2000, urup. 41.

354. Akayesu avuga ko iyo mpamvu y'ubujurire igizwe n'ibice bibiri. Avuga ko uburenganzira bwe butubahirijwe ku birebana: 1) no gukorerwa inyandiko y'ibirego bidatinze, 2) no kumenyeshwa bidatinze imiterere y'ibyaha ashinjwa.[640] Nyuma, nibwo yaje gukomoza ku kibazo cy'uko yafunzwe mu buryo bunyuranyije n'amategeko, avuga ko ingingo ya 40 y'Amategeko y'Urukiko yerekeye ibyemezo by'agateganyo itubahirijwe.[641] Kubera ibyo, agira ati :

> Urugereko rw'Ubujurire rusabwe gufata icyemezo cyo guhagarika iburanisha, kubera ko kurikomeza kandi bigaragara ko Ujurira yavukijwe uburenganzira bwe ku buryo bukomeye byahungabya cyane ubusugire bw'ubutabera, kandi bukangiza isura y'Urukiko nshinjabyaha mpuzamahanga. Urugereko rusabwe rero gufata icyo cyemezo nk'uko rwabikoze mu rubanza rwa Jean Bosco Barayagwiza .[642]

355. Ingingo za Porokireri kuri iyi mpamvu y'ubujurire zatanzwe gusa mu iburanisha mu rukiko rw'Ubujurire ku itariki ya 1 n'iya 2 Ugushyingo 2000, no mu Gisubizo cya Porokireri ku Cyifuzo cyasabaga gukosora ibintu bimwe na bimwe.[643]

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[640] Imyanzuro ya Akayesu, Umutwe 1, igika cya 21. Ingingo zerekeye buri mpamvu y'ubujurire zisobanuye mu mwanzuro wa Akayesu, umutwe I, ibika 22-45, n'ibika 45-53.

[641] Ku birebana n'ifungwa rye, Akayesu yavuze ibyabaye ku buryo bukurikira: yinjiye muri Zambiya hagati y'ukwezi kwa kanama 1994 n'intangiriro y'umwaka wa 1995. Yari afite uruhushya rwo kuba muri Zambiya kugeza ku itariki ya 29 Ukwakira 1995. Ku itariki ya 10 Ukwakira 1995, yafashwe n'abategetsi ba Zambiya, bakurikije ibaruwa ya Ambasaderi w'u Rwanda yo ku itariki ya 6 Nzeri 1995 yasabaga ko Akayesu n'abandi bakekwaho kuba barakoze itsembabwoko mu Rwanda bafatwa bagafungwa. Ku itariki ya 22 Ugushyingo 1995, Porokireri yashyikirije abategetsi ba Zambiya, hakurikijwe ingingo ya 40 y'Amategeko, icyifuzo kibasaba gufunga Akayesu (n'abandi). Ku itariki ya 1 Gashyantare 1996, Urukiko Rukuru rwa Zambiya rwasanze Akayesu atagomba gufungurwa ahubwo agomba kwimurirwa muri uru Rukiko, hakurikijwe icyifuzo cya Porokireri kandi hubahirijwe icyemezo 978 cy'Inama Ishinzwe Amahoro ku Isi. Ku itariki ya 13 Gashyantare 1996, Porokireri yatanze Inyandiko y'ibirego ishinja Akayesu. Iyo Nyandiko y'ibirego yemejwe ku itariki ya 16 Gashyantare 1996, hanyuma hatangwa na manda yo gufata Akayesu hamwe n'itegeko ryo gukomeza kumufunga. Nyuma y'icyumweru kimwe, Inyandiko y'ibirego yashyikirijwe abategetsi ba Zambiya kugira ngo bayimenyeshe Akayesu. Akayesu yemeza ko abo bategetsi ba Zambiya bamumenyesheje ku itariki ya 29 Werurwe 1996 iyo manda yo gufungwa, banamumenyesha kandi ko igihe cy'igifungo cye cyongerewe kandi ko uru Rukiko rwemeje Inyandiko y'ibirego. Nibwo yimurirwaga muri gereza ya Arusha ku itariki ya 26 Gicurasi 1996, yitaba Urukiko bwa mbere na mbere ku itariki ya 30 Gicurasi 1996. Reba kandi Urubanza rwa Akayesu mu rw'Iremezo, ibika 9-12.

[642] Imyanzuro ya Akayesu, umutwe I, igika 54.

[643] Kubera ko mu Cyemezo cyarwo cyo ku itariki ya 22 Kanama 2000, urugereko rwanze gutanga uruhushya rwo kongera iyi mpamvu y'ubujurire mu Nyandiko y'ubujurire, Porokireri ntiyasubije ingingo zikubiye mu Myanzuro ya Akayesu. [Imyanzuro ya Porokireri isubiza, igika 2.1, Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 43 - 44]. Mu iburanisha mu bujurire, Porokireri ntiyasabye uruhushya rwo gutanga indi myanzuro yanditse.

2. Isesengura ry'Urugereko

356. Mbere yo gusuzuma iyi mpamvu y'ubujurire mu mizi yayo, Urugereko rw'Ubujurire rugomba mbere na mbere kumenya niba rwarayijuririwe mu buryo bwemewe n'amategeko.

357. Akayesu avuga ko ingingo ebyiri zikubiye muri iyi mpamvu y'ubujurire yazivuze mu Rugereko rwa Mbere rw'Iremezo,[644] akaba ari iyo mpamvu asaba Urugereko rw'Ubujurire gusubira mu Cyemezo cyarwo cyamwimye uruhusa rwo kongeramo iyi mpamvu y'ubujurire, kugira ngo rusuzume icyo kibazo mu mizi yacyo.

358. Porokireri avuga ko Akayesu yivukije uburenganzira bwe bwo kuvuga, mu bujurire, ikibazo cyo kumenya niba icyifuzo Porokireri yatanze ashingiye ku ngingo ya 40 y'Amategeko y'Urukiko cyarakurikije amategeko, kubera ko icyo kibazo atigeze akivuga mu iburanisha mu rw'iremezo.[645] N'ubwo yemera ko mbere y'iburanisha Akayesu yatanze ingoboka mbanzirizarubanza avugamo ibibazo byinshi byerekeye ugufungwa kwe muri rusange, Porokireri asanga harimo ingingo imwe yonyine yerekeye ugufatwa n'ugufungwa kwe. Iyo ngingo ikaba ari uko ngo yafunzwe n'abategetsi ba Zambiya mu buryo budakurikije amategeko nyuma y'aho u Rwanda rubisabiye, n'uburyo yafunzwemo.[646] Porokireri avuga ko ibyo yaba yarakoze kugira ngo afatishe Akayesu cyangwa Icyifuzo yatanze ashingiye ku ngingo ya 40 y'Amategeko, nta kintu Akayesu

[644] Icyifuzo gisaba gukosora ibintu bimwe na bimwe, igika 1: "Ikibazo cyo kuba yarafunzwe mu buryo bunyuranyije n'amategeko n'icyo kuba ataramenyeshejwe ibyaha aregwa mu gihe cyateganyijwe byabyukijwe imbere y'Urugereko rwa Mbere rw'Iremezo, mu rwego rw'icyifuzo cyasabaga ko imiburanishirize yahagarikwa". Na none mu bivugwa n'Ujurira ku gisubizo cya Porokireri kuri icyo cyifuzo cyo gukosora ibintu bimwe na bimwe, harimo ibi bikurikira ku rupapuro rwa 5 kugera ku rwa 7: "Ujurira ntiyigeze avanaho ibyo yavugiye imbere y'Urugereko rwa Mbere rw'Iremezo byerekeye ifungwa rye rinyuranyije n'amategeko no kuba ataramenyeshejwe ibyaha yarezwe".

[645] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo, urup. 60. Porokireri yatangiye asobanura ingingo zirebana n'imizi y'iyi mpamvu y'ubujurire, ni ukuvuga ikibazo cyo kumenya niba ifungwa rya Akayesu ryarakozwe mu buryo bunyuranyije n'amategeko, nk'uko Akayesu abivuga.

[646] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 62 - 63. Igisubizo cya Porokireri ku cyifuzo cyo gukosora ibintu bimwe na bimwe, igika cya 12 n'ibikurikira.

yigeze abivugaho.[647] Porokireri avuga ko Akayesu atigeze yongera kuvuga icyo kibazo abinyujije k'Umwunganira avuga yaba yarihitiyemo cyangwa undi avoka uwo ari we wese, kandi ko atigeze yerekana igice cyo muri dosiye kigaragaza ko yaba yarabyukije ikibazo cyo kumenya niba Icyifuzo cya Porokireri cyo gufatisha Akayesu muri Zambiya cyarubahirije amategeko.[648] Porokireri akomeza avuga ko « ibibazo byabyukijwe mu ngoboka mbanzirizarubanza atari bimwe n'ibyabyukijwe mu […] mpamvu y'ubujurire ».[649] Kubera iyo mpamvu, nk'uko Porokireri abibona, Akayesu yivukije uburenganzira bwe bwo kuba yabyutsa icyo kibazo mu bujurire.[650]

359. Urugereko rw'Ubujurire rusanga, mbere na mbere, ku birebana no kumenya niba iki kibazo cyaravuzwe mu Rugereko rwa Mbere rw'Iremezo, bisa n'aho Akayesu yaba yaratanze, mu bujurire, ingingo zivuguruzanya kandi yihitiyemo atitaye ku zindi. N'ubwo mu ngingo zimwe na zimwe avuga ko ikibazo cyo gufungwa mu buryo bunyuranyije n'amategeko cyavuzwe mu rubanza[651], mu mpamvu y'ubujurire ya kabiri avuga ko Umwunganizi we yari umuswa, ko atakurikije amabwiriza ye, ndetse ntabaze ibibazo byereye ifatwa n'ifungwa rye mu buryo bunyuranyije n'amategeko.[652] Nyuma, asubiza ibyavuzwe na Porokireri ko Akayesu atashoboye kugaragaza ko yahaye ayo mabwiriza avoka we kugira ngo abaze ikibazo cy'ifungwa rye muri Zambiya ritubahirije

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[647] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 62-66. Porokireri avuga ko Akayesu "yanenze uburyo u Rwanda rwatanzemo icyo cyifuzo kubera ko hatakurikijwe inzira ziboneye, mu gihe byanyujijwe muri Ambasade i Pretoria, aho guturuka i Kigali ku buryo butaziguye, no kubra izindi ngingo zijya gusa n'iyo. Porokireri yiyemerera ko mu gisubizo cye ku ngoboka mbanzirizarubanza yagaragaje ibikorwa birebana n'icyifuzo yatanze ashingiye ku ngingo ya 40 y'Amategeko. Avuga ariko ko Akayesu adashobora kubyitwaza nk'ikimenyetso ko icyo kibazo cyaba cyarashyikirijwe Urugereko rwa Mbere rw'Iremezo, agamije kwerekana ko bitafatwa nk'aho yivukije uburenganzira yagombaga kugira. Porokireri avuga kandi ko icyo kibazo kitanditse mu nyandikomvugo y'iburanisha ryo ku wa 26 Nzeri 1996, ari na ryo ababuranyi basobanuyemo ingingo zabo kuri iyo ngoboka mbanzirizarubanza.

[648] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, urup. 66.

[649] Igisubizo cya Porokireri ku Cyifuzo gisaba gukosora ibintu bimwe na bimwe, igika 13.

[650] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 65-69.

[651] Imbonerahamwe y'ibyifuzo bitarasuzumwa (mu ishyirwa mu bikorwa gahunda y'ingengabihe yo ku wa 24 Gicurasi 2000), yatanzwe ku itariki ya 2 Kamena 2000, urup. 35; Icyifuzo cyo guhindura inyandiko y'ubujurire ku byerekeye ukutabogama n'ubwigenge bw'urukiko, no kongera impamvu z'ubujurire mu Nyandiko y'ubujurire, cyatanzwe ku itariki ya 7 Ukuboza 1999, igika 24 j); Imyanzuro ya Akayesu, umutwe I, ibika 14 - 15.

[652] Imyanzuro ya Akayesu, umutwe III, ibika 10 na 14. Akayesu avuga ko : "Ujurira anenga ba avoka yahawe kuba batarabyukije, kandi yarabibasabye mu mabwiriza yabahaye, ibibazo byerekeranye no kuba yarafashwe akanafungwa mu buryo bunyuranyije n'amategeko. Bagombaga kandi kubutsa ikibazo cyo kuba hatarubahirijwe uburenganzira

amategeko,[653] Akayesu yavuze ko Me Scheers, avoka wamwunganiraga icyo gihe, yabyukije ikibazo cy'ifatwa rye ritakurikije amategeko, ko rero ikibazo cyo kumenya niba amategeko yarubahirijwe cyizweho icyo gihe, n'ubwo kitasuzumwe ku buryo burambuye.[654] Akayesu avuga ko Abunganizi yahawe nyuma batize icyo ikibazo ndetse ntibanagikurikiranire hafi. Agira ati :

> Kubera ko abanyunganiraga batavuze icyo kibazo mu rw'iremezo, Urugereko rwanze ko kivugwa mu rw'Ubujurire […] nyamara ni ingingo y'ingenzi kandi ikomeye. Kuba Abavoka nahawe ku gahato ngo banyunganire batarakivuze, byatumye ndenganywa kuko navukijwe uburenganzira bwo gukoresha ingingo yashoboraga gushingirwaho ngo iburanisha rihagarikwe.[655]

360. Akayesu agerageza gushingira kuri iryo kosa ngo asobanure impamvu y'ubujurire bwe ya kabiri, ariko akavuga ibintu binyuranye n'iyo mpamvu y'ubujurire. Cyakora, n'ubwo uko kunyuranya bitaba impamvu ihagije yabuza Urugereko rw'Ubujurire gusuzuma icyo kibazo, rusanga Akayesu yarabyukije icyo kibazo ashingiye ku bintu yihitiyemo nyamara yirengagije ibindi. Bityo, kubera impamvu zasobanuwe haruguru, Urugereko rw'Ubujurire rugomba, mbere na mbere, kumenya niba icyo kibazo cyaravuzwe mu Rugereko rwa Mbere rw'Iremezo.

361. Birazwi ko impaka zigibwa mu iburanisha mu bujurire atari urubanza rushya.[656] Ahubwo, ababuranyi bafite inshingano zo kugeza ku Rugereko rwa Mbere rw'Iremezo, mu buryo bwemewe n'amategeko, ibibazo byose bikurura impaka, haba mu gihe cy'iburanisha cyangwa mu itegurarubanza.[657] Umuburanyi ntashobora kwicecekera ku kibazo runaka,

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bwe bwo kumenyeshwa mu maguru mashya impamvu z'ifatwa n'ifungwa bye muri Zambiya, n'uburenganzira bwe, nk'uregwa, bwo kumenyeshwa ako kanya ibirego ashinjwa no gushyikirizwa uru Rukiko.

[653] Porokireri asobanura ko "Uwajuriye avuga, nta kimenyetso na kimwe abitangiye, ko abamwunganiraga batakurikije amabwiriza ye yo kubyutsa ibibazo birebana n'ihungabanywa ry'uburenganzira bwe igihe yafungirwaga muri Zambiya. Porokireri asanga Uwajuriye atarashoboye gutanga ikimenyetso kigaragaza ko yatanze ayo mabwiriza, maze agasaba Urugereko kwemeza ko ibivugwa n'uwajuriye kuri icyo kibazo bidafite ishingiro". Imyanzuro ya Porokireri isubiza, igika 4.23.

[654] Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, igika 44.

[655] Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, ibika 45 - 46.

[656] Urubanza rwa *Celebici* mu bujurire, igika 724; Urubanza rwa *Furundzija* mu bujurire, igika 40; Icyemezo mu rubanza rwa *Tadic* (ibimenyetso by'inyongera), ibika 41 - 42.

[657] Urugereko rwa Mbere rw'Iremezo rwa TPIY rwemeje ko kugira ngo ikibazo cyabyukijwe n'umuburanyi mu bujurire gishobore kwakirwa, atazitiwe n'ingingo y'uko yivukije uburenganzira bwo kukibyutsa, kigomba kuba cyarabyukijwe mu gihe cy'iburanisha Rugereko rwa Mbere rw'Iremezo cyangwa se mu gihe cy'itegurarubanzabanza.

hanyuma ngo azakivuge mu Rugereko rw'Ubujurire arusaba kukiburanishaho.[658] Igihe umuburanyi atagize icyo avuga ku kibazo runaka mu Rugereko rwa Mbere rw'Iremezo (kandi ushyize mu gaciro ubona ko ntacyamubuzaga kubikora), Urugereko rw'Ubujurire rugomba kwemeza ko «uwo muburanyi yivukije uburenganzira bwo kuvuga icyo kibazo nk'impamvu y'ubujurire, keretse mu gihe habonetse impamvu zidasanzwe zatumye atabikora mbere.[659]

362. Mu iburanisha mu bujurire, Akayesu yavuze ko ibyo Porokireri avuga ko yaba yarivukije uburenganzira bwe bitagomba kwakirwa kubera ko Urugereko rw'Ubujurire rwari rwafashe icyemezo cyo kwakira Icyifuzo cye gisaba ko hakosorwa ibintu bimwe maze rukamwemerera kuburana kuri icyo kibazo mu mizi yacyo nk'uko gikubiye mu nyandiko y'ubujurire yahinduwe.[660] Nyamara ibintu si ko biteye. Hakurikijwe Icyifuzo cyari cyatanzwe gisaba Urugereko gusubira ku cyemezo rwari rwarafashe, cyane cyane ko urubanza rwari rugeze kure ruburanishwa, Urugereko rw'Ubujurire rwemereye ababuranyi ko, mu iburanisha mu bujurire, bashobora kugira icyo bavuga kuri icyo Cyifuzo ubwacyo, ndetse no gutanga ingingo zabo ku birebana n'iyo mpamvu y'ubujurire mu mizi yayo. Urugereko rw'Ubujurire ntirwigeze na rimwe rwemeza ko rwanyuzwe n'ibyo Akayesu avuga ko ibibazo byabyukijwe muri iyo mpamvu y'ubujurire byari byarashyikirijwe, ku buryo bwemewe, Urugereko rwa Mbere rw'Iremezo, ku buryo Urugereko rw'Ubujurire rwaba rwarakoze ikosa iryo ari ryo ryose mu Cyemezo rwafashe ku itariki ya 22 Kanama 2000. Icyo kibazo gikubiye mu ngoboka mbanzirizarubanza cyari kitarabonerwa umuti mbere y'uko Urugereko rw'Ubujurire rusuzuma ingingo zatanzwe mu mizi yazo. Mu yandi magambo, umuntu yakwibaza niba Akayesu yaba,

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Urubanza rwa *Furundzija* mu bujurire, igika 174: "Iyo asanga ari ingirakamaro, Uwajuriye yashoboraga kuba yarabyukije ikibazo imbere mu Rugereko rwa Mbere rw'Iremezo, haba mbere y'iburanisha cyangwa igihe cy'iburanisha. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanga Uwajuriye yarivukije uburenganzira bwe bwo kubyutsa ikibazo ubu, iyo mpamvu y'ubujurire ikaba rero nta shingiro ifite".

[658] Urubanza rwa *Kambanda* mu bujurire, igika 25, hifashishijwe urubanza rwa *Tadic* mu bujurire, igika 55.

[659] Urubanza rwa *Kambanda* mu bujurire, igika 25. Reba na none Icyemezo mu rubanza rwa *Aleksovski*, igika 20: "[...] nta kibazo nk'icyo cyigeze kibyutswa mu rubanza rwa *Aleksovski* mu Rugereko rwa Mbere rw'Iremezo, akaba ari yo mpamvu hatagomba kwemerwa ko kibyutswa bwa mbere mu Rugereko rw'Ubujurire"; Urubanza rwa *Celebici* mu bujurire, igika 640.

[660] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 72 - 73.

nk'uko abishimangira, yarabajije ibyo bibazo mu Rugereko rwa Mbere rw'Iremezo ku buryo yaba atarivukije uburenganzira bwe bwo kukivuga mu Rugereko rw'Ubujurire[661].

363. Urugereko rw'Ubujurire ruzasuzuma icyo kibazo gikubiye mu ngoboka mbanzirizarubanza ruzirikana ibice byombi by'iyi mpamvu y'ubujurire nk'uko Akayesu yabigejeje ku Rugereko. Ibyo bice ni ibi bikurikira : kutubahiriza uburenganzira bwe bwo gukorerwa bidatinze Inyandiko y'ibirego no kutubahiriza uburenganzira bwe bwo kumenyeshwa imiterere y'ibyaha ashinjwa.

a. Kuvutswa uburenganzira bwo gukorerwa bidatinze Inyandiko y'ibirego

364. Urugereko rw'Ubujurire rusanga ingingo zatanzwe n'Akayesu kuri iki kibazo nta shingiro zifite.

365. Akayesu yibwira ko ingoboka mbanzirizarubanza yatanzwe ku itariki ya 27 Gicurasi 1996 (« Ingoboka mbanzirizarubanza »)[662] n'imiburanishirize yaje kubera nyuma mu Rugereko rwa Mbere rw'Iremezo ku itariki ya 26 n'iya 27 Nzeri 1996, ari bimenyetso bigaragaraza ko icyo kibazo cyavuzwe mu Rugereko rwa Mbere rw'Iremezo.[663] N'ubwo nta muntu uhakana ko Akayesu yatanze iyo ngoboka mbanzirizarubanza, uretse ko we abibona ukundi, ntacyo Urugereko rw'Ubujurire rwashingiraho rwemeza ko ikibazo cyihariye kivugwa muri iyi mpamvu y'ubujurire cyashyikirijwe Urugereko rwa Mbere rw'Iremezo.

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661 Kuri iki kibazo, mu gihe cy'iburanisha mu bujurire, Urugereko rw'ubujurie rwamweretse ko "ikibazo cy'ibanze, hano, cyari cyerekeye iyakirwa ry'iyo mpamvu. Wabyukije mu Rugereko rw'Ubujurire ikibazo cyo kuba uwo wunganira yarafunzwe mu buryo bunyuranyije n'amategeko. Urugereko rwakwemereye kubyutsa icyo kibazo mu mpamvu igendana na cyo, rushingiye ku byo wavugaga ko cyabyukijwe mu Rugereko wa Mbere rw'Iremezo. Ni ngombwa cyane rero, kandi nta kundi byagenda, ko izo ngingo zatanzwe mu Rugereko rwa Mbere rw'Iremezo zisuzumwa ku buryo burambuye, kuko ari ingingo zizatuma hagenzurwa aho urwo ruhushya wahawe n'Urugereko rw'Ubujurire rwo kubyutsa icyo kibazo rugarukira", Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 95 - 96.

662 Ingoboka mbanzirizarubanza, yatanzwe na Akayesu ku itariki ya 27 Gicurasi 1996, ibimenyetso gihamya bifite nº 2 na 3 byometse ku Cyifuzo gisaba gukosora ibintu bimwe na bimwe (cyiswe "imyanzuro").

663 Porokireri yatanze igisubizo cye kuri icyo Cyifuzo ku itariki ya wa 5 Nzeri 1996: Igisubizo ku cyifuzo cy'ingoboka mbanzirizarubanza cyatanzwe n'uwunganira uregwa, ibimenyetso gihamya bifite nº 4 na 5 byometse ku Cyifuzo gisaba gukosora ibintu bimwe na bimwe.

Ibyo Akayesu avuga muri iyi mpamvu y'ubujurire[664] bishingiye ku biteganywa n'ingingo ya 40 y'Amategeko y'Urukiko, nk'uko yari iteye icyo gihe, avuga ko bitubahirijwe igihe yafungirwaga muri Zambiya bisabwe na Porokireri, kuva nibura tariki ya 22 Ugushyingo 1995, ariyo tariki Porokireri yasiyeho abategetsi ba Zambiya kumufunga by'agateganyo, hamwe n'abandi, hashingiwe ku ngingo ya 40 y'Amategeko y'Urukiko) kugera ku itariki ya 16 Gashyantare 1996 ari wo munsi Inyandiko y'ibirego yemejweho, no ku itariki ya 30 Gicurasi 1996 ubwo yitabaga bwa mbere Urukiko.[665] Akayesu avuga ko iyo ngingo iyo iza gusesengurwa uko bikwiye, igifungo cy'agateganyo Urukiko rwari kumugenera kitari kurenza iminsi 20.[666] Kubera iyo mpamvu, avuga ko kuva ahagana ku itariki ya 9 Ukuboza 1995, ifungwa rye ryaba ryaranyuranije n'amategeko.[667]

366. Urugereko rw'Ubujurire rusanga n'ubwo hari ibibazo yavuze byerekeye ifatwa n'ifungwa rye igihe yatangaga ingoboka mbanzirizarubanza, Akayesu ntiyigeze na rimwe yita ku buryo bwihariye ku kibazo cyo kuba yarafunzwe bisabwe na Porokireri. Byongeye kandi ntiyigeze na rimwe avuga ko Porokireri atubahirije ingingo ya 40 y'Amategeko y'Urukiko, nk'uko abyitwaza ubu mu myanzuro ye.[668]

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[664] Imyanzuro ya Akayesu, umutwe I, ibika 22 - 44. Reba igika 42: "Ingingo y'Uwajuriye ishingiye ku kwerekana ko igihe yamaze muri gereza mbere y'uko Inyandiko y'ibirego yemezwa, kitubahirije amategeko mpuzamahanga yerekeranye n'ifungwa ry'agateganyo ry'abakekwaho icyaha". Reba na none igika cya 44: "Uwajuriye avuga ko Porokireri atakurikije amategeko igihe yongeraga igihe cy'igifungo cye muri Zambiya kandi ataragombaga kumufunga atyo yitwaza ko anketi zitararangira ngo ashobore kumurega. Kugira ngo Uwajuriye adakomeza gufungwa mu buryo bunyuranyije n'amategeko, Porokireri yagombaga kumufungura. Nta muryango n'umwe w'amategeko ahana ibyaha wemerera Porokireri kwiha ububasha bw'ako kageni buhungabanya uburenganzira bw'ibanze bw'umuntu ufunze".

[665] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, urup. 56 (ENG).

[666] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 140-145.

[667] Imyanzuro ya Akayesu, umutwe i, igika 32.

[668] Mu ngoboka mbanzirizarubanza, Akayesu yavuga ibi bikurikira: (muri rusange) uburenganzira bwe bwo kumenyeshwa mu maguru mashya ibyaha aregwa ntibwubahirijwe, we na avoka we ntiberetswe inyandiko zerekeye ifatwa rye n'ibyaha ashinjwa, yafashwe n'abategetsi ba Zambiya mu buryo bunyuranyije n'amategeko, yafashwe kinyamaswa muri gereza nkuru ya Lusaka, yatswe uburenganzira bwe bwo guhabwa umwunganira igihe yari afungiye i Lusaka, icyemezo cyo kumwimurira muri uru Rukiko nticyagombaga gufatwa adahari. Na none, yasabaga ko ingingo zimwe z'ibimenyetso zitagenderwaho, anashimangira ko uburenganzira bwe bwo kuburanishwa mu ruhame kandi mu buryo buboneye n'urukiko rwigenga kandi rudafite aho rubogamiye butubahirijwe.

367. Ku itariki ya 26 Nzeri 1996, ababuranyi batanze ingingo zabo kuri iyo ngoboka mbanzirizarubanza.[669] Aha na ho, nta kintu na kimwe kiri mu nyandikomvugo y'iburanisha Urugereko rw'Ubujurire rwaheraho rwemera ko Akayesu yavuze icyo kibazo cyihariye.[670] Mu cyemezo rwafashe mu magambo bucyeye ku itariki ya 27 Nzeri 1996, Urugereko rwa Mbere rw'Iremezo rwasanze iyo ngoboka mbanzirizarubanza nta shingiro ifite. Ni ngombwa twibutsa ibikubiye muri icyo cyemezo cy'Urugereko rwa Mbere rw'Iremezo :

> Mu gihe yasobanuraga iyo ngoboka […] Uwunganira Uregwa yaratandukiriye cyane avuga ibintu bitari mu myanzuro ye yanditse. Yibanze gusa ku kuvuga ibibazo bimwe byerekeye uburyo Akayesu yafunzwemo muri Zambiya no kuba barakererewe kumumenyesha Inyandiko y'ibirego hamwe n'ibimenyetso ishingiyeho.
>
> Urugereko ntirugamije guhakana ko Ushinjwa yafashwe n'abategetsi ba Zambiya babisabwe na Ambasade y'u Rwanda i Pretoria cyangwa byifujwe n'iyo Ambassade. Ntirugamije kandi guhakana ko inyubako ya gereza y'i Lusaka itari ikwiye. Cyakora, ibyo bibazo byombi ntibiri mu bubasha bw'Urukiko.
>
> […]
>
> **Rumaze kumva Porokireri**, Urugereko rusanga Porokireri ataranyuranije n'Amategeko y'Urukiko.
>
> […]
>
> **Rumaze kumva nyuma** imyanzuro Ubwunganizi bwatanze mu magambo mu iburanishwa ryagenewe iki Cyifuzo ku itariki ya 26 Nzeri 1996 ubwo Uwunganira Uregwa yibanze ahanini ku kibazo cyerekeye uburyo Uregwa yafunzwemo n'ukuntu bakerewe kumumenyesha Inyandiko y'ibirego n'ibimenyetso bifatika ishingiyeho […][671]

368. Mu nyandiko ebyiri zasabaga Urugereko gusubira ku Cyemezo rwafashe ku itariki ya 22 Kanama 2000 (Icyifuzo gisaba gusubira ku Cyemezo rwafashe, n'Igisubizo cya Porokireri ku Cyifuzo gisaba Urugereko gusubira ku Cyemezo rwafashe) no mu iburanisha mu bujurire, Akayesu yagerageje kumvisha Urugereko ko icyo kibazo cyavuzwe mu

[669] Inyandikomvugo y'iburanisha (ENG), 26 Nzeri 1996, imp. 10-39 (Akayesu), n'imp. 39-45 (Porokireri).

[670] Akayesu, mu iburanisha yavuze ibi bikurikira: "Ikibazo cya gatatu […] ni uburyo […] Akayesu yafatiwe muri Zambiya". Nyuma yavuze ibyerekeye ibaruwa y'abategetsi b'u Rwanda yasabaga ko afatwa, Inyandikomvugo y'iburanisha (ENG), 26 Nzeri 1996, imp. 18 - 19.

[671] *Ibyemezo ku ngoboka mbanzirizarubanza zabyukijwe na Porokireri n'Ubwunganizi*, Urugereko rwa Mbere rw'Iremezo, Inteko ya mbere, 27 Nzeri 1996, imp. 3 - 4.

Rugereko rwa Mbere rw'Iremezo. By'umwihariko, yagerageje kurwumvisha ko ingingo yatanze muri iyi mpamvu y'ubujurire na zo zatanzwe mu ngoboka mbanzirizarubanza. Yasobanuye ko n'ubwo izo ngingo zaba zitarasobanutse neza, Urugereko rwa Mbere rw'Iremezo rwazimenyeshejwe kandi rukazizirikana mu guca urubanza.[672]

369. Urugereko rw'Ubujurire rusanga muri iyo ngoboka mbanzirizarubanza hatarigeze havugwa ikibazo kiri mu gice cya mbere cy'iyi mpamvu y'ubujurire, ari cyo kuba ifungwa rya Akayesu ritarubahirije amatekego, hakurikijwe ingingo ya 40 y'Amategeko y'Urukiko yariho icyo gihe, no kuba ifungwa rye ry'agateganyo ryaba ryararengeje igihe cy'iminsi 20 ngo giteganywa n'amategeko. Urugereko rw'Ubujurire rusanga ahubwo ingoboka mbanzirizarubanza yarabyutsaga ibibazo rusange byerekeye uburyo yafashwemo n'uko yafunzwe.[673] Byongeye kandi, ku itariki ya 26 Nzeri 1996, mu iburanisha ryahariwe iyo ngoboka, Avoka wungania Akayesu ntishyize ikibazo cyasobanuwe haruguru mu bibazo byagibwagaho impaka.[674] Mu iburanisha mu bujurire, Urugereko rwasabye, ku buryo butaziguye, Avoka wa Akayesu kurwereka muri dosiye y'ubujurire ahantu hagaragaza ko icyo kibazo cyabyukijwe mu Rugereko rwa Mbere rw'Iremezo.[675] By'umwihariko, Urugereko rwamubajije ikibazo gikurikira : « Mu ngero watanze, haba hari ikigaragaza ko Bwana Scheers yashyikirije Urugereko rwa Mbere rw'Iremezo ingingo zigaragaza ko gufungwa by'agateganyo k'Uregwa muri Zambiya

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[672] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, urup. 73 n'izikurikira. Akayesu asanga ingoboka mbanzirizarubanza, Igisubizo cya Porokireri kuri iyo ngoboka kimwe n'ibyavuzwe na avoka umwunganira mu iburanisha ryo ku wa 26 Nzeri 1996 byarahariwe icyo kibazo cyabyukijwe muri iyo mpamvu y'ubujurire. Reba kandi Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 97-100.

[673] Nk'uko Porokireri yabivuze, "ibibazo byabyukijwe muri iyo ngoboka ntibimeze kimwe n'ibivugwa mu mpamvu y'ubujurire y'inyongera yatanzwe na Akayesu". Igisubizo cya Porokireri ku cyifuzo gisaba guhindura ibintu bimwe na bimwe, igika 13.

[674] Urugereko rw'Ubujurire rusanze Porokireri avuga ko yasobanuye, mu gisubizo cye ku ngoboka mbanzirizarubanza, ibikorwa byerekeye icyifuzo yatanze ashingiye kugingo ya 40 y'Amategeko. Porokireri avuga ko n'ubwo ikibazo cyagejejwe mu by'ukuri ku Rugereko rwa Mbere rw'Iremezo, Akayesu atagomba kwibwira ko Porokireri hari icyo azamufashaho kuri icyo kibazo mu bujurire niba ku ruhande rwe adatanze, mu buryo ubwo ari bwo bwose, nibura ingingo imwe ishyigikira iyo mpamvu. Inyandikomvugo y'iburanisha mu bujurire, Ugushyingo 2000, urup. 50 (ENG). Urugereko rw'Ubujurire rusanga Akayesu atagomba kwitwaza ko Porokireri yaba yarakomoje kuri icyo kibazo imbere y'Urugereko rwa Mbere rw'Iremezo. Ibyo ari byo byose, rusanga Akayesu ataragarutse kuri iyi ngingo ngo ayisobanure mu magambo arambuye kandi mu buryo busobanutse. Ayo makuru ytanzwe gusa na Porokireri, mu rwego rw'incamake y'ibyabaye.

[675] Reba Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 309 - 311, na 2 Ugushyingo 2000, imp. 93 - 100.

kwarengeje igihe giteganywa n'ingingo ya 40 y'Amategeko y'Urukiko ? »[676] Avoka wa Akayesu yageze aho yemera ko icyo kimenyetso kitavuzwe.[677]

370. Urugereko rw'Ubujurire rusanze Akayesu atarabyukije icyo kibazo mu Rugereko rwa Mbere rw'Iremezo. Byongeye kandi, mu Cyifuzo gisaba Urugereko gusubira ku Cyemezo cyarwo, Akayesu yemeje ko yavuze icyo kibazo kandi atari byo. Ni yo mpamvu Urugereko rw'Ubujurire rusanze Akayesu yarivukije uburenganzira bwe bwo kuvuga icyo kibazo mu bujurire.

b. Kuvutswa uburenganzira bwo kumenyeshwa imiterere y'ibyaha aregwa

371. Akayesu avuga ko icyo kibazo na cyo cyavuzwe ku buryo bwemewe mu Rugereko rwa Mbere rw'Iremezo, bityo ngo akaba atarivukije uburenganzira bwe bwo kukibyutsa mu bujurire.

372. Akayesu avuga ko yavukijwe uburenganzira bwe bwo kumenyeshwa bidatinze imiterere y'ibyaha ashinjwa. Avuga ko, ku itariki ya 29 Werurwe 1996, ari bwo yamenyeshejwe ibirego aregwa n'impamvu yafashwe, ni ukuvuga hashize ibyumweru bitandatu Inyandiko y'ibirego imaze kwemezwa. Cyakora, yemera ku nshuro zigera kuri eshatu, yashoboye kumenya ko gufungwa kwe bifitanye isano n'ibyabaye mu Rwanda. Kubera iyo mpamvu, ngo uburenganzira bwe bwo kumenyeshwa bidatinze ibyaha ashinjwa ntibwubahirijwe.[678] Avuga ko yimuriwe mu Rukiko hashize amezi atatu n'igice Inyandiko y'ibirego yemejwe,

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[676] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, urup. 94.
[677] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 95-97 (FR), imp. 76 -78 ENG), igira iti: "Ingingo zatanzwe na Me Scheers ntizarebanaga n'iby'amategeko mu buryo bweruye, ntizavugaga ko ingingo ya 40 y'Amategeko iteganya igihe cy'iminsi 90 cyangwa ko hari ukundi ibivuga[…] Me Scheers yavuze gusa ko amategeko atakurikijwe […] Ndemera ko Me Scheers atasobanuye ibintu neza […] Porokireri we yabisobanuye neza kandi abacamanza bashyize ingingo zose ku munzani maze bakurikiza amategeko".
[678] Imyanzuro ya Akayesu, umutwe I, igika 45. Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 145 - 147.

ibyo bikaba binyuranyije n'ingingo ya 19 ya Sitati.[679]. Avuga kandi ko yitabye Urukiko bwa mbere hashize amezi atandatu Porokireri atanze Icyifuzo gishingiye ku ngingo ya 40 y'Amategeko y'Urukiko, hanashize kandi amezi atatu n'igice afashwe akanaregwa hakurikijwe ibiteganywa na Sitati n'Amategeko y'Urukiko.[680] Akayesu avuga ko yafatwa nk'ukekwaho icyaha (ufunzwe kuva ku itariki ya 22 Werurwe 1995) cyangwa se nk'ushinjwa (ufunzwe kuva ku itariki ya 16 Gashyantare 1996), ku itariki ya 29 Werurwe 1996 ari bwo yamenyeshejwe ibyaha ashinjwa, n'ibikorwa n'amategeko byashingiweho kugira ngo afungwe. Ni yo mpamvu avuga ko uburenganzira bwe bwo kumenyeshwa ibyo byose bidatinze butubahirijwe.[681]

373. Porokireri avuga ko bigaragara ko Akayesu yari azi nibura imiterere y'ibirego ashinjwa kandi ko yiyemerera ubwe ko yamenyeshejwe imiterere y'ibyo birego nibura muri rusange.[682]

374. Urugereko rw'Ubujurire rusanze na none ikibazo kivugwa muri iyi mpamvu y'ubujurire kitarabyukijwe mu Rugereko rwa Mbere rw'Iremezo. Mu ngoboka mbanzirizarubanza, Akayesu yari yavuze ko yafunzwe bisabwe n'abategetsi b'u Rwanda kandi ko atigeze amenyeshwa na rimwe impamvu zatumye afatwa. Avuga ko ku itariki ya 10 n'iya 11

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679 Imyanzuro ya Akayesu, umutwe I, ibika 46 - 47. Akayesu avuga ko igihe yari afunzwe, yavukijwe uburenganzira bwe bwo kumenyeshwa mu maguru mashya imiterere rusange y'ibyaha aregwa, kandi ko Inyandiko y'ibirego imaze kwemerwa na bwo atamenyeshejwe ako kanya ibyaha ashinjwa.

680 Imyanzuro ya Akayesu, umutwe 1, igika 48. Akayesu avuga ko uburenganzira bwo kuburanishwa mu maguru mashya buteganywa n'amategeko mpuzamahanga arengera uburenganzira bwa muntu kimwe n'ay'Urukiko, kandi ko igihe cyashize mbere y'uko aburanishwa kinyuranyije rwose n'igiteganywa n'ayo mategeko. Yagaragaje ko mu rubanza rwa Barayagwiza, Urugereko rw'Ubujurire rwashimangiye ku buryo busobanutse ko umuntu wese afite uburenganzira bwo kumenyeshwa ibyo aregwa agifungwa. Imyanzuro ya Akayesu, umutwe I, ibika 51 na 52.

681 Imyanzuro ya Akayesu, umutwe I, igika 51.

682 Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 56-60. Porokireri avuga ko Akayesu yemeye ko, na mbere y'icyifuzo cyatanzwe ku itariki ya 22 Ugushyingo 1995 gishingiye kungingo ya 40 y'Amategeko, yari azi ko Urukiko rumugendaho, kandi ko we ubwe yigeze kwifashisha ibaruwa ya Porokireri w'Urukiko yo ku itariki ya 31 Ukwakira 1995. Ikindi kandi, yari azi icyemezo cy'Urukiko Rukuru rwa Zambiya cyo ku itariki ya 1 Gashyantare 1996 cyerekana ko urwo rukiko rwarimo kwiga ikibazo cy'uko yakwimurirwa muri uru Rukiko. Na none, biragaragara ko mu ntangiriro z'ukwezi kwa Gashyantare 1996, Akayesu yahuye n'uwahoze ategeka ishami ry'Urukiko rishinzwe anketi. Naho ku byo Akayesu avuga ko yamenyeshejwe bitinze Inyandiko y'ibirego, Porokireri ahamya ko Inyandiko y'ibirego yemejwe ku itariki ya 16 Gashyantare 1996, ikohererezwa abategetsi ba Zambiya ku itariki ya 8 Werurwe 1996, kugira ngo bayimenyeshe nyuma Akayesu. N'ubwo Akayesu avuga ko yabonye Inyandiko y'ibirego mu mpera z'ukwezi kwa Werurwe 1996, Porokireri we avuga ko ibyo atari we byabazwa [Porokireri].

Mata 1996 igihe yabazwaga muri gereza ya Lusaka ari bwo yamenyeshejwe ibyaha ashinjwa.[683] Mu iburanisha ryo ku wa 26 Nzeri 1996, Akayesu yasubiyemo iyo mvugo anatangaza ko hashize amezi arindwi ataramenya, cyangwa umwunganira ataramenya, ibirego ashinjwa.[684] Byongeye kandi, yemeza ko yashyikirijwe Inyandiko y'ibirego ku itariki ya 30 Gicurasi 1996.[685]

375. Urugereko rw'Ubujurire rusanga nta kimenyetso na kimwe gihamya ko ibikorwa n'ingingo bivugwa muri iyi mpamvu y'ubujurire byaba, nk'uko Akayesu abyemeza, byaranavugiwe mu Rugereko rwa Mbere rw'Iremezo. Impamvu Ushinjwa yatanze icyo gihe ntizavugaga ko hari ikosa Porokireri yakoze nk'iryo amugerekaho ubu mu Rugereko rw'Ubujurire. Akayesu yavuze gusa, mu magambo rusange, ko atamenyeshejwe impamvu z'ifatwa rye, ko ariko bisa n'aho byatewe n'ikosa ry'abategetsi ba Zambiya. Nta gisobanuro na kimwe cyigeze gitangwa kuri icyo kibazo mu iburanisha ryo ku wa 26 Nzeri 1996. Urugereko rw'Ubujurire rusanze Akayesu yarivukije uburenganzira bwe bwo kubyutsa icyo kibazo mu bujurire.

3. Umwanzuro

376. Ku itariki ya 2 Nzeri 1998, Akayesu yahamijwe icyaha akatirwa ibihano n'Urugereko rwa Mbere rw'Iremezo ku itariki ya 2 Ukwakira 1998. Haba mu Nyandiko y'ubujurire ya mbere yatanzwe n'Akayesu ubwe, cyangwa mu ya kabiri yatanzwe n'Umwunganira, nta hantu hamwe havugwa ikibazo cyo kuba yarafunzwe mu buryo budakurikije amategeko

[683] Ingoboka mbanzirizarubanza, igika B.2. Akomeza avuga ko "kugeza ubu, n'umwunganira atarahabwa Inyandiko y'ibirego cyangwa kopi y'inyandiko imumenyesha ku mugaragaro ibyaha uwo yunganira aregwa".

[684] Inyandikomvugo y'iburanisha , 26 Nzeri 1996, urup. 16 (ENG).

[685] Inyandikomvugo y'iburanisha, 26 Nzeri 1996, imp. 15-17 (ENG). Mu *Cyemezo ku ngoboka mbanzirizarubanza* zatanzwe na Porokireri n'Ubwunganizi, Urugereko rwa Mbere rw'Iremezo rwgize ruti: "Biragaragara ko habaye ubukererwe mu gushyikiriza uwunganira uregwa Inyandiko y'ibirego kimwe n'izindi nyandiko z'uru rubanza, ziri mu rurimi rw'Igifaransa. Ibiro bya Porokireri ariko ntibisabwa kubahiriza igihe iki n'iki uretse ibiteganywa mu ngingo ya 66 y'Amategeko, ahavugwa ko bigomba gukorwa aho bishobokeye. Urugereko rwa Mbere rw'Iremezo, Inteko ya mbere, 27 Nzeri 1996.

cyabyukijwe nk'uko bisobanurwa haruguru. N'ubwo mu mwaka wa 1999 yatanze ibyifuzo byinshi byasabaga uruhushya rwo guhindura Inyandiko y'ubujurire bwe[686], ku itariki ya 7 Ukuboza 1999 ni bwo gusa Akayesu yasabye uruhushya rwo guhindura Inyandiko y'ubujurire kugira ngo yongeremo impamvu igaragaza ko yafunzwe mu buryo bunyuranije n'amategeko.[687] Icyemezo Urugereko rw'Ubujurire rwafashe ku itariki ya 3 Ugushyingo 1999 mu rubanza rwa *Barayagwiza* gishobora kuba ari cyo cyabaye intandaro yo kugira ngo hatangwe kiriya Cyifuzo gisaba guhindura inyandiko y'ubujurire.[688] Cyakora icyo Cyifuzo nticyakiriwe n'Urugereko rw'Ubujurire, mu Cyemezo cyarwo cyo ku itariki ya 22 Kanama 2000 kubera ko ikibazo cyavugwaga kitari cyarabyukijwe mu rw'iremezo. Mu byo avuga ku Gisubizo cya Porokireri kuri icyo Cyifuzo, Akayesu asa n'uwabigendeyeho kugira ngo agerageze kwerekana ko Uwamwunganiraga atari ashoboye akazi. Mu Cyifuzo gisaba Urugereko gusubira ku Cyemezo cyarwo, Akayesu avuga ko ikibazo cyabyukijwe mu Rugereko rwa Mbere rw'Iremezo, kandi ko ngo Urugereko rw'Ubujurire rwibeshye mu Cyemezo cyarwo cyo ku wa 22 Kanama 2000. Nyamara ariko, ntagaragaza ko ari ko byagenze koko. Urugereko rw'ubujurire ntirubona impamvu n'imwe rwasubira ku mwanzuro rwafashe kuri icyo kibazo, nk'uko ukubiye mu Cyemezo cyarwo cyo ku itariki ya 22 Kanama 2000. Kubera iyo mpamvu, rusanze ntacyo rwakongera ku myanzuro rwafashe mbere, ku birebana n'ibibazo byabyukijwe muri iyi mpamvu y'ubujurire.

