UMURYANGO W'ABIBUMBYE

Urwego Rwashyiriweho Kurangiza Imirimo y'Inkiko Mpanabyaha Mpuzamahanga

Urubanza N° MICT-12-29-A

Date: 15 Mata 2014

Umwimerere: Icyongereza

Urugereko rw'Ubujurire

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AUGUSTIN NGIRABATWARE

Aburana na

POROKIRERI

INYANDIKO ITARI IBANGA

ICYEMEZO KU CYIFUZO CYA AUGUSTIN NGIRABATWARE GISABA URUGEREKO GUFATIRA POROKIRERI IBIHANO, NO GUTANGA ITEGEKO RYO KUMENYEKANISHA INYANDIKO

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1. Urugereko rw'Ubujurire (« Urugereko rw'Ubujurire ») rw'Urwego Rushinzwe Imirimo y'insigarira y'Inkiko Mpanabyaha Mpuzamahanga (« MICT») rwashyikirijwe « Icyifuzo cy'Ubwunganizi gisaba Urugereko rw'Ubujurire gufatira Porokireri ibihano, no gutegeka ko haba imenyekanisha ry'inyandiko (hashingiwe ku Ngingo ya 71(A)(ii), iya 72(D), iya 73(A) n'iya 74 z'Amategeko ya MICT) » cyatanzwe na Augustin Ngirabatware ku itariki ya 9 Gicurasi 2013, kigizwe n'inyandiko yagenewe rubanda ifite Umugereka G w'ibanga (« Icyifuzo »). Porokireri yatanze igisubizo cy'ibanga ku itariki ya 20 Gicurasi 2013[1], ku itariki ya 22 Gicurasi 2013 Ngirabatware atanga imyanzuro ye y'ibanga ku gisubizo cya Porokireri[2]

I. AMAVU N'AMAVUKO

2. Ngirabatware yari umuyoboke w'ishyaka rya Muvoma Iharanira Demokarasi n'Amajyambere muri Repubulika (« MRND »), akaba yarabaye Minisitiri w'Imigambi ya Leta muri Guverinoma y'Agategenyo guhera ku itariki ya 9 Mata kugeza ku ya 14 Nyakanga 1994[3]. Ku itariki ya 20 Ukuboza 2012, Urugereko rwa Mbere rw'Iremezo II rw'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda (« Urugereko rwa Mbere rw'Iremezo » na « TPIR ») rwahamije Ngirabatware icyaha cyo guhamagarira no gushyigikira jenoside, icyo guhamagarira mu ruhame kandi ku buryo butaziguye gukora jenoside, gukora we ubwe, binyuze mu kujya mu mugambi mubisha uhuriweho, icyaha cyo gusambanya abagore ku gahato nk'icyaha cyibasiye

[1] Igisubizo cya Porokireri ku Cyifuzo cya Ngirabatware gisaba ko Porokireri yafatirwa ibihano hakanaba imenyekanisha, 20 Gicurasi 2013 (inyandiko y'ibanga).

[2] Imyanzuro y'Ubwunganizi ku gisubizo cya Porokireri ku Cyifuzo cya Ngirabatware gisaba ko hafatwa ibihano hakanaba imenyekanisha, 22 Gicurasi 2013 (inyandiko y'ibanga).

[3] Reba Inyandiko y'urubanza rwa Augustin Ngirabatware mu rw'iremezo, 20 Ukuboza, ibika 6-7.

inyokomuntu[4]. Ngirabatware yakatiwe igifungo cy'imyaka 35 mu rw'iremezo[5], urubanza rwe rukaba rutaracibwa mu bujurire[6].

3. Mu gihe cy'iburanisha ry'urubanza, André Delvaux wari ushinzwe iperereza ku ruhande rwa Porokireri yatanze ubuhamya ku bihe binyuranye ikipe y'abakozi bo kwa Porokireri bagiye babonana n'abatangabuhamya bashinja[7]. Ku itariki ya 30 Nzeri 2009, umutangabuhamya Delvaux arangije gutanga ubuhamya, Ngirabatware yasabye gushyikirizwa inyandiko zose zakozwe mu gihe Porokireri yagiye abonana n'abatangabuhamya 12[8]. Mu cyemezo rwafashe uwo munsi, Urugereko rwa Mbere rw'Iremezo rwanze icyo cyifuzo, ruvuga ko ibirebana n'isesengura Porokireri akora ku batangabuhamya bigengwa n'Ingingo ya 70(A) y'Amategeko ya TPIR Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso (« Amategeko ya TPIR ») kandi Ngirabatware akaba ataragaragaje ko

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[4] Inyandiko y'urubanza mu rw'iremezo, ibika 1345, 1370, 1393, 1394.

[5] Inyandiko y'urubanza mu rw'iremezo, igika 1420.

[6] Reba Inyandiko y'ubujurire bwa Augustin Ngirabatware, 9 Mata 2013; Imyanzuro ya Dogiteri Ngirabatware mu bujurire, 18 Kamena 2013 (inyandiko y'ibanga); Inyandiko irimo ibigomba gukosorwa mu Myanzuro ya Dogiteri Ngirabatware mu bujurire, 16 Nyakanga 2013 (inyandiko y'ibanga). Inyandiko y'imyanzuro mu bujurire yahinduwe yagenewe rubanda kandi isibwemo ibigomba kuba ibanga yatanzwe ku itariki ya 1 Kanama 2013.

[7]Umutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 29 Nzeri 2009, imp. 24, 27, 31-32. Umutangabuhamya Delvaux yasobanuye ko ubwo yabonanaga n'abatangabuhamya, hari hamwe na hamwe yabazaga ibibazo akandika ibisubizo abatangabuhamya batanze, naho mu yindi abagize ikipe y'abakozi bo kwa Porokireri bagakora isesengura ku batangabuhamya hakaba n'ubwo banagira ibyo bandika. Reba umutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 29 Nzeri 2009, imp. 24, 27, 31-32, 35-36, 41-45, 48-49, 56-58. Reba n'umutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 30 Nzeri 2009, urup. 15.

[8] Inyandikomvugo y'iburanisha, 30 Nzeri 2009, urup. 18. Icyifuzo cya Ngirabatware kirebana by'umwihariko n'abatangabuhamya biswe ANAJ, ANAG, ANAO, ANAP, ANAE, ANAM, ANAA, ANAD, ANAK, ANAN, ANAL, na ANAF. Inyandikomvugo y'iburanisha, 30 Nzeri 2009, urup. 19.

mu gihe cyo kubonana n'abo batangabuhamya hari ubuhamya bwanditse Porokireri yafashe bugomba kumenyekanishwa[9]. Ku itariki ya 5 Ukwakira 2009, Ngirabatware yasabye uburenganzira bwo kujuririra icyo cyemezo cy'Urugereko rwa Mbere rw'Iremezo[10], hanyuma ku itariki ya 2 Ukuboza 2009 Urugereko rwanga kubumuha[11]. Ku itariki ya 22 Gashyantare 2010, Ngirabatware yasabye Urugereko rwa Mbere rw'Iremezo gusubira ku cyemezo cyarwo kubera inyandiko z'inyongera zerekeye ibazwa ry'umutangabuhamya wiswe ANAP zamenyekanishijwe bitinze, kuri Ngirabatware, ibyo bikaba ari ikimenyetso kigaragaza ko izo nyandiko zakozwe mu bihe byarondowe na Delveaux abakozi ba Porokireri bagihe babonana n'abo batangabuhamya[12]. Urugereko rwa Mbere rw'Iremezo rwanze icyo cyifuzo, ruvuga ko Ngirabatware atagaragaje ko

