

RWANDA / JUDGMENT

UBUSHINJACYAHA v BIRINDABAGABO

RPAA/GEN 00004/2020/CA

COURT

Court of Appeal

DECIDED

8 April 2022

CASE / FILE NUMBER

RPAA/GEN 00004/2020/CA

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UBUSHINJACYAHA v BIRINDABAGABO

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- Date: 2022-04-08
- Case/document no.: RPAA/GEN 00004/2020/CA
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Text

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UBUSHINJACYAHA v BIRINDABAGABO [Rwanda URUKIKO RW'UBUJURIRE – RPAA/GEN 00004/2020/CA (Rugabirwa, P.J., Tugireyezu na Umugwaneza) 08 Mata 2022] Amategeko agenga imiburanishirize y'imanza – Ibimenyetso mu manza nshinjabyaha – Kuburanisha sinari mpari (Alibi) – Mu gihe uregwa aburanisha Sinari mpari (Alibi), Ubushinjacyaha bugomba gutanga ibimenyetso byemeza icyaha muri rusange, by'umwihariko bukomeza gutanga ibimenyetso bidashidikanywaho byemeza ko uregwa yari aho icyaha cyakorewe, ariko ukurikiranyweho icyaha uvuga ko atari ari aho icyaha cyakorewe mu gihe runaka ku buryo atari kubasha gukora ibyaha, asigarana inshingano zo kugaragaza gusa ko atari ahakorewe icyaha. Amategeko agenga imiburanishirize y'imanza – Ibimenyetso mu manza nshinjabyaha – Ubuhamya – Ukuvuguruzanya kw'abatangabuhamya ku tuntu duto mu rubanza, ntibitesha agaciro ireme ry'ubuhamya batanga. Amategeko agenga imanza z'inshinjabyaha – Jenocide – Icyaha 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 badahuje. Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Ubushinjacyaha bukurikiranye Birindabagabo ku cyaha cya jenocide n'icyaha cyo kurimbura imbaga nk'icyaha cyibasiye inyokomuntu, byateganywaga kandi byahanishwaga ingingo za 114, 115, 120 na 121 z'Itegeko ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana¹, n'ingingo ya 2 n'ya 3 z'Amasezerano Mpuzamahanga yo ku wa 09 Ukuboza 1948 agamije gukumira no guhana icyaha cya jenocide. Uyu uregwa yahoze ari mu Buyobozi ku rwego rw'Igihugu bw'ihuriro ry'imiryango y'Abahinzi-Borozi mu Rwanda: "Twibumbire hamwe bahinzi" akaba n'Umuvugabutumwa mu Itorero rya ADEPR2 Rukumberi, kuba muri Mata 1994, yakoze icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, yakoreye muri Komini Sake, aho yari atuye, n'icyaha cya jenocide yakoreye muri Komini Kibirira, aho yavukiye, kubera ko muri Gicurasi 1994, yagize uruhare mu rupfu rw'uwitwa Nyirinkindi amuziza ubwoko bwe. Urwo Rukiko rwaciye urubanza rwemeza ko uregwa ahamwe n'ibyaha aregwa, rumuhanisha igifungo cya burundu y'umwihariko. Uregwa yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha Mpuzamahanga n'ibyaha byambuka imbibi³. Nyuma yo gutesha agaciro inzitizi yari yatanze ku rwego rwa mbere, uretse inzitizi ijyanye n'uko atahawe dosiye y'urubanza yuzuye yahawe

1 Ubu bikaba biteganywa kandi bihanishwa n'ingingo za 91, 94 na 95 z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. 2 Association des Eglises de Pentecôte du Rwanda 3 Muri uru rubanza, mu rwego rwo guhana amagambo, harakoreshwa Urukiko Rukuru mu kuvuga Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi

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ishingiro, urwo Rukiko narwo rwemeje ko imikirize y'urubanza rujuririrwa idahindutse, uretse ko uregwa yahanishijwe igifungo cya burundu kuko igifungo cya burundu y'umwihariko cyavanywe mu mategeko y'u Rwanda. Uregwa yarongeye ajurira mu Rukiko rw'Ubujurire, avuga ko Urukiko Rukuru rutagombaga kumuhamya icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, byakorewe muri Komini ya Sake hagati yo ku wa 6-7/04/1994, no muri Komini Kibirira muri Gicurasi 1994, kandi atari ahari igihe ibyo byaha byakorwaga, ko rwamuhamije ibyo byaha hashingiwe ku buhamya buvuguruzanya, kandi ko Urukiko rutagombaga kumuhamya ibyo byaha byombi hashingiwe ku bikorwa bimwe, avuga kandi ko asaba imbabazi z'uko yatwaraga abasirikare mu modoka ye mu bikorwa by'ubwicanyi byakorewe muri Komini ya Sake atabishaka kuko babaga bamushyizeho agahato katigobotorwa, naho mu iburanisha ry'urubanza, Birindabagabo avuga ko ataryozwa ibyo bikorwa by'ubwicanyi byakozwe n'abasirikare yatwaraga mu modoka ye kuko bari baramufashe bugwate nk'umushoferi wabo. Ubushinjacyaha bwo buvuga ko abatangabuhamya bose bahuriza ku kuba tariki ya 6 – 7 Mata 1994, Birindabagabo yari i Sake muri Kibungo, buvuga kandi ko ku byerekeranye no kuba atakurikiranwaho icyaha cya jenocide kuko cyakozwe atari muri Komini Kibirira muri Gicurasi 1994, ko abatangabuhamya batavuguruzanya, ko ahubwo buzuzanya cyane ko banahuriza ku gihe

yahagereye n'ibikorwa yahakoze birimo gushinga bariyeri no gutegeka ko hashakishwa uwitwa Nyirikindi akicwa kandi ko byabaye. Ubushinjacyaha bukomeza buvuga kandi ko ibivugwa na Birindabagabo ko atakurikiranwaho ibyaha bibiri bitandukanye hashingiwe ku bikorwa bimwe, ko nta shingiro bifite kubera ko ingingo z'amategeko ateganya icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu zisobanutse. Ku byerekeye no kuba uregwa yaratwaraga abasirikare mu modoka ye mu bikorwa by'ubwicanyi ashyizweho agahato katigobotorwa, Ubushinjacyaha buvuga ko atashyizweho agahato katigobotorwa kuko yashoboraga guhunga abasirikare mu masaha yabaga yigenga, ko ahubwo yagiye mu bitero ku bushake bwe nkuko bigaragazwa n'abatangabuhamya banyuranye. Incamake y'icyemezo: 1. Mu gihe uregwa aburanisha Sinari mpari(Alibi), Ubushinjacyaha bugomba gutanga ibimenyetso byemeza icyaha muri rusange, by'umwihariko bukomeza gutanga ibimenyetso bidashidikanywaho byemeza ko uregwa yari aho icyaha cyakorewe, ariko ukurikiranyweho icyaha uvuga ko atari ari aho icyaha cyakorewe mu gihe runaka ku buryo atari kubasha gukora ibyaha, asigarana inshingano zo kugaragaza gusa ko atari ahakorewe icyaha. Bityo hashingiwe ku buhamya bw'abatangabuhamya, ingingo ye y'ubujurire y'uko atari aho ibyaha aregwa byabereye, ku buryo atabikurikiranwaho nta shingiro ifite.

2. Ukuvuguruzanya kw'abatangabuhamya ku tuntu duto mu rubanza, ntibitesha agaciro ireme ry'ubuhamya batanga. Ubujurire nta shingiro bufite. Amategeko yashingiweho: Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 89, 91 n'ya 94;

