

RWANDA / JUDGMENT

UBUSHINJACYAHA v TWAGIRAMUNGU

RP/GEN 00001/2018/HC/HCCIC

COURT

High Court

DECIDED

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UBUSHINJACYAHA v TWAGIRAMUNGU

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Text

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UBUSHINJACYAHA v TWAGIRAMUNGU [Rwanda URUKIKO RUKURU – RP/GEN 00001/2018/HC/HCCIC – (Muhima, J. P., Nsanzimana na Mushimiyimana, J.) 16 Gashyantare 2023] Amategeko agenga imanza nshinjabyaha – Icyaha cya jenocide – Ubushake bwo gukora icyaha cya jenocide – Ni umugambi wihariye (dolus specialis) wo kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry’uruhu cyangwa ku idini, bazira icyo bari cyo, bukaba bushobora kugaragarira mu bikorwa no mu magambo cyangwa se harebwe muri rusange uko ibikorwa bibujijwe byakozwe. Amategeko agenga imanza nshinjabyaha – Ikorwa ry’icyaha – Umugambi mubisha uhuriweho – Uburyo bw’ibanze bw’umugambi mubisha uhuriweho – Ni uburyo bubaho iyo abantu benshi bumvikanye gukora icyaha bashyira mu bikorwa umugambi mubisha bumvikanyeho ku buryo icyo gihe buri wese mu bahuriye muri uwo mugambi afatwa nk’uwafatanyije n’abandi gukora icyaha n’iyo ibikorwa bifatika byo kugitsotsoba byakozwe gusa na bamwe muri bo. Amategeko agenga imanza nshinjabyaha – Icyaha cya jenocide – Uburyozwe bw’icyaha cya jenocide – Umuntu uryozwa icyaha cya jenocide ntagomba gukora ibikorwa bibujijwe gusa ahubwo agomba no kuba afite ubushake bwihariye bwo kuribumbura abantu bose cyangwa bamwe muri bo bahuriye kuri rimwe mu matsinda arengerwa n’amategeko. Incamake

y'ikibazo: Twagiramungu wari umwarimu mw'ishuri rya EAV-Kaduha, akaba n'umuyobohe w'ishyamba rya MDR wari warahungiyeye mu gihugu cy'Ubudage nyuma akaza koherezwa mu Rwanda, bisabwemo n'ubushinjacyaha kugira ngo aburanishwe ku byaha akekweho ko yakozwe muri jenocide yakorewe abatutsi mu mwaka wa 1994. Ageze mu Rwanda Ubushinjacyaha mwamuregeye uru Rugereko rw'Urukiko Rukuru, icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu. Aregwa ibyo byaha kubera kujya mu bitero byishe Abatutsi, ubwo ababijyagamo bari bafite umugambi wo kubarimbura ndetse hakaba harimo ibyagabwemo mu murenge wa Mbazi, kuri Paruwasi Gatolika ya Cyanika no ku biro bya Komini Musange. Twagiramungu yaburanye ahakana ibyaha ashinjwa avuga ko kuva indege y'uwaru Perezida wa Repubulika yahanurwa yagumye mu rugo mu rwego rwo kurinda nyina wari umututsikazi kugirango aticwa n'abagabaga ibitero hafi y'iwabo, ndetse iwabo bakaba bari bahishe Abatutsi, ko hari n'abo yarakoye akabajyana kwa muganga mu rwego rwo kubatabara, nubwo bitamubuzaga kujya ku muhanda kureba uko ibintu byifashe. Akomeza vuga ko nta ruhare yagize mu bwicanyi bwabereye mu murenge wa Mbazi, kuri Paruwasi ya Cyanika cyangwa ku biro bya Komini Musange, ko nta na banyirye yigeze ajyaho, ndetse ko nta n'inama ziteguye ubwo bwicanyi yagiyemo akaba nta n'imbunda yigeze atunga. Asoza avuga ko ahantu yageze ari i Kaduha agiye gufata ibikoresheho bya kuko yahigishaga kandi ko icyo gihe yafashije Dogiteri Gasana wayoboraga ishuri yigishagaho kurokora abana bagera kuri magana ane

- (400) bari bagiye kwicwa. Incamake y'icyemezo: 1. Igikorwa cyo kwica gifatwa nka kimwe mu bikorwa bigize icyaha cya jenocide iyo ugikoze yica umuntu umwe cyangwa benshi akabikora afite n'ubushake bwo kurimbura uwo muntu umwe cyangwa abo bantu bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo.
2. Ubushake bwo gukora icyaha cya jenocide ni umugambi wihariye (dolus specialis) wo kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, bukaba bushobora kugaragarira mu bikorwa no mu magambo cyangwa se harebwe muri rusange uko ibikorwa bibujijwe byakozwe.

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3. Umugambi mubisha uhuriweho ubaho mu gihe igikorwa gifatika cyo gukora icyaha kigomba kuba kirimo abantu benshi ariko atari ngombwa byanze bikunze kuba gitunganyijwe mu rwego rw'ubutegetsi, urwa politiki, cyangwa urwa gisirikare; kuba hariho umugambi uhuriweho wo gukora icyaha ariko atari ngombwa ko uwo mugambi uba waracuzwe cyangwa waranonyoswe mbere kuko ushobora no guhita ubaho kandi ukagaragarira mu byabaye; no kuba uregwa yaritabiriye uwo mugambi uhuriweho ugizwe no gukora icyaha.
4. Uburyo bw'ibanze bw'umugambi mubisha uhuriweho ni uburyo bubaho iyo abantu benshi bumvikanye gukora icyaha bashyira mu bikorwa umugambi mubisha bumvikanyeho ku buryo icyo gihe buri wese mu bahuriye muri uwo mugambi afatwa nk'uwafatanyije n'abandi gukora icyaha n'icyo ibikorwa bifatika byo kugitsotsoba byakozwe gusa na bamwe muri bo.

5. Umuntu uryozwa icyaha cya jenocide ntagomba gukora ibikorwa bibujijwe gusa ahubwo agomba no kuba afite ubushake bwihariye bwo kuribumbura abantu bose cyangwa bamwe muri bo bahuriye kuri rimwe mu matsinda arengerwa n'amategeko. Uregwa ahamwa n'icyaha cya jenocide. Uregwa ahanishijwe igifungo cy'imyaka makumyabiri n'itanu. Amategeko yashingiweho: Itegeko Ngenga No 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa, ingingo ya 5. Convention Européenne d'extradition du 13 Decembre 1957, article 14 (1). Amasezerano ku ikumira n'ihanwa ry'icyaha cya jenocide yo ku wa 09/12/1948 u Rwanda rwashyizeho umukono ku wa 12/02/1975, ingingo ya 2. Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 3 n'ya 111. Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange, ingingo ya 2, 83, 91, 92 n'ya 335. Itegeko N° 69/2013 ryo ku wa 02/09/2013 ryerekeye kohererezanya ukurikiranyweho icyaha, ingingo ya 2 n'ya 28. Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, ingingo ya 8. Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 115. Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 65. Sitati ya Roma yo ku wa 17 Nyakanga 1998 yatangiye gukurikizwa ku wa 1 Nyakanga 2002 ishyiraho Urukiko Mpanabyaha Mpuzamahanga, ingingo ya 6 n'ya 25. Loi No 1.222 du 28/12/1999 relative à l'extradition, article 2. Imanza zifashishijwe: RS/INCONST/SPEC 00003/2019/SC, Kabasinga Florida c/ Leta y'u Rwanda, Urukiko rw'Ikirenga (04/12/2019) RS/REV/INJUST/PEN 0001/17/CS-RP 0001/2017/SC, Bahirwe Geoffrey c/ Mukagatoya Marie, Urukiko rw'Ikirenga (13/04/2017). RPAA 00032/2019/CA, Ubushinjacyaha c/ Nzafashwanimana Jean de Dieu, Urukiko rw'Ubujurire (28/02/2020). ICTR-05-88-T, ICTR, Prosecution v Kalimanzira Callixte, Trial Chamber (22 June 2009), p.188, para. 730. TPIR-2001-64 -T, TPIR, Le Procureur c/ Gacumbitsi Syvestre, Chambre de Première Instance III (June 17, 2004), pp. 63 - 64, paras. 249 -251.

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67. A. IT-97-25, ICTY, Prosecutor v Milorad Krnojelac, Trial Chamber (15 March 2002), p. 34, para 82. See IT -95-17/1-T, ICTY, Procutor v Anto Furund@Ija, Trial Chamber (10 December 1998), p. 75, para 187. IT- 02 - 60, ICTY, Prosecutor v Vidoje Blagovedic, Trial chamber (17January 2010), p. 256, para 702. ICC-01/04 – 01/06, The Prosecutor v Thomas Lubanga Dyilo, (14/03/2012), p.423, para 977. ICC-01/04 – 01/07, Le Procureur c/ Germain Katanga, (07/03/2014), p. 564, para 1381. IT- 94-1-A, Prosecutor v Tadic, Appeal Chamber, (15 July 1999) pp.87- 88, paras. 202 -203. IT-98-30/1-A, ICTY, Prosecutor v Miloslav Kvocka et al. Appeals Chamber (28 February 2005), p. 30. Inyandiko z’abahanga zifashishijwe: J. Fortin et L. Viau, *Traité de Droit Pénal général*, Les Edition Thémis Inc. 2011, p 531, para. 346. C. Hennau et J. Verhaegen, *Droit Pénal Général*, 3e éd. (Bruylant Bruxelles, 2003), P.268, Para. 289. B. Bouloc, *Droit pénal général*, Dalloz, coll. Précis, 22ème éd., 2011, n° 307 et s.; R. Merle et A. Vitu, *Traité de droit criminel*, Problèmes généraux de la science criminelle – Droit pénal général, préc., n° 523.

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anashinzwe imyitwarire y'abanyeshuri mu kigo cy'amashuri yisumbuye cya EAV Kaduha (Ecole Agri-Vétérinaire) akaba n'umuyobohe w'ishyamba rya "Mouvement Démocratique Républicain (MDR)", ari mu bashakishwaga aho yari yarahungiyeye kubera uruhare akekweho mu bikorwa bya jenocide. [2] Ubushinjacyaha bw'u Rwanda bumaze kumenya ko ari mu gihugu cy'Ubudage bwashyize ko Twagiramungu Jean yoherezwa kuburanira mu Rwanda ku cyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu yakekwagaho. Ku wa 17/08/2017 icyo gihugu cyamwohereje kuburanira mu Rwanda, ahageze aregerwa Urugereko rw'Urukiko Rukuru ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi ku cyaha cya jenocide hashingiwe ku kujya mu bitero bitandukanye byishe Abatutsi benshi, ubushinjacyaha bukavugaga ko abagabye ibyo bitero bari bafite umugambi wo kurimbura Abatutsi. Busobanura kandi ko muri ibyo bitero harimo ibyagabwe mu murenge wa Mbazi nk'icyo kwa Kamondo Juvénal cyiciwemo Abatutsi batanu (5), icyo ku muvandimwe we Bendantunguka Daniel cyiciwemo Abatutsi cumi n'umwe (11), icyagabwe ahahozeho ari ku biro bya Komini Musange n'icyagabwe kuri Paruwasi Gatolika ya Cyanika. [3] Twagiramungu Jean yaburanye ahakana icyaha cya jenocide akurikiranyweho akavugaga ko atigeze ajya mu bitero byagabwe mu murenge wa Mbazi, ku biro bya Komini Musange no kuri Paruwasi Gatolika ya Cyanika akanavugaga ko kuva indege y'uwohoze ari perezida w'u Rwanda ihanuwe, n'ubwo yari iwabo, atigeze ahava kuko yangaga gusiga nyina wari umututsikazi kugira ngo aticwa n'abagabaga ibitero hafi y'iwoho. [4] Mbere y'uko urukiko rutangira kuburanisha urubanza mu mizi rwabanje gutashya agaciro icyemezo cy'Urukiko Gacaca rw'Umurenge wa Ngara cyafashwe ku wa 28/10/2008 cyari cyarahamagariye Twagiramungu Jean igifungo cya burundu cy'umwihariko runafata umwanzuro ku kirego yari yarushyikirije asaba kurekurwa by'agateganyo mu gihe urubanza rutarabwira mu mizi, rwemeza ko akomeza gufungwa by'agateganyo. Mu iburanisha ry'uru rubanza ababuranyi ndetse n'urukiko bagize umwanya wo kubaza abatangabuhamya batanzwe n'impande zombi, bamwe babazwa barindiwe umutekano bahabwa andi mazina ntibanagaragazwa mu ruhamye, amajwi yabo nayo arahindurwa, abandi babarizwa mu ruhamye batarindiwe umutekano. Urukiko kandi ruri kumwe n'impande zombi zirebwa n'uru rubanza rwanagiye aho icyaha akekweho gukora cyakorewe kugira ngo rwirebere imiterere y'ahavugwa ko hakorewe ibikorwa bigize icyaha cya jenocide Twagiramungu Jean akurikiranweho.

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- [5] Ibibazo bisuzumwa muri uru rubanza ni: - Kumenya niba Twagiramungu Jean yaragiye mu bitero byishe Abatutsi mu murenge wa Mbazi, kuri Paruwasi Gatolika ya Cyanika no ku biro bya Komini Musange. - Kumenya niba mu rwego rw'amategako Twagiramungu Jean yaryozwe icyaha cya jenocide kubera kujya mu bitero mu gihe byagaragara ko yabigiyemo. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA 1 Kumenya niba Twagiramungu Jean yaragiye mu bitero byishe Abatutsi mu murenge wa Mbazi, kuri Paruwasi Gatolika ya Cyanika no ku biro bya Komini Musange A. Imiburanire y'Ubushinjacyaha [6] Muri rusange, ikirego cy'Ubushinjacyaha kigaragaza ko Twagiramungu Jean yagize uruhare rukomeye muri Jenocide yakorewe Abatutsi kuko yagiye ahantu hatandukanye mu bitero byishe Abatutsi benshi mu murenge wa Mbazi, kuri Paruwasi Gatolika ya Cyanika no ku biro bya

Komini Musange. Icyo kirego kigaragaza kandi ko ibyo bitero byakozwe mu buryo bunyuranye bamwe bakicwa batemwe, abandi batewe za gerenade, bakubiswe impiri abandi barashwe kandi ko abicwaga baziraga gusa ko ari Abatutsi hatagamijwe kumenya uwo buri wese azica uwo ari we hatanitawe ko ari abana, abagore, abasaza, abafite ubumuga n'abize, ahubwo hagamijwe kubarimbura bose cyangwa igice kimwe muri bo, ko ibi bigaragazwa n'ubuhamya bwatanzwe n'abagizweho ingaruka n'ibyo bitero ndetse n'ababigizemo uruhare. [7] Ku birebana n'ibitero byishe Abatutsi mu murenge wa Mbazi, Ubushinjacyaha buvuga ko ku wa 14/04/1994, Twagiramungu Jean afatanyije n'abandi bantu benshi barimo Karasanyi na Rufangura bari baturutse i Mbazi n'ahandi, bagabye igitero mu rugo rwa Kamondo Juvénal cyica Abatutsi batanu (5) bari bahihishe kinica abandi cumi n'umwe (11) bari mu rugo rw'umuvandimwe we bari baturanye witwa Bendantunguka Daniel, ko izo ngo hari abazitaga kwa Nzamurambaho cyangwa se kwa Rwamanywa se wa Kamondo na Bendantunguka, bukavuga ko mubahiciwe harimo Ahishakiye Diyonizi, Munyankuge Gerigori, Gasimba Godifiridi, umusore bahimbaga Gapira, Kaniziyo, Mukategamaso, Rwamugire Cassien n'abandi, kandi ko abo batutsi bahiciwe bicishijwe imihoro n'amahiri, ko ibi byemezwa n'imvugo z'ababajijwe mu iperereza barimo Karangwa Augustin, Mukabera Yudita, Kamondo Juvénal, Ngirinshuti Mathias, Rushagaza Télesphore, Karegeya Daniel na Musonera Karoli. [8] Bunavuga ko niyo muri ibyo bitero Twagiramungu Jean ubwe atari kugira uwo atema ariko agomba kuryozwa ibyaberaga muri ibyo bitero kuko yabaga yabitanzemo amabwiriza, bugasobanura ko mu gitondo cyo ku wa 14/04/1994 saa yine mbere y'uko igitero kigabwa kwa Kamondo, yari yamutumyehe mushiki we witwa Munganyinka Léonille amubwira ko mu rugo rwe nibahasanga Abatutsi bamurimbura nabo, bituma Kamondo ahunga. Buvuga ko mu mvugo zo mu iperereza z'umwe mubabajijwe wagize uruhare muri jenocide yemeje ko Twagiramungu Jean mwene Munyambuga yari interahamwe, ko yamwiboneye afite umuhoro ari na we uyoboye icyo gitero akanaba yiyemerera ko nawe yari akirimo uretse ko acyita icyo kwa Nzamurambaho. [9] Bukomeza buvuga ko muri Mata 1994 hari umurambo w'umututsi witwaga Ruzagiriza Alfred wabonetse mu gikari cy'iwabo wa Twagiramungu Jean kandi ko mu iperereza, hari uwavuze ko yabonye Twagiramungu Jean ahagaze iruhande rw'uwo murambo amubajije uburyo uwo muntu yapfuyemo amusubiza ko bamufashijwe n'igitero cyari kivuye i Ruseke. Bunavuga ko ibyo yavuze bishimangirwa n'imvugo zo mu iperereza z'undi wabajijwe wemeje ko hari umututsi witwa Alfred wari warahishwe na Munyambuga, Twagiramungu Jean amusohora aho yari yihishe aramwica, ahandi akavuga ko uwo muntu yaguye iwabo wa Twagiramungu Jean ariwe umwishe kuko we na se bamubwiye ko igitero cyavuye i Ruseke aricyo cyabafashije kumwica, ko no mu mvugo zo mu iperereza z'undi wabajijwe

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nawe yemeza ko Ruzagiriza Alfred yaguye mu gikari cyo kwa Munyambuga iwabo wa Twagiramungu Jean kuko asobanura ko ubwo yarimo avugana na Ruzagiriza yumvise igitero kije ajya kwihisha, nyuma aza kumenya ko uyu yaguye mu gikari cyo kwa Munyambuga. [10] Busoza buvuga ko Twagiramungu Jean afatanyije n'abandi yanagize uruhare mu iyicwa ry'uwitwa