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[686] Ibyinshi mu byifuzo bye byabonewe ibisubizo mu Cyemezo cyo ku wa 24 Gicurasi 2001.

[687] Icyifuzo cyo guhindura Inyandiko y'ubujurire ku birebana ukutabogama n'ubwigenge by'Urukiko, hakongerwamo impamvu z'ubujurire zindi, cyatanzwe ku itariki ya 7 Ukuboza 1999, nk'uko cyandukuwe mu mbonerahamwe y'Ibyifuzo bitarafatirwa Ibyemezo (hashyirwa mu bikorwa *"Gahunda y'ingengabihe"* yo ku wa 24 Gicurasi 2000).

[688] Akayesu yiyemerera ko icyo cyemezo cyatumye atanga icyifuzo cyo gusaba kongera iyi mpamvu y'ubujurire mu Nyandiko y'ubujurire: "Ushinjwa yatanze vuba na bwangu icyifuzo cyo guhindura inyandiko y'ubujurire ku wa 30 Ugushyingo 1999, nyuma y'isomwa ry'Icyemezo cyo ku wa 3 Ugushyingo 1999 […], icyo cyemezo kikaba kiri mu bukemuramanza bw'ingirakamaro ku birebana n'ifungwa rinyuranyije n'amategeko, icyifuzo gisaba gufungurwa *[habeas corpus]*, n'uburenganzira bw'uregwa bwo kumenyeshwa ibyaha ashinjwa", Icyifuzo cyo gukosora ibintu bimwe na bimwe, igika cya 8. Muri urwo rwego, icyifuzo cye cya mbere na mbere cyifashishaga muri rusange uko "ubukemuramanza bwagiye buhindagurika ku birebana n'ifungwa rinyuranyije n'amategeko no ku birebana n'uburenganzira bw'ibanze". Icyifuzo gisaba guhindura Inyandiko y'ubujurire ku byerekeye ukutabogama n'ubwigenge by'Urukiko, hakongerwamo impamvu nshya z'ubujurire, cyatanzwe ku itariki ya 7 Ukuboza 1999 (igika 24 J). Mu birebana n'imbonerahamwe y'ibyifuzo bitarafatirwa ibyemezo, uwunganira uregwa yavuze ko bize

377. Urugereko rw'Ubujurire rusanze Icyifuzo gisaba Urugereko gusubira ku Cyemezo cyarwo nta shingiro gifite, kandi ruhamishije Icyemezo rwafashe ku itariki ya 22 Kanama 2000 rwima Ujurira uruhushya rwo kongera iyo mpamvu mu Nyandiko y'ubujurire.

K. Impamvu y'ubujurire ya 11: Kujuririra igihano cyatanzwe[689]

378. Ubujurire bwa Akayesu ku gihano yakatiwe bubyutsa ibibazo bitatu bitandukanye. Mu nyandiko y'ubujurire, ibyo bibazo byitwa impamvu z'ubujurire ku gihano. Muri iki cyiciro, ibyo bibazo cyangwa izo mpamvu z'ubujurire bizitwa « impamvu z'ubujurire ku gihano ».[690] Impamvu ebyiri za mbere z'ubujurire ku gihano zishingiye ku cyo yise kuvutswa uburenganzira bwe mu iburanisha ryahariwe impaka ku gihano, ryabaye ku itariki ya 28 Nzeri 1998 no ku ya 2 Ukwakira 1998. Impamvu ya gatatu ishingiye ku mvugo rusange irwanya igihano yakatiwe n'Urugereko rwa Mbere rw'Iremezo. Mu nyandiko y'ubujurire ku gihano yakatiwe, Akayesu asaba Urugereko rw'Ubujurire ibintu bikurikira : 1) kwemeza ko Urugereko rwa Mbere rw'Iremezo rutakurikije amategeko mu kugena iginano, kandi ko rwabikoze nta bubasha rubifitiye ; 2) gukomatanya ubujurire ku gihano yakatiwe n'ubujurire yatanze mbere ku rubanza rwamuhamije ibyaha ; 3) mu gihe rwasanga ubujurire bwe ku rubanza rwamuhamije ibyaha budafite ishingiro, kumugabanyiriza igihano ku buryo bugaragara ku byaha byose ashinjwa.[691]

379. Mu nyandiko y'ubujurire ku gihano yakatiwe, Akayesu yatanze impamvu zikurikira :

> Impamvu y'ubujurire ku gihano ya mbere:
>
> Urukiko rwavukije Ujurira uburenganzira bwe bwo kunganirwa na avoka mu iburanisha ryo ku itariki ya 28 Nzeri 1998. Yasabye kugenerwa umwunganira, ariko Urukiko

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ku buryo bunononsoye icyo cyemezo. Imbonerahamwe y'ibyifuzo bitarafatirwa ibyemezo (hashyirwa mu bikorwa *"Gahunda y'ingengabihe"* yo ku wa 24 Gicurasi 2000), yatanzwe ku itariki ya 2 Kamena 2000, igika 35.

689 Reba Umugereka B.

690 Urugereko rw'Ubujurire rusanga mu Nyandiko y'ubujurire ku gihano yakatiwe, Akayesu asobanura amavu n'amavuko y'ibibazo yabyukije, abihuza n'ibyo avuga ko Ubuyobozi bw'Urukiko butubahirije uburenganzira bwe bw'ibanze (igika 27 n'ibikurikira). Ibyo avuga harimo n'ibibazo birebana no kugenerwa abamwunganira, mbere na mbere agatanga urugero rw'ibaruwa yo ku wa 18 Nzeri 1998 yandikiye Gerefiye n'Urukiko. Na none, mu mutwe wa XIV w'imyanzuro ya Akayesu, yagarutse kuri ibyo bikorwa.

691 Inyandiko y'ubujurire ku gihano yakatiwe, ibyo asaba.

ruramumwima ku bushake bwarwo gusa. Kubera iyo myitwarire yarwo igayitse, Urukiko nta bubasha bwo kumuburanisha rwari rukimufiteho.

Impamvu y'ubujurire ku gihano ya kabiri :

Ku itariki ya 2 Ukwakira, Urukiko rwavukije uwajuriye uburenganzira bwo kuruha ibisobanuro. Na none, iyo myitwarire igayitse igomba gutuma hemezwa ko urwo Rugereko nta bubasha bwo kumuburanisha rwari rugifite, ndetse ko yanarutakarije icyizere.

Impamvu y'ubujurire ku gihano ya gatatu :

Igihano kidashyize mu gaciro kandi kidafite aho gishingiye.[692]

1. <u>Icyifuzo cy'ikubitiro cya Akayesu</u>

380. Mbere yo gusuzuma ibivugwa mu mpamvu z'ubujurire ku gihano yakatiwe, ni ngombwa gusuzuma icyifuzo Akayesu yatanze mbere.

a. Ibivugwa n'ababuranyi

381. Akayesu asaba Urugereko gusuzuma rutandukanyije ubujurire ku mikirize y'urubanza n'ubujurire ku gihano. Avuga ko ruramutse rutakiriye ubujurire bwe ku mikirize y'urubanza, Urugereko rw'Ubujurire rugomba kumva ubujurire yatanze ku gihano, bityo akaboneraho gutanga ibimenyetso by'inyongera, no gutanga indi myanzuro ku gihano yakatiwe[693].

382. Porokireri asubiza ko, mu mikorere yarwo, Urugereko rw'Ubujurire rutajya na rimwe ruca iburanisha mo ibice. Yongeraho ko Amategeko adateganya imikorere nk'iyo mu

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[692] Inyandiko y'ubujurire ku gihano yakatiwe, igika cya 24

[693] Imyanzuro y'akayesu, umutwe wa XIV, igika 7 n'umutwe XV, igika 5; Igisubizo cy'Ujurira, igika 137. Akayesu ntatanga ingingo irambuye ku mpamvu ya gatatu y'ubujurire bwe (ivuga ko igihano yakatiwe kidashyize mu gaciro ndetse ko nta shingiro gifite). Avuga ko afite uburenganzira bwo gutanga ingingo ku igenagihano no ku byerekeye kuba mbere y'uko yitaba Urukiko bwa mbere yaramaze amezi atandatu afunzwe mu buryo bunyuranije n'amategeko. Ku byerekeye iki cyifuzo cya nyuma, twibutse ko, ubwo rwasuzumaga impamvu ya 10 y'ubujurire, Urugereko rw'Ubujurire rwasuzumye ikibazo Akayesu avuga ko yafunzwe binyuranyije n'amategeko (Reba hasi).

bujurire[694]. Porokireri avuga ko mu mikorere yarwo, nta na rimwe Urukiko rwigeze rutandukanya iburanisha ry'ubujurire ku mikirize y'urubanza mu mizi yarwo n'ubujurire ku gihano[695]. Porokireri avuga ko n'ubwo mbere Amategeko yateganyaga ko Urugereko rwa Mbere rw'Iremezo rushobora gufata umwanzuro ku rubanza mu mizi yarwo, rukazatanga igihano nyuma, ayo mategeko yaje guhindurwa muri Kamena 1998 kugira ngo imikirize y'urubanza mu mizi yarwo n'itangwa ry'igihano bikorerwe rimwe. Asobanura rero ko igihe urubanza rwacibwaga mu mizi yarwo, igihe igihano cyatangwaga n'igihe Akayesu yajuriraga, ayo mategeko yahinduwe ariyo yakurikizwaga[696]. Porokireri yibutsa ko mu Nyandiko ye y'ubujurire ku gihano, Akayesu ubwe yari yasabye Urugereko rw'Ubujurire gukomatanya « ubujurire bwe ku gihano n'ubujurire yari yaratanze mbere ku byemezo bimuhamya ibyaha »[697]. Porokireri avuga ko gukomatanya ubwo bujurire bwombi bitavutsa Akayesu uburenganzira bwe; ko kubera iyo mpamvu Urugereko rugomba kutakira icyifuzo cya Akayesu gisaba ko ubujurire bwe ku byemezo bimuhamya ibyaha butaburanishirizwa hamwe n'ubwo yatanze ku gihano[698].

b. Isesengura ry'Urugereko

383. Mbere na mbere, Urugereko rw'Ubujurire rusanga mu nyandiko ye y'ubujurire, Akayesu asaba mu buryo butaziguye « gukomatanya ubujurire ku byemezo bimuhamya ibyaha n'ubujurire ku gihano »[699]. Rusanga kandi asaba ko, ruramutse rwanze kwakira ubujurire yatanze ku byemetso bimuhamya ibyaha, Urugereko, « rwamugabanyiriza cyane igihano ku byaha byose yahamijwe »[700]. Urugereko rw'Ubujurire rusanga ibyo bigaragaza nta shiti ko Ujurira yasabye Urugereko rw'Ubujurire gusuzumira hamwe ubujurire bwombi no kubufata nk'aho bukomatanyirije hamwe[701].

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694 Igisubizo cya Porokireri, igika 15.3
695 Igisubizo cya Porokireri, igika 15.3
696 Igisubizo cya Porokireri, ibika 15.5-15.7
697 Igisubizo cya Porokireri, igika 15.7
698 Igisubizo cya Porokireri, ibika 15.8-15.9
699 Inyandiko y'ubujurire ku gihano, ibisabwa n'Ujurira
700 Inyandiko y'ubujurire ku gihano, ibisabwa n'Ujurira.
701 Urugereko rw'Ubujurire ruvuga kandi ko ikindi kintu cy'ingenzi ari uko Akayesu yongeye kuvuga izo mpamvu z'ubujurire mucyo yise "inyandiko ikomatanyije imenyesha ubujurire", yometse ku Myanzuro ye. Reba imyanzuro y'Akayesu, intangiriro, igika 5

384. Mu Mategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, no muri Sitati, ntaho biteganyijwe, mu buryo butaziguye, ko ubujurire ku rubanza mu mizi yarwo busuzuma butandukanijwe n'ubujurire ku gihano. Mu by'ukuri, Amategeko ateganya igihe ntarengwa ababuranyi bagomba gutangiraho imyanzuro yabo. By'umwihariko, Amategeko ateganya ko nyuma yo gutanga inyandiko y'ubujurire, ujurira agomba gutanga imyanzuro ye mu gihe kitarenze iminsi 90, kandi iyo myanzuro ikaba ikubiyemo « ingingo zose zishingiye ku mategeko no ku byabaye »[702]. Amategeko ntateganya ko imyanzuro y'ubujurire ku gihano ishobora gutangwa ukwayo cyangwa gutangwa mu gihe gitandukanye n'icy'ubujurire ku rubanza mu mizi yarwo. Inyingo ya 111 y'Amategeko ntigomba kumvikana nk'ivuga ko iyo yatanze inyandiko y'ubujurirre ku gihano, mu myanzuro ye y'ubujurire, ujurira ashobora kudatanga ingingo zerekeye ubujurire ku gihano. Cyakora, Ujurira aramutse abisabye mu nyandiko, birumvikana ko ibihe biteganywa na Sitati bishobora kongerwa. Icyo gihe, umuburanyi ubisabye agomba kubitangira impamvu[703]. Akayesu ntiyigeze ashyikiriza Urugereko rw'Ubujurire icyifuzo nk'icyo[704]. Byongeye kandi, Urugereko rw'Ubujurire rusanga ingingo zikubiye mu myanzuro y'ubujurire zavuzwe haruguru zitagomba kwitiranywa n'icyifuzo gisaba kongererwa igihe, cyane cyane ko Akayesu atigeze atanga icyifuzo na kimwe cyangwa impamvu iyo ari yose.

385. Urugereko rusanga, haba mu nyandiko ze cyangwa mu iburanisha mu bujurire, Akayesu yaragerageje gutanga ibisobanuro ku kibazo kivugwa mu byo yise impamvu ya mbere y'ubujurire ku gihano[705]. Byongeye kandi, Urugereko rw'Ubujurire rwemeje ko, mbere

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[702] Ingingo ya 111 y'Amategeko iteganya ko: "Imyanzuro y'ujurira igomba kuba ikubiyemo ingingo zose zerekeranye n'amategeko n'ibyabaye kandi igashyikirizwa Ibiro bya Gerefiye ikanamenyeshwa undi muburanyi mu gihe kitarenze iminsi 90 uhereye umunsi inyandiko y'ubujurire yatangiweho, nk'uko biteganywa n'ingingo y'i 108". " (nk'uko yahinduwe mu nama rusange ya gatanu y'Abacamanza yo ku itariki ya 8 Kamena 1998).

[703] Ingingo ya 116 iteganya ibi bikurikira: "iyo rusanze hari impamvu zigaragara, Urugereko rw'Ubujurire rushobora kwemera iyongerwa ry'igihe ntarengwa ryasabwe n'ababuranyi".

[704] Mu cyemezo cyiswe "*Scheduling Order*" [Itegeko rishyiraho amatariki] cyo ku itariki ya 24 Gicurasi 2000, Urugereko rw'Ubujurire rwategetse ababuranyi gutanga imyanzuro y'ubujurire, hashingiwe ku ngingo ya 111 y'Amategeko, bitarenze ku itariki ya 10 Nyakanga 2000.

[705] By'umwihariko, mu iburanisha mu bujurire, ntihigezwe havugwa ko imyanzuro yagombaga gufatwa nk'ingingo zisanzwe zibanza, hategerejwe irindi buranisha kuri icyo kibazo. Mu gisubizo cye, Porokireri avuga ko mu ngingo ze kuri icyo kibazo Akayesu "asa n'usaba ko imihango y'ubujurire itakurikizwa uko yakabaye …". Reba igisubizo

y'iburanisha mu bujurire, Akayesu yatanze inyandiko y'ubujurire ku gihano. Urugereko rwari rwavuze igihe Akayesu yagombaga gutangira, mu magambo, ingingo zishyigikira impamvu ze zose z'ubujurire, harimo n'impamvu y'ubujurire bwe ku gihano. Mu iburanisha, Akayesu yatanze by'umwihariko ingingo zerekeranye n'impamavu ya mbere y'ubujurire ku gihano.

386. Urugereko rw'Ubujurire ruributsa ko kugeza ubu rwagiye rusuzumira hamwe ubujurire ku rubanza mu mizi yarwo n'ubujurire ku gihano[706]. Gusuzuma ubujurire ku gihano byasubitswe rimwe gusa mu rubanza rwaburanishijwe n'Urukiko rwa TPIY[707]. Cyakora, Urugereko rw'Ubujurire ruvuga ko byatewe n'impamvu zihariye, zitagereranywa n'izatanzwe muri uru rubanza. Mu by'ukuri, muri urwo rubanza, Ujurira yari yashyikirije Urugereko rw'Ubujurire rwa TPIY imyanzuro yerekeye ubujurire ku mikirize y'Urubanza mu rw'iremezo no ku gihano yakatiwe. Kubera ko rwagize Ujurira umwere ku byaha bimwe yari yarahamijwe, Urugereko rw'Ubujurire rwa TPIY rwasanze ari ngombwa kuba ruretse gufata icyemezo ku bujurire ku gihano, rutegereje ko Urugereko rwa Mbere rw'Iremezo rurangiza kugena ibihano ku birego bishya[708].

387. Urugereko rw'Ubujurire rusanga nta mpamvu n'imwe yatuma rudakurikiza imikorere n'ibihe biteganywa n'Amategeko. Akayesu ni we wagombaga gushyiraho umwete no gutanga, adakererewe, imyanzuro ye y'ubujurire. Urugereko rw'Ubujurire rugiye gusuzuma, mu mizi yabyo, ibibazo rwagejejweho. Iryo suzuma rirashingira gusa ku

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cya Porokireri, igika 15.11. Cyakora, Urugereko rw'Ubujurire rusanga Akayesu yasharakaga, mu by'ukuri, kuvuga ishingiro ry'iyo ngingo y'ubujurire ku gihano.

[706] Imanza za Furundzija, Celebici, Kambanda na Alesksovski mu bujurire.

[707] Urubanza rwa Tadic mu bujurire.

[708] Urubanza rwa Tadic mu bujurire. Imikirize y'urubanza. Twibutse kandi ko mu rubanza rwa Celebici mu bujurire, ikibazo cyerekeranye n'igihano cyoherejwe mu y'indi nteko y'Urugereko rwa Mbere rw'Iremezo, igizwe n'Abacamanza bashyizweho na Perezida. Byongeye kandi muri urwo rubanza, ababuranyi bose barebwa n'iki kibazo bajuririye igihano mu Rugereko rw'Ubujurire, narwo rugira icyo ruvuga ku ishingiro ry'impamvu z'ubujurire ku gihano. Cyakora, urwo Rugereko rwavuze ko Inteko y'Urugereko rwa Mbere rw'Iremezo yari gushyirwaho ari yo yari gutanga igihano ishingiye ku myanzuro mishya yarwo. Urubanza rwa Celebici mu bujurire, imikirize y'urubanza.

ngingo zikubiye mu myanzuro Akayesu yatanze mu nyandiko cyangwa ku ngingo zatanzwe mu magambo mu iburanisha mu bujurire[709].

2. Ingingo ya mbere ku gihano

a. Ibivugwa n'ababuranyi

388. Akayesu avuga ko yavukijwe uburenganzira bwo kunganirwa na avoka. Avuga ko umuntu wese afite uburenganzira bwo kunganirwa n'avoka haba igihe cy'iburanisha ry'urubanza mu mizi yarwo haba n'igihe cy'iburanisha ku gihano. Yongeraho ko ari muri urwo rwego, yavukijwe uburenganzira bwe bwo kunganirwa na avoka mu iburanisha ryo ku itariki ya 28 Nzeri 1998 ryabanjirije isomwa ry'icyemezo cyamugeneye igihano[710]. Akayesu avuga ko n'ubwo yasabye kenshi ko ashaka kunganirwa n'avoka[711], Urugereko rwa Mbere rw'Iremezo rwanze kwakira icyifuzo cye, maze ruvuga ko yagombaga gutegereza ko igihano gisomwa akabona gusaba avoka mushya umwunganira[712]. Asobanura ko kuva aho asabiye kunganirwa na avoka, Urugereko rwa Mbere rw'Iremezo rwagombaga guhita rusubika iburanisha ku birebana n'igihano kugeza igihe aboneye umwunganira[713]. Avuga ko Urugereko rwa Mbere rw'Iremezo nta cyo rwabikozeho, bityo ushingiye ku byakurikiyeho ukaba watekereza ko yivukije uburenganzira afite bwo guhabwa umwunganira, kandi we nta kundi yari kubigenza[714]. Akayesu yemeza ko, iyo aza kunganirwa n'avoka, yari guhamagaza abatangabuhamya bamushinjura, akanaboneraho gusaba Urugereko rwa Mbere rw'Iremezo kuzirikana ko yafunzwe mu

[709] Reba na none urubanza rwa Kambanda mu bujurire, igika 97.
[710] Imyanzuro ya Akayesu, umutwe wa XIV, igika 7
[711] Imyanzuro y'Akayesu, umutwe wa XIV, igika 4 "yinubiye mu buryo butaziguye ko adafite umwunganira"
[712] Imyanzuro ya Akayesu, umutwe XIV, igika 4. Akayesu avuga ko Urugereko rwa Mbere rw'Iremezo rusa n'urwibagiye ko hari hateganijwe igihe cy'iminsi 30 ngo hatangwe inyandiko y'ubujurire ndetse rukanibagirwa ko abamwunganira bari bamutereranye. Akayesu avuga ko mu iburanisha ryabanjirirje isomwa ry'igihano, yavuze mu buryo butaziguye kandi asubiramo ko akeneye umwunganira. Reba Igisubizo cya Akayesu, igika 137. Reba kandi inyandikomvugo y'iburanisha (mu bujurire), 1 Ugushyingo 2000, imp. 127, 128 [FR] (Reba na none imp. 93, 94 mu nyandiko iri mu cyongereza)
[713] Igisubizo cya Akayesu, igika 137. Avuga ko mu iburanisha yongeye kuvuga ko adafite avoka, ko rero adashobora gusubiza neza ingingo za Porokireri. Reba na none inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 94 (mu cyongereza), aho Akayesu avuga ko kuba iburanisha ritarasubitswe byateye inenge igenagihano.

buryo bunyuranije n'amategeko, nk'uko yari yarabivuze mu iburanisha ryo ku itariki ya 26 Nzeri 1996[715]. Mu gusoza kuri iyi ngingo, Akayesu yemeza ko n'ubwo Perezida w'Urugereko yashatse kumuha avoka w'izamu ngo abe ariwe umwunganira, we atari byo yari yasabye :

> Ntabwo ari ibyo Bwana Akayesu yashakaga. Akayesu yasabaga umwunganira yizeye kandi uhoraho. Muri icyo gihe, Akayesu yari yasabye kunganirwa na Avoka John Philpot. Aho gusubiza ibaruwa ya Akayesu, Umucamanza Kama yamuhaye Avoka ngo wo kumwunganira mu masaha make. Mu by'ukuri, si byo Ujurira yifuzaga.[716]

389. Porokireri avuga ko Akayesu asobanura ibintu uko bitagenze haba mu iburanisha ryo ku itariki ya 28 Nzeri 1998[717] ryabanjirije isomwa ry'icyemezo cyamugeneye igihano cyangwa mbere y'iryo buranisha. Mu kunyomoza Akayesu, Porokireri avuga ko ahubwo ari Perezida « wategetse » Akayesu gusaba umwunganira[718], ko rero Perezida atamubujije kugira umwunganira[719]. Amaze kuvuga, muri make, uko iburanisha ryagenze uwo munsi, Porokireri agira ati : « nta gushidikanya ko Akayesu yari azi ko ashobora kunganirwa n'avoka yifuza »[720], ariko « yahisemo kwitangira ingingo ze ku birebana n'igihano »[721]. Kubera iyo mpamvu rero, « yivukije ku bwende uburenganzira bwe » bwo kugira umwunganira mu iburanisha ribanziriza isomwa ry'igihano[722].

390. Porokireri yongeraho ko, kubera imirimo yakoraga n'umwanya yari afite muri rubanda, ndetse akaba yari « ashinzwe kubahirisha amategeko n'ubutabera »[723], nta gushidikanya

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[714] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 236. Porokireri avuga "ko Akayesu yaretse ubwo burenganzira"
[715] Imyanzuro ya Akayesu, umutwe wa XIV, igika 7
[716] inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 209, 240
[717] Igisubizo cya Porokireri, ibika 15,12
[718] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 109, 215
[719] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 164 (mu cyongereza)
[720] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 109, 215
[721] Igisubizo cya Porokireri, igika 15.18
[722] Igisubizo cya Porokireri, igika 15.18. Muri rusange, reba ibika 15.13-15.18; inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 200, imp. 209-215 (imp.164-169 mu cyongereza)
[723] Igisubizo cya Porokireri, igika 15.20. Porokireri avuga ko: "umukozi wo mu rwego rwe, ni ukuvuga ushinzwe kubahiriza amategeko n'ubutabera agomba kuba azi ibintu shingiro nk'uburenganzira bw'abaregwa"(igisobanuro cyo hasi ku rupapuro cyerekeranye n'Urubanza mu rw'iremezo, ibika 49-77).

ko Akayesu « yari azi ingaruka z'icyemezo cye cyo kwivutsa kunganirwa n'avoka »[724]. Porokireri avuga ko ikindi kibigaragaza ari uko Akayesu yari azi amategeko akurikizwa kandi ko yitangiye ubwe impamvu nyoroshyagihano mu iburanisha ryabanjirirje isomwa ry'icyemezo cyamugeneye igihano[725]. Porokireri abona ko Akayesu « yaba yarerekanye urwego rw'ubumenyi rudashobora kugirwa n'umuntu utazi amategeko »[726]. Mu gusoza kuri iyi ngingo, Porokireri avuga ko ubu bujurire ku gihano « nta shingiro bufite [bityo] bukaba butagomba kwakirwa »[727].

b. Isesengura ry'Urugereko

391. Urugereko rw'Ubujurire rwakiriye ingingo ya Porokireri ivuga ko Akayesu agerageza gusobanura, mu buryo butari bwo, ibirebana n'iburanisha ryo ku itariki ya 28Nzeri 1998, ryabanjirirje isomwa ry'icyemezo cyagennye igihano. Urugereko rusanga, n'ubwo we abibona ukundi, Akayesu yarivukije uburenganzira bwo kugira umwunganira mu iburanisha, maze akemera ko urubanza rukomeza yiburanira asaba urukiko guca inkoni izamba. Kugira ngo umuntu abyemere neza, ni ngombwa kwibutsa ibintu bimwe na bimwe byabaye.

392. Mu ibaruwa yo ku itariki ya 18 Nzeri 1998, Akayesu yasabye Urugereko rwa Mbere rw'Iremezo guhindura umwunganira, kandi Urugereko rwaramusubije[728].

393. Iburanisha ryo ku itariki ya 28 Nzeri 1998 ritangiye, mbere yo kumva ababuranyi, Perezida w'Inteko yasabye Akayesu gusobanura neza igitekerezo cye ku birebana n'umwunganira, no kuvuga niba ashaka cyangwa adashaka kugira umwunganira mu

[724] Igisubizo cya Porokireri, igika 15.20. Porokireri avuga ko: "Urebye imiterere y'uru rubanza, inyungu z'ubutabera ntizategekaga ko Ujurira agira umwunganira mu iburanisha ryabanjirije isomwa ry'igihano" (igisobanuro cyo hasi ku rupapuro nticyongewemo).
[725] Igisubizo cya Porokireri, ibika 15.19 - 15.23
[726] Igisubizo cya Porokireri, igika 15.23
[727] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.169 (mu cyongereza)
[728] Iyo baruwa yemewe mu bimenyetso mu Cyemezo cyo kuwa 17 Mata 2000. Kuri iyo ngingo, reba na none impamvu ya kabiri y'ubujurire

iburanisha ribanziriza isomwa ry'urubanza rwerekeye igihano. Perezida w'Urugereko rwa Mbere rw'Iremezo yagize ati:

> Wiyemeje kongera guhindura avoka. Cyakora, nkurikije ibaruwa wanditse ndumva ibi birebana n'ubujurire. Mu izina ry'Abacamanza nakwandikiye ibaruwa nkubwira ko ikigomba gusuzumwa atari uguhamwa n'icyaha kuko byo byarangiye. Ikigomba gusuzumwa ni igihano. Ndashaka kumenya igitekerezo cyawe ku byerekeye ibaruwa wohereje. Akayesu, ijambo ni iryawe[729]

394. Akayesu yarasubije ati: « Mwumvise ko nasabye guhindura avoka mu bujurire. Si ibyo gusa kuko urubanza rwari rugikomeza, kandi niba ntibeshye, ndatekereza ko urubanza rwanjye rurangira uyu munsi »[730]. Amaze kubaza Akayesu impamvu atategereje ko urubanza rurangira ngo abone gusaba guhindura avoka umwunganira, Perezida w'Inteko yavuze ko abunganira Akayesu bataje mu iburanisha kubera ko, nk'uko babyemeza, babonye ibaruwa ya Akayesu ibatuka[731]. Hakurikiyeho ikiganiro gikurikira:

> [Perezida w'Inteko]: "Watubwira niba ushobora gufata ijambo ukavuga ku mpamvu nyoroshyagihano, kuko ari cyo cyonyine gisuzumwa uyu munsi, ntitugaruka ku byabyaye kubera ko warangije guhamwa n'icyaha. Urabitekerezaho iki ?" Ni icyo nkubajije gusa.
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> [Akayesu]: Nyakubahwa Perezida, mu bwiyoroshye nsanganwe, ninsanga hari icyo nshoboye kuvuga, ndafata ijambo.[732].

395. Nyuma y'icyo kiganiro, Porokireri yahise atanga ingingo ze ku byerekeye igihano. Amaze kuvuga, hakurikiyeho iki kiganiro:

> [Perezida w'Inteko] : Bwana Jean-Paul Akayesu, nk'uko nabikubwiye mu izina ry'Abacamanza, mbere yo kuguha ijambo, Urukiko rurifuza kumenya niba ushaka kwiregura ubwawe, nk'urugero utanga impamvu nyoroshyagihano, cyangwa niba ushaka ukunganira ku byerekeye igihano. Biraterwa nawe. Wenda mu bujurire ushobora guhabwa undi avoka. Urashaka kugira icyo uvuga ku byerekeye igihano ?
>
> [Akayesu] : Nyakubahwa Perezida, nk'uko mubizi ndimo gutegura ubujurire. Mu yandi magambo, ndashaka kuvuga ko nkeneye igihe. Sinifuza ko iburanisha ry'uyu munsi ryasubikwa kugira ngo mpabwe avoka wanyunganira gusa ku byerekeye igihano. N'ubwo

[729] Inyandikomvugo y'iburanisha, 28 Nzeri 1998, urup.2
[730] Inyandikomvugo y'iburanisha, 28 Nzeri 1998, urup.4
[731] Inyandikomvugo y'iburanisha, 28 Nzeri 1998, imp. 4, 5
[732] Inyandikomvugo y'iburanisha, 28 Nzeri 1998, urup.5

> ntari umunyamategeko, ngiye kubagezaho ibintu bike nateguye bityo turangize iburanisha ku gihano[733].

396. Ubwo rero, Perezida w'Urugereko yahaye ijambo Akayesu ngo asobanure impamvu nyoroshyagihano. Cyakora, Akayesu yahise yongera kuvuga ko akomeje kuvutswa uburenganzira bwe kuko atari acyunganirwa n'uwahoze ari avoka we, kandi akaba atarahawe avoka mushya wo kumwunganira mu iburanisha[734]. Perezida w'Inteko yongeye kumubaza inshuro nyinshi niba ashaka, cyangwa adashaka kunganirwa n'avoka[735]. Akayesu yagezeho asubiza muri aya magambo:

> Ndumva ngiye gusubira mu byo navuze. Ku byekereye iburanisha ku gihano, ndahari kandi hari ingingo nateguye ngomba kubagezaho… Muri iki cyiciro sinzunganirwa n'avoka[736].

397. Perezida yongeye kumubaza ati: « ntukeneye avoka" ? Akayesu yashubije ko ntawe akeneye[737] arangije atanga ingingo ze ku birebana n'igihano[738]. Urugereko rw'Ubujurire rusanga, ubwo yatangaga ingingo ze, Akayesu yaravuze inshuro ebyiri ko adafite avoka umwunganira[739]. Urugereko rw'Ubujurire rusanga ayo magambo avunaguye kandi

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[733] Inyandikomvugo y'iburanisha, 28 Nzeri 1998, imp. 25, 26

[734] Akayesu yagize ati: "Mbabwije ukuri ko nta kintu na kimwe nzi mu mategeko, no mu iburanisha. Ubusanzwe, unyunganira niwe wagombye kuvuga mu izina ryanjye, ku mwanzuro wa Porokireri ku gihano. Ikibabaje ni uko natandukanye n'abanyunganira mbere gato y'iri buranisha kandi nta wundi muntu nari nahabwa wo kunyunganira. Ni ukuvuga ko inyungu zanjye zitari burengerwe uko bikwiye. Cyakora ndagerageza….", inyandikomvugo y'iburanisha, 28 Nzeri 1998, urup.27

[735] Inyandikomvugo y'iburanisha, 28 Nzeri 1998, imp.27-29 [Perezida w'urugereko] "oya, ndagusabye witera urujijo. Maze kukubaza ikibazo mu ruhame kirebana n'igihano. Nakubajije niba wowe ubwawe ushaka kugira icyo ubivugaho, cyangwa niba ushaka avoka ukundanira ku byerekeranye n'igihano. Wasubije ko udashaka gukomeza guta igihe, ko ushaka ko ibintu byose birangira uyu munsi kandi ko witeguye kwiburanira. Wihindukira rero ngo uvuge ko inyungu zawe zitarengewe. Sinkunda urujijo, ndashaka ko ibintu bisobanuka. Ni wowe ugomba gufata icyemezo." Akayesu yashubije muri aya magambo: "Niyemeje kuziburanira mu bujurire". Asanze na none icyo gisubizo kidasobanutse, Perezida w'Urugereko yongeye kubaza icyo kibazo, agira ati: "Oya sobanura. Tubwire niba ku byerekeye igihano ushaka umuntu ukunganira kugira ngo inyungu zawe zirengerwe, cyangwa niba ushaka kwiburanira, kuko ari igihano". Perezida yongeyeho ati: "Oya, oya, subiza ikibazo. Ibintu bigomba gusobanuka neza uyu munsi. Tubwire icyemezo cyawe."

[736] Inyandikomvugo y'iburanisha, 28 Nzeri, urup.29

[737] Inyandikomvugo y'iburanisha, 28 Nzeri, urup.29

[738] Inyandikomvugo y'iburanisha, 28 Nzeri, imp. 29-50

[739] Inyandikomvugo y'iburanisha, 28 Nzeri, imp.37, 38. "Bwana Perezida, ubu ngiye kubabwiza ukuri. Sinshobora gutanga igisubizo gikwiye, nk'uko umunyamategeko yabikora, ku myanzuro Porokireri yatanze ku gihano. Simfite unyunganira. Sinumva rero ukuntu ngomba gusubiza ibivugwa na Porokireri kandi tutanganya ubushobozi. We ni umunyamategeko akaba n'inzobere mu by'amategeko. Muri uru rubanza, yari afite abantu bamufasha kandi yashoboye kwemeza Urukiko ibyaha bimpama. Nk'umuntu nkanjye wabaye umwarimu mu ntara, nkaba na

aziguye atavuguruza icyifuzo Akayesu yafashe kandi yakomeje gusubiramo asaba ko iburanisha ryakomeza avoka adahari. Ruhereye ku nyandikomvugo y'iburanisha ryo ku itariki ya 28 Nzeri 1998, nk'urugero ibice byavuzwe haruguru, Urugereko rw'Ubujurire rurasanga nta ho rwahera rwemeza ko Akayesu ativukije uburenganzira yari afite bwo kugira avoka umwunganira muri iryo buranisha.

398. Mu gusoza kuri iki kibazo, Urugereko rw'Ubujurire rusanga kandi mu iburanisha mu bujurire, Akayesu yemera ko Urukiko rwashakaga kumuha umuntu umwunganira n'ubwo avoka w'izamu bashakaga kumuha atari uwo yari yihitiyemo[740]. Nk'uko bivugwa haruguru, Urugereko rw'Ubujurire rwemeza ko uregwa uzwiho kuba umutindi nyakujya, adafite uburenganzira bwo kwihitiramo umwunganira[741]. Kuri iyo ngingo, mu rubanza rwa Kambanda mu bujurire havugwa ko « … kuba umuntu afite uburenganzira bwo kugenerwa avoka umwunganira ku buntu, bitavuga ko uwo muntu afite uburenganzira bwo kwihitiramo avoka »[742]. Urwego ruhemba abunganira abaregwa ni rwo ruhitamo avoka. Urugereko rw'Ubujurire rusanga Akayesu yaragenewe avoka umwunganira ariko akamwanga.

399. Kubera ibyo, iyi mpamvu ya mbere y'ubujurire ku gihano nta shingiro ifite.

3. Ingingo ya kabiri ku gihano

400. Akayesu avuga ko ubwo icyemezo ku gihano cyasomwaga ku itariki ya 2 Ukwakira 1998, yavukijwe uburenganzira bwo gufata ijambo imbere y'Urugereko rwa Mbere rw'Iremezo. Avuga ko « ….imyifatire idahwitse y'Urukiko ituma rutakaza ububasha rufite bwo

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burugumesitiri wa komine nto yo mu cyaro, bingwiririye, ndibaza ukuntu nahangana na Porokireri. None se nkore iki ? Nicecekere se mureke avuge wenyine ? Oya, ndatekereza ko bitaba ari byiza". Byongeye kandi, ku rupapuro rwa 49 n'urwa 50, Akayesu avuga ko n'ubwo yatanze "impamvu zigabanya uburyozwacyaha", atabikoze mu magambo yabugenewe no mu buhanga bwa ngombwa nk'uko undi muntu wiregura yabikora.

[740] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, imp. 239, 240

[741] Reba isesengura ku mpamvu ya mbere y'ubujurire

[742] Urubanza wa Kambanda mu bujurire, igika 33. Havugwa nk'urugero "k'ukuntu Sitati n'Amategeko bigomba kumvikana", umuntu abigereranije n'ibyemezo byafashwe, ku kibazo nk'iki, na Komite ishinzwe Uburenganzira bw'Ikiremwamuntu, n'inzego za Komnisiyo y'Uburayi ishinzwe uburenganzira bw'ikiremwamuntu.

kumuburanisha »[743]. Akayesu ntiyigeze asobanura iyi ngingo, haba mu nyandiko[744] ze, cyangwa mu iburanisha mu bujurire. Porokireri na we, ntacyo yasubije kuri iyi ngingo, haba mu magambo cyangwa mu nyandiko.

401. Urugereko rw'Ubujurire rusanga iyo mpamvu y'ubujurire ku gihano itagomba kwakirwa, bityo bikaba ntacyo bimaze kuyisuzuma[745].

4. Impamvu ya gatatu ku gihano

a. *Ibivugwa n'ababuranyi*

402. Akayesu avuga ko yakatiwe igihano gihanitse kandi kidafite ishingiro. Yongeraho ko ruramutse rutakiriye ubujurire ku cyemezo kimuhamya icyaha, Urugereko rw'Ubujurire rwagombye kumugabanyiriza cyane ibihano ku birego ashinjwa byose.

403. Mu ikubitiro, Porokireri avuga ko Urugereko rw'Ubujurire rwagombye kwanga kwakira iyi mpamvu y'ubujurire ku gihano rutabitinzeho kubera ko Akayesu atatanze ingingo n'imwe ifatika iyishyigikira[746]. Byongeye kandi, avuga ko, ibyo ari byo byose, ibyo bintu Akayesu avuga muri rusange nta shingiro bifite[747]. Asobanura ko Urugereko rwa Mbere rw'Iremezo rwazirikanye uko bikwiye ingingo za Sitati n'iz'Amategeko zirebana n'iki kibazo[748], zirimo izirebana n'uburemere bw'ibyaha, n'imiterere bwite ya Akayesu. Avuga ko « igihano cyatanzwe gikurikije amategeko, kandi ko igihe rwagenaga igihano,

[743] Inyandiko y'ubujurire ku gihano, igika 24
[744] Haba mu myanzuro ye cyangwa mu Gisubizo cye kinyomoza, Akayesu ntavuga ibi bintu uretse kuvuga iyi mpamvu mu myanzuro y'ubujurire.
[745] Kuri iyi ngingo, Urugereko rw'Ubujurire ruvuga gusa (rudafashe icyemezo kuri iki kibazo) ko, hashingiwe ku nyandikomvugo y'iburanisha ryo ku itariki ya 2 Ukwakira 1998, nta cyatuma umuntu avuga ko Akayesu yaba yarasabye ijambo Urugereko rwa Mbere rw'Iremezo, cyangwa ko urwo Rugereko rwaba rwaramwimye ijambo. Inyandikomvugo y'iburanisha, 2 Ukwakira 1998, imp. 1-35
[746] Igisubizo cya Porokireri, ibika 15.26-15.28. Porokireri yari yatanze ingingo nk'iyo mu myanzuro yanditse yatanze mu rubanza rwa Jean Kambanda. Reba urubanza rwa Kambanda mu bujurire, igika 96.
[747] Igisubizo cya Porokireri, ibika 15.29-15.33
[748] Igisubizo cya Porokireri, igika 15.30

Urugereko rwa Mbere rw'Iremezo nta kosa rigaragara rwakoze mu gukoresha ububasha rufite bwo gusuzuma ibintu »[749].

b. Isesengura ry'Urugereko

404. Haruguru twavuze ko Urugereko rw'Ubujurire rwasuzumye ibintu bisa n'ibi mu rubanza rwa Kambanda mu bujurire. Muri urwo rubanza, urebye Ujurira ntiyari afite ingingo n'imwe ishyigikra ubujurire bwe ku gihano. Urugereko rw'Ubujurire rwafashe umwanzuro rero ukurikira muri urwo rubanza,:

> …Iyo habaye amakosa yo mu rwego rw'amategeko, ingingo z'ababuranyi ntizirebana n'ikibazo cyose uko cyakabaye. Nk'umukemurampaka wa nyuma mu Rukiko, Urugereko rw'Ubujurire ni rwo rurenganura ujurira rushingiye ku zindi mpamvu zitandukanye n'izo yatanze: ibi bishingiye ku ihame rivuga ko « Urukiko ruzi amategeko » (*jura novit curia*). Kubera ko Urugereko rw'Ubujurire rutagendera gusa ku ngingo z'ababuranyi, rugomba gusuzuma ikibazo cyose cyavuzwe mu bujurire kabone n'iyo hatatanzwe ingingo zishingiye ku mizi y'urubanza. Mu yandi magambo, ihame rivuga ko ubyukije ikibazo ari we ugomba gutanga ingingo zishyigikira ibyo avuga, si ihame ridakuka. Mu by'ukuri, ntawavuga ko ibivugwa bihita bita agaciro iyo bidafite ingingo n'imwe ibishyigikira[750].

405. Nk'uko byagenze muri uru rubanza, Urugereko rw'Ubujurire rwiyemeje gukoresha ububasha rufite bwo gusuzuma ishingiro ry'iyi ngingo.

406. Kugira ngo birusheho kumvikana, tugiye gusubiramo ingingo za Sitati n'iz'Amategeko zerekeranye n'iyi ngingo.

Ingingo ya 23 ya Sitati: Ibihano

1. Urugereko rwa Mbere rw'Iremezo rugena ibihano by'igifungo gusa. Mu kugena ibihano by'igifungo, Urugereko rwa Mbere rw'Iremezo rwifashisha urutonde rusange rw'ibihano by'igifungo rukurikizwa n'inkiko zo mu Rwanda.

2. Mu kugena igihano icyo ari cyo cyose, Urugereko rwa Mbere rw'Iremezo ruzirikana ibintu binyuranye, nk'uburemere bw'icyaha n'imibereho y'uwakatiwe.

3. Uretse igihano cyo gufunga uwakatiwe, Urugereko rwa Mbere rw'Iremezo rushobora gutegeka ko ibintu byose n'umutungo byigaruriwe mu nzira zinyuranyije n'amategeko bisubizwa nyirabyo, ndetse hakaba hakoreshwa n'ingufu.

[749] Igisubizo cya Porokireri, igika 15.33
[750] Urubanza rwa Kambanda mu bujurire, igika cya 98

Ingingo ya 101 y'Amategeko.

A) Umuntu uhamijwe icyaha n'Urukiko ashobora guhanishwa igihano cy'igifungo kimara igihe runaka cyangwa cy'igifungo cya burundu.

B) 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 nyoroshyagihano ;

ii) Mu mpamvu 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 mu gika cya 3).

C) Iyo ibihano ari byinshi, Urugereko rwa Mbere rw'Iremezo rwemeza niba ibyo bihano bigomba kurangizwa kimwe nyuma y'ikindi, cyangwa se niba bigomba kurangizwa icyarimwe.

D) Igihe uwahamwe n'icyaha yamaze afunze ategereje gushyikirizwa Urukiko, gucirwa urubanza n'Urugereko rwa Mbere rw'Iremezo cyangwa n'Urugereko rw'Ubujurire gishobora gukurwa mu gihe cy'igifungo cyose.

407. Rumaze gusuzuma ubujurire ku bihano, Urugereko rw'Ubujurire rwa TPIY, rwanzuye rugira ruti:

> Ingereko za mbere z'iremezo zifite ububasha busesuye bwo gusuzuma ibintu kugira ngo zigene igihano gikwiye. Cyakora, ubwo bubasha bufite aho bugarukira. Ibi bijyanye ahanini n'inshingano y'ibanze rufite yo guhuza igihano n'imiterere bwite y'uregwa ndetse n'uburemere bw'icyaha. Kugira ngo zibigereho, ingereko za mbere z'iremezo zigomba gusuzuma impamvu nyoroshyagihano n'impamvu zongera ububi bw'icyaha ku birebana n'uregwa[751].

408. Kubera ko Urugereko rwa Mbere rw'Iremezo rufite « ububasha busesuye bwo gusuzuma ibintu », hari ikibazo cyo kumenya uruhare rw'Urugereko rw'Ubujurire mu gusuzuma ubujurire ku gihano. Muri uru rubanza, ubujurire buvugwa ni ubwerekeye igihano Akayesu yakatiwe mu rw'Iremezo. Uru Rugereko rw'Ubujurire rurashingira ku bisabwa kugenderwaho Urugereko rw'Ubujurire rwa TPIY ruherutse kwibutsa :

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[751] Urubanza rwa Celibici mu bujurire, igika 717

> Urugereko rw'Ubujurire ruributsa ko « ubujurire mu Rukiko Mpuzamahanga butagamije gutuma ababuranyi bakosora amakosa bakoze cyangwa ngo butume bakora neza ibyo batitayeho mu iburanisha ry'urubanza mu mizi yarwo cyangwa cyangwa mu iburanisha ku birebana n'igihano ». Urubanza mu bujurire rugamije gukosora, no [….] si urubanza rushya.
>
> […]
>
> Igisabwa kigenderwaho mu kwemeza niba igihano cyasubirwamo, ni igiherutse kwemezwa mu rubanza rwa Furundzija mu bujurire. Muri rusange rero, Urugereko rw'Ubujurire ntirukuraho igihano cyatanzwe mu rw'Iremezo ngo rugisimbuze icyarwo keretse iyo « rusanga Urugereko rwa Mbere rw'Iremezo rwara koze ikosa mu gukoresha ububasha bwarwo busesuye bwo gusuzuma ibintu, cyangwa rukanyuranya n'amategeko akurikizwa ».Urugereko rw'Ubujurire ntacyo ruhindura kereka iyo « rusanze » harabaye ikosa mu gusuzuma ibintu. Igihe cyose Urugereko rwa Mbere rw'Iremezo rudakoresheje nabi « ububasha bwarwo busesuye bwo gusuzuma ibintu », Urugereko rw'Ubujurire ntacyo rubikoraho[752].