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Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 48; Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 3 n'ya 65; Itegeko - Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 83,103 n'ya 120; Amasezerano Mpuzamahanga yo ku wa 09 Ukuboza 1948 agamije gukumira no guhana icyaha cya jenocide, ingingo ya 2. Amasezerano yemejwe mu Rwanda binyuze mu Itegeko - Teka N° 08/75 ryo ku wa 12/02/1975, ndetse n'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 114, agace ka 10; Rome Statute of the International Criminal Court, Article 7.2; Statut du Tribunal Militaire International de Nuremberg, Article 6 (c) Statut du TPIR, Article 3. Imanza zifashishijwe: Ubushinjacyaha v. Uwinkindi, RPA 00002/2016/CA rwaciwe n'Urukiko rw'Ubujurire ku wa 24/12/2020. Prosecutor v. Kamuhanda Jean de Dieu, ICTR-99-54A Appeal Judgement, 19 September 2005. Prosecutor v. Kalimanzira Callixte, ICTR-05-88-A, Appeal Judgement, 20 October 2010. Prosecutor v. Zigiranyirazo Protais, ICTR-01-73-A, Appeal Judgement, 16 November 2009 Prosecutor v. Nahimana et al.18 ICTR-99-52-A, Appeal Judgement, 28 November 2000. Prosecutor v. Niyitegeka Eliézer, ICTR -96-14-A, Appeal Judgement, 9 July 2004. Prosecutor v. Rutaganda George, ICTR -96-3-A, Appeal Judgement, 26 May 2003. Prosecutor v. Munyakazi Yussuf, ICTR 97-36a-A, Appeal, Judgement, 28 September 2011. Prosecutor v. Ndahimana Grégoire, ICTR -01-68-A, Appeal Judgement, 16 December 2013. Prosecutor v. Milošević Dragomir, IT-98-29/1-A, Appeal Judgement, 12 November 2009. Prosecutor v. Lukić &

Lukić Et Al , IT 98-32/1-A., Appeal Judgement, 4 December 2012. Prosecutor v. Musema Alfred, ICTR -96-13-A, Rwacwiwe Ku Wa 25 Gashyantare 2014. Prosecutor v. Kalimanzira Callixte, Ictr-05-88-A, Appeal Judgement, 20 October 2010. Le Procureur v. François Karera, ICTR – 01 -74 –T, Du 7 Décembre 2007. Prosecutor v. Gatete Jean Baptiste ICTR – 2000 -61 –T, 31/03/2011. Prosecutor v. Seromba Athanase ICTR – 2001 -66–I, 13 December 2006. Prosecutor v. Bikindi Simon, ICTR – 2001 -72 –T, 2nd December 2008 Posecutor v. Muvunyi Tharcisse, ICTR – 00 -55a –T, 11 December 2010. Le Procureur Contre Elizaphan Ntakirutimana Et Gérard Ntakirutimana, ICTR -96-10-T et ICTR -96-17-T, 21 Février 2003. Prosecutor V. Radislav Krstić, It-98-33-A, Appeal Judgement, The Prosecutor V. Théoneste Bagosora, Gratien Kabiligi Aloys, Ntabakuze, Anatole Nsengiyumva, Ictr-98-41, 18 December 2008. Procureur C/ Akayezu Jean – Paul, ICTR-96-4-T/Peine/leg/fra, p.6. Inyandiko z’abahanga:

Patrick KOLB et Laurence LETURMY, Droit Pénal Général, 10 éd, 2015 – 2016, p.155. Frédéric Desportes et Francis Le Gunehec, Droit Pénal Général, 14ème éd, 2007, p.613.