[9] Inyandikomvugo y'iburanisha, 30 Nzeri 2009, imp. 22-23. Reba n'Inyandikomvugo y'iburanisha, 29 Nzeri 2009, imp. 22, 28 (icyemezo ku Cyifuzo gisa n'iki cyerekeye imibonano Porokireri yagiranye n'umutangabuhamya wiswe ANAI). Urugereko rwa Mbere rw'Iremezo rwasobanuye kandi ko ibirebana n'isuzuma ry'umutangabuhamya rikorwa n'umwe mu baburanyi bigengwa n'Ingingo ya 70(A) y'Amategeko ya TPIR, bikaba bikwiriye gutandukanywa n'inyandiko zikorwa n'ukora iperereza hamwe n'ubuhamya bwanditse bw'inyongera, cyane cyane iyo ubwo buhamya bugizwe n'ibibazo n'ibisubizo. Reba Inyandikomvugo y'iburanisha, 29 Nzeri 2009, urup. 47.

[10] *Urubanza Porokireri aburana na Augustin Ngirabatware,* N° ICTR-99-54-T, Icyifuzo cy'Ubwunganizi gisaba kwemererwa kujururirira ibyemezo byatanzwe mu magambo ku tariki ya 29 no ku ya 30 Nzeri 2009, 5 Ukwakira 2009; *Urubanza Porokireri aburana na Augustin Ngirabatware,* N° ICTR-99-54-T, Inyandiko ikubiyemeo ibigomba gukosororwa mu Cyifuzo cy'Ubwunganizi gisaba kwemererwa kujuririra ibyemezo byatanzwe mu magambo ku tariki ya 29 no ku ya 30 Nzeri 2009, 6 Ukwakira 2009.

[11] *Urubanza Porokireri aburana na Augustin Ngirabatware,* N° ICTR-99-54-T, Icyemezo ku Cyifuzo cy'Ubwunganizi gisaba kwemererwa kujuririra ibyemezo byatanzwe mu magambo ku tariki ya 29 no ku ya 30 Nzeri 2009, 2 Ukuboza 2009.

[12] Inyandikomvugo y'iburanisha, 22 Gashyantare 2010, imp. 52, 55-56. Reba Icyifuzo, igika 5; Umugereka G w'Icyifuzo (inyandiko y'ibanga).

inyandiko zikubiyemo ubwo buhamya ziriho kandi ko zigomba kumenyekanishwa[13]. Urugereko rwa Mbere rw'Iremezo rwongeyeho ko izo nyandiko ziramutse zigaragaye Porokireri yagomba kuzimenyekanisha[14].

4. Ngirabatware amaze gusuzuma ibimenyetso Urugereko rwa Mbere rw'Iremezo rwashingiyeho mu Nyandiko y'Urubanza mu rw'iremezo, ku itariki ya 10 Mata 2013 yasabye ko Porokireri amushyikiriza inyandiko zakozwe mu bihe abakozi ba Porokireri bagiye babonana n'abatangabuhamya icyenda bashinja[15], anasaba kandi gushyikirizwa ibimenyetso byose bishobora kuba byatuma ibivugwa n'abatangabuhamya bashinja bikemangwa, hamwe n'ibimenyetso byerekeye imyiregurire ye ya sinari mpari ku birebana n'itariki ya 7 Mata 1994, no ku birebana n'igitero cyagabwe kuri Safari Nyambwega muri Komini ya Nyamyumba[16]. Ku itariki ya 16 Mata

[13] Inyandikomvugo y'iburanisha, 22 Gashyantare 2010, urup. 57.

[14] Inyandikomvugo y'iburanisha, 22 Gashyantare 2010, urup. 57.

[15] Icyifuzo, igika. 10; Umugereka B w'Icyifuzo, imp. 967-966 (nimero zikoreshwa n'ibiro bya Gerefiye). By'umwihariko, Ngirabatware yasabye gushyikirizwa ibibazo byabajijwe n'ibisubizo byatanzwe byashyizwe mu nyandiko yakozwe ubwo abagize ibiro bya Porokireri babonanaga n'abatangabuhamya mu buryo bukurikira: (i) babonanye n'umutangabuhamya wiswe ANAE ku itariki ya 25 Ukwakira 2007, ku ya 21 Werurwe 2009, no ku ya 28 Kanama 2009; (ii) babonanye n'umutangabuhamya wiswe ANAG ku itariki ya 25 Ukwakira 2007 no ku ya 21 Werurwe 2009; (iii) babonanye n'umutangabuhamya wiswe ANAM ku itariki ya 28 Werurwe 2009; (iv) babonanye n'umutangabuhamya wiswe ANAO ku itariki ya 29 Ukwakira 2008 no ku ya 19 Werurwe 2009; (v) babonanye n'umutangabuhamya wiswe ANAD ku itariki ya 26 Ukwakira 2007 no ku ya 22 Werurwe 2009; (vi) babonanye n'umutangabuhamya wiswe ANAJ ku itariki ya 27 Ukwakira 2009 no ku ya 20 Werurwe 2009; (vii) babonanye n'umutangabuhamya wiswe ANAN ku itariki ya 15 Ugushyingo 2007 no ku ya 5 Kanama 2009; (viii) babonanye n'umutangabuhamya wiswe ANAL ku itariki ya 19 Werurwe 2009; (ix) babonanye n'umutangabuhamya wiswe ANAF ku itariki ya 24 Ukwakira 2007 no ku ya 18 Werurwe 2009.

[16] Icyifuzo, igika. 10; Umugereka B w'Icyifuzo, ibika 2-7.

2013, Porokireri yatanze igisubizo kuri icyo cyifuzo, avuga ko izo nyandiko Ngirabatware yifuza zitari mu bimenyetso bimenyekanishwa, kandi ko mu bushakashatsi Porokireri yakoze nta buhamya bwanditse bw'inyongera bwagaragaye bwatanzwe n'umutangabuhamya uwo ari we wese ushinja muri uru rubanza[17]. Porokireri yanemeje kandi ko azakomeza gusuzuma inyandiko zose afite, akazageza kuri Ngirabatware ibimenyetso bishinjura byose yazabona[18]. Mu mabaruwa yandikiye Porokireri nyuma yaho, Ngirabatware yakomeje kugaruka ku cyifuzo cye cyo gushyikirizwa ibimenyetso, avuga by'umwihariko inyandikomvugo yuzuye y'ubuhamya bwatanzwe na Casimir Bizimungu n'ubwatanzwe na Prosper Mugiraneza mu rubanza Porokireri aburana na Casimir Bizimungu na bagenzi be[19]. Ku itariki ya 3 Gicurasi 2013, Porokireri yatanze inyandikomvugo y'iburanisha ryabereye mu ruhame yari yasabwe[20].