409. Kubera iyo mpamvu, mbere y'uko Urugereko rw'Ubujurire ruhindura igihano cyagenwe mu rw'Iremezo cyangwa ngo rugisimbuze ikindi, hagomba kugaragazwa ko, mu igenagihano, Urugereko rwa Mbere rw'Iremezo rwarengereye ububasha rufite bwo gusuzuma ibintu.

410. Ububasha Urugereko rwa Mbere rw'Iremezo rufite bwo bwo gusuzuma ibintu buteganywa mbere na mbere na Sitati, n'Amategeko kuko ari byo bisobanura amahame rusange agenderwaho urwo Rugereko rugomba kuzirikana mu kugena igihano: «Ayo mahame ategeka Urugereko kuzirikana impamvu zongera ububi bw'icyaha, n'impamvu nyoroshyagihano (zirimo n'uburyo uregwa yashishikariye gufasha Porokireri), uburemere bw'icyaha, imitere bwite y'umuntu uhamwe n'icyaha, n'urutonde rusange rw'ibihano by'igifungo bitangwa n'inkiko z'u Rwanda »[753]. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwasanze « igihe cyose rugomba kugena igihano, ruzashyira imbere ububasha bwarwo busesuye bwo gusuzuma ibintu, rushingiye ku kiburanwa no ku miterere bwite

[752] Uubanza rwa Celibici mu bujurire, ibika 724, 725, hasubirwamo ibivugwa (ibisobanuro byo hasi ku rupapuro ntibyongewemo) mu rubanza rwa Erdemovic mu bujurire, igika 15; Icyemezo mu rubanza rwa Tadic (ibimenyetso by'inyongera), ibika 41, 42; urubanza rwa Serushago mu bujurire ku gihano, igika 32; urubanza rwa Tadic mu bujurire ku gihano, ibika 20, 22; Urubanza rwa Alesksovski mu bujurire, igika 187.

y'abaregwa »[754]. Udafashwe mu rwego wavuzwemo, uwo mwanzuro ushobora kumvikana nk'aho usobanura ko Urugereko rwa Mbere rw'Iremezo rufite ububasha butagira imbibi bwo gusuzuma ibintu. Urugereko rw'Ubujurire rusanga biterwa n'ukuntu amagambo Urugereko rwa Mbere rw'Iremezo rwakoresheje yumvikana, ndetse n'urwego yavuzwemo. Ufashe iyi mvugo yose uko yakabaye, usanga idasobanura ko Urugereko rwa Mbere rw'Iremezo ruvuga ko ububasha bwarwo bwo gusuzuma ibimenyetso butagira aho bugarukira. Biragaragara ko Urugereko rwa Mbere rw'Iremezo rwari ruzi ko rugomba kuzirikana amategeko akurikizwa, ikiburanwa, n'imyitwarire y'uregwa. Urugereko rwa Mbere rw'Iremezo rwari rufite rero ububasha busesuye bwo kugena igihano rushatse, icya ngombwa kwari uko rukurikiza ibintu byose bijyanye n'urubanza. Ibi bigaragarira mu gice cy'Urubanza mu rw'iremezo gisubirwamo mu gika cya 412.

411. Kubera izo mpamvu, Urugereko rw'Ubujurire rugiye noneho kureba niba, muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwarasuzumye kandi rukazirikana ibintu bijyanye n'urubanza, byaba bitarakozwe gutyo bikaba byaba ikosa ryo mu rwego rw'amategeko. Kuba ikosa nk'iryo ryatuma icyemezo cyafashwe mu rw'Iremezo kivanwaho cyangwa kikagumishwaho, icyo ni ikindi kibazo[755].

412. Mu kugena igihano, mbere yo gusesengura, Urugereko rwa Mbere rw'Iremezo rwabanje kuvuga ibintu cyangwa ingingo rushaka kuzirikana. Rwavuze rero ko rwari gusuzuma ibintu bikurikira: kuba urubanza rwari rumaze ukwezi rusomwe, ibyaha byahamye Akayesu, imyanzuro ya Porokireri ku gihano, ingingo Akayesu na Porokireri batanze mu iburanisha ryo ku itariki ya 28 Nzeri 1998 ryabanjirije isomwa ry'icyemezo cyagennye igihano, n'ibiteganywa na Sitati n'Amategeko kuri iki kibazo[756]. Igihita kigaragara ni uko iyi ncamake yari yo.

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[753] Urubanza rwa Celibici mu bujurire, igika 716. N'ubwo ibi bireba TPIY, aya mategeko asa n'akoreshwa muri uru Rukiko.
[754] Urubanza mu rw'iremezo ku gihano, ibika 17 na 21.
[755] Urubanza rwa Kambanda mu bujurire, ibika 116, 123 na 124.
[756] Urubanza mu rw'iremezo ku gihano, igika 2.

413. Urugereko rw'Ubujurire rusanga kandi biragaragara ko, mu isuzumwa rwakoze, Urugereko rwa Mbere rw'Iremezo rwasuzumye uko bikwiye kandi rukazirikana ibintu bijyanye n'iki kibazo. Mu kugena igihano, Urugereko rwa Mbere rw'Iremezo rwatangiye rwibaza ukuntu ibiteganywa na Sitati n'Amategeko bigomba kumvikana. By'umwihariko, Urugereko rwa Mbere rw'Iremezo rwasanze « jenoside n'icyaha cyibasiye inyokomuntu bigomba guhanishwa igihano gikwiranye na byo kubera uburemere bwabyo[757]. Ibyo ni byo Urugereko rwa Mbere rw'Iremezo rwagombaga kugenderaho mu kugena igihano. Kuri iyi ngingo, Urugereko rw'Ubujurire rugendera ku ihame ryashyizweho, rikoreshwa muri TPIY. Iryo hame rivuga ko « Uburemere bw'icyaha ari ikintu cy'ibanze kizirikanwa mu kugena igihano »[758]. Iryo hame risaba « kwita ku miterere yihariye y'urubanza, k'uburyo abaregwa bakozemo icyaha no ku ngano y'uruhare rwabo mu ikorwa ry'icyo cyaha »[759]. Urugereko rw'Ubujuririre rusanga hataragaragajwe ko Urugereko rwa Mbere rw'Iremezo rwateshutse ku nshingano zarwo muri iryo sesengura.

414. Rumaze gusobanura amahame y'amategeko rwagombaga kugenderaho, Urugereko rwa Mbere rw'Iremezo rwatanze imyanzuro yarwo rushingiye ku byavuzwe na Akayesu na Porokireri. Rwasuzumye impamvu zongera ububi bw'icyaha, n'impamvu nyoroshyagihano maze rwanzura rugira ruti: « uburemere bw'amarorerwa yakozwe bukomeje kuba ikintu cy'ingenzi kigenderwaho mu kugena igihano. Igihano kigomba gutangwa hakurikijwe ihame rizwi ryo kwita ku buremere bw'icyaha n'ingano y'uburyozwacyaha bw'uwagikoze »[760]. Urugereko rwa Mbere rw'Iremezo rwazirikanye ko « abizi, Akayesu yagize uruhare mu bwicanyi bwari kuri gahunda bwakorewe muri Komine ya Taba »[761].

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757 Urubanza mu rw'iremezo ku gihano, igika 10.

758 Urubanza rwa Celibici mu rw'Iremezo, hagenderwa ku mwanzuro wafashwe mu rubanza rwa Kupreskic mu rw'Iremezo, igika 852, ukanasubirwamo mu rubanza rwa Aleksovski mu bujurire, igika 182. Reba kandi urubanza rwa Kambanda mu bujurire, igika 125.

759 Urubanza rwa Kupreskic mu rw'Iremezo, igika 852, rusubirwamo mu rubanza rwa Aledsovski mu bujurire, igika 182.

760 Urubanza mu rw'iremezo ku gihano, ibika 39 na 40

761 Urubanza mu rw'iremezo ku gihano, igika cya 36

> … umutegetsi wa Guverinoma usumba abandi muri Taba. Kubera uwo mwanya, yari ashinzwe kurinda abaturage, nyamara yateshutse kuri iyo nshingano. Yahamagariye abantu ku mugaragaro gukora ubwicanyi muri Taba. Byongeye kandi, yategetse ko abantu bamwe bahotorwa, kandi bamwe muri bo bishwe ahari ndetse abigiramo uruhare. Kubera ko yari ahibereye, yashyigikiye kandi ashishikariza abantu gusambanya ku gahato abagore benshi ku biro bya komine.[762]

415. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarasuzumye uko bikwiye, rukaba rwaranazirikanye uburemere bw'ibyaha Akayesu yahamijwe ndetse n'ingano y'uburyozwacyaha bwe kuri ibyo byaha.

416. Ubwo rwasuzumaga ibiteganywa mu ngingo ya 23 2) ya Sitati, no mu ngingo ya 101 B) y'Amategeko, Urugereko rwa Mbere rw'Iremezo rwavuze ko « ari nk'uburyo bwo guhana umuntu ku giti cye »[763]. Urugereko rwa Mbere rw'Iremezo rwumva ko ibi bisobanura ko « mu guhana umuntu ku giti cye, abacamanza batagomba gushingira gusa ku biteganywa na Sitati n'Amategeko. Ububasha busesuye bafite bwo gusuzuma ibyabaye n'ukuntu byabaye, bwagombye gutuma bazirikana ikindi kintu cyose basanga cyerekeranye n'ibivugwa »[764]. Urugereko rw'Ubujurire rusanga uyu mwanzuro nta hame na rimwe unyuranye na ryo. Uburengazira bwo kuzirikana izindi ngingo zifite aho zihuriye n'ibivugwa bujyana n'inshingano ikomeye Urugereko rufite yo gutanga igihano rushingiye ku miterere bwite y'uregwa no ku buremere bw'icyaha. Ikintu cy'ingenzi gikurikizwa ni uko igihano kigenwa kigomba kuba gihwanye n'imyifatire mibisha yose y'uwakoze icyaha[765] Urugereko rwa Mbere rw'Iremezo rwasuzumye kandi, by'umwihariko, impamvu zongera ububi bw'icyaha, impamvu nyoroshyagihano, n'imiterere bwite y'Uregwa. Rwibutsa impamvu nyoroshyagihano Akayesu yavuze mu iburanisha ryo ku itariki ya 28 Nzeri 1998 n'impamvu zongera ububi bw'icyaha Porokireri yashyize mu myanzuro ye yanditse n'izo yavuze mu iburanisha ryo ku itariki ya 28 Nzeri 1998. Urugereko rwasobanuye ko « rwasuzumanye ubushishozi ingingo zose

[762] Urubanza mu rw'iremezo ku gihano, igika 36
[763] Urubanza mu rw'iremezo ku gihano, igika 20
[764] Urubanza mu rw'iremezo ku gihano, igika 21
[765] Urubanza rwa Celebici mu bujurire, ibika 429, 771

zishingiye ku byabaye ababuranyi batanze ku ku birebana n'igihano[766]. Rwafashe umwanzuro ukurikira:

> Impamvu zongera ububi bw'icyaha ziruta kure impamvu nyoroshyagihano, kubera ko Akayesu yahisemo gukora jenoside azi icyo akora[767].

417. Urugereko rw'Ubujurire rusanga nta kosa riri muri iri sesengura. By'umwihariko, rusanga hataragaragajwe ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu gusuzuma no guha agaciro buri ngingo yatanzwe n'ababuranyi. Nk'uko biteganywa n'ingingo ya 6 1) ya Sitati, Akayesu yahamijwe icyaha cya jenoside, guhamagarira abantu mu ruhame kandi mu buryo butaziguye gukora jenoside, ibyaha byibasiye inyokomuntu, n'ibindi byaha bifite uburemere bukomeye. Urugereko rw'Ubujurire rusanga igihano cyatanzwe gihwanye n'uburemere bw'ibyaha byakozwe kandi ntikirenze ububasha Urugereko rwa Mbere rw'Iremezo rufite bwo gusuzuma ibintu.

418. Kubera izo mpamvu, mu ncamake rwatanze ku bikorwa bigize ibyaha Akayesu yahamijwe ku giti cye, Urugereko rwa Mbere rw'Iremezo rwavuzemo nk'ubuhotozi no guteza Abatutsi ububabare bukomeye bw'umubiri; gufasha no gushishikariza abantu gukora ibikorwa by'urugomo byibasiye imyanya ndangagitsina, birimo gusambanya ku gahato n'ibindi bikorwa birenze kameremuntu; gufata ijambo mu nama kandi azi ko amagambo ye afatwa nk'aho ahamagarira abantu kwica Abatutsi, iyo nama niyo yabaye imbarutso y'ubwicanyi rusange bwakorewe Abatutsi muri Taba ; gutegeka ko abantu batatu bahotorwa; gutegeka ko impunzi umunani zihotorwa, kandi zahotowe ahari; gutegeka ko abarimu batanu bahotorwa ; no kwica abantu batandatu bagaraguwe[768].

419. Ku byerekeye uwo mwanzuro wa nyuma, Urugereko rwa Mbere rw'Iremezo rwasobanuye ko abantu bagaraguwe ari abiswe U, V, W, Y na Z kandi rwari rwarananzuye ruvuga ko

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766 Urubanza mu rw'iremezo ku gihano, ibika 34, 37
767 Urubanza mu rw'iremezo ku gihano, igika 37
768 Urubanza mu rw'iremezo ku gihano, igika 25

hatagaragajwe ukuri ku igaragurwa ryakorewe uwiswe X[769]. Ikibazo gihari ni ukumenya niba muri ibyo bintu umuntu yabonamo ikosa ryatuma Urugereko rw'Ubujurire rugira icyo rukora no gukuraho igihano cyatanzwe rukagisimbuza ikindi. Akayesu yakatiwe igifungo cy'imyaka 10 ku bikorwa by'urugraguro, nk'icyaha cyibasiye inyokomuntu. Kubera ibindi byaha byamuhamye, mu bihano yakatiwe harimo ibihano bitatu by'igifungo cya burundu, ibihano bine by'igifungo cy'imyaka 15, n'igihano cy'igifungo cy'imyaka 10. Urugereko rw'Ubujurire rusanga kuba harabaye ukwibeshya maze umuntu wakorewe ibyaha wiswe X agashyirwa mu ncamake iri mu rubanza ku gihano, bidahagije ngo igihano kigabanywe, kubera ibihano byose Akayesu yakatiwe, ibyaha yahamijwe n'imyitwarire ye yose mibisha.

420. Urugereko rw'Ubujurire rwemeje ko Urugereko rwa Mbere rw'Iremezo rugomba «kwifashisha » urutonde rusange rw'ibihano by'igifungo bitangwa n'inkiko zo mu Rwanda[770] kandi « rukabizirikana »[771]. Haba mu Mategeko cyangwa muri Sitati, ntahasobanurwa ukuntu Urugereko rwa Mbere rw'Iremezo rugomba kwifashisha urwo rutonde rw'ibihano. Byongeye kandi, ubukemuramanza butayegayezwa bwa TPIR buteganya ko ayo Mategeko cyangwa Sitati « bidategeka Urugereko rwa Mbere rw'Iremezo gukurikiza iyo mikorere. Urugereko rwa Mbere rw'Iremezo rusabwa gusa kuyizirikana »[772]. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo rwasuzumye ikibazo cyo kumenya niba rushobora kwifashisha cyangwa kutifashisha imikorere y'inkiko zo mu Rwanda. Rwemeje, mu kuri, ko iyo mikorere « igomba gusa kuba kimwe mu bindi byose rugomba kuzirikana mu igenabihano » kandi ikaba urugero rwagenderwaho aho kuba itegeko[773]. Urugereko rwa Mbere rw'Iremezo rwavuze ko n'ubwo mu Rwanda habaye imanza ku byabaye mu mwaka wa 1994 kandi kenshi hagatangwa ibihano byo kwicwa n'iby'igifungo, « rutashoboye kubona ibisobanuro ku

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[769] Urubanza mu rw'iremezo, ibika 407, 408, 676-684 na 713 ("ku birebana n'ibivugwa mu gika cya 17, Porokireri ntiyemeje Urugereko ko bifite gihamya nta shiti").
[770] Ingingo ya 23 1) ya Sitati
[771] Ingingo y'101 B iii) y'Amategeko.
[772] Urubanza rwa Serushago mu bujurire ku gihano, igika 30. Reba kandi, icyemezo giherutse gufatwa n'Urugereko rw'Ubujurire rwa TPIY mu rubanza rwa Celebici mu bujurire, igika 813.
[773] Urubanza mu rw'iremezo ku gihano, igika 14.

bikubiye muri ibyo byemezo, cyane cyane ku mpamvu zatumye bifatwa »[774]. Mu gusoza, urwo Rugereko rwibukije ko « u Rwanda, kimwe n'ibindi bihugu byashyize jenoside cyangwa ibyaha byibasiye inyokomuntu mu mategeko yabyo, rwateganyirije ibyo byaha ibihano biremereye kurusha ibindi biri mu mategeko yarwo ahana ibyaha »[775].

421. Uretse ikosa rukumbi ryavuzwe haruguru, Urugereko rw'Ubujurire rusanga nta rindi kosa Urugereko rwa Mbere rw'Iremezo rwakoze mu isesengura rusange, ndetse no mu kugenera Akayesu igihano (yewe nta n'irindi kosa rwigeze rwerekwa). Ako gakosa gato kakozwe n'Urugereko rwa Mbere rw'Iremezo ntigahagije kugira ngo Urugereko rw'Ubujurire ruhindure igihano cyatanzwe mu rw'Iremezo.

422. Mu gusoza, Urugereko rwa Mbere rw'Iremezo rwemeje ko ibihano byose byatanzwe byakomatanywa bikagirwa igihano kimwe cy'igifungo cya burundu (ari byo byiswe "*life imprisonment*" mu nyandiko y'urubanza ku gihano iri mu cyongereza). Nk'uko byemejwe mu rubanza rwa Kambanda mu bujurire, icyo gihano cy'igifungo cya burundu ni cyo gisumba ibindi Urukiko rushobora gutanga, ni ukuvuga gufungwa iminsi isigaye yose yo kubaho nk'uko biteganywa n'ingingo ya 101 A) y'Amategeko[776]. Igihano kigomba kuzarangizwa hakurikijwe Amategeko akoreshwa mu gihugu ukatiwe azafungirwamo, bikagenzurwa n'Urukiko (ingingo ya 26 ya Sitati). Kubera iyo mpamvu, igihano gishobora kugabanywa mu gihe amategeko y'icyo gihugu abiteganya, ariko Perezida w'Urukiko amaze kubyemeza nyuma yo kugisha inama abandi bacamanza (ingingo ya 27 ya Sitati)

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[774] Urubanza mu rw'iremezo ku gihano, igika 15. N'ubwo impamvu yatumye Urugereko rwa Mbere rw'Iremezo rugira izo ngorane itumvikana neza, Urugereko rw'Ubujurire ntirushobora gukekakeka kuri iyi ngingo.

[775] Urubanza mu rw'iremezo ku gihano, ibika 11, 16.

[776] Urubanza rwa Kambanda mu bujurire, igisobanuro nomero 144. Kimwe no muri uru rubanza, inyandiko y'umwimerere y'urubanza ku gihano yanditse mu gifaransa.

L. Umwanzuro w'Urugereko ku bujurire bwa Akayesu

423. Urugereko rw'Ubujurire rwasuzumye ingingo zose Akayesu yatanze, zaba izo yatangiye hamwe cyangwa izo yatanze ukwazo. Rusanze Akayesu atarashoboye kwerekana ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa avuga yo mu rwego rw'amategeko n'urw'ibyabaye. Kubera iyo mpamvu, rusanga atari ngombwa gusuzuma ibindi bibazo ndetse n'impamvu ya munani y'ubujurire. Nk'uko byasobanuwe haruguru, Akayesu ntiyasobanuye birambuye izo mpamvu z'ubujurire, kandi yiyemerera ko zimwe muri zo zitatangiwe ibimenyetso bizishyigikira, zikaba ahubwo ari ibintu avuga bidafite ishingiro. Kubera iyo mpamvu, buri mpamvu y'ubujurire ivugwa muri ibi byiciro nta shingiro ifite.

424. Na none, kubera ko Akayesu atasobanuye cyangwa ngo avuge izindi mpamvu z'ubujurire ziri mu nyandiko ya mbere n'iya kabiri z'ubujurire, Urugereko rw'Ubujurire rusanga rutagomba kuzakira, rukaba rero rutari buzisuzume.

IV. IMPAMVU Z'UBUJURIRE ZA POROKIRERI

A. Impamvu y'ubujurire ya mbere n'iya kabiri : ingingo ya 4 ya Sitati (Ibikorwa binyuranye n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve, n'Inyongera yayo ya II)

425. Porokireri atanga impamvu ebyiri z'ubujurire zerekeranye n'uburyo Urugereko rwa Mbere rw'Iremezo rwasobanuye ingingo ya 4 ya Sitati. Akayesu yagombaga kwiregura ku birego bitanu, hakurikijwe ingingo ya 4 ya Sitati, kandi yahanaguweho icyaha kuri buri kirego[777]. Mu mpamvu ya mbere y'ubujurire, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa ku ngingo y'amategeko kuko rwakoresheje « inshoza yerekeye umukozi wa Leta cyangwa umuntu uhagarariye Guverinoma » mu kureba abantu bashobora kuryozwa ibyaha bikomeye binyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano [y'I Jeneve] n'Inyongera yayo ya II (« inshoza yerekeye umukozi wa Leta"). Impamvu ya kabiri y'ubujurire itangwa nk'isimbura iya mbere kuko Porokireri avuga ko iyo mpamvu yasuzumwa gusa ari uko Urugereko rw'Ubujurire rwanze kwakira ibyo avuga mu mpamvu ya mbere y'ubujurire[778]. Mu mpamvu ya kabiri y'ubujurire, Porokireri avuga ko, mu gukoresha inshoza yerekeye umukozi wa Leta, Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'ibyabaye kuko rwemeje ko Akayesu atari mu rwego rw'abantu baryozwa icyaha hakurikijwe ingingo ya 4 ya Sitati[779].

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[777] Mu nyandiko y'ibirego, Akayesu yaregwaga, mu buryo bukurikira, ibirego bitanu biteganywa n'ingingo ya 4 ya Sitati : ikirego cya 6 (ubuhotozi) giteganywa n'ingingo ya 4 a) ya Sitati; ikirego cya 8 (ubuhotozi) giteganywa n'ingingo ya 4 a) ya Sitati; ikirego cya 10 (ubuhotozi) giteganywa n'ingingo ya 4 a) ya Sitati; ikirego cya 12 (ibikorwa by'ubugome) giteganywa n'ingingo ya 4 a) ya Sitati; ikirego cya 15 (guhungabanya agaciro ka muntu, nko gusambanya ku gahato, ibikorwa bitesha agaciro, bigakoza isoni, n'ibindi bikorwa by'iterasoni) biteganywa n'ingingo ya 4 e) ya Sitati. Akayesu yagizwe umwere kuri ibyo birego byose, kuko Urugereko rwa Mbere rw'Iremezo rwasanze, nta gushidikanya ko, mu gihe cy'ibyabaye bivugwa, ibyo byaha bitakozwe mu rwego rw'intambara. Rwanzuye kandi ruvuga ko hatagaragajwe ko Akayesu yari umwe mu bagize ingabo zishamiranye cyangwa ngo hagaragazwe ko, nk'umukozi wa Leta cyangwa umuntu ufite ububasha ahabwa n'amategeko cyangwa uko ibintu biteye, yari afite inshingano zo gushyigikira cyangwa ategerejweho gushyigikira intambara cyangwa gutuma uruhande ariho ruyitsinda. Reba Urubanza mu rw'iremezo, igika 643.

[778] Umwanzuro wa Porokireri, igika 1.18

[779] Impamvu ya kabiri yerekeye ku gufata icyo kintu kigenderwaho ukagikoresha mu byabaye bivugwa muri uru rubanza. Porokireri ashaka kuvuga ikibazo cyo gukoresha amategeko aho kuvuga icy'amakosa yo mu rwego rw'ibyabaye yakozwe n'Urugereko rwa Mbere rw'Iremezo. Avuga ko "gukoresha [ikigenderwaho]…kuri ba burugumesitiri bo mu Rwanda byagira akamaro rusange mu bukemuramanza bw'uru Rukiko kubera ko bamwe mu baregwa bategereje kuburanishwa bari ba burugumesitiri mu gihe ibyaha baregwa byakorwaga. Ubushinjacyaha

426. Ku byerekeye gukosora iryo kosa, Porokireri avuga ko ku mpamvu ya mbere y'ubujurire, Urugereko rw'Ubujurire rugomba gukuraho imyanzuro Urugereko rwa Mbere rw'Iremezo rwafashe kuri icyo kibazo. Ku mpamvu ya kabiri y'ubujurire, Porokireri asaba Urugereko rw'Ubujurire kwemera ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu gukoresha inshoza yerekeye umukozi wa Leta mu myanzuro yarwo yo mu rwego rw'ibyabaye[780].

1. Ibivugwa n'ababuranyi

427. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kuko rwavuze ko kugira ngo aryozwe ibyaha binyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano [y'i Jeneve] n'Inyongera yayo ya II, umuntu agomba kuba « afite inshingano ahabwa n'amategeko cyangwa akaba ategerejweho gufasha mu kurwana intambara cyangwa gutuma uruhande ariho rutsinda iyo ntambara, akabikora nk'umukozi wa Leta cyangwa umuntu ufite ububasha ahabwa n'Amategeko cyangwa se, ukurikije uko ibintu bimeze, nk'umuntu uhagarariye Guverninoma »[781]. Porokireri avuga ko gukoresha inshoza yerekeye umukozi wa Leta bidateganijwe muri Stitati (cyangwa mu nyandikomvugo zakozwe ku mpaka zagiwe bategura Sitati)[782], binyuranyije kandi n'intego y'Amasezerano y'i Jeneve n'Inyongera yayo[783], bikaba binyuranyije ndetse n'ubukemuramanza mpuzamahanga (burimo ubwa TPIY[784]) n'amahame y'amategeko[785].

buvuga ko, kubera iyo mpamvu, Urugereko rw'Ubujurire rufite ububasha bwo gufata icyemezo ku ikoreshwa ry'[icyo kintu kigenderwaho] mu rwego rw'ibiteganywa na Sitati". Reba imyanzuro ya Porokireri, igika 1.19.

780 Imyanzuro ya Porokireri, ibika 2.42, 2.23 uko bikurikirana; inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, imp. 266, 267.

781 Imyanzuro ya Porokireri, ibika 2.3 na 2.39-2.41

782 Imyanzuro ya Porokireri, ibika 2.7-2.13. Porokireri avuga ko Sitati n'icyifuzo cy'Inama Ishinzwe Amahoro ku Isi mu mwanzuro wayo wa 955, bigaragaza ko umuntu wese wujuje biteganywa n'ingingo za 1, 4, 5, 6 na 7 za Sitati (nta n'imwe ivuga icyo kintu kigenderwaho cy'umukozi wa Leta) ashobora gukurikiranirwa ko yanyuranyije n'ingingo ya 4 Sitati. Kubera iyo mpamvu, gukoresha ikigenderwaho cy'umukozi wa Leta, binyuranyije n'intego n'impamvu bya Sitati.

783 Imyanzuro ya Porokireri, ibika 2.14, 2.16.

784 Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, imp. 260 -262

785 Imyanzuro ya Porokireri, ibika 2.17-2.27; 2.37-2.38 2.28-2.36;

428. Ku byerekeranye, by'umwihariko, n'intego y'Amasezerano y'i Jeneve n'Inyongera yayo, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwivugiye ko ayo Masezerano n'izo nyongera bigamije, mbere na mbere, « kurengera abakorewe ibyaha n'abantu bashobora gukorerwa ibyaha mu ntambara »[786]. Avuga ko yumva ubukemuramanza n'amahame mpuzamahanga bishyigikira rwose igitekerezo kivuga ko, hakurikijwe amategeko arengera abantu mu gihe cy'intambara, abantu bose, ni ukuvuga abasirikare n'abasiviri bose, bafite inshingano bagomba kubahiriza[787]. Porokireri avuga ko ikintu rukumbi kivugwa muri rusange mu ngingo ya 4 ya Sitati ari uko « ibyaha byakozwe bigomba kuba bifitanye isano n'intambara »[788]. Ntibitegetswe na rimwe ko gatozi w'ibyaha biteganywa n'ingingo ya 4 Sitati aba ari mu cyiciro cy'abantu aba n'aba[789]. Kubera iyo mpamvu, Porokireri avuga ko "byaba ari agahomamunwa", igihe umuturage usanzwe akoze amarorerwa mu ntambara ariko ntabe yabiryozwe ku giti cye, hakurikijwe ingingo ya 4 ya Sitati[790]

429. Akayesu avuga ko imyanzuro inengwa yafashwe n'Urugereko rwa Mbere rw'Iremezo igomba kumvikana mu rwego yafashwemo, kandi ko Porokireri ayivuga uko itari[791]. Akayesu avuga ko Urugereko rutamuhamije icyaha rushingiye ku ngingo ya 4 ya Sitati, kubera ko rwasanze hataragaragajwe, nta shiti, ko ibikorwa byakozwe bifitanye isano n'intambara. Ibyavuzwe n'Urukiko ku nshoza yerekeye umukozi wa Leta byari igitekerezo yatuye aho gusa, ntibyari bigamije kugira icyo byongera ku biteganywa n'ingingo ya 4 ya Sitati[792]. Iyo usesenguye imyanzuro rwafashe, usanga, mu by'ukuri, Urugereko rwa Mbere rw'Iremezo rwemera ko abasiviri bashobora kuryozwa ibyaha

[786] Imyanzuro ya Porokireri, ibika 2.4, 2.14-2.16; Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 292. Hasubiwemo ibivugwa mu gika cya 630 cy'Urubanza mu rw'iremezo. Porokireri avuga ko n'ubwo atari ko Urugereko rwa Mbere rw'Iremezo rubibona mu myanzuro yarwo, intego n'impamvu by'Amasezerano "bitegeka ko umuntu wese ukoze ibyaha bikomeye byo kunyuranya n'ingingo ya 3 ihuriweho n'Amasezerano, cyangwa Inyongera yayo ya II, aryozwa ibyo byaha ku giti cye iyo bifitanye isano n'intambara". Reba imyanzuro ya Porokireri, igika 2.16
[787] Imyanzuro ya Porokireri, igika 2.37
[788] Imyanzuro ya Porokireri, igika 2.6
[789] Imyanzuro ya Porokireri, igika 2.5
[790] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup.265
[791] Igisubizo cya Akayesu, ibika cya 8(a), 17-24.
[792] Igisubizo cya Akayesu, igika 8(a); inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 12-16.

hashingiwe ku ngingo ya 4, bityo rero, « ibivugwa n'Urugereko rwa Mbere rw'Iremezo bisa n'ibitandukanye n'ibyo Porokireri avuga »[793].

2. Isesengura ry'Urugereko

430. Urugereko rwa Mbere rw'Iremezo rwavuze ibi bikurikira:

> 630. Nk'uko byavuzwe haruguru, Amasezerano ane y'i Jeneve n'Inyongera yayo ebyiri yemejwe cyane cyane kugira ngo harengerwe abakorewe icyaha cyangwa abantu bashobora kugirirwa nabi mu mirwano. Ayo Masezerano areba rero mbere na mbere abantu, kubera ubutegetsi bwabo, baryozwa kuba barateje imirwano cyangwa binjiye mu bundi buryo mu buyobozi bwayo. Urwego rw'abantu bashobora kubiryozwa rwagarukira akenshi ku bayobozi b'ingabo, abarwanyi n'abandi basirikare.
>
> 631. Ibyo aribyo byose, kubera ko ayo Masezerano mpuzamahanga agenewe mu buryo rusange kurengera ikiremwamuntu, ntibikwiye guhagararira ku buryo budasubirwaho ku bantu barebwa n'ibikubiye mu ngingo ya 3 rusange no mu Nyongera ya II. Ibisabwa kimwe n'inshingano bivugwa mu Masezerano y'i Jeneve n'Inyongera yayo bikurikizwa gusa ku bantu b'ingeri zose bari mu mitwe y'ingabo zitegekwa mu rwego rwa gisirikare n'ubuyobozi bw'imitwe ishyamiranye, ku bantu babiherewe ububasha bwemewe bizwi ko bashyigikiye cyangwa batera inkunga ingabo kubera ko ari abategetsi, abakozi ba Leta cyangwa abandi bantu bari mu rwego rw'ubuyobozi cyangwa bahagarariye mu by'ukuri guverinoma. Ubwo buryo bwari gutuma ingingo za Sitati zishyirwa mu bikorwa noneho inshingano z'ibanze z'Amasezerano n'Inyongera yayo zikarushaho kugerwaho[794].

431. Nyuma yaho, Urugereko rwa Mbere rw'Iremezo rwifashishije iryo sesengura ku miterere bwite ya Akayesu kugira ngo rurebe niba yaryozwa ku giti cye ibyaha aregwa, hakurikijwe ingingo ya 4 ya Sitati, maze rufata umwanzuro ukurikira:

[793] Inyandikomvugo y'iburanisha, mu bujurire, 2 Gugushyingo 2000, ibika 12-16. Akayesu avuga kandi ko iyo mpamvu idafite ishingiro mu mategeko kubera ko Porokireri yaretse impamvu ye y'ubujurire ku mwanzuro w'ibanze Urugereko rwafashe kuri icyo kibazo (Ikosa ryakozwe n'Urugereko rwa Mbere rw'Iremezo kuko rutazirikanye ibimenyetso bysoe byatanzwe mu rubanza kandi bishobora kugaragaza ko ibikorwa Akayesu yakozwe byari bifitanye isano n'intambara yabaye mu Rwanda mu mwaka wa 1994). Reba igisubizo cy'Akayesu, igika 25. Porokireri yaretse iyo mpamvu y'ubujurire mu gika cya 1.13 cy'imyanzuro. Porokireri avuga ko: "Ubushinjacyaha butsinze kuri iyi mpamvu, igishobora gukurikiraho ari uko icyo kibazo gisubizwa mu Rugereko rwa Mbere rw'Iremezo. Kugira ngo hakoreshwe neza umutungo n'igihe by'Urukiko, Ubushinjacyaha buvuga ko, nta kubangamira icyemezo bwafata, ikibazo kiramutse gisubijwe mu Rugereko rwa Mbere rw'Iremezo kubera indi mpamvu, butifuza kongera kuvuga kuri iyo mpamvu y'ubujurire yonyine".

> 640. Kugira ngo Akayesu aryozwe icyaha hashingiwe ku ngingo ya 4 ya Sitati, ni ngombwa ko Porokireri agaragaza, nta gushidikanya na gato, ko Akayesu yakoreraga Leta y'u Rwanda cyangwa FPR, ko kandi yubahirizaga intego y'intambara ibyo bice byombi byarwanaga. Nk'uko byavuzwe haruguru, Akayesu yaryozwa ibikorwa bye ari uko hatanzwe ibimenyetso ko, kubera ubutegetsi bwe, yateje imirwano cyangwa yinjiye mu buyobozi bwayo ku bundi buryo ubwo aribwo bwose butaziguye. Ubushinjacyaha bukaba rero bugomba kugaragariza Urugereko no gutanga ibimenyetso ko Akayesu yari umusirikare, ategekwa n'ubuyobozi bwa gisirikare bw'umwe mu mitwe ishyamiranye cyangwa ko yari yarahawe ububasha bwemewe bizwi ko ashyigikiye abari mu mirwano, nk'umukozi wa Leta, nk'umuntu uri mu rwego rw'ubuyobozi cyangwa uhagarariye mu by'ukuri Guverinoma. Ariko nanone Urugereko ruributsa ko ingingo ya 4 ya Sitati ikurikizwa no ku basiviri[795].

432. Urugereko rw'Ubujurire rusanga ntawashidikanya ko Urugereko rwa Mbere rw'Iremezo rwakoresheje inshoza yerekeye umukozi wa Leta mu gisobanuro rwatanze ku ngingo ya 4 ya Sitati. Rurangije, rwasuzumye ibintu byihariye bijyanye n'urubanza rwa Akayesu. N'ubwo rwavuze ko Amasezerano y'i Jeneve n'Inyongera yayo « agamije muri rusange kurengera ikiremwamuntu »[796], bityo « umuntu akaba atagomba kugabanya cyane icyiciro cy'abantu barebwa n'ingingo ya 3 ihuriweho n'ariya Masezerano n'Inyongera yayo ya II »[797], Urugereko rwa Mbere rw'Iremezo rwasanze icyiciro cy'abantu baryozwa kunyuranya n'ingingo ya 4 ya Sitati, kirimo « gusa abantu b'ingeri zose bari mu ngabo za buri ruhande urwo ari rwose mu zihanganye cyangwa abandi bantu bafite inshingano cyangwa bategerejweho gushyigikira cyangwa gushyira mu bikorwa inkunga y'intambara kubera ko ari abakozi ba Leta, ko bafite imyanya y'ubuyobozi cyangwa, ukurikije uko ibintu bimeze, bahagarariye Guverinoma ». Urugereko rwa Mbere rw'Iremezo rusanga icyo gisobanuro « kigomba gutuma hagerwa ku ntego y'ibanze y'Amasezerano [mpuzamanga y'i Jeneve] n' Inyongera yayo »[798].

433. Hari ikibazo cyo kumenya niba kiriya gisobanuro kijyanye cyangwa kitajyanye n'ibiteganywa na Sitati by'umwihariko, n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, muri rusange. Kubera iyo mpamvu, ni ngombwa gusesengura

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794 Urubanza mu rw'iremezo, ibika 630, 631 (ntibishimangiye mu nyandiko y'umwimerere).
795 Urubanza mu rw'iremezo, igika 640.
796 Urubanza mu rw'iremezo, igika 631.
797 Urubanza mu rw'iremezo, igika 631
798 Urubanza mu rw'iremezo, igika 631(ntibishimangiye mu nyandiko y'umwimerere).

mbere na mbere, ingingo za Sitati zijyanye n'iki kibazo, n'uburyo izo ngingo zisobanurwa mu bukemuramanza bw'Inkiko. Nyuma yaho umuntu agomba kureba icyo ingingo ya 3 ihuriweho n' Amasezerano y'i Jeneve igamije[799].

434. Urugereko rw' Ubujurire rurabanza kwibutsa ibiteganywa mu ngingo ya 4 ya Sitati:

> Ingingo ya 4: Ibikorwa binyuranyije n'Ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve hamwe n' Inyongera yayo ya II
>
> Urukiko Mpuzamahanga Rwashyiriweho u Rwanda rufite ububasha bwo gukurikirana abantu bakoze cyangwa bategetse abandi gukora ibikorwa binyuranyije bikomeye n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve yo ku wa 12 Kanama 1949 agamije kurengera abakorewe ibyaha mu gihe cy'intambara, n'Inyongera yayo ya 2 yo ku itariki ya 8 Kamena 1977. Bitavuzwe byose, ibyo byaha bigizwe na:
>
> (a) Ibyaha byangiza ubuzima, amagara, n'ibihungabanya umuntu ku mubiri cyangwa mu mutwe, cyane cyane ubwicanyi n'ibikorwa by'ubugome nk'urugaraguro, guca ingingo z'umubiri, cyangwa ubundi bugizi bwa nabi bwose bwibasira umubiri;
>
> (b) Ibihano rusange;
>
> (c) Gufata abantu ho ingwate;
>
> (d) Ibikorwa by'iterabwoba;
>
> (e) Guhungabanya agaciro ka muntu, nko gukora ibikorwa bimutesha agaciro, bimukoza isoni, gusambanya ku gahato, guhatira umuntu uburaya n'ibindi bikorwa by'iterasoni;
>
> (f) Gusahura;
>
> (g) Gukatira umuntu no kurangiza urubanza bidakomotse ku cyemezo cyafashwe n'urukiko rwemewe n'amategeko, mu buryo bukurikije imihango y'iburanisha irengera uregwa yemewe n'ibihugu byateye imbere mu isanzuramuco;
>
> (h) Gukangisha gukora ibivugwa muri iyi ngingo.

435. Mu ngingo ya 4 ntahavugwa aho ibyiciro by'abantu bakurikiranwa hakurikijwe iriya ngingo bigarukira. Iyi ngingo ivuga gusa ko, Urukiko « rufite ububasha bwo gukurikirana abantu bakoze cyangwa bategetse abandi gukora » ibikorwa binyuranyije bikomeye n'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve. Iyo umuntu asomye iyo ngingo ayigereranya n'ingingo ya 1 yo muri Sitati ivuga ku bubasha rusange bw'Urukiko n'iya 5

[799] Ingingo ya 311 y'Amasezerano y'i Viyene yerekeye amategeko agenga masezerano mpuzamahanga (1969) iteganya ko "amasezerano mpuzamahanga agomba gusobanurwa neza hakurikijwe igisobanuro gisanzwe gihabwa

nayo yo muri Sitati ivuga ku bantu Urukiko rufitiye ububasha bwo kuburanisha, asanga iyo ngingo idatanga igisobanuro cy'inyongera ku byerekeye urwego rw'abantu bashobora gukurikiranwa hashingiwe kuri izi ngingo, by'umwihariko ingingo ya 4. Mu by'ukuri, izo ngingo zigira ziti:

> Ingingo ya 1
>
> Urukiko Mpuzamahanga Rwashyiriweho u Rwanda rufite ububasha bwo gucira imanza abantu bakekwaho kuba barakoreye mu Rwanda ibyaha binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara, n'abanyarwanda bakekwaho kuba barabikoreye mu bihugu bituranye n'u Rwanda
>
> Ingingo ya 5
>
> Urukiko mpuzamahanga rwashyiriweho u Rwanda rufite ububasha bwo kuburanisha abantu ku giti cyabo hakurikijwe ingingo zikubiye muri iyi Sitati.

436. Bityo rero, muri Sitati, nta kigaragaza mu buryo butaziguye ko uburyozwacyaha bw'umuntu ku giti cye bugarukira ku cyiciro runaka cy'abantu. Mu by'ukuri, ingingo za Sitati zerekeranye n'uburyozwacyaha bw'umuntu ku giti cye, zisubiramo gusa ihame ry'uburyozwacyaha bw'umuntu ku giti cye nk'uko bwasobanuwe n'Urukiko rwa *Nuremberg*[800]. Gusesengura ibiteganywa na Sitati, ntibitanga igisubizo cyatuma umuntu afata umwanzuro. Kubera iyo mpamvu, Urugereko rw'Ubujurire rugomba kureba ingingo yashingiweho mu gushyiraho ingingo ya 4 ya Sitati, ari yo ngingo ya 3 ihuriweho n'Amasezerano y'i Jeneve. Iyi ngingo iteganya ibikurikira:

> Mu gihe cy'intambara itari mpuzamahanga kandi ibera ku gace kagenzurwa na rumwe mu mpande zirwana, buri ruhande ruri mu ntambara rugomba gukurikiza nibura ingingo zikurikira:
>
> 1) Abantu badafite uruhare rutaziguye mu ntambara barimo abasirikare bashyize intwaro hasi n'abandi bantu batagishoboye kurwana kubera kurwara, gukomereka, gufungwa cyangwa indi mpamvu yose, bagomba buri gihe gufatwa kimuntu batavanguwe na rimwe bishingiye ku bwoko, ibara ry'uruhu rwabo, idini, cyangwa ukwemera kwabo, igitsina, aho bavuka, umutungo cyangwa ikindi kintu cyose gisa n'ibyo. Kubera iyo mpamvu, birabujijwe kandi bihora bibujijwe igihe cyose n'ahantu hose gukorera abantu bavuzwe haruguru ibikorwa bikurikira:

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amagambo yo mu Masezerano mpuzamahanga mu rwego yavuzwemo, ndetse hakanakurikizwa intego n'impamvu z'ayo Masezerano".

[800] Reba *the Trial of the Major war Criminals: Proceedings of the International Military Tribunal sitting at Nuremberg Germany*, Igice cya 22, urup. 447.

a. Ibikorwa byangiza ubuzima n'ibihungabanya umuntu ku mubiri, nk'ubwicanyi bukozwe mu buryo ubwo ari bwo bwose, guca ingingo z'umubiri, ibikorwa by'ubugome, kugaragura n'ibikorwa bizahaza umubiri;

b. Gufata abantu ho ingwate;

c. Guhungabanya agaciro k'abantu nko kubakorera ibikorwa bibatesha agaciro, bikanabakoza isoni;

d. Gukatira umuntu no kurangiza urubanza bidakomotse ku cyemezo cyafashwe n'urukiko rwemewe n'amategeko, mu buryo bukurikije imihango y'iburanisha irengera uregwa yemewe n'ibihugu byateye imbere mu isanzuramuco;

2) Inkomere n'abarwayi bagomba kuvurwa.

437. Biragaragara ko ingingo ya 3 ihuriwe ho n'Amasezerano y'i Jeneve idasobanura abantu barebwa n'ibyo iteganya[801]. Byongeye kandi, iyo ngingo ntitanga ibisobanuro bigaragara ku buryozwacyaha bw'umuntu ukoze ibikorwa binyuranyije na yo. Mu mutwe w'iyo ngingo, hateganijwe gusa ko « buri ruhande mu zirwana, rugomba gukurikiza nibura amategeko akurikira ». Ibi bigamije ahanini gushimangira ko buri ruhande rufite « inshingano idakuka » yo kurinda abantu bavugwa n'iyo ngingo[802]. Urugereko rw'Ubujurire rusanga ibyo bidasobanura ko urenze ku biteganywa n'iyi ngingo agomba kuba, byanze bikunze, afite aho ahuriye na rumwe mu mpande zavuzwe haruguru.

438. N'ubwo bidasobanutse neza mu ngingo ya 3 ihuriweho n'Amasezerano[803], Urugereko rw'Ubujurire rwa TPIY rwasanze iyo ngingo iryoza icyaha umuntu ku giti cye urenze ku byo iteganya[804]. Urugereko rw'Ubujurire rwatanze ibindi bintu bishobora kugenderwaho

[801] Reba urubanza rwa Čelebići mu bujurire, igika 153 hashingiwe ku bivugwa mu rubanza rwa Tadic mu bujurire (ingoboka ku iburabubasha), igika 128.
[802] Ibisobanuro by'Umuryango Mpuzamahanga Utabara Imbabare, urup. 42.
[803] Urubanza rwa Tadic mu bujurire (ingoboka ku iburabubasha), igika 128; urubanza rwa rwa Čelebići mu bujurire, igika 153.
[804] Urubanza rwa Tadic mu bujurire (ingoboka ku iburabubasha), igika 128; urubanza rwa Čelebići mu bujurire, igika 153. Urugereko rw'Ubujurire rwibutsa kandi magambo yakoreshejwe n'Umunyamabanga Mukuru w'Umuryango w'Abibumbye ubwo Sitati yemezwaga: « Ingingo ya 4 ya Sitati … ishyize bwa mbere, mu mubare w'ibyaha, ibikorwa binyuranije n'ingingo ya 3 ihuriweho n'Amasezerano ane y'i Jeneve ». Reba raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye (Icyemezo cya 955 cy'Inama Ishinwe Aamahoro ku Isi) ku ishyirwa ho ry'Urukiko mpuzamahanga rushinzwe gucira imanza abantu bakoze jenoside cyangwa ibindi byaha bikomeye binyuranyije n'amategeko arengera abantu mu gihe cy'intambara.

mu gushyira mu bikorwa iyo ngingo. Muri uru rubanza, Urugereko rw'Ubujurire ruvuga ibyo bintu mu ncamake ikurikira:

- Icyaha (kunyuranya bikomeye n'amategeko) kigomba kuba cyakozwe mu ntambara;
- Iyo intambara ishobora kuba ari mpuzamahanga cyangwa atari yo[805];
- Icyaha kigomba kuba cyarakorewe umuntu udafite uruhare rutaziguye mu ntambara[806];
- Imyitwarire mibisha igomba kuba ifitanye isano n'intambara[807].

439. N'ubwo Urugereko rw'Ubujurire rwa TPIY rwasuzumye kenshi igisobanuro cy'ingingo ya 3 ihuriweho n'Amasezerano y'i Jeneve, ni ngombwa kuvuga ko rutigeze na rimwe rusanga ari ngombwa guhagararira ku cyiciro cy'abantu bashobora kurebwa n'iyo ngingo. Kugeza ubu, nta gisobanuro kigeze gitangwa kuri iyo ngingo mu bukemuramanza bw'inkiko, uretse mu byo Urugereko rwa Mbere rw'Iremezo rwa TPIY ruherutse gusuzuma. Mu by'ukuri, urwo Rugereko rwavuze ko « ingingo ya 3 ihuriweho mu byo isaba bigenderwaho hashobora kuba harimo n'isano iri hagati y'uwakoze icyaha na

805 Mu rubanza rwa Tadic mu rw'Iremezo (ingoboka ku iburabubasha), ruvuga ku rubanza rwa Nicaragua (igika 128), Urugereko rw'Ubujurire rwa TPIY rwerekana ko " .… za Leta zasobanuye amategeko agomba kubahirizwa mu gihe cy'intambara zitari mpuzamahanga zivugwa mu ngingo ya 3 ihuriweho n'Amasezerano y'i Jeneve yo muri 1949". Rwanavuze kandi ko "… nibura ku byerekeye ibigomba kubahirizwa biteganywa mu ngingo ya 3 ihuriweho n' Amasezerano, imiterere y'intambara ititabawaho cyane" (igika cy'102). Urugereko rw'Ubujurire rwa TPIY ruherutse kwemeza icyo gisobanuro mu rubanza rwa Čelebići aho rugira ruti: "haba mu mategeko cyangwa mu mitekerereze ya muntu, ibiteganywa n'ingingo ya 3 ihuriweho, ari nabyo bigenderwaho mu ntambara zitari mpuzamahanga, ntibyumvikana ukuntu bisobanuye gake ubigereranyije n'ibigenderwaho mu ntambara mpuzamahanga. Ibiteganywa n'ingingo ya 3 ihuriwe ho bisobanuye mu buryo burambuye mu mategeko akoreshwa mu gihe cy'intambara mpuzamahanga. Kubera iyo mpamvu, birumvikana ko ayo mategeko akoreshwa ku ntambara mpuzamahanga kuko ayo mategeko remezo ashingiye ku bintu bimwe. Urugereko rw'Ubujurire rusanga igikorwa kibujijwe mu ntambara itari mpuzamahanga, kinabujijwe mu ntambara mpuzamahanga ahakoreshwa amategeko menshi kurushaho. Kubera iyo mpamvu, Urugereko rw'Ubujurire ntirunyuzwe n'ingingo z'Abajurira bityo rukaba rusanga nta mpamvu ikomeye yatuma rufata imyanzuro itandukanye n'iyo rwafashe mbere". Reba urubanza rwa Čelebić mu bujurire, igika 150.

806 Kuri iyi ngingo, Urugereko rw'Ubujurire rwa TPIY ruherutse kwibutsa ko "ingingo ya 3 ihuruiwe ho n'Amasezerano y'i Jeneve igamije kurengera, mbere na mbere, abantu bari mu karere kaberamo intambara ariko batarwana. Kubera ko ireba umuntu wese udafite uruhare mu ntambara, iyi ngingo ikoreshwa ahantu harenze ahateganywa n'Amasezerano ya IV y'i Jeneve asubirwamo mu ngingo ya 2 ya Sitati […]". Reba urubanza rwa Čelebići mu bujurire, igika 420.

807 Urugereko rw'Ubujurire rwa TPIY rwasanze : "bihagije ko ibyaha bivugwa ko byakozwe byaba bifitanye isano n'intambara ibera mu tundi duce tw'igihugu tugenzurwa n'impande zishyamiranye". Reba urubanza rwa Tadić mu

rumwe mu mpande zirwana[808]. Cyakora, Urugereko rw'Ubujurire rusanga icyo gisobanuro kidafite icyo gishingiyeho haba mu mategeko asanzwe yanditse cyangwa mu bukemuramanza. Ibyo ari byo byose, mu rubanza rwa Kunarac, Urugereko rwa Mbere rw'Iremezo rwasanze atari ngombwa gusobanura birambuye iyi ngingo kubera imiterere y'urubanza[809]

440. Muri urwo rwego, Urugereko rw'Ubujurire rusanga ari ngombwa gusesengura impamvu n'intego by'ingingo ya 3 ihuriweho n'Amasezerano by'umwihariko, n'Amasezerano y'i Jeneve muri rusange. Rusanga iyo mpamvu n'iyo ntego ari ingenzi mu gusobanura ingingo ya 4 ya Sitati[810].

441. Ibisobanuro by'Umuryango Mpuzamahanga Utabara Imbabare ku Isi byerekana amahame yatumye ingingo ya 3 ihuriweho n'Amasezerano itorwa.

> Iyi ngingo ihuriweho n'Amasezerano ane y'i Jeneve igaragaza intambwe nshya yatewe mu gitekerezo gihora gikura Umuryango Utabara Imbabare ushingiyeho no mu kuba icyo gitekerezo cyarashyizwe mu nshingano mpuzamahanga. Iyi ngingo yagura, ku buryo busa n'ubutari bwitezwe, ingingo ya 2 […]. Kubera ko ishyira mu bikorwa ihame ry'uwo muryango, iyi ngingo yatumye Umuryango Utabara Imbabare wita no ku bindi byiciro by'abantu bakorewe ibyaha mu ntambara, utuma ayo masezerano agenda avugururwa, kandi kurinda mu mategeko imfungwa z'intambara birongerwa bigera no ku basiviri. Ibyo byagombye no gutuma iryo hame rikoreshwa mu ntambara zose harimo n'izitari mpuzamahanga[811].

442. Kubera iyo mpamvu, ingingo ya 3 ihuriweho n'Amasezerano igamije kurengera abantu no mu ntambara zitari mpuzamahanga, nk'uko bimeze mu mategeko akurikizwa mu ntambara mpuzamahanga. Iyo ngingo igamije gutuma amategeko arengera abantu mu gihe cy'intambara arushaho kubahirizwa, ikabikora isobanura uko umuntu yagombye gufatwa, n'amategeko akurikizwa mu bihe byose n'ahantu hose. Mu by'ukuri, « nk'uko

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bujurire (ingoboka ku iburabubasha), igika 70. Muri uru rubanza, icyo kibazo nticyashyikirijwe Urugereko rw'Ubujurire, kimwe n'icy'uk'ukuntu Urugereko rwa Mbere rw'Iremezo rusobanura iyo ngingo mu rubanza.

[808] Urubanza rwa Kunarac mu rw'Iremezo, igika 407.

[809] Urubanza rwa Kunarac mu rw'Iremezo, igika 407.

[810] Reba ingingo ya 31 1) y'Amasezerano y'i Viyene ku mategeko agenga Amasezerano mpuzamahanga (byavuzwe hejuru).

[811] Ibisobanuro by'Umuryango Utabara Imbabare, urup. 31.

Umuryango Mpuzamahanga Utabara Imbabare ubivuga, ingingo ya 3 ihuriweho n'Amasezerano igamije gutuma amategeko y'ibanze arengera ikiremwamuntu yubahirizwa. Ibihugu byateye imbere mu isanzuramuco bisanga ayo mategeko yakubahirizwa ahantu hose no mu bihe byose, bisanga kandi ari hejuru y'andi mategeko kandi akoreshwa no mu bihe bitari iby'intambara. Kubera iyo mpamvu, ayo mategeko yafatwa nk'iremezo ry'amahame arengera abantu mu gihe cy'intambara avugwa mu Masezerano yose y'i Jeneve »[812]. Bityo rero, ingingo ya 3 ihuriweho n'ayo Masezerano igamije mbere na mbere kurengera abakorewe ibyaha.

443. Urugereko rw'Ubujurire rusanga kurengera abakorewe ibyaha, biteganijwe mu ngingo ya 3 ihuriweho n'Amasezerano bisobanura, byanze bikunze, ko abanyuranyije n'iyi ngingo bagomba guhabwa igihano nyacyo. Cyakora, icyo gihano kigomba no guhabwa umuntu wese, ntakuvangura, nk'uko bisabwa n'amahame y'uburyozwacyaha bw'umuntu ku giti cye yashyizweho, nk'urugero, n'Urukiko rwa *Nuremberg*. Urugereko rw'Ubujurire rusanga amategeko mpuzamahanga arengera abantu mu gihe cy'intambara yaba ateshejwe agaciro kandi ajowe, haramutse hemewe ko abantu bamwe banyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano bataryozwa icyaha ku giti cyabo, hitwajee ko batari mu rwego uru n'uru rwihariye.

444. Mu gika cya 630 cy'inyandiko y'urubanza, Urugereko rwa Mbere rw'Iremezo rwasanze Amasezerano ane y'i Jeneve « yarashyiriweho cyane cyane kurengera abakorewe ibyaha n'abasbobora kubikorerwa mu gihe cy'intambara ». Rwasanze kandi «icyiciro cy'abantu bashobora kuryozwa ko barenze kuri ariya Masezerano, rwagarukira ahanini ku bakuriye abasirikare, abarwanyi n'abandi basirikare ». Iyo umuntu akibyumva asanga ibivugwa n'urwo Rugereko bifite ishingiro. Mu by'ukuri, birashoboka ko abanyuranyije n'ingingo ya 3 ihuriweho n'Amasezerano, baba muri kimwe muri ibyo byiciro kubera ko ingingo ya 3 ihuriweho n'Amasezerano isaba ko ibyaha byakozwe biba bifitanye isano n'intambara. Iyo sano hagati y'ibyaha n'intambara ivuga ko, ahanini, gatozi w'icyaha ashobora kuba afite aho ahuriye ku buryo bwihariye na rumwe mu mpande zirwana. Cyakora, ibyo

812. Urubanza rwa Celebići mu bujurire, igika 143 [ibisobanuro byo hasi ku rupapuro ntibyongewemo]

ntibivuga ko iyo sano igomba kuba ihari byanze bikunze kugira ngo ingingo ya 3 ihuriweho n'Amasezerano ikoreshwe, bityo hanakoreshwe n'ingingo ya kane 4 ya Sitati. Urugereko rw'Ubujurire rusanga ikosa Urugereko rwa Mbere rw'Iremezo rwakoze ari uko rwategetse ko iyo sano yihariye ari kamara mu kugaragaza uburyozwacyaha bw'umuntu wakoze ibikorwa binyuranyije n'ingingo ya 4 ya Sitati.

445. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarakoze ikosa mu rwego rw'amategeko kuko rwashyizeho urubibi ntarengwa ingingo ya 3 ihuriweho n'Amasezerano ikoreshwamo, rukayigarukiriza gusa ku cyiciro kimwe cy'abantu, nk'uko urwo Rugereko [rw'iremezo] rubisobanura.

446. Kubera izo mpamvu zose, Urugereko rw'Ubujurire rwakiriye iyo mpamvu y'ubujurire kandi rusanze atari ngombwa kugira icyo ruvuga ku mpamvu y'ubujurire yatanzwe na Porokireri, kuko yari gusuzumwa iyo iyi ngiyi itakirwa.

B. Impamvu y'ubujurire ya gatatu: ingingo ya 3 ya Sitati (ibyaha byibasiye inyokomuntu

1. Ibivugwa n'ababuranyi

447. Porokireri avuga ko rwemeza mu gika cya 590 ko « uwakorewe icyaha agomba kuba yarishwe azize ivangura rishingiye ku bwenegihugu, ubwoko, umutwe wa politiki cyangwa idini », Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kuko rwanzuye ruvuga ko igitekerezo cyo kuvangura ari impamvu y'ingenzi kugira ngo kimwe mu bikorwa biteganywa n'ingingo ya 3 ya Sitati kibe ari icyaha cyibasiye inyokomuntu. Porokireri avuga ko, kuri iyo ngingo, imitekerereze y'Urugereko rwa Mbere rw'Iremezo ivuguruzanya, ikanahuzagurika kandi ko urwo Rugereko rusa n'urwanzura, by'umwihariko, ruvuga ko kuri kimwe mu byaha biteganywa n'ingingo ya 3 ya Sitati, hagomba kugaragazwa ko hari umugambi wo

kuvangura.[813] N'ubwo iyi mpamvu y'ubujurire ishingiye, mu buryo butaziguye, ku mwanzuro wafashwe ku cyaha cy'ubwicanyi, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa nk'iryo mu mitekerereze yarwo ku cyaha cyo gusambanya ku gahato.[814]

448. Porokireri avuga ko umwanzuro uri mu gika cya 590 cy'Urubanza mu rw'iremezo utajyanye neza n'ibiteganywa na Sitati, n'amategeko mpuzamahanga ashingiye ku muco karande[815]. Yongeraho ko uwo mwanzuro unavuguruza impamvu n'intego bya Sitati bigamije kurengera ikiremwamuntu, kandi ko, muri rusange, uvuguruza impamvu n'intego by'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara.[816] Porokireri asanga ibisabwa mu ngingo ya 3 ya Sitati « bitadukanye kure n'ibisabwa ko buri cyaha mu byavuzwe, kigomba kuba cyakozwe n'umuntu wagaragaje ko avangura uwakorewe icyaha, hashingiwe ku mpamvu zavuzwe ».[817] Porokireri avuga ko atari ngombwa cyane kumenya umugambi w'uwakoze icyaha[818], ko ahubwo icy'ingenzi ari uko igikorwa kivugwa « kiba cyarakozwe uwagikoze azi neza ko kiri mu rwego rw'igitero rusange kiri kuri gahunda kandi cyibasiye abaturage b'abasiviri, kubera impamvu z'ivangura »[819]. Avuga ko kubyumva ukundi byasobanura ko abantu bakoze ibyaha byibasiye inyokomuntu bashobora kudahanwa kuko batanga izindi mpamvu zatumye bakora ibyo byaha. Akomeza avuga ko ibyo bishobora guteza icyuho kinini kuko

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[813] Imyanzuro ya Porokireri, igika 4.6.
[814] Imyanzuro ya Porokireri, igika 4.6.
[815] Imyanzuro ya Porokireri, igika 4.2.
[816] Imyanzuro ya Porokireri, ibika 4.16-4.25. Porokireri avuga ko "imwe mu ntego z'ingenzi z'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara […] ari ukurengera abanyantege nke n'abatishoboye, igihe ubuzima n'umutekano byabo bishobora kwibasirwa. Byongeye kandi, izi Nkiko zombi zashyiriweho ahanini […] guhana abantu bose bakoze ibyaha byo kunyuranya n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara", Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, urup. 280.
[817] Imyanzuro ya Porokireri, igika 4.3. Avuga ko ibiteganywa n'ingingo ya 3 "byumvikana kandi bidateye urujijo, ndetse ko muri iyo ngingo hasabwamo ibintu bine by'ingenzi: kimwe mu byaha biteganywa n'ingingo ya 3 kigomba kuba cyarakozwe mu rwego rw'igitero rusange kandi kiri kuri gahunda, igitero kigomba kuba cyaragabwe kubera ivangura zishingiye ku bwenegihugu, politiki, ubwoko cyangwa idini. Imyanzuro ya Porokireri, igika 4.9. Reba kandi inyandikomvugo y'iburanisha mu bujurire, Ugushyingo 2000, imp. 276, 277.
[818] Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 220 (mu cyongereza).
[819] Imyanzuro ya Porokireri, igika 4.3. Porokireri avuga ko kimwe mu byaha bivugwa gishobora kuba cyarakozwe hatagamijwe kuvangura uwagikorewe, igihe uregwa yari azi ko ibikorwa bye byari mu rwego rw'igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abasiviri kubera impamvu z'ivangura. Imyanzuro ya Porokireri, igika 4.10; Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 277.

byatuma hatereranwa abantu bishwe kubera impamvu zitari iz'ivangura, kandi barishwe n'abantu bazi neza ko ibikorwa byabo biri mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri kubera impamvu z'ivangura[820].

449. Porokireri asanga kuvuga ko n'ubwo impamvu z'ivangura ziri mu mutwe w'ingingo ya 3 zigaragaza aho ububasha bw'Urukiko bugarukira, bidatuma izo mpamvu zihinduka kimwe mu bigize igitekezo cyo gukora ibyo byaha.[821] Cyakora, avuga ko n'iyo izo mpamvu zaba zigize igitekerezo cyo gukora ibyaha, amagambo akoreshwa muri Sitati yagombye na none kumvikana nk'uko byasobanuwe haruguru.[822] Porokireri asanga amagambo akoreshwz mu ngingo ya 3 ya Sitati atuma umuntu yanzura avuga ko gukora kimwe mu byaha bivugwa bitagomba byanze bikunze kuba bishingiye ku mpamvu z'ivangura. Ibintu bimeze gutyo, byaba bitakiri ngombwa ko habaho igisabwa kugenderwaho mu ngingo ya 3 h), ari cyo itoteza rigomba kuba ryarakozwe « kubera impamvu za politiki, ubwoko cyangwa idini »[823].

450. Porokireri avuga ko Inama Ishinzwe Amahoro ku Isi yashatse kutagendera ku mategeko mpuzamahanga ashingiye ku muco karande, ubwo yandikaga ingingo ya 3 ya Sitati y'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda. Niyo mpamvu iyo Nama isaba ko ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri bigomba kuba byaragabwe kubera impamvu z'ivangura.[824] Cyakora, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rutavuze icyo rwashingiyeho mu kuvuga ko Inama Ishinzwe Amahoro ku Isi yashakaga kuvuga ko ari ngombwa kugaragaza ko hari umugambi w'ivangura kuri buri cyaha mu biteganywa n'iyo ngingo.[825] Urugereko rw'Ubujurire ntirwagendeye ku Mategeko mpuzamahanga ashingiye ku muco karande no ku biteganywa na Sitati mu buryo butaziguye, ubwo rwafataga kimwe « impamvu

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[820] Imyanzuro ya Porokireri, igika 4.22.
[821] Imyanzuro ya Porokireri, igika 4.11.
[822] Imyanzuro ya Porokireri, igika 4.12.
[823] Imyanzuro ya Porokireri, igika 4.14; inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, urup. 278. Mu gisubizo cya Porokireri (igika 5.3), havugwamo na none ko ingingo ya 7 ya Sitati ya Roma iteganya ko ku cyaha cyo gutoteza ari honyine umuntu agomba kugaragaza ko hari umugambi w'ivangura.
[824] Imyanzuro ya Porokireri, igika 4.29.

z'ivangura » zivugwa mu ngingo ya 3 zigomba kugaragazwa « n'igitekerezo cyo kuvangura », kandi impamvu z'ivangura zijyana n'ibyo umuntu aba azi neza naho igitekerezo kivangura kikajyana n'ibyo umuntu aba atazi neza [826].

451. Kugira ngo ibyo bikosorwe, Porokireri asaba Urugereko rw'Ubujurire gukuraho umwanzuro wafashwe mu gika cya 590 cy'Urubanza mu rw'iremezo maze rukavuga ko impamvu z'ivangura zisabwa mu ngingo ya 3 ya Sitati zerekeranye n'igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abasiviri[827].

452. Mu gisubizo cye, Akayesu avuga ko umuntu agendeye ku mahame y'ibanze yo kumva ibintu, ingingo ya 3 ya Sitati igomba kumvikana uko iri.[828] Yongeraho ko, mu myanzuro ye, Porokireri ashaka « gushyiraho » amategeko aho gushaka kumva icyo ayo mategeko avuga[829], kuko asaba ko mu mutwe w'iyo ngingo havanwamo amagambo atumvikanwaho. Avuga ko Porokireri agomba kugendera gusa kuri Sitati, maze akongeraho ko muri iyo ngingo, Inama Ishinzwe Amahoro ku Isi itakurikije Amategeko mpuzamahanga ashingiye ku muco karande.[830] Akayesu avuga ko Sitati y'i Roma ari ikimenyetso cy'ibyo amahanga atekereza[831]. Anenga kuba asabwa « kujya mu mpaka zirebana n'ibibazo bidafitiye akamaro urubanza, zitanamureba ahubwo zireba abandi baregwa ». Avuga ko adategetswe… « kwemera cyangwa kwanga ibyo Porokireri avuga »[832]. Yongeraho ko imyanzuro yafashwe kuri icyo kibazo ari igitekerezo cyunganira ibindi ndetse ko Urugereko rw'Ubujurire rufashe icyemezo cyo kubihindura bitagira icyo bihindura ku mikirize y'urubanza[833].

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[825] Imyanzuro ya Porokireri, ibika 4.26-4.33.
[826] Imyanzuro ya Porokireri, igika 4.32. Porokireri avuga imanza nyinshi, yemeza ko zishyigikira ibyo avuga ko ibyaha biteganywa n'ingingo ya 3 ya Sitati bishobora gukorwa bidaturutse ku mugambi w'ivangura (ibika 4.33-4.380).
[827] Imyanzuro ya Porokireri, ibika 4.47, 4.48.
[828] Igisubizo cya Akayesu, ibika 37, 38.
[829] Igisubizo cya Akayesu, ibika 27, 38.
[830] Igisubizo cya Akayesu, igika 41.
[831] Igisubizo cya Akayesu, igika 42.
[832] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, imp. 22, 23.
[833] Inyandikomvugo y'iburanisha mu bujurire, 2 Ugushyingo 2000, urup. 23.

2. <u>Intangiriro ku kibazo cyabyukijwe</u>

453. Urugereko rwa Mbere rw'Iremezo rwasanze icyiciro cy'ibyaha biteganywa n'ingingo ya 3 ya Sitati kirimo, muri rusange, ibintu bine by'ingenzi. Muri ibyo bintu harimo ibisabwa bigenderwaho ko « igikorwa kigomba gukorwa kubera impamvu y'ivangura imwe cyangwa nyinshi, nk'ivangura rishingiye ku bwenegihugu, politiki, ubwoko cyangwa idini ».[834] Mu myanzuro rusange yarwo, Urugereko rwa Mbere rw'Iremezo rugira ruti:

> Nk'uko Sitati ibiteganya, ibikorwa birenze kameremuntu byakorewe abaturage b'Abasiviri bigomba kuba byarabibasiye « kubera ubwenegihugu, imitwe ya politiki barimo, ubwoko cyangwa idini byabo. Ivangura rikorewe umuntu kubera amatwara ye ya politiki riba ryujuje ibisabwa bigenderwaho no kuba mu mutwe wa « politiki » nk'uko biteganywa mu ngingo ya 3 ya Sitati […]
>
> Ibikorwa birenze kameremuntu byakorewe abantu batujuje ibiri mu gisobanuro gitangwa ku gice cy'abantu barinzwe bishobora kuba ibyaha byibasiye inyokomuntu iyo banyirukubikora bari bafite umugambi wo kugaba ibitero ku gice cy'abantu barebwa n'ivangura kubera imwe mu mpamvu iyi n'iyi mu ziteganywa n'ingingo ya 3 ya Sitati. Kugira ngo ibyaha byibasiye inyokomuntu bibe byarakozwe, ni ngombwa kugaragaza ko uwabikoze yari yaritswemo n'igitekerezo cya ngombwa cyo kubikora.[835]

454. Porokireri avuga ko niba « igitekerezo » kivugwa gisobanura ko uwakoze icyaha agomba kuba agambiriye, abizi neza, ko ibikowa bye bijya mu gitero cyibasiye itsinda ry'abantu bibasiwe kubera ivangura, cyangwa akaba azi ndetse ateganya ko ibikorwa bye bishobora gutuma icyo gitero kibaho, icyo gihe uwo mwanzuro waba ari wo.[836] Cyakora, avuga ko uwo mwanzuro uvuguruza indi myanzuro Urugereko rwa Mbere rw'Iremezo rwafashe ku cyaha cy'ubwianyi n'icyo gusambanya ku gahato.

455. Mu myanzuro yarwo ku bwicanyi nk'icyaha cyibasiye inyokomuntu, mu byo Urugereko rwa Mbere rw'Iremezo rwavuze harimo ko:

> Ubwicanyi bugomba kuba bwibasiye abaturage b'abasiviri mu rwego rw'igitero rusange cyangwa kiri kuri gahunda. Uwakorewe icyaha agomba kuba yarishwe ku mpamvu

[834] Urubanza mu rw'iremezo, igika 578.
[835] Urubanza mu rw'iremezo, ibika 583,584 (ibisobanuro byo hasi ku rupapuro ntibyongewemo).
[836] Imyanzuro ya Porokireri, ibika 4.40, 4.41.

> z'ivangura kubera ubwenegihugu bwe, ubwoko, umutwe wa politiki arimo cyangwa idini rye [837]

456. Byongeye kandi, ku byerekeye icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu, mu myanzuro yarwo Urugereko rwa Mbere rw'Iremezo rugira ruti:

> Icyo gikorwa kigomba gukorwa:
>
> a) Mu rwego rw'igitero rusange cyangwa kiri kuri gahunda;
> b) Ku baturage b'abasiviri;
> c) Ku mpamvu z'ivangura rishingiye nko ku bwenegihugu, ubwoko, politiki, cyangwa idini by'uwakorewe icyaha[838].

457. Cyakora, ku byaha by'itsembatsemba n'urugaraguro nk'ibyaha byibasiye inyokomuntu, Urugereko rwa Mbere rw'Iremezo rwasanze « hagomba kugaragazwa ko *igitero* cyagabwe kubera impamvu z'ivangura rishingiye ku bwenegihugu, umutwe wa politiki, ubwoko cyangwa idini by'abakorewe ibyaha ».[839]

458. Urugereko rw'Ubujurire rusanga bihita bisa n'ibigaragara ko hari ivuguruzanya hagati y'imitekerereze n'imyanzuro y'Urugereko rwa Mbere rw'Iremezo. Mu by'ukuri, n'ubwo ku ruhande rumwe Urugereko rwa Mbere rw'Iremezo rusa n'urwafashe umwanzuro ko kugira ngo ubwicanyi no gusambanya ku gahato bibe ibyaha byibasiye inyokomuntu hagomba kugaragazwa ko uwabikoze yari yaritswemo n'umugambi wo kuvangura umuntu wakorewe ibyo byaha. Ku rundi ruhande, urwo Rugereko rwafashe umwanzuro ko ku byaha by'itsembatsemba n'urugaraguro hagomba kugaragazwa ko igitero cyagabwe kubera impamvu z'ivangura.

459. Urugereko rw'Ubujurire rugomba kureba niba icyo gikorwa kigize icyaha cyibasiye inyokomuntu Urukiko rufitiye ububasha bwo kuburanisha nk'uko biteganywa mu mutwe w'ingingo ya 3 ya Sitati, gisaba ko uwakoze icyaha aba azi ko igikorwa cyari mu rwego

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[837] Urubanza mu rw'iremezo, igika 590.
[838] Urubanza mu rw'iremezo, igika cya 598.
[839] Urubanza mu rw'iremezo, ibika 590, 592 (ibyerekeye itsembatsemba). Igika cya 595 kivuga mu magambo nk'ayo, ibisobanuro bitangwa n'Urugereko rwa Mbere rw'Iremezo ku bintu by'ingenzi bigize icyaha cyo kugaragura.

rw'igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abasiviri kubera impamvu z'ivangura; cyangwa rukareba niba igikorwa cye cyaratumye icyo gitero kiba; cyangwa se niba icyo gikorwa gisaba ko hagomba kugaragazwa ko uwakoze buri cyaha mu byavuzwe biteganywa n'iyo ngingo yari yaritswemo n'umugambi wo kuvangura, by'umwihariko, umuntu yakoreye ibyaha kubera impamvu zasobanuwe.

3. <u>Isesengura ry'Urugereko</u>

460. Mbere na mbere, Urugereko rw'Ubujurire ruributsa ibikubiye mu ngingo ya 3 ya Sitati.

> Ingingo ya 3 : Ibyaha byibasiye inyokomuntu
>
> Urukiko mpuzamahanga mpanabyaha rufite ububasha bwo gucira imanza abantu bakekwaho kuba barakoze ibyaha by'ubugome bikurikira mu gihe byakozwe mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri abo ari bo bose, kubera ubwenegihugu bwabo, umutwe wa politiki barimo, ubwoko bwabo cyangwa idini ryabo :
>
> a) Ubuhotozi;
> b) Itsembatsemba;
> c) Gushyira mu bucakara;
> d) Kumenesha;
> e) Gufunga;
> f) Kwica urubozo;
> g) Gusambanya ku gahato.
> h) Ugutoteza bishingiye ku mpamvu za politiki, z'ubwoko n'iz'idini;
> i) Ibindi bikorwa bibi birenze kameremuntu

461. Urugereko rw'Ubujurire rw'Urukiko rwa TPIY rwigeze gusuzuma ikibazo cy'ivangura rikorwa n'umuntu byagambiriwe, ku birebana n'ibyaha byibasiye inyokomuntu, nk'uko biteganywa n'ingingo ya 5 ya Sitati y'urwo Rukiko. Mu rubanza rwa Tadic mu bujurire, urwo Rugereko rwafashe uyu mwanzuro:

> […] Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemeza ko mu byaha byose byibasiye inyokomuntu haba harangwamo igitekerezo cy'ivangura. Icyo gitekerezo cy'ivangura ni kimwe mu byangombwa giteganyijwe ku buryo bweruye ku byaha bimwe na bimwe, ni ukuvuga uburyo bwose bw'ivangura buvugwa mu ngingo ya 5 h) ya Sitati.[840]

[840] Urubanza rwa Tadic mu bujurire, igika cya 305.

462. Cyakora, uru Rugereko rw'Ubujurire rusanga ubwo bukemuramanza hamwe n'igisobanuro cy'ingingo ya 5 ya Sitati ya TPIY byahabwa gusa agaciro gaciriritse mu gusuzuma ingingo ya 3 ya Sitati, kubera ahanini ko izo ngingo zombi zitandukanye cyane. Mu by'ukuri, mu ntangiriro yayo ingingo ya 5 ya Sitati ya TPIY ntiteganya nk'iriya yindi ko ibyaha byibasiye inyokomuntu bikurikiranwa mu rukiko ari uko "byakozwe mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri abo ari bo bose kubera ubwenegihugu bwabo, umutwe wa politiki barimo, ubwoko bwabo cyangwa idini ryabo."[841] Cyakora, ntawabiheraho ngo ahite yemeza nta shiti ko inyongera iri mu ntangiriro y'ingingo ya 3 ya Sitati ya TPIR, yatuma ibisobanuro byayitangwaho binyurana n'ibikubiye mu rubanza rwa Tadic mu bujurire, ku buryo umuntu yavuga ko iyo ngingo ya 3 iteganya ko abakoze ibyaha byibasiye inyokomuntu bakurikiranwa ari uko hagaragaye ko bakoze ivangura babigambiriye.

463. Urugereko w'ubujurire rugomba rero kwerekana uburyo abanditse amategeko (ni ukuvuga Inama Ishinzwe Amahoro ku Isi) bashakaga ko ingingo ya 3 yumvikana. By'umwihariko, rugomba kwemeza niba hari itandukaniro hagati y'ingingo ya 3 ya Sitati y'uru Rukiko n'iya 5 ya Sitati ya TPIY, ku buryo byatuma uru Rugereko butagendera ku bisobanuro byatanzwe ku rubanza rwa Tadic ku byerekeye ibyaha byibasiye inyokomuntu.

464. Urugereko rw'Ubujurire ruvuga ko uretse ku birebana n'itoteza, amategeko mpuzamahanga arengera abantu mu gihe cy'intambara ntasaba ko mu byaha byibasiye inyokomuntu, harangwamo igitekerezo cy'ivangura nka kimwe mu bintu byangombwa bigize ibyo byaha.[842] Kubera iyo mpamvu, Urugereko rw'Ubujurire rwunga mu myanzuro n'isesengura rusange bikubiye mu rubanza rwa Tadic mu bujurire, nk'uko

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[841] Ingingo ya 5 ya Sitati y'Urukiko mpuzamahanga rwashyiriweho icyahoze ari Yugosilaviya yanditswe itya: " Urukiko rufite ububasha bwo gucira imanza abantu bagize uruhare mu byaha by'ubugome bikurikira byakorewe mu mirwano yo hagati y'ibihugu cyangwa hagati y'abenegihugu ubwabo, yibasiye abaturage b'abasiviri abo ari bo bose: (a) Ubuhotozi; (b) itsembatsemba; (c) gushyira mu bucakara; (d) kumenesha; (e) gufunga; (f) kwica urubozo; (g) gusambanya ku gahato; (h) gutoteza bishingiye ku mpamvu za politiki, z'ubwoko n'izidini; (i) ibindi bikorwa birenze kameremuntu."

[842] Urubanza rwa Tadic mu bujurire, igika 288.

byasobanuwe haruguru.[843] Cyakora, n'ubwo igitekerezo cy'ivangura atari cyo shingiro ry'icyaha ubwacyo, ibyaha byibasiye inyokomuntu by'ingeri zose bishobora gukorwa mu rwego rw'ibitero byibasira bamwe mu baturage b'abasiviri. Nk'uko byemejwe mu rubanza rwa Tadic mu bujurire: "ni byo ko akenshi ibyaha byibasiye inyokomuntu bikorerwa abaturage b'abasiviri bazira ubwenegihugu, umutwe wa politiki, ubwoko cyangwa idini.[844] Ni muri urwo rwego no mu gusuzuma ibyabaye mu Rwanda (aho abaturage b'abasiviri bibasiwe bicwa mu bitero birangwa n'ivangura), Inama Ishinzwe Amahoro ku Isi yemeje ko ububasha bw'Urukiko mu byerekeye ibyaha byibasiye inyokomuntu bwibanda ku byaha byakozwe hashingiwe ku ivangura. Ni ukuvuga ko Inama Ishinzwe Amahoro ku Isi yashatse ko Urukiko rureka gukurikirana abakoze ibindi byaha byaba byaribasiye inyokomuntu.

465. Urugereko rw'Ubujurire rwasanze mu gukora ibyo, Inama ishinzwe amahoro ku isi itaranyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara[845]. Nta n'ubwo kandi yahinduye ibisabwa n'ayo mategeko kugira ngo bivugwe ko habayeho ibyaha byibasiye inyokomuntu. Twavuga ko ububasha bw'urwo Rukiko bwagarukirijwe gusa ku rutonde rw'ibyaha bimwe, bishobora mu by'ukuri gukorwa bitewe n'uko ibintu byifashe. Na none, Urugereko rw'Ubujurire rusanga ingingo ya 5 ya Sitati ya TPIY iteganya, mu buryo butaziguye, ko ibyo byaha bigomba kuba bifitanye isano n'intambara. Nk'uko byemejwe mu rubanza rwa Tadic mu bujurire, "ibyo bigabanya ingeri z'ibyaha

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843 Urubanza rwa Tadic mu bujurire, ibika 287 n'ibikurikira. RUmaze gukora isesengura, Urugereko rw'Ubujurire rwemeje, mu gika cya 292 cy'urwo rubanza, ko " bikwiye kwemeza ko amategeko mpuzamahanga ashingiye ku muco-karande, nk'uko yahindutse amahame rusange kubera gukomoka ku masezerano mpuzamahanga no ku bukemuramanza bwo mu nkiko zo mu bihugu, adasaba ko ibyaha byose byibasiye inyokomuntu bigomba kurangwamo igitekerezo ubikora aba afite cyo kuvangura cyangwa gutoteza". Muri urwo rubanza, Ugurereko rw'Ubujurire rwa TPIY rwashingiye cyane cyane ku bisobanuro birebana na: Amasezerano y'i Londres yasinywe ku itariki 8 Kanama 1945, Sitati y'Urukiko Mpuzamahanga rw'i Tokyo, itegeko Nº 10 ry'inama ishinzwe ubugenzuzi (Conseil de contrôle), umushinga w'urwunge rw'amategeko yerekeye ibyaha bibangamiye amahoro n'umutekano bya muntu, na Sitati y' i Roma.

844 Urubanza rwa Tadic mu bujurire, Igika 297.

845 Kuri iki kibazo, Urugereko rw'Ubujurire ruributsa imyanzuro yafashwe mu rubanza rwa Tadic (igika cya 296) : "Ni uburenganzira bw'Inama ishinzwe amahoro ku isi, haseguriwe iyubahirizwa ry'amahame remezo agenga amategeko mpuzamahanga ashingiye ku muco-karande [inyandiko yo hasi ku rupapuro ntikubiyemo]. Ariko, muri rusange, ingingo za Sitati zisobanura ibyaha Urukiko rufitiye ububasha bwo kuburanisha zigomba iteka kumvikana ko zikomoka ku mategeko mpuzamahanga ashingiye ku muco-karande, uretse igihe hagaragajwe icyifuzo cyo kubitandukanya mu nyandiko ya Sitati, cyangwa mu zindi nyandiko zemewe".

bikurikiranwa, ugereranyije n'ibiteganywa n'amategeko mpuzamahanga ashingiye ku mucokarande ku byerekeye ibyaha byibasiye inyokomuntu."[846] Aho kandi, mu kugabanya ibyaba birebwa n'iyo ngingo, Inama Ishinzwe Amahoro ku Isi ntiyifuzaga ko igisobanuro gikubiye muri Sitati ya TPIY cyaba ihame rivuguruza amategeko mpuzamahanga ashingiye ku muco. Mu byerekeye uru rubanza, Urukiko rwasanze rufite ububasha bwo kuburanisha ibyaha byibasiye inyokomuntu (nk'uko bizwi mu mategeko mpuzamahanga ashingiye ku muco), ariko bikaburanishwa gusa, "iyo byakozwe mu rwego rw'ibitero rusange kandi biri kuri gahunda, byibasiye abaturage b'abasiviri abo ari bo bose", bishingiye kw'ivangura. Icyaha gikurikiranwa ni icyakozwe muri uwo rwego gusa. Koko rero, ibi bigabanya gusa ibyaha biri mu bubasha bw'Urukiko, ariko nta kintu cyiyongera ku byangombwa bigize icyaha, nk'uko bizwi ma mategeko mpuzamahanga ashingiye ku muco.

466. Kubera iyo mpamvu, uretse iryo gabanya ry'ububasha, ibyo byaha bikomeza kugengwa nk'uko bisanzwe n'amategeko mpuzamahanga ashingiye ku muco. Ayo mategeko akaba yemeza ko ivangura atari ikintu kibandwaho mu kwerekana ibyaha byibasiye inyokomuntu, kereka igihe hari itoteza.

467. Ikigaragara mu ngingo ya 3 ya Sitati ni uko n'ubwo yaba atari afite igitekerezo cy'ivangura igihe yakoreraga umuntu runaka icyaha kivugwa, uregwa yari azi ko igikorwa cye kiri mu rwego rwo gushyira mu bikorwa ibitero bishingiye kw'ivangura byibasiye abaturage b'abasiviri; kabone n'iyo ibyo bitero byaba byaragabwe n'abandi bantu, ndetse n'uregwa akaba abyigurutsa. Kubera izo mpamvu, igihe bigaragara ko uregwa yari azi ko hari isano hagati y'ibyo bikorwa byibasira bamwe, si ngombwa ko Porokireri yerekana ku buryo burambuye ko icyaha cyaregewe cyakorewe umuntu runaka azira ivangura. Aho byemerwa gusa mu mategeko mpuzamahanga ashingiye ku muco, ni mu gihe birebana n'imanza zerekeranye itoteza.

[846] Urubanza rwa Tadic mu bujurire, igisobanuro nº 356 cyo hasi ku rupapuro.

468. Hakurikijwe ibi bisobanuro n'umwanzuro w'uko itoteza ari cyo cyaha cyonyine kigize ibyaba byibasiye inyokomuntu gisaba gutangirwa ibimenyetso bigaragaza ko cyakozwe mu rwego rw'ivangura, Urugereko rw'Ubujurire rusanga interuro iri ku ruhembe rw'ingingo ya gatatu ya Sitati iramutse ifashwe nk'aho isaba ko hatangwa ibimenyetso byemeza ko nyirugukora ibyaha byibasiye inyokomuntu yari afite igitekerezo cy'ivangura rivugwa ku buryo bweruye, ariko muri make cyane, mu ngingo ya 3 h) ya Sitati (gutoteza), byaba ari ugusubiramo, kandi atari ngombwa, ibyanditse. Iyo nteruro ifatwa rero nk'aho isaba ko hatangwa ikimenyetso kigaragaza igitekerezo cy'ivangura.[847]. Nk'uko buri wese abizi, mu mahame y'ingenzi agenga gusobanura amategeko harimo rimwe rivuga ko nta ngingo, cyangwa igice cy'ingingo, cyakumvikana nk'aho ntacyo cyongeraho cyangwa se ntacyo kimaze, keretse nta wundi mwanzuro ushoboka wagerwaho. Umuntu agomba kugendera ku ihame rivuga ko uwashyizeho ayo mategeko yari agambiriye guha uburemere buri jambo ryakoreshejwe.

469. Kubera izo mpamvu, Urugereko rw'Ubujurire rusuzumye iyi mpamvu y'ubujurire, maze rwanzura ruvuga ko:

1) Ingingo ya gatatu ya Sitati idasaba ko ibyaha byose byibasiye inyokomuntu bivugwa muri iyo ngingo, bikorwa kubera impamvu z'ivangura.

2) Ingingo ya gatatu iteganya ko ububasha bw'Urukiko bugarukira ku byaha byibasiye inyokomuntu byakozwe mu bihe bidasanzwe, ni ukuvuga "mu rwego rw'ibitero rusange kandi biri kuri gahunda byibasiye abaturage b'abasiviri abo ari bo bose," ku mpamvu izo ari zo zose zishingiye ku ivangura.

[847] Interuro y'iyi ngingo ivuga ivangura rishingiye ku mpamvu "z'ubwenegihugu, iza politiki, iz'ubwoko cyangwa iz'idini…", naho ingingo ya 3(h) ya Sitati ikaba ivuga "ugutoteza bishingiye ku mpamvu za politiki, z'ubwoko n'iz'idini".

C. Impamvu y'ubujurire ya kane: ingingo ya 6 1) ya Sitati

1. Ibivugwa n'ababuranyi.

470. Mu mpamvu ya kane y'ubujurire, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'amategeko, ubwo rwemezaga ko gushishikariza abandi bantu gukora ibyaha biteganywa n'ingingo ingingo ya 6(1) ya Sitati, biba icyaha iyo byakozwe ku buryo butaziguye kandi mu ruhame.[848] Porokireri avuga ko igikorwa cyo gushora abandi bantu mu cyaha bifite intera isumbye iy'igikorwa cyo guhamagarira abandi bantu, mu buryo butaziguye kandi mu ruhame, gukora icyaha, kuko bitari ngombwa ko gikorwa ku buryo butaziguye kandi mu ruhame.[849]

471. Yifashishije amahame yo gusobanura akubiye mu masezerano y'i Viyene [Vienne] yo mu mwaka wa 1969 yerekeye amategeko agenga amasezerano mpuzamahanga, Porokireri avuga ko "uburyo butandukanye bw'ubufatanyacyaha buteganywa n'ingingo ya 6 1) bugomba kwumvikana uko buteye ntacyongeweho, hashingiwe ku ntego ya Sitati, bityo gushishikariza abandi bantu gukora icyaha bikumvikana mu buryo busanzwe, ni ukuvuga ko kubikorera mu ruhame cyangwa ku buryo butaziguye atari kamara ngo icyo cyaha kibeho"[850]. Ibyo Porokireri abikomora ku mpamvu y'uko icyifuzo cya bene urwo ruhare

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[848] Imyanzuro ya Porokireri, igika cya 5.1 Porokireri arerekana ko n'ubwo Akayesu yahamwe n'ibyaha byerekeye gushishikariza abandi gukora ibyaha bitandukanye, nta na kimwe yigeze ahanagurwaho hashingiwe ku mpamvu z'uko iryo shishikariza ritabaye mu ruhame cyangwa mu buryo butaziguye. Imyanzuro ya Porokireri, igika 5.2.

[849] Imyanzuro ya Porokireri, igika cya 5.9. Porokireri aributsa ko Urugereko rwa Mbere rw'Iremezo rwifashishije ibitekerezo bikubiye mu nyandiko yitwa "*The International Criminal Tribunal for Rwanda*"[Urukiko Mpuzamahanga Nshinjabyaha rwashyiriweho u Rwanda] ya Morris na M.P.Sharf (hano hasi turayita "Morris na Scharf) yatangajwe na "Transnational Publishers Inc", mu wa 1998. Rwifashishije kandi, mu buryo bwo kugereranya, ingingo ya 6(1) ya Sitati n'ingingo ya 2(3)(b) y'umushinga w'urwunge rw'amategeko yerekeye ibyaha bibangamiye amahoro n'umutekano bya muntu yo mu wa 1996 (hano hasi uritwa "umushinga w'urwunge rw'amategeko yerekeye ibyaha"). Porokireri aravuga ati n'ubwo mu nyandiko ya Morris na Scharf byanditse ko "ishishikariza rivugwa mu ngingo ya 6(1) rihuye n'irivugwa mu ngingo ya 2(3)(f) y'umushinga w'urwunge rw'amategeko yerekeye ibyaha, umuntu yabona ko icyo izo nyandiko zombi zishaka kuvuga ari uko ishishikariza ry'icyaha mu ruhame kandi mu buryo butaziguye rikubiye mu gukoresha abandi icyaha kandi bifite aho bihurira, bikaba ariko bitavuga ko gukoresha abandi icyaha bigarukira gusa ku kubahamagarira kugikora." Imyanzuro ya Porokireri, igika cya 5.12. Porokireri avuga ko kwifashisha umushinga w'urwunge rw'amategeko ahana mu gusesengura, bidashobora guhabwa agaciro karuta ibisanzwe biteganyijwe na Sitati. Imyanzuro ya Porokireri, Igika cya 5.12.

[850] Imyanzuro ya Porokireri, igika 5.17. Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000, urup. 298.

rwavuzwe n'Urugereko rwa Mbere rw'Iremezo kiramutse cyemewe, ni ukuvuga ko umuntu ushishikariza abandi bantu umugambi yaryozwa icyaha ari uko gusa yabikoreye ku mu ruhame, ni ukuvuga aho amategeko yemera ko ari ku karubanda.[851] Porokireri avuga ko kugira ngo habeho uburyozwacyaha, ntacyo bihinduraho yaba icyaha cyarakorewe muri bisi, mu busitani rusange aho abantu benshi bahurira, mu modoka cyangwa mu busitani by'umuntu ku giti cye, ngo kubera ko igitekerezo cyo gukora icyaha ari kimwe muri izo ngero zose. Uburyozwacyaha bw'umuntu ku giti cye buba buriho hakurikijwe ingingo ya 6 1) ya Sitati[852]. Porokireri arongera ati biramutse byemejwe ko icyo cyaha kiba cyo iyo gikorewe mu ruhame kandi ku buryo butaziguye, byaba biburijemo biriya bivuga by'umwihariko ku "guhamagarira abandi, mu buryo butaziguye kandi mu ruhame, gukora jenoside", nk'uko biteganywa n'ingingo ya 2 n'iya 3c) za Sitati.[853]

472. Ku birebana n'umuti w'icyo kibazo, Porokireri asaba Urugereko rw'Ubujurire kuvanaho uwo mwanzuro wafashwe w'Urugereko rwa Mbere rw'Iremezo kuri icyo kibazo.[854]

473. Akayesu avuga ko n'ubwo Urugereko rw'Ubujurire rwakwakira iyo mpamvu y'ubujurire, nta nkurikizi byagira ku mikirize y'Urubanza mu rw'iremezo. Ni cyo gituma asaba Urugereko rw'Ubujurire kutirirwa rusuzuma iyo mpamvu y'ubujurire.[855] Kubera ibyo, Akayesu asaba Urugereko rw'Ubujurire ko ruramutse rwemeje gusuzuma iyo mpamvu mu mizi yayo, rwareka abandi bavoka baburanira abaregwa barebwa n'icyo kibazo bakagira na bo icyo bakivugaho.[856] Byongeye kandi, Akayesu yibaza niba iki kibazo

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[851] Imyanzuro ya Porokireri, igika 5.21.

[852] Imyanzuro ya Porokireri, igika 5.21. Porokireri ahamya ko ihame ry'uko icyaha cyabaho ari uko cyakozwe "mu ruhame kandi mu buryo butaziguye" ryaba rinyuranye n'igitekerezo abanditse iyo Sitati bari bafite, kubera ko byasonera bamwe mu bagomba gushinjwa […] kandi bakwiriye kuba bahanwa".Imyanzuro ya Porokireri, igika 5.26.

[853] Imyanzuro ya Porokireri, igika 5.27. Porokireri avuga ko "aryozwa icyaha hakurikijwe ingingo ya 6(1), umuntu wese uhamagarira ku bwende bwe abandi gukora icyaha (yifuza ko gitsotsobwa cyangwa se azi ko icyo gikorwa cye gishobora kuba nyirabayazana) kandi uruhare rwe rukaba ari ingirakamaro ku buryo butaziguye mu ikorwa ry'icyo cyaha, kabone n'iyo igikorwa cy'uwo muntu ufatwa nk'icyitso cyaba cyabereye mu ruhame cyangwa se mu bwiherero". Imyanzuro ya Porokireri, igika 5.31.

[854] Imyanzuro ya Porokireri, igika 5.32.

[855] Imyanzuro ya Akayesu isubiza, igika 44.

[856] Imyanzuro ya Akayesu isubiza, igika 45.

gikwiriye koko gusuzumwa n'Urugereko rw'Ubujurire. Aha, arerekana inyandiko ikubiyemo ibisobanuro ya CDI [Komisiyo ya Loni ishinzwe amategeko mpuzamahanga] ku mushinga w'urutonde rw'amategeko ahana ibyaha, Porokireri yifashishije.[857] Akayesu akaba rero avuga ko atari ngombwa ko Urugereko rw'Ubujurire rusuzuma ubujurire bwa Porokireri kuri icyo kibazo rugamije gusa gutanga ibisobanuro binoze ariko bisa nk'ibintu by'umurimbo.[858]

2. Isesengura ry'Urugereko

474. Urugereko rwa Mbere rw'Iremezo rwasesenguye ingingo ya gatandatu ya Sitati (yerekeye uburyozwacyaha bw'umuntu ku giti cye). Mu myanzuro rwafashe, harimo ikurikira:

> Uburyo bwa kabiri bw'ubufatanyacyaha ni uguhamagarira abandi bantu gukora icyaha, mu ngingo ya 6(1) ya Sitati, bikaba byitwa "*incitation*" mu nyandiko y'igifaransa naho mu y'icyongereza bikitwa "*instigation*". Cyakora, mu cyongereza amagambo "*incitement*" na "*instigation*" avuga kimwe. Mu nyandiko zimwe z'amategeko mpuzamahanga, bakoresha ijambo "*instigated*" cyangwa "*instigation*" bashaka kuvuga "*incitation*". Ariko rero , mu miryango imwe y'amategeko, cyane cyane ashingiye ku byo bita *"civil law",* ayo magambo yombi aratandukanye cyane. Kandi n'ubwo yaba avuga kimwe, ikibazo ni ukumenya niba ijambo "*instigation*" rivugwa mu ngingo ya 6(1) rigomba kumvikanamo ko hari ibikorwa runaka byakozwe mu buryo butaziguye kandi mu ruhame, nk'uko byumvikana iyo hakoreshejwe ijambo "*incitement*", cyane cyane mu byerekeye guhamagarira abantu gukora jenoside (Ingingo ya 2(3)(c) ya Sitati), aho ijambo "*incitation*" ry'igifaransa rihindurwa "*incitement*" mu cyongereza, mu mwanya wo gukoresha "*instigation*". Hari abemeza ko ibyo ari byo. Uru Rugereko na rwo niko rwemera iki gisobanuro[859].

475. Porokireri avuga ko icyo gisobanuro cy'ingingo ya 6(1) gikosamye, bikaba ari byo byatumye Urugereko rwa Mbere rw'Iremezo rwemeza ko "guhamagarira abantu gukora icyaha" bisaba ko icyo gikorwa kiba cyabaye mu buryo butaziguye kandi mu ruhame. Urugereko rwa Mbere rw'Iremezo rwagereranyije ingingo ya 6(1) (ahakoreshwa ijambo "*instigated*" mu cyongereza) n'iya 2(3)(c) ya Sitati za Sitati (ahakoreshwa ijambo

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[857] Imyanzuro ya Akayesu isubiza, igika 46. Aha, Akayesu avuga ko niba Umushinjacyaha yarashakaga kurega abantu bahamagariye, cyangwa bashishirikaje abandi gukora ibyaha, ariko babikorera mu bwiherero, yagombaga gukora inyandiko z'ibirego ashingiye kuri ibyo bisobanuro.
[858] Imyanzuro ya Akayesu isubiza, igika 47.
[859] Inyandiko y'Urubanza mu rw'iremezo, igika 481 (inyandiko zo hasi ku rupapuro ntazirimo).

"*incitement*" mu cyongereza, rusanga ayo magambo yombi yafatwa ko ari guhamagarira abantu gukora jenoside, ari nayo mpamvu rushyigikira igisobanuro cyavuzwe.[860] Muri icyo cyemezo, Urugereko rwa Mbere rw'Iremezo rushingira ku bitekerezo by'impuguke zimwe na zimwe ("abantu bamwe"), rugasubiramo ibyanditswe na "Morris and Scharf", mu gisobanuro cyo hasi ku rupapuro.

476. Mbere na mbere, Urugereko rw'Ubujurire rwasuzumye ibikubiye mu gitabo cya Morris na Scharf. Rusanga bisa n'aho Morris na Scharf bagereranyije gusa muri rusange ibikubiye mu mushinga w'urutonde rw'amategeko ahana ibyaha (hamwe n'ibisobanuro byomyetseho) n'igisobanuro cyemejwe muri Sitati, byombi bikaba byerekeye iryozwacyaha ry'umuntu ku giti cye ku byerekeye guhamagarira abantu gukora ibyaha.[861] Ntawakwemeza ko abo banditsi bageze ku myanzuro ihuye koko n'iyo babitirira.[862] Ku birebana n'isesengura ryakozwe n'Urugereko rwa Mbere rw'Iremezo, igitekerezo cy'uru Rugereko gishingiye ku kugereranya muri rusange ingingo zigize amategeko mpuzamahanga ateganya ibintu birangwa n'uko bikorewe "mu ruhame" kandi akabigenderaho.[863] Ikibazo gihari ni ukumenya niba isensengura ry'Urugereko rwa Mbere rw'Iremezo rikosamye, by'umwihariko kumenya niba rwarakoze ikosa mu kwemeza ko ijambo "*instigated*" mu cyongereza, rikoreshwa mu ngingo ya 6(1) ya Sitati, rigomba, byanze bikunze, kumvikana nk'aho rivuga guhamagarira, abantu mu buryo butaziguye kandi mu ruhame, gukora icyaha.

[860] Inyandiko y'Urubanza mu rw'iremezo, igika 481.
[861] Ku rupapuro rwa 238 n'urwa 239 rw'igitabo cyabo, Morris na Scharf banditse ko "Inama Ishinzwe Amahoro ku Isi yamaganye ibyaha binyuranyije n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara byabaye mu Rwanda, kandi yibutsa ihame ry'iryozwacyaha rya nyirubwite mu byerekeye gahamagarira abandi ikorwa ry'ibyo byaha. Aka gace k'ingingo ya 6(1) gasa n'ingingo ya 2(3)(f) y'inyandiko yitwa "Draft Code"[Umushinga w'urwunge rw'amategeko ahana] ILC (Komisiyo ya Loni ishinzwe amatgeko mpuzamahanga] mu buryo bukurikira"(inyandiko yo hasi ku rupapuro ntikubiyemo).
[862] Urugereko rw'Ubujurire ruremeza cyane cyane yuko nta kintu muri iyo nyandiko cyerekana ko Morris na Scharf bigeze basuzuma by'umwihariko ukuntu ingingo ya 6(1) ya Sitati ibuzemo ijambo "mu ruhame".
[863] Urugereko rwa Mbere rw'Iremezo rwakoresheje ingingo ya 2(3)(f) y'inyandiko yitwa *"Draft Code of Crimes"(*nk'uko Morris na Scharf bayifashishije) n'ingingo ya 2(3)(c) ya Sitati. Inyandiko y'Urubanza mu rw'iremezo, igika 481.

477. Ingingo ya 6(1) ya Sitati, yanditse mu ndimi ebyiri zigenderwaho kimwe, iteganya ko:

> Umuntu uwo ari we wese wacuze umugambi, uwawuhamagariye abandi, uwategetse gukora icyaha, uwagikoze cyangwa ku bundi buryo ubwo ari bwo bwose, agafasha kandi agashyigikira gucura umugambi, gutegura, cyangwa gutsotsoba icyaha cy'ubugome kivugwa kuva ku ngingo ya 2 kugeza ku ya 4 y'iyi Sitati, akiryozwa ku giti cye.[864]

478. Hari itandukanyirizo rigaragara cyane hagati y'ibyanditse mu cyongereza n'ibyanditse mu gifaransa. Mu by'ukuri, mu cyongereza hakoreshejwe ijambo "*instigated*" naho mu gifaransa hakoreshwa ijambo "*incité*". N'ubwo bimeze gutyo, Urugereko rw'Ubujurire rusanga ayo magambo yombi adatandukanye mu cyo asobanura. Urugereko rw'Ubujurire rushimangira cyane ko ayo magambo yombi adakomoza ku birebana n'uko igikorwa cyo guhamagarira abandi gukora icyaha kiba icyaha ari uko gikozwe mu ruhame kandi mu buryo butaziguye. Kubera ibyo, mu gusobanura iyi ngingo hakurikijwe imyumvikanire isanzwe y'iri jambo," [865] Urugereko rw'Ubujurire rusanga n'ubwo iryo jambo "*instigation*" rimwe na rimwe rivuga ko ari uguhamagarira abantu, mu ruhame kandi mu buryo butaziguye, gukora icyaha, ibyo atari impamvu kamara ngo icyo cyaha kibe kibayeho. Mu ngingo ya 6(1) ntaho bigaragara ko ibyo ari kamara. Urugereko rw'Ubujurire rwemeranya na Porokireri ko "iyo abanditse iyi Sitati bashaka guhinira iyo mvugo '*instigation'* , ku byaha bikorewe mu ruhame kandi mu buryo butaziguye gusa, umuntu ashyize mu gaciro yabona ko baba barabivuze ku buryo bweruye."[866] Birumvikana koko ko "inyito iyi n'iyi yahabwa isesengura ryihariye niba ba nyirubwite ari cyo gitekerezo bari bafite."[867] Ntacyemeza rero ko, kuri iki kibazo, ba nyirubwite babitekerezaga gutyo.

479. Byongeye kandi, Urugereko rw'Ubujurire rusanga ubwo buryo bwo kwumva iryo jambo bushimangirwa n'ibikubiye mu Ngingo ya 2(3)(c) ya Sitati, aho bigaragara ko

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[864] Mu nyandiko y'umwimerere nta bwo bitsindagiye gutyo.
[865] Ingingo ya 31 1) y'Amasezerano y'i Vienne yerekeranye n'amategeko agenga Amasezerano mpuzamahanga.
[866] Imyanzuro ya Porokireri, igika 5.27.
[867] Ingingo ya 31 4) y'Amasezerano y'i Vienne yerekeranye n'amategeko agenga Amasezerano mpuzamahanga.

Inama Ishinzwe Amahoro ku Isi yakoresheje, mu buryo bweruye, amagambo amwe n'ayo mu Masezerano y'i Jeneve yerekeye jenoside[868]. Iyo Ngingo igira iti: "

Ibikorwa bikurikira birahanirwa:

[…]

(c) Guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside."[869]

480. By'umwihariko, ku birebana no guhamagarira abantu gukora jenoside, Sitati ivuga ku buro bweruye ko icyo gikorwa kirangwa n'uko cyabereye mu ruhame kandi mu buryo butaziguye, ibyo bikaba bidakubiyemo ubundi buryo bwo guhamagarira abantu gukora jenoside, harimo no kubibahamagarira ahantu hatari mu ruhame. Iyo nyongera ntiyashyizwe mu buryo bweruye mu ngingo ya 6(1) ya Sitati. Urugereko rw'Ubujurire rusanga iyo ibyo bisabwa biba bigomba no gukurikizwa mu ngingo ya 6(1) ya Sitati, ibiteganyijwe ku buryo bweruye mu ngingo ya 2(3)(c) ya Sitati byari kuba ari nk'amagambo y'uburondogozi gusa.[870]

481. Ni muri urwo rwego, byaba ari amakosa hajemo komeka ayo magambo ku ngingo ya 6(1) ya Sitati iteye ukundi, hagamijwe kwinjiza muri iyi ngingo amagambo yo mu ngingo ya 2(3)(c) ya Sitati yerekana, ku buryo bweruye, ko guhamagarira abantu gukora jenoside ari igikorwa kirangwa n'uko cyabereye mu ruhame. Nk'uko byavuzwe haruguru, ibyo byaba binyuranije n'amahame agenderwaho mu gusobanura amategeko. Muri rusange, ayo mahame yerekana ko ibitanditse kimwe biba bitavuga kimwe.

482. Kubera ibyo, Urugereko rw'Ubujurire rusanga nta mpamvu yatuma umuntu afata umwanzuro w'uko Inama Ishinzwe Amahoro ku Isi yashatse ko ingingo ya 6(1) ya Sitati yaba ikubiyemo ikintu cy'inyongera (kitagaragara mu magambo y'iyi ngingo),

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[868] Ingingo ya III y'Amasezerano agamije kuburizamo no guhana icyaha cya jenoside iteye itya: Ibikorwa bikurikira birahanirwa: (a) Jenoside; (b) Ubwumvikane bugamije gukora jenoside;(c) guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenoside; (d) Ubwinjiracyaha bwa jenoside; (e) Kuba icyitso cy'abakoze jenoside.

[869] Ingingo ya 2(3)(c) ya Sitati (mu nyandiko y'umwimerere ntibishimangiwe). Umuntu kandi yakoresha ingingo ya 2(3)(f) ya Raporo ya *CDI*, iteye itya "umuntu aryozwa ibyaha bivugwa mu ngingo za 17, 18, 19 na 20, igihe: […] f) ahamagariye abandi mu buryo butaziguye kandi ku mu ruhame gukora kimwe muri ibyo byaha, iyo icyo cyaha cyatsotsobwe"(urup. 34).

cyatuma hatangwa igisobanuro gitandukanye n'uko yumvikana mu buryo bworoshye kandi busanzwe.

483. Kubera izo mpamvu, rumaze gusuzuma iyi mpamvu y'ubujurire, Urugereko rw'Ubujurire rusanga guhamagarira abantu gukora icyaha, nk'uko biteganywa n'ingingo ya 6 1) ya Sitati, ubwabyo ari icyaha, kabone n'iyo byaba bitarakozwe "mu ruhame kandi mu buryo butaziguye".

V. IMIKIRIZE Y'URUBANZA

Kubera izo mpamvu, **Urugereko rw'Ubujurire**,

Rumaze kubona ingingo ya 24 ya Sitati n'iya 118 y'Amategeko;

Rumaze kubona imyanzuro y'ababuranyi, yaba iyanditse, cyangwa ibyo bavuze mu magambo ku itariki ya 1 n'iya 2 Ugushyingo 2000;

Ruburanishiriza mu ruhame;

Ku bwumvikane bw'abacamanza bose bagize inteko, rwemeje ko nta ngingo n'imwe y'ubujurire ya Jean-Paul Akayesu ifite ishingiro;

Ruhamishijeho icyemezo kirebana n'ibyaha byose Jean-Paul Akayesu yahamijwe kimwe n'icyerekeye igifungo cya burundu yakatiwe.

Rutegetse ko uru rubanza rwo mu bujurire ruhita rurangizwa nk'uko biteganywa n'ingingo ya 119 y'Amategeko;

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[870] Urubanza rwa Tadic mu bujurire, igika 284.

Rwitaye ku mpamvu ya mbere, iya kabiri n'iya gatatu z'ubujurire bwa Porokireri, **Rwemeje** ko, ku byerekeye ibirwanywa na Porokireri mu rwego rw'amategeko mu bujurire bwe, imyanzuro iboneye irebana n'amategeko yagezweho n'uru Rugereko ikubiye mu nyandiko y'uru rubanza.

Bikozwe mu cyongereza no mu gifaransa, ariko inyandiko y'igifaransa ni yo igenderwaho.

[Umukono]	[Umukono]	[Umukono]
Claude Jorda	Lal Chand Volirah	Muhammed Shahabuddeen

[Umukono]	[Umukono]
Raphael Nieto-Navia	Fausto Pocar

Ku mugereka w'iyi nyandiko y'urubanza, Umucamanza Shahabuddeen yometseho inyandiko ikubiyemo igitekerezo cye.

Ku mugereka w'iyi nyandiko y'urubanza, Umucamanza Nieto-Navia yometseho inyandiko ikubiyemo igitekerezo cye kinyuranye n'icy'abandi.

Bikorewe Arusha, tariki ya 1 Kamena 2001.
Repuburika ya Tanzaniya

[KASHE Y'URUKIKO]

UMUGEREKA A: IMIBURANISHIRIZE MU BUJURIRE[871]

A. Kugenera Akayesu avoka umwunganira

484. Kubera ibibazo byari byavutse hagati ya Akayesu n'abavoka yari yagenewe bo kumwunganira mu rubanza, hashingiwe kandi ku cyemezo cyo ku itariki ya 20 Nzeri 1998, Akayesu yaje gusigara nta avoka umwunganira afite[872]. Ku itariki ya 20 Mutarama 1999, Akayesu yatanze icyifuzo asaba Urugereko rw'Ubujurire kwemeza ko icyemezo cya Gerefiye kibuza Bwana Philipot kumwunganira « nta gaciro gifite kandi kirangwa n'ivangura ». Muri icyo cyifuzo yasabaga kandi Urugereko gutegeka Gerefiye gushyiraho uwo Philipot ngo amwunganire, kuva ku itariki yahise ya 18 Nzeri 1998 (« Icyifuzo gisaba iseswa ry'icyemezo cyafashwe n'urundi rwego »)[873]. Ku itariki ya 30 Werurwe 1999, Urugereko rw'Ubujurire rwategetse Gerefiye gutanga igisubizo kuri icyo Cyifuzo bitarenze itariki ya 12 Mata 1999. Rwanamenyesheje Akayesu ko ibyo azaba avuga ku gisubizo cya Gerefiye, kimwe n'inyandiko gihamya yavuze mu Cyifuzo cye, agomba kubitanga bitarenze itariki ya 26 Mata 1999[874].

485. Cyakora muri icyo gihe, Gerefiye yarimo yitegura gushyiraho undi avoka wo kunganira Akayesu. Bityo rero, mu ibaruwa ye yo ku itariki ya 9 Gashyantare 1999 Gerefiye yashyizeho Giacomo Barletta Caldarera nk'avoka mukuru wunganira Akayesu. Nyuma y'urwandiko rwa Giacomo Barletta Caldarera rwavugaga ko John Philpot n'Akayesu bamushyira ku nkeke idashira bamusaba gusezera ku mirimo ye y' ubwunganizi, ku

[871]Imitwe y'inyandiko zivugwa mu bisobanuro byo hasi ku rupapuro muri uyu mugereka yandukuwe uko iri mu nyandiko z'umwimerere, bityo rero amakosa cyangwa ibintu bituzuye bikubiyemo byandukuwe uko biri.

[872]Ibyo gusubiramo ibyakozwe birebana gusa n'igenwa rya avoka wunganira uregwa, n'ibyo Urugereko rw'Ubujurire rushobora gukora kuri icyo kibazo.

[873]Icyifuzo gisaba guhindura icyemezo cyafashwe n'urundi rwego hakurikijwe ingingo ya 19 ya Sitati hamwe n'ingingo ya 73 n'iya 105 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, Icyifuzo cyihutirwa gisaba ko ababuranyi bahabwa urubuga rwo kwisobanura mu magambo, cyatanzwe ku ya 20 Mutarama 1999.

[874]Icyemezo kigena ingengabihe y'iburanisha, cyo ku ya 30 Werurwe 1999, ariko cyatangajwe ku ya 31 Werurwe 1999.

itariki ya 31 Werurwe 1999, Gerefiye yemeje kugumishaho uwo Giacomo Barletta Caldarera nk'avoka wunganira Akayesu[875].

486. Ku itariki 12 Mata 1999[876], Gerefiye yatanze inyandiko ikubiyemo igisubizo cye ku Cyifuzo cy'Akayesu, maze ku ya 28 Mata 1999 Akayesu na we atanga inyandiko ikubiyemo ibyo avuga ku gisubizo cya Gerefiye[877]. Na none, ku itariki ya 28 Mata 1999, Ishyirahamwe mpuzamahanga ry'abavoka bunganira abaregwa (*« Association internationale des avocats de la défense »)* ryashyikirije Urugereko rw'Ubujurire Icyifuzo cyo kugira icyo ruvuga mu rubanza nk'inshuti y'Urukiko *(« amicus curiae »),* nk'uko biteganywa n'ingingo ya 74 y'Amategeko[878].

487. Urugereko rw'Ubujurire rwafashe icyemezo cyo kudaha ababuranyi urubuga rwo kujya impaka imbere yarwo ku birebana na kiriya cyifuzo, maze ku itariki ya 27 Nyakanga 1999 rufata icyemezo rushingiye gusa ku nyandiko zatanzwe kuri iki kibazo nk'uko zavuzwe haruguru[879].

488. N'ubwo mu Mabwiriza agenga ishyirwaho ry'abavoka bunganira abaregwa hadateganijwe ko uregwa ashobora kujuririra icyemezo cya Gerefiye cyanga kumugenera avoka runaka, Urugereko rw'Ubujurire rwasanze hagomba kubaho uburenganzira bwo

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[875]Icyemezo kigumishaho Giacomo Barletta Caldarera nk'avoka wunganira Akayesu cyo ku ya 24 Werurwe 1999, ariko cyatanzwe ku ya 31 Werurwe 1999. Akayesu yagize icyo avuga kuri icyo Cyemezo ku ya 4 Gicurasi 1999 (Igisubizo cya Jean-Paul Akayesu ku cyemezo cya Gerefeiye cyo ku ya 24 Werurwe 1999 kigumishaho Me Giacomo).

[876]Imyanzuro ya Gerefiye isubiza Icyifuzo gisaba guhindura icyemezo cyafashwe n'urundi rwego hashingiwe ku ngingo ya 19 ya Sitati, hamwe n'ingingo ya 73 n'iya 105 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, yatanzwe ku ya 12 Mata 1999.

[877]Igisubizo cy'Ujurira ku ngingo za Gerefiye cyo ku ya 23 Mata 1999, ariko cyatanzwe ku ya 28 Mata 1999.

[878]Inyandiko ikubiyemo icyifuzo cy'Ishyirahamwe mpuzamahanga ry'abavoka bunganira abaregwa gisaba kugira icyo ruvuga mu rubanza nk'inshuti y'Urukiko *(« amicus curiae »),* (ingingo ya 74 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso), yatanzwe ku ya 28 Mata 1999. Imyanzuro ishyigikiye icyo cyifuzo yatanzwe ku ya 1 Kamena 1999 (Imyanzuro y'Ishyirahamwe mpuzamahanga ry'abavoka bunganira abaregwa). Ingingo ya 74 y'Amategeko igira iti: " Mu gushaka guca urubanza neza, kubera inyungu z'ubutabera, Urugereko rushobora gutumira cyangwa kwemerera igihugu icyo ari cyo cyose, Umuryango uwo ari wo wose cyangwa umuntu wese kurwitaba, kugira ngo asobanure ikibazo iki n'iki rwagennye."

[879] Icyemezo cyerekeye ishyirwaho ry'avoka wunganira uregwa cyo ku itariki ya 27 Nyakanga 1999, ariko cyatangajwe ku ya 28 Nyakanga 1999.

kujuririra icyo cyemezo kugira ngo uregwa ashobore gukoresha nyabyo uburenganzira ahabwa n'ingingo ya 20(4) ya Sitati. Ubwo burenganzira bwemejwe kandi mu zindi manza zaciwe na TPIY. Rumaze kubona ko Gerefiye yari yarashyize izina rya John Philpot ku rutonde rw'abavoka bashobora kunganira abaregwa, kubera ko Akayesu yari yabisabye akomeje, ndetse bikamuha icyizere ko azagenerwa uwo John Philpot nk'avoka mukuru wo kumwunganira, Urugereko rwategetse Gerefiye gushyiraho Philpot nk'avoka mukuru wunganira Akayesu, ibyo kandi bigahera ku itariki ya 22 Nzeri 1998 ubwo izina rye ryashyirwaga ku rutonde rw'abavoka bashobora kunganira abaregwa. Urugereko rw'Ubujurire rwanze kandi kwakira icyifuzo cy'Ishyirahamwe mpuzamahanga ry'abavoka bunganira abaregwa ryasabaga kugira icyo ruvuga mu rubanza nk'inshuti y'Urukiko.

489. Nyuma yaho, ku itariki ya 10 Kanama 1999 Gerefiye yafashe icyemezo cyo gukuraho avoka Caldarera wunganiraga Akayesu. Icyo cyemezo cyagombaga kubahirizwa uhereye ku itariki ya 27 Nyakanga 1999[880].

B. <u>Kwibutsa ibyabaye birebana n'Inyandiko zatanzwe mu bujurire</u>

1. <u>Inyandiko z'ubujurire</u>

490. Ku itariki ya ya 1 Nyakanga 1998, Akayesu yatanze inyandiko y'ubujurire ya mbere (ibaruwa yandikishije intoki). Ku itariki ya 2 Ukwakira 1998, hatanzwe Inyandiko y'ubujurire ya kabiri yateguwe n'avoka umwunganira[881]. Ku itariki ya 2 Ugushyingo

[880]Icyemezo cyo ku itariki ya 10 Kanama 1999 gikuraho Barletta Caldera nk'avoka wunganira Jean-Paul Akayesu, ariko cyatanzwe ku itariki ya 1 Ukuboza 1999.

[881]Inyandiko y'ubujurire yatanzwe ku ya 2 Ukwakira 1998. Porokireri yasabye Urugereko rw'Ubujurire kutakira inyandiko y'ubujurire ya mbere, rugasuzuma gusa inyandiko y'ubujurire ya kabiri. Igisubizo cya Porokireri, ibika 1.33 - 1.38 (Kuri icyo kibazo, reba Ibivugwa na Akayesu ku Gisubizo cya Porokireri, igika cya 3). Mu ntangiriro y'iburanisha mu bujurire, Urugereko rw'Ubujurire ntirwemeye izo ngingo. Rwasanze n'ubwo rwakurikiye, muri rusange, impamvu zikomatanyirije mu nyandiko ya kabiri y'ubujurire bw'Akayesu (mu gihe cy'iburanisha mu bujurire Akayesu yemeye ibikubiyemo mu mizi yabyo) bitavuga ko rwari rwanze ibikubiye mu nyandiko ye y'ubujurire ya mbere. Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushyingo 2000, ibika 9-11.

1998, Akayesu yatanze ubujurire bwe ku gihano yakatiwe[882]. Mu cyemezo rwafashe ku itariki ya 24 Gicurasi 2000, Urugereko rw'Ubujurire rwahaye Akayesu uruhushya rwo kongera mu nyandiko y'ubujurire ye impamvu enye zikurikira: kuba Urugereko rwa Mbere rw'Iremezo rwaremeye ubuhamya bushingiye ku nkuru mbarirano, kuba rwaramwangiye kubaza ibibazo bisa n'ibibwira ubazwa icyo asubiza mu ibaza rinyomoza, kuba ubuhamya bwanditse bw'abagabo bashinjura bwarashyizwe ahagaragara mu buryo bunyuranyije n'amategeko, no kubirebana n'ibyo avuga ku mutangabuhamya wiswe DAAX. Akayesu kandi yemerewe guhindura impamvu y'ubujurire irebana n'ibimenyetso bitatanzwe mu iburanisha. Mu Cyemezo rwafashe ku itariki ya 22 Kanama 2000, Urugereko rw'Ubujurire rwimye Akayesu uruhushya rwo kongera izindi mpamvu z'ubujurire mu nyandiko y'ubujurire cyangwa guhindura zimwe mu mpamvu yari yatanze mbere[883].

491. Ku itariki ya 2 Ukwakira 1998, Porokireri yatanze inyandiko y'ubujurire ikubiyemo impamvu umunani z'ubujurire[884]. Muri iyo nyandiko, yasabaga Urugereko rw'Ubujurire ibintu bikurikira: 1) Gusesa ibyemezo by'Urugereko rwa Mbere rw'Iremezo ku birego bya 6, 8, 10 na 15 (ibyaha biteganywa n'ingingo ya 4 ya Sitati Uregwa yahanaguweho), maze bigasimbuzwa ibyemezo mpamyacyaha ; 2) gusesa ibyemezo byo mu rwego rw'amategeko birimo amakosa. Ku itariki ya 15 Ukwakira 1999, Porokireri yatanze inyandiko ikuraho impamvu ya 6 y'ubujurire[885]. Byongeye kandi, mu myanzuro ye yamenyesheje Urugereko rw'Ubujurire ko akuyeho n'impamvu ya 4 y'ubujurire[886]. Porokireri yavuze kandi ko, mu by' ukuri, impamvu ya mbere itagomba gufatwa mu

[882] Inyandiko y'ubujurire ku bihano byagenwe n'Urugereko, yatanzwe ku itariki ya 2 Ugushyingo 1998.

[883] Urugereko rw'Ubujurire rusanga Akayesu yaragiye akuramo impamvu zimwe na zimwe z'ubujurire mu Nyandiko y'ubujurire, izindi ntiyongere kuzitaho. Izo mpamvu rero ntacyo zivugwaho muri iyi nyandiko y'icibwa ry'urubanza.

[884] Inyandiko y'ubujurire, yatanzwe ku ya 2 Ukwakira 1998.

[885] Mu mpamvu ya 6, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa mu rwego rw'amategeko mu kwemeza ko kugira ngo uregwa afatwe nk'uwacuze umugambi mubisha nk'uko ingingo ya 6(1) ya Sitati ibiteganya, agomba kuba yaracuze uwo mugambi afatanyije na gatozi w'icyaha.

[886] Mu mpamvu ya 4, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu rwego rw'ibyabaye, aho rwafashe umwanzuro uvuga ko « nta bimenyetso byatanzwe byemeza ko, kubera ko yarakoze muri Komine ya Taba igihe ibivugwa mu Nyandiko y'ibirego byabaga, ibikorwa Akayesu ashinjwa bifitanye isano n'intambara».

nk'impamvu y'ubujurire, ko ahubwo ikubiyemo impamvu ya 2, iya 3 n'iya 4[887]. Yanavuze ko nta yindi ngingo yashakaga kongera mu mpamvu y'ubujurire ya 8[888].

2. Itangwa ry'inyandiko

492. Ababuranyi bamaze gutanga inyandiko zabo z'ubujurire, havutse ikibazo cyo gushyiraho avoka wunganira Akayesu. Nk'uko byasobanuwe haruguru, Urugereko rw'Ubujurire rwafashe icyemezo kuri icyo kibazo ku itariki ya 27 Nyakanga 1999. Icyo gihe, rwanemeje ingengabihe y'iburanisha yo gutangamo imyanzuro. Bityo, rwategetse ko Ujurira azatanga imyanzuro y'ubujurire bitarenze itariki ya 25 Ukwakira 1999, naho Usubiza mu bujurire agatanga imyanzuro isubiza bitarenze tariki ya 22 Ugushyingo 1999. Rwanemeje ko ibisubizo ku myanzuro isubiza byagombaga gutangwa bitarenze tariki ya 6 Ukuboza 1999[889].

493. Ku itariki ya 21 Ukwakira 1999, Urugereko rw'Ubujurire rwasubitse ibyo bihe ntarengwa rutegereje ko ibyifuzo binyuranye byatanzwe na Akayesu byakemurwa, muri ibyo byifuzo hakaba harimo nk'icyerekeye amakosa avugwa mu myandikiye ya dosiye yo mu Rugereko rwa Mbere rw'Iremezo[890]. Ibyo byifuzo byakemuwe mu Cyemezo cyafashwe ku itariki ya 24 Gicurasi 2000. Mu Cyemezo kigena ingengabihe y'iburanisha, nacyo cyafashwe kuri iyo tariki ya 24 Gicurasi 2000, Umucamanza wari ushinzwe gutegura dosiye yemeje ko ibihe byo gutanga imyanzuro bisubukurwa, bityo ategeka ko imyanzuro y'ujurira igomba gutangwa bitarenze tariki ya 10 Nyakanga 2000, imyanzuro isubiza

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[887]Imyanzuro ya Porokireri, igika 1.2.
[888]Imyanzuro ya Porokireri, igika 1.15. Mu mpamvu ya mbere avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze amakosa mu rwego rw'ibyabaye no mu rwego rw'amategeko kuko rwemeje ko Akayesu adahamwa n'ibyaha bikubiye mu birego bya 6, 8, 10, 12 na 15. Naho mu mpamvu ya 8, Porokireri agerageza gukubiramo izindi mpamvu zose yifuza, Urugereko rw'Ubujurire ruramutse rubimwemereye.
[889]Icyemezo kirebana n' ishyirwaho ry'avoka wunganira uregwa, 27 Nyakanga 1999.
[890]Icyemezo cyo ku itariki ya 21 Ukwakira 1990 gitegeka isubikwa ry'amatariki ntarengwa imyanzuro yo mu bujurire igomba gutangwamo, ariko cyatanzwe ku ya 26 Ukwakira 1999.

igatangwa bitarenze tariki ya 10 Kanama 2000, naho igisubizo ku myanzuro isubiza kigatangwa bitarenze tariki ya 25 Kanama 2000[891].

494. Ku itariki ya 7 Nyakanga 2000, Akayesu yatanze imyanzuro y'Ubujurire («Imyanzuro ya Akayesu »)[892], naho Porokireri atanga iye ku itariki ya 10 Nyakanga 2000 (Imyanzuro ya Porokireri »). Ku itariki ya 24 Nyakanga 2000, Akayesu yatanze icyifuzo gisaba Urugereko rw'Ubujurire kutakira Imyanzuro ya Porokireri[893]. Umucamanza ushinzwe gutegura dosiye yafashe umwanzuro wemeza ko Icyifuzo cy'ujurira gikemanga imiterere y'ubujurire bwa Porokireri gikwiye gufatwa nk'imyanzuro ye [Akayesu] isubiza iya Porokireri. Cyakora, yemeje ko aramutse abishatse, Akayesu ashobora gutanga indi myanzuro mu gihe ntarengwa cyateganyijwe[894]. Na none, kuri iyo tariki, uwo Mucamanza yabaye asubitse amatariki ababuranyi bagomba gutangiraho imyanzuro yabo, hategerejwe ko ibyifuzo byinshi byatanzwe bifatirwa icyemezo. Yategetse ko imyanzuro y'usubiza mu bujurire izatangwa mu gihe kitarenze iminsi 13 uhereye ku itariki Urugereko ruzaba rwafatiye Icyemezo ku byifuzo byatanzwe, naho igisubizo cy'ujurira ku myanzuro y'usubiza kigatangwa mu gihe kitarenze iminsi 28 uhereye ku itariki Urugereko ruzaba rwafatiye Icyemezo ku byifuzo byatanzwe[895]. Urugereko rw'Ubujurire rwafashe Icyemezo kuri ibyo byifuzo ku itariki ya 22 Kanama 2000, hanyuma ku itariki ya 4 Nzeri 2000, Porokireri atanga imyanzuro isubiza iya Akayesu (Imyanzuro isubiza ya Porokireri)[896]. Akayesu ntiyigeze atanga inyandiko n'imwe isubiza imyanzuro ya Porokireri. Ku itariki ya 19 Nzeri 2000 ni bwo Akayesu na Porokireri batanze ibisubizo

[891]Icyemezo kigena ingengabihe y'iburanisha, 24 Gicurasi 2000.
[892]Atanga imyanzuro ye, Akayesu yanashyikirije Urugereko rw'Ubujurire inyandiko ikomatanyirijemo impamvu z'ubujurire zatanzwe mu Nyandiko z'ubujurire zombi hamwe n'zindi mpamvu yongeyemo amaze gutanga Ibyifuzo bye.

[893]Icyifuzo gisaba Urugereko kutakira Imyanzuro y'Ujurira [Porokireri] hamwe n'igisubizo cye ku myanzuro y'Usubiza mu bujurire [Akayesu], cyatanzwe ku itariki ya 24 Nyakanga 2000.
[894]Icyemezo cy'Urugereko rw'Ubujurire (ku Cyifuzo gisaba kutakira ubujurire bwa Porokireri), 27 Nyakanga 2000.
[895]Icyemezo kigena ingengabihe y'iburanisha, 27 Nyakanga 2000.
[896]Imyanzuro ya Porokireri isubiza, yatanzwe ku itariki ya 4 Nzeri 2000.

byabo ku myanzuro isubiza (« Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri » na « Igisubizo cya Porokireri ku myanzuro isubiza ya Akayesu »)[897].

495. Nyuma yaho, ku itariki ya 2 Ukwakira 2000 Urugereko rwatanze itegeko ryemeza ko ababuranyi bombi bazaburana mu bujurire ku itariki ya 1 Ugushyingo 2000, byaba ngombwa iburanisha rigakomeza no ku ya 2 Ugushyingo 2000[898].

C. Iburanisha mu bujurire

496. Ku itariki ya 1 n'iya kabiri Ugushyingo 2000, Urugereko rw'Ubujurire rwumvise ingingo z'ababuranyi bombi, ibyo bikaba byarabereye ku cyicaro cy'Urukiko Arusha.

D. Isomwa ry'urubanza mu bujurire

497. Ku itariki ya 16 gicurasi 2001, mu rwego rwo kugena ingengabihe y'iburanisha, Urugereko rw'Ubujurire rwashyizeho itegeko ryemeza ko uru rubanza ruzasomwa ku itariki ya 1 Kamena 2001, ku cyicaro cy'Urukiko Arusha[899].

E. Ibyifuzo byatanzwe na Akayesu

498. Ubu bujurire bwaranzwe cyane cyane n'inyandiko nyinshi z'ibyifuzo Akayesu yakomeje gushyikiriza Urugereko, akenshi azisukiranya. Muri izo nyandiko, Akayesu yabyutsaga ibibazo byaba ibyo mu rwego rw'imiburanishirize, cyangwa ibyerekeranye n'impamvu z'ubujurire mu mizi yazo. Muri byifuzo, harimo ibyasabaga uruhushya rwo kongera impamvu nshya mu nyandiko y'ubujurire, ndetse n'ibyasabaga Urugereko kwakira ibimenyetso by'inyongera.

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[897]Ku itariki ya 22 Kanama 2000, Akayesu yatanze ikindi Cyifuzo (Icyifuzo cyihutirwa cya avoka wunganira Uregwa gisaba isubikwa ry'ingengabihe y'iburanisha). Ku itariki ya 24 Kanama 2000, Urugereko rwafashe Icyemezo cyanga kwakira icyo Cyifuzo. Cyakora icyo Cyemezo cyatangajwe ku ya 25 Kanama 2000. Porokireri yatanze igisubizo kuri icyo Cyifuzo ku itariki ya 25 Kanama 2000 (Igisubizo cya Porokireri ku Cyifuzo cy'Ujurira cyo ku ya 21 Kanama 2000 gisaba ko igihe ntarengwa cyakongerwa).

[898]Icyemezo gishyiraho itariki ababuranyi bazaburaniraho mu bujurire, 2 Ukwakira 2000. Reba kandi, hano hasi, Icyifuzo cya Akayesu gisaba ko itariki yiburanisha yasubikwa, cyatanzwe ku ya 30 Ukwakira 2000.

499. Kubera ubwinshi bw'ibyo byifuzo, cyane cyane ko byagiye bitangwa ubutitsa, Urugereko rw'Ubujurire rwategetse Akayesu inshuro ebyiri kubikomatanyiriza mu nyandiko imwe. Ubwo bwari uburyo bwo kumuhatira kwerekana ku buryo busobanutse kandi muri make ingingo zishyigikira ibyo asaba muri buri Cyifuzo cye. Icyemezo kimwe cyamutegekaga gutanga iyo nyandiko cyatanzwe ku itariki ya 30 Ugushyingo 1999[900], ikindi gifatwa ku ya 24 Gicurasi 2001[901].

500. Mu cyemezo cyo ku itariki ya 30 Ugushyingo 1999, Urugereko rw'Ubujurire rwategetse Akayesu gukomatanyiriza hamwe ibyifuzo icyenda yari yararushyikirije hagati y'itariki ya 23 Nzeri n'iya 15 Ugushyingo 1999[902]. Akayesu yatanze icyo Cyifuzo gikomatanyije ku itariki ya 10 Ukuboza (« Icyifuzo gikomatanyije cya mbere »)[903]. Porokireri yatanze

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[899] Icyemezo kigena ingengabihe y'iburanisha, 16 Gicurasi 2001.

[900] Icyemezo kigena ingengabihe y'iburanisha, 30 Ugushyingo 1999.

[901] Icyemezo kigena ingengabihe y'iburanisha, 24 Gicurasi 2000.

[902] Icyifuzo cyo ku itariki ya 23 Nzeri 1999 gisaba Urugereko kongera igihe ntarengwa no kwakira ibimenyetso bishya mu bujurire hakurikijwe ingingo ya 115 n'iya 116 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso; Ibyifuzo byo ku itariki ya 29 Nzeri 1999 no ku ya 4 Ukwakira 1999 bisaba gukuraho Icyemezo cy'ubujurire cyatanzwe na Gerefiye, gukosora ibikubiye muri dosiye no gusubika ibihe ntarengwa by'ubujurire, hakurikijwe ingingo ya 19 n'iya 20 za Sitati, n'ingingo ya 73 n'iya 105 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso; Icyifuzo gisaba ko hasuzumwa ikibazo cyo kuvutsa Uregwa uburenganzira bwo guhabwa avoka umwunganira, gisaba kwigizayo igihe ntarengwa cy'ubujurire, kinasaba Urugereko kwakira ikimenyetso gishya mu bujurire, hakurikijwe ingingo ya 115 n'iya 116 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, cyatanzwe ku ya 25 Ukwakira 1999; Icyifuzo gisaba Urugereko kwakira ibimenyetso bishya mu bujurire, kongera no gusubika ibihe ntarengwa by'ubujurire, no guhagarika ikurikiranacyaha, cyatanzwe ku ya 25 Ukwakira 1999; Icyifuzo cyerekeye guhererekanya ibimenyetso no kwigizayo igihe ntarengwa cy'ubujurire, hakurikijwe ingingo za 68, 73, 107, 115, na 116 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, hamwe n'ingingo ya 20 ya Sitati y'Urukiko, cyatanzwe ku ya 26 Ukwakira 1999; Icyifuzo gisaba guhindura inyandiko y'ubujurire irebana n'ibimenyetso bishya mu bujurire, kwigizayo no gusubika ibihe ntarengwa, no guhagarika ikurikiranacyaha (birebana n'umutangabuhamya wiswe DAAX), cyatanzwe ku ya 10 Ugushyingo 1999; Inyandiko ikubiyemo ibyo uwajuriye avuga ku Gisubizo Porokireri yatanze ku Cyifuzo gisaba gukuraho Icyemezo cy'ubujurire cyatanzwe na Gerefiye, gukosora ibikubiye muri dosiye no gusubika ibihe ntarengwa by'ubujurire, hakurikijwe ingingo ya 19 n'iya 20 za Sitati, n'ingingo ya 73 n'iya 105 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, yatanzwe ku ya 4 Ugushyingo 1999; Icyifuzo gisaba guhindura inyandiko y'ubujurire no gusubika ibihe ntarengwa by'ubujurire, cyatanzwe ku ya 15 Ugushyingo 1999; Icyifuzo gisaba gutunganya bundi bushya dosiye y'urubanza, gushyikirizwa ibikubiye muri dosiye yo mu Rugereko rwa Mbere rw'Iremezo, no kwigizayo ibihe ntarengwa by'ubujurire, cyatanzwe ku ya 15 Ugushyingo 1999. Mu cyemezo cyarwo cyo ku ya 30 Ugushyingo 1999, Urugereko rw'ubujurire rwagize kandi icyo ruvuga ku bisubizo bibiri Porokireri yari yarushyikirije ku itariki ya 15 Ukwakira 1999 ari byo ibi bikurikira: *Igisubizo cya Porokireri ku Cyifuzo cy'Ubwunganizi kirebana no gukuraho icyemezo cyerekeye dosiye y'ubujurire* ; *Igisubizo ku Cyifuzo cy'uwajuriye ari we Jean-Paul Akayesu asabamo kwigizayo ibihe ntarengwa by'ubujurire, no kwakira ibimenyetso bishya mu bujurire, hakurikijwe ingingo ya 115 n'iya 116 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso.*

[903] Imyanzuro y'uwajuriye ku byifuzo bivugwa mu Cyemezo kigena ingengabihe y'iburanisha cyo ku ya 30 Ugushyingo 1999, yatanzwe ku ya 10 Ukuboza 1999.

Igisubizo kuri icyo Cyifuzo ku itariki ya 21 Ukuboza 1999[904]. Cyakora mbere yaho, ku itariki ya 15 Ukuboza 1999, Akayesu yari yatanze Icyifuzo cyihutirwa kandi mu byo yasabaga harimo kongererwa igihe cyo gutanga Igisubizo[905]. Mu Cyemezo cyarwo cyo ku itariki ya 30 Ukuboza 1999, Urugereko rwamwongereye igihe yasabaga[906]. Ku itariki ya 13 Werurwe 2000, Porokireri yatanze Igisubizo cy'inyongera[907].

501. Mu cyemezo cyo ku itariki ya 17 Mata 2000, Umucamanza ushinzwe gutegura dosiye yafashe Icyemezo ku byifuzo bibiri byashyizwe hamwe mu Cyifuzo gikomatanyije cya mbere, byarebanaga cyane cyane n'ibibazo by'imiburanishirize n'ibya dosiye yo mu bujurire. Uwo Mucamanza yategetse Gerefiye kongera inyandiko zimwe na zimwe muri dosiye y'ubujurire, no kuziha ababuranyi[908]. Mu cyemezo rwafashe ku itariki ya 24 Gicurasi 2000, Urugereko rw'Ubujurire rwafashe umwanzuro ku bindi byifuzo byari bitarakemurwa na byo byari byashyizwe hamwe mu Cyifuzo gikomatanyije cya mbere («Icyemezo cyo ku ya 24 Gicurasi 2000 »)[909]. Urugereko rw'Ubujurire rwatanze uruhushya rwo guhindura Inyandiko y'ubujurire, rwemera kandi ko hatangwa ibimenyetso bishya mu bujurire.

502. Mu Cyemezo cyo ku itariki ya 24 Gicurasi 2001 kigena ingengabihe y'iburanisha, Urugereko rw'Ubujurire rwategetse Akayesu gukomatanyiriza mu nyandiko imwe ibyifuzo byose byari bitarakemurwa byatanzwe kuva ku itariki ya 7 Ukuboza 1999, ni ukuvuga ibyari byaratanzwe kuva ku itariki ya 30 Ugushyingo 1999 ubwo hafatwaga

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[904]*Igisubizo cya Porokireri ku Myanzuro y'uwajuriye irebana n'ibyifuzo bivugwa mu Cyemezo kigena ingengabihe y'iburanisha cyo ku ya 30 Ugushyingo 1999,* cyatanzwe ku ya 21 Ukuboza 1999.

[905]Icyifuzo cya Porokireri cyihutirwa gisaba kwigizayo igihe cyo gusubiza « Imyanzuro y'uwajuriye irebana n'ibyifuzo bivugwa mu Cyemezo kigena ingengabihe y'iburanisha cyo ku ya 30 Ugushyingo 1999 », cyatanzwe ku ya 15 Ukuboza 1999.

[906]Icyemezo (ku Cyifuzo cyihutirwa cya Porokireri gisaba kwigizayo ibihe ntarengwa), 30 Ukuboza 1999.

[907]Inyongera ku gisubizo cya Porokireri ku myanzuro Ubwunganizi bwatanze hakurikijwe Icyemezo cy'Urugereko rw'Ubujurire cyo ku ya 30 Ukuboza 1999, yatanzwe ku ya 13 Werurwe 2000. Ku itariki ya 3 Mata 2000, *Porokireri yanatanze kandi indi nyongera ku Gisubizo cye ku myanzuro Ubwunganizi bwatanze hakurikijwe Icyemezo cy'Urugereko rw'Ubujurire cyo ku ya 30 Ukuboza 1999.*

[908]Icyemezo ku mpamvu ya 1 n'iya 7 zo mu mwanzuro w'Uwajuriye, ku birebana n'ibyifuzo bivugwa mu Cyemezo cyo ku ya 30 Ugushyingo 1999 kigena ingengabihe y'iburanisha (kirebana na dosiye y'ubujurire), cyafashwe ku ya 17 Mata 2000, ariko gitanganzwa ku ya 18 Mata 2000.

[909]Icyemezo (ku Byifuzo bya 2, 3, 4, 5, 6 na 8, Imyanzuro y'Uwajuriye irebana n'ibyifuzo bivugwa mu Cyemezo cyo ku ya 30 Ugushyingo 1999 kigena ingengabihe y'iburanisha, 24 Gicurasi 2000.

Icyemezo kigena ingengabihe y'iburanisha, kugeza ku ya 24 Gicurasi 2000[910]. Akayesu yatanze Icyifuzo gikomatanyije ku itariki ya 2 Kamena 2000 (« Icyifuzo gikomatanyije cya kabiri »)[911], hanyuma Porokireri atanga Igisubizo kuri icyo Cyifuzo ku itariki ya 12 Kamena 2000[912]. Ku itariki ya 22 Kanama 2000, Urugereko rw'Ubujurire rwafashe Icyemezo ku Cyifuzo gikomatanyije cya kabiri (« Icyemezo cyo ku ya 22 Kanama 2000 »)[913]. Muri icyo cyemezo, Urugereko rw'ubujurire rwimye Akayesu uruhushya rwo guhindura inyandiko ze z'ubujurire, ndetse runamwangira gutanga ibimenyetso bishya mu bujurire.

503. Akayesu yashyikirije Urugereko ibindi byifuzo byinshi bitari byafatiwe umwanzuro mu Cyemezo cyo ku itariki ya 24 Gicurasi 2000 cyangwa icyo ku itariki ya 22 Kanama 2000. Muri ibyo byifuzo harimo icyasabaga ko hagenwa itariki y'inama ntegurarubanza. Cyakora, iki Cyifuzo nticyakiriwe nk'uko bigaragara mu Cyemezo Urugereko rwafashe ku itariki ya 24 Gicurasi 2000 rugena ingengabihe y'iburanisha[914] . Icyifuzo cyasabaga ko inyandiko Akayesu yashyikirije Urugereko rw'Ubujurire zahindurwa mu rundi rurimi,

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[910]Icyemezo kigena ingengabihe y'iburanisha, 24 Gicurasi 2000. Ibyifuzo bivugwa byari ibi bikurikira: Icyifuzo gisaba guhindura inyandiko y'ubujurire ku birebana n'ihame ryo kutabogama n'ubwigenge by'Urukiko, kinasaba kongera impamvu nshya z'ubujurire mu nyandiko y'ubujurire, cyatanzwe ku ya 7 Ukuboza 1999; Icyifuzo gisaba guhindura inyandiko y'ubujurire (gusobanura neza igice cya 2 cy'ubujurire cyerekeye « kuvutsa uregwa uburenganzira bwo gushyiraho avoka umwunganira ubifitiye ubushobozi »), cyatanzwe ku ya 20 Mutarama 2000 (Ibivugwa na Gerefiye kuri icyo Cyifuzo cyo guhindura inyandiko y'ubujurire (kugira ngo asobanure neza igice cya 2 cy'iyo nyandiko kirebana no kuvutswa uburenganzira bwo guhabwa avoka ubishoboye), byatanzwe ku ya 20 Werurwe 2000; Icyifuzo gisaba uruhusa rwo kwandukura inyandikomvugo y'iburanisha ryo ku ya 23 Mutarama 1997, no guhindura inyandiko y'ubujurire yerekeye guhezwa k'uregwa mu iburanisha, cyatanzwe ku ya 17 Gashyantare 2000; Icyifuzo gisaba kwemererwa gutanga ibimenyetso birebana no guhagarika ikurikiranacyaha (cyangwa gusesa icyemezo mpamyabyaha cyafashwe), no gusubika ibihe by'ijurira ku birebana n'imyifatire idahwitse ya Porokireri irimo no kuba afite inyungu zitabangikana muri uru rubanza, cyatanzwe ku ya 17 Gashyantare 2000; Icyifuzo gisaba uruhusa rwo gutanga ikimenyetso mu bujurire, buva k'umutangabuhamya w'impuguke witwa Serge A. Desouter (no gukura impamvu imwe mu nyandiko y'ubujurire), cyatanzwe ku ya 29 Gashyantare 2000; Icyifuzo cyihutirwa cyahinduwe gisaba ko inyandiko izi n'izi zashyirwa ahagaragara, kikanasaba guha ababuranyi urubuga rwo kujya impaka imbere y'Urukiko, no guhinduira ibintu bimwe na bimwe biri mu Nyandiko y'ibirego, cyatanzwe ku ya 17 Mata 2000.

[911]Inyandiko ikomatanyije ibyifuzo bitarakemurwa (hakurikijwe Icyemezo kigena ingengabihe y'iburanisha cyo ku ya 24 Gicurasi 2000), yatanzwe ku ya 2 Kamena 2000.

[912]Igisubizo cya Porokireri Nyandiko ikomatanyije ibyifuzo bitarakemurwa (hakurikijwe Icyemezo kigena ingengabihe y'iburanisha cyo ku ya 24 Gicurasi 2000), cyatanzwe ku ya 12 Kamena 2000 ;

[913]Icyemezo ku byifuzo bikomatanyije bitarakemurwa, 22 Kanama 2000.

[914]Icyifuzo gisaba ko hagenwa itariki y'inama ntegurarubanza (Ingingo ya 65 *bis* n'iya 107 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso), cyatanzwe ku ya 12 Gashyantare 2000. Igisubizo cya Porokireri kuri icyo Cyifuzo, cyatanzwe ku ya 13 Werurwe 2000.

na cyo nticyakiriwe nk'uko bigaragara mu Cyemezo Urugereko rwafashe ku itariki ya 25 Gicurasi 2000[915]. Urugereko rwakiriye Icyifuzo cyarusabaga gusubira mu Cyemezo cyarwo, cyakora rusanga kidafite ishingiro kuri bimwe nk'uko bigaragara mu Cyemezo rwafashe ku itariki ya 25 Gicurasi 2000[916].

504. Mu minsi mike yabanjirije iburanisha mu bujurire, Akayesu yatanze ibindi byifuzo bibiri. Ku itariki ya 20 Ukwakira 2000, Akayesu yatanze Icyifuzo cya mbere gisaba Urugereko gukosora no gusubira mu gice cy'Icyemezo rwafashe ku itariki ya 22 Kamena 2000 ku Cyifuzo cyasabaga uruhushya rwo kongera impamvu y'ubujurire mu Nyandiko y'ubujurire, no ku birebana, muri rusange, n'ikibazo cyo kuba yarafuzwe mu buryo bunyuranyije n'amategeko[917]. Icyi cyifuzo cyafatiwe umwanzuro mu isuzuma ry' impamvu ya cumi y' ubujurire muri uru rubanza. Ku itariki ya 30 Ukwakira 2000, Akayesu yatanze ikindi Cyifuzo gisaba gusubika itariki y'iburanisha mu bujurire (ryari riteganyijwe ku ya 1 Ugushyingo 2000) kugira ngo inyandiko zimwe zishobore guhindurwa mu rundi rurimi[918]. Mu gisubizo yatanze kuri icyo Cyifuzo, ku itariki ya 31 Ukwakira 2000, Porokireri avuga ko cyatanzwe igihe cyararenze kandi ko nta n'icyo kimaze. Iburanisha ritangiye ku itariki ya 1 Ugushyingo 2000, Urugereko rw'Ubujurire rwanze kwakira icyo Cyifuzo cya Akayesu, maze ruhita rukomeza iburanisha mu bujurire[919].

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[915]Icyemezo (ku Cyifuzo cyihutirwa gisaba guhindura mu rundi rurimi inyandiko zatanzwe n'ujurira kugira ngo Urugereko rw'Ubujurire ruzige), 25 Gicurasi 2000. Akayesu yatanze Icyifuzo gisaba guhindura izo nyandiko mu rundi rurimi ku ya 25 Mutarama 2000, naho Porokireri atanga Igisubizo kuri icyo Cyifuzo ku ya 7 Werurwe 2000. Akayesu yatanze inyandiko igira icyo ivuga kuri icyo Gisubizo cya Porokireri ku ya 21 Werurwe 2000.

[916]Icyemezo cyo ku ya 25 Gicurasi 2000 cyerekeye ikosorwa ry'ikindi Cyemezo cyafashwe ku ya 30 Ukuboza 1999 (kirebana n'Icyifuzo cyihutirwa cya Porokireri gisaba kwigizayo ibihe ntarengwa byagenwe). Icyifuzo cya Akayesu kuri icyo kibazo cyatanzwe ku ya 13 Mutarama 2000, naho Porokirri atanga Igisubizo cye kuri icyo Cyifuzo ku ya 20 Mutarama 2000.

[917]Icyifuzo gisaba gukosora no gusubiramo kuri bimwe Icyemezo cyo ku ya 22 Kanama 2000 (Icyemezo gitegeka gukomatanyiriza hamwe Ibyifuzo bitarakemurwa) (Guhindura inyandiko y'ibirego), cyatanzwe ku ya 20 Ukwakira 2000.

[918]Icyifuzo gisaba gusubika itariki y'iburanisha, cyatanzwe ku ya 30 Ukwakira 2000. Porokireri yatanze Igisubizo cye kuri icyo Cyifuzo ku ya 31 Ukwakira 2000 [Igisubizo cya Porokireri ku Cyifuzo gisaba gusubika itariki y'iburanisha ry'ubujurire, (cyatanzwe ku ya 31 Ukwakira 2000)]. Nyirabayazana y'icyo Cyifuzo ni ibarwa avoka wunganira Akayesu yandikiye Urugereko rw'Ubujurire ku ya 24 Ukwakira 2000, ariko ikaba yarashyikirijwe Urugereko ku ya 25 Ukwakira 2000 (Ibaruwa John Philpot yandikiye Umucamanza Claude Jorda, Perezida w'Urugereko rw'Ubujurire).

[919]Inyandikomvugo y'iburanisha mu bujurire, 1 Ugushingo 2000, imp. 5 na 6.

505. Byongeye kandi, mu gihe Abacamanza bari bihereyeye basesengura ingingo z'ababuranyi mbere yo guca urubanza, Akayesu yongeye gutanga ibindi byifuzo bibiri.

506. Mu Cyifuzo cya mbere, Akayesu yasabaga ko Imyanzuro ye hamwe n'Igisubizo cye ku myanzuro isubiza ya Porokireri byahindurwa mu rundi rurimi[920]. Ku itariki ya 16 Werurwe 2000, Porokireri yatanze Igisubizo kuri icyo Cyifuzo[921]. Akayesu na we atanga inyandiko ikubiyemo igitekerezo cye ku Gisubizo cya Porokireri ku itariki ya 21 Werurwe 2001[922]. Mu Cyemezo rwafashe ku itariki ya 29 Werurwe 2001, Urugereko rw'ubujurire rwagize ruti: «Kugirango urubanza ruburanishwe neza kandi ababuranyi bahabwe amahirwe angana, ni ngombwa ko inyandiko zabo, by'umwihariko imyanzuro yabo, zihindurwa mu ndimi zombi z'Urukiko ». Kubera ibyo, Urugereko rw'Ubujurire rwategetse Gerefiye guhinduza izo nyandiko mu rurimi rw'Icyongereza mu gihe rwagennye[923].

507. Ku itariki ya 17 Mata 2001, Akayesu yashyikirije Urugereko rw'Ubujurire Icyifuzo cya kabiri arusaba gusubiza urubanza rwe mu Rugereko rwa Mbere rw'Iremezo kugira ngo rurusubiremo, hakurikijwe ingingo ya 123 y'Amategeko[924]. Iyo ngingo igira iti: « Iyo hasabwe isubirwamo ry'urubanza kubera ingingo nshya, kandi rwarajuririwe, Urugereko rw'Ubujurire rushobora gusubiza idosiye mu Rugereko rwa Mbere rw'Iremezo kugira ngo rufate icyemezo kuri icyo kibazo ». Mbere yaho, ku itariki ya 12 Mata 2001, Akayesu yari yashyikirije Urugereko rwa Mbere rw'Iremezo Icyifuzo kirusaba

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[920]Icyifuzo cyihutirwa cyane gisaba ko hatangwa itegeko ryo guhindura mu rundi rurimi Imyanzuro y'ujurira, hamwe n'Igisubizo cye ku myanzuro isubiza ya Porokireri, cyatanzwe ku ya 15 Werurwe 2001

[921]Igisubizo cya Porokireri ku Cyifuzo cyihutirwa cyane gisaba ko hatangwa itegeko ryo guhindura mu rundi rurimi Imyanzuro y'ujurira, hamwe n'Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, cyatanzwe ku ya 16 Werurwe 2001

[922]Inyandiko ikubiyemo ibivugwa na Akayesu ku Gisubizo cya Porokireri ku Cyifuzo cyihutirwa cyane gisaba ko hatangwa itegeko ryo guhindura mu rundi rurimi Imyanzuro y'ujurira, hamwe n'Igisubizo cya Akayesu ku myanzuro isubiza ya Porokireri, yatanzwe ku ya 21 Werurwe 2001.

[923]Icyemezo (ku Cyifuzo gisaba guhindura mu rundi rurimi imyanzuro y'Uwajuriye), 29 Werurwe 2001.

[924]Icyifuzo hamwe n'myanzuro byatanzwe hakurikijwe ingingo ya 123 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso y'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, byatanzwe ku ya 17 Mata 2001

gusubiramo urubanza rwe kubera ibyo yitaga ingingo nshya yavumbuye nyuma[925]. Porokireri yatanze Igisubizo cye kuri icyo Cyifuzo ku itariki ya 4 Gicurasi 2001[926]. Ku itariki ya 9 Gicurasi 2001[927], Akayesu yatanze inyandiko ivuga ko yifuza kugira icyo avuga ku Gisubizo cya Porokireri, hanyuma ku itariki ya 11 Gicurasi 2001 aba ari bwo abikora[928].

508. Mu mwanzuro rwafashe kuri icyo Cyifuzo, ku itariki ya 16 Gicurasi 2001, Urugereko rw'Ubujurire rwavuze ko, ukurikije uko ibintu biteye nta mpamvu yo gusubiza urubanza mu Rugereko rwa Mbere rw'Iremezo. Rwemeje ibi bikurikira: 1) Igihe cyose Urugereko rw'Ubujurire rutarasubiza urubanza mu Rugereko rwa Mbere rw'Iremezo. Iyo rero rutarasubizwa dosiye, Urugereko rwa Mbere rw'Iremezo nta bubasha ruba rufite bwo gusuzuma icyo kirego cyo gusubirishamo urubanza ingingo nshya ; 2) Mu gusuzuma niba ari ngombwa gusubiza urubanza mu Rugereko rwa Mbere rw'Iremezo, Urugereko rw'Ubujurire ruzirikana ingingo zirebana no gusubirishamo urubanza mu Rukiko kubera ingingo nshya; (3) Mu ikubitiro, biragaragara ko nta ngingo nshya zishingiye ku byabaye Akayesu yerekana; 4) Niyo Urugereko rw'Ubujurire rwafata Icyifuzo gisaba gusubiza urubanza mu Rugereko rwa Mbere rw'Iremezo nk'aho ari inyandiko isaba uruhushya rwo gutanga ibimenyetso bishya mu bujurire, icyo cyifuzo nticyakwakirwa kubera ko kitujuje ibisabwa mu ngingo ya 115 y'Amategeko[929].

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[925]Icyifuzo, cy'Ubwunganizi gisaba gusubiramo Icyemezo cy'Urugereko rwa Mbere rw'Iremezo cyo ku ya 2 Nzeri 1998, hamwe n'Imyanzuro ishyigikiye icyo Cyifuzo, byatanzwe ku ya 12 Mata 2001.
[926]Igisubizo cya Porokireri ku Cyifuzo cy'Ubwunganizi cyatanzwe hakurikijwe ingingo ya 123 y'Amategeko Agenga Imiburamishirize n'Itangwa ry'Ibimenyetso y'Urukiko Mpanabyaha Mpuzamahanga Rwashyirweho u Rwanda, cyakozwe ku ya 17 Mata 2001, ariko gitangwa ku ya 4 Gicurasi 2001.
[927]Inyandiko y'Akayesu amenyesha Urugereko ko yifuza kugira icyo avuga ku Gisubizo cya Porokireri ku Cyifuzo cy'Ubwunganizi cyatanzwe hakurikijwe ingingo ya 123 y'Amategeko Agenga Imiburamishirize n'Itangwa ry'Ibimenyetso y'Urukiko Mpanabyaha Mpuzamahanga Rwashyirweho u Rwanda, cyatanzwe ku ya 9 Gicurasi 2001.
[928]Inyandiko y'Akayesu ikubiyemo ibyo avuga ku Gisubizo cya Porokireri ku Cyifuzo cy'Ubwunganizi cyatanzwe hakurikijwe ingingo ya 123 y'Amategeko Agenga Imiburamishirize n'Itangwa ry'Ibimenyetso y'Urukiko Mpanabyaha Mpuzamahanga Rwashyirweho u Rwanda, cyatanzwe ku ya 11 Gicurasi 2001.
[929]Icyemezo (ku Cyifuzo gisaba ko urubanza rwasubizwa mu Rugereko rwa Mbere r'Iremezo, Inteko ya mbere), 16 Gicurasi 2001.

F. Ibyifuzo byatanzwe na Porokireri

509. Ku itariki ya 13 Weruwe 2000, Porokireri yatanze « Icyifuzo cyihutirwa gisaba ko hafatwa ingamba zo kurinda umutekano w'abatangabuhamya », bitewe n'uko Akayesu yari amaze gutanga ikindi Cyifuzo cyari gikubiyemo inyandiko[930] yerekana amazina y'abatangabuhamya 12, bamwe muri bo bakaba baragombaga kurindirwa umutekano, nk'uko Urugereko rwa Mbere rw'Iremezo rwari rwabitegetse mu gihe cy'iburanisha. Mu byo Urugereko rw'Ubujurire rwategetse harimo ko ibice bimwe by'iyo nyandiko byasibasibwa hakoreshejwe wino, kandi amazina y'abatangabuhamya bagomba kurindirwa umutekano ntahishurirwe rubanda cyangwa ngo amenywe n'abantu bandi badafite uruhare mu bujurire[931].

510. Ku itariki ya 31 Gicurasi 2000, Porokireri yatanze Icyifuzo gisaba ko yakwemererwa gutanga nk'ibimenyetso by'inyongera, ibintu bimwe na bimwe byakuwe mu nyandikomvugo z'iburanisha mu rubanza rwa Georges Rutaganda[932]. Ku itariki ya 16 Kamena 2000, Akayesu yatanze Igisubizo cye kuri icyo Cyifuzo avuga ko abona nta kibazo biteye[933]. Mu cyemezo rwafashe ku itariki ya 12 Nyakanga 2000, Urugereko rw'Ubujurire rwemeye ko izo nyandikomvugo z'iburanisha zatangwa nk'ibimenyetso by'inyongera[934].

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[930]Icyifuzo gisaba guhindura inyandiko y'ubujurire (kigamije gusobanura neza igice cya kabiri cy'iyo nyandiko ku itariki isaba guhindura dosiye y'ubujurire (kugira ngo hatangwe ibisobanuro binoze ku gice cya 2 cy'iyo dosiye, ku birebana « no kuvutswa uburenganizra bwo kugira avoka ubishoboye, cyatanzwe ku ya 24 Mutarama 2001

[931]Icyemezo (ku Cyifuzo cya Porokireri gisaba ko hafatwa ingamba zo kurengera umutekano w'abatangabuhamya), cyafashwe ku ya 20 Werurwe ariko gitangazwa ku ya 21 Werurwe 2000.

[932]Icyifuzo cya Porokireri gisaba kwemererwa gutanga ibimenyetso bishya mu bujurire, hakurikije Icyemezo cy'Urugereko rw'ubujurire cyo ku ya 24 Gicurasi, icyo Cyifuzo cyatanzwe ku ya 31 Gicurasi 2000.

[933]Igisubizo ku Cyifuzo cya Porokireri gisaba kwemererwa gutanga ibimenyetso bishya mu bujurire, hakurikije Icyemezo cy'Urugereko rw'ubujurire cyo ku ya 24 Gicurasi, icyo Gisubizo cyatanzwe ku ya 19 Kamena 2000.

[934]Icyemezo (ku Cyifuzo cya Porokireri gisaba kwemererwa gutanga ibimenyetso by'inyongera), 12 Nyakanga 2000.

UMUGEREKA B : IMPAMVU Z'UBUJURIRE BW'AKAYESU[935]

A. Impamvu y'ubujurire ya mbere: Akayesu yavukijwe uburenganzira bwo kunganirwa na avoka yihitiyemo.

Inyandiko y'ubujurire ya mbere

Kuva urubanza rwatangira muri Mutarama 1998, Uregwa yavukijwe ubureganzira bwe bwo kwihitiramo Avoka umwunganira. Ibi byavuzwe ku mugaragaro, mu kinyamakuru cyitwa New York Times, na Sarash Darehshori, wari umushinjacyaha muri iyi dosiye. Ibyo bizatangirwa ibimenyetso[936].

Uregwa yahatiwe kwemera kunganirwa na Patrice Monthe na Nicholas Tiangaye, kandi mbere yari yarabanze. Abo bavoka bombi bihitiwemo na Gerefiye wenyine[937].

Ibimenyetso ntibyamenyekanishijwe mu buryo bukwiye kuko Porokireri yatanze akererewe amazina y'abatangabuhamya, maze bituma Uregwa adategura ukwiregura kwe mu buryo bwuzuye kandi buhamye[938].

Mu iburanisha, byageze aho biba ngombwa ko Uregwa yiburanira kubera ko atari yahawe avoka n'umwe yihitiyemo, kandi yari yarabisabye[939].

Inyandiko y'ubujurire ya kabiri

(a) Urukiko na Gerefiye bavukije Ujurira uburenganzira bwo kwihitiramo avoka umwunganira. Mu by'ukuri, Ujurira ntiyahawe avoka yari yahisemo bwa mbere ari we

[935] Ibivugwa muri izi mpamvu z'ubujurire ni ibyanditse mu nyandiko z'umwimerere nk'uko zatanzwe. Kubera iyo mpamvu, amakosa cyangwa ibiburamo ni nk'ibiri muri izo nyandiko z'umwimerere.
[936] Ingingo y'ubujurire ya 22
[937] Ingingo y'ubujurire ya 23
[938] Ingingo y'ubujurire ya 33

Johan Scheers, kubera ko Bwana Andronico Adede wahoze ari Gerefiye, akaza kwirukanwa ku kazi kubera ubuswa, na Madamu Prisca Nyambe wakoraga mu Biro bya Gerefiye batamwemeye. Ku itariki ya 31 Ukwakira 1996, Bwana Michael Karnavas, wari wungirije Scheers akaba ari na we wari waravuganye na Scheers mu Bubiligi, yahatiye Ujurira kuba ari we "ahitamo" ngo amwunganire, asimbure Scheers. Ujurira yanze kunganirwa na Karnavas kubera uburiganya bwe. Mu by'ukuri, byaramenyekanye ko Karnavas yari yarasabye akazi mu Biro bya Porokireri kandi akaba yari yaravuze ndetse akandika ko atazigera aburanira "umujenosideri". Ujurira yahisemo ubwa kabiri avoka Michel Marchand w'i Montreal muri Canada, wari uhari urubanza rutangira ku itariki ya 9 Mutarama 1997. Porokireri yari azi ko ahari, nk'uko byemejwe n'Umushinjacyaha Sarah Dareshori mu kinyamakuru cyitwa *New York Times* cyasohotse ku itariki ya 8 Nzeri 1998. Abacamanza na Gerefiye banze, mu buryo bunyuranyije n'amategeko, ko Bwana Marchand afata ijambo mu Rukiko, banamwangira kubonana n'umukiliya we. Urukiko rwahatiye Ujurira gufata ba avoka babiri bashyizweho na Gerefiye ku itariki ya 9 Mutarama 1997 ari bo Nicolas Tiangaye na Patrice Monthé. Icyo gihe, urubanza rwaratangiye. Ujurira yanze abo ba avoka bombi atari azi, atashakaga, kandi batari bateguye na rimwe ukwiregura kwe muri uru rubanza rwa mbere rwa jenoside kuva aho imanza z'i Nurenberg zirangiriye. Aka karengane Ujurira yagize kanyuranyije bikomeye n'ibiteganywa na Sitati y'Urukiko ndetse n'amahame shingiro k'uburenganzira bw'ikiremwamuntu. Ako karengane kanyuranyije kandi n'imikorere y'Urukiko rw'i Nuremberg aho Urukiko rwazirikanye by'umwihariko uburenganzira shingiro abaregwa bose bafite nta kuvangura, bwo kunganirwa n'abantu bihitiyemo. Ujurira yamenye amakuru avuga ko TPIY yemera ko uregwa afite uburenganzira bwo kwihitiramo avoka umwunganira, n'ubwo Gerefiye ari we umushyiraho. Ujurira yavukijwe uburenganzira bwe kubera ikosa Urukiko rwakoze ryo mu rwego rw'amategeko, bityo akaba yararenganyijwe ku buryo budafite igaruriro. Ujurira azagaragaza ukuntu yavukijwe uburenganzira shingiro bwe, n'ingaruka byagize.

[939] Ingingo y'ubujurire ya 38

(b) Gerefiye amaze kumuhatira abo bavoka bombi atashakaga, Ujurira yarabirukanye maze asaba kwiburanira. Yamaze iminsi itatu yiburanira abaza abatangabuhamya ibibazo. Mu buryo bunyuranyije n'amategeko, Urukiko rwaje kwemerera abo bavoka bombi Ujurira yari yirukanye, ari bo Patrice Monthé na Nicolas Tiangaye, kubaza ibibazo. Nyuma yaho, Urukiko rwahatiye Ujurira kwemera abo bavoka, bityo ruvutsa Uregwa uburenganzira bwo kwiregura ahabwa na Sitati y'Urukiko. Kubera iyo mpamvu, Urugereko rwanyuranyije n'ibiteganywa na Sitati kuko rwakoze amakosa yo mu rwego rw'amategeko ku birebana n'ububasha bwarwo.

(c) Ubwo Urukiko rwahatiraga Ujurira abo bavoka bombi atashakaga kandi atari azi, Umucamanza Laïty Kama yamubwiye ko abo bavoka bashoboye akazi kandi ko adafite uburenganzira bwo kwiburanira. Nyamara, mu gihe cy'imyanzuro nsozarubanza, abo bavoka bombi ntibari bahari kandi Umucamanza Laïty Kama yari yavuze ko bashoboye akazi. Urukiko rwasabye Porokireri gutanga imyanzuro nsozarubanza ye abo bavoka badahari, maze iki gice cy'iburanisha gikomeza Ujurira adafite umwunganira. Kubera iyo mpamvu, Urugereko rwakoze ikosa ryo mu rwego rw'amategeko ku birebana n'ububasha bwarwo[940].

B. <u>Impamvu y'ubujurire ya kabiri: Akayesu yavukijwe uburenganzira bwe bwo kugira avoka umwunganira ubishoboye.</u>

Inyandiko y'ubujurire ya mbere

Urugereko rwanze ko abagabo 19 b'ingirakamaro batanga ubuhamya bushinjura. Iryo ni ikosa ryo kurengera mu bubasha bwarwo kandi rinyuranije na Sitati y'Urukiko (TPIR) rikanavutsa Uregwa uburenganzira bwe bw'ibanze[941].

Uregwa ntiyunganiwe n'Avoka ushoboye akazi. Nta kindi Avoka yakoze uretse kuzambya urubanza rwose[942].

[940] Igice cya mbere.
[941] Ingingo y'ubujurire ya 7

Urugereko rwafashe Jenerali Dallaire nk'umutangabuhamya w'impuguke, maze bituma Ujurira aharenganira ku buryo budafite igaruriro[943].

Urugereko rwatakaje ububasha bwose rwari rufite kuko rwasabye Porokireri gutanga imyanzuro nsozarubanza ye mu magambo mu gihe abunganira Uregwa batari bahari[944].

Inyandiko y'ubujurire ya kabiri

Uregwa ntiyashoboye kwiregura mu buryo bwuzuye kandi buhamye kubera ko yavukijwe uburenganzira bwe kwo kunganirwa na Avoka ushoboye akazi cyangwa uko bikwiye. Ibyo byatumye urubanza rwose rugira inenge maze araharenganira. Dore amwe mu makosa yakozwe:

(i) Urubanza rugitangira, abavoka bombi bashyizweho ngo bunganire Uregwa, nta kindi bari gukora uretse gusaba ko rusubikwa kugira ngo bategure ukwiregura kwe. Ntibari bazi Uregwa, kandi ntibari baramenyeshejwe ibimenyetso bityo bakaba batarashoboraga kunganira Uregwa uko bikwiye. Ubusanzwe mbere yo kunganirwa na Avoka, Uregwa agomba kubanza kuganira na we mbere y'uko urubanza rutangira, akareba niba yakwizera uwo avoka, maze akamuha ibisobanuro byose ku rubanza no ku birego. Ibi byose bigomba gukorwa mbere y'itangira ry'urubanza, kubera cyane cyane uburemere bw'ibyaba Uregwa ashinjwa, ari byo jenoside n'ibyaha byibasira inyokomuntu, kubera igihano gishobora kuzatangwa no guteshwa agaciro kuko yahamijwe icyaha.

ii) Abo bavoka bombi ntibaganiriye na Scheers kandi barasanze yarakoreye Ujurira akazi kenshi.

iii) Abunganira Uregwa bakoze ikosa ritakwihanganirwa ryo guhamagaza umujenerali w'Umunyakanada witwa Romeo Dallaire nk'umutangabuhamya w'impuguke. Nyamara ubuhamya bwe bushingiye ku byo yiboneye gusa n'amaso ye. Ntibigeze babaza Jenerali

942 Ingingo y'ubujurire ya 25
943 Ingingo ya 26 y'ubujurire
944 Ingingo ya 27 y'ubujurire

Dallaire ku mubano ukomeye afitanye na Jenerali Paul Kagame, ubu utegekesha igitugu mu Rwanda, cyangwa ngo bamubaze ku byo yavuze, agenda yivuguruza, nk'ibyo yatangaje, ku itariki ya 14 Nzeri 1994, mu kiganiro yagiranye n'abanyamakuru kuri televiziyo ya Kanada ikoresha ururimi rw'igifaransa, aho yagize ati:

> **Ikibazo kibajijwe n'umwe mu bitabiriye icyo kiganiro**: Mwatubwira niba jenoside yarakozwe n'impande zombi, ni ukuvuga Abahutu n'Abatutsi?
>
> **Dallaire** : Navuga ko habaye jenoside y'igihugu cyose ishingiye kuri politiki aho gushingira ku moko gusa. Abahutu benshi n'Abatutsi benshi barishwe. Sinahakana ko FPR yakoze ubwicanyi kimwe n'uko ntahakana ko n'uruhande byari bihanganye rwakoze ubwicanyi. Cyakora, hari ubushake bwo gushyikiriza abo bantu ubutabera ngo baryozwe ibyo bakoze. Impande zombi zigomba gushyikirizwa ubutabera.
>
> (…)
>
> **Ikibazo cya Jean François Lépine,** umunyamakuru **wa** Radiyo ya Kanada:
> (…) Mwatubwira niba iyicwa rya Perezida ari ryo ryatumye umugambi w'itsembatsemba wari warateguwe ushyirwa mu bikorwa?
>
> **Dallaire**: Icyo ni kimwe muri byinshi bishoboka. (…) mu rwego rwa politiki, kwica abantu batari intagondwa. (…) Amarorerwa twabonye arenze ibyo umuntu ashobora kwiyumvisha. Cyakora hariho umugambi wo mu rwego rwa politiki wo kurimbura abantu batari intagondwa. (…) Ariko, ndatekereza ko icyo gihe nta muntu n'umwe wari kumenya ingano y'amarorerwa yabaye nyuma.
>
> Byavuye muri : Roméo Dallaire : "*Un homme d'honneur"* Société Radio Canada, Le Point, 14 Nzeri 1994. Iki kiganiro cyamaze iminota 27 n'amasegonda 30.

iv. Mu iburanisha, abavoka bunganira Uregwa bemeye ibintu bitagombaga kwemerwa. Muri byo, igikomeye kurusha ibindi ni uko bemeye ko, hashingiwe ku mategeko, umuntu yavuga ko mu Rwanda habaye jenoside mu mwaka wa 1994.

v. Uwunganira uregwa ntiyahamagaje umutangabuhamya n'umwe w'impuguke wo kunyomoza ubuhamya bukemangwa bwatanzwe na Madamu Alison DesForges nk'umutangabuhmaya w'impuguke. Muri ubu bujurire, Ujurira arakosora iryo kosa.

vi. Abavoka bunganiraga Uregwa bemeye n'ibindi bintu bidafite gihamya, ibyo bintu bizashyirwa ahagaragara ku buryo burambuye nibimara kwandukurwa neza bivanywe mu nyandikomvugo z'amaburanisha.

vii. Ku byerekeranye n'amashyirahamwe y'abatangabuhamya bashinja ibinyoma, bagurirwa kandi bagategurwa mbere yo kujya gutanga ubuhamya muri TPIR, avoka wunganira Uregwa ntiyatanze ibimenyetso byihariye kuri buri mutangabuhamya ushinja, nk'uko biteganywa n'umuryango w'amategeko witwa « *Common Law* ».

viii. Abavoka ntibasabye Ujurira gutanga ubuhamya bwo kunyomoza ibintu runaka byavuzwe n'abatangabuhamya benshi bashinja. Kubera iyo mpamvu bakoze ikosa, hashingiwe ku biteganywa n'umuryango w'amategeko witwa « *Common Law* ».[945].

Mu kwihutisha urubanza ngo rurangire vuba, Urugereko rwabujije, nta mpamvu, Ujurira gukoresha uburenganzira afite bwo kwiregura mu buryo bwuzuye kandi buhamye, kuko rwanze kumva ubuhamya bw'abagabo 14 bashinjura b'ingirakamaro[946].

Urugereko rwakoze ikosa ryo mu rwego rw'amategeko kuko rwemeje ko Jenerali Romeo Dallaire ari umutangabuhamya w'impuguke, ibyo bikaba byararenganiije Ujurira mu buryo budafite igaruriro. Mu by'ukuri Bwana Dallaire yagombaga kwitwa gusa umutangabuhamya ku byabaye[947].

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[945] Igice cya 2.
[946] Ingingo ya 4(v) y'ubujurire
[947] Ingingo ya 4(y) y'ubujurire

C. Impamvu y'ubujurire ya gatatu: kutigenga no kubogama by'Urukiko.

Inyandiko y'ubujurire ya mbere

Urugereko rwarabogamye, ibyo bizatangirwa ibimenyetso mu bujurire. Abacamanza bagize Inteko y'urwo Rugereko bagiye kenshi bemeza ko, muri rusange, Abahutu bose bakoze icyaha kandi Uregwa ni umwe mu Bahutu[948].

Urugereko rwemeje, nta muburanyi ubirusabye, ko hagati ya Mata na Nyakanga 1994, mu Rwanda habaye jenoside yari yarateguwe[949].

Ntibishoboka ko Uregwa yacirwa urubanza mu buryo butarenganya igihe cyose hakirangwa intambara mu karere, kimwe n'iterabwoba n'ubuhotozi byibasira abantu bashobora kuzaza gutanga ubuhamya bushinjura[950].

Inyandiko y'ubujurire ya kabiri[951]

e. Urukiko rwashyizweho n'Inama Ishinzwe Amahoro ku Isi mu buryo bunyuranyije n'amategeko, ndetse ishyirwaho ryarwo rinyuranyije n'Amategeko Shingiro y'Umuryango w'Abibumbye. Ibyo rero bituma urubanza rwose rwaciwe rugomba guseswa.

f. Urukiko rurabogamye kubera ko ruburanisha gusa abantu bo ku ruhande rumwe mu barwanaga. Abantu ba FPR baturutse muri Uganda baridegembya mu gihe abari mu gice cyirwanagaho baregwa ibyaha byaba byarakozwe mu cyiciro cya nyuma cy'intambara yamaze imyaka ine kandi inyuranyije n'amategeko ya Afurika. Icyiciro cya nyuma cy'iyo

[948] Ingingo ya 9 y'ubujurire
[949] Ingingo ya 29 y'ubujurire
[950] Ingingo ya 34 y'ubujurire
[951] Nk'uko rwabivuze haruguru, Urugereko rw'ubujurire ruributsa ko impamvu z'ubujurire zandukuwe nk'uko zatanzwe na Akayesu ubwe. Kubera iyo mpamvu, amakosa ari mu mibare cyangwa inyuguti bigaragaza uko zikurikirana ntiyakosowe.

ntambara cyatangiranye n'ihanurwa ry'indege ya Perezida ku itariki ya 6 Mata 1994. Nk'urugero, raporo ya Gersony yemewe n'Ishami ry'Umuryango w'Abibumbye Ryita ku Mpunzi yemeza ko, hagati ya Kamena na Nzeri 1994, FPR imaze gutsinda intambara yishe abantu batari hasi ya 30 000, biganjemo Abahutu. Nyamara ntihatanzwe ikirego na kimwe gishingiye kuri iyo raporo imaze imyaka ine ihishwe.

g. Abacamanza barabogamye. Umucamanza Laity Kama yagaragaje ko abogamye cyane kandi yibwira ko yahawe inshingano yo guhana abantu bakoze « jenoside ». Yagiye kenshi agira ibyo atangaza mu ruhame k'uburyozwacyaha rusange bw'abantu bafunzwe avuga ko hafashwe « abantu b'ibikomerezwa ». Mu ijambo yavugiye muri Etiyopiya, yavuze aho abazahamwa n'ibyaha bakwiye gufungirwa maze umuntu akaba yakwibaza niba yari yamaze kwiyemeza kuzahamya ibyaha bamwe mu baregwa. Mu rubanza mu bujurire tuzatanga ibimenyetso by'aya magambo ye n'ubwo azwi n'ababuranyi bose muri uru Rukiko.

h. Umucamanza Laity Kama yakomeje kunyuranya n'ihame rivuga ko uregwa aba ari umwere igihe cyose atari yahamwa n'icyaha, kandi ibyo byabagamiye Ujurira. Nyuma y'ubuhamya bw'abagabo benshi bavugaga ko bakorewe icyaha cy'urugomo rwibasiye imyanya ndangagitsina, uyu Mucamanza yavuze ko yifatanyije na bo mu kababaro batewe n'ibyo bikorwa, kandi ibyo yabivuze mbere y'uko uwarezwe atangira kwiregura. Ibi bigaragaza ko yari yarangije kwemeza ko bavuga ukuri. N'ubow ujurira yavuguruje ibimenyetso byatanzwe kuri icyo kirego, ntibyabujije ko byemerwa mu ikiza ry'urubanza. Kubera ko yari yarangije kwishyiramo ko ibyo abo batangabuhamya bavuga ari ukuri, uwo Mucamanza yanyuranyije n'ihame rivuga ko uregwa afatwa nk'umwere igihe cyose atarahamwa n'icyaha. Ibyo rero byagombye gutuma urubanza rwose ruseswa.

i. Umucamanza Navanethem Pillay na we yanyuranije n'ihame rivuga ko uregwa aba ari umwere igihe cyose atarahamwa n'icyaha, ibyo bikaba byarabangamiye Ujurira. Uyu Mucamanza yakoze ingendo hirya no hino avuga ku by'urubanza kandi ubwunganizi

bwari butaratangira kwiregura. N'ubwo ateruye ngo avuge ku buhamya runaka, mu kiganiro cyahise kuri Radiyo Kanada (*Canadian Broadcasting Corporation*) ku itariki ya 12 Ugushyingo 1997, yavuze ko abakorewe ibyaha by'urugomo rwibasiye imyanya ndangagitsina mu Rwanda badatinyuka gukoresha amagambo yerekeranye n'imyanya ndangagitsina. Yavuze ko ikimenyetso rukumbi gihari kuri ibyo ari ibyatangajwe n'umwe mu bashinjacyaha witwa Pierre-Richard Prosper. Umucamanza Pillay yanavuze ko abantu 200 000 bakorewe ibyaha by'urugomo rwibasiye imyanya ndangagitsina, byakozwe kubera ingamba za politiki zari zarashyizweho zo gukorera abantu ibyo byaha. Nyamara, nta na kimwe muri ibyo byaha cyagaragajwe neza mu Rukiko. Yavuze kandi amagambo nk'ayo nibura mu kinyamakuru kimwe no mu nama yabereye muri Kaminuza ya York, i Toronto. Kubera izo mpamvu, yanyuranyije n'ihame rivuga ko uregwa afatwa nk'umwere igihe cyose atarahamwa n'icyaha. Mu iburanisha mu bujurire hazatangwa ibimenyetso byerekeranye n'iyi ngingo. Iri kosa ryagombye gutuma urubanza ruseswa.

j. Umucamanza Lennart Aspegren yavuze ijambo rizwi cyane ubwo yemezaga ko abantu bafungiye Arusha bafashwe neza cyane. Ibyo bisa n'aho yasubiragamo ibyo Guverinoma y'i Kigali yinubira. Ibimenyetso ku byo uwo Mucamanza yavuze bizatangwa mu iburanisha mu bujurire. Uyu Mucamanza yanyuranije rero n'ihame rivuga ko uregwa afatwa nk'umwere igihe cyose atarahamwa n'icyaha, kandi yateshutse ku nshingano ze zo kutagira aho abogamira.

k. Hari indi mpamvu igaragaza ko Urukiko rwabogamye mu mwanzuro warwo ku byabaye. Urukiko rwakoze amakorasa yo mu rwego rw'amategeko n'urw'ibyabaye kuko rwavuze inshuro icyenda ko indege ya Perezida yahanutse aho kuvuga ko yarashwe hakoreshejwe misile ku itariki ya 6 Mata 1994. Indege ntiyahanutse ahubwo yarashwe igisasu cya misile n'umuntu wari ku butaka. Ihanuka ry'iyo ndege, ari ryo ryabaye nyirabayazana y'intambara ya politiki n'amoko yatangiye muri Mata 1994, ryahawe inyito itari yo, maze muri rusange bituma ibimenyetso bidahabwa agaciro gakwiye. Indege ishobora guhanuka kubera impanuka naho kurasa ibisasu bya misile indege itwaye abaperezida babiri b'Abahutu bigomba kumvikana ukundi kandi bigira ingaruka mu rwego rwa politiki.

Urukiko ntirwigeze na rimwe rushishikazwa no gusuzuma ikibazo cy'ingenzi ibindi bishingiyeho ari cyo cyo kumenya uwarashe iyo ndege maze agahitana Perezida w'u Rwanda, igihugu cyari kimaze imyaka ine mu ntambara yagabwe n'abantu bavuye hanze y'igihugu. Kubera ko rwakoze iryo kosa rikomeye rishingiye ku byabaye, Urukiko rwatumye urubanza rw'Ujurira rucibwa nabi.

l. Ntibishoboka ko Uregwa aburanishwa mu buryo buboneye igihe cyose mu karere hakirangwa intambara y'urudaca, kimwe n'iterabwoba n'ubuhotozi byibasira abatangabuhamya bashinjura cyangwa abandi bantu bashobora kuzatanga ubuhamya bushinjura. Intambara yibasiye u Rwanda igabwe na Uganda na FPR yahinduye isura iba intambara yibasiye Zayire igabwe n'u Rwanda na Uganda (1996-1997), nyuma ihinduka intambara yibasiye Kongo-Zayire kuva ku itariki ya 2 Kanama 1998. Ubu intambara iraca ibintu mu Rwanda. U Rwanda ni igihugu gitegekeshwa igitugu n'ubwoko bumwe. FPR irakoresha iterabwoba muri Afurika yose, mu Burayi no muri Kanada. Umugabo wese utanze ubuhamya bunyuranye n'ibivugwa na FPR ashobora kwicwa. Umuntu yatanga urugero rw'ibyabaye kuri Fidele Uwizeye, umutangabuhamya wavuye mu Rwanda akaza mu Rukiko gutanga ubuhamya ku byabereye kuri Burigade y'i Remera. "*Amnesty International*" ivuga ko yazimiye ndetse binavugwa ko ashobora kuba yarapfuye. Byongeye kandi, nta masezerano Urukiko rwagiranye n'ibihugu, nka Kenya, kugira ngo bantu bashobora gutanga ubuhamya babe basubirayo bamaze gutanga ubuhamya. Benshi muri abo batangabuhamya baba mu gihugu cya Kenya mu buryo butemewe n'amategeko. Benshi mu bagabo bashinjura mu rubanza rw'Ujurira ntibaje gutanga ubuhamya kubera ubwoba. Ikibazo cyakemurwa gusa no guhagarika ikurikiranacyaha.

m. Urukiko ntirukora neza kuko rudafite ububasha bwo guhatira abagabo kurwitaba ngo batange ubuhamya. Ububasha bwonyine rufite, nabwo budafututse, ni ubwo gutegeka ko abantu bakekwaho ibyaha baba mu bindi bihugu bafatwa bakazanwa Arusha ku cyicaro cy'Urukiko, kandi nabyo bishobora kuba bikorwa mu buryo bunyuranije n'amategeko. Ubwo bubasha rero busa n'ubutuzuye. Mu by'ukuri, kuba Urukiko rufite ububasha bwo

gufata abaregwa aho bari hose ariko ntirugire ubwo guhatira umutangabuhamya kurwitaba, bituma ubwunganizi buharenganira. Byongeye kandi, abaregwa bahatirwa kugaragaza impamvu bahamagaza abatangabuhamya bashinjura mu gihe muri rusange mu manza nshinjabyaha zigendera ku mategeko ya "*common law*", uregwa ahitamo abatangabuhamya azahamagaza Urukiko rutabyivanzemo.

n. Urugereko rwakoze ikosa ryo mu rwego rw'amategeko n'urw'ibyabaye kuko rwemeje ko intambara yabaye mu Rwanda mu wa 1994 itari mpuzamahanga. Nyamara, iyo ntambara itemewe n'amategeko ni Ubuganda bwayigabye ku Rwanda. Ku itariki ya 22 Nzeri 1998, Perezida Yoweri Museveni w'Ubuganda ubwe yiyemereye mu Nteko Ishinga Amategeko y'igihugu cye, ko Ubuganda bwateye inkunga FPR buyiha uburyo bwo gukoresha mu ntambara yamaze imyaka ine. Iri kosa Urugereko rwakoze ryatumye abantu bumva nabi iby'iyo ntambara. Abarwanyije ibyo bitero n'ibikorwa by'ubucengezi by'umwanzi nibo bahinduwe abanyabyaha, « abajenosideri », naho abakoranye n'abashoje intambara bo bafatwa nk'abahohotewe. Iri kosa ryatumye urubanza rucibwa nabi.

o. Byongeye kandi, Urugereko rwakoze ikosa rikomeye mu kwemeza ko byari ngombwa gutandukanya intambara yashyamiranyije ingabo za FPR n'iz'u Rwanda (FAR) n'iyashyamiranije abantu byagaragaraga ko atari abasirikare. Abantu ba FPR batangiye gucengera mu Rwanda kuva mu Kwakira 1990. Abari bashyamiranye muri iyi mirwano ya « gisiviri » ni kimwe neza n'abari bashyamiranye mu mirwano ya gisirikare ku buryo ntawashoboraga kubatandukanya. Uwo mwanzuro w'Urugereko kuri icyo kibazo unyuranyije n'ibyabaye byatanzweho ibimenyetso, ndetse n'ibindi bintu by'inyongera bishingiye ku byabaye bizashyirwa muri dosiye, kandi watumye urubanza rw'Ujurira rucibwa nabi.

p. Urugereko rwemeje, nta muburanyi ubirusabye, ko kuva muri Mata kugera muri Nyakanga 1994 habaye jenoside mu Rwanda. Nyamara nk'uko Urugereko rubyiyemerera, mbere yo guca urubanza rw'Ujurira ntibyari ngombwa kubanza kwemeza niba harabaye cyangwa hatarabaye jenoside mu Rwanda hagati ya Mata na Nyakanga 1994. Ujurira

avuga ko Urugereko rwavuze ibyo bintu mu rwego rwa politiki kandi atari ngombwa. Urukiko ntirufite uburenganzira bwo kurenga ku byabaye kuko ari byo byonyine rugomba gusuzuma mbere yo guca urubanza.

q. Urugereko rwakoze ikosa rwemeza ko, hagati ya Mata na Nyakanga 1994, mu Rwanda habaye jenoside yibasiye Abatutsi kandi yari yarateguwe[952].

D. Impamvu y'ubujurire ya kane: Andi makosa akomeye yatuma icyemezo gihamya Ujurira icyaha kivanwaho

1. Ingingo ya mbere: Guhindura Inyandiko y'ibirego ya mbere na mbere mu buryo bunyuranyije n'amategeko

Inyandiko y'ubujurire ya mbere

Urugereko rugizwe n'Abacamanza Laity Kama, Navanethem Pillay na Lenmart Aspegren, rwatanze uruhushya rwo guhindura Inyandiko y'ibirego, hakongerwamo ibyaha byo gusambanya ku gahato, nk'uko Umushinjacyaha yari yabisabye. Ubusanzwe abo Bacamanza bagombaga kwikura urubanza ariko ni bo baburanishije Uregwa, kandi ibyo binyuranije n'amahame rusange y'amategeko yashyizweho[953].

Inyandiko y'ubujurire ya kabiri

Ku itariki ya 17 Kanama 1997, Urugereko rwakoze ikosa ryo mu rwego rw'amategeko kuko rwatanze uruhushya rwo guhindura inyandiko y'ibirego hakongerwamo ibirego bishya bitatu byerekeranye n'urugomo rwibasiye imyanya ndangagitsina[954].

[952] Igice cya gatatu
[953] Ingingo ya 37 y'ubujurire
[954] Ingingo ya 4(t) y'ubujurire

2. Ingingo ya kabiri: Gufata uko bidakwiye ubuhamya bwanditse bwatanzwe mbere

Inyandiko y'ubujurire ya mbere.

Kumenyekanisha ibimenyetso ntibyakozwe neza kuko Porokireri yatanze amazina y'abatangabuhamya akererewe cyane. Ibyo byabujije Ujurira gutegura ukwiregura kwe mu buryo bwuzuye kandi buhamye[955].

Inyandiko y'ubujurire ya kabiri.

Urukiko rwakoze ikosa kuko rwafashe icyemezo rusange kivuga ko ubuhamya bwatanzwe mu Rukiko bwakwizerwa kurusha ubuhamya bwanditse bwatangiwe hanze y'Urukiko mbere y'uko urubanza rutangira. Nyamara, igihe cyose hari ukwivuguruza hagati y'ubuhamya butanzwe mu Rukiko n'ubwatangiwe hanze y'Urukiko, Urugereko rwagombye gusuzuma uko kwivuguruza rushingiye kuri buri mutangabuhamya ukwe, no kuri buri buhamya ukwa bwo. Kubera ko rwafashe icyemezo rusange kuri ubwo buhamya, Urukiko rwanyuranyije n'ihame rivuga ko umuntu wese afatwa nk'umwere igihe atari yahamwa n'icyaha. Byongeyeye kandi, Urugereko rwatumye urubanza rucibwa nabi kubera ko rwabogamiye ku batangabuhamya bashinja, kandi bitemewe mu mategeko. Ibyo byatumye urubanza rucibwa nabi[956].

[955] Ingingo ya 33 y'ubujurire
[956] Ingingo ya 4(bb) y'ubujurire

3. Ingingo ya gatatu: Kudakurikiza ihame risaba gushingira ku bimenyetso bidashidikanywaho, amakosa akomeye yo mu rwego rw'ibyabaye

Inyandiko y'ubujurire ya mbere.

Mu guca urubanza, Urugereko rwa Mbere rw'Iremezo rwafashe imyanzuro ikosamye kubera ko rutari ruzi neza imiterere ya Komine ya Taba. Byongeye kandi, ntirwazirikanye ibintu byinshi bidashoboka ku hantu Uregwa yari ku isaha iyi n'iyi nk'uko bivugwa n'abatangabuhamya bashinja[957].

Mu guca urubanza, Urugereko rwashingiye gusa ku buhamya bw'abagabo bashinja, kubera kwanga ubuhamya bw'abagabo bashinjura rutiririrwe runabusuzuma [958].

Urugereko rwagiye kenshi ruha agaciro ubuhamya budafite aho buriye n'ibivugwa mu rubanza[959].

Urugereko ntirwazirikanye ukwivuguruza gukomeye kuri mu buhamya bw'abagabo bashinja[960].

Urugereko rwarivuguruje ku ngingo nyinshi zerekeranye n'ibyabaye[961].

Ari muri Kanada, Umucamanza Navanethem Pillay wo mu Rugereko rwa Mbere rw'Iremezo, Inteko ya 1, yagize icyo avuga mu ruhame k'ukwizerwa kw'abatangabuhamya bashinja kandi yabikoze mbere y'uko ubwunganizi butanga ibimenyetso bishinjura. Ibyo bigaragaza rero ko uwo Mucamanza abogamye cyane[962].

[957] Ingingo ya 2 y'ubujurire
[958]Ingingo ya 3 y'ubujurire
[959] Ingingo ya 4 y'ubujurire
[960] Ingingo ya 5 y'ubujurire
[961] Ingingo ya 12 y'ubujurire
[962] Ingingo ya 14 y'ubujurire

Ari i New York, Umucamanza Laity Kama yemeje mu ruhame ko hari ibimenyetso bigaragaza icyaha cyo gusambanya ku gahato kandi yabikoze mbere y'uko Ubwunganizi butangira gutanga ibimenyetso bishinjura. Uwo Mucamanza yagaragaje rero ko abogamye[963].

Urugereko rwanze nta mpamvu ifatika Icyifuzo cy'Uregwa cyasabaga ko ahabereye ibyaha hakorerwa iperereza kugira ngo, mu rwego rw'ubuhanga mu by'ubuganga, hasuzumwe icyishe abantu [964].

Inyandiko y'ubujurire ya kabiri.

Urukiko rwakoresheje nabi ihame ryerekana umuburanyi ufite inshingano yo gutanga ibimenyetso kuko ku birebana na Porokireri rwarebaga niba ibyo avuga ari ibintu « bishobora kuba byarabaye » aho kureba niba ibimenyetso atanga « bidashidikanywaho na gato »[965].

Urukiko rwafashe ubuhamya bw'abagabo benshi uko butari. Nk'urugero, rwanzuye ruvuga ko Ujurira yarimo gushakisha Abatutsi kandi ibimenyetso bigaragaza ko abo yashakishaga ari abacengezi ba FPR[966].

4. Ingingo ya kane: Ubuhamya butatangiwe mu iburanisha

Iyi ngingo yahinduwe mu cyemezo cyo ku itariki ya 24 Gicurasi 2000[967]

Mu guca urubanza, Urugereko rwashingiye ku buhamya bwatangiwe butatangiwe mu iburanisha ubwaryo, kandi uyu adahari ndetse atanabizi. Kuba abaperefe n'ababurugumesitiri baba barahinduye imyifatire yabo nyuma y'inama yabaye ku itariki 18 Mata 1994, no kuba Ujurira yaba yarahindutse cyari ikintu cy'ingenzi mu rubanza. Mu rubanza rwa Georges Rutaganda ku

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963 Ingingo ya 15 y'ubujurire
964 Ingingo ya 31 y'ubujurire
965 Ingingo ya 4(n) y'ubujurire
966 Ingingo ya 4 (dd) y'ubujurire
967 Ingingo ya 24, Inyandiko y'ubujurire ya mbere, n'impamvu y'ubujurire ya 4(s), Inyandiko y'ubujurire ya kabiri.

itariki ya 14 Ukwakira 1997, rubyibwirije, Urugereko rwavuze amagambo yo kugenzura ukuri kw'ibimenyetso byatanzwe mu rubanza rw'Ujurira igihe Filip Reynjtens yatangaga ubuhamya nk'umugabo w'impuguke. Icyo gihe rwanabajije uyu mutangabuhamya ibibazo, byerekeranye mu buryo butaziguye n'urubanza rw'Ujurira. Iyo mpuguke yatanze ubuhamya kuri ibyo bibazo. Byongeye kandi, Urugereko rwaretse iyo mpuguke Filip Reynjtens ivuga nabi kandi isebya Ujurira ku byerekeranye na dosiye kandi nta n'umwe awgize icyo abivugaho. Iryo ni ikosa ryo mu rwego rw'amategeko (guca urubanza nabi), rigomba gutuma urubanza ruseswa. Ibi bizatangirwa ibimenyetso mu iburanisha mu bujurire.

5. Ibindi bibazo

a. Kwemera nta mpaka raporo z'iperereza zakozwe n'Umuryango w'Abibumbye

Inyandiko y'Ubujurire ya kabiri

Urukiko rwakoze ikosa aho rwemeje ko rushobora kugena ibibazo bitagibwaho impaka n'ababuranyi rushingiye kuri raporo zimwe na zimwe kandi Ujurira atemera ibizikubiyemo[968].

b. Isemura

Inyandiko y'ubujurire ya mbere

Urugereko rwakoresheje akazi ko gusemura umumwe mu banyamuryango ba ARFM ngo asemure mu buhamya bwatanzwe n'abagore ku bikorwa byo gusambanya ku gahato kandi uwo musemuzi yari yarateguye imyigaragambyo muri Kigali yo kurwanya urugomo rushingiye ku gitsina. ARFM ni ishyirahamwe ry'abagore b'abanyarwanda bakora umwuga w'itangazamakuru,

[968] Ingingo ya 4(u).Raporo zivugwa n'Akayesu ntiziri mu mugereka.

bazwi kubera ibikorwa byabo bya politiki kandi bashyigikiwe n'ubutegetsi bw'Abatutsi bw'i Kigali[969].

c. Inyandikomvugo z'iburanisha zidahuye n'ibyavuzwe mu rubanza.

Inyandiko y'ubujurire ya mbere

Ujurira avuga ko atashoboye gutegura neza ukwiregura kwe uko yabyifuzaga kubera ko inyandikomvugo z'urubanza rwe zirimo amakosa kandi ibirimo ntibihure n'ibiri ku makaseti yafatiweho amajwi y'ibyavuzwe mu iburanisha[970].

Inyandiko y'ubujurire ya 2

Ujurira avuga ko, amakuru y'ibanze agaragaza ko inyandikomvugo z'iburanisha mu rubanza rwe zirimo amakosa ndetse ibirimo ntibihure n'ibiri ku makaseti yafatiweho amajwi y'ibyavuzwe mu iburanisha. Yongeraho ko hanaburamo ibice by'ingenzi[971].

d. Kumenyekanisha ibimenyetso

Inyandiko y'ubujurire ya kabiri

Kumenyekanisha ibimenyetso ntibyakozwe neza kuko Porokireri yakererewe cyane mu gutanga amazina y'abatangabuhamya, bityo bikaba byaratumye adategura imyiregurire ye mu buryo bwuzuye kandi buhamye. Byongeye kandi, Porokireri ntiyamenyekanishije inyandiko zose z'ubuhamya. Porokireri yari afite amashusho ya videyo y'amasaha 90 cyangwa kaseti zafatiweho amajwi mu buhamya Jean Kambanda yatanze ku byabaye byavuzwe mu rubanza. Kumenyekanisha ibimenyetso si ibintu Porokireri akora iyo abishatse. Agomba kubahiriza

[969] Ingingo ya 21 y'ubujurire
[970] Ingingo ya 35 y'ubujurire

inshingano yo kubimenyekanisha, byaba bifite aho bihuriye n'urubanza cyangwa ntaho bihuriye na rwo. Porokireri yari afite rero inshingano yo kumenyekanisha ubuhamya bwose bwa Jean Kambanda ndetse n'amakuru arambuye k'ukuntu yari afungiwe ahantu hatandukanye n'ah'abandi bantu baregwa, adafite avoka, acungwa n'umupolisi w'umunyakanada witwa Pierre Duclos. Ujurira arasaba Urugereko rw'Ubujurire gutegeka ko ibyo bimenyetso byamenyekanishwa[972].

e. Abatangabuhamya b'impuguke

Inyandiko y'ubujurire ya mbere

Urugereko rwemeje ko ubuhamya bwa Alison Des Forges na Mathias Ruzindana ari ukuri gufatika, kwemewe hose ku isi, kandi abahanga bo muri za Kaminuza, abashakashatsi cyangwa izindi mpuguke batemera ibivugwa mu buhamya bw'abo bagabo. Ubwunganizi ntibwabonye umwanya wo guhamagaza umutangabuhamya w'impuguke wabwo ngo anyomoze ibivugwa muri buriya buhamya[973].

f. Kurinda umutekano w'abatangabuhamya.

Inyandiko y'ubujurire ya mbere.

Perezida w'Inteko ya 1 y'Urugereko rwa Mbere rw'Iremezo, n'umwe mu bashinjacyaha witwa Richard Prosper, bamenyekanishije umwirondoro w'umutangabuhamya ushinjura wiswe DFX n'aho abarizwa kandi uwo mutangabuhamya yari arindiwe umutekano. Ibyo byagize ingaruka zikomeye kuko, nk'urugero, DFX yashyizweho iterabwoba ko ashobora kugirirwa nabi, ndetse bituma bamwe mu bagabo banga kuza gutanga ubuhamya bushinjura Ujurira[974].

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[971] Ingingo ya 7 y'ubujurire
[972] Ingingo ya 4(cc) y'ubujurire
[973] Ingingo ya 17 y'ubujurire

Inyandiko y'ubujurire ya kabiri.

Urukiko ntirwubahirije amategeko yarwo cyangwa ngo rutegeke ko ayo mategeko yubahirizwa mu byerekeye kurinda umutekano w'abatangabuhamya birimo kutamenyekanisha umwirondoro wabo. Kubera iyo mpamvu, Ujurira yavukijwe uburenganzira bwo guhamagaza abandi bagabo kuko bagize ubwoba bwo gutanga ubuhamya. Izina ry'umugore w'uwo mutangabuhamya n'umwirondoro wa Perefe wa Gitarama byaratangajwe[975].

g. Kotsa igitutu abatangabuhamya no kwivanga k'Urugereko

Urugereko rwakoresheje ivangura ryibasiye bamwe mu batangabuhamya bashinjura. Hari n'igihe rutazuyaje mu kubashyiraho iterabwoba[976].

h. Ikiganiro kidakurikije imihango y'iburanisha Umucamanza yagiranye n'umutangabuhamya

Inyandiko y'ubujurire ya mbere

Ku nshuro zirenze imwe, Urugereko rwemeye ko abatangabuhamya babazwa ibibazo kandi Ujurira yarimo kungurana ibitekerezo n'Umwunganira. Ibyo byatumye Ujurira aharenganira[977].

Inyandiko y'ubujurire ya kabiri

Nibura inshuro imwe, umucamanza Aspegren yakomeje kubaza umutangabuhamya ibibazo kandi Ujurira yarimo kungurana ibitekerezo na Avoka we. Ibyo byatumye Ujurira aharenganira cyane[978].

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[974] Ingingo ya 18 y'ubujurire
[975] Ingingo ya 4(x) y'ubujurire
[976] Ingingo ya 8 y'ubujurire
[977] Ingingo ya 32 y'ubujurire
[978] Ingingo ya 4(aa) y'ubujurire

E. Impamvu y'ubujurire ya gatanu: Kuba u Rwanda ari igihugu kitagendera na gato ku mategeko

Urukiko rwashyiriweho kugira ngo u Rwanda rube igihugu kigendera ku mategeko kandi ruce umuco wo kudahana. Kuva mu wa 1994, abategetsi b'u Rwanda bashya bakoresha igitugu kandi b'abicanyi bimakaje umuco wo kudahana ku birebana n'ibyo bakoze mu Rwanda, no mu burasirazuba bwa Congo-Zaire kuva mu wa 1996, 1997, kugera mu mpera z'uwa 1998. Porokireri Mukuru witwa Louise Arbour wahoze ari umucamanza mu bujurire ukomoka muri Kanada, yahaye akazi umupolisi w'Umunyakanada witwa Pierre Duclos, uzwiho kuba yarahimbye ibimenyetso mu rubanza rwa Matticks. Duclos ni we washinzwe « gucunga » Jean Kambanda wahoze ari Minisitiri w'intebe. Imyitwarire y'abacamanza n'abategetsi b'Urukiko n'ukuntu rwakomeje kuvutsa Ujurira uburenganzira bwe bw'ibanze nk'uko bisobanurwa mu nyandiko y'ubujurire ntibyari kwihanganirwa muri Kanada no mu Rukiko rw'Ubujurire rwa Ontario rwahaye Louise Arbour uruhushya rwo kuza kuba Porokireri Mukuru w'uru Rukiko. Ujurira afite uburenganzira bwo kurenganurwa kugira ngo asubirane agaciro ka muntu kandi afungurwe[979].

F. Impamvu y'ubujurire ya gatandatu: Ubuhamya butemewe mu mategeko bushingiye ku nkuru mbarirano

Inyandiko y'ubujurire ya mbere

Mu guca urubanza, Urugereko rwemeje ko ubuhamya bushingiye ku nkuru mbarirano bwakwizerwa[980].

Urwo Rugereko rwafashe nk'ukuri ubuhamya buziguye kandi budafite ibindi bimenyetso bifatika bibushyigikira[981].

[979] Igice cya 5 (igika cya ee)
[980] Ingingo ya 10 y'ubujurire
[981] Ingingo ya 11 y'ubujurire

Inyongera ku Cyemezo cyo ku itariki ya 24 Gicurasi 2000.

Urugereko rwanyuranyije n'amategeko kuko rwemeye ubuhamya bushingiye ku nkuru mbarirano, rutabanje gusuma ukwizerwa kwabwo. Kubera iyo mpamvu, Urugereko rwanyuranyije n'ingingo ya 89(c) y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, kandi ntirwubahirije ubukemuramanza bwemejwe mu rubanza Porokireri yaburanagamo na Tadic.

G. Impamvu y'ubujurire ya karindwi: Kudakurikiza amategeko mu ibaza ry'ibanze n'irinyomoza

Inyandiko y'ubujurire ya mbere

Urugereko rwanze uburyo Avoka wunganiraga Ujurira yabazagamo abatangabuhamya bashinjura, kandi rwari rwaremeye ko Porokireri abaza abatangabuhamya bashinja muri ubwo buryo[982].

Uregwa yavukijwe uburenganzira bwe bwo kunyomoza abatangabuhamya[983].

Inyongera ku Cyemezo cyo ku itariki ya 24 Gicurasi 2000.

Urubanza rutangiye, mu iburanisha ryo ku itariki ya 15 Mutarama 1997, Laïty Kama wari Perezida w'Inteko yabujije Uregwa kubaza umutangabuhamya ushinja ibibazo bisa n'ibimubwira icyo agomba gusubiza, ubwo byari mu rwego rw'ibaza rinyomoza. Uwo Mucamanza yabaye nk'uciye iteka kuri icyo kibazo. Nyamara, hafi buri gihe, ibibazo nk'ibyo biremewe mu ibazwa rinyomoza. Ahubwo, Umucamanza Kama yagiye yemerera kenshi Porokireri kubaza abatangabuhamya bashinja ibibazo bisa n'ibibabwira ibyo bagomba gusubiza, mu gihe cy'iburanisha. Ubundi, avoka ntiyemerewe kubaza umutangabuhamya yahamagaje ibibazo bisa n'ibimubwira icyo agomba gusubiza.

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[982] Ingingo ya 1 y'ubujurire

H. Impamvu y'ubujurire ya munani: Kudakurikiza amategeko mu kumenyekanisha inyandiko z'ubuhamya bw'abagabo bashinjura

Ku itariki ya 28 Mutarama 1997, Urugereko rwategetse Porokireri kurushyikiriza inyandiko zose z'ubuhamya bw'abagabo. Rwanategetse ko ubuhamya bwose bwanditse buvugwa na Porokireri cyangwa Ubwunganizi bushyirwa muri dosiye nk'ibimenyetso gihamya. Ibyo biragaragara neza mu nyandiko y'urubanza.

I. Impamvu y'ubujurire ya cyenda: Ibaruwa umutangabuhamya wiswe DAAX yandikiye Abacamanza.

Inyongera ku cyemezo cyo ku itariki ya 24 Gicurasi 2000.

1. Mu iburanisha, by'umwihariko ku itariki ya 3 Werurwe 1998, DAAX yatanze ubuhamya bushinjura mu muhezo

2. DAAX yagombaga kuba yaratanze ubuhamya bushinja ariko Porokireri ntiyamuhamagaza kuko, ku ruhande rumwe, uyu mugabo yashidikanyaga kuza gutanga ubuhamya kubera ubwoba. Ku rundi ruhande, ubuhamya bwe mu Rukiko bwari kugirira akamaro Ubwunganizi urebye, nk'urugero, ubwanditse yari yaratanze mbere.

3. Kubera ko Porokireri atashakaga guhamagaza DAAX, Ubwunganizi butari bwashoboye kuzana abatangabuhamya bwari bwavuze ko buzahamagaza, bwigaruriye uwo mutangabuhamya maze abwemerera kuzatanga ubuhamya bushinjura, Urukiko rurabyemera. DAAX yatanze rero ubuhamya bushinjura ku itariki ya 3 Werurwe 1998 ahamagajwe n'Ubwunganizi.

4. Mbere y'uko DAAX atanga ubuhamya ku itariki ya 3 Werurwe 1998, hari hagiwe impaka mu muhezo mu biro by'Umucamanza Laity Kama, ku kibazo cy'umutekano w'uwo mutangabuhamya. Muri izo mpaka hari abashinjacyaha babiri ari bo Pierre-Prosper

[983] Ingingo ya 20 y'ubujurire

Richard na James Stewart, Nicholas Tiangaye wunganiraga Uregwa, na Roland Amousouga wari Umukuru w'agashami gashinzwe abatangabuhamya. (Inyandikomvugo cyangwa imyanzuro y'iyo nama ntiri muri dosiye y'urubanza)

5. Muri iyo nama, haba haragiwe impaka ku byerekeranye no kuba umugabo aramutse avuye i Kigali akaza gutanga ubuhamya bushinjura bishobora kumushyira mu mazi abira. Ibyo byari byagaragajwe mu Cyifuzo Ishami rishinzwe abatangabuhamya ryatanze ku itariki ya 18 Gashyantare 1998 (Dosiye y'urubanza, umutumba wa VI, N° 84). N'ubwo yari afite ubwoba, ndetse n'ishami rishinzwe abatangabuhamya rikabisobanura, uwo mugabo yemeye gutanga ubuhamya.

6. Ikindi kibazo cy'ubwo buhamya cyerekeranye n'ukuntu uwo mugabo yagiye yihitiramo ibyo avugaho yirengagije ibindi : uwo mutangabuhamya yibagiwe kuvuga ibintu bifitiye akamaro Uregwa nko kuba uyu yarasabye ko bamwongerera abajandarume mbere y'itariki ya 18 Mata 1994, n'amagambo yavuze kuri icyo kibazo mu nama yabereye i Murambi ku itariki ya 18 Mata 1994.

7. Ayo makosa agaragara, kandi akomeye, ntiyagarukiye aho: uwo munsi, amaze gutanga ubuhamya, DAAX yandikiye Abacamanza Kama, Aspegren na Pillay ibaruwa y'ibanga (Ikimenyetso R-1), avuga ngo « numva bikwiye kwibutsa cyangwa gushimangira ibibazo n'ibisubizo nabajijwe, kugira ibyo nibutsa cyangwa nongera ku bibazo cyangwa ibisubizo natanze cyangwa bigatangwa n'uwamvuganiraga ubwo nitabaga Urugereko, kandi numva byagirira akamaro Uregwa, utarampagaje ngo ntange ubuhamya, ndetse bikanafasha Urukiko Mpanabyaha Mpuzamahanga … ». Iyi baruwa ibyutsa ibibazo bitanu:

a) Umutangabuhamya yibaza impamvu Uregwa yari yambaye ishati ya gisirikare akanitwaza imbunda, yirengagije inama yari yamugiriye cyangwa amabwiriza yari yamuhaye (iyi ngingo yavuzweho mu buhamya bwatanzwe mu ruhame) ;

b) Yibaza icyatumye uwahoze ari Burugumesitiri wa Musambira avuga ko Uregwa yari mu bitero byagabwe ku miryango imwe n'imwe bikica Abatutsi ku mugoroba wo ku itariki ya 19 Mata 1994 (iyi ngingo ntiyavuzweho mu buhamya bwatanzwe mu ruhame). Ibi rwose ni ugushinja umuntu ushingiye ku mabwire ndetse ni ugusebanya, kandi Uregwa ntiyashoboye kubyireguraho;

c) Yibazaga icyatumye Uregwa ataramenyesheje Perefe iby' « igitero rusange interahamwe zagabye ku bantu bari barakuwemo mu byabo n'intambara cyangwa ku miryango runaka », ahubwo akamumenyesha gusa ibikorwa bike by'iterabwoba. Icyo kibazo (igitero rusange cyagabwe ku itariki itazwi) nticyavuzwe mu buhamya bw'uwo mugabo. Ibyo bikaba ari ubundi buryo bubisha bwo gushinja Uregwa amuciye ruhinga nyuma, kandi we atari bubone uko abyireguraho;

d) Yibaza impamvu Uregwa atirukanywe ku mirimo ye nyuma y'uko « bisabwa na Justin Mugenzi wakomewe aashyi cyane ubwo yatangaga icyo gitekerezo ; uwo Mugenzi akaba yari Minisitiri muri Guverinoma ya Kambanda. Muri make, DAAX asa n'uvuga mu cyayenge ko Uregwa atirukanywe ku mirimo ye kubera ko yari afite ubufatanye na Guverinoma. Na none, iyo baruwa isa n'ivuga mu marenga ko Uregwa yaryozwa icyaha kubera ubufatanye bwe n'iyo Guverinoma, ibyo na byo bikaba ari ukumuca ruhinga nyuma kuko atashoboye kwiregura kuri ibyo bintu uwo mugabo atavugiye mu ruhame ubwo yatangaga ubuhamya bwe ;

e) Mu gusoza, yibaza impamvu Uregwa ariwe ubu Ujurira yagumanye n'Interahamwe n'abayobozi bazo « kugeza ubwo ahunganye nabo, kandi byari bizwi ko ba burugumesitiri bakoze neza akazi kabo, batagize uruhare rutaziguye mu bikorwa bya jenoside, basigaye mu Rwanda, maze bakitandukanya, n'ubwo bari baratinze, na Guverinoma yakoze jenoside ». Icyo gitekerezo, kivuga nabi kandi kirwanya Uregwa ntigikubiye mu buhamya bw'ibanze uwo mugabo yatanze mu Rukiko. Uwo mutangabuhamya watanzwe na Porokireri, bivugwa ko yagirira akamaro Ubwunganizi, yaciye ruhinga nyuma Uregwa aramugambanira.

8. Ntawabura kwibwira ko iyo baruwa, iharabika bikomeye Uregwa, yakiriwe ikanasomwa n'abo yandikiwe ari bo Abacamanza, ubushinjacyaha n'abavoka bunganira Uregwa kuko mu madosiye y'Urukiko nta kintu kigaragaza ko atari ko byagenze. Uregwa yahawe kopi y'iyo baruwa kandi yamenye ko iyo baruwa ikomeye abo yari yandikiwe bayisomye.

9. Amaze gutanga ubuhamya mu Rukiko, DAAX yasubiye i Kigali maze ku itariki ya 1 Gicurasi 1998 arafatwa afungirwa kuri Burigade y'i Remera. Yaje kwimurirwa aho bafungira abasirikare mu kigo cy'abasirikare barinda Perezida ku Kimihurura i Kigali, nyuma yaho yimuriwe mu yindi gereza ya gisirikare ahandi bafungira abasirikare ku Mulindi. Hashize amezi make, yaje kwimurirwa muri gereza ya Kimironko (dufite ibimenyetso bibihamya).

10. Ujurira asanga bitarashobokaga ko acirwa urubanza mu buryo buboneye kubera impamvu zikurikira:

c) N'ubwo buriya buhamya bwa DAAX bumurenganya bikomeye kandi ku buryo bidafite igaruriro, ntiyari gushobora kubunyomoza, bitewe cyane cyane n'uko bwahishwe, ibirego bibukubiyemo bikaba ari bishya kandi bitunguranye (bidafite aho bihuriye n'ubuhamya bwatanzwe mu ruhame), bukabamo amagambo avuga ibintu mu buryo buziguye, ibitekerezo bwite by'umugabo ndetse n'andi yo kumuhamya icyaha.

d) Guhererekanya amakuru ku buryo bwihariye hagati y'Urugereko n'umutangabuhamya, by'umwihariko ushyigikiwe na Guverinoma, ni bintu bitemewe mu miryango yose y'amategeko kandi binyuranyije n'ihame ry'ibanze risaba ko mu manza nshinjabyaha iburanisha rigomba kubera mu ruhame.

e) Bityo rero, habayeho kunyuranya n'amahame akurikira:
   - Iburanisha rigomba kubera mu ruhame; no

- Uregwa afite uburenganzira bwo gucirwa urubanza ku buryo buboneye kandi mu ruhame.

Aya mahame ateganywa n'ingingo ya 78 n'iya 80 z'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, kandi aranemewe mu muryango w'amategeko witwa « *Common Law* ».

Reba, *Scott et al.v.Scott, 1913 , A.C . 417,463(H.L)*

Mc Pherson v, McPhereson,[1936] A.C..177(PCP)

Addis V, Crocker et al , [1960] 3 weekly law reports 339,345 and 346 (C.A.England)

d) Ujurira yavukijwe uburenganzira bwo kunyomoza uwo mutangabuhamya « kandi iryo ni ikosa rikomeye cyane ryo mu rwego rw'amategeko » nk'uko byemezwa mu rubanza *Davis* yaburanagamo na *Alaska*, Urubanza rwaciwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe za Amerika (*United States vs Bagler 473 U.S.667,1055, Ct. 3375.87 L.Ed 481,1985*). Ubwo rero habayeho kunyuranya n'amahame shingiro agenderwaho, mu mategeko yose mpanabyaha, kugira ngo urubanza rucibwe ku buryo buboneye: reba by'umwihariko igitekerezo cy'Umucamanza *White* mu rubanza Duncan yaburanagamo na Louisiana, *391 U.S 145,885. Ct.1444,20 l.Ed 491(1968)*

e) Kubera ko batakoze akazi kabo neza kandi ntibanagire icyo bitaho, abavoka bunganiraga Uregwa bamuvukije uburenganzira bwo kwiregura mu buryo bwuzuye kandi buhamye n'ubwo gucirwa urubanza mu buryo buboneye. Kubera ingaruka zikomeye zatewe n'ibyo DAAX yavuze mu buryo buziguye n'ibibazo yibajije, cyane cyane amakuru yashyikirije Abacamanza mu ibanga, hagombaga gufatwa ingamba zikomeye zo kurenganura Ujurira no kumusubiza uburenganzira bwe. Nyamara, izo ngamba ntizafashwe maze bituma urubanza rucibwa nabi, kandi Avoka wese ushishikariye imirimo ye yo kunganira Uregwa aba yarashoboye kuburizamo ko ibyo bintu biba.

f) Nk'uko tuzabyerekana, isesengura ry'imiryango y'ingezi y'amategeko rigaragaza ko iyo Avoka wunganira Uregwa adashoboye akazi, bituma haba akarengane mu iburanisha bityo urubanza rugacibwa nabi. Hari ubukemuranza buke kuri iki kibazo

cy'ubuswa bw'abunganira abaregwa kubera ko, muri rusange, abaregwa bunganirwa n'abavoka bihitiyemo bityo bagakorana mu busabane. Kubera ko Uregwa yavukijwe ubwo burenganzira bwe, ntahabwe abamwunganira bashoboye akazi kandi bagashishikariye, urubanza rwagombye kuburanishwa bundi bushya kubera ko yunganiwe n'abavoka b'abaswa.

g) Ujurira asanga iyo aza kunganirwa uko bikwiye maze akabasha kwiregura mu buryo bwuzuye kandi burimo umurego, urubanza rwe ruba rwaraciwe ukundi.

J. Impamvu y'ubujurire ya 10: Gufungwa mu buryo bunyuranye n'amategeko

Impamvu y'ubujurire nshya (Icyemezo cyo ku itariki ya 22 Kanama 2000)

Kuva ku itariki ya 22 Ugushyingo 1995 kugera ku ya 30 Gicurasi 1996 ubwo yitabaga Urukiko, Ujurira yafunzwe na Porokireri mu buryo butemewe n'amategeko. Ujurira yavukijwe rero uburenganzira bwo kumenya impamvu afunzwe kandi we na Avoka Johan Scheers wamwunganiraga, bagaragaje ko binubiraga ko afunzwe mu buryo bunyuranyije n'amategeko.

K. Impamvu y'ubujurire ya 11: Ubujurire ku gihano

1. Ingingo ya mbere

Ujurira yavukijwe uburenganzira bwe bw'ibanze bwo kugira Avoka umwunganira mu iburanisha ryo ku itariki ya 28 Nzeri 1998. Yasabye guhabwa Avoka wo kumwunganira, Urukiko rumuvutsa, ku bushake, ubwo burenganzira bw'ibanze. Kubera iyo myifatire yarwo idahwitse, Urukiko rwatakaje ububasha bwo kuburanisha Ujurira.

2. Ingingo ya kabiri

Ku itariki ya 2 Ukwakira 1998, Urugereko rwavukije Ujurira uburenganzira bwo kugira icyo arubwira. Imikorere nk'iyo itemewe mu mategeko yongera kwerekana ko rwitesheje ububasha bwo kumuburanisha n'icyubahiro yagombye kurugirira.

3. Ingingo ya gatatu.

Igihano yakatiwe ntigishyize mu gaciro kandi ntaho gishingiye.

UMUGEREKA C :   URUTONDE RW'AMAGAMBO

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

1. Ubujurire bwa Jean-Paul Akayesu

Inyandiko y'ubujurire ya mbere	*Ibaruwa yo ku itariki ya 1 Ukwakira 1998*
Inyandiko y'ubujurire ya kabiri	*Inyandiko imenyesha ubujurire, yatanzwe ku ya 2 Ukwakira 1998*
Inyandiko y'ubujurire ku gihano	*Inyandiko y'ubujurire ku gihano cyagenwe n'Urugereko, yatanzwe ku ya 2 Ugushyingo 1998*
Imyanzuro y'Akayesu	*Imyanzuro y'Uwajuriye, yatanzwe ku ya 7 Nyakanga 2000*
Imyanzuro ya Porokireri isubiza	*Imyanzuro ya Porokireri isubiza, yatanzwe ku ya 4 Nzeri 2000*
Igisubizo cya Akayesu ku myanzuro ya Porokireri isubiza	*Igisubizo cy'Uwajuriye ku myanzuro ya Porokireri isubiza, cyatanzwe ku ya 19 Nzeri 2000.*

2. Ubujurire bwa Porokireri

Inyandiko y'ubujurire bwa Porokireri	*Inyandiko y'ubujurire, yatanzwe ku ya 2 Ukwakira 1998*
Inyandiko imenyesha ivanwaho ry'impamvu ya 6 y'ubujurire	*Inyandiko ya Porokireri yo ku ya 2 Ukwakira 1998, imenyesha ivanwaho ry'impamvu ya 6 y'ubujurire, yatanzwe ku ya 15 Ukwakira 1999*
Imyanzuro ya Porokireri	*Imyanzuro y'ubujurire ya Porokireri, yatanzwe ku ya 10 Nyakanga 2000*
Imyanzuro ya Akayesu isubiza	*Icyifuzo gisaba Urugereko kutakira imyanzuro y'ubujurire bwa Porokireri n'imyanzuro ye isubiza, cyatanzwe ku ya 24 Nyakanga 2000*
Umugereka ku myanzuro ya Akayesu isubiza	*Icyifuzo gisaba Urugereko kutakira imyanzuro y'ubujurire bwa Porokireri n'imyanzuro ye, Umugereka, urubanza Browski aburanamo na Canada (Porokireri Mukuru) F1989G 1, R.C.S. 342, cyatanzwe ku ya 25 Nyakanga 2000*
Igisubizo cya Porokireri ku myanzuro ya Akayesu isubiza	*Igisubizo cya Porokireri ku myanzuro ya Akayesu isubiza, cyatanzwe ku ya 19 Nzeri 2000*

B. <u>Izindi nyandiko zifashishijwe</u>

Inyandiko y'ibirego ya mbere	Inyandiko y'ibirego mu rubanza Porokireri aburanamo na *Jean-Paul Akayesu*, urubanza No. ICTR-96-4-T, nk'uko yemejwe ku itariki ya 16 Gashyantare 1996
Inyandiko y'ibirego	Inyandiko y'ibirego mu rubanza Porokireri aburanamo na *Jean-Paul Akayesu*, urubanza No. ICTR-96-4-T, nk'uko yahinduwe n'Urugereko rwa Mbere rw'Iremezo I, 17 Kamena 1997
Akayesu cyangwa Ujurira	Jean-Paul Akayesu
Archbold 2000	*Archbold 2000, Criminal Pleading Evidence and Practice (2000, Sweet and Maxwell), Eds. Richardson and Thomas (Sentencing Editor)*

Urubanza rwa *Aleksovski mu bujurire*	Urubanza mu bujurire, *Porokireri aburana na Zlatko Aleksovski*, urubanza No. IT-95-14/1-A, 24 Werurwe 2000 (Urugereko rw'Ubujurire rwa TPIY)
Urubanza rwa *Barayagwiza* mu bujurire	Urubanza mu bujurire, *Jean-Bosco Barayagwiza aburana na Porokireri*, urubanza No. ICTR-97-19-AR72, 3 Ugushyingo 2000
Urubanza rwa *Čelebići* mu bujurire	Urubanza mu bujurire, *Porokireri aburana na Zejnil Delalić na bagenzi be*, urubanza No. IT-96-21-A, 20 Gashyantare 2001 (Urugereko rw'Ubujurire rwa TPIY)
Urubanza rwa *Erdemović* mu bujurire	Urubanza mu bujurire, *Porokireri aburana na Drazen Erdemović*, urubanza No. IT-96-22-A, 7 Ukwakira 1997 (Urugereko rw'Ubujurire rwa TPIY)
Urubanza rwa *Furund'ija* mu bujurire	Urubanza mu bujurire, *Porokireri aburana na Anto Furund'ija*, urubanza No. IT-95-17/1-A, 21 Nyakanga 2000 (Urugereko rw'Ubujurire rwa TPIY)
Urubanza rwa *Kambanda* mu bujurire	Urubanza mu bujurire, *Porokireri aburana na Jean Kambanda*, urubanza No. ICTR-97-23-A, 19 Ukwakira 2000 (Urugereko rw'Ubujurire)
Urubanza rwa *Serushago* mu bujurire *birebana n'igihano* 2000 (Urugereko rw'Ubujurire)	Impamvu z'icyemezo, *Omar Serushago aburana ku naPorokireri*, urubanza No. ICTR-98-39-A, 6 Mata
Urubanza rwa *Tadić* mu bujurire	Urubanza mu bujurire, *Porokireri aburana na Duško Tadić*, urubanza No. IT-94-1-A, 15 Nyakanga 1999 (Urugereko rw'Ubujurire rwa TPIY)
Urubanza rwa *Tadić* mu bujurire	
(ingoboka y'iburabubasha)	Icyemezo ku bujurire bw'Ubwunganizi bwerekeye ingoboka mbanzirizarubanza y'iburabubasha *Porokireri aburana na Duško Tadić*, urubanza No. IT-94 1 AR72, 2 Ukwakira 1995 (Urugereko rw'Ubujurire rwa TPIY)
Urubanza rwa *Tadić* mu bujurire	Urubanza mu bujurire ku byerekeye igihano, *Porokireri aburana na Duško Tadić*, urubanza No.

	IT-94-1-A & IT-94-1-Abis, 26 janvier 2000 (Urugereko rw'Ubujurire rwa TPIY)
Ingingo ya 3 ihuriweho	Ingingo ya 3 ihuriweho n'Amasezerano 4 y'i Jeneve yo mu mwaka wa 1949
Iburanisha mu bujurire	Iburanisha ryo kumva ingingo z'ababuranyi, itariki ya 1 n'iya 2 Ugushyingo 2000
CDI	*Raporo ya Komisiyo y'Amategeko Mpuzamahanga,* Inteko ya 48, 6 Gicurasi-26 Nyakanga 1996, AG de O.N.U., Inteko ya 51, Umugereka No. 10 (A/51/10)
CEDH	Urukiko rw'i Burayi ku burenganzira bw'ikiremwamuntu
Urugereko rwa Mbere rw'Iremezo	Urugereko rwa Mbere rw'Iremezo, Inteko ya mbere, rw'Urukiko mpuzamahanga
Urugereko rw'Ubujurire	Urugereko rw'Ubujurire rw'Urukiko Nshinjabyaha Mpuzamahanga 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
CIJ	Urukiko Mpuzamahanga rwa Loni
CRA	Inyandikomvugo y'iburanisha mu rw'Iremezo *mu rubanza Porokireri aburanamo na Jean-Paul Akayesu*, *urubanza No. ICTR-96-4-T. Nimero zose z'amapaji y'inyandikomvugo z'iburanisha zivugwa muri uru rubanza mu bujurire ni izo mu nyandiko y'igifaransa itazajya igenderwaho kandi idakosoye. Birashoboka rero ko nimero z'amapaji muri iyi nyandiko zitandukanye n'iziri mu nyandiko y'igifaransa ikosoye*.
CRA(A)	Inyandiko mvugo y'iburanisha mu bujurire
	Inyandikomvugo z'iburanisha mu bujurire yabereye Arusha (iburanisha ryo ku itariki ya 1 n'iya 2 Ugushyingo 2000). Nimero zose z'amapaji y'inyandikomvugo z'iburanisha zivugwa muri uru

rubanza mu bujurire ni izo mu nyandiko y'igifaransa itazajya igenderwaho kandi idakosoye. Birashoboka rero ko nimero z'amapaji muri iyi nyandiko zitandukanye n'iziri mu nyandiko y'igifaransa ikosoye.

Amasezerano y'Uburayi ku burenganzira bw'ikiremwamuntu [CEDH]	Amasezerano yerekeranye no kurengera uburenganzira bw'ikiremwamuntu n'uburenganzira bw'ibanze, yashyizweho umukono i Roma ku itariki ya 4 Ugushyingo 1950
Ibisobanuro bya CICR	*Pictet (ed.), Commentaire de la Quatrième Convention de Genève relative à la protection des personnes civiles en temps de guerre* [Ibisobanuro ku Masezerano ya Kane y'i Jeneve yerekeranye no kurengera abasiviri mu gihe cy'intambara, Umuryango Mpuzamahanga Utabara Imbabare, Jeneve, 1958.
Ibisobanuro bya CICR ku Masezerano y'inyongera	*Sandoz et al. (eds.), Commentaires des Protocoles additionnels du 8 août 1977 aux Conventions de Genève du 12 août 1949* [Ibisobanuro ku Migereka yo ku itariki ya 8 Kamena y'Amasezerano y'I Jeneve yo ku itariki ya 18 Kanama 1949], Comité International de la Croix-Rouge, Genève, 1987.
Icyemezo cyo ku itariki ya 17 Mata 2000	Icyemezo *(ku cyifuzo cya 1 n'icya 7 byo mu Myanzuro y'Ujurira byerekeye ibyifuzo bikurikira birebwa n'icyemezo gishyiraho gahunda y'iburanisha cyo ku itariki ya 30 Ugushyingo 1999 (regarding record on appeal [*cyerekeye ubujurire]*),* cyafashwe ku itariki ya 17 Mata 2000
Icyemezo cyo ku itariki ya 24 Gicurasi 2000	Icyemezo mu bujurire (ku byifuzo 2, 3, 4, 5, 6 na 8 byo mu Myanzuro y'Ujurira byerekeye ibyifuzo bikurikira birebwa n'icyemezo gishyiraho gahunda y'iburanisha cyo ku itariki ya 30 Ugushyingo 1999), cyafashwe ku itariki ya 24 Gicurasi 2000.
Icyemezo cyo ku itariki ya 22 Kanama 2000	Icyemezo mu bujurire k'ugushyira hamwe cyangwa kubumbira hamwe mu ncamake ibyifuzo bitari byaburanishwa, cyafashwe ku itariki ya 22 août 2000

Icyemezo mu rubanza rwa *Tadić* (ibimenyetso by'inyongera)	Icyemezo ku Cyifuzo cy'Ujurira gisaba kongererwa igihe no kwakira ibimenyetso by'inyongera, urubanza *Porokireri aburana na Duško Tadić*, urubanza No. IT-94-1-A, 15 Ukwakira 1998 (Urugereko rw'Ubujurire rwa TPIY)
Urubanza mu rw'iremezo	*Porokireri aburana na Jean-Paul Akayesu*, urubanza No. ICTR-96-4-T, 2 Nzeri 1998 (Urugereko rwa Mbere rw'Iremezo)
Urubanza rwa *Blaškić* mu rw'Iremezo	Urubanza mu rw'iremezo, *Porokireri aburana na Tihomir Blaškić*, urubanza No. IT-95-14-T, 3 Werurwe 2000 (Urugereko rwa Mbere rw'Iremezo rwa TPIY)
Urubanza rwa *Čelebići* mu rw'Iremezo	Urubanza mu rw'iremezo, *Porokireri aburana na Zejnil Delalić na bagenzi be*, urubanza No. IT-96-21-T, 16 Ugushyingo 1998 (Urugereko rwa Mbere rw'Iremezo rwa TPIY)
Urubanza rwa *Kambanda* mu rw'Iremezo	Urubanza n'igihano, *Porokireri aburana na Jean Kambanda*, urubanza No. ICTR-97-23-S, 4 Nzeri 1998 (Urugereko rwa Mbere rw'Iremezo)
Urubanza rwa K*ayishema/Ruzindana* mu rw'Iremezo	Urubanza mu rw'iremezo, *Porokireri aburana na Clément Kayishema na Obed Ruzindana*, urubanza No. ICTR-95-1-T, 21 Gicurasi 1999 (Urugereko rwa Mbere rw'Iremezo)
Urubanza rwa *Kunarac* mu rw'Iremezo	Urubanza mu rw'iremezo, *Porokireri aburana na Dragoljub Kunarac na bagenzi be*, imanza Nos. IT-96-23-T & IT-96-23/1-T, 22 Gashyantare 2001 (Urugereko rwa Mbere rw'Iremezo rwa TPIY)
Urubanza rwa *Kupreškić* mu rw'Iremezo	Urubanza mu rw'iremezo, *Porokireri aburana na Zoran Kupreškić na bagenzi be*, urubanza No. IT-95-16-T1, 4 Mutarama 2000 (Urugereko rwa Mbere rw'Iremezo rwa TPIY)
Urubanza rwa *Musema* mu rw'Iremezo	Urubanza n'igihano, *Porokireri aburana na Alfred Musema*, urubanza No. ICTR-96-13-T, 27 Mutarama 2000 (Urugereko rwa Mbere rw'Iremezo)

Urubanza rwa *Rutaganda* mu rw'Iremezo	Urubanza n'igihano, *Porokireri aburana na Georges Anderson Nderubumwe Rutaganda*, urubanza No. ICTR-96-3-T, 6 Ukuboza 1999 (Urugereko rwa Mbere rw'Iremezo)
Urubanza mu rw'iremezo n'igihano	Igihano, *Porokireri aburana na Jean-Paul Akayesu*, urubanza No. ICTR-96-4-T, 2 Ukwakira 1998 (Urugereko rwa Mbere rw'Iremezo)
PDCP [Amasezerano mpuzamahanga]	Amasezerano mpuzamahanga k'uburenganzira mu by'imbonezamubano no mu bya politiki (1966)
Urubanza rwa mbere rwa *Erdemović* ku gihano	Urubanza n'igihano, *Porokireri aburana na Dra'en Erdemović*, urubanza No. IT-96-22-T, 29 Ugushyingo 1996 (Urugereko rwa Mbere rw'Iremezo du TPIY)
Porokireri	Ibiro bya Porokireri
Inyongera ya I	Umugereka w'Amasezerano y'i Jeneve yo ku itariki ya 12 Kanama 1949 yerekeranye no kurengera abakorewe ibyaha mu gihe cy'intambara.
Inyongera ya II	Umugereka w'Amasezerano y'i Jeneve yo ku itariki ya 12 Kanama 1949 yerekeranye no kurengera abakorewe ibyaha u gihe cy'intambara
Raporo y'Umunyamabanga Mukuru	Raporo y'Umunyamabanga Mukuru, hashingiwe ku gika cya 5 cy'Icyemezo 955 (1994) cy'Inama Ishinzwe Amahoro ku Isi, U.N.Doc.S/1995/134, 13 Gashyantare 1995
Amategeko	Amategeko y'Urukiko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso,
Icyemezo 955	Icyemezo 955 cy'Inama Ishinzwe Amahoro ku Isi (1994), U.N.Doc.S/Res/955, 8 Ugushyingo 1994 (ishyirwaho ry'Urukiko)
Urubanza rwa kabiri *Erdemović mu rw'Iremezo* ku gihano	*Porokireri aburana na Dražen Erdemović*, urubanza No. IT-96-22T*bis*, itangwa ry'igihano, 5 Werurwe 1998 (Urugereko rwa Mbere rw'Iremezo rwa TPIY)
Sitati	Sitati y'Urukiko

Sitati ya Roma	Sitati y'Urukiko Nshinjabyaha Mpuzamahanga yemejwe, i Roma, ku itariki ya 17 Nyakanga 1998, Doc.ONU A/CONF.183/9
TPIY	Urukiko Nshinjabyaha Mpuzamahanga rushinzwe gucira imanza abantu bakekwaho kuba barakoreye mu cyahoze cyitwa Yugosolaviya ibyaha bikomeye binyuranije n'amategeko mpuzamahanga arengera abantu mug ihe cy'intambara, kuva mu mwaka wa 1991.
TPIR	Urukiko Mpuzamahanga cyangwa Urukiko. Urukiko Mpuzamahanga 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.
Amasezerano ya Kane y'i Jeneve	Amasezerano y'i Jeneve yerekeranye no kurengera abasiviri mu gihe cy'intambara, yo ku itariki ya 12 Kanama 1949.

IGITEKEREZO CYA SHAHABUDDEEN

1. Nemera imikirize y'uru rubanza kandi ndifuza kuyishyigikira by'umwihariko ku kibazo kimwe. Icyo kibazo ni icyo kumenya niba Urugereko rw'Ubujurire rufite ububasha bwo gufata ibyemezo ku bibazo bimwe by'isesengura ry'amategeko bivuye mu Rugereko rwa Mbere rw'Iremezo, igihe umwanzuro wose wafatwa (aho waba uganisha hose) utagira ingaruka ku mikirize y'Urubanza mu rw'iremezo. Porokireri ni we wasabye Urugereko rw'Ubujurire gufata icyemezo ku Cyifuzo yarushyikirije mu bujurire. Uwunganira Akayesu (Ubwunganizi) avuga ko Urugereko rw'Ubujurire nta bubasha rufite bwo gukemura icyo kibazo. Anavuga ko ruramutse rubikoze byaba nko kugira abantu inama, maze akongeraho ko ibihugu biha bene ubwo bubasha Urugereko rw'Ubujurire biba bishingiye ku itegeko ryihariye ryashyizweho n'Inteko ishinga amategeko.

2. Mu bigiye gusuzumwa, ndasaba ko umuntu yatandukanya impamvu z'ubujurire n'ibindi bibazo bitagombye kujuririrwa. Impamvu y'ubujurire iba ishingiye ku "ikosa ryo mu rwego rw'amategeko ryatuma icyemezo cy'urubanza giseswa", hakurikijwe ingingo ya 24 ya Sitati, ari na yo igenderwaho muri uru rubanza. Ibindi bibazo bitagomba kujuririrwa bigamije kwerekana ikosa rinyuranyije n'amategeko, ariko iryo kosa ntiribe ryatuma icyemezo cy'urubanza giseswa. Iyo Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu gusesengura itegeko, ariko ntibigire ingaruka ku mikirize y'urubanza, icyo gihe imyanzuro yarwo ntiseswa. Ikosa nk'iryo rero si impamvu yemerwa mu bujurire.

3. Inyandiko y'ubujurire yatanzwe mbere na Porokireri yari ikubiyemo impamvu z'ubujurire, n'ibibazo bitagombye kujuririrwa. Nyuma yaho, iyo nyandiko yaje gukurwamo izo mpamvu z'ubujurire, hasigara gusa ibibazo bitagombye kujuririrwa. Umuntu yakwibaza rero niba inyandiko y'ubujurire yose yaba itarakuweho.

4. Igihe cyose inyandiko y'ubujurire ishingiye gusa ku bibazo bitagombye kujuririrwa, nta bujurire buba buriho. Kuri ibyo bibazo rero, n'iyo Urugereko rw'Ubujurire rwakwemera ko habayeho ikosa mu gusesengura itegeko runaka mu rubanza rujuririrwa, ubwo bujurire

ntibwakwakirwae. Cyokora, mu rubanza rwa *Tadic*[1] rugenderwaho nk'ubukemuramanza kuri icyo kibazo, havugwa ko n'ubwo rutakora nk'aho rwemeye ubujurire Urugereko rw'Ubujurire rushobora kwakira ikibazo cyerekeye amakosa yakzowe mu isesengura ry'amategeko, maze rugatanga igitekerezo cyarwo k'ukuntu iryo sesengura ryari gukorwa.

5. Muri urwo rubanza, hatanzwe urugero rw'isesengura ry'itegeko Urugereko rwa Mbere rw'Iremezo rwanengwagaho (ku byerekeye itangazwa ry'ibyo abatangabuhamya bemezaga), maze kubikosora bikaba ntacyo byahindura ku myanzuro yafashwe mu icibwa ry'urubanza. Nk'uko byerekanywe mu mikirize y'urubanza, Urugereko rw'Ubujurire rwa TPIY [Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze cyitwa Yugosolaviya] rwavuze ibi bikurikira:

> Hakurikijwe ingingo ya 25 ya Sitati, Urugereko rw'Ubujurire nta bubasha rufite bwo kwivanga, mu buryo ubwo ari bwo bwose, mu cyemezo cy'Urugereko rwa Mbere rw'Iremezo, nk'aho icyo cyemezo ubwacyo cyaba cyajuririwe. Cyakora, ikibazo kirimo cy'isesengura ry'amategeko ni ikibazo cy'ingirakamaro, bikaba bisaba ko Urugereko rw'Ubujurire rugitangaho igitekerezo.[2]

6. Urugereko rw'Ubujurire rwa TPIY rwize icyo kibazo rushingiye kuri ibyo bintu. Umuntu ashobora kwibwira ko ubwo ababuranyi b'impande zombi bemeye ko iyo ngingo ikwiye gufatirwa umwanzuro ari ikintu kigabanya ingufu z'icyo cyemezo. Cyakora jye nsanga icyo cyemezo gishingiye ku ihame rigaragara bihagije ku buryo uru Rugereko rukwiye kugikurikiza.

7. Ku kindi kibazo cyavuzwe muri urwo rubanza (ku byerekeye ibyaha byibasiye inyokomuntu), Urugereko rw'Ubujurire rwa TPIY na rwo rwabigenje gutyo. Mu gika cya(8) cy'icyemezo cy'Urugereko handitse ibi bikurikira:

> RUSANZE Urugereko rwa Mbere rw'Iremezo rwarakoze amakosa rwemeza ko ibyaha byose byibasiye inyokomuntu birangwa n'igitekerezo cy'ivangura, kandi

[1] Porokireri aburana na Tadic, IT-94-1-a, 15 Nyakanga 1999, igika 316; reba n'igika 315.
[2] Ni kimwe no haruguru..

RUKANEMEZA ko mu rwego rw'amategeko, bene icyo gitekerezo ari ikintu cya ngombwa gisabwa gusa ku byaha byavuzwe ku buryo bweruye, ni ukuvuga ingeri z'ibyaha by'itoteza, nk'uko biteganywa n'ingingo ya 5 h) ya Sitati y'Urukiko.

8. Kubera iyo mpamvu, Urugereko rw'Ubujurire rwa TPIY rwasanze Urugereko rwa Mbere rw'Iremezo rwarakoze amakosa mu isesengura rwakoze, maze rukosora ibintu uko bikwiye. Cyakora urwo Rugereko rw'Ubujurire ntirwigeze ruvuga ko ubujurire kuri icyo kibazo bwakiriwe. Ibyo byatewe n'uko iryo kosora ritagize icyo rihindura ku myanzuro yafashwe n'Urugereko rwa Mbere rw'Iremezo[3]. Koko rero, iryo kosa mu isesengura ry'amategeko ntiryashoboraga "gutuma icyemezo giseswa" hakurikijwe ibiteganywa n'ingingo ya 25(1) ya Sitati ya TPIY. Bityo rero, nta bujurire bwari buhari kuri icyo kibazo, ariko ntibyabujije urwo Rugereko gukosora ikosa ryari ryagaragaye mu gusesengura ibyarebanaga n'iryo tegeko.

9. Cyakora, mu rubanza rwa Tadic, inyandiko ya Porokireri y'ubujurire yari ikubiyemo impamvu z'ubujurire, hamwe n'ibibazo bitagombye kujuririrwa. Nyuma, iyo nyandiko mu miterere yayo uko yaje gusuzumwa n'Urugereko, yari ikubiyemo gusa ibibazo bitagombye kujuririrwa. Aho rero, nta bujurire bushyitse Porokireri yari yagejeje ku Rugereko rw'Ubujurire. Icyo gihe, Urugereko rw'Ubujurire rwashoboraga kumva Porokireri ari uko rufite ububasha bwo gutanga inama. Ariko nk'uko byumvikana, ntirwari rufite ubwo bubasha. Umuntu atarebye neza akaba yakwihutira kwanzura avuga ko iryo burabubasha ryabuza Urugereko rw'Ubujurire kugira icyo ruvuga kuri icyo kibazo.

10. Cyakora hari ikindi gitekerezo kivuga ko iyo ibintu bimeze bityo, Urugereko rw'Ubujurire rushobora kugira icyo rukora, rukagikora kandi mu rwego rw'Ubujurire, ariko ntibibe nko gufata imyanzuro y'ubujurire mu myumvire isanzwe. Hano umuntu yakwibaza niba nyuma y'iseswa ry'inyandiko y'ubujurire bwa Porokireri hari icyo Urugereko rw'Ubujurire rwashoboraga gukora kuri urwo rubanza. N'ubwo Porokireri atari yatanze ubujurire buhamye, Uwungirije Uregwa we yari yaratanze ubujurire

bwemewe, bityo na Porokireri akaba yari umuburanyi kuri ubwo bujurire. Ikibazo gihari ni ukumenya niba mu kwiga ubujurire bw'Umwanganizi, Urugereko rw'Ubujurire rwarashoboraga no kureba ibikemangwa ku isesengura ry'amategeko biri mu nyandiko ry'urubanza barwanya, maze bigakosorwa ku buryo byahura n'ibyemejwe mu rubanza rwa Tadic. Nsanga rwose ntacyabuza Urugereko rw'Ubujurire kubigenza gutyo.

11. Nk'uko bivugwa mu gika cya 17 cy'inyandiko y'uru rubanza mu bujurire, ubukemuramanza bwerekana ko Urugereko rw'Ubujurire rufite ububasha bwo kubyutsa, rubyibwirije, ibibazo biri mu nyandiko y'urubanza rwajuririwe; rufite kandi n'ububasha bwo kubifataho ibyemezo, ariko rumaze guha ababuranyi umwanya wo kugira icyo babivugaho. Mu cyemezo cyafashwe ku kibazo cy'ububasha mu rubanza rwa Tadic ("*Tadic Decision On Jurisidiction*), Ubwunganizi bwari bwabyukije ikibazo mu Rugereko rwa Mbere rw'Iremezo cyerekeye agace karebana n'ibyaha byibasiye inyokomuntu mu ngingo ya 5 ya Sitati ya TPIY/ICTY, ariko ntibwakomeje kukivuga mu bujurire. Cyakora, ibyo ntibyabujije Urugereko rw'Ubujurire kugira icyo ruvuga kuri icyo kibazo. Urwo Rugereko rwagize ruti: "N'ubwo ujurira yaretse gukurikirana icyo kibazo mu bujurire…, uru Rugereko rukurikije uburemere bwacyo rurasanga bikwiye kugira icyo ruvuga ku biteganywa n'ingingo ya 5."[4]

12. Kubera izo mpamvu, iyo mu gihe cyo kumva ubujurire bwatanzwe n'Uregwa, Urugereko rusanze hari ibivugwa byerekeranye n'amategeko kandi biri mu cyemezo kirwanywa, nta mpamvu igaragara yarubuza gukoresha ububasha bwarwo bwo kubisesengura. Hari impamvu rwose zifatika zo kuba ubwo bubasha bwakoreshwa.

13. Icyemezo cy'urubanza kiba gifite icyo gishingiyeho. Ibibazo bisuzumwa biba byaragaragaye mu rubanza rurimo gusuzumwa bundi bushya kandi byafashweho ibyemezo mu rw'iremezo. Igihe birimo amakosa ariko ntakosorwe mu nyandiko y'urubanza, ibyo byemezo bizatera, byanze bikunze, ingaruka zikomeye ku manza zindi manza Urukiko ruzaburanisha, kubera cyane cyane ko ari zo nyandiko zonyine

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[3] Ni kimwe no haruguru, igika 281

z'ingirakamaro zihari ku bibazo by'ingenzi mu bukemuramanza bw'Urukiko. Byongeye kandi, ntibyaba ari byiza kwirengagiza ukuri gukubiye mu icibwa ry'uru rubanza mu bujurire ku ngingo ebyiri zikurikira: Urukiko ntiruzahoraho; icya kabiri, imirimo yarwo yerekeranye n'ibibazo bishobora kugira ingaruka ziremereye mu muryango mpuzamahanga. Bigakubitiraho ko ubundi ibibazo by'ubukemuramanza bibonerwa igihe kirambuye mu zindi nkiko zihoraho, ibyo akaba atari ko bimeze muri uru Rukiko.

14. Birumvikana ko iri sesengura ritaba urwitwazo rwo guta umurongo mu mahame y'ingenzi agenga icibwa ry'imanza; nta n'ikibuza ko iyo mikorere yombi ihurirana, cyane cyane mu rubanza nk'uru aho ababurana babijyaho impaka cyangwa se nibura bakaba bafite urubuga rwo kuzijya. N'ubwo ntacyo bihindura ku myanzuro y'urubanza rwajuririwe, ndibwira ko Akayesu yari ashishikariye bihagije kuba ahibereye ngo akurikirane ubwe impaka ku kibazo kimureba.

15. Haramutse havuzwe ko iyo mikorere itashoboka hakurikijwe ibiteganywa n'ingingo ya 24 ya Sitati, igisubizo ni uko ibigize amahame yavuzwe mbere bigomba kuzirikanwa mu gusesengura icyo Inteko Ishinzwe Amahoro ku Isi yari igamije igihe yemezaga Sitati y'Urukiko, ikaba yaranateganyijemo uburenganzira bwo kujurira. Nta gushidikanya ko bamwe bemera ko iyo ngingo igomba gufatwa gusa uko iteye n'ibiyikubiyemo mu kuyisesengura. Cyakora, buri tegeko rigomba gusesengurwa hakurikijwe impamvu zisobanura by'umwihariko icyatumye rishyirwaho. Nkaba ntekereza ko, urebye ibyasuzumwe mbere n'ukuntu abarishyizeho barigaragaje, iryo tegeko barigennye ku buryo ryakumvikana kimwe n'andi mu mahame y'ubukemuramanza, yemera ko, rimwe na rimwe Urukiko rw'Ubujurire rushobora gufata ibyemezo ku bibazo bivuka mu bujurire, kabone n'iyo ibyo bibazo ntacyo byahindura ku mikirize y'urubanza rwajuririwe. Amahame ajyanye n'ibyo yagiye yandikwa kwinshi mu buryo butandukanye. Ayo mahame ateganya ibikurikira:

> Inkiko z'ubujurire zica imanza gusa ku bibazo zigejejweho mu bujurire nta bindi bibazo byongeweho nta no gutanga ibitekerezo ku bindi bibazo byagiweho impaka cyangwa

[4] Urubanza Porokireri aburana na Tadic, [1994-1995]I TPIY, *JR* 353 à 503, igika 139.

> kwatura amahame agenga amategeko mu gihe ayo mahame nta kamaro gafatika mu kurengera uburenganzira bw'ababuranyi. Inkiko z'ubujurire zisuzuma gusa ibibazo byashingirwaho mu gufata ibyemezo by'urubanza, nta kugerageza kundi " gushyiraho itegeko ryagenderwaho cyangwa ryakoreshwa mu bukemuramanza bw'igihugu". Ibibazo bitajuririwe mu buryo butaziguye, bitari ngombwa, bidafite amahuriro cyangwa ishingiro mu ngingo zishingirwaho mu gufata ibyemezo bya burundu, ntibisuzumwa cyangwa ngo bifatweho ibyemezo mu Rukiko rw'Ubujurire, keretse gusa iyo byemejwe ko birebana n'inyungu z'igihugu, cyangwa kubera akamaro byagirira umwuga w'ubucamanza, cyangwa se hari izindi nyungu zava muri iyo myanzuro.[5]

16. Bityo, umuntu akaba yavuga ko amarembo afunguye buke. Ntibyemewe gupfa kwivanga mu bintu. Uburemere bw'ikibazo ubwabwo ntibuhagije kuba impamvu yo kukivangamo. Urugero rwatangwa mu bundi bukemuramanza, ni uko, hagomba kuba "indi mpamvu y'ingaruka byagira ku mibereho ya rubanda, icyo kibazo kiramutse kidakemuwe."[6] Byongeye kandi, nk'uko bishimangirwa mu nyandiko y'urubanza mu bujurire, hagomba kubaho isano ya hafi hagati y'impamvu zemewe mu bujurire n'ibibazo bitagombye kujuririrwa. Ariko n'iyo ibyo bya ngombwa byujujwe, Urukiko rw'Ubujurire ntiruba rufite ubwisanzure busesuye bwo gufata umwanzuro kuri ibyo bibazo bitagombye kujuririrwa, iyo icyemezo cyarwo nta ngaruka kigira ku rubanza rwaciwe mu rw'iremezo.

17. Nk'uko byasobanuwe haruguru, iyo umuburanyi ashaka gushingira ku bibazo bitagombye kujuririrwa, icyo gihe nta bujurire buba buriho bugomba gufatwaho ibyemezo. Cyakora, muri uru rubanza, nk'uko bigaragara mu cyemezo cyarwo, Urugereko rw'Ubujurire ntirwemeye kandi ntirwanze kwakira ubujurire bwa Porokireri. N'ubwo rugira icyo ruvuga ku cyo rwita impamvu zatanzwe na Porokireri mu bujurire bwe, icyemezo cyarwo kigomba kumvikana nk'igitekerezo gitanzwe ku bibazo byabyukijwe byerekeye amategeko. Mu by'ukuri, Urugereko rw'Ubujurire rwafashe ubujurire bwa Porokireri nk'intandaro yo kugira ngo rwige ibyo bibazo birebana n'amategeko, aho kubufata nk'ubujurire busanzwe bukeneye gufatwaho umwanzuro.

18. Muri make rero, ububasha bw'Urugereko rw'Ubujurire mu gufata ibyemezo ku bibazo by'amategeko bidafite ingaruka ku mikirize y'urubanza rujuririrwa ni ikibazo kirebana

[5] Corpus Juris secundum (New York), Vol.5, pp. 593-608, inyandiko yo hasi ku rupapuro ntirimo.

n'ubwisanzure bwarwo. Cyakkora n'ubwo ubwo bubasha buriho, abacamanza bagomba kubukoresha bigengesereye. Iyo bukoreshejwe neza, Urugereko rw'Ubujurire ruba rutunganyije imirimo yarwo, nk'uko bisanzwe mu rwego rw'Ubujurire. Ntibivuga ko ruba rwishoye mu bintu byo gutanga inama. Nemeranya rero n'Urugereko rw'Ubujurire ku kibazo nk'iki gikwiye koko gutuma Abacamanza bakoresha ubwo bubasha.

Mohammed Shahabudeen

[Umukono + Kashe y'Urukiko]

Bikorewe Arusha, tariki ya 1 Kamena 2001

Repubulika ya Tanzaniya.

[6] Urubanza rwa Borowski na Kanada (Minisitiri w'Ubutabera), [1989] 1 *S.C.R.* 342 kugeza kuri 362, ahasesengurwa ibyerekeye ububasha bw'Inkiko bwo gufata icyemezo ku kibazo kitagira ingaruka iyo ari yo yose ku rubanza

IGITEKEREZO GITANDUKANYE N'ICY'ABANDI CY'UMUCAMANZA NIETO-NAVIA

1. Ku bwiganze bw'amajwi, Abacamanza bagize inteko y'Urugereko rw'Ubujurire bemeye gusuzuma ubujurire bwa Porokireri muri uru rubanza.[1] Sinemeranya na bo kuri icyo cyemezo.

2. Mu mpamvu ze z'ubujurire, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwaba rwarakoze amakosa ku byerekeye ibibazo abona ko bifite uburemere bukomeye mu iburanisha mu Rukiko.[2] Porokireri yemera ko impamvu ubwo bujurire bushingiyeho atari impamvu zisanzwe zemewe hakurikijwe ingingo ya 24 ya Sitati, kubera ko, ahanini, icyemezo icyo ari cyo cyose Urugereko rw'Ubujurire rwafata kuri ibyo bibazo nta ngaruka cyagira ku mikirize y'urubanza rwo mu rw'Iremezo.[3] Cyakora, Porokireri yemeza ko " ukurikije imikorere yarwo, Urugereko rw'Ubujurire rutagomba kwibanda gusa ku bikubiye mu ngingo ya 24 ya Sitati"[4], ko, kubera iyo mpamvu, "rushobora gusuzuma ibibazo bindi bitavugwa mu ngingo ya 24 ya Sitati."[5] Porokireri agira ati:

> Kubera ko Urukiko rukiri mu bihe byo kwiyubaka, byaba byiza Urugereko rw'Ubujurire rushishikariye kwakira izi manza z'ubujurire no kuzifatira imyanzuro ku buryo byafasha mu gushyiraho umurongo uzajya ugenderwaho mu gusuzuma ubujurire n'imiburanishirize y'imanza, ku buryo byagirira akamaro Urugereko rwa Mbere rw'Iremezo ndetse n'ababuranyi .[6]

3. Ku bwiganze bw'amajwi, Abacamanza bagize inteko y'Urugereko rw'Ubujurire basanga uru Rugereko rufite ububasha busesuye bwo kwakira bene ubwo bujurire *"igihe rwumva*

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[1]Inyandiko y'urubanza rwo mu bujurire, igika 28: "…Urugereko rw'Ubujurire rero ruzasuzuma impamvu enye z'ubujurire zatanzwe na Porokireri."

[2] Porokireri aravuga ko "izi mpamvu z'ubujurire zibyutsa ibibazo bifite uburemere rusange mu byerekeye ubukemuramanza n'imikoreye y'Urukiko…" Reba Impinamyanzuro ya Porokireri, igika cya 1.17. Reba na none Inyandikomvugo y'iburanisha, 2 November 2000", imp. 22 - 26: "ku byerekeye ibibazo byose impamvu z'ubujurire zishingiyeho, twemera ko bifitiye muri rusange akamaro ubukemuramanza bw'Urukiko no guteza imbere amategeko mpuzamahanga ahana, ndetse no kunononsora ibisobanuro byerekeranye n'ayo mategeko."

[3] Porokireri agira ati: "Porokireri aremera ko amakosa ubwayo adahagije kugirango ashingiwrweho mu gusesa icyemezo cy'Urugereko rwa Mbere rw'Iremezo, cyangwa se ko agomba kuba ahuje ku buryo bweruye n'ibivugwa mu ngingo ya 24(1) ya Sitati." Reba Impinamyanzuro ya Porokireri, igika 1.17.

[4] Imyanzuro ya Porokireri isubiza, igika 2.6.

[5] Kimwe n'ibibanziriza ibi.

[6] "Inyandikomvugo y'iburanisha, 1 Ugushyingo 2000", urup. 244

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ko gukemura ibibazo bikubiyemo byafasha cyane mu guteza imbere ubukemuramanza bw'Urukiko", kandi impamvu z'ubwo bujurire "zikaba zifatanye isano n'urubanza rusuzumwa".[7] Byongeye kandi, abo Bacamanza bemera ko Urugereko rw'Ubujurire rudafite ububasha, nk'ubw'Urukiko Mpuzamahanga rwa Loni, bwo "*gutanga inama*" ku bibazo rwashyikirijwe.[8] Icyo gitekerezo cya nyuma ndacyemera rwose. Uko mbibona, biragaragara y'uko Urugereko rw'Ubujurire rudafite ububasha bwo gutanga inama ku bibazo runaka. Nkaba numva bigoye kubangikanya ibyo bitekerezo byombi, kuko nibaza ukuntu Urugereko rw'Ubujurire rwakwemera ko nta bubasha rufite bwo gutanga inama, maze ngo ruhindukire rwemeze ko rushobora gusuzuma ibibazo bisanzwe bisuzumwa n'abafite ubwo bubasha bwo gutanga inama.

4. "Sitati y'Urukiko Mpuzamahanga Rwashyiriweho u Rwanda ni yo ikubiyemo amategeko y'ingenzi agenga Urukiko. Ingereko zarwo zombi rero, ni ukuvuga urwa Mbere rw'Iremezo n'urw'Ubujurire, zifite ububasha bwo gusobanura ibikubiye muri iyo Sitati.[9] Muri urwo rwego, iriburiro rya Sitati rigira riti:

> Rushyizweho n'Inama Ishinzwe Amahoro ku Isi hakurikijwe umutwe wa 7 w'Amategeko-shingiro y'Umuryango w'Abibumbye, *Urukiko Mpanabyaha Mpuzamahanga* 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 (rwiswe

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[7] Inyandiko y'urubanza rwo mu bujurire, ibika 23 na 24.

[8] Inyandiko y'urubanza rwo mu bujurire, igika 23: "*Urugereko rw'Ubujurire ruributsa ko gusuzuma ibibazo bifite akamaro muri rusange bitagamije gushyiraho indi nzira y'ijurira cyangwa ubundi bubasha bujyanye no gutanga inama."* Ingingo ya 65 ya Sitati y'Urukiko Mpuzamahanga rwa Loni igira iti:
"1. Urukiko rushobora gutanga igitekerezo kigira abantu inama ku bibazo by'amategeko, bisabwe n'ababifitiye uburenganzira mu buryo buhuje n'Amategeko-Shingiro y'Umuryango w'Abibumbye.
2. Ibibazo Urukiko rubazwaho gutanga ibitekerezo ngishwanama bigomba kuru shyikirizwa mu nyandiko yerekana neza ikibazo bwite kigishwaho inama, hamwe n'umugereka w'izindi nyandiko zafasha mu kunoza imiterere y'icyo kibazo."

[9] Umwanzuro 955(1994), wagennye ishyirwaho ry'Urukiko, mu kiciro kawo ka 1 handitse ibi bikurikira:
[Inama Ishinzwe Amahoro ku Isi] **Yemeje**, ikurikije icyifuzo cyatanzwe na Leta y'u Rwanda (S/1994/1115), gushyiraho Urukiko Mpuzamahanga rushinzwe gusa kuburanisha 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; *kugira ngo bigerweho, Inama yemeje kandi Sitati y'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda, yometse kuri uyu mwanzuro.*"(byashimangiwe na twe).

hano "Urukiko Mpuzamahanga Rwashyiriweho u Rwanda") *ruzarangiza inshingano zarwo hakurikijwe iyi Sitati*.[10]

5. Birumvikana ko Sitati igomba gusobanurwa hakurikijwe amahame rusange yerekeye isesengura ry'amategeko mpuzamahanga, nk'uko ateganywa n'ingingo ya 31 n'iya 32 z'Amasezerano y'i Viyene yerekeye Amasezerano Mpuzamahanga.[11] Ibi ni ibintu bizwi kandi byagaragaye mu byemezo no mu manza by'Ingereko zombi za TPIY, ari zo urwa Mbere rw'Iremezo n'urw'Ubujurire,[12] ndetse no mu nyandiko y'uru rubanza ni ko byemejwe rwose. Hakurikijwe ayo mahame, inyandiko y'Amasezerano (aha ni ukuvuga Sitati) igomba gufatwa ko *ikubiyemo igitekerezo cy'imvaho ba nyirubwite bafite.*[13] Kubera iyo mpamvu, "usobanura" ntashobora gushyira ku ruhande ibyanditse ngo akurikize "ibyo yikuriye mu mutwe we gusa", cyangwa se ngo yongeremo ibidakubiye muri iyo nyandiko ku buryo bweruye cyangwa buteruye".[14] Urukiko Mpuzamahanga rwa Loni rugira ruti:

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[10] Hongewemo ishimangira. Amagambo agira ati "hamaze gushyirwaho" yasimbuwe n'andi agira ati "nk'uko yahinduwe" n'andi agira ati "nk'uko yavuguruwe", nyuma y'uko Inama Ishinzwe Amahoro ku Isi igize ibyo ihindura mu Mwanzuro wayo 1165(1998).

[11] Amasezerano y'i Viyene yerekeye amategeko agenga amasezerano (1969), "UN Doc. A/CONF.39/27. Amasezerano y'i Viyene akubiyemo amategeko rusange agenga isesengura rikoreshwa mu masezerano mpuzamahanga, ndetse no mu zindi nyandiko mpuzamahanga muri rusange zifitanye ibisanira na yo, ariko ibigomba guhinduka byahinduwe. Urukiko rugendera ku mahame ashingiye ku ngingo ya 31(1) y'Amasezerano y'i Viyene , iyo ngingo ikaba igira iti: "Isesengura ry'ibigize amasezerano rigomba gushingira ku kuri hakurikijwe icyo amagambo akubiyemo ashaka kumenyesha mu busanzwe no mu mvugo bigendana, harimo no kureba intego n'ibigamijwe."

[12] Ingero: Icyemezo ku cyifuzo cya Porokireri gisaba ko hafatwa ingamba zo kurinda umutekano w'abatangabuhamya n'uw'abahohotewe, *Urubanza rwa Porokireri na Dusko Tadic, No"IT-94-1-T,"* 10 Kanama 1995, igika cya 18 *n'ibigikurikira*; *Urubanza rwa Porokireri na Zejnil Delalic na bagenzi be, No IT-96-21-T*, 16 Ugushyingo 1998," igika 158 n'ibigikurikira; Icyemezo cyo mu bujurire kirebana n'iyakirwa ry'ibyemezo birindwi 7 affidavits] n'inyandiko imwe ikubiyemo ubuhamya, *urubanza rwa Porokireri na Dario Kordic na Mario Cerkez, No.IT-95-14/2-AR73.6*, 18 Nzeri 2000", igika 22.

[13] Raporo (1996) ku Mategeko agenga Amasezerano mpuzamahanga yasohowe na Komisiyo y'Amategeko mpuzamahanga [International Law Commission, ILC] (Vol. II, ILC Yearbook, 1996, p.220). Urukiko Mpuzamahanga Rwashyiriweho u Rwanda ntirufite "ibihugu byagiranye amasezerano"[yo kurushyiraho] nk'uko bisanzwe. Ibyanditse muri Sitati bikwiye gufatwa nk'ibyemezo byerekana ibyifuzo by'Inama Ishinzwe Amahoro ku Isi.

[14] Ni kimwe no haruguru, urup. 221. Mu nama yabereye i Viyene, intumwa ya Leta Zunze Ubumwe z'Amerika, Bwana Myres S. Mc Dougal, yatanze icyifuzo kigamije kwagura umushinga w'amategeko wakozwe na ILC (A/CONF.39/C.1/L.156) yasangaga ushyiraho imbibi zikabije (A/CONF.39/11, inama ya 31, 19 Mata 1968, igika 38). Intumwa y'Ubwongereza, Bwana I.M Sinclar, yamaganye n'ubuhanga bwinshi icyo cyifuzo cya Bwana Mc Dougal *(ni kimwe no haruguru*, inama ya 33, 22 Mata 1968, igika cya 2 n'ibigikurikira). Icyifuzo cy'Amerika cyaje

> Iyo amagambo y'ingenzi mu byanditse yumvikana mu buryo asanzwe yumvikana nta kwiririwa umuntu ashakisha icyo bishaka kuvuga muri iyo nyandiko, icyo gihe nta kibazo na gito kiba gihari. Cyakora, iyo bene ayo magambo akoreshejwe mu buryo umuntu agomba gucishiriza ngo yumve icyo ashaka kuvuga, cyangwa se iyo ashobora gutuma hagerwa ku bintu bidafututse, icyo gihe ni bwo bwonyine Urukiko rugomba kwiyambaza ubundi buryo bw'isesengura kugira ngo rusuzume neza icyo ba nyirubwite bashakaga kuvuga ubwo bakoreshaga ayo magambo.[15]

6. Uko mbibona, biragaragara neza ko ingingo ya 24 ya Sitati ikubiyemo imvugo yumvikana mu buryo "amagambo ayigize asanzwe yumvikanamo". Ayo magambo ni aya akurikira:

> 1. Urugereko rw'Ubujurire rwakira ubujurire butanzwe n'abakatiwe n'Urugereko rwa Mbere rw'Iremezo, cyangwa butanzwe na Porokireri, kubera impamvu zikurikira:
>
> (a) Ukwibeshya ku ngingo y'itegeko bituma icyemezo cyavanwaho; cyangwa
>
> b) Ukwibeshya ku byabaye kwatumye urubanza rucibwa nabi.
>
> 2. Urugereko rw'Ubujurire rushobora kugumishaho ibyemezo by'Ugereko rwa Mbere rw'Iremezo, kubihindura cyangwa kubisubiramo.

7. Nta kintu na kimwe gikubiye muri iyi ngingo cyemerera Abacamanza b'Urugereko rw'Ubujurire, mu bwiganze bw'amajwi, gutanga ibisobanuro bimeze nk'ibyo batanze mu Nyandiko y'urubanza. Amagambo y'iyo ngingo ntateye urujijo, kandi nta n'impamvu yindi iriho yatuma Urugereko rw'Ubujurire rwitabaza ububasha bwarwo busesuye kugira ngo rusuzume ubujurire bushingiye ku makosa yo mu rwego rw'amategeko, mu gihe bitaganisha ku guhamishaho, guhindura cyangwa gusubiramo icyemezo cy'Urugereko rwa Mbere rw'Iremezo. Ni ukuvuga ko impamvu z'ubujurire, zidahuje ku buryo budatandukira n'ibikubiye mu ngingo ya 24 ya Sitati, ziba zidakwiye kwakirwa, nkaba jye mbona zitaragombaga gusuzumwa n'Urugereko rw'Ubujurire.

8. Nkurikije cyane cyane ko uru Rukiko ari urwego rudahoraho kandi rutagenewe kuramba, simpakana ukuri kw'ihame rivuga ko byagira akamaro Urugereko rw'Ubujurire rugiye, rimwe na rimwe, ruha umurongo Urugereko rwa Mbere rw'Iremezo « umurongo » rusange rugomba gukurikiza mu mikorere yarwo. Ibi bishobora (ndetse rwose urebye

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kubura amajwi mu nama rusange ya Komisiyo: amajwi 66 yaracyanze, 8 aracyemera, naho 10 aba ay'abifashe (A/CONF.39/11/Add.2, Raporo y'inama rusange ya Komisiyo, igika 271).

[15] Ububasha bw'Inama Rusange ya Loni mu byerekeye kwinjiza ibihugu bishya mu Muryango w'Abibumbye, Raporo za I.C.J [Komisiyo Mpuzamahanga y'Impuguke mu Mategeko], (1950), urup. 8.

birashoboka) guteza guteza imbere ubukemuramanza bwacu. Cyakora, ububasha bwo gukora ibyo ntaburiho na mba. Nk'uko Akayesu abivuga, ruramutse rwemeye kwakira ubwo bujurire bwa Porokireri, Urugereko rw'Ubujurire rwaba rwiyemeje kwagura ibiteganywa na Sitati.[16]

9. Ibitekerezo byatanzwe n'uru Rugereko rw'Ubujurire ku mpamvu z'ubujurire bwa Porokireri muri uru rubanza bizagira, ku buryo bugaragara, ingaruka ku manza zicibwa ubu n'izindi zizacibwa nyuma n'Urukiko[17] kandi Porokireri arabizi.[18] Urugereko rw'Ubujurire rufashe rero inzira mbi kandi yakurura ibibazo, ku bwanjye nkaba nemeza nkomeje ko uru Rugereko rwagombaga kuyirinda.

10. Ikindi kandi, ndashima ukuntu Urugereko rw'Ubujurire rwa TPIY rwagiye rusobanura ububasha ruhabwa n'ingingo ya 25 ya Sitati irugenga[19], maze rukabufata mu buryo bwaguye rushingiye ku mpamvu ivuga ko rufite uburenganzira bwo gufata ibyemezo ku buryo busesuye.[20] Mu kubikora, rwasanze n'ubwo bitagira ingaruka ku rubanza rwajuririwe, ibibazo bimwe bivuka mu bujurire bigomba gusuzumwa kubera ko birebana muri rusange n'ubukemuramanza. Hagati y'izo manza n'uru hari ibintu bitandukanye ku buryo bugaragara. Kimwe muri byo ni uko muri uru rubanza, nta na kimwe mu bibazo byavuzwe na Porokireri mu bujurire gishingiye ku ngingo ya 24 ya Sitati, naho mu bibazo byasuzumwe n'Urugereko rw'Ubujurire TPIY, harimo impamvu z'ubujurire zemewe na Sitati. Muri rusange ubujurire bwibanze ku bibazo byerekeye ukwibeshya ku ngingo y'itegeko cyangwa ku byabaye bishobora gutuma urubanza rucibwa nabi mu Rugereko rwa Mbere rw'Iremezo, uretse ko haje kuzamo n'ibibazo bimwe by'inyongera Urugereko rw'Ubujurire rwemeye gusuzuma.

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[16] Imyanzuro y'Akayesu isubiza , igika 9.

[17] Nkuko Akayesu yabivuze mu gisubizo cye, ibika11 - 13.

[18] Igisubizo cya Porokireri ku myanzuro ya Akayesu isubiza , ibika 2.10 - 2.14. Mu gika cya 2.14, Porokireri avuga ko "ikigamijwe mu ngingo z'amategeko, ukurikije amategeko y'ibihugu bimwe, ni ugutanga uburyo n'inzira byakemura ibibazo byo gusesengura amategeko, bikaba bizagira ingaruka mu mikorere y'ibihe biri imbere, cyane cyane mu manza zibonekamo ko nta burenganzira uburana afite bwo kujurira. Reba na none Inyandikomvugo y'iburansiha mu bujurire, 1 Ugushyingo 2000", urup. 244.

[19] Ibi bihuje n'ingingo ya 24 ya Sitati y'Urukiko Mpuzamahanga Rwashyiriweho u Rwanda.

[20] Reba Inyandiko y'*urubanza rwa Porokireri na Dusco Tadic,* No IT-94-1-A , 15 Nyakanga 1999, ibika 247, 281, na 315. Inyandiko y*'urubanza rwa Porokireri na Zlatco Aleksovski*, No "IT-95-14-A," 24 Werurwe 2000, igika cya 113 cyavuzweho muri uru rubanza rwo mu bujurire

11. Ibyo ari byo byose, turetse impaka zindi ku bubasha bw'Urugereko rw'Ubujurire bwo gufata ibyemezo mu buryo busesuye muri izo manza za mbere, jye ndabona tugomba gusobanura amategeko atugenga ku buryo budatandukira, ndetse tugomba no kwisubiraho kuri icyo kibazo. Kubera izo mpamvu, Urugereko rw'Ubujurire rwagombaga gusuzuma gusa ubujurire bwerekana amakosa yo mu rwego rw'amategeko yatuma urubanza ruseswa, cyangwa amakosa ku byabaye yatumye urubanza rucibwa nabi.

Bikozwe mu cyongereza n'igifaransa, ariko inyandiko y'icyongereza niyo igenderwaho

Rafael Nieto-Navia [Umukono]

Bikorewe Arusha, 1 Kamena 2001

Repubulika ya Tanzania. [Kashe y'Urukiko]