Rudahunga Ananias wari wihishe muri Farumasi iri imbere ya Komini Rukondo kuko aribo bamukuye aho yari yihishe bamwicira mu Gitinda bamutemaguye, ko uwitwa Karegeya Daniel ahamya ko atamubonye gusa mu bitero ahubwo ko yanamubonye we n'uwitwa Albert wari wungirije Burugumesitiri bafata Rudahunga Ananias bamuvanye aho yari yihishe muri farumasi bakajya kumwicira mu Gitinda akanemeza ko yamubonye amutema ibitsi by'amaguru yombi nyuma yo kugwa hasi uwitwa Gashara akamutema igikanu. Bukavuga kandi ko Karangwa Augustin, Ngirinshuti Mathias na Rushagaza Télesphore mu mvugo zabo zo mu iperereza biyemerera ko babaga bari mu bitero byagabwaga ku batutsi i Mbazi n'ahandi kandi ko bari bari kumwe na Twagiramungu Jean. [11] Ku bijyanye n'ibitero byo kuri kiliziya yo mu Cyanika, Ubushinjacyaha buvuga ko ku wa 22/04/1994, Twagiramungu Jean yari mu gitero cyaturutse i Mbazi cyerekeza kuri Kiliziya Gatolika ya Cyanika gufatanya n'ibindi bitero biturutse mu tundi duce dutandukanye byica Abatutsi benshi bari bahahungiyeye barimo Kayumba, Nyakayiro Michel, Mwumvaneza François, Karongozi Joseph n'abandi, ko ibi byemezwa n'imvugo z'ababajijwe mu iperereza. [12] Buvuga kandi ko muri ubwo bwicanyi hakoreshejwe imbunda, gerenade, imihoro n'amahiri bunagirwamo uruhare n'inzego z'umutekano zirimo igisirikari na Jandarumeri zifatanyije n'abaturage b'abasiviri bitabiriye ubwicanyi. [13] Ku birebana n'ibitero byo kuri komini Musange, Ubushinjacyaha buvuga ko Twagiramungu Jean ari mu bagiye mu bitero byishe Abatutsi bari bahungiyeye kuri komini Musange mu kwezi kwa mata 1994, bugasobanura ko yabigiyemo ari mu modoka y'umutuku ya komini Rukondo yanavanagayo abicanyi, bukavuga ko ibi byemezwa n'imvugo zitandukanye z'ababajijwe mu iperereza barimo Karangwa Augustin, Ngirinshuti Mathias n'abandi. B. Imyiregurire ya Twagiramungu Jean [14] Muri rusange, Twagiramungu Jean yisobanura avuga ko nta ruhare yagize mu bikorwa bigize icyaha aregwa cya jenocide cyakorewe mu murenge wa Mbazi, kuri Paruwasi Gatolika ya Cyanika no kuri komini Musange, ko atari kugira umugambi wo kwica Abatutsi kandi nyina na we ari umututsikazi. Anasobanura ko iwabo bari bahishe Abatutsi, ko hari n'abo yarokoye akabajyana kwa muganga mu rwego rwo kubatabara. Avuga kandi ko indege y'uware perezida w'u Rwanda yaraye ihanutse, yageze ku gasantere ka Mbazi abona ibintu byahindutse hakurya y'iwabo amazu ari gushya, abantu bari kwiruka banavuze induru bituma asubira iwabo mu rugo nyina wari umututsikazi amubwira ko bari guhiga Abatutsi. Avuga ko kuva icyo gihe atakundaga kuva mu rugo iwabo atinya ko nyina yakwicwa ariko ko n'ubwo yafashe uwo mwanzuro bitamubuzaga kujya ku muhanda kugira ngo amenye uko ibintu byifashe. [15] Yisobanura ku bitero byo mu murenge wa Mbazi, Twagiramungu Jean avuga ko nta ruhare yagize mu bitero byishe Abatutsi muri uwo Murenge. Asobanura ko yabonye abantu batangiye gutwikira abandi no kubica, iwabo mu rugo naho haza igitero kigizwe n'abantu bagera kuri mirongo itanu (50) kirabakubita ndetse na we bamukubita ubuhiri akomereka ku mutwe. Ku bijyanye n'igitero cyo kwa Kamondo Juvénal, asobanura ko atigeze akijyamo, ko n'abahiciwe atabazi ahubwo ko yumvise babivuga ari gucuruza mu kabari kandi ko na Kamondo Juvénal ubwe atigeze amushinja ko yamubonye muri icyo gitero. Avuga ko n'ibyo Kamondo Juvénal amushinja ko yamutumyehe mushiki we witwa Munganyinka Léonille kumubwira ko nibasanga iwe hari Abatutsi bahihishe bazabicana, na byo atari ukuri kuko atigeze amenya ko hari Abatutsi bari bahihishe.

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[16] Akomeza anavuga ko nta ruhare yagize mu rupfu rwa Rudahunga Ananias wiciwe mu kazu ka farumasi kari inyuma y'urugo rw'iwabo aho kuba mu Gitinda nk'uko ubushinjacyaha bubivuga, agasobanura ko yicwa bo bari mu rugo iwabo bumva ikintu giturika ariko ko batasohotse mu rugo nyuma aba ari bwo abantu baza kubabwira ko bamwishe. Anavuga ko azi ibirebana n'urupfu rwa Alfred Ruzagiriza kubera ko yabyumvise ariko ko nta ruhare yagize mu rupfu rwe. Avuga na none ko ibivugwa n'Ubushinjacyaha ko umurambo we wasanzwe mu gikari cy'iwabo atari byo ahubwo ko wasanzwe nko muri metero mirongo ine (40m) uvuye muri icyo gikari. Avuga kandi ko Ubushinjacyaha bwamureze iby'urupfu rwa Ruzagiriza Alfred nyamara yicwa rye ritari mu bikorwa bigize ibyaha bikubiye mu nyandiko y'ikirego bwashingiyeho busaba ko yoherezwa kuburanira mu Rwanda. [17] Ku bitero byo kuri Paruwasi Gatolika ya Cyanika ho avuga ko atigeze ajya mu gitero cyahagabwe, akavuga ko yacyumvise kuko mu Cyanika ari ahantu hazwi, ko n'imodoka ivugwa ko yagiyemo ntayo azi; bityo ko nta ruhare yagize mu bwicanyi bwahabereye, ko nta na bariyeri yigeze ajyaho, ndetse ko nta n'inama zitegura ubwo bwicanyi yagiyemo akaba nta n'imbunda yigeze atunga. [18] Ku birebana n'ibitero byo kuri komini Musange, Twagiramungu Jean avuga ko atagombye kuregwa igitero cy'i Musange kuko kitari mu bikorwa byashingiyeho n'Ubushinjacyaha asabirwa koherezwa kuburanira mu Rwanda. Akanavuga ko uretse no kuba atagombye ku kiregwa, atigeze ajya mu bitero byishe Abatutsi kuri komini Musange kuko kuva iwabo ujyaye ari kure kuko hari ibirometero nka cumi na bitanu (15 km), ko ibyavuzwe n'ababajijwe mu iperereza atari byo kuko batabyiboneye. Agasobanura avuga ko ahantu yageze ari i Kaduha agiye gufata ibikoreshe bya kuko yahigishaga kandi ko icyo gihe yafashije Dogiteri Gasana wayoboraga ishuri yigishagaho kurokora abana bagera kuri magana ane (400) bari bagiye kwicwa. C. Ubuhamya bwatangiwe mu Rukiko n'icyo ababuranyi babuvugaho - Ubuhamya bwatangiwe mu Rukiko [19] Ku birebana n'igitero cyo kwa Kamondo, umutangabuhamya Mukabera Judith avuga ko yabonye Twagiramungu Jean mu bari bagabye iki gitero cyarimo abantu barenga ijana (100) barimo Kabarisa, Busharaza, Ngirinshuti, Uwizera n'abandi ariko ko nta cyo yabonye Twagiramungu Jean akora, ko atanibuka icyo yari yitwaje n'imyenda yari yambaye, agasobanura ko igitero cyagabwe kubahigwaga nabo baza babahungiyeho kirabakurikira kibavana mu rugo iwe kibicira ku muharuro uri haruguru y'urugo rwabo uri nko kuri metero zirindwi (7m), ko mubahiciwe harimo Rwamugire, Ahishakiye, Munyankuge na Gasimba. [20] Anavuga ko icyo gitero cyatangiyemo nka saa ine kimara nk'isaha imwe kandi ko cyasanze umugabo we Kamondo Juvénal yahunze kubera ko abavandimwe be bari bamaze kwicwa, akomeza avuga ko bamaze gutwara abo bantu bari bahungiyemo iwabo bagiye no kwica abandi ku muturanyi witwa Bendantunguka aho bishe abantu cumi n'umwe (11) ariko ko abo bicwa atabibonye kuko yagumye iwe ahubwo yabyumvise babivuga, ko ibyo yiboneye ari abiciwe iwe. [21] Mu buhamya bwe, Kamondo Juvénal avuga ko ku wa 14/04/1994 hari abantu batanu (5) biciwe iwe aribo Habimana, Munyankuge, Rwamugire, Gasimba na Ahishakiye ariko ko babica yari yahunze naho ko kwa mukuru we Bendantunguka Daniel bari baturanye hiciwe abantu cumi n'umwe (11), umunani (8) muri bo babavanye mu nzu abandi batatu (3) babavana mu rutoki,

akaba abo yibukamo ari Mukategamaso Viviyana n'umukazana we n'abana be, barumuna be na Gapira bavanye mu masaka, ko hari n'uwitwaga Maseduwane na Lando. Avuga na none ko ku wa 14/04/1994 hafi y'iwabo naho haguye abandira bantu. [22] Asoza avuga ko kugira ngo ahunge byatewe n'uko mushiki we witwaga Munganyinka yageze iwabo amubwira ko Twagiramungu Jean amubwiye ko iwabo nibahasanga Abatutsi bahasenyaye, ko icyo gitero cyahise kiza nyuma y'iminota itarenze itanu (5) mushiki we amaze kubivugira ariko ko ahungira

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atabonye Twagiramungu Jean mubonye yahuye nabo baje muri icyo gitero, ko ibyongye kuba Twagiramungu Jean yaraje muri icyo gitero yabyumvise mu Nkiko Gacaca. [23] Umutangabuhamya wahawe izina rya DJB kubera impamvu z'umutekano we uri mu bagize uruhare muri jenocide, asobanura ko ubwo yari ari kwa Nzamurambaho mu ma saa tanu, yabonye Twagiramungu Jean ayoboye igitero kirimo abantu nka Magana abiri (200) akaba ari cyo cyishe Abatutsi barenga makumyabiri (20) bari bahari barimo Shamugambira, Gasini, Mukategamaso n'abandi atibuka amazina, ko uretse Twagiramungu Jean wari imbere muri icyo gitero yambaye amatiriningi y'ubururu buvanye n'umukara, yitwaje umuhoro n'ubuhiri, undi yibuka ari Rufangura. [24] Anasobanura ko ibyongye kuba mu iperereza yari yaravuye ko yabonye Twagiramungu Jean inshuro ebyiri (2) yagera mu rukiko akavugira ko yamubonye inshuro imwe no kuba yari yaravuye ko mu ntwaro yari afite harimo n'ubuhiri ariko mu rukiko akavugira ko yamubonye umuhoro gusa, bitwaga no kwibagirwa kubera ko hashize igihe kirekire. Anasobanura ko kuba yaramenye Twagiramungu Jean mu bantu bagera kuri magana abiri (200) bari mu gitero ari uko yari imbere ashishikariza abicanyi kwica Abatutsi ariko ko nta muntu yabonye yica ubwe. [25] Akomeza avugira ko icyo gitero kihageze cyabanyije gusohora abantu bahiciwe ariko ko Twagiramungu Jean we yari yasigaye hanze abwira abicanyi gusohora abo yitaga inzoka kugira ngo bazice ntibashye n'imwe kandi ko nibiba ngombwa n'umuryango wa Nzamurambaho bawica, naho iby'uko mu iperereza yari yaravuye ko Twagiramungu Jean yari yaravuye ngo basohore abantu mu rukiko akavugira ko yavuye ngo basohore inzoka, avugira ko koko mu iperereza yavuye ngo basohore abantu ariko ko ibyongye kuvugira inzoka mu rukiko yabitewe no kwibagirwa kuko hashize igihe kirekire. [26] Umutangabuhamya Ngiririshuti Mathias, na we wagiye mu bitwaga, avugira ko yari asanzwe ari Twagiramungu Jean ko mu gihe cyari jenocide yamubonye mu gitero cyo mu mudugudu wa Butare n'icyo kwa Nzamurambaho cyaguyemo Gasimba, Rutagarama, Ahishakiye, Kaniziyo na Rwamugire Kasiyane, ko nyuma ya jenocide Kamondo yamubwiye ko Twagiramungu Jean yari yamuburiye amubwira ko iwe nibahasanga Abatutsi bazabikana. Anasobanura ko muri icyo gitero atibuka intwaro Twagiramungu Jean yari afite n'inyuma yari yambaye, akanavugira ko yamubonye mu gitero cyari Musange ari kumwe n'abandi ariko ko batageranyeyeho na we kuko baturukaga mu duce dutandukanyeho, akavugira kandi ko muri iki gitero Twagiramungu Jean yari yitwaje umuhoro naho igitero cyo mu Cyanika akavugira ko atakimubonyemo ko nta n'inyuma ziteguraga jenocide yamubonyemo. [27] Ku birebana n'uko yaba yarageranyeho i Musange na Twagiramungu Jean no kuba yaramenye ibyababereye atarahageze, asobanura ko yumvise indangururamajwi iri mu modoka uwitwaga Rushingabigwi wari ankadereri w'urubyiruko ahamagarira abantu gutabara i Musange, avugira ko inyenzu

zahateye. Akavuga ko yagarukiye ku giti cy'inyoni aharasiwe Rushingabigwi kubera ko abari bayoboye igitero bababwiye kuba ari ho bahagarara bakajya batega abantu bava aho abasirikari bari kurasira, akavuga ko kuba yaramenye ibyabereye i Musange ari uko aho ku giti cy'inyoni yagarukiye hegeranye, kuko harimo metero magana arindwi gusa (700 m) ndetse ko n'abantu bavagayo bavugaga ibimaze kuhabera. [28] Asobanura ko yabonye Twagiramungu Jean afite umuhoro n'akantu kameze nk'ikirahuri ari kumwe na Gashara Alphonse na Sekamonyo Boniface bari kuzamuka bataha bavuye i Musange bagenda n'amaguru kuko imodoka zose bari bazisize mu Ijenda. [29] Umutangabuhamya Karangwa Augustin we avuga ko Twagiramungu Jean amuzi ari umwarimu, ko hari ibitero yamubonyemo ndetse ko hari n'ibyo bajanyemo nk'icy'i Musange cyahagurukiye kuri komini Rukondo kigizwe n'abantu benshi barimo Gashara, Emmanuel, umupolisi wari Burigadiye witwaga Karaveri, umwarimu witwaga Ngango n'abandi benshi. Asobanura ko we n'abandi bakigiyemo n'amaguru naho Twagiramungu Jean agenda n'imodoka akaba yaramubonye imodoka yarimo ibahiseho

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aho bari bageze hitwa mu Manwari, ko bagera i Musange hari abantu benshi baturutse ahantu hatandukanye batangiye kwica, ko batageze i Musange neza kuko bageze ku Giticyinyoni basanga haguye uwitwa Rushingabigwi bituma bagarukira aho; bityo ko atamenye ibyabereye i Musange. Avuga kandi ko, uretse kuba yarabonye Twagiramungu Jean ku Giticyinyoni mu gutaha ariko ko ntacyo yabonye ahakora, ko atanibuka imyenda yari yambaye kandi ko nta modoka yabagezeho aho ko atanazi uburyo umurambo wa Rushingabigwi wavanywe aho ndetse ko nta makuru yigeze yumva ko Twagiramungu Jean yaba yarageze i Musange ahiciwe abantu. [30] Akomeza avuga ko bajya mu gitero cyo mu Cyanika yibuka ko yahagurukanye na Twagiramungu Jean uyu agenda n'imodoka naho bo bagenda n'amaguru ko bagezeyo bahasanze abajandarume n'abapolisi kandi ko yahamubonye bari kumwe muri icyo gitero we ari inyuma naho Twagiramungu Jean ari imbere nko mu birometero bibiri (2 km) kandi ko muri icyo gitero bageraga ku bantu magana atatu (300), ko iki gitero kitabereye umunsi umwe n'icy'i Musange, ko atanigeze avuga ko Twagiramungu Jean yashishikariye abicanyi kwica Abatutsi. [31] Karegeya Daniel utararahiye nk'umutangabuhamya kubera ko yahanishijwe igifungo cya burundu ku cyaha cya Jenoside, mu makuru yahaye urukiko yavuze ko azi Twagiramungu Jean kuko baturanye. Avuga ko nta gitero azi yaba yaragiyemo mu gihe cya Jenoside kandi ko nta muntu azi wishwe muri Jenoside Twagiramungu Jean abigizemo uruhare. Kubirebana n'urupfu rwa Rudahunga Ananias avuga ko nta ruhare Twagiramungu Jean yarugizemo, ko ibyo yari yaravuze mu ibazwa rye mu Bugenzacyaha ku wa 05/07/2015 ko Twagiramungu Jean ariwe watemye Rudahunga Ananias ibitsi by'amaguru yombi, yagwa hasi uwitwa Gashara akamutema igikanu atari byo kuko mu bugenzacyaha bamwandikiye uko atabivuze. Avuga ko Rudahunga yavuye iwabo ahunga ajya kwihisha muri Farumasi ahamara nk'iminsi (3), uwari wungirije Burugumesitiri (Assistant Bourgmestre) witwa Albert yumva Rudahunga akoroye, ahuruza abantu basaba Burugumesitiri urufunguzo kugira ngo bamukuremo ararubima, nyuma uwitwa Mutabaruka ajya kuzana icyuma gikata ibyuma bagikatisha urugi rw'aho yari ari, maze abitwa Gashara na Habiyaemye bamuvanamo baramwica. [32] Avuga kandi ko kuba yari yaravuze ko Twagiramungu Jean yari mu

modoka yagiye mu bitero mu Cyanika ariko mu rukiko akaba abihakana ko n'ubwo yemera iyi nyandikomvugo ariko uwamubajije yirengagije kwandika ko Twagiramungu Jean yayigiyemo agiye kureba mushiki we wagiraga ikibazo cyo mu mutwe. Anahakana kuba yaravuze mu Bugenzacyaha ko Twagiramungu Jean ariwe wandikaga abantu bagabanaga inyama z'inka yasahuye muri jenocide, akavuga ko n'ibyo yagiye avuga yabitewe n'uko aho yanyuze hose yagiye akorerwa icyarubozo, ndetse akaba yarashyiraga umukono ku nyandikomvugo adasomye kuko yari azi ko ukuri kwe azakuvugira mu rukiko. [33] Umutangabuhamya Kamugire Remy we avuga ko abantu bahungaga batangiye kugera mu Cyanika hagati yo ku wa 10/04/1994 no ku wa 14/04/1994 ndetse ko na we n'umuryango we ugizwe na se, se wabo, nyirakuru, nyina n'abavandimwe be aribwo bahageze akaba ari naho biciwe. Akanavuga ko icyo gitero cyabateye cyabanje kujya kwica i Murambi, abari barokotse yo baza bavirirana bababwira ibyabereyeyo banabasaba guhunga. Anasobanura ko Twagiramungu Jean n'abo bari kumwe bahagera yabonaga basa n'abategereje igitero kiva ku Gikongoro, ko icyabimubwiye ari uko icyo gitero kihageze bahise batangira kubica. [34] Akomeza avuga ko ubwicanyi bwakorewe kuri Paruwasi ya Cyanika yabubonye kuko ariho yari yarahungiyeyo, ko ku wa 21/04/1994 yabonye Twagiramungu Jean mubaje mu gitero cyarimo superefe wa Karaba Hagirintwari, Burugumesitiri wa Karama Ngezahayo, Veterineri Sebakiga, Mpakaniye, Umugenzacyaha Munyaneza Jean de Dieu, Burigariye Samuel na Ugirindege Charles. Anavuga ko icyo gihe ababona hari nka saa mbili n'igice za mu gitondo bari hafi y'abapadiri kuri paruwasi ya Cyanika ariko ko nta ntwaro gakondo bari bafite, ko nta n'umuntu yabonye Twagiramungu Jean yica ubwe ahubwo ko abaturage aribo bari bazifite. Akavuga ko Twagiramungu Jean yari mu bahageze mbere baje

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basanga abandi bahagose ariko ko atibuka neza imyenda yari yambaye kuko hashize igihe kirekire kandi akaba yari akiri umwana. [35] Umutangabuhamya Musonera Charles avuga ko azi Twagiramungu Jean ariko ko mu gihe cya Jenocide atigeze amubona. Asobanura ko hari ubwo yageze hafi y'urugo rw'iwabo wa Twagiramungu Jean nko muri metero eshanu ahasanga umurambo wa Alfred, Twagiramungu Jean na se bamubwira ko uwo muntu wapfuye bamufashijwe n'abantu bavuye i Ruseke ariko ko icyo gitero atakibonye ndetse ko mu iperereza atigeze avuga ko Twagiramungu Jean ariwe wasohoye Alfred. Asoza avuga ko mu gitero cyo kwa Mutabaruka atajyanye na Twagiramungu Jean, ko abo yibuka bari kumwe ari Karegeya Daniel, Herman, Sindayigaya Félicien, uwo bitaga Gaca na Shingiro. [36] Mu buhamya bwe, Rufangura Faustin we, avuga ko yagiye mu gitero cyo kwa Kamondo ari kumwe na Athanase, Didace, Rusharaza n'abandi atibuka kuko hashize igihe kirekire ariko ko atabonye Twagiramungu Jean muri icyo gitero cyarimo abantu bagera nko kuri mirongo itanu (50) cyabaye nko mu kwezi kwa gatanu cyangwa kwa gatandatu muri 1994. [37] Anavuga ko ari mu bagabye igitero kwa Bendantunguka bahasanga abantu mirongo ine (40) bicamo batanu (5) bakomeza kwa Kamondo ariko ho ko ntacyo bahakoze uretse inka bahasahuye, ko bahagera bahamusanze kandi ko nta muntu wahiciwe. Avuga na none ko icyatumye ajya muri icyo gitero ari uko ubwo yari mu nzira ajya kwa sebwake yageze ahitwa ku Itambiro ahahurira n'uwitwaga Didace wari Burugumesitiri wa Komini Rukondo ari kumwe n'abandi bantu bane (4), uyu amubaza impamvu ari kugenda kandi

gahunda ihari ari ukwica Abatutsi, ko yahise areka kujya iyo yari agiye ahita ajya muri icyo gitero cyari kiyobowe na Didace ariko ko bahageze uwabashishikarizaga kwica abantu ari Rusharaza Telesphore. [38] Umutangabuhamyi Nkiriye Emmanuel wari umupolisi, avuga ko ubwo yari ku kazi k'izamu kuri komini, yumvise abantu batabaza ko kwa Mutabaruka Paulin hatewe, aratabara, ahageze asanga bamutemaguye, ko yahasanze abantu nka cumi na babiri (12) barimo Musonera Charles, Félicien mwene Seneza, umuhungu wa Gatari Jean n'abandi; akanavuga ko atabonye Twagiramungu Jean muri icyo gitero. Asobanura kandi ko Rudahunga Ananias amuzi ariko ko atazi iby'urupfu rwe uretse ko yamenye ko yapfuye ariko ko atamenye igihe yapfiriye, ko nabyo yabyumvanye umuntu bahinganaga amwereka aho ashyinguye, akanasobanura ko n'ibyo yavugiyemo mu iperereza by'uko azi iby'urupfu rwe yabyemejwe n'inkoni ategukwa gushinja Twagiramungu Jean, agasobanura ko n'ubwo yabyemeye yari azi ko azabisobanura imbere y'urukiko. [39] Kubirebana n'iyicwa rya Ruzagiriza Alfred, avuga ko ntariye azi, ko igitero cyo kwa Kamondo Juvénal cyo yacyumvanye abantu. Akavuga ko yajyaga iwabo wa Twagiramungu Jean igihe yabaga akeneye amazi yo kunywa ari ku kazi. Agasoba avuga ko ibyabereye kuri farumasi ahiciwe Rudahunga Ananias ntabwo azi kuko hagati yayo na komini harimo intera ya metero ijana. [40] Mu makuru yahaye urukiko, Hategekimana Didace wari burugumesitiri wa Komini Rukondo mu gihe jenoside yakorewe Abatutsi yakorwaga, avuga ko afungirwe ubwicanyi n'ibitero byo mu Cyanika, akanavuga ko Twagiramungu Jean amuzi kandi ko nta ruhare rwe muri jenoside yakorewe Abatutsi yamenye. Anavuga kandi ko igitero cyo mu Cyanika atakizi uretse ko yumvise ko cyabaye ku wa 21/04/1994 kandi ko mu iburana rye abitwaga Hishamunda Charles na Mageza Onesphore yumvise bavugaga ko bari mu bakigiyemo, kandi ko ibirebana n'igitero cya Musange atamenye uwakigiyemo kuko ari kure. [41] Anavuga na none ko komini yari ifite ikamyoneti itukura yatwarwaga na Burasabwe Silas ariko itagiye mu gitero cyo mu Cyanika. Avuga kandi ko yamenye igitero cyo kwa Kamondo ahurijwe na murumuna we witwaga Mazina, ajyanayo n'abajandarume babiri (2) ariko ko atamenye abishye abantu kuko

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bababonye bagahita bahungu, basanga hapfuye abantu makumyabiri na babiri (22) babafasha kubashyingura. [42] Ku birebana n'ibikorwa imodoka ya komini yakoreshwaga mu gihe cya jenoside yakorewe Abatutsi, asobanura ko atabimenye kuko umushoferi wayo yajyaga ayitwara atabizi ariko ko itigeze ijyana abantu mu bitero byo kwica Abatutsi. Asobanura kandi ko kuba ibitero bya Cyanika na Musange harakoreshejwe iyo modoka ntabwo azi kuko atabaga ahari, akanasobanura ko icyo ashingiraho avugaga ko imodoka itagiye mu gitero cy'i Musange ari uko iyo imodoka iyo yajyaga hirya y'imbibi za komini we nka burugumesitiri yasinyaga mu ikayi y'ingendo z'imodoka n'aho igiye ariko ko yayikoresheje ajya kwa Kamondo no munama, akanasobanura ko iyo modoka yirirwaga ikanarara kuri komini we agataha n'amaguru cyangwa n'ipikipiki. [43] Anavugaga ko hari amakuru yumvise muri gereza abantu bavugaga ko Rudahunga Ananias yari yihishe mu nzu yari hafi ya komini uwitwaga Janvière ahanyuze yumva akorora ajya guhuruza abantu barimo Ngango n'umuhungu wa Karamira maze basenya umuryango bamuvanamo aricwa. Asoza avugaga ko mu rubanza rwa jenoside yareganwaga na Ntegeyintwari Joseph, Hishamunda Charles, Mageza Onesphore, Mpakaniye Frodouard na Ntaganira

Emmanuel ariko ko nta zina rya Twagiramungu Jean ryavuzwemo. [44] Bugegera Emmanuel Alias Busimba uvuga mu buhamya bwe ko yagize uruhare mu bwicanyi bwabereye i Mbazi, mu Cyanika na Musange avuga ko agereranyije igitero cyo mu Cyanika cyabaye ku wa 25/04/1994. Agasobanura ko superefe ari kumwe na komanda Sebhura mu modoka Toyota y'icyatsi kibisi babasanze kuri santere yari hafi y' i Mbazi babasaba kujya gutabara mu Cyanika. Avuga ko bamwe bagiyeyo n'imodoka barimo abafite imbunda nk'umupolisi uvuka mu Kivomo, Gashara wari umwarimu na Gabriel, naho abagiye n'amaguru barimo Kanyankore, Hangimana Isaïe, Munyentwari, Kamondo uva indimwe na Kanyankore n'abandi bahagurikiye kwa Ngirimandwa, we na Hangimana Izayasi n'umukobwa witwa Mukahitimana Marthe bahagurukira ahandi. Abari muri santere hagati bahagurukiye i Mbazi bajya mu Cyanika ariko ko atabonye Twagiramungu Jean. Avuga kandi ko bahaguruka bose bahagurukiye rimwe n'iyo modoka ariko ko atamenye niba mu nzira hari abandi iyo modoka yahafashe; bityo ko atazi abo yageranye mu Cyanika kandi ko iyo modoka yabatanze ariko ko igaruka atayibonye. [45] Akomeza asobanura ko bageze mu Cyanika basanze hagati mu gikari cyo kwa padiri hari abasirikare, ko batangiyeye kurasa amasasu na gerenade bahageze, akavuga ko mu marembo y'igikari cyo kwa padiri hari hari ivuriro kandi ko hagati ya kiriziya n'ivuriro hanyuragamo umuhanda, hakaba n'igikari cy'abaganga gitandukanyijwe na metero nk'icumi (10m) n'igikari cya kiriziya. Asobanura na none ko abateraga gerenade bari mu muhanda bagose igikari cy'abapadiri, naho abasirikari bari ku marembo bajugunya amagerenade banarasa amasasu, ko bo bari haruguru y'ivuriro mu ikawa hagaturuka abantu nka magana atatu (300) bavuye i Nyamagabe na Mudasomwa naho abicwaga bari mu kigo imbere ariko ko bo atamenye umubare wabo. Avuga ko igitero cyo mu Cyanika cyarangiye nko mu ma saa munani ariko we yahavuye mu ma saa saba, ko rero atazi uburyo cyarangiye. [46] Avuga na none ko yagiye no mu gitero cy'i Musange, ko ubwo Komanda Sebhura yaje i Mbazi mu modoka yababwiye kujya i Musange, bagahaguruka i Mbazi ari nka cumi na batanu (15) barimo Karegeya mwene Bihigimondo, Ignace mwene Kananga, Kamondo uva inda imwe na Kanyankore, Edouard umuhungu wa Kanyankore, Munyentwari, Andereya na Karori n'abandi ariko ko Twagiramungu Jean yasigaye mu rugo. [47] Akomeza asobanura ko icyo gitero cy'i Musange cyatangiye mu ma saa tatu n'igice ariko ko bo bagarukiye mu Ijenda kuko ariho bari babwiye kurindira ngo hatagira umuntu ubacika kandi aho igitero cyari kiri kubera hari hafi ku buryo bumvaga imbunda zivuga, ko aho mu Ijenda hari umwarimu uvuka i Kararo bahasanze yatemaguwe yapfuye ariko ko atazi abamwishe, akanavuga ko aho bahagarukiye Twagiramungu Jean atari ahari. Asobanura na none ko mu gitero cy'i Musange abicaga bari nk'ijana

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(100) kandi ko imodoka bajyanyeyo yari ijipe ya gisirikari ariko ko iyo modoka atari yo bajyanye mu gitero cyo mu Cyanika. [48] Asoza avuga ko haba mu gitero cy'i Musange n'icyo mu Cyanika Twagiramungu Jean atari abirimo, ko atavaga mu rugo kuko se atamukundiraga kuhava kandi ko nyina yari umututsikazi ndetse ko abarimo Kanyankore bavugaga ngo batere kwa ba Twagiramungu Jean kuko nyina ari umutsikazi, akavuga kandi ko superefegitura ya Karaba yagiraga imodoka, ko komini Karama yumva nayo yari iyifite kubera ko komini zose zagiraga imodoka, ko na komini Rukondo yagiraga imodoka itukura

kandi ko iyi modoka mu gihe cya jenocide itigeze igaruka kuri komini, itanigeze ihirirwa cyangwa ngo iharare kuko Burugumesitiri yari yarayijyanye iwe mu rugo. Avuga kandi ko igitero cyo kwa Kamondo ntacyo azi kuko cyo atakigiyemo. [49] Nkunuzwimye Médard mu buhamya bwe avuga ko aya indimwe na Kamondo Juvénal kwa se wabo kandi ko azi Twagiramungu Jean, agasobanura ko igitero cyagabwe kwa Kamondo atari akirimo ko yakimenye nk'umuntu wo muri uwo muryango kandi wari uhari ari kumwe n'abandi barimo Hatunguramye, Mayira Félicien, Nzabandora Juvénal, Seyanga Joseph, Sebubeba na Kabalisa Frédéric, ko cyaje kigizwe n'abantu barenga magana atanu (500) giturutse mu Ryagakwerere kigera kwa Kamondo saa tatu z'amanya, kihageze abantu baratatana bagaruka nko mu minota mironko itatu (30) baje kureba uko bigenze basanga kwa Kamondo cyahishe abantu, kijya kwa Nzamurambaho kihica abandi bari hejuru y'icumi (10), gikomereza no kwa Bendantunguka naho kihicaye abantu barenga umunani (8), ko abo basanze batishwe ari nyina wa Kamondo Merisiyana, umugore wa Kamondo n'abana babo naho kwa Bendantunguka bahasanga abana be b'i Kigali, kandi ko abari bahahungiyeye aribo bari bamaze kwicwa. Avuga na none ko ku mugoroba nyuma y'icyo gitero burugumesiteri wa Rukondo witwa Hategekimama Didace ari kumwe n'abajandarume batatu baje bagategeka ko abishwe bashyingurwa maze babashyingura bukeye mu mva rusange. [50] Asobanura kandi ko n'ubwo igitero cyahageze yahunze ariko ko yamenye ko cyari kigizwe n'abantu Magana atanu kuko cyamunyuzeho aho yari yihishe haruguru y'umuhanda, akavuga ko uburyo igitero cyamenye ko kwa Kamondo Juvénal hihishe Abatutsi ari uko bari bazi ko ari mu bantu bakomeye hagomba kuba hihishe abantu kuko bashoboraga kubarengera. Avuga na none ko igitero kiza Kamondo yari mu rugo iwe, kubera ko yari umusirikari ashobora gusohoka ajya kwihisha, ko we ajya kwihisha atamubonye ahubwo yabonye umugore we, akanavuga ko bajya kwihisha abantu bari bamaze kwicwa, abicanyi bari gusahura inka akaba mubo yamenyemo harimo Ngango na Kagimbura Martin ko ari nabo bari bakuriye icyo gitero, anavuga kandi ko Twagiramungu Jean yari amuzi yigishaga i Kaduha ariko ko atigeze amubona mu bari bajagaraye aho. [51] Avuga ko n'ubwo bari bari mu muryango ukomeye nta makuru bamenye y'uko hari igitero cyabagabwaho, akanavuga ko mu biciwe kwa Kamondo harimo Kaniziyo na Gasimba ariko ko baza kuhihisha atabimenye, naho kwa Nzamurambaho avuga ko mubahiciwe harimo Rutagarama wiciwe hepfo ahunga, Kamaraba na Viviyana Nyirategamaso, Collette n'umukazana we wari umugore wa Nkusi Callixte, agasobanura kandi ko yari azi ko kwa Nzamurambaho hihishe abantu. Asoza avuga ko icyo gitero yagihaniwe kubera ko atatabaye abantu bahaguye ariko ko atakigiyemo kandi ko n'icyo mu Cyanika nacyo ntacyo yagiyemo.

- Icyo ababuranyi bavugaga ku buhamya bwatangiwe mu Rukiko - Icyo ubushinjacyaha buvugaga ku byavuzwe n'abatangabuhamya [52] Ubushinjacyaha buvugaga ko abatangabuhamya babwo bose bemeje ibyo bari baravugiyemo mu iperereza uretse Karegeya Daniel wahinduye imvugo avuga ko nta ruhare azi Twagiramungu Jean yagize mu gukora jenocide, ariko ko ibi bitandukanye n'ibikubiye mu nyandikomvugo yakorewe mu iperereza mu bihe bitandukanye aho ku wa 25/02/2011 no ku wa 05/07/2015 yamushinje kugira uruhare muri jenocide. Bikanavugaga ko n'ubwo yivuguruzaga abashingiye ko ibyo yasinyiye atabanje kubisoma nyamara

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ntiyerekana niba hari uwabimubujije, bityo ko iyo mvugo y'uko atabisomye itahabwa ishingiro, ahubwo ko yahinduye imvugo agamije gukingira ikibaba Twagiramungu Jean kubera ko bakoranye ibyaha kandi ko mu rukiko yivugiye ko yemera indi nyandikomvugo ubushinjacyaha bwamubarijeho nayo isa n'ibyo yari yaravuze mu Bugenzacyaha, ko ndetse n'amakuru yatanze mu iperereza ahura n'ay'abandi batangabuhamya. Bunavuga na none ko hari amakuru yatanze wenyine yemezwa na Twagiramungu Jean arebana n'urupfu rwa Rudahunga Ananias avuga ko yari yihishe muri farumasi itari kure y'iwabo wa Twagiramungu Jean, ibi bikaba bigaragaza ko ibikubiye mu nyandiko mvugo ze zo mu iperereza ari byo n'ubwo yageze mu rukiko akabihakana. [53] Ku byavuzwe n'umutangabuhamya Rufangura Faustin, ubushinjacyaha buvuga ko kuba ahakana igitero cyabaye kwa Kamondo kandi gifitiwe ibimenyetso bidashidikanywaho ari icyerekana ko ashaka uburyo Twagiramungu Jean atahamwa n'icyaha yakoze, ko nta kuntu yaba yari mu gitero cyateye ku muvandimwe wa Kamondo kandi baturanye ngo ayoberwe ko kwa Kamondo Juvénal hiciwe abantu kandi igitero cyishe abantu muri izo ngo ari kimwe nk'uko byemezwa n'ibyavuzwe n'abandi batangabuhamya. Bityo ko ibyo avuga ko atari kwibagirwa ko yabonye Twagiramungu Jean bikaba bidahagije mu kwemeza ko Twagiramungu Jean atari ahari kuko umutangabuhamya nawe yivugira ko hari abandi bantu babiri (2) yibagiwe kandi nabo yari asanzwe abazi; cyane cyane ko abatangabuhamya batanzwe n'ubushinjacyaha n'abatanzwe na Twagiramungu Jean barimo Hategekimana Didace bemeza ko kwa Kamondo Juvénal hiciwe abatutsi. [54] Busobanura ko busanga ubuhamya bwa Nkiryumwami Emmanuel yatangiye mu rukiko nta kamaro byagira mu gushinjura Twagiramungu Jean kuko ibyo yahamagariwe gutangira ubuhamya bushinjura yavuze ko ntacyo abiziho haba ku rupfu rwa Rudahunga Ananias, haba ku gitero cyabaye kwa Mutabaruka Paulin na Ateyimbabazi Callixta, urupfu rwa Mukanyabitare, ku rupfu rwa Ruzagiriza Alfred, ndetse n'igitero cyo kwa Kamondo. [55] Bunavuga ko ubuhamya bwatanzwe na Hategekimana Didace butagomba gushingirwaho nk'ikimenyetso gishinjura kuko ibyo kwa Kamondo, mu Cyanika na Musange yasobanye ko atamenye abagiye mu bitero byahiciye abatutsi naho ibirebana n'iyicwa rya Rudahunga akaba avuga ko yabimenye afunze, bityo ko ibyo yahamagariwe kuvuga nta bumenyi abifiteho. [56] Ku birebana n'ubuhamya bwa Bugegera Emmanuel alias Busimba, Ubushinjacyaha buvuga ko ubuhamya bwe bukwiye guteshwa agaciro kuko ibyo avuga bishingiye ku myumvire ye, bityo ko adakwiye kwizerwa kuko ibyo Twagiramungu Jean yamuhamagariye gutangaho ubuhamya birebana n'ibitero byose yagiyemo birimo icyo kwa Kamondo Juvénal, icyo mu Cyanika n'icy'i Musange byagaragaye ko nta bumenyi abifiteho. Bugasobanura ko avuga ko igitero cyo mu Cyanika cyabaye saa saba (13h00) kirangira saa munani (14h00) kandi atari byo, naho ku gitero cy'i Musange akaba yivugira ko atahageze ahubwo yagarukiye mu Ijenda kandi ko n'abaje mu modoka ya Superefe (sous prefet) atabazi. [57] Bunavuga ko n'ibyo avuga ko se wa Twagiramungu Jean yari intare atari kumwemerera kuva mu rugo, nabyo atari byo kuko Twagiramungu Jean ubwe yivugiye ko hari igihe yajyaga ahava. Ikindi kandi kuba umutangabuhamya ubwe yivugira ko yajyaga mu bitero bitadukanye busanga ibyo avuga nta shingiro bikwiye guhabwa kuko atari kujya mu bitero ngo anamenye uko Twagiramungu Jean akoresha igihe cye. Buvuga na none ko bigaragara ko uyu mutangabuhamya atibuka abenshi mu bagiyemo mu bitero kuko nawe hari aho

yavuze ko mu bagiye mu gitero cy'i Musange yibukamo gusa abantu batatu naho kuba Twagiramungu Jean yaragiye mu gitero cyo mu Cyanika ndetse n'imodoka ikaba yaratanze bamwe bafite imbunda, uyu mutangabuhamya abihurizaho na Karegeya Daniel bakanahuriza ku mazina ya bamwe mu bari mu modoka barimo Gashara wari umupolisi kandi umwe yaratanze amakuru mu 2011 undi akayatanga muri 2022; bityo ko busanga uyu mutangabuhamya adafite amakuru yuzuye ku bajyanywe n'imodoka yatwaye abantu kwica abatutsi mu gitero cyo mu Cyanika kuko yabwiye urukiko ko abatwawe n'imodoka bageze aho igitero cyabereye mbere y'uko ahagera kandi ko atabamenye. Ikindi

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kandi n'ubwo Twagiramungu Jean yamutanze nk'umutangabuhamya ushinjura ku birebana n'igitero cyo kwa Kamondo, ubuhamya bwe bugaragaza ko ntacyo akiziho kuko yavuze ko atigeze agerayo. [58] Ubushinjacyaha buvuga ko umutangabuhamya Nkunuzwimye Médard ari umutangabuhamya udakwiye kwizerwa kuko atavugisha ukuri, kubera ko atanga ubuhamya yahishe ukuri ku bimureba mu iyicwa ry'abantu bari bahungiyeye kwa Kamondo ari nako atakuvugisha ku birebana Twagiramungu Jean. Bugasobanura ko atangira ubuhamya bwe yahakanye uruhare rwe muri ubwo bwicanyi ariko birangira avuga ko ari mubabuhaniwe, bityo ubuhamya bwe bukaba butakwizerwa kuko ahishira uruhare rwa Twagiramungu Jean muri ubwo bwicanyi. - icyo Twagiramungu Jean n'umwunganizi we bavuga ku byavuzwe n'abatangabuhamya [59] Twagiramungu Jean n'umwunganizi we bavuga ko umutangabuhamya Kamugire Remy ari umutangabuhamya utakwizerwa kuko yemeza ko yabonye Twagiramungu Jean mu gitero cyo mu Cyanika ariko ko urebye aho avuga yari ari mu gikari cy'abapadiri atashoboraga kubona Twagiramungu Jean aho avuga yamubonye mu marembo y'igipangu; ko n'ibyo avuga by'uko yamubonyemo asa n'utanga amabwiriza bitera gushidikanya ku kuba Twagiramungu Jean yari ahari, ndetse n'igihe avuga cya saa mbiri za mu gitondo (8h00) avuga yahamubonye atashoboraga kuba yageze mu Cyanika avuye i Mbazi iwabo kuko byamusabaga kuba yavuye mu rugo nka saa kumi n'ebiri kandi muri kiriya gihe nta muntu washoboraga kugenda muri ayo masaha ajyanywe no kwica abatutsi. Bavuga kandi ko ibyo Kamugire Remy avuga ko yabaga yihishe mu bikari bya Paruwasi ya Cyanika agashobora kureba no kumenya umuntu uri muri metero ijana bidashoboka kubera ko hagati y'agasozi "Centre de Santé" yegamiye n'uruzitiro rwa paruwasi hari intera itari munsu ya metero magana ane. [60] Bavuga na none ko ibyo umutangabuhamya Karangwa Augustin yavugiyemo mu rukiko bitandukanye n'ibyo yari yaravuze mu iperereza kuko mu rukiko yavuze ko bajya gutera mu Cyanika bagiye n'amaguru bari kumwe na Twagiramungu Jean nyamara mu iperereza yari yaravuze ko Twagiramungu Jean yabatambutseho ari mu modoka. Ikindi ibyo umutangabuhamya avuga ko yabonye Twagiramungu Jean ari imbere ye mu ntera y'ibirometero bibiri (2 km) atari byo kuko bidashoboka. [61] Banavuga ko n'iby'umutangabuhamya Ngirinshuti Mathias yavugiyemo imbere y'urukiko ko Twagiramungu Jean yagiye mu gitero icy'i Musange kandi ko yakimubonyemo atari byo kuko muri ubwo buhamya avuga ko we yagarukiye ahitwa ku Giticyinyoni atageze i Musange, bityo akaba atari kumubona muri icyo gitero kandi na we atarahageze. [62] Banavuga ko n'iby'igitero cyo kwa Kamondo Juvénal, ubuhamya bwa Mukabera Judith, umugore wa Kamondo Juvénal, butandukanye

n'ubw'umugabo we ku ruhare rwa Twagiramungu Jean mu gitero cyagabwe iwabo kubera ko Kamondo Juvénal washinjaga Twagiramungu Jean mu iperereza yageze mu rukiko avuga ko bamwandikiye ibyo atigeze avuga ariko umugore we Judith Mukabera akomeza kumushinja atagaragaza igikorwa nyir'izina yakoze uretse kuvuga ko yamubonye ari hamwe n'abandi bari bakigabye. Bavuga kandi ko kwa Kamondo Juvénal ari muni y'umuhanda hakaba ahantu hahanamye ku buryo igitero cy'abantu ijana kitabona aho cyahagarara ngo ube wareba umuntu uri hagati muri cyo nk'uko Mukabera Judith abivugaga; ko rero basanga ibyo Kamondo Juvénal yavuze ko ubwo yasohokaga ahunga yabonye abari imbere bayoboye igitero barimo Rufangura Uwizera na Kabalisa ari byo bifite ishingiro. [63] Bavuga na none ko ubuhamya bwa D.J.B butahabwa agaciro kuko ibyo yavuze mu rukiko ko yabonye Twagiramungu Jean mu gitero cyo kwa Nzamurambaho ari imbere yitwaje umuhoro binyuranye n'ibyo yari yaravuze mu iperereza ko muri icyo gitero Twagiramungu Jean yari yitwaje ubuhiri akaba anavuguzanya na Mukabera Judith kuko we atavugaga ko yamubonye afite izo ntwaro.

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[64] Bakomeza basobanura ko ibyo Musonera Charles yavuze ko yamenye iby'urupfu rwa Ruzagiriza Alfred abibwiye na Twagiramungu Jean warwigambaga avuga ko we na se bamwishe bamufashijwe n'igitero cyari giturutse ahandi, nta shingiro bifite kuko Twagiramungu Jean abihakana kandi akaba nta kindi kimenyetso kibishimangira Ubushinjacyaha bwatanze. Banavugaga ko ikindi kandi gituma ibyo Musonera Charles avugaga bitahabwa agaciro ari uko ari umutangabuhamya utavugisha ukuri kuko yivugiye ko yari afite akabari muri santeri ya Mbazi hafi yo kwa Munyambuga se wa Twagiramungu Jean kandi atari byo kuko Majoro Vénuste na Gahigi babajijwe n'urukiko ubwo rwari mu iperereza ahakorewe icyaha bavuze ko atigeze agira akabari aho, ko abari bafite utubari ari Nshimiye, Nkurikiye na Twagiramungu Jean. Bavuga kandi ko ibyo umutangabuhamya Musonera Charles yavuze ko Ruzagiriza yaturutse hepfo y'urugo bitandukanye n'imvugo zo mu ipereza za Angélique Usabase wavuze ko bamwishe bamaze kuvugana ari inyuma y'urugo. [65] Ku birebana n'urupfu rwa Rudahunga Ananias bavugaga ko basanga ubuhamya Nkiryumwami Emmanuel yatangiye mu rukiko ari bwo bukwiye guhabwa ishingiro kuko yavuze ko ntacyo azi ku ruhare rwa Twagiramungu Jean muri ubwo bwicanyi ko n'ibyo yari yaramushinje mu iperereza atari byo kuko yabikoze kubera gukubitwa kandi ko nta nyungu yaba afite yo guhishira abandi bantu yaba yari afatanyije na bo ibyaha kandi we ari gukora ibihano by'ibyo yemeye. [66] Muri rusange, bavugaga ko basanga ubuhamya bushinja bwatangiye mu rukiko nta shingiro bufite uretse ubwatanzwe na Kamondo Juvénal wageze mu rukiko aramushinjura kandi mu iperereza yari yaramushinje. Bakanavugaga ko mu nyandiko y'ikirego yashingiweho hasabwa ko Twagiramungu Jean aza kuburanira mu Rwanda ibirebana n'iyicwa rya Ruzagiriza Alfred n'ibitero by'i Musange bitarimo, ko Ubushinjacyaha bwabyongeyemo nyuma aregerwa urukiko. Bityo bakababasanga binyuranyije n'amategeko. Basaza bavugaga ko abatangabuhamya bashinja bose batavuze ukuri ko ibi bigaragarira ku kuntu abenshi muri bo bagarukaga ku modoka y'ikamyoneti itukura ya Komini Rukondo yagiye mu gitero cyo mu Cyanika nyamara aho mu Cyanika

hatari muri Komini Rukondo kuko hari mu cyahoze ari komini Karama kandi iyo modoka ikaba itari kuja mu yindi komini itabihereye uburanzira na burugumesitiri nk'uko byemezwa n'amakuru Hategekimana Didace wari burugumesitiri wa Komini Rukondo mu gihe jenocide yakorwaga yahaye urukiko. [67] Banavugaga na none ko abatangabuhamya batavugaga kimwe uburyo Twagiramungu Jean yagiye muri icyo gitero kuko hari abavugaga ko bahagurutse i Mbazi n'amaguru bari kumwe na Twagiramungu Jean abandi bakavugaga ko yabanyuzeho ari muri iyo modoka, mu gihe abandi bavugaga ko bongeye kumubona bageze mu Cyanika nyamara irengero rya ya modoka mu gihe cyo gutaha ntirigaragazwe; hakaba n'undi wavuze ko mu gutaha yabonye Twagiramungu Jean agenda n'amaguru yikoreye icyuma gifotora; bityo ko iyo kamyoneti idakwiye gushingirwaho mu guhamya ko Twagiramungu Jean yagiye mu gitero cyo mu Cyanika. D. Uko urukiko rubibona ku birebana n'ibikorwa byakozwe [68] Muri iki gice, Urukiko rurasuzuma niba Ubushinjacyaha bwagombaga kuregera ibikorwa birebana n'iyicwa rya Ruzagiriza Alfred n'iby'igitero cyishe Abatutsi kuri Komini Musange Twagiramungu Jean avugaga ko bitari mu bikorwa byashingiweho asabwa koherezwa kuburanira mu Rwanda. Rurasuzuma kandi niba hari ibimenyetso bigaragaza ko Twagiramungu Jean yagize uruhare mu bwicanyi bunyuranye bwabereye mu Murenge wa Mbazi, kuri Paruwasi Gatolika ya Cyanika ndetse no kuri Komini Musange n'iyicwa rya Ruzagiriza Alfred mu gihe bigaragaye ko yagombaga kubiregwa. Kumenya niba Twagiramungu Jean yaragombaga kuregwa ibikorwa birebana n'iyicwa rya Ruzagiriza Alfred n'igitero cyishe Abatutsi i Musange [69] Rusanga ku wa 01 Kamena 2015 Minisitiri w'Ubutabera yarohereje Minisitiri w'Ububanyi n'Amahanga n'Ubutwererane w'u Rwanda inyandiko irebana no gusaba ko Twagiramungu Jean yoherezwa kuburanira mu Rwanda ku cyaha cya jenocide akurikiranyweho amusaba kuyishyikiriza

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inzego z'Igihugu cy'Ubudage zibifitiye ububasha. Muri icyo nyandiko, ibikorwa bishingirwaho aregwa icyaha cya Jenocide ni ubwicanyi bwakorewe Abatutsi bari bahungiyeye kwa Kamondo Juvénal, kwa Bendantunguka Daniel, kwa Ateyimbazi Callixta n'iyicwa rya Rudahunga Ananias wavanywe muri Farumasi yari imbere ya Komini Rukondo akicirwa mu Gitinda, ibi byose byakorewe ahahoze ari muri Komini Rukondo no kuri Paruwasi Gatolika ya Cyanika ahahoze ari muri Komini Karama nk'uko bigaragazwa n'urwandiko mpuzamahanga rwo gufata ruherekera icyo nyandiko. Naho ku cyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, ibikorwa byashingiweho ni igitero cyishe Abatutsi kuri Paruwasi Gatolika ya Cyanika ahahoze ari Komini Karama. [70] Rusanga n'ubwo igitero cyishe Abatutsi kuri Komini Musange n'iyicwa rya Ruzagiriza Alfred bitari mu bikorwa byashingiweho Twagiramungu Jean asabwa koherezwa kuburanira mu Rwanda, ibyo avugaga ko atari akwiye kubikurikiranwaho nta shingiro bifite kuko icyaha cya jenocide kiri mu byashingiweho asabirwa koherezwa kuburanira mu Rwanda nk'uko biteganywa n'ingingo ya 28 y'Itegeko N° 69/2013 ryo ku wa 02/09/2013 ryerekeye koherezanya ukurikiranyweho icyaha iteganywa ko ikibujijwe ari ugukurikirana, kuburanisha, gufunga by'agateganyo cyangwa kohereza mu kindi gihugu ukurikiranyweho icyaha azira ikindi cyaha

gitandukanye n'icyasabiwe iyoherezwa. Iyi ngingo ikaba iteganya ihame ryihariye (rule of specialty in case of extradition) rinateganywa mu ngingo 2 agace ka 40 y'iryo Tegeko, iryo hame rikaba risobanurwa nk'ihame ryo kudakurikiranwa cyangwa kudacirwa urubanza ku bindi byaha usibye gusa icyaha cyasabiwe iyoherezwa. Ibi biteganywa n'izi ngingo bihura n'ibiteganyijwe mu mategeko y'ibindi bihugu nko mu gihugu cya Monaco¹, muri Canada², mu Bufaransa³ ndetse no mu Masezerano mpuzamahanga anyuranye nk'ay'Ibihugu by'i Burayi⁴. - Kumenya niba Twagiramungu Jean yaragize uruhare mu bikorwa akurikiranyweho - Ku bijyanye n'ibitero byo mu murenge wa Mbazi [71] Mu bitero byagabwe mu Murenge wa Mbazi, Twagiramungu Jean aregwa kuba yaragize uruhare mu bwicanyi bwabereye mu ngo za bene Rwamanywa ari bo Kamondo Juvénal na Bendantunguka Daniel, urupfu rwa Ruzagiriza waciwe hafi yo kwa Munyambuga, se w'uregwa, n'urwa Rudahunga Ananias wishwe avanywe muri farumasi iri ku gasanteri ka Mbazi. - Ku birebana n'ubwicanyi bwabereye kwa Kamondo Juvénal no kwa Bendantunguka Daniel [72] Mu buhamya bwatangiye mu rukiko hari abatangabuhamya bemeza ko Twagiramungu Jean yagize uruhare mu iyicwa ry'Abatutsi bari bahungiyeye kwa Kamondo Juvénal no kwa Bendantunguka Daniel, hakaba n'abandi bavuga ko nta ruhare yagize muri ubwo bwicanyi. [73] Mu bavuga ko yagize uruhare muri ubu bwicanyi, hari Mukabera Judith, umugore wa Kamondo Juvénal wavuze ko yabonye Twagiramungu Jean mu baje mu gitero cyakuye mu nzu abantu bari bahungiyeye iwe kibicira mu mbuga ariko ko nta cyo yabonye Twagiramungu Jean akora. Anavuga ko icyo gitero kivuye iwe cyakomereje kwa Bendantunguka Daniel kihica abantu ariko ko byo atabonye; Kamondo Juvénal uvuga ko mbere y'uko igitero kiza iwe mushiki we yageze iwabo amubwira ko Twagiramungu Jean amubwiye ko iwe nibahasanga Abatutsi bari buhasenye, ko yahise ahunga ariko ko mu guhunga kwe yahuye n'igitero ariko ko mu bo yabonye bakijemo atabonyemo Twagiramungu Jean. Abandi bavuga ko yagize uruhare muri ubu bwicanyi ni uwahawe izina rya DJB kubera umutekano we

1 Article 21 de la Loi n. 1.222 du 28/12/1999 relative à l'extradition (La personne extradée ne sera, sans le consentement du Prince, ni détenue, ni poursuivie, ni jugée, ni soumise à aucune limitation de sa liberté personnelle sur le territoire de l'État requérant pour un fait quelconque antérieur à la remise et autre que celui pour lequel l'extradition a été accordée). 2 Section 80 (a) (1) of Extradition Act S.C., C.18. 3 Article 696-6 du Code de Procédure Pénale: "l'extradition n'est accordée qu'à la condition que la personne extradée ne sera ni poursuivie, ni condamnée pour une infraction autre que celle ayant motivé l'extradition et antérieure à la remise" 4 Article 14 (1) de la Convention Européenne d'extradition du 13 Decembre 1957.

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uvuga ko ubwo yari ari kwa Nzamurambaho Frédéric yabonye Twagiramungu Jean yitwaje umuhoro n'ubuhiri ari imbere ayoboye icyo gitero cyahishe abantu benshi hakaba na Ngirinsuti Mathias uvuga ko yari kumwe n'uregwa muri icyo gitero. Aba babajijwe mu rukiko bari baranabajijwe mu gihe cy'iperereza, haba mu bugenzacyaha no mu bushinjacyaha, ibyo bari baravuze bikaba bihura n'ibyo bavuze mu rukiko. [74] Mu bavuga ko batabonye Twagiramungu Jean muri icyo gitero harimo Rufangura Faustin uvuga ko yari akirimo ariko atakimubonyemo, Nkunzuwimye Médard uvuga ko igitero cyagabwe kwa Kamondo Juvenal no mu bavandimwe be

kiza yari aho hamwe n'abandi bantu, bahita bahunga, barihisha, ariko ko aho yari yihishe atabonye Twagiramungu Jean mu bari bajagaraye aho. Uretse aba bavuga ko batabonye Twagiramungu Jean muri iki gitero hari na Hategekimana Didace wahoze ari Burugumesitiri wa Komini Rukondo wavuze ko igitero cyo kwa Kamondo Juvénal yakimenye ahurujwe na murumuna wa Kamondo Juvénal ariko ko atamenye abishe abantu kuko abari muri icyo gitero bababonye bagahita bahunga, basanga hapfuye abantu makumyabiri na babiri (22) babafasha kubashyingura. [75] Urukiko rurebye ko ibyo buri mutangabuhamya yavuze mu buhamya bwe bihura n'ibyo yari yaravuze mu iperereza n'uko buri mutangabuhamya avuga uko icyo gitero cyagenze bihura n'ibyo bagenzi be basobanuye ku birebana n'uburyo igitero cyaje, abari bakigize, abishwe n'aho biciwe, ubu buhamya n'izi mvugo bikwiye gushingirwaho nk'ikimenyetso gihamya nta gushidikanya ko Twagiramungu Jean yari mu bagabye igitero cyishe Abatutsi muri izo ngo ari hamwe na Gashara Alphonse, Kabalisa Frederic, Rufangura Faustin, Uwizera Vianney, Bukeye, Karasanyi Frédéric n'abandi, cyica Abatutsi barenga cumi na batandatu (16), barimo Gasimba Godefroid, Habimana Canisius, Munyankuge Grégoire, Ahishakiye Dionis, Rutanga n'abandi bari bahungiyeye kwa Kamondo Juvénal no kwa Bendantunguka Daniel mu kagari ka Butare ku wa 14/04/1994. [76] Rusanga ikindi gituma ubu buhamya n'imvugo bikwiye gushingirwaho mu kugaragaza uruhare rwa Twagiramungu Jean ari ibivugwa na DJB na Ngirirshuti Mathias bari mu bagabye icyo gitero ndetse bakabihurizaho na Mukabera Judith na Kamondo Juvénal bari bahishe Abatutsi biciwe mu ngo zabo. Bityo, ubwo buhamya bukaba bufite ingingo zikiranuye kandi zikwiye kwemerwa kandi bukaba bugaragaza ko abatangabuhamya bafite ubumenyi bw'ibyabaye, no ku buryo babivuga uko byagenze nk'uko biteganywa n'ingingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza. [77] Runasanga ubuhamya bw'ababajijwe mu rukiko bari baranabajijwe mu iperereza bushimangira imvuzo zo mu bugenzacyaha zo ku wa 08/06/2011 n'izo mu bushinjacyaha zo ku wa 5/3/2018 za Ateyimbabazi Callixta wavuze ko yamenye ko Twagiramungu Jean yari mu gitero cyishe abantu makumyabiri na babiri (22) kwa bene Rwamanywa kandi ko muri icyo gitero yari yitwaje umuhoro ndetse n'imvugo za Mutabaruka Paulin na we wemeza ko yabwiwe n'abagiye muri icyo gitero ko Twagiramungu Jean yari akirimo. Bityo, izi mvugo na zo zikaba zikwiye gushingirwaho nk'ikimenyetso nk'uko biteganywa n'ingingo ya 8 y'Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda iteganya ko urukiko rushobora guhamya umuntu icyaha rushingiye ku gaciro k'ubuhamya bwanditse iyo ubwo buhamya bufite ubundi bubushyigikira. [78] Rusanga na none amakuru yatanze na Hategekimana Didace n'ubuhamya bwatanze na Nkunzuwimye Médard by'uko nta ruhare Twagiramungu Jean yagize mu bwicanyi bwareye kwa Kamondo Juvénal no kwa Bendantunguka Daniel nta shingiro bifite kuko bitamukuraho uruhare rwagaragajwe n'abatangabuhamya bamushinja bavuzwe kubera ko icyo Hategekimana Didace avuga ari uko atamenye abishe kuko yageze ahabereye igitero nyuma ubwicanyi bwamaze kuba, abari muri icyo gitero bamubonye bagahita bahunga naho Nkunzuwimye Médard akavuga gusa ko yabonye igitero kije ahita ahunga ajya kwihisha ; bityo ibyo avuga ko aho yari yihishe atamubonye bikaba nta reme bifite kuko nawe ubwe yivugira ko igitero cyarimo abantu benshi.

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[79] Rusanga kandi n'ibivugwa na Rufangura Faustin ko atabonye Twagiramungu Jean muri icyo gitero na we yari arimo nta shingiro bifite kuko avuga ko yari ari kumwe na Hategekimana Didace mu gihe uyu yavuze ko yahageze nyuma igitero cyarangije kwica akaba anavuga ko icyo gitero cyabaye hagati y'ukwezi kwa Gicurasi na Kamena mu gihe abandi batangabuhamya bari bakirimo na ba nyir'ingo zatewe bahuriza ku kuba igitero cyarabaye ku wa 14 Mata 1994 bakanemeza ko icyo gitero Twagiramungu Jean yari akirimo. - Ku birebana n'iyicwa rya Ruzagiriza Alfred wiciwe hafi yo kwa Munyambuga, se w'uregwa [80] Mu buhamya bwatangiye mu rukiko, umutangabuhamya Musonera Charles ni we wenyine uvuga ko hari ubwo yageze hafi y'urugo rw'iwabo wa Twagiramungu Jean ahasanga umurambo wa Alfred, Twagiramungu Jean na se bamubwira ko uwo muntu wapfuye bamufashijwe n'igitero cy'abantu bavuye ahitwa i Ruseke. Mu bushinjacyaha ku wa 01/12/2017, Musonera Charles yabanje kuvuga ko Ruzagiriza Alfred yasohowe na Twagiramungu Jean iwabo aho se yari yamuhishe aricwa, abajijwe abamwishe avuga ko yasanze arambaraye inyuma y'urugo bamwishe noneho Twagiramungu Jean na se bamubwira ko bamufashijwe n'igitero cy'abantu bavuye ahitwa i Ruseke. [81] Urukiko rurebye ubuhamya Musonera Charles yatangiye mu rukiko, rusanga ubwabyo atari ikimenyetso kidashikanywaho kigaragaza uruhare rwa Twagiramungu Jean mu iyicwa rya Ruzagiriza Alfred kuko buvuguruzanya n'imvugo ze zo mu bushinjacyaha kuko abazwa yabanje kugaragaza ko Ruzagiriza Alfred yasohowe na Twagiramungu Jean iwabo aho se yari yamuhishe aricwa ariko muri iryo bazwa, abajijwe abamwishe avuga ko yasanze arambaraye inyuma y'urugo yishwe, Twagiramungu Jean na se bamubwira ko bamufashijwe n'igitero cy'abantu bavuye ahitwa i Ruseke. Bityo, ubuhamya bwe bugereranyijwe n'imvugo ze zo mu iperereza ziganjemo kwivuguruza bitera gushidikanya ku ruhare rwa Twagiramungu Jean mu iyicwa rya Ruzagiriza Alfred. Ibi bikaba kandi bishimangirwa n'ubuhamya bwa Nkiriyumwami Emmanuel wavuze ko, uretse kuba yari azi Ruzagiriza Alfred, ariko ko atazi iby'iyicwa rye. [82] Ikindi kandi uku gushidikanya ku ruhare rwa Twagiramungu Jean mu rupfu rwa Ruzagiriza Alfred bishimangirwa n'imvugo zo mu iperereza za Usabase Angélique wari wihishe kwa Munyambuga Jean Baptiste, se wa Twagiramungu Jean we uvuga ko ubwo yarimo avugana na nyirarume Ruzagiriza Alfred wari inyuma y'urugo yumvise igitero kije ahungira mu nzu, nyuma baza gusanga cyishe Ruzagiriza Alfred ariko ko atibuka aho Twagiramungu Jean na se bari bari icyo gihe. Runasanga na none n'imvugo zo mu iperereza za Nyirangegeza Colette nazo zitera gushidikanya ku ruhare rwa Twagiramungu Jean mu iyicwa rya Ruzagiriza Alfred kuko, uretse gusa kuvuga ko abo kwa Munyambuga batabura kugira uruhare mu iyicwa rya Ruzagiriza Alfred no kuba yariciwe hafi yo kwa Munyambuga, ubwe yivugira ko iby'urwo rupfu byavuzwe ariko ko atazi abamwishe. [83] Kuby'ibyo, hashingiwe ku biteganywa n'ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko ishidikanya rirengera ushinjwa, rusanga nta ruhare rwa Twagiramungu Jean yagize mu iyicwa rya Ruzagiriza Alfred rwagaragajwe ku buryo budashidikanywaho. - Ku birebana n'iyicwa rya Rudahunga Ananias (wishwe avanywe muri farumasi yari imbere ya Komini Rukondo) [84] Mu batanze

amakuru mu rukiko arebana n'urupfu rwa Rudahunga Ananias harimo Karegeya Daniel wavuze ko nta ruhare Twagiramungu Jean yagize mu rupfu rwa Rudahunga Ananias ko ahubwo Asisita wa Burugumesitiri (Assistant Bourgmestre) witwa Albert yahurije Gashara na Habiyaemye bamuvana aho yari yihishe muri Farumasi baramwica, ko kuba yari yaramushinje mu iperereza yabitewe n'iyicarubozo yakorewe. Mu mvugo ze mu bushinjacyaha zo ku wa 09/06/2020, Karegeya Daniel yavuze ko kuba yari yavuze ko Twagiramungu Jean yagize uruhare mu iyicwa rya Rudahunga Ananias yibeshye,

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ko abamwishe ari Gashara na bagenzi be ariko mu bugenzacyaha ku wa 25/02/2011 ho yari yaravuze ko yiboneye Twagiramungu Jean ari mu gatsiko k'abakozi ba Komini barimo Asisita Burugumesitiri Albert bakuye Rudahunga Ananias muri Farumasi yari imbere ya Komini Rukondo baja kumwicira aho bita mu Gitinda. [85] Urukiko rurasanga haba amakuru yatangiye mu rukiko haba n'imvugo zo mu bushinjacyaha no mu bugenzacyaha birimo kuvuguruzanya gukomeye bituma Karegeya Daniel aba umutangamakuru utakwizerwa, bityo ibyo yavuze byose bikaba bitashingirwaho nk'ikimenyetso kigaragaza ku buryo budashidikanywaho uruhare rwa Twagiramungu Jean mu iyicwa rya Rudahunga Ananias. Rusanga kandi nta n'ikindi kimenyetso kigaragaza uruhare rw'uregwa muri iri yicwa rya Rudahunga Ananias kubera ko n'abandi batanze ubuhamya n'amakuru bavuze ko batazi iby'urupfu rwa Rudahunga Ananias kuko nka Nkiryumwami Emmanuel mu buhamya bwe avuga ko atazi iby'urupfu rwa Rudahunga uretse ko yamenye ko yapfuye abyumvanye umuntu bahinganaga amwereka aho ashyinguye, naho Hategekimana Didace, mu makuru yahaye urukiko, akavuga ko iby'urupfu rwa Rudahunga yabimenyeye muri gereza aho yumvise abantu bavuga ko ubwo Rudahunga Ananias yari yihishe mu nzu yari hafi ya komini uwitwa Janvière yahanyuze akumva akorora bigatuma ajya guhuruza abantu barimo Ngango n'umuhungu wa Karamira, baje basenya umuryango wa farumasi bamuvanamo baramwica. - Ku birebana n'igitero cyishe Abatutsi kuri Paruwasi Gatolika ya Cyanika [86] Mu buhamya n'amakuru byatangiye mu rukiko, hari ababajijwe bemeza ko Twagiramungu Jean yari mu gitero cyishe Abatutsi kuri Paruwasi Gatolika ya Cyanika hakaba n'abavuga ko nta ruhare yagize muri ubwo bwicanyi. [87] Mu bavuga ko Twagiramungu Jean yagize uruhare mu gitero cyishe Abatutsi kuri Paruwasi Gatolika ya Cyanika harimo Kamugire Remy wari mu bari bahungiyeye kuri Paruwasi ya Cyanika uvuga ko yabonye Twagiramungu Jean muri icyo gitero ariko ko nta ntwaro gakondo yari afite kimwe n'abo bari kumwe, ko ari mu bahageze mbere baje basanga abandi bahagose mbere y'uko abasirikari bahagera bagatangira kubarasa ariko ko nta muntu yabonye yica ubwe, Karangwa Augustin wari muri icyo gitero we uvuga ko yibuka ko yahagurukanye na Twagiramungu Jean iwabo i Mbazi baja mu Cyanika ariko uyu yagiye n'imodoka naho we agenda n'amaguru, ko bagezeyo bahasanze abajandarume n'abapolisi bari kumwe na Twagiramungu Jean wari imbere muri icyo gitero cyarimo abantu bageraga kuri magana atatu. Ubu buhamya bwa Kamugire Remy bukaba buhura n'imvugo ze zo mu bushinjacyaha zo ku wa 23/01/2018 n'ubuhamya bwa Karangwa Augustin bukaba na bwo buhura n'imvugo ze zo mu bushinjacyaha zo ku wa 02/12/2017. [88] Uretse Kamugire Remy na Karangwa Augustin batanze ubuhamya mu rukiko bakaba bari baranabajijwe mu bushinjacyaha

hari n'imvugo z'ababajijwe mu iperereza na bo bemeza ko Twagiramungu Jean yagize uruhare mu gitero cyishe Abatutsi bari bahungiyeye kuri Paruwasi Gatolika ya Cyanika. Muri bo harimo uwitwa Bucyeye Alphonse wari muri icyo gitero wavuze abazwa mu bugenzacyaha ku wa 25/02/2011 ko yabonye Twagiramungu Jean ari mu modoka ya Komini Rukondo yabanyuzeho bari ahitwa mu Miko, ndetse na nyuma y'uko na bo bapakiwe bakajyanwa muri icyo gitero, yagezeyo asanga Twagiramungu Jean ari mu marembo yinjira mu kigo cy'abapadiri ari kumwe n'abasirikari barimo kurasa imbere mu kigo, hakaba harishwe Abatutsi barimo Kayumba, Nyakayiro Michel, Mwumvaneza n'abandi nk'uko yabisobanuye mu nyandiko mvugo ye yo mu bugenzacyaha yo ku wa 05/07/2015. [89] Mu babajijwe mu iperereza hari kandi Hategekimana Jean Marie Vianney wabajijwe mu bushinjacyaha ku wa 23/01/2018 na we yemeza ko ubwo yari i Mbazi yabonye Twagiramungu Jean hamwe n'abandi bikusanya bafite ibihiri n'imihoro bavuga ko bagiye gukora mu Cyanika kandi nyuma uwo munsu amakuru aza avuga ko Abatutsi bahungiyeye mu Cyanika bishwe. Hari kandi Karegeya Daniel, mu ibazwa rye mu bugenzacyaha ku wa 25/02/2011 no mu bushinjacyaha ku wa 09/06/2020 wemeza ko

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yari kumwe na Twagiramungu Jean n'abandi mu modoka yari igiye kwica Abatutsi mu Cyanika ariko ko bageze kwa Mutabaruka Paulin we avamo kubera uburwayi, imbunda yari afite ayiha umupolisi witwa Sekamonyo bari bahuriye aho, we agarukira aho, ndetse na Kamondo Juvénal abazwa mu bugenzacyaha ku wa 25/02/2011 wavuze ko atabonye Twagiramungu Jean ajya mu gitero cyo mu Cyanika ariko ko yumvise ko yagiye. [90] Na none kandi mu babajijwe mu iperereza bavuga ko Twagiramungu Jean yagiye mu gitero cyo mu Cyanika harimo Mutabaruka Paulin mu ibazwa rye mu bushinjacyaha ryo ku wa 01/12/2017 na Ateyimbazi Callixta mu ibazwa rye mu bushinjacyaha ryo ku wa 05/03/2018 bavuga ko bumvise ko Twagiramungu Jean yagiye mu gitero cyishe Abatutsi mu Cyanika giturutse iwabo i Mbazi, hari kandi Ngezahayo Désiré wari Burugumesitiri wa komini Karama mu gihe cya jenocide, abazwa mu bugenzacyaha ku wa 23/02/2011 wemeza ko Twagiramungu Jean na se na Gashara wari umugenzuzi w'amashuri na Benimana Gabriel, ko ubwo bari bari kuri komini Rukondo ku wa 21/04/1994 aho bapakiriraga abantu mu mamodoka ajyanye abantu kwica mu Cyanika, bashishikarije abahutu kujya kwica abatutsi bari bahungiyeye mu Cyanika bakoresheje indangururamajwi. [91] Mu batangabuhamya bavuga ko nta ruhare Twagiramungu Jean yagize muri icyo gitero harimo Ngirishuti Mathias wari mu gitero cyo mu Cyanika wavuze ko atakimubonyemo n'ubwo abazwa mu bugenzacyaha ku wa 08/06/2017 yavuze ko yamubonye ajya mu modoka ya Superefe yari ijyanye abantu muri icyo gitero, we n'abandi, ageze mu Cyanika amubona afite inkoni, Bugegera Emmanuel alias Busimba wavuze ko yagiye mu gitero cyo mu Cyanika abishishikarijwe na superefe wari kumwe na komanda Seuhura mu modoka Toyota y'icyatsi kibisi abasanze ku santere iri hafi y'i Mbazi ariko ko bahaguruka bajya mu Cyanika ndetse n'ubwo bari bagezeyo atabonye Twagiramungu Jean, Hategekimana Didace wari Burugumesitiri wa Komini Rukondo mu gihe jenocide yakorewe Abatutsi yakorwaga, uvuga ko afungiywe ubwicanyi n'ibitero byo mu Cyanika, na we mu makuru yahaye urukiko avuga ko nta ruhare azi Twagiramungu Jean yagize muri jenocide yakorewe Abatutsi kandi ko igitero cyo mu Cyanika atakizi. Undi ni Karegeya Daniel uvuga ko

Twagiramungu Jean yagiye mu modoka yari itwaye abantu mu gitero cyo kuri Paruwasi Gatolika ya Cyanika ariko ko yayigiyemo agiye kureba mushiki we wagiraga ikibazo cyo mu mutwe. [92] Urukiko rusanga Karangwa Augustin mu buhamya bwe mu rukiko yemeza ko yabonye Twagiramungu Jean ahagaruka i Mbazi ajya mu gitero mu Cyanika naho Hategekimana Jean Marie Vianney, mu mvugo ze mu iperereza akavuga ko ari i Mbazi yamubonye ari kumwe n'abandi barimo Superefe Ntegeyintwari Joseph, Mudenge Juvénal, Nkuriza Anastase, Munyaruguru Didace, umupolisi Sekamonyo, Gashara, Didace wari burugumesitiri bikusanya bafite imihoro n'impiri bagiye mu gitero mu Cyanika, naho Karegeya Daniel, mu mvugo ze mu iperereza avuga ko bahagurukanye na Twagiramungu Jean i Mbazi mu modoka ariko ko we atakomeje kuko yavuyemo kubera impamvu z'uburwayi. Rusesenguye rero ubuhamya n'imvugo zabo, rusanga bigaragaza ko Twagiramungu Jean yagiye mu gitero cyishe Abatutsi kuri Paruwasi Gatolika ya Cyanika. [93] Rusanga uretse aba bavuga ko bamubonye ahagurutse ajya mu gitero mu Cyanika, hari na Bucyeye Alphonse wabajijwe mu iperereza wemeje ko yamubonye abanyuzeho mu nzira ari mu modoka yerekeza mu Cyanika. [94] Uretse aba bamubonye ahagaruka n'abamubonye mu nzira ari mu modoka yerekeza mu Cyanika, hari n'abamubonye mu Cyanika barimo Kamugire Remy, mu buhamya bwe no mu mvugo ze mu iperereza, wemeza ko yabonye Twagiramungu Jean mu bari mu gitero mu Cyanika mbere y'uko abajandarume bahagera; Karangwa Augustin, mu buhamya bwe no mu mvugo ze mu iperereza, uvuga ko ari mu baturutse i Mbazi bagiye mu gitero mu Cyanika n'amaguru naho Twagiramungu Jean agenda n'imodoka ageze amutangaye ari imbere mu bantu bari muri icyo gitero hamwe n'abajandarume n'abapolisi naho Bucyeye Alphonse wabajijwe mu iperereza akaba na we yemeza ko nk'uwari waturutse

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i Mbazi n'amaguru agiye mu gitero mu Cyanika, yageze asanga Twagiramungu Jean ari mu marembo yinjira mu kigo cy'abapadiri, ari kumwe n'abasirikari barimo barasa Abatutsi bari bagihungiyemo. [95] Urukiko rusesenguriye hamwe ubu buhamya n'imvugo zo mu iperereza zavuzwe hejuru rukareba uko bamwe bemeza ko yashishikarizaga abantu kujya mu gitero cyo kuri Paruwasi Gatolika ya Cyanika, abandi barimo n'abo bari kumwe bagahamya ko bamubonye mu modoka ahagaruka ajya mu gitero, abandi bakamubona mu nzira mu modoka yerekeza mu Cyanika, abandi nabo bakamubona mu Cyanika ahicirwaga Abatutsi ari kumwe n'abajandarume n'abasirikari barasa abari bahahungiyemo, bigaragaza ku buryo budashidikanywaho ko Twagiramungu Jean yari mu gitero cyishe Abatutsi barimo Kabagwira Odette, Habyarimana, Kanamugire François na Niyomugabo Joseph wari Padiri mukuru wa Paruwasi ya Cyanika. Rusanga kandi ubu buhamya n'izi mvugo bishimangira imvugo za Ateyimbabazi Callixta na Mutabaruka Paulin bavuze ko bumvise ko Twagiramungu Jean yagiye mu gitero cyishe Abatutsi mu Cyanika. [96] Rusesenguye ariko ubuhamya n'imvugo z'abahamya ko Twagiramungu Jean atari mu gitero cyishe Abatutsi mu Cyanika, rusanga bidakwiye gushingirwaho nk'ikimenyetso gihamya ko atari akirimo kubera ko nka Ngirinshuti Mathias na Karegeya Daniel mu byo bavuze mu rukiko bivuguruzanya n'imvugo zabo zo mu iperereza. Ngirinshuti Mathias mu buhamya bwe we avuga ko Twagiramungu Jean atari mu gitero cyo mu Cyanika nyamara mu mvugo ze zo mu

iperereza yari yemeje ko we na Twagiramungu Jean bari bakirimo naho Karegeya Daniel mu buhamya bwe akaba avuga ko Twagiramungu Jean yuriye imodoka ijyanye abantu kwica Abatutsi bari bahungiyeye mu Cyanika ari ko Twagiramungu Jean yari agiye kureba mushiki we urwaye mu gihe mu iperereza yari yaravuze ko buriranye iyo modoka na we agiye kwica. [97] Rusanga kandi n'ibyo Bugegera Emmanuel alias Busimba na Hategekimana Didace bavugaga na byo bitagaragaza ko Twagiramungu Jean atagize uruhare mu gitero cyishe Abatutsi kuri Paruwasi Gatolika ya Cyanika kuko ibyo Bugegera Emmanuel alias Busimba avugaga by'uko atahamubonye binyuranye n'ibyavuzwe n'abandi batangabuhamya urukiko rwashingiyeho bemeza ko yari akirimo bakaba banemeza ko cyarimo abantu benshi akaba atarashoboraga no kumubona. Rusanga na none n'ibivugwa na Hategekimana Didace nabyo bitamukuraho uruhare kuko uyu icyo avugaga gusa ari uko ntacyo azi kuri icyo gitero. - Ku birebana n'igitero cyishe Abatutsi kuri Komini Musange [98] Mu batanze ubuhamya ku bwicanyi bwakorewe kuri Komini Musange bemeza ko Twagiramungu Jean yagize uruhare muri ubwo bwicanyi harimo Ngirinshuti Mathias, mu buhamya bwe mu rukiko, wavuze ko ari mubagiye mu gitero cy'i Musange aturutse iwabo i Ruseke, agarukira ahitwa ku Giticyinyoni kubera ko abari bayoboye igitero babasabye kuba ariho bahagarara bakahategera abantu bava aho abasirikari bari kurasira, akavugaga ko mubo yabonye bava i Musange harimo Twagiramungu Jean wari ufite umuhoro n'akantu kameze nk'ikirahuri n'abandi bari mu modoka bava i Musange, maze bageze ku Giticyinyoni mu modoka havamo bamwe barimo Twagiramungu Jean, hashyirwamo umurambo wa Rushingabigwi wari wahiciwe. Hari kandi Karangwa Augustin we uvugaga ko ubwo bari mu nzira bajya mu gitero cy'i Musange, bageze ahitwa mu Manwari, Twagiramungu Jean abahitaho ari mu modoka yari ijyanye abantu muri icyo gitero, yongera kumubona ahitwa ku Giticyinyoni bataha. Ubu buhamya bwabo buhura n'imvugo zabo zo mu bushinjacyaha zo ku wa 02/12/2017. [99] Mu batarabajijwe mu rukiko ariko babajijwe mu iperereza bashinja Twagiramungu Jean ko yagiye mu gitero cyishe Abatutsi kuri Komini Musange, hari Nyirangegeza Colette uvugaga mu ibazwa rye ryo mu bushinjacyaha ku wa 02/12/2017 ko yumvise abarimo Twagiramungu Jean bigamba icyo gitero kuko we yari mu batarihishaga, hakaba na Mutabaruka Paulin wavuze mu ibazwa rye ryo mu bushinjacyaha ku wa 01/12/2017 ko yumvise ko Twagiramungu Jean yari umwe mu bagiyeye mu gitero cyishe Abatutsi i Musange.

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[100] Mubavugaga ko Twagiramungu Jean nta ruhare yagize muri ubwo bwicanyi harimo Hategekimana Didace mu makuru yatanze yabwiye urukiko ko ibirebana n'igitero cy'i Musange atamenya uwakigiyemo kuko ari kure, ko n'imodoka y'ikamyonete itukura ya komini itigeze ijya i Musange kuko iyo iyo imodoka yajyaga hirya y'imbibi za komini we nka burugumesitiri yasinyaga mu ikayi y'ingendo zayo n'aho igiye, harimo kandi Bugegera Emmanuel Alias Busimba, wari mu gitero cyaturutse i Mbazi kijya kwica i Musange uvugaga ko Twagiramungu Jean atakigiyemo, ko yasigaye iwabo.

[101] Urukiko rusesenguye ubuhamya n'imvugo zo mu iperereza bya Ngirinshuti Mathias rusanga bitashyingirwaho nk'ikimenyetso kidashidikanywaho kigaragaza ko Twagiramungu Jean yari mu gitero cyishe Abatutsi bari bahungiyeye kuri Komini Musange kubera ko mu byo avugaga

harimo kwivuguruza kuko hamwe avuga ko yabonye Twagiramungu Jean ava i Musange ari kumwe n'abandi bagenda n'amaguru, ahandi akavuga ko yamubonye ava i Musange ari mu modoka afite umuhoro n'akantu kameze nk'ikirahuri, ibagezeho bamukuramo kugira ngo bashyiremo umurambo wa Rushingabigwi wari wahiciwe. Runasanga uretse uko kwivuguruza nawe ubwe yiyemerera ko atageze i Musange ahiciwe Abatutsi ngo abe yamenya niba Twagiramungu Jean nawe yaragezeyo kuko yivugira ko yagarukiye ahitwa ku Giticyinyoni.

- [102] Runasanga n'ubuhamya n'imvugo zo mu iperereza bya Karangwa Augustin na byo bitera gushidikanya ku kuba Twagiramungu Jean yarageze i Musange kuko icyo avuga ari uko yabonye Twagiramungu Jean ahitwa mu Manwari abahitaho ari mu modoka yari ijyanye abantu mu gitero cy'i Musange, yongera kumubona ahitwa ku Giticyinyoni bataha ariko ibi ubwabyo bikaba bitagaragaza ko yamubonye i Musange ahiciwe Abatutsi.
- [103] Urukiko rurasanga ibi byo kuba nta bimenyetso bidashidikanywaho bigaragaza uruhare rwa Twagiramungu Jean mu gitero cyishe Abatutsi i Musange bishimangirwa n'ubuhamya bwa Bugegera Emmanuel Alias Busimba uri mu bagiye muri icyo gitero wemeza ko Twagiramungu Jean atakigiyemo kuko yasigaye iwabo. Rurasanga n'imvugo za Nyirangegera Collette zo mu iperereza wemeza ko yumvise Twagiramungu Jean na bagenzi be bigamba icyo gitero n'iza Mutabaruka Paulin wavuze ko yumvise ko Twagiramungu Jean yagiye mu gitero cyishe Abatutsi i Musange na zo ari amabwire adashyigikiwe n'ikindi kimenyetso.
- [104] Rusanga na none n'imvugo zo mu bushinjacyaha zo ku wa 02/12/2017 za Mukabera Judith wavuze ko yumvise ko imodoka ya komini Rukondo yapakiye abantu bajya kwica Abatutsi i Musange n'iza Kamondo Juvénal na we uvuga ko amakuru y'igitero cyo ku wa 22/04/1994 cyahagurukiye kuri Komini Rukondo kigiye i Musange yayumvanye Ngirinshuri Mathias abantu b'iwabo baraye bavuye mu gitero cyo mu Cyanika na zo, uretse kuba ari ibyo bumvise, ntizigagaza ku buryo budashidikanywaho ko Twagiramungu Jean yagiye mu gitero cyishe Abatutsi kuri Komini Musange. Bityo, hakurikijwe ibi bimenyetso byose Urukiko rurasanga nta kimenyetso kigaragaza ko Twagiramungu Jean yari mu gitero cyishe Abatutsi kuri Komini Musange kuko mu batangabuhamya bose ntawe ugaragaza uko ubwicanyi bwahakorewe bwakozwe cyangwa se ngo agaragaze abahiciwe. 2.2. Kumenya niba mu rwego rw'amategeko Twagiramungu Jean yaryozwa icyaha cya jenocide kubera kujya mu bitero A. Icyo amategeko ateganya ku cyaha cya jenocide
- [105] Urukiko rusanga icyaha cya jenocide giteganywa n'ingingo ya 91 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, igasobanura ko jenocide ari kimwe mu bikorwa byo kwica abantu, kubatera ubumuga bw'umubiri cyangwa bwo mu mutwe, kubashyira, ubigambiriye, mu mibereho ishobora gutuma barimbuka bose cyangwa harimbuka igice cyabo, gufata ibyemezo bibabura kubyara, kubambura ku ngufu urubyaro rwabo ukaruha abandi bantu badahuje, gikozwe kigambiriwe, kigamije kurimbura abantu bose cyangwa bamwe muri bo,

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bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, haba mu bihe bisanzwe cyangwa mu bihe by'intambara⁵.

[106] Ibi bikorwa ni na byo bihanwa nk'icyaha cya jenocide mu Masezerano ku ikumira n'ihanwa ry'icyaha cya jenocide yo ku wa 09/12/1948 u Rwanda rwashyizeho umukono ku wa 12/02/1975 mu ngingo yayo ya kabiri⁶ no mu mategeko ashiraho Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda⁷, ashiraho Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze ari Yugoslavia⁸ n'ashiraho Urukiko Mpanabyaha Mpuzamahanga⁹.

[107] Rusanga na none mu manza zitandukanye zaciwe n'Inkiko Mpanabyaha Mpuzamahanga nk'urwa Kalimanzira Callixte¹⁰, urwa Gacumbitsi Sylvestre¹¹, urwa Hategekimana Ildephonse¹², urwa Jelisic¹³, urwa Muvunyi Tharcisse¹⁴, urwa Kamuhanda Jean de Dieu¹⁵ hasesenguwe ibigize icyaha cya jenocide zigaragaza ko kugira ngo kibeho hagomba kubaho kimwe mu bikorwa biteganywa n'izo ngingo, harimo kwica, bikoze hagamiye kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo haba mu bihe bisanzwe cyangwa mu bihe by'intambara.

[108] Runasanga by'umwihariko, igikorwa cyo kwica nka kimwe mu bikorwa bigize icyaha cya jenocide gisaba ko ugikoze yica umuntu umwe cyangwa benshi, ko uwo muntu cyangwa abo bantu bagomba kuba bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, kandi uwakoze icyaha akaba afite ubushake bwo kurimbura abantu bose cyangwa bamwe muri bo bahuriye muri rimwe mu matsinda yavuzwe ndetse imyitwarire ye ikaba igaragaza ko yibasiye rimwe muri ayo matsinda¹⁶. Ibi bikaba bihura n'ibyemejwe mu manza zitandukanye zaciwe n'Urukiko

5 Ingingo ya 91 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu iteganyaga ko cyaha cya Jenocide ni kimwe mu bikorwa bikurikira, gikozwe kigambiriwe, kigamije kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, haba mu bihe bisanzwe cyangwa mu bihe by'intambara: 1° kwica abo bantu; 2° kubatera ubumuga bw'umubiri cyangwa bwo mu mutwe; 3° kubashyira, ubigambiriye, mu mibereho ishobora gutuma barimbuka bose cyangwa harimbuka igice cyabo; 4° gufata ibyemezo bibabura kubyara; 5° kubambura ku ngufu urubyaro rwabo ukaruha abandi bantu badahujwe. 6 Article 2 de la convention pour la prévention et la repression du crime de génocide: "Dans la présente Convention, le génocide s'entend de l'un quelconque des actes ci-après, commis dans l'intention de détruire, en tout ou en partie, un groupe national, ethnique, racial ou religieux comme tel:

- a) Meurtre de membres du groupe;
- b) Atteinte grave à l'intégrité physique ou mentale de membres du groupe;

- c) Soumission intentionnelle du groupe à des conditions d'existence devant entraîner sa destruction physique totale ou partielle;
- d) Mesures visant à entraver les naissances au sein du groupe
- e) Transfert forcé d'enfants du groupe à un autre groupe 7 Article 2 du Statut du Tribunal Pénal International pour le Rwanda. 8 Article 4 (2o) of the Statute of the International Criminal Tribunal for the former Yugoslavia. 9 Article 6 du Statut de Rome de la Cour Pénale Internationale. 10 Prosecution v Kalimanzira Callixte, ICTR-05-88-T, ICTR, Trial Chamber (22 June 2009), p.188, para. 730. 11 Le Procureur c/ Gacumbitsi Syvestre, TPIR- 2001- 64 –T, TPIR, Chambre de Première Instance III (June 17, 2004), pp. 63
- 64, paras. 249 -251. 12 Prosecution v Hategekimana Ildephonse, ICTR-00-55B-T, ICTR, Trial Chamber (6 December 2010), p. 187, para. 679. 13 Prosecution v Jelusic, IT -95 -10-T, ICTY, Trial Chamber (December 14, 1999), p.19, para. 62. 14 Le Procureur c/ Tharcisse Muvunyi, ICTR-00-55A-T, (12 Septembre 2006), pp.132 -133, paras. 477- 478. 15 Procureur c/ Kamuhanda Jean de Dieu, ICTR -99-54-A-T, TPIR, Chambre de Première Instance II (22 Janvier 2004), p.141, para. 622. 16 “International Criminal Court, Elements of Genocide by killing: 1. The perpetrator killed one or more persons. 2. Such person or persons belonged to a particular national, ethnical, racial or religious group. 3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such. 4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction”.

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Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda nk'urwa Kajelijeli Juvénal rwasobanuye ko kugira ngo umuntu ahamwe n'icyaha cya jenocide kubera kwica bisaba ko umushinjacyaha aterekana gusa ko uregwa yari afite ubushake bwo kurimbura abantu bose cyangwa bamwe muri bo bazira icyo bari cyo, ko agomba no kugaragaza ko uregwa yari afite ubushake bwo kwica umwe cyangwa benshi bagize itsinda n'uko uwishwe cyangwa abishwe bazize ko bari bamwe mu bagize itsinda rishingiye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini ryari rigenderewe¹⁷.

^[109] Ubu bushake bwo gukora icyaha cya jenocide busobanurwa nk'umugambi wihariye (dolus specialis) wo kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku matsinda anyuranye yavuzwe hejuru. Ubushake bwo gukora icyaha cya jenocide bushobora kugaragarira mu bikorwa no mu magambo by'uregwa cyangwa se harebwe muri rusange uko ibikorwa bibujijwe byakozwe¹⁸. Ibi ni byo byasobanuwe mu manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda nk'urwa Gacumbitsi Sylvestre n'urwa Munyakazi Yussuf¹⁹, urwa Rutaganda Georges²⁰, urwa Bagosora Théoneste²¹, urwa Simba Aloys²² n'izaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho

Published by the International Criminal Court, 2013, The Hague | The Netherlands| www.icc-cpi.int [<https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>, accessed on 16/02/2023]. 17 Prosecutor v Kajelijeli Juvénal, ICTR - 98-44A-T, ICTR, Trial Chamber (December 1, 2003), p.179, para.813. Reba na none Le Procureur c/ Semanza Laurent, ICTR-97-20-T, TPIR, Chambre de Première Instance (15 Mai 2003), p. 95, para. 319: “Pour faire déclarer l’accusé pénalement responsable de génocide à raison du meurtre de membres d’un groupe, le Procureur doit établir non seulement que l’accusé était animé de l’intention de détruire, en tout ou en partie, le groupe visé, mais également que les éléments suivants sont réunis : 1) l’accusé a intentionnellement donné la mort à un ou plusieurs membres du groupe, la préméditation n’étant pas requise ; et 2) la victime ou les victimes appartenaient au groupe ethnique, racial, national ou religieux visé.” 18 Prosecution v Gacumbitsi Sylvestre, ICTR - 2001 - 64 -T, ICTR, Trial Chamber (June 17, 2004), p.61, para. 252: “It is possible to infer the genocidal intent inherent in a particular act charged from the perpetrator's deeds and utterances considered together, as well as from the general context of the perpetration of other culpable acts systematically directed against that same group, notwithstanding that the said acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership in a particular group while excluding members of other groups, can enable the Chamber to infer the genocidal intent of a particular act”. 19 Prosecution v. Gacumbitsi Sylvestre, ICTR-2001 -64-T, ICTR, Trial Chamber (June 17, 2004), p.61, para. 250: “The mens rea of genocide is the specific intent (dolus specialis) described in Article 2(2) of the Statute as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group”. See also Le Procureur c/ Munyakazi Yussuf, ICTR - 94 - 36A - A, TPIR, Chambre d’Appel (28 septembre 2011), p.53, para. 141. 20 Le Procureur c/ Georges Anderson Nderubumwe Rutaganda, ICTR96-3-A, TPIR, Chambre d’Appel (26 Mai 2003), p.202, para. 525, “... Les manifestations explicites de l’intention criminelle sont [...] rares en matière pénale. En l’absence de preuves explicites directes, le dolus specialis peut donc se déduire d’un ensemble de faits et de circonstances pertinentes. Une telle approche permet d’éviter qu’une personne accusée de génocide soit soustraite à la condamnation, du seul fait que son intention n’était pas manifeste”. 21 Le Procureur c. Théoneste Bagosora et autres, ICTR-98-41-T, TPIR, Chambre de Première Instance (18 Décembre 2008), p.757, para 2116: “La Chambre fait observer qu'en l'absence de preuve directe, l'intention de commettre le genocide qui habite l'auteur peut être déduite de certains faits et indices qui sont de nature à établir, au-delà de tout doute raisonnable, l'existence de l'intention. Au nombre des éléments propres à établir l' intention spécifique du génocide figurent notamment le contexte général de perpétration d'autres actes répréhensibles systématiquement dirigés contre le même groupe, l'échelle des atrocités commises, le fait que les victimes ont été délibérément et systématiquement choisies en raison de leur appartenance à un groupe particulier, ou la répétition d'actes de destruction discriminatoires”. 22 Aloys Simba c/ Le Procureur, ICTR-01-76-A, Appeal Chamber (27 November 2007), p. 78, para 264: “(...) La chambre d’appel a déjà indique que la preuve de l’intention génocide peut se déduire des faits et des circonstances de la cause, ce qui l’a amenée à considérer qu’il suffit à cet égard d’exposer dans l’acte d’accusation les faitsd’ou l’état d’esprit de l’accusé doit être déduit. (...)”

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icyahoze ari Yugoslavia nk'urwa Stakic²³ n'urwa Jelusic²⁴. Uyu umugambi wihariye akaba ari wo utandukanya icyaha cya jenocide n'ibindi byaha²⁵. B. Uburyo umuntu aryozwamo icyaha cya jenocide

[110] Amategeko mpanabyaha mpuzamahanga n'amategeko mpanabyaha y'u Rwanda ateganya uburyo bunyuranye uwakoze icyaha cya jenocide akiryozwamo. Mu mategeko mpuzamahanga, sitati ishyiraho Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'ishyiraho Urukiko Mpanabyaha rwashyiriweho icyahoze ari Yugoslavia²⁶ ziteganya uburyo bunyuranye icyaha cya jenocide gikorwamo harimo kutegura icyaha, gukora icyaha, gutegeka gukora icyaha, gusemburira undi gukora icyaha, gutera undi akanyabugabo ko gukora icyaha, gutanga ubufasha n'inkunga byo gukora icyaha, kuryozwa icyaha nk'umuyobozi iyo hari icyaha cyakozwe n'abo ayobora. Ubu buryo butandukanye ni bwo bwagiye bushingirwaho mu guhana abakurikiranyweho icyaha cya jenocide nk'uko bigaragara mu manza zitandukanye zaciwe n'izo nkiko nk'urwa Nahimana Ferdinand na bagenzi be²⁷, urwa Semanza Laurent²⁸, urwa Muvunyi Tharcisse²⁹ zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'iza Tadic³⁰, Vasiljevic³¹ zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze ari Yugoslavia, ndetse n'urwa Krnojelac³² na Blagojevic³³.

²³ Milomir Stakic, IT-97-24-T, Trial Chamber (July 31, 2003), p. 149, para. 526: "It is generally accepted, particularly in the jurisprudence of both this Tribunal and the Rwanda Tribunal, that genocidal *dolus specialis* can be inferred either from the facts, the concrete circumstances, or a pattern of purposeful action". ²⁴ Prosecutor v Goran Jelusic, IT-95-10-A, ICTY, Appeals Chamber (July 5, 2001), p.18, para 47: "As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred... from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts". ²⁵ Procureur v Akayesu Jean Paul, ICTR - 96 - 4-T, ICTR, Trial Chamber (2 September 1998), p. 205, para. 498: "Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or a religious group as such". Reba n'urubanza Ubushinjacyaha v. Kamuhanda Jean de Dieu, ICTR-99-54A- T, Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, Urugereko rw'Iremezo (22/01/2004), urupapuro rwa 142, igika cya 622. ²⁶ Article 6(1) of Statute of the International Criminal Tribunal for Rwanda and article 7 (1) of Statute of the International Criminal Tribunal for the former Yugoslavia: "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime [...] shall be individually responsible for the crime" and Article 6 and 7(3) reads : "The fact that any of the acts [...] was committed by a subordinate does not relieve his or her superior of

criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof". 27 Nahimana Ferdinand v The Prosecutor, ICTR-99-52-A, ICTR, Appeals Chamber (28 November 2007), p. 155, para 492. 28 The Prosecutor v Semanza Laurent, ICTR-97-20-T, ICTR, Trial Chamber (15 May 2003), p. 117, para. 379 – 384. 29 The Prosecutor v Muvunyi Tharcisse, ICTR-00-55A-T, ICTR, Trial Chamber (12 September 2006), pp. 115- 120, paras. 460 – 475. 30 Prosecutor v Du [Ko tadi] a/k/a "Dule, IT- 94-T, ICTY Trial Chamber, (7 May 1997), p.249, para. 674 see also Prosecutor

- v. Du [ko tadi], IT-94-1-A, Appeal Chamber (15 July 1999) p.80, para 186. 31 Prosecutor v Mitar Vasiljevic IT- 98-32-T, ICTY Trial chamber, (29 November 2002), p. 2320, para 67. "A person participates in a joint criminal enterprise by personally committing the agreed crime as a principal offender, or by assisting the principal offender in committing the agreed crime as a co-perpetrator by undertaking acts that facilitate the commission of the offence by the principal offender, or by acting in furtherance of a particular system in which the crime is committed by reason of the accused's position of authority of function, and with knowledge of the that sysme and intent to further that system. If the agreed crime is committed, all or other of the participants in a joint criminal enterprise such as has already been discussed, all of the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission". 32 Prosecutor v Milorad Krnojelac, IT-97-25, ICTY, Trial Chamber (15 March 2002), p. 34, para 82. See also Procecuter v Anto Furund@Ija, IT -95-17/1-T, ICTY, Trial Chamber (10 December 1998), p. 75, para 187. 33 Prosecutor v Vidoje Blagovedic, IT- 02 - 60, ICTY, Trial chamber (17January 2010), p. 256, para 702.

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[111] Na none ingingo ya 25 ya Sitati ya Roma yo ku wa 17 Nyakanga 1998 yatangiye gukurikizwa ku wa 1 Nyakanga 2002 ishyiraho Urukiko Mpanabyaha Mpuzamahanga na yo iteganya, ku byaha byose uru rukiko rufitiye ububasha bwo kuburanisha harimo n'icyaha cya jenocide, uburyo bunyuranye uwakoze icyaha akiryoza burimo gukora icyaha, gutegeka gukora icyaha, guhamagarira undi gukora icyaha, gutera akanyabugabo, gutanga ubufasha n'inkunga y'ubundi buryo ubwo ari bwo bwose mu kugikora cyangwa mu bwinjiracyaha, gushishikariza abantu mu ruhame kandi ku buryo butaziguye gukora jenocide n'ubundi buryo³⁴. Ibi akaba ari na byo byasobanuwe n'abahanga mu mategeko, Gerhard Werle na Boris Burghardt³⁵. Mu manza zaciwe n'Urukiko Mpanabyaha Mpuzamahanga na zo zagiye zisobanura ubwo buryo butandukanye icyaha gikorwamo nk'urwa Lubanga Thomas³⁶ n'urwa Katanga Germain³⁷.

[112] Amategeko y'u Rwanda na yo ateganya uburyo butandukanye icyaha gikorwamo. Ingingo ya 83 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu iteganya ko icyaha kiryoza uwagikoze ubwe, uwafatanyije na we kugikora cyangwa icyitso cye³⁸ naho ingingo ya kabiri³⁹ igasobanura ko uwakoze icyaha ari uwakoze igikorwa gihanwa n'itegeko cyangwa uwanze gukora igikorwa gitegetswe

n’itegeko, ko umufatanyacyaha ari uwafatanyije ku buryo butaziguye n’uwakoze icyaha naho icyitso akaba ari umuntu wafashije uwakoze icyaha.

- [113] Rusanga ingingo zimaze kuvugwa mu gika kibanziriza iki zitanga ibisobanuro by’uwakoze icyaha n’umufatanyacyaha ariko ibyo bisobanuro bikaba bitagaragaza ku buryo bwumvikana igikorwa uwakoze icyaha agomba kuba yakoze uretse kuvuga gusa ko aba yakoze igikorwa gihanwa n’itegeko zikaba zitanasobanura igikorwa umufatanyacyaha agomba kuba yakoze uretse kuvuga gusa ko agomba kuba yafatanyije ku buryo butaziguye n’uwakoze icyaha.

34 “The Court shall have jurisdiction over natural persons pursuant to this Statute; a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute; in accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission; (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime; (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide; (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.” 35 G. Werle et B. Burghardt, *Les formes de participation en Droit International Pénal*, Dalloz Revue de Science criminelle et de droit pénal comparé, 2012/1, no 1, pages 47 à 67, L’art. 25 (3) al. a) prévoit “trois formes de commission en tant qu’auteur: la commission directe (commet un tel crime [...] individuellement), la coaction ou commission conjointe (conjointement avec une autre personne) et la commission indirecte (par l’intermédiaire d’une autre personne). Dans un modèle de participation criminelle différenciée, la commission en tant qu’auteur équivaut à attribuer la plus grande part de responsabilité individuelle. Par conséquent, les conditions de détermination de la qualité d’auteur et la portée de la notion de commission doivent être cernées et faire l’objet d’une interprétation stricte, étant donné la conclusion qu’on a affaire à la forme la plus grave de participation criminelle”, biboneka kuri <https://www.cairn.info/revue-de-science-criminelle-et-de-droit-penalcomparé-2012-1-page-47.htm>, accessed on 16/02/2023. 36 *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04 – 01/06 (14/03/2012), p.423, para 977. 37 *Le Procureur c/ Germain Katanga*, ICC-01/04 – 01/07

(07/03/2014), p. 564, para 1381. “L’approche objective met l’accent sur la réalisation d’un ou de plusieurs des éléments matériels du crime. Selon cette approche, une personne ne peut être considérée comme auteur d’un crime que si elle en exécute physiquement certains des éléments”. 38 Ingingo ya 83 y’Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange nk’uko ryavuguruwe kugeza ubu. 39 Ingingo ya 2 y’Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange nk’uko ryavuguruwe kugeza ubu.

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- [114] Rurasanga abahanga mu mategeko basobanura ko uwakoze icyaha ari uwakoze igikorwa gifatika gitsotsoba icyaha kandi anafite ubushake bwo kugikora, ko nko ku cyaha cyo kwica uwakoze icyaha ari uwakubise cyangwa uwakoze ikindi gikorwa cyahise gitera urupfu⁴⁰. Banavuga ko undi ufatwa nk’uwakoze icyaha, ari utakoze igikorwa nyirizina gitsotsoba icyaha ariko yakigizemo uruhare rutaziguye, nk’uwaziritse amaboko y’umuntu ugiye kwicwa cyangwa uwamufunze umunwa kugirango adataka⁴¹. Ibi ni nabyo kandi byasobanuwe mu rubanza rwa Germain Katanga rwaciwe n’Urukiko Mpanabyaha Mpuzamahanga rwavuze ko umuntu afatwa nk’uwakoze icyaha iyo yakoze ku buryo bufatika bimwe mu bikorwa bigize icyaha.⁴² Naho ku bijyanye n’umufatanyacyaha bagasobanura ko, kimwe n’uwakoze icyaha w’ibanze wakoze igikorwa gifatika gitsotsoba icyaha, ari uwakoze ku giti cye ibigize icyaha ariko kubera ko aba yabikoranye n’abandi nabo ba gatozi muri icyo cyaha, bamwita umufatanyacyaha⁴³; ibi ni na byo bisobanurwa n’abandi bahanga barimo nka Bernard Boulloc na R. Merle et A. Vitu⁴⁴ na bo bemeza ko abafatanyacyaha ari abakoze ibikorwa byose bigize icyaha.
- [115] Rusanga harebwe uburyo Twagiramungu Jean yakozemo ibikorwa by’icyaha cya jenocide aregwa ahantu hatandukanye ari kumwe n’abandi bantu, nta gikorwa gifatika cyo kwica yakoze ahubwo uruhare rwe ari uko yajyaga mu bitero bitandukanye byishe Abatutsi, atagomba gufatwa nk’uwakoze ibikorwa bigize icyaha ubwe cyangwa uwafatanyije n’abandi gukora icyo gikorwa ku buryo butaziguye n’abicaga Abatutsi cyangwa se uwafashije ababishe mu buryo busobanurwa mu ngingo ya 2 n’iya 83 y’Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange nk’uko ryahinduwe kugeza ubu.
- [116] Rusanga ahubwo mu byaha mpuzamahanga nka jenocide irangwa no kwitabirwa n’abakora ibyaha benshi kandi bari mu kivunge bikanagira ingaruka ku bantu benshi, bitoroshye kugaragaza igikorwa gifatika gitsotsoba icyaha buri wese mu bitabiriye ibyo bikorwa yakoze ariko bikaba bitavuze ko ku wo bitabashije kugaragazwa ko hari igikorwa gifatika gitsotsoba icyaha yakoze nta ruhare yagize ubwe mu ikorwa ryacyo mu gihe bigaragara ko yari ahuje umugambi mubisha n’abo bari kumwe bakora ibikorwa bitsotsoba icyaha cyangwa bagitegura.

[117] Urukiko rurasanga ibyo kuba uregwa yaryozwa icyaha ku bikorwa byakozwe n'abandi bahuje umugambi mubisha ari uburyo bwo gukora icyaha bwemewe mu Muco Mpuzamahanga (Customary International law) bwitwa uburyozwacyaha bushingiye ku mugambi mubisha uhuriweho (Joint Criminal Enterprise) kandi ko ukoze icyaha muri ubu buryo afatwa nk'uwakoze icyaha ubwe (gatozi) nk'uko byasobanuwe mu manza zinyuranye zaciwe n'Inkiko Mpanabyaha Mpuzamahanga⁴⁵. Abahanga mu

40 J. Fortin et L. Viau, *Traité de Droit Pénal général*, Les Edition Thémis Inc. 2011, p 531, para. 346. 41 C. Hennau et J. Verhaegen, *Droit Pénal Général*, 3e éd. (Bruylant Bruxelles, 2003), P.268, Para. 289. 42 Le Procureur c/ Germain Katanga, ICC-01/04 – 01/07 du 07/03/2014, p. 571, para 1391. 43 D. Becheraoul, Les formes de participation criminelle en droit libanais, *Revue Internationale de droit comparé*, 2012, 64- 1, pp. 245-281. 44 B. Bouloc, *Droit pénal général*, Dalloz, coll. Précis, 22ème éd., 2011, n° 307 et s.; R. Merle et A. Vitu, *Traité de droit criminel*, Problèmes généraux de la science criminelle – Droit pénal général, préc., n° 523. “Les coauteurs sont les individus qui réunissent en leur personne tous les éléments constitutifs de l’infraction commise en participation”. 45 The Prosecutor v Aloys Simba, ICTR-2001-76-T, ICTR, Trial Chamber (13 December 2005), p. 90, para. 385: “Article 6

(1) sets out certain forms of individual criminal responsibility applicable to the crimes falling within the Tribunal’s jurisdiction. Article 6 (1) does not make explicit reference to joint criminal enterprise. However, the Appeals Chamber has previously held that participating in a joint criminal enterprise is a form of liability which exists in customary international law and that it is a form of “commission” under Article 6 (1).” See also André Rwamakuba v The Prosecutor, ICTR-2001- 76-T, ICTR, Trial Chamber, Decision on interlocutory appeal regarding application of joint criminal enterprise to the crime of genocide (22 October 2004), para. 31: “The present decision is a narrow one. The Appeals Chamber holds that customary international law recognized the application of the mode of liability of joint criminal enterprise to the crime of genocide before 1992, and that in consequence the statement to that effect in the Tadić Appeal Judgement was legally correct. Consequently, the International Tribunal has jurisdiction to try the Appellant on a charge of genocide through the mode of liability of joint criminal enterprise”. The Prosecutor v Nahimana Ferdinand, ICTR-99-52-A, Appeal Chamber (28/11/2007), p.150. para 478: “The Appeal Chamber recalls that commission covers, primarily, the physical perpetration of the crimes (with

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mategeko na bo bagaragaza ko ubu ari uburyo bwo kuryoza icyaha umuntu ku giti cye mu gihe icyaha cyakozwe n'abantu benshi bahuriye hamwe mu itsinda kubera uruhare bagize mu ikorwa ry'icyaha haba mu gihe cy'icura ry'umugambi wo kugikora, haba mu itegurwa ryacyo haba no mu itsotsoba ryacyo bagize mu ishyirwa mu bikorwa ry'uwo mugambi atari ukubera ko bakoze ibikorwa nyirizina bigize icyaha⁴⁶. Ubu buryo bw'uburyozwa cyaha bukaba bugamije kwirinda ko uburyozwacyaha bw'umuntu ku giti cye butwikirwa n'uburyo icyaha cyakozwe mu kivunge⁴⁷.

- [118] Rusanga imanza zitandukanye zaciwe n'Inkiko Mpanabyaha Mpuzamahanga zisobanura Umugambi mubisha uhuriweho icyo ari cyo. Mu rubanza rwa Simba Aloys n'urwa Nizeyimana Ildephonse zaciwe mu rwego rwa mbere n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ndetse n'izaciwe ku rwego rw'ubujurire nk'urwa Ntakirutimana Elisaphan⁴⁸ zasobanuye ko habaho uburyo butatu bw'umugambi mubisha uhuriweho: uburyo bw'ibanze; uburyo bushingiye kuri gahunda iteguye n'uburyo bwaguye. Izi manza zasobanuye kandi ko muri buri buryo bw'umugambi mubisha uhuriweho, igikorwa gifatika cyo gukora icyaha kigomba kuba kigizwe n'ibintu bitatu: kuba kirimo abantu benshi ariko ko atari ngombwa kuba byanze bikunze gitunganyijwe mu rwego rw'ubutegetsi, urwa politiki, cyangwa urwa gisirikare; kuba hariho umugambi uhuriweho wo gukora icyaha ariko ko atari ngombwa ko uwo mugambi uba waracuzwe cyangwa waranonosowe mbere kuko ushobora no guhita ubaho kandi ukagaragarira mu byabaye; no kuba uregwa yaritabiriye uwo mugambi uhuriweho ugizwe no gukora icyaha⁴⁹. Mu bujurire, mu rubanza rwa Nizeyimana Ildephonse, urukiko rwasobanuye na none ko atari ngombwa kugaragaza buri zina ry'abahuriye ku mugambi mubisha uhuriweho, ko icyangombwa ari ukugaragaza ko uwo mugambi mubisha uhuriweho wakorewe ahantu hamwe n'igihe kimwe kandi ko wari uhuririweho ndetse no kugaragaza uruhare rw'uregwa muri uwo mugambi⁵⁰.
- [119] Rurasanga no mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze ari Yugoslavia nazo ari muri ubwo buryo zasobanuye umugambi mubisha uhuriweho nko mu rubanza rwa Tadic,⁵¹ Kvocka,⁵² Valjevic,⁵³ Stanisic & Simatovic⁵⁴ na Knojelac.⁵⁵ Na none Gerhard Werle na Boris Burghardt basobanura ko ku birebana n'umugambi mubisha uhuriweho ari ngombwa kubanza kwerekana uwo mugambi kuko ari cyo kintu cy'ingenzi (condition indispensable)

criminal intent) or a culpable omission of an act that is mandated of the rule of criminal law, but also participation in a Joint criminal enterprise”); *André Rwamakuba v The Prosecutor*, ICTR-99-44AR 72-4 (22/10/2004). 46 Sam Lyes, *La theorie de l'entreprise criminelle commune*, dans le procès Hissein Habré devant les Chambres africaines extraordinaires au sein des juridictions sénégalaises, *Revue Académique de la Recherche Juridique (RARJ)*, Volume 11, Numéro 01-2020, pp. 559-567 47 J. Hemptinne et al., *Modes of liability in International Criminal*, (Cambridge University Press, 2019), p.121. 48 *The Prosecutor v Elisaphan Ntakirutimana and Gérard Ntakirutimana*, ICTR-96-10-A, Appeal Chamber (13 December 2004), p. 147, para. 463. 49 *The Prosecutor v Aloys Simba*, ICTR-2001-76-T, ICTR, Trial Chamber (13 December 2005), p. 90, paras. 386-387; *The Prosecutor v Nizeyimana Ildephose*, ICTR-2000-55C-T, ICTR, Trial Chamber (19 June 2012), p. 406, paras. 1453-1354. “Article 6 (1) has been interpreted to contain three forms of joint criminal enterprise: basic, systemic, and extended. The basic form requires that all the co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention. The required actus reus for each form of joint criminal enterprise comprises three elements. First, a plurality of persons is required. They need not be organised in a military, political or administrative structure. Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required. There is no necessity

for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts. Third, the participation of the accused in the common purpose is required, which involves the perpetration of one of the crimes provided for in the Statute. This participation need not involve commission of a specific crime (...), but may take the form of assistance in, or contribution to, the execution of the common purpose". 50 Prosecutor v Ildephonse Nizeyimana, ICTR - 0055c-A, (29/09/2014), p.122, para.325. 51 Prosecutor v Du [Ko tadi], IT- 94-1-A, Appeal Chamber, (15 July 1999), p.104, paras. 227-228. 52 Prosecutor v Miloslav Kvocka et al. IT-98-30/1-A, ICTY, Appeals Chamber (28 February 2005), p.30, paras. 82-83. 53 Prosecutor v Mitar Valjevic, IT-98 -32-A, ICTY, Appeals Chamber (28 February 2005), p.30, paras 96- 99. 54 Prosecutor v Jovica Stanišić and Franko Simatović, IT -03-69-A, ICTY, Appeals Chamber (09/12/2015) para 77. 55 Prosecutor v Milorad Krnojelac, IT-97-25-A, ICTY, Appeals chamber (17 September 2003), p.19, para 30.

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kigaragaza ko umuntu ari muri uwo mugambi mubisha kandi ko hagamijwe gukora icyaha gihanwa n'amategeko mpanabyaha mpuzamahanga. Basobanura kandi ko umugambi mubisha uhuriweho, nka politiki y'itoteza yo ku rwego rw'igihugu ishobora gufatwa nk'umugambi mubisha, kandi ko uwo mugambi utagomba byanze bikunze kuba warateguwe mbere y'ikorwa ry'icyaha, ahubwo ushobora kubaho mu gihe ry'ikorwa ry'icyaha.

[120] Banasobanura ko nta kintu cy'umwihariko gisabwa nk'uruhare rwihariye rw'umuntu uri muri uwo mugambi wo gukora icyaha, ko uburyo bwose bugaragaza ubufatanye muri uwo mugambi mubisha buhagije; by'umwihariko ko atari ngombwa ko hagaragazwa ubufatanye mu buryo butaziguye bw'uregwa mu ikorwa ry'icyaha; ko guhuza imigambi ari bwo buryo bw'umwihariko kuri ubwo buryo bw'ikorwa ry'icyaha.⁵⁶

[121] Rusanga nk'uko byagiye byemezwa mu manza zitandukanye zaciye n'inkiko mpuzamahanga muri ubwo buryo butatu bw'umugambi mubisha uhuriweho, uburyo bwa kabiri budahura n'ibikorwa Twagiramungu Jean yakoze kubera ko bubaho iyo abahuriye ku mugambi mubisha bashyizeho urwego (institution), rushinzwe gutoteza abantu kandi ukurikiranyweho icyaha akagira uruhare rukomeye muri iryo totezwa, akaba ahanwa iyo yafashije mu mikorere y'urwo rwego azi neza imigambi mubisha irukorerwamo.⁵⁷ Runasanga ibikorwa bye bitanahura n'uburyo bwa gatatu bw'umugambi mubisha uhuriweho kuko ubu buryo bwagutse bwo bubaho iyo bamwe mubahuriye mu mugambi mubisha bakoze ibikorwa bitandukanye n'ibyo bari bumvikanyeho mbere, ukurikiranyweho icyaha akaba abihanirwa iyo yashoboraga guteganya ko ibyo bikorwa byashobokaga kabone n'ubwo atari ahujwe umugambi n'abakoze ibyo bikorwa bindi.⁵⁸

[122] Rugasanga ahubwo uruhare rwa Twagiramungu Jean mu ikorwa ry'icyaha cya jenocide ruhura n'uburyo bw'ibanze bw'umugambi mubisha uhuriweho (Basic form of Joint criminal enterprise) bubaho iyo abantu benshi bumvikanye gukora icyaha bashyira mu bikorwa umugambi mubisha bumvikanyeho ku buryo icyo gihe buri wese mu bahuriye muri uwo mugambi afatwa nk'uwafatanyije n'abandi gukora icyaha n'iyi ibikorwa bifatika byo

kugitsotsoba byakozwe gusa na bamwe muri bo. Ibi nibyo byasobanuwe mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha rwashyiriweho u Rwanda n'urwashyiriweho icyahoze ari Yugoslavia⁵⁹ ndetse n'abahanga mu mategeko⁶⁰.

56 G. Werle et B. Burghardt, *Les formes de participation en Droit International Pénal*, Dalloz Revue de Science criminelle et de droit pénal compare, 2012/1, no 1, pages 52 “Selon cette théorie, il est d’abord nécessaire d’identifier un plan commun (common plan, design or purpose), une condition indispensable pour être assimilé à un participant de l’entreprise criminelle commune qui, elle, doit projeter la commission d’un ou plusieurs crimes de droit international. Même une entreprise criminelle de grande envergure comme une politique de persécution élaborée à un niveau national peut constituer un plan commun selon cette doctrine. Également, le plan commun ne doit pas nécessairement avoir été conçu à une étape préalable à la réalisation du crime, mais il peut aussi avoir été conçu spontanément au moment de l’exécution du crime. Sur le plan probatoire, l’existence d’un plan commun peut être déduite du concours de plusieurs personnes à la réalisation d’une entreprise criminelle. La jurisprudence n’a pas formulé d’exigences particulières concernant la contribution spécifique de chaque participant à la réalisation du crime; toute forme de collaboration peut suffire. En particulier, il n’est pas nécessaire que l’individu participe directement à la commission du crime, que sa contribution soit indispensable ou essentielle en vue de la réalisation du plan criminel commun. C’est l’association des intentions communes qui serait spécifique à cette forme de participation criminelle”. 57 *Prosecutor v Tadic*, IT- 94-1-A, Appeal Chamber, (15 July 1999) pp.87- 88, paras. 202 -203. 58 *Prosecutor v Miloslav Kvocka et al.* IT-98-30/1-A, ICTY, Appeals Chamber (28 February 2005), p. 30, para 83; *The Prosecutor v Elisaphan Ntakirutimana and Gérard Ntakirutimana*, ICTR-96-10-A, ICTR, Appeals Chamber (13 December 2004), p. 148, para. 467; *Prosecutor v Tadic*, IT- 94-1-A, ICTY, Appeal Chamber, (15 July 1999) pp.89 -91, paras.204 and 208. 59 *The Prosecutor v Aloys Simba*, ICTR-2001-76-T, ICTR, Trial Chamber (13 December 2005), p. 90, para. 388; *The Prosecutor v Nizeyimana Ildephose*, ICTR-2000-55C-T, ICTR, Trial Chamber (19 June 2012), p. 406, para. 1455 “The required mens rea for each form of joint criminal enterprise varies. The basic form of joint criminal enterprise requires the intent to perpetrate a certain crime, this intent being shared by all co- perpetrator (...)”; *Prosecutor v Tadic*, IT- 94-1-A, ICTY, Appeal Chamber, (15 July 1999) pp.83, 85, paras.196, 220. 60 R. Cryer, D. Robinson, S. Vasiliev, *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, 4th ed., 2019, p.346.

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[123] Hasesenguwe ibiteganywa n’amategeko ku birebana n’icyaha cya jenocide n’uburyo gikorwamo harimo umugambi mubisha uhuriweho rukabihuza no kuba Twagiramungu Jean yaragiye agaragara ari kumwe n’abandi bantu batandukanye barimo abasivile, abajandarume, abasirikari, abayobozi mu nzego zinyuranye z’imirimo ya Leta, hanarebwe ko yagaragaraga aho abajyaga mu bitero bisuganyirizaga mbere yo kubijyamo, akanagaragara ahaberaga ubwicanyi igihe bwabaga burimo bukorwa, kwa Kamondo Juvénal no kwa Bendantunguka Daniel hiciwe Abatutsi barenga cumi na batanu (15) barimo Ahishakiye Dyonizi, Munyankuge Grégoire, Gasimba Godifiridi n’abandi no kuri Paruwasi

Gatolika ya Cyanika hiciwe Abatutsi benshi bari bahahungiyeye barimo Kayumba, Nyakayiro Michel, Mwumvaneza François, Karongozi Joseph n'abandi, rurasanga yaragize uruhare rukomeye mu gushyira mu bikorwa umugambi mubisha yari ahuriyeho n'abo babaga bari kumwe mu bitero byishe Abatutsi aho hantu havuzwe bazira gusa ko bari Abatutsi nk'abari muri rimwe mu matsinda arengerwa n'amategeko.

- [124] Rusanga kugira ngo umuntu aryoze icyaha cya jenocide atagomba gukora ibikorwa bibujijwe gusa ahubwo agomba no kuba afite ubushake bwihariye bwo kuribumbura abantu bose cyangwa bamwe muri bo bahuriye kuri rimwe mu matsinda arengerwa n'amategeko. Rurebye rero uburyo Twagiramungu Jean yazengurukanaga na bagenzi be mu bitero yitwaje intwari yakondo, uko yabaga ari imbere mu bitero, uko ibitero yabaga arimo byakoresheje uruvange rw'intwari yakondo n'imbunda, kuba izo ntware zarakoreshejwe mu kwica Abatutsi nta kurobanura, kuba yari afatanyije na bamwe mu bayobozi n'abari bashinzwe umutekano no kuba ubwo bwicanyi bwarakorwaga n'ikivunge cy'abantu bigakorerwa Abatutsi benshi bari ahantu hamwe, iyi myitwarire ye kimwe n'abo bari bahuriye mu mugambi mubisha bigaragaza nta gushidikanya ko yari afite umugambi wo kurimbura Abatutsi.
- [125] Bityo harebwe ibikorwa Twagiramungu Jean yakoze byo kujya mu bitero byishe Abatutsi kwa Kamondo Juvénal, kwa Bendantunguka Daniel no kuri Paruwasi Gatolika ya Cyanika, hakanarebwa ko yari agamije kurimbura Abatutsi, rusanga agomba guhamwa n'icyaha cya jenocide. C. Ku birebana n'ibihano
- [126] Ubushinjacyaha buvuga ko busanga icyaha cya jenocide ari icyaha gifite uburemere kikaba kigira ingaruka zikomeye ku muryango nyarwanda kuko yica abantu benshi, abandi ikabasigira ubumuga bwo mu ngeri zitandukanye, ikaba inagira ingaruka ku gihugu yabayemo no ku isi yose. Ibi bikaba bisaba ko ihanwa ku buryo buremereye. Buvuga kandi ko harebwe ko Twagiramungu Jean yaburanye ahakana icyaha, akaba adashobora kwicuza ibyo atemera, hanashingiwe ku buremere n'ingaruka z'ibyo Twagiramungu Jean yakoze byagize ku muryango nyarwanda no kuba nta mpamvu nyoroshyacyaha ihari yatumye agabanyirizwa ibihano, busaba ko yahanishwa igifungo cya burundu hashingiwe ku biteganywa n'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu kuko ariryo riteganyira ibihano bito aho gushingira ku Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana bwashingiyeho bumurega.
- [127] Twagiramungu Jean avuga ko ari umwere agasaba kurekurwa kuko Ubushinjacyaha butagaragaje ibikorwa yakoze bigize icyaha cya jenocide aregwa, akanavuga ko hari ugushidikanya gukomeye ku cyaha aregwa kubera ko ubushinjacyaha butashoboye kugaragaza ibimenyetso by'igikorwa yakoze ubwe, bityo ko urukiko mu gusuzuma ibimenyetso rwazashingira ku biteganywa n'ingingo ya 6261 y'itegeko ry'ibimenyetso n'itangwa ryabyo isobanura icyo ubuhamya ari cyo n'iya 11162 y'Itegeko n° 027/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganyira ko gushidikanya birengera uregwa, rukemeza ko ibyo avuga ko nta cyaha yakoze ko nta n'ibimenyetso bifatika

ubushinjacyaha bwatanze, ari ukuri.

61 Ingingo ya 62 y'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko ubuhamya ni ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa. 62 Ingingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko gushidikanya birengera ushinjwa. Iyo urubanza rwakurikiranywe mu buryo bwose, ntihagire ibimenyetso nyakuri biboneka byemeza nta shiti abacamanza ko ushinjwa yakoze icyaha koko, bagomba kwemeza ko atsinze.

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- [128] Urukiko rusanga, nk'uko byasobanuwe, Twagiramungu Jean ahamwa n'icyaha cya jenocide kubera ibitero byagabwe kwa Kamondo Juvénal, kwa Bendantunguka Daniel no kuri Paruwasi Gatolika ya Cyanika byiciwemo Abatutsi. Iki cyaha giteganywa n'ingingo ya 91, 10 y'Itegeko No 68/2018 ryo ku wa 30/08/2018 rigena ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu n'ingingo ya 3 agaka ka mbere n'aka 2 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 iteganya igihano cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha ku muntu wese uhamwe n'icyaha cya jenocide.
- [129] Urukiko rurasanga Twagiramungu Jean aregwa harashingiwe ku Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana aho mu ngingo yaryo ya 115 ryateganyaga igifungo cya burundu cy'umwihariko, ariko kuva muri 2007 hari hasanzwe Itegeko Ngenga No 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa ryateganyaga mu ngingo yaryo ya 5 ko icyaha cya jenocide gihanishwa igifungo cya burundu cy'umwihariko. Muri 2013 iryo tegeko ryarahinduwe hongerwamo ingingo ya 5 Bis ivuga ko umuntu woherejwe kuburanira mu Rwanda avuye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda cyangwa mu kindi gihugu adashobora guhanishwa igifungo cya burundu cy'umwihariko.
- [130] Rusanga urubanza rutarasozwa harasohotse Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange riteganya igihano cya burundu ku cyaha cya jenocide, rikanateganya mu ngingo yaryo ya 335 ko ibyaha bya Jenocide yakorewe Abatutsi n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'ya 31 Ukuboza 1994 bihanwa hakurikijwe ibihano biteganyijwe muri iri tegeko; bityo kuba igihano cyari gisanzwe giteganyijwe kuboherejwe kuburanira mu Rwanda bahamwe n'icyaha cya jenocide ari igifungo cya burundu akaba ari na cyo giteganyijwe mu Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, rusanga iri tegeko ari ryo rigomba gukurikizwa kuko ari ko ribiteganywa.⁶³
- [131] Urukiko rusanga n'ubwo igihano gihanishwa uwahamwe n'icyaha cya jenocide ari igifungo cya burundu kidashobora kugabanywa nk'uko biteganywa mu ngingo ya 92 y'Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu, ariko hari imanza zaciwe n'Urukiko rw'Ikirenga ndetse n'izaciwe n'Urukiko

rw'ubujirire zigaragaza ko iyo umucanza atagabanyije igihano ububasha bwe buba bugarukira gusa ku kwemeza ko umuntu ahamwa n'icyaha naho ibishingirwaho mu kugena igihano akaba nta bubasha aba abifiteho. Izo manza zinagaragaza ko kubuza umucamanza gushingira ku mpamvu nyoroshyacyaha agabanya ibihano, binyuranye n'ihame ry'uko buri wese afite uburenganzira ku butabera buboneye ku birebana n'ibihano⁶⁴. Runasanga mu kugena ibihano, umucamanza abanza kureba igihano giteganywa n'itegeko, yasanga hari impamvu zituma kigabanywa akabikora ashingiye ku mwihariko wa buri rubanza agamije gutanga igihano gikwiye⁶⁵.

[132] Urukiko rushingiye ku bisobanuro byatanzwe birebana n'amategeko n' imanza zaciwe, rukabihuza n'uburyo Twagiramungu Jean yakozemo icyaha cya jenocide, rukanareba ko aburana atagoye urukiko, akaba ari n'ubwa mbere ahamwe n'icyaha, rusanga aho guhanishwa igifungo cya burundu yagabanyirizwa ibihano agahanishwa igifungo cy'imyaka makumyabiri n'itanu (25). III. ICYEMEZO CY'URUKIKO

63 Ingingo ya 335 y'Itegeko no 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kugeza ubu. 64 Kabasinga Florida C/ Leta y'u Rwanda, urubanza no RS/INCONST/SPEC 00003/2019/SC, Urukiko rw'Ikirenga (04/12/2019) na Ubushinjacyaha c/ Nzafashwanimana Jean de Dieu, urubanza no RPAA 00032/2019/CA, Urukiko rw'Ubujurire (28/02/2020). 65 Bahirwe Geoffrey C/ Mukagatoya Marie, urubanza no RS/REV/INJUST/PEN 0001/17/CS-RP 0001/2017/SC, Urukiko rw'Ikirenga (13/04/2017) igika cya 41.

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[133] Rwemeje ko Twagiramungu Jean ahamwa n'icyaha cya jenocide.

[134] Ruhanishije Twagiramungu Jean igifungo cy'imyaka makumyabiri n'itanu (25).

[135] Rutegetse ko asonerwa amagarama y'urubanza kubera ko aburana afunze.

[136] Rwibukije ko kujurira bikorwa mu gihe kitarenga iminsi mirongo itatu (30) uhereye ku itariki urubanza rwaciriweho.

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