II. IBIVUGWA N'ABABURANYI

5. Mu cyifuzo yatanze, Ngirabatware asaba Urugereko rw'Ubujurire gufata umwanzuro uvuga ko Porokireri atubahirije inshingano ze zo kumenyekanisha ibimenyetso kubera : (i) kutamenyekanisha inyandiko zakozwe n'abakozi bo mu biro bya Porokireri ubwo babonanaga n'abatangabuhamya ANAE, ANAG, ANAM, ANAO, ANAD, ANAJ, ANAN, ANAL, na ANAF kugira ngo basuzume ubuhamya bwabo; no (ii) kutamenyekanishiriza igihe inyandikomvugo y'ubuhamya bwa Bizimungu n'iy'ubwa Mugiraneza mu rubanza rwa Bizimungu na bagenzi be[21]. Ikindi kandi, Ngirabatware asaba Urugereko rw'Ubujurire gutegeka ko hamenyekanishwa izo

[17] Umugereka C w'Icyifuzo, imp. 959-958 (nimero zikoreshwa n'ibiro bya Gerefiye).

[18] Umugereka C w'Icyifuzo, urup. 958 (nimero zikoreshwa n'ibiro bya Gerefiye).

[19] Umugereka D w'Icyifuzo, urup. 955 (nimero zikoreshwa n'ibiro bya Gerefiye); Umugereka E w'Icyifuzo.

[20] Umugereka F w'Icyifuzo, imp. 951-950 (nimero zikoreshwa n'ibiro bya Gerefiye).

[21] Icyifuzo, ibika 10, 16, 29, 41.

nyandiko zafashwe zivugwa haruguru hamwe n'ibindi bimenyetso byose bishobora gutuma ibivugwa n'abatangabuhamya bashinja bikemangwa cyangwa bishyigikira imyiregurire ye ya sinari mpari irebana n'itariki ya 7 Mata 1994[22].

6. ku birebana n'izo nyandiko zafashwe, Ngirabatware avuga ko ziri mu bigomba kumenyekanishwa hashingiwe ku Ngingo ya 71(A)(ii) n'iya 72(D) y'Amategeko ya MICT Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso (« Amategeko »)[23]. Atanga impamvu zinyuranye kuri we zigaragaza ko izo nyandiko ziriho, izo mpamvu zikaba zinatuma izo nyandiko zikwiriye kumenyekanishwa: (i) ubuhamya umutangabuhamya Delvaux yatanze mu Rukiko n'inyandiko zakozwe mu ibazwa ry'umutangabuhamya wiswe ANAP bigaragaza ko mu bihe bivugwa abakozi ba Porokireri babonanaga n'abatangabuhamya hagamijwe gusuzuma ubuhamya bwabo, abatangabuhamya babajijwe ibibazo bagaha Porokireri amakuru mashya atari akubiye mu buhamya bwanditse bari baratanze mbere; (ii) nta na rimwe Porokireri yigeze yumvikanisha ko inyandiko zakozwe mu bihe yagiye abonana n'abatangabuhamya zikubiyemo gusa ibisobanuro n'ibitekerezo by'umutangabuhamya Delvaux; kandi (iii) Inyandiko y'ibirego yahinduwe mu mwaka wa 2009 hamaze kuboneka ibimenyetso bishya nyuma y'amaperereza bishobora kuba byarimo n'izo nyandiko Ubwunganizi busaba[24].

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[22] Icyifuzo, ibika 10, 16, 41. Mu cyifuzo cye, Ngirabatware asaba kandi Urugereko rw'Ubujurire gutegeka Porokireri kumenyekanisha « ubuhamya bwanditse bwose n'ibimenyetso gihamya birebana n'ibyavuzwe na Bizimungu na Mugiraneza mu buhamya bwabo». Reba Icyifuzo, igika 41. Mu Myanzuro ye ku gisubizo cya Porokireri ariko, Ngirabatware yasabye Urugereko rw'Ubujurire kuvuga ko iki cyifuzo kitagifite impamvu. Reba Imyanzuro ya Ngirabatware ku gisubizo cya Porokireri, igika 28(ii).

[23] Icyifuzo, ibika 17-24.

[24] Icyifuzo, ibika 25-26.

7. Naho ku birebana n'ibivugwa ko habayeho gutinda mu kumenyekanisha inyandikomvugo y'ubuhamya bwa Mugiraneza n'iy'ubwa Bizimungu, Ngirabatware avuga ko ubwo buhamya bumushinjura kubera ko bushyigikira imyiregurire ye ya sinari mpari yerekeye itariki ya 7 Mata 1994[25]. Ngirabatware avuga kandi ko kuba Porokireri yaramenyekanishije izo nyandikomvugo atinze byamubangamiye kubera ko byatumye atifashisha ubwo buhamya mu rubanza rwe[26]. Kuba Porokireri ataramenyekanishije ubwo buhamya ku gihe bikaba kuri Ngirabatware ari impamvu ituma Porokireri afatirwa ibihano hashingiwe ku Ngingo ya 74 y'Amategeko[27].

8. Mu gisubizo cye, Porokireri avuga ko ntaho yanyuranyije n'inshingano ye yo kumenyekanisha ibimenyetso[28]. Porokireri kandi amenyekanisha incamake idasinye y'ibazwa ry'umutangabuhamya wiswe ANAN ryabaye ku itariki ya 5 Kanama 2009, akavuga ko iyo nyandiko ubwayo idashinjura Ngirabatware, kandi akemeza ko Ngirabatware yamaze gushyikirizwa izindi nyandiko zikubiyemo ibibazo abatangabuhamya babajijwe n'ibisubizo batanze[29]. Porokireri akomeza kwemeza ko « izindi nyandiko zonyine zisigaye zitamenyekanishijwe zerekeye ibazwa ry'abatangabuhamya », zikubiye muri raporo zateguwe n'abashinjacyaha bo mu biro bya Porokireri mu rwego rw'isesengura ry'ubuhamya bw'abatangabuhamya rikorwa n'ibyo biro[30].

[25] Icyifuzo, ibika 34-35.

[26] Icyifuzo, igika 39-40. Reba n'Imyanzuro ku gisubizo cya Porokireri, igika 27.

[27] Icyifuzo, igika 39. Reba n'Imyanzuro ku gisubizo cya Porokireri, igika 27.

[28] Igisubizo, ibika 2-3, 6, 23.

[29] Igisubizo, ibika 7, 9, 11. Reba n'umugereka w'Igisubizo.

[30] Igisubizo, igika 8.

9. Ku birebana n'inyandikomvugo z'ubuhamya bwa Bizimungu n'ubwa Mugiraneza, Porokireri avuga ko igihe Ngirabatware yaburanaga urubanza rwe, yari azi ko ubuhamya bwabo bushobora gushyigikira imyiregurire ye ya sinari mpari kandi ashobora kubona inyandikomvugo zitari ibanga[31]. Porokireri yongeraho ko, uko biri kose, Ngirabatware atabangamiwe cyane kubera ko ubwo buhamya bufite agaciro gake, kandi ahanini hakaba hari ibindi bimeyetso biteye kimwe na bwo biri muri dosiye[32].

10. Mu Myanzuro ye ku gisubizo cya Porokireri, Ngirabatware avuga ko kuba Porokireri akoresha amagambo « izindi nyandiko zisigaye zitamenyekanishijwe zerekeye ibazwa ry'abatangabuhamya », no kuba hari incamake y'ibazwa ry'umutangabuhamya wiswe ANAN iherutse kumenyekanishwa bisa n'ibigaragaza ko Porokireri afite izindi nyandiko zakagombye kumenyekanishwa[33]. Ngirabatware avuga kandi ko ibazwa rya ANAN ritari rigamije gusa isesengura ry'ubuhamya mu rwego rwo kwitegura; ahubwo ko ibiri muri iryo bazwa bidahuye

[31] Igisubizo, ibika 12-17, avuga ku *rubanza Porokireri aburana na Augustin Ngirabatware*, N° ICTR-99-54-T, Imyanzuro ibanziriza itangwa ry'ibimenyetso bishinjura, 21 Ukwakira 2010 (inyandiko y'ibanga), imp. 8930-8929 (nimero zikoreshwa n'ibiro bya Gerefiye); *Urubanza Porokireri aburana na Augustin Ngirabatware*, N° ICTR-99-54-T, Inyandiko y'inyongera imenyesha imyiregurire ya sinari mpari, 22 Werurwe 2010 (inyandiko y'ibanga rikomeye), ibika 4-5.

[32] Igisubizo, ibika 2, 18-21.

[33] Imyanzuro ku gisubizo cya Porokireri, ibika 8-11. Urugereko rw'Ubujurire rusanga mu mu Myanzuro ye ku gisubizo cya Porokireri, Ngirabatware asa n'usaba bwa mbere ko yashyikirizwa inyandiko zirebana n'imibonano Porokireri yagiranye n'umutangabuhamya ushinja wiswe ANAI. Reba Imyanzuro ku gisubizo cya Porokireri, igika 6, avuga ku mutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 29 Nzeri 2009, imp. 24, 27. Urugereko rw'Ubujurire rwibutsa ko Imyanzuro ku gisubizo cy'undi muburanyi yagombye kuba yerekeye gusa ku ngingo zikubiye muri icyo gisubizo kugira ngo nyir'ugutanga igisubizo atavutswa amahirwe yo gusubiza ku ngingo nshya. Bityo rero Urugereko rw'Ubujurire ntirusuzuma icyo kibazo kurenza aha.

n'ubuhamya umutangabuhamya yatanze mu rukiko, kubimenyekanisha bitinze bikaba byarabaye guteshuka kwa Porokireri ku nshingano ye yo kumenyekanisha ibimenyetso[34]. Naho ku byerekeye inyandikomvugo z'ubuhamya bwa Bizimungu n'ubwa Mugiraneza, Ngirabatware avuga ko Porokireri yumva nabi inshingano ye yo kumenyekanisha ibimenyetso[35], kandi agahakana ko yari azi ibikubiye muri ubwo buhamya igihe yaburanaga mu rubanza rwe[36]. Ngirabatware avuga ko kubangamirwa kwatewe n'uko yabumenyeshejwe bitinze kugaragazwa n'uko Urugereko rwa Mbere rw'Iremezo rwanze imyiregurire ye ya sinari mpari, ibyo bikaba ari impamvu ituma Porokireri agomba gufatirwa ibihano[37].

III. AMATEGEKO AKURIKIZWA

11. Hashingiwe ku Ngingo ya 71(A)(ii) y'Amategeko, Porokireri agomba gushyikiriza Ubwunganizi kopi z'ubuhamya bwanditse bw'abatangabuhamya bose ateganya kuzahamagaza

[34] Imyanzuro ku gisubizo cya Porokireri, ibika 11-13.

[35] Imyanzuro ku gisubizo cya Porokireri, ibika 15-18. Urugereko rw'Ubujurire rusanga mu Myanzuro ye ku gisubizo cya Porokireri, Ngirabatware yinubira bwa mbere imenyekanisha ry'ubuhamya bwanditse bwa Mugiraneza bwo ku itariki ya 8 n'iya 19 Mata 1999 bivugwa ko ryakozwe bitinze ku itariki ya 10 Gicurasi 2013. Reba Imyanzuro ku gisubizo cya Porokireri, ibika 22-27. Urugereko rw'Ubujurire rwibutsa ko Imyanzuro ku gisubizo cy'undi muburanyi yagombye kuba yerekeye gusa ku ngingo zikubiye muri icyo gisubizo. Kubera ibyo rero, Urugereko rw'Ubujurire ntirusuzuma ingingo za Ngirabatware kuri iki kibazo. Uko biri kose, Urugereko rw'Ubujurire rusanga hari izindi ngingo Ngirabatware yatanze kuri iryo menyekanisha ry'ubuhamya bwanditse bwa Mugiraneza bwo ku itariki ya 8 n'iya 19 Mata 1999 bivugwa ko ryakozwe bitinze, akanasaba mu Cyifuzo cye cy'ibanga gishingiye ku Ngingo ya 73, iya 74 n'iya 142 y'Amategeko cyatanzwe ku itariki ya 25 Nyakanga 2013 ko ubwo buhamya bwakwakirwa nk'ikimenyetso cy'inyongera mu bujurire. Urugereko ruri busuzume iki kibazo igihe cyo gufata icyemezo kuri icyo cyifuzo.

[36] Imyanzuro ku gisubizo cya Porokireri, ibika 19-20.

kugira ngo batange ubuhamya mu rukiko[38]. Hakurikijwe Ingingo ya 72(D) y'Amategeko, Porokireri afite inshingano yo gushyikiriza Ubwunganizi inyandiko cyangwa ibimenyetso byose by'inyongera byagombaga kuba byaramenyekanishijwe mbere bikimara kugaragara[39]. Hatitawe ku biteganywa n'iyo ngingo, hakurikijwe Ingingo ya 76(A) y'Amategeko, « raporo, imyanzuro, cyangwa izindi nyandiko zihariye zateguwe n'umwe mu baburanyi, abamufasha cyangwa abamuhagarariye mu gukora iperereza, mu gutegura dosiye cyangwa mu kuyiburana si ngombwa ko bimenyeshwa undi muburanyi cyangwa ko bihererekanywa»[40].

12. Hakurikijwe Ingingo ya 73(A) y'Amategeko, Porokireri afite kandi inshingano ihoraho yo « gushyikiriza Ubwunganizi adatinze ibimenyetso azi ko koko bishobora gushinjura uregwa, kugabanya uburyozwacyaha bwe, cyangwa bishobora gutuma ibimenyetso bimushinja bikemangwa »[41]. Kwemeza ibimenyetso bigomba kumenyekanishwa hakurikijwe ibivugwa aha bituruka ku isuzuma rikorwa na Porokireri rishingiye ku byo afite[42]. Bityo rero, Urugereko

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[37] Imyanzuro ku gisubizo cya Porokireri, ibika 26-27, hasubirwamo ibivugwa mu Nyandiko y'urubanza mu rw'Iremezo, igika 685.

[38] Reba n'Ingingo ya 66(A)(ii) y'Amategeko ya TPIR.

[39] Reba n'Ingingo ya 67(D) y'Amategeko ya TPIR.

[40] Reba n'Ingingo ya 70(A) y'Amategeko ya TPIR.

[41] Reba n'Ingingo ya 68(A) y'Amategeko ya TPIR.

[42] Reba *Urubanza Justin Mugenzi na Prosper Mugiraneza baburana na Porokireri,* N° ICTR-99-50-A, Icyemezo mu bujurire ku byifuzo bisaba indihano kubera Ingingo ya 68 y'Amategeko itarubahirijwe, 24 Nzeri 2012, igika 7; *Urubanza Ephrem Setako aburana na Porokireri,* No ICTR-04-81-A, Icyemezo ku cyifuzo cya Ephrem Setako gisaba uburenganzira bwo guhindura Inyandiko ye y'ubujurire n'Icyifuzo gisaba Urugereko kwakira ibimenyetso, cyatanzwe mu ibanga ku itariki ya 23 Werurwe 2011, inyandiko itari ibanga yasibwemo ibigomba kuba ibanga yatanzwe ku itariki ya 9 Ugushyingo 2011, igika 13; *Urubanza Jean de Dieu Kamuhanda aburana na Porokireri,* N° ICTR-99-54A-R68,

rw'Ubujurire ntirwivanga mu buryo Porokireri akoresha ububasha bwe, keretse rugaragarijwe ko Porokireri yabukoresheje nabi, naho igihe nta bimenyetso bibigaragaza ukundi, rukaba rufata ko Porokireri akora ibiri mu nshingano ze nta buriganya[43]. Urugereko rw'Ubujurire ruributsa ko inshingano Porokireri afite yo kumenyekanisha ibimenyetso bishinjura ari ingenzi kugira ngo habeho urubanza ruboneye kandi rusanga iyo nshingano yaragiye buri gihe yumvikana mu buryo bwaguye[44].

13. Kugira ngo bugaragaze ko Porokireri atubahirije inshingano ye yo kumenyekanisha ibimenyetso ivugwa mu Ngingo ya 73 y'Amategeko, Ubwunganizi bugomba: (i) kuvuga by'umwihariko ibimeyetso bwifuza; (ii) kugaragaza ko, ukibikubita amaso, usanga ibyo bimenyetso byashinjura uregwa; no (iii) kwerekana ko Porokireri afite cyangwa agenzura ibimenyetso bwifuza[45]. Iyo Ubwunganizi bugaragarije Urugereko ko Porokireri atubahirije inshingano

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Icyemezo ku cyifuzo gisaba kumenyeshwa ibimenyetso, 4 Werurwe 2010, igika 14. Inyandiko y'urubanza rwa Dario Kordić na Mario Čerkez mu bujurire, 17 Ukuboza 2004, igika 183.

[43] Reba *Urubanza rwa Mugenzi,* Icyemezo mu bujurire, igika 7; *Urubanza rwa Kamuhanda,* Icyemezo mu bujurire, igika 14; *Urubanza Ferdinand Nahimana na bagenzi be baburana na Porokireri*, N° ICTR-99-52-A, Icyemezo ku byifuzo by'ujurira Jean-Bosco Barayagwizaga bisaba uburenganzira bwo gutanga ibimenyetso by'inyongera hashingiwe ku Ngingo ya 115 y'Amategeko, 8 Ukuboza 2006, igika 34.

[44] *Urubanza rwa Mugenzi,* icyemezo mu bujurire, igika 7; *Urubanza rwa Setako*, Icyemezo mu bujurire, igika 12; Inyandiko y'urubanza rwa Kalimanzira mu bujurire, 20 Ukwakira 2010, igika 18.

[45] Reba Inyandiko y'urubanza Justin Mugenzi na Prosper Mugiraneza mu bujurire, 4 Gashyantare 2013, igika 39; *Urubanza Théoneste Bagosora na bagenzi baburana na Porokireri*, N° ICTR-98-41-A, Icyemezo ku byifuzo bya Aloys Ntabakuze bisaba kumenyeshwa ibimenyetso, 18 Mutarama 2011, igika 7 *Urubanza rwa Kamuhanda,* Icyemezo mu bujurire, igika 14.

ziteganywa n'Ingingo ya 73 y'Amategeko, Urugereko rugomba gusuzuma niba ibyo hari aho byabangamiye Ubwunganizi mbere yo gusuzuma niba hari indihano ikwiye gutangwa[46].

IV. ISESENGURA RY'URUGEREKO

A. Inyandiko zakozwe Porokireri abonana n'abatangabuhamya hagamijwe gusesengura ubuhamya bwabo

14. Ku ikubitiro, Urugereko rw'Ubujurire rwibutsa ko hashingiwe ku Ngingo ya 71(A)(ii) y'Amategeko, inyandiko zigizwe n'ibibazo Porokireri yabajije abatangabuhamya n'ibisubizo batanze ari ubuhamya bwanditse bw'abatangabuhamya, bityo zikaba zigomba kumenyekanishwa[47]. Izo nyandiko zigomba gutandukanywa n' « inyandiko zihariye zateguwe n'umwe mu baburanyi » zitari mu bigomba kumenyekanishwa hakurikijwe Ingingo ya 76 y'Amategeko[48].

15. Urugereko rw'Ubujurire rusanga, mu rwego rwo gutanga igisubizo ku Cyifuzo cy'Ubwunganizi, Porokireri yaramenyekanishije incamake y'ibazwa ry'umutangabuhamya wiswe ANAN ryo ku itariki ya 5 Kanama 2009[49]. Iyo nyandiko ikubiyemo ibisubizo umutangabuhamya yatanze asubiza ibibazo, bityo ikaba iri mu ziteganywa n'Ingingo ya 71(A)(ii) y'Amategeko. Bityo

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[46] Inyandiko y'urubanza rwa Mugenzi na Mugiraneza mu bujurire, igika 39; Icyemezo mu bujurire mu rubanza rwa *Setako*, igika 14; Inyandiko y'urubanza rwa Kalimanzira mu bujurire, igika 18.

[47] Reba Inyandiko y'urubanza rwa Eliezer Niyitegeka mu bujurire, 9 Nyakanga 2004, igika 33, bavuga ku Ngingo ya 66(A)(ii) y'Amategeko ya TPIR.

[48] Inyandiko y'urubanza rwa Niyitegeka mu bujurire, igika 34 (basobanura ko mu nyandiko zihariye zidasohoka hashobora kuba hakubiyemo inyandiko zigizwe n'ibibazo bitabajijwe umutangabuhamya n'inyandiko zirebana n'ibazwa ry'umutangabuhamya, uretse igihe umutangabuhamya yagiye abazwa ibibazo akanabitangira ibisubizo kimwe nyuma y'ikindi).

[49] Reba Umugereka w'Igisubizo.

rero, Urugereko rw'Ubujurire rusanga Porokireri atarubahirije inshingano ye iteganywa mu Ngingo ya 71(A)(ii) y'Amategeko kubera ko atamenyekanishije ku gihe ubwo buhamya bwanditse[50]. Ikindi kandi, ubu buhamya bwanditse busa n'ubuvuguruza ubuhamya ANAN yatanze mu rukiko aho avuga ko hari bariyeri yari hafi y'ibiro bya gasutamo[51]. Uko kunyuranya gushobora gutuma ibyo uwo mutangabuhamya avuga bikemangwa bikanagabanya agaciro k'ubuhamya bwe. Kubera ibyo rero, Urugereko rw'Ubujurire rusanga Porokireri atarubahirije inshingano ze zivugwa mu Ngingo ya 73 y'Amategeko ubwo yategereza itariki ya 20 Gicurasi 2013 kugira ngo amenyekanishe ubwo buhamya bwanditse, bityo akaba ataramenyekanishije bidatinze iyi nyandiko yashoboraga kuba yashinjura Uregwa kandi yari ayifite kuva ku itariki ya 5 Kanama 2009[52].

16. Kubera ko Ngirabatware yavukijwe ubushobozi bwo kwifashisha ibyo bimenyetso mu rubanza rwe, Urugereko rw'Ubujurire rurasuzuma niba kuba Uregwa yarabangamiwe bisaba ko Porokireri afatirwa ibihano. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarasanze ubuhamya bundi bwanditse ANAN yatanze mbere n'ubwo yatangiye mu Rukiko budahuza ku birebana n'aho bariyeri yabaga, kandi rukaba rwarasuzumye icyo kibazo[53]. Byongeye

[50] Yananyuranyije kandi n'ibiteganywa mu Ngingo ya 66(A)(ii) y'Amategeko ya TPIR.

[51] Ubuhamya bwanditse busa n'ubuvuga ko bariyeri yo kuri gasutamo yari hafi y'ibiro bya Gasutamo mu gihe, ubwo ANAN yasobanuraga mu buhamya bwe mu Rukiko aho iyo bariyeri yari iherereye, yavuze ko nta biro bya gasutamo byari aho hantu. Reba Inyandikomvugo y'iburanisha, 8 Gashyantare 2010, uru p. 94 (mu muhezo).

[52] Yananyuranyije n'ibiteganywa n'Ingingo ya 68 y'Amategeko ya TPIR.

[53] Mu nyandiko y'urubanza mu rw'iremezo, Urugereko rwa Mbere rw'Iremezo ruvuga ko mu buhamya bwanditse ANAN yatanze mbere avugamo ahantu hari bariyeri avuga ko hari ku biro bya gasutamo yo ku muhanda wa Cyanika-Gisa; nyamara ariko mu buhamya bwe mu Rukiko uwo mutangabuhamya avuga ko nta biro bya gasutamo byari mu Cyanika, ariko ko bariyeri yari mu Cyanika ku muhanda waho. Rushingiye kuri ibyo, Urugereko rwa Mbere rw'Iremezo rwasanze Inyandiko y'ibirego itavuga ibyabaye uko biri aho ivuga ko bariyeri yo ku muhanda wa Cyanika-Gisa yari ku biro bya gasutamo. Reba Inyandiko y'urubanza mu rw'iremezo, igika 228.

kandi, mu iburanisha, Ngirabatware yakemanze ukwizerwa kwa ANAN ashingiye ku bintu binyuranye ANAN ahuzagurikaho mu buhamya bwanditse yatanze mbere no mu bwo yatangiye mu Rukiko. Urugereko rwa Mbere rw'Iremezo rwasumye izo ngingo, rusanga zidahagije kugira ngo zibe zatuma ibyo umutangabuhamya avuga bitizerwa[54]. Ikindi kandi, mu gusuzuma niba ibyo ANAN avuga byakwizerwa, Urugereko rwa Mbere rw'Iremezo rwasanze yaraburanye yemera icyaha cya jenoside kandi ashobora kuba yarabaye icyitso cya Ngirabatware mu byabaye, maze ruvuga ko ruzasuzumana ubuhamya bwe ubushishozi bukwiye[55]. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanga uko Ngirabatware yabangamiwe kose bitewe n'uko kumenyeshwa inyandiko bitinze bitatuma Porokireri afatirwa ibihano hashingiwe ku Ngingo ya 74 y'Amategeko.

17. Urugereko rw'Ubujurire rugiye noneho gusuzuma ibyo Ngirabatware avuga ko Porokireri atubahirije inshingano ye yo kumenyekanisha ibimenyetso kubera ko atamenyekanishije izindi nyandiko zakozwe mu ubao yabonanaga n'abandi batangabuhamaya hagamijwe gusesengura ubuhamya bwabo[56]. By'umwihariko, Ngirabatware ashingira ku buhamya bw'umutangabuhamya Delvaux buvuga ko muri uko kubonana na bo hari ibibazo abatangabuhamya babajijwe hanyuma na bo bagatanga ibisubizo[57]. Urugereko rw'Ubujurire rusanga mu iburanisha umutangabuhamya Delvaux yaravuze ko uko kubonana n'abatangabuhamya mu rwego rwo gusesengura ubuhamya bwabo hari hagamijwe gusuzuma niba umutangabuhamya akwiye kuba yahamagazwa kugira ngo atange ubuhamya mu rukiko, kandi muri rusange, hakaba harafatwaga ubundi buhamya bwanditse bushya iyo ibibazo abagize ikipe ya Porokireri babaga babajije byatumaga hatangwa amakuru

[54] Reba Inyandiko y'urubanza mu rw'iremezo, ibika 194-197, 292-293, 318.

[55] Reba Inyandiko y'urubanza mu rw'iremezo, ibika 192-193.

[56] Icyifuzo, ibika 10, 16-28.

[57] Icyifuzo, igika 25(a); Imyanzuro ku gisubizo cya Porokireri, igika 6.

mashya[58]. Umutangabuhamya Delvaux yavuze kandi mu buhamya bwe ko, ku nshuro ebyiri ANAN yabonanye n'ikipe y'abakozi bo mu biro bya Porokireri, nta buhamya bwanditse yatanze. Mu by'ukuri, Delvaux ntiyari azi neza niba kuri izo nshuro zombi hari inyandiko zakozwe[59]. Na none, ku birebana no kubonana na ANAL na ANAF hagamijwe gusesengura ubuhamya bwabo, ubuhamya bwa Delvaux ntibugaragaza niba hari inyandiko zakozwe[60]. Ku byerekeye abatangabuhamya basigaye bavugwa mu cyifuzo, umutangabuhamya Delvaux yavuze mu buhamya bwe ko yafashe ubuhamya bwanditse bw'umutangabuhamya wiswe ANAO wenyine[61], Porokireri akaba avuga ko bwashyikirijwe Ngirabatware ku itariki ya 19 Mutarama 2009[62]. Bityo rero, ubuhamya bwa Delvaux ntibugaragaza ko mu kubonana n'abatangabuhamya bavugwa muri kiriya cyifuzo hagamijwe gusesengura ubuhamya bwabo, abagize ikipe yo kwa Porokireri bagiye bakora inyandiko zigomba kumenyekanishwa, ibyo bikaba binyuranye n'ibyo Ngirabatware abivugaho.

18. Byongeye kandi, Urugereko rw'Ubujurire ntirunyurwa n'ibyo Ngirabatware apapira avuga ko inyandiko zakozwe ubwo Porokireri yabonanaga na ANAP na ANAN kugira ngo asesengure ubuhamya bwabo zigaragaza ko hagomba kuba hariho n'izindi nyandiko nk'izo zakozwe mu ubwo yagiye abonana n'abandi batangabuhamya hagamijwe gusesengura ubuhamya bwabo, bityo zikaba zigomba kumenyekanishwa. Urugereko rw'Ubujurire rusanga kandi Ngirabatware ataratangiye

58 Umutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 30 Nzeri 2009, urup. 13.

59 Umutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 29 Nzeri 2009, imp. 41-42.

60 Umutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 29 Nzeri 2009, imp. 44, 48-49.

61 Umutangabuhamya Delvaux, Inyandikomvugo y'iburanisha, 29 Nzeri 2009, imp. 15, 56-57. Reba n'Ikimenyetso giihamya n° 2 cyatanzwe n'Ubwunganizi.

62 Igisubizo, igika 9, igisobanuro cyo hasi ku rupapuro cya 17.

ibimenyetso ibyo avuga ko kuba Inyandiko y'ibirego yarahinduwe mu mwaka wa 2009 bigaragaza ko izo nyandiko ziriho[63].

19. Mu kurangiza, ku birebana n'ingingo ya Ngirabatware ivuga ko kuba Porokireri akomoza ku nyandiko zikubiyemo ibazwa ry'abatangabuhamya ziri muri raporo z'ubutumwa bigaragaza ko izo nyandiko zikwiriye kumenyekanishwa[64], Urugereko rw'Ubujurire rusanga Porokireri avuga ko izo nyandiko « zidakubiyemo ibibazo abatangabuhamya babajijwe n'ibisubizo batanze »[65]. Urugereko rw'Ubujurire rusanga kandi Porokireri avuga ko inyandiko zose zikubiyemo ibibazo abatangabuhamya babajijwe hamwe n'ibisubizo batanze zashyikirijwe Ngirabatware[66]. Kuva nta bimenyetso bihari binyomoza ibyo Porokireri avuga, Urugereko rw'Ubujurire rufata ko ayo magambo ya Porokireri nta buriganya burimo[67]. Kubera iyo mpamvu, Ngirabatware ntiyagaragaje ko hari izindi nyandiko ziriho zigomba kumenyekanishwa Porokireri yaba afite.

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[63] Reba Icyifuzo, igika 26, kivuga ku *rubanza Porokireri aburana na Augustin Ngirabatware*, N° ICTR-99-54-T, Icyifuzo cya Porokireri gisaba uburenganzira bwo guhindura Inyandiko (cyatanzwe hashingiwe ku Ngingo ya 50(A) n'iya 54 y'Amategeko, hamwe no ku zindi Ngingo bireba), 23 Ukwakira 2008, ibika 26, 28, Urubanza *Porokireri aburana na Augustin Ngirabatware*, N° ICTR-99-54-T, Icyemezo ku cyifuzo cya Porokireri gisaba uburenganzira bwo guhindura Inyandiko, 29 Mutarama 2009, igika 4, *Urubanza Augustin aburana na Porokireri,* N° ICTR-99-54-A, Icyemezo ku bujurire bwa Augustin Ngirabatware ku byemezo byanga ibyifuzo bye bisaba guhindura itariki y'iburanisha, 12 Gicurasi 2009, igika 29.

[64] Imyanzuro ku gisubizo cya Porokireri, igika 8.

[65] Igisubizo, igika 8.

[66] Igisubizo, ibika 2, 9.

[67] Reba haruguru, igika 12.

B. Inyandikomvugo z'ubuhamya bwa Bizimungu n'iz'ubwa Mugiraneza

20. Mu iburanisha, Porokireri yavuze ko ku itariki ya 7 n'iya 8 Mata 1994, Ngirabatware yari muri Komini ya Nyamyumba aho yatanze intwaro akanahamagarira abaturage kwica Abatutsi[68]. Ngirabatware yitabaje imyiregurire ya sinari mpari ivuga ko ku itariki ya 7 n'iya 8 Mata 1994 yari i Kigali[69]. By'umwihariko, avuga ko ku mugoroba wo ku itariki ya 6 Mata 1994, we n'umuryango we bajyanywe mu kigo cy'umutwe w'abasirikare barinda Perezida bakahaguma kugeza mu gitondo cyo ku itariki ya 8 Mata 1994 ubwo bahavaga bajya kuri ambasade y'u Bufaransa bakahamara umunsi wose[70]. Urugereko rwa Mbere rw'Iremezo rwasanze umuntu ashyize mu gaciro, imyiregurire ya sinari mpari ya Ngirabatware ku birebana n'itariki ya 7 Mata 1994 idashobora kuba ari ukuri[71], ariko rwemera iyo myiregurire ye ku byerekeye aho yari ari ku itariki ya 8 Mata 1994[72].

21. Mu cyifuzo cye, Ngirabatware avuga ibice by'ubuhamya bwa Bizimungu n'ubwa Mugiraneza yumva ko bishyigikira imyiregurire ye ya sinari mpari[73]. By'umwihariko, Ngirabatware avuga ubuhamya bwanditse bw'undi mutangabuhamya Porokireri yeretse Bizimungu buvugwamo ko saa sita z'ijoro ku itariki ya 6 Mata 1994, abaminisitiri bakomoka mu ishyaka rya MRND bose bari bamaze guhungishwa n'abasirikare bo mu mutwe urinda Perezida[74]. Byongeye kandi, Ngirabatware yifashisha ubuhamya bwa Mugiraneza buvuga ko ku mugoroba wo ku itariki

[68] Reba, nk'urugero, inyandiko y'urubanza mu rw'iremezo, ibika 650, 697.

[69] Inyandiko y'urubanza mu rw'iremezo, igika 492.

[70] Inyandiko y'urubanza mu rw'iremezo, igika 492.

[71] Inyandiko y'urubanza mu rw'iremezo, ibika 685, 696.

[72] Inyandiko y'urubanza mu rw'iremezo, ibika 695-696.

[73] Icyifuzo, ibika 33, 35. Reba n'Umugereka B w'Icyifuzo, igika 5; Umugereka D w'Icyifuzo.

[74] Umugereka B w'Icyifuzo, igika 5, hasubirwamo ibivugwa mu *rubanza Porokireri aburana na Casimir Bizimungu na bagenzi be*, N° ICTR-99-50-T, Bizimungu, Inyandikomvugo y'iburanisha, 11 Kamena 2007, urup. 31.

ya 6 Mata 1994: (i) Mugiraneza yavuganye na Ngirabatware kuri telefone; (ii) André Ntagerura yabwiye Mugiraneza ko abaminisitiri bakomoka mu ishyaka rya MRND bose bahungishirijwe mu kigo cy'umutwe urinda Perezida kandi ko abasirikare bo muri uwo mutwe bashobora kumujyanayo; (iii) ko igihe yerekezaga kuri icyo kigo yahagaze kwa Ngirabatware; kandi ko (iv) Mugiraneza ageze mu kigo cy'umutwe urinda Perezida ahagana saa sita z'ijoro, yabonye abaminisitiri bo mu ishyaka rya MRND bose uretse uw'Ubutegetsi bw'Igihugu n'uw'Ingabo[75]. Urugereko rw'Ubujurire rusanga iyi nyandiko ivugwa ishobora gushyigikira imyiregurire ya sinari mpari ya Ngirabatware ku buryo butaziguye cyangwa buziguye ku birebana n'aho Ngirabatware yari ari mu gitondo cyo ku itariki ya 7 Mata 1994[76]. Kubera ibyo rero, Urugereko rw'Ubujurire rwemera ko iyi nyandiko ivugwa, ku ikubitiro, uhita wumva ishobora kuba yashinjura Uregwa.