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Urubanza I. IMITERERE Y’URUBANZA [1] Birindabagabo Jean Paul wahoze ari mu Buyobozi ku rwego rw’Igihugu bw’ihuriro ry’imiryango y’Abahinzi-Borozi mu Rwanda: “Twibumbire hamwe bahinzi” akaba n’Umuwugabutumwa mu Itorero rya ADEPR4 Rukumberi, yafatiwe mu Gihugu cya Uganda, yirukanwa muri icyo gihugu, aburanira mu Rwanda, ibyaha yakekwagaho bigizwe n’icyaha cya jenocide n’icyaha cyo kurimbura nk’icyaha cyibasiye inyokomuntu, yakoreye mu cyahoze ari Komini Sake, muri Perefegitura ya Kibungo, aho yari atuye, hagati yo ku wa 6-7/04/1994, ndetse no mu cyahoze ari Komini Kibirira, muri Perefegitura ya Gisenyi, aho avuka, muri Gicurasi 1994. [2] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Ubushinjacyaha burega Birindabagabo Jean Paul kuba yarakoze icyaha cya jenocide n’icyaha cyo kurimbura nk’icyaha cyibasiye inyoko muntu yakoreye muri Komini Sake na Komini Kibirira. [3] Bigirabagabo Jean Paul yaburanye ahakana ibyaha aregwa, ndetse na mbere yo kuburana urubanza mu mizi, yatanze inzitizi mu Rukiko Rwisumbuye rwa Ngoma avuga ko nta bubasha rufite bwo kumuburanisha, kuba ataragenewe umwunganizi na Minisiteri y’Ubutabera nk’utishoboye wavuye mu mahanga, no kuba atarahawe dosiye yose y’urubanza rwe, urwo Rukiko rufata icyemezo n° 01 mu rubanza n° RP/GEN 0004/16/TGI/Ngoma ku wa 09/03/2016, rwemeza ko izo nzitizi nta shingiro zifite, rutegeka ko urubanza ruburanishwa mu mizi. [4] Ubushinjacyaha nabwo bwatanze inzitizi muri urwo Rukiko zigamije gutesha agaciro imanza Birindabago Jean Paul yaciriwe n’Inkiko Gacaca z’Imirenge ya Nshili muri Komini Sake, na Nyamisa muri Komini Kibirira, zamuhamije icyaha cya jenocide n’icyaha cyo kurimbura imbaga, buri rumwe rumuhanisha igifungo cya burundu y’umwihariko, mbere yo kumuburanisha mu mizi ku birebana n’icyaha cya jenocide n’icyaha cyo kurimbura imbaga nk’icyaha cyibasiye inyokomuntu aregwa muri uru rubanza. Iyo nzitizi yashimangiwe kandi na BIRINDABAGO Jean Paul wavuze ko ifite ishingiro kuko yari yarandikiye Umushinjacyaha Mukuru amusaba gutesha agaciro izo manza ariko ntiyabikora. Urwo Rukiko rwafashe icyemezo n° 2 mu rubanza n° RP GEN 0004/16/TGI/Ngoma ku wa 09/03/2016, rwemeza ko izo manza ziteshejwe agaciro kandi ko zikuweho. [5] Urwo Rukiko rwaciye urubanza mu mizi n° RP GEN 0004/15/TGI/NGOMA ku wa

25/05/2017, rwemeza ko BIRINDABAGO Jean Paul ahamwa n'icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu hashingiwe ku mvugo z'abatangabuhamya batandukanye, rumuhanisha igifungo cya burundu y'umwihariko. [6] Birindabagabo Jean Paul yajuririye urwo rubanza mu Rukiko Rukuru, atanga umwanzuro w'ubujurire ukubiyemo inzitizi zikurikira: kuba yaraciriwe urubanza n'Urukiko rutabifitiye ububasha, kuba ibyemezo yafatiwe n'Inkiko Gacaca bigomba kubanza gukurwaho mbere y'iburanisha ry'urubanza mu mizi, kuba adakwiye gufatwa nk'ufitanye isano ya hafi n'uwari Perezida Habyarimana Juvénal, kuba yarekurwa akaburana ari hanze, kuba atarahawe dosiye y'urubanza yuzuye, no kuba nta byaha yarezwe byakorewe mu Karere ka Rubavu kandi

4 Association des Eglises de Pentecôte du Rwanda.

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yarafunzwe by'agateganyo kugira ngo Ubushinjacyaha bukore iperereza mu Turere twa Ngoma, Ngororero na Rubavu, nyamara mu gutanga ikirego akaregwa ibikorwa byakorewe i Ngoma na Ngororero gusa. Urwo Rukiko rwafashe icyemezo ku wa 04/05/2018, rwemeza ko izo nzitizi nta shingiro zifite, uretse inzitizi ijyanye n'uko atahawe dosiye y'urubanza yuzuye yahawe ishingiro. [7] Ku bijyanye n'ubujurire mu mizi y'urubanza, Birindabagabo Jean Paul avuga ko yahamijwe icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu, byakorewe mu duce dutandukanye two muri Komini Sake hagati yo ku wa 6 -7/04/1994, no muri Komini Kibirira muri Gicurasi 1994, nyamara muri ibyo bihe atari ari muri utwo duce, kandi ko yahamijwe ibyo byaha hashingiwe ku buhamya buvuguruzanya, ntirwaha agaciro iby'uko abasirikare bamuhatiye kubatwara mu bwicanyi akoresheje imodoka ye, ndetse ko atagombaga guhamwa n'ibyo byaha byombi hashingiwe ku bikorwa bimwe. [8] Urwo Rukiko rwaciye urubanza n° RPA/GEN 00003/2017/HC/HCCIC ku wa 30/10/2019, rwemeza ko ubujurire bwa Birindabagabo Jean Paul nta shingiro bufite, ko imikirize y'urubanza rwajuririwe idahindutse, rumuhanisha igifungo cya burundu kubera ko igifungo cya burundu y'umwihariko cyavanwe mu mategeko mpanabyaha y'u Rwanda. [9] Birindabagabo Jean Paul yajuririye na none urwo rubanza mu Rukiko rw'Ubujurire avuga ko Urukiko Rukuru rutagombaga kumuhamya icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, byakorewe muri Komini ya Sake hagati yo ku wa 6-7/04/1994, no muri Komini Kibirira muri Gicurasi 1994, kandi atari ahari igihe ibyo byaha byakorwaga, ko rwamuhamije ibyo byaha hashingiwe ku buhamya buvuguruzanya, kandi ko rutagombaga kumuhamya ibyo byaha byombi hashingiwe ku bikorwa bimwe, ndetse ko asaba imbabazi z'uko yatwaraga abasirikare mu modoka ye mu bikorwa by'ubwicanyi byakorewe muri Komini ya Sake atabishaka kuko babaga bamushyizeho agahato katigobotorwa, naho mu iburanisha ry'urubanza, Birindabagabo Jean Paul n'abamwunganira bavuga ko ataryozwa ibyo bikorwa by'ubwicanyi byakozwe n'abasirikare yatwaraga mu modoka ye kuko bari baramufashe bugwate nk'umushoferi wabo. [10] Urubanza rwaburanishijwe mu ruhame ku wa 18/01/2022, 20/01/2022, 31/01/2022 no ku wa 02/02/2022, Birindabagabo Jean Paul yunganiwe na Me Ruberwa Silas na Me Ndayisabye Alex, Ubushinjacyaha buhagarariye na Rudatinya Nyangezi Gapard, Umushinjacyaha ku rwego rw'Igihugu. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO: II.1. Kumenya niba Birindabagabo Jean Paul atakurikiranwaho icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha

cyibasiye inyoko muntu kuko atari muri Sake ku wa 06- 07/04/1994. A. Imiburanire ya Birindabagabo Jean Paul [11] Birindabagabo Jean Paul n'abamwunganira bavuga ko Urukiko Rukuru, rwamuhamije icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu yakoreye muri Komini Sake ku matariki ya 6 – 7 Mata 1994, nyamara atari ari muri Sake icyo gihe. Basobanura ko yakoreraga i Kigali, akavayo ku wa 07 Mata 1994 amaze kumenya ko ubwicanyi bwatangiye

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akajya kureba umuryango we i Sake akahagera saa munani n'igice z'amanywa (14h30'), bityo ko atari kubera rimwe i Kigali n'i Sake ku buryo yari kubasha kuba mu bateguye ubwicanyi bwatangiye muri Sake mu gitondo cyo ku wa 07 Mata 1994. [12] Banavuga kandi ko uretse no kuba atari ari i Sake kuri ayo matariki bivugwa ko yahakoreye ibyaha, ko Urukiko Rukuru rwamuhamije ibyaha rushingiye ku mvugo z'abatangabuhamya bitwa Rurinda Déo, Ntwari Claver, Gakwerere Emmanuel na Nkundibigwira Ildephonse bemeje ko ku matariki ya 6 - 7 Mata 1994, Birindabagabo Jean Paul yari muri Komini Sake bashingiye ku bikorwa by'ubwicanyi bamubonyemo kandi mu mvugo zabo hari abivuguruzanya, abavuguruzanya, ndetse hakaba n'abavuguruzanya n'Ubushinjacyaha. [13] Birindabagabo Jean Paul n'abamwunganira bavuga ko ku birebana no kuba yari i Sake ku wa 06/04/1994, ivuguruzanya ry'abatangabuhamya rigaragarira ku kuba umutangabuhamya Ntwari Claver, mu ibazwa rye mu Bugenzacyaha ku wa 02/04/2014, no mu buhamya bwe mu Rukiko Rukuru ku wa 21/5/2019, yasobanuye ko ku wa 06 Mata 1994, Birindabagabo Jean Paul yari iwe mu rugo i Rukumberi, nyamara inyandikomvugo y'iburanisha ryabereye mu Rukiko Rukuru ku wa 21/05/2019, igaragaza ko Ntwari Claver abazwa igihe Birindabagabo Jean Paul yagereye i Sake, yasubije ko ku mugoroba wo kuri uwo wa gatatu yari yaraye avuye iwabo ku mukecuru wa Ntwari Claver witwa Ndamage, banyura i Kibungo, ariko ko uwo Ndamage yaguye ku Rusumo yajyanwe na Birindabagabo Jean Paul, akavuga ko atazi neza niba yarageze i Kigali cyangwa niba yaragarukiye i Kibungo, ariko akavuga ko yamubonye ku mugoroba ku wa gatatu ku itariki ya 06/04/1994 akongera akivuguruzanya akavuga ko usibye ko atamubonye ariko yajyanye na murumuna we batandukanira za Kibungo, akongera akavuga ko kuri uwo wa gatatu (tariki ya 06/04/1994) we atabonyanye na Birindabagabo Jean Paul ariko ko bamubwiye ko yahageze akajyana na Ndamage, kandi ko bari basanzwe bagendana. [14] Bakomeza bavuga ko imvugo ya Ntwari Claver ubwayo yivuguruzanya nk'uko babyerekanye, kuko we yivugira ko ku mugoroba w'itariki ya 06/04/1994 yabonye Birindabagabo Jean Paul, ubundi akavuga ko atamubonye, ko ahubwo yabonywe na murumuna we, ubundi akongera akavuga ko kuri iyo tariki na none yajyanye na Ndamage kuri uwo mugoroba, akanivugira ko icyo gihe yagiye ku Rusumo ari naho yiciye Ndamage yahamujyanye, ndetse anajya i Kibungo kuri uwo mugoroba wo ku wa 06/04/1994, bityo ko n'ubwo Urukiko Rukuru mu kwandika mu rubanza ibyo Ntwari Claver yavuze bitandukanye kure n'ibiri mu nyandikomvugo y'iburanisha, bakaba bibaza uburyo iyo mvugo ubwayo ivuguruzanya ityo yashingirwaho hakemezwa ko Birindabagabo Jean Paul yari i Sake ku wa 06/04/1994. [15] Bavuga kandi ko imvugo ya Ntwari Claver ivuguruzanya n'iya Rurinda Déo, wari ushinze kurinda umutekano wa Député Mutabaruka Sylvain mu gihe cya jenocide, kuko we avuga ko ku mugoroba wo ku wa 06 Mata 1994, saa moya (19h00) z'ijoro yari

kumwe n'interahamwe banywa inzoga bari basengerewe n'abayobozi babo barimo Député Mutabaruka Sylvain na Rutayisire Evariste wari Burugumesitiri, Birindabagabo Jean Paul akahabasanga saa tatu z'ijoro (21h00), ari nabwo bamenye ko indege y'uwahoze ari Perezida Habyarimana Juvénal yahanutse, ko Ntwari Claver yivugira ko kuri uwo mugoroba wo ku wa 06/04/1994, Birindabagabo Jean Paul yari iwabo i Rukumberi, ndetse ko yagiye ku Rusumo n'i Kibungo, ko bibaza uburyo saa tatu z'ijoro (21h00) mu gihe kitarenze amasaha abiri, yari ari i Sake, kuko kuva i Rukumberi ujya Rusumo ubwaho utwaye imodoka ukanajya i Kibungo bitabura gufata byibura amasaha 4, ko nta kuntu saa tatu z'ijoro (21h00) yari kuba agarutse i Sake, ko ibyo byerekana kuvuguruzanya

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gukomeye kuko abatangabuhamya bavuguruzanya ubwabo, ndetse ko batanahuriza ku bikorwa bimwe yaba yarakoze, bityo ko mu by'ukuri Birindabagabo Jean Paul atari i Sake ku wa 06/04/1994. [16] Bakomeza bavuga ko Ntwari Claver avuguruzanya na Rurinda Déo kubera ko yavuze ko ku wa 7 Mata 1994, yabonye Birindabagabo Jean Paul mu bihe bitatu bitandukanye, ko mu gitondo saa kumi n'imwe n'igice (05h30) yamunyuzeho yerekeza i Sake, saa yine za mu gitondo (10h00) amubona ava i Sake hamwe n'abasirikari benshi, yongera kumubona ku manywa no ku gicamunsi ari kumwe n'igitero cy'abasirikare n'interahamwe barimo kwica abatutsi, naho Rurinda Déo we akavuga ku wa 07 Mata 1994, yabonye Birindabagabo Jean Paul ari kumwe na Burugumesitiri Rutayisire Evariste bagiye gutangiza ubwicanyi i Rukumberi, naho Gakwerere Emmanuel nawe akabivuguruzanya akavuga ko ku wa 07 Mata 1994, mu gitondo yabonye Birindabagabo Jean Paul i Gafunzo ari kumwe n'abasirikari yari yazindutse avana i Kibungo, hari na Député Mutabaruka Sylvain wari kumwe n'igitero cyari kivuye kwica kwa Sesonga, nyuma amubona amanukanye n'abaturage bajya kwica kwa muganga, aho bageze bagatangiza ubwicanyi nyuma bakerekeza i Rukumberi [17] Bakomeza bavuga ko Gakwerere Emmanuel yivuguruzanya, akavuguruzanya na Nkundibigwira Ildephonse, ndetse ko bombi banavuguruzanya n'Ubushinjacyaha, kuko mu gika cya 16 cy'urubanza rujuririrwa, Gakwerere Emmanuel yabajijwe n'Ubugenzacyaha ku wa 30/10/2007 akavuga ko ku wa 07/04/1994, mu gitondo yabonye Birindabagabo Jean Paul i Gafunzo ari kumwe n'abasirikare yari avanye i Kibungo, naho Nkundibigwira Ildephonse we muri icyo gika cyavuzwe haruguru, akavuga ko yabonye Birindabagabo Jean Paul i Gafunzo ku wa 07 Mata 1994, ubwo Député Mutabaruka Sylvain yabahaga amabwiriza yo kwica abatutsi yambaye imyenda ya gisirikare. Ikindi n'uko mu nyandiko itanga ikirego, Gakwerere Emmanuel asobanura ko Birindabagabo Jean Paul yazindukiye i Kibungo, naho Ubushinjacyaha bukavuga ko ku wa 07/4/1994, mu gitondo Birindabagabo Jean Paul na Mutabaruka Sylvain baje mu rugo kwa Niyonshuti Silas nyuma haza kuza interahamwe zirashe zikica NKUSI na Bodouin bari abatutsi. [18] Bavuga ko n'ubwo Rurinda Déo mu mvugo ze yasobanuye ko ku wa 06/04/1994, saa moya z'ijoro, uwitwa Mutabaruka Sylvain wari umu Député na Rutayisire wari Burugumesitiri, bahamagaje umutwe w'Interahamwe bajya kubagurira inzoga, nyuma y'aho Birindabagabo Jean Paul akaza kuