



INCAMAKE Y'URUBANZA

(Iyi nyandiko igenewe abanyamakuru gusa, ntigenderwaho)

URUGEREKO
RW'UBUJURIRE

Arusha, 18 Ukuboza 2014

Incamateke y'Inyandiko y'urubanza rwa Augustin Ngirabatware mu bujurire

1. Urubanza Porokireri aburana na Augustin Ngirabatware rusomwe uyu muni hashingiwe ku Ngingo ya 144(D) y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso ya MICT. Ntabwo buri ngingo yose y'uru rubanza iza kuvugwa muri iyi ncamake, yibanda gusa ku bibazo by'ingenzi. Iyi ncamake ntigomba gufatwa nk'igice icyo ari cyo cyose gishobora kugenderwaho cy'inyandiko y'uru rubanza mu bujurire.

A. Amavu n'amavuko y'urubanza

2. Mu gihe kivugwa cyo mu mwaka wa 1994, Ngirabatware yari Minisitiri w'Imigambi ya Leta muri Guverinoma y'u Rwanda.
3. Ku itariki ya 20 Ukuboza 2012, Urugereko rwa Mbere rw'Iremezo II rw'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda rwahamije Ngirabatware icyaha cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhamwe, gukora jenocide kubera ijamba yavugiye kuri bariyeri yari muri Komini ya Nyamyumba, ku itariki ya 22 Gashyantare 1994. Rwasanze kandi ahamwa n'icyaha cyo guhamagarira abantu gukora jenocide no kubashyigikira mu ikorwa ryayo kubera uruhare rwe mu gutanga intwari, n'amagambo yavugiye kuri bariyeri ebyiri zari muri Komini ya Nyamyumba, ku itariki ya 7 Mata 1994. Hashingiwe ku buryo bwagutse bw'umugambi mubisha uhuriweho, Urugereko rwa Mbere rw'Iremezo rwahamije kandi Ngirabatware icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu. Rwamuhanishije igihano cy'igifungo cy'imyaka 35.
4. Inyandiko y'urubanza yasohowe ku itariki ya 21 Gashyantare 2013, maze Ngirabatware ajuririra MICT anenga imikirize y'urubanza ku birebana n'ibyaha yahamijwe, n'igihano yahawe. Urugereko rw'Ubuujurire rwumvise ingingo z'abaturanyi mu magambo ku itariki ya 30 Kamena 2014.

B. Icyifuzo gishingiye ku Ngingo ya 98bis y'Amategeko

5. Ngirabatware avugaga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rwanze kwemera icyifuzo yatanze hashingiwe ku Ngingo ya 98bis y'Amategeko ya TPIR, yasabagamo guhanagurwaho ibyaha ashinjwa bivugwa mu bika 45 by'Inyandiko y'ibirego. Urugereko rw'Ubuujurire rusanze Urugereko rwa Mbere rw'Iremezo rutarakoze ikosa rwanga kwemera icyifuzo cya Ngirabatware gishingiye ku Ngingo ya 98bis uko cyakabaye. Bityo rero, Urugereko rw'Ubuujurire rusanze impamvu ya 6 y'ubujurire bwa Ngirabatware nta shingiro ifite.

C. Guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenocide

6. Urugereko rwa Mbere rw'Iremezo rwahamije Ngirabatware icyaha cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenocide, kubera ijambo yavugiye kuri bariyeri yari ku muhanda Cyanika-Gisa muri Komini ya Nyamyumba, ku itariki ya 22 Gashyantare 1994. By'umwihariko, Urugereko rwa Mbere rw'Iremezo rwasanze, nyuma y'iyicwa rya Martin Bucyana wari Perezida w'ishyamba rya CDR, Ngirabatware yarabwiye imbaga y'abantu, bari hagati ya 150 na 250 bari bateraniye kuri iyo bariyeri, kwica Abatutsi. Ngirabatware ntiyemeranya n'imyanzuro y'Urugereko rwa Mbere rw'Iremezo ku birebana n'icyaha yahamijwe cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame, gukora jenocide.
7. Ku birebana n'ingingo Ngirabatware atanga z'uko atamenyeshajwe icyo kirego, Urugereko rw'Ubujurire rusanze Inyandiko y'ibirego yaramenyeshaje Ngirabatware mu buryo buhagije amakuru arebana n'imyitwarire ye mibisha, itariki icyaha cyakoreweho, n'uko kuri iyo bariyeri hari imbaga y'abantu. By'umwihariko, ku bijyanye n'ahantu bariyeri yari iri havugwa ko ari ho hakorewe icyaha, Urugereko rw'Ubujurire rusanze ivuguruzanya riri mu buhamya buvuga aho bariyeri yari iri rikomeye kandi ko, kubera ibyo, ritagaragaza ko Ngirabatware atamenyeshajwe bihagije ahantu icyaha aregwa cyakorewe cyangwa ko hari akarengane byaba byaramuteye.
8. Urugereko rw'Ubujurire rusanze kandi Ngirabatware atarashoboye kugaragaza ko atabonye igihe gihagije cyo gutegura ibaza rinyomoza ry'umutangabuhamya wiswe ANAT.
9. Ku birebana n'ibyo Ngirabatware anenga bijyanye n'ibigize icyaha mu rwego rw'amategeko, Urugereko rw'Ubujurire rusanze Ngirabatware ataragaragaje ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ubwo rwanzuraga ko igikorwa gifatika kigize icyaha (*actus reus*) cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenocide cyagaragajwe. Ku birebana no kuba icyo cyaha cyarakorewe mu ruhame, Urugereko rwa Mbere rw'Iremezo rwerekanye neza ko abo Ngirabatware yashakaga kugezaho ijambo, ni abantu bari hagati ya 150 na 250 bari bakoraniye kuri bariyeri, atari gusa abayikoragaho. Ngirabatware ntiyashoboye kandi kugaragaza ko Urugereko rwa Mbere rw'Iremezo rutafashe imyanzuro ya ngombwa ku birebana n'igitekerezo cyo gukora icyaha (*mens rea*) cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenocide.
10. Ku byerekeye ibyo Ngirabatware anenga ku isuzuma ry'ibimenyetso ryakozwe n'Urugereko rwa Mbere rw'Iremezo, Urugereko rw'Ubujurire rusanga Ngirabatware atarashoboye kugaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rwemeza ko abatangabuhamya biswe ANAN na ANAT batumvikanye ku buhamya bazatanga cyangwa ngo umwe ahindure ubuhamya bwe agendeye ku wundi. Bityo rero, Urugereko rw'Ubujurire rusanze impamvu ya 5 y'ubujurire bwa Ngirabatware nta shingiro ifite.

D. Jenoside

11. Urugereko rwa Mbere rw'Iremezo rwahamije Ngirabatware icyaha cyo guhamagarira abantu gukora jenocide n'icyo kubashyigikira mu ikorwa ry'icyo cyaha, kubera uruhare rwe mu gutanga intwari, n'amagambo yavugiye kuri bariyeri ebyiri muri Komini ya Nyamyumba, ku itariki ya 7 Mata 1994. By'umwihariko, Urugereko rwa Mbere rw'Iremezo rwasanze ku itariki ya 7 Mata 1994, Ngirabatware yaratanze intwari kuri bariyeri yari aho bita Buruseri, icyo gihe akaba yarabwiye Faustin Bagango ko atashakaga kongera kumva ko hari Umututsi n'umwe ukiriho aho bitaga Buruseri.