22. Urugereko rw'Ubujurire rusanga ibice bivugwa by'ubuhamya bwa Bizimungu n'ubwa Mugiraneza byaratanzwe mu iburanisha ryo mu ruhame, bityo rero Ngirabatware akaba yarashoboraga kubona inyandikomvugo z'iburanisha ryo mu ruhame. Nyamara ariko, Urugereko rw'Ubujurire rwibutsa ko muri rusange inshingano ya Porokireri yo kumenyekanisha ibimenyetso ireba ubuhamya bw'abatangabuhamya butangiwe mu iburanisha ryo mu ruhame mu zindi manza ziburanishwa n'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda[77]. N'ubwo

[75] Umugereka B w'Icyifuzo, igika 5, hasubirwamo ibivugwa mu *rubanza Porokireri aburana na Casimir Bizimungu na bagenzi be*, N° ICTR-99-50-T, Mugiraneza, Inyandikomvugo y'iburanisha, 22 Gicurasi 2008, imp. 24-25.

[76] Reba Inyandiko y'urubanza mu rw'iremezo, ibika 499-500, 502, 532-533, 551, 571-572, 580, 596.

[77] *Urubanza Eliézer Niyitegeka aburana na Porokireri*, N° ICTR-96-14-R, icyemezo ku cyifuzo cya gatatu gisaba gusubirishamo urubanza, 23 Mutarama 2008, igika 27, avuga ku *rubanza Porokireri aburana na Dario Kordić*, N° IT-95-14/2-A, Icyemezo ku nyandiko y'ubujurire no ku yindi nk'iyo y'inyongera yerekeye kuba Porokireri atarubahirije inshingano ye yo kumenyekanisha ibimenyetso hashingiwe ku Ngingo ya 68 y'Amategeko, 11 Gashyantare 2004, igika 20. Reba *n'Urubanza Porokireri aburana na Radoslav Brđanin*, N° IT-99-36-A, Icyemezo ku cyifuzo cy'ujurira gisaba

Bizimungu yatanze ubuhamya mu rubanza rwa Bizimungu na bagenzi be muri Kamena 2007 naho Mugiraneza akabutanga muri Gicurasi 2008, muri Gicurasi 2013 ni bwo Ngirabatware yashyikirijwe inyandikomvugo y'ubuhamya bwabo butari ibanga[78]. Bityo rero, Urugereko rw'Ubujurire rusanga Porokireri atarubahirije inshingano ye yo kumenyekanisha iyi nyandiko bidatinze nk'uko biteganywa n'Ingingo ya 73 y'Amategeko[79].

23. Kubera ko Porokireri atubahirije inshingano ye yo kumenyekanisha ibimenyetso, Ngirabatware yavukijwe ubushobozi bwo kwifashisha iyi nyandiko mu iburanisha. Urugereko rw'Ubujurire rusanga ariko Ngirabatware yaratanze ibindi bimenyetso bishyigikira ibyo avuga ko mu ijoro ryo ku itariki ya 6 Mata 1994 yari mu kigo cy'umutwe w'abasirikare barinda Perezida[80]. Uretse kuvuga gusa ko iyo nyandiko ishyigikira imyiregurire ye ya sinari mpari, Ngirabatware ntasobanura uburyo iyi nyandiko yashobaraga kuba yahindura imyiregurire ye cyangwa uburyo Urugereko rwa Mbere rw'Iremezo rwasuzumye ibimenyetso yatanze bishyigikira imyiregurire ye ya sinari mpari[81]. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanga Ngirabatware ataratanze ibimenyetso bigaragaza ibyo avuga ko kuba Porokireri ataramushyikirije iyi nyandiko ku gihe « byamubangamiye bikomeye » ku buryo Porokireri akwiye gufatirwa ibihano[82].

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imenyekanisha hashingiwe ku Ngingo ya 68 n'Icyifuzo gisaba ko Urugereko rutegeka Gerefiye kumenyekanisha inyandiko zimwe na zimwe, 7 Ukuboza 2004, urup. 4.

[78] Icyifuzo, igika 32; Umugereka F w'Icyifuzo; Imyanzuro ku gisubizo cya Porokireri, igika 27.

[79] Yanyuranyije kandi n'Ingingo ya 68 y'Amategeko ya TPIR.

[80] Inyandiko y'urubanza mu rw'iremezo, ibika 664-665.

[81] Reba Icyifuzo, igika 39.

[82] Reba Icyifuzo, igika 39. Reba na none Imyanzuro ku gisubizo cya Porokireri, igika 27.

C. Ibindi bimenyetso byatuma ibyo abatangabuhamya bashinja bavuga bikemangwa cyangwa bigashyigikira imyiregurire ya sinari mpari ya Ngirabatware ku birebana n'itariki ya 7 Mata 1994

24. Urugereko rw'Ubujurire rusanga Ngirabatware ataragaragaje ku buryo buhagije ko hari ibindi bimenyetso Porokireri abitse byashobora gutuma ibyo abatangabuhamya bashinja bavuga bikemangwa, cyangwa byashyigikira imyiregurire ye ya sinari mpari. Urugereko rw'Ubujurire rusanga kandi Porokireri avuga ko agikomeza kureba mu nyandiko afite, akaba azamenyekanisha adatinze ibimenyetso birebana n'inshingano ye iteganywa n'Ingingo ya 73 y'Amategeko[83]. Kuva nta bimenyetso bigaragaza ko yanyuranyije n'ibyo, Urugereko rw'Ubujurire nta mpamvu rufite yo gushidikanya ko Porokireri agikomeza kubahiriza nta buriganya inshingano ye ihoraho yo kumenyekanisha ibimenyetso.

D. Umwanzuro

25. Urugereko rw'Ubujurire rwasanze Porokireri yaranyuranyije n'inshingano ye yo kumenyekanisha ibimenyetso kubera ko yamenyekanishije atinze inyandiko yafashwe mu ibazwa ry'umutangabuhamya wiswe ANAN ryo ku itariki ya 5 Kanama 2009 hamwe n'inyandikomvugo z'ubuhamya Bizimungu na Mugiraneza batangiye mu rubanza rwa Bizimungu na bagenzi be. Cyakora ntabwo ahangaha Ngirabatware yagaragaje ko, hakurikijwe Ingingo ya 74 y'Amategeko, hari impamvu yo gufatira Porokireri ibihano.

[83] Igisubizo, ibika 3, 24.

V. ICYEMEZO

26. Kubera impamvu zimaze kuvugwa, Urugereko rw'Ubujurire **RWEMEYE** kuri bimwe icyo cyifuzo, kandi **RUSANZE** Porokireri yaranyuranyije n'Ingingo ya 71(A)(ii) n'iya 73(A) z'Amategeko ku birebana n'inyandiko zakozwe mu gihe cy'ibazwa ry'umutangabuhamya wiswe ANAN no ku byerekeye inyandikomvugo z'ubuhamya bwa Bizimungu n'ubwa Mugiraneza mu rubanza rwa *Bizimungu na bagenzi be*, **RUSANZE** icyifuzo cya Ngirabatware gisaba kumenyeshwa izo nyandiko nta gaciro kigifite, **RWANZE** ibindi bice bisigaye by'icyo cyifuzo.

Bikozwe mu rurimi rw'icyongereza n'urw'igifaransa, inyandiko yo mu rurimi rw'icyongereza ikaba ari yo igenderwaho.

Bikorewe i La Haye mu Buholandi,

ku itariki ya 15 Mata 2014,

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Theodor Meron, Perezida

[Kashe ya MICT]