12. Urugereko rwa Mbere rw'Iremezo rwasanze kandi nyuma yaho uwo muni, Ngirabatware yaragarutse kuri bariyeri y'aho bitaga Buruseri agatanga izindi ntwaro. Inyandiko y'urubanza mu rw'iremezo igaragaza ko Ngirabatware yatonganyije Interahamwe avuga ko zakoraga akazi zijenjetse, yongeraho ko yazazaniye intwaro kugira ngo atazongera kubona ikitwa Umututsi muri Serire ya Busheke. Nyuma yaho, Ngirabatware yatanze intwaro kuri bariyeri ya Gitsimbi/Cotagirwa yari hafi aho, yongeraga kubwira Bagango ko atashakaga kongera kubona ikitwa Umututsi muri Komini ya Nyamyumba. icyo gihe yategetse kandi Bagango gukora akazi neza. Urugereko rwa Mbere rw'Iremezo rwashingiye ku bimenyetso birambuye bigaragaza ko Ngirabatware amaze gutanga intwaro, abantu bagabweho igitero baricwa, kandi ko Interahamwe zacungaga bariyeri yari ahitwaga Buruseri n'iyari i Gitsimbi/Cotagirwa zabaye ruhara kubera uruhare zagize mu bwicanyi bwibasiye Abatutsi no mu gusahura imitungo yabo.
13. Ngirabatware avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rumuhama icyaha cyo guhamagarira abantu gukora jenocide n'icyo kubashyigikira mu ikorwa ryayo.
14. Urugereko rw'Ubujurire rusanga Ngirabatware atarashoboye kugaragaza ko atamenyeshejwe uko bikwiye igihe kivugwa intwaro zatangiye, kandi ko yabangamiye mu buryo bukomeye ngo kubera ko Inyandiko y'ibirego itagaragaza neza ahantu ibyo aregwa byabereye. Urugereko rw'Ubujurire rusanga kandi Ngirabatware atarashoboye kugaragaza ko atamenyeshejwe uko bikwiye ko yatanze intwaro inshuro eshatu ahantu habiri hatandukanye, kandi ko atamenyeshejwe uko bikwiye ibyaha bishingiye kuri ibyo bikorwa bye, abatsotsobye ibyo byaha n'abahohotewe.
15. Urugereko rw'Ubujurire ntirwemera ibyo Ngirabatware avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ubwo rwasuzumaga ibikorwa bifatika (*actus reus*) n'igitekerezo (*mens rea*) bigize icyaha cyo guhamagarira abantu gukora icyaha no kubashyigikira mu ikorwa ryacyo.
16. Ku byerekeye uburyo Urugereko rwa Mbere rw'Iremezo rwasuzumye ibimenyetso, Urugereko rw'Ubujurire rusanga umucamanza usuzuma ibyabaye ushyira mu gaciro yari kwemeza ko umwanzuro rukumbi ushyize mu gaciro ari uko Interahamwe zigomba kuba zarakoresheje byibura zimwe muri ziriya ntwaro zatanzwe na Ngirabatware ku ya 7 Mata 1994, mu bitero n'ubwicanyi byakurikiyeho byibasiye Abatutsi. Bityo rero, Urugereko rw'Ubujurire rusanze impamvu ya 1 y'ubujurire bwa Ngirabatware nta shingiro ifite.

E. Imyiregurire ya sinarimpari

17. Mu iburanisha ry'urubanza, Ngirabatware yiyambaje imyiregurire ya sinarimpari, avuga ko yari i Kigali kuva ku itariki ya 6 kugeza ku ya 12 Mata 1994. Urugereko rwa Mbere rw'Iremezo rwasanze Ngirabatware atamenyesheje uko bikwiye ko aziyambaza imyiregurire ya sinarimpari, bityo icyo kikaba ari kimwe mu byo rwashingiyeho rusuzuma agaciro k'ibimenyetso bishyigikira iyo myiregurire. Muri urwo rwego, Urugereko rwa Mbere rw'Iremezo rwasanze uburyo Ngirabatware yamenyekanishijemo ko azifashisha imyiregurire ya sinarimpari bugaragaza ko bishoboka cyane ko iyo myiregurire yahimbwe kandi igakorwa ku buryo ihuzwa n'ibyo Porokireri yavugaga. Urugereko rwa Mbere rw'Iremezo rwasanze kandi abatangabuhama bashinjura bafite isano cyangwa aho bahuriye bya hafi na Ngirabatware, maze rwemeza ko abo batangabuhama bashobora kuba bari bafite impamvu zatumye barengera Ngirabatware. Urugereko rwa Mbere rw'Iremezo rwemeje ko ibimenyetso bishyigikira imyiregurire ya sinarimpari bidakwiye kwemerwa kandi bidahagije ku buryo byatumye habaho gushidikanya ku byo Porokireri avuga ko Ngirabatware yari muri Komini ya Nyamyumba ku itariki ya 7 Mata 1994.

18. Urugereko rw'Ubujurire rusanga Ngirabatware atarashoboye kugaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu isuzuma ry'uburyo yamenyekanishije ko aziyambaza imyiregurire ya sinarimpari no kuba imyanzuro icukumbuye rwafashe kuri iryo menyekanisha ari uko rikwiye gukemangwa. Urugereko rw'Ubujurire, uretse Umucamanza Moloto utemeranywa na bagenzi be, rusanga kandi Ngirabatware atarashoboye kugaragaza ko Urugereko rwa Mbere rw'Iremezo ruzuzumiye hamwe ibimenyetso byose byatanzwe, ko rwahinduye umuburanyi ufite inshingano zo gutanga ibimenyetso bishyigikira ibivugwa, kandi ko rwakoze ikosa ubwo rwasuzumaga niba urugendo hagati ya Kigali na Perefegitura ya Gisenyi rwarashobokaga igihe ibivugwa byabaga. Urugereko rw'Ubujurire, uretse Umucamanza Moloto utemeranywa na bagenzi be, rusanze kandi Ngirabatware atarashoboye kugaragaza ko hari ikosa Urugereko rwa Mbere rw'Iremezo rwakoze mu isuzuma ry'agaciro k'ibimenyetso birebana n'imyiregurire ya sinarimpari.
19. Bityo rero, Urugereko rw'Ubujurire, uretse Umucamanza Moloto utemeranywa na bagenzi be, rusanze impamvu ya 2 y'ubujurire bwa Ngirabatware nta shingiro ifite.

F. Umugambi mubisha uhuriweho

20. Urugereko rwa Mbere rw'Iremezo rwahamije Ngirabatware igikorwa cyo gusambanya ku gahato nk'icyaha kibasiye inyokomuntu, gikubiye mu kirego cya 6 cyo mu Nyandiko y'ibirego. icyo cyaha Ngirabatware yakiryojwe hashingiwe ku mugambi mubisha uhuriweho mu buryo bwawo bwagutse, kubera ko muri Mata 1994, Chantal Murazemariya yasambanyijwe ku gahato inshuro nyinshi n'abantu babiri mu bagize umugambi mubisha uhuriweho.
21. Ngirabatware avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rumuhamya icyaha cyo gusambanya ku gahato hashingiwe ku ruhare yagize muri uwo mugambi mubisha uhuriweho, kubera ko uruhare yaba yaragize muri uwo mugambi rutavugwa mu Nyandiko y'ibirego. Avuga kandi ko adashobora kuryozwa icyaha gikubiye mu kirego cya 6 cyo mu Nyandiko y'ibirego kubera ko muri icyo kirego havugwamo ko icyo abari muri uwo mugambi mubisha uhuriweho bose bari bagamije kwari ugutsemba abasiviri b'Abatutsi, nyamara icyaha cy'itsembatsemba, aregwa mu kirego cya 5, Urugereko rwa Mbere rw'Iremezo rukaba rwarakimuhanaguyeho.
22. Urugereko rw'Ubujurire rusanga imiterere y'umugambi uhuriweho uvugwa mu kirego cya 5 (itsembatsemba) usa n'umugambi uhuriweho uvugwa mu kirego cya 6 (gusambanya ku gahato). Umuntu asomye uko byanditse mu Nyandiko y'ibirego, asanga umugambi uhuriweho wo gutsemba Abatutsi b'abasiviri uvugwa mu kirego cya 6 (gusambanya ku gahato) warahujwe n'itsembatsemba rikubiye mu kirego cya 5 (gusambanya ku gahato). Urugereko rw'Ubujurire rusanga ikirego cya 6 (gusambanya ku gahato) gifite imiterere itagutse, kikaba kivuga ko Ngirabatware yateye inkunga umugambi uhuriweho wo gutsemba Abatutsi, ibi akabiryoza hashingiwe ku myitwarire ye ivugwa mu kirego cya 5 (itsembatsemba). Urugereko rwa Mbere rw'Iremezo rwashingiye ku myanzuro rwafashe ku kirego cya 2 (jenocide) mu kugaragaza uruhare Ngirabatware yagize mu mugambi mubisha uhuriweho, bikaba bivuze ko rwaguye icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu, ibi bikaba bidahwitse.
23. Urugereko rw'Ubujurire rusanga uruhare Ngirabatware yagize mu mugambi uhuriweho wo gutsemba abasiviri b'Abatutsi ari ikintu cya ngombwa Urugereko rwashingiyeho mu kugaragaza uburyozwacyaha bwe ku byaha bitari muri uwo mugambi uhuriweho, ariko nyamara kandi umuntu yashoboraga kwitega ko byaba ingaruka y'uwo mugambi. Kubera ko Porokireri atashoboye kugaragaza uruhare rwa

Ngirabatware muri uwo mugambi uhuriweho wo gutsemba Abatutsi b'abasiviri uvugwa mu kirego cya 5, icyemezo gihamya Ngirabatware icyaha cyo gusambanya ku gahato hashingiwe ku mugambi mubisha uhuriweho mu buryo bwawo bwagutse, aryozwa mu kirego cya 6, nta shingiro gifite. Kubera ko Porokireri atajuririye icyo cyemezo, Urugereko rw'Ubujurire nta cyo ruri buvuge ku birebana no kuba Ngirabatware yarahanaguweho icyaha gikubiye mu kirego cya 5 cy'Inyandiko y'ibirego.

24. Urugereko rw'Ubujurire rwemeye rero, kuri bimwe, impamvu ya 3 y'ubujurire bwa Ngirabatware, rukaba ruvanyeho icyemezo kimuhamya icyaha cyo gusambanya ku gahato Chantal Murazemariya, bityo rukanamuhanaguraho icyaha ashinjwa mu kirego cya 6 cy'Inyandiko y'ibirego.
25. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanze bitakiri ngombwa gusuzuma impamvu ya 4 y'ubujurire bwa Ngirabatware inenga ibindi bice birebana n'icyemezo kimuhamya icyaha cyo gusambanya ku gahato Chantal Murazemariya.

G. Igenagihano

26. Urugereko rw'Ubujurire rusanze Ngirabatware ataragaragaje ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa iryo ari ryo ryose mu isuzumagihano.
27. Nk'uko byavuzwe haruguru, Urugereko rw'Ubujurire rwavanyeho icyemezo gihamya Ngirabatware icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu. Nyamara ariko, aracyahamwa n'ibyaha bikomeye cyane, birimo icyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenocide, n'icya jenocide. Niba kuba hari icyaha yahanaguweho bifite ingaruka ku gihano, biri buvugwe mu gusoma icyemezo cy'Urugereko rw'Ubujurire.

H. Icyemezo cy'Urugereko

Kubera impamvu zavuzwe haruguru, **URUGEREKO RW'UBUJURIRE**,

RUSHINGIYE ku Ngingo ya 23 ya Sitati n'ya 144 y'Amategeko,

RUMAZE KUBONA imyanzuro yanditse y'abaturanyi n'iyi batanze mu magambo mu iburanisha mu bujurire ku itariki ya 30 Kamena 2014,

RUBURANISHIRIZA mu ruhame;

RWEMEYE impamvu ya 3 y'ubujurire bwa Ngirabatware, rukaba **RUVANYEHO** icyemezo kimuhamya icyaha cyo gusambanya ku gahato nk'icyaha cyibasiye inyokomuntu, yaryozwaga mu rwego rw'umugambi mubisha uhuriweho, mu buryo bwawo bwagutse;

NTIRWEMEYE izindi mpamvu zose z'ubujurire bwa Ngirabatware, uretse Umucamanza Moloto utemeranywa na bagenzi be kuri bimwe;

RWEMEJE ibyemezo bihamya Ngirabatware icyaha cyo guhamagarira abantu mu buryo butaziguye kandi mu ruhame gukora jenocide, n'icyo guhamagarira abantu gukora jenocide no kubashyigikira mu ikorwa ryayo, ariko ku cyemezo kirebana n'iki cyaha cya nyuma, Umucamanza Moloto akaba atemeranywa na bagenzi be;

RUKUYEHO igihano cy'igifungo cy'imyaka 35 Ngirabatware yakatiwe mu rw'iremezo kandi **RUMUHANI SHIJE** igihano cy'igifungo cy'imyaka 30, hakuwemo, nk'uko biteganywa n'Ingingo ya 125 (C) n'ya 131 z'Amategeko, igihe yari amaze afunze kuva afatwa ku itariki ya 17 Nzeri 2007;

RUTEGETSE ko iki cyemezo gihita gishyirwa mu bikorwa nk'uko biteganywa n'Ingingo ya 145(A) y'Amategeko;

RUTEGETSE ko, hashingiwe ku Ngingo ya 127(C) n'ya 131 z'Amategeko, Ngirabatware ahama mu maboko ya MICT kugeza igihe hafatiwe ingamba za ngombwa zo kumwimurira mu gihugu azarangirizamo igihano cye.

Umucamanza Bakone Justice Moloto yatanze igitekerezo kinyuranye n'icya bagenzi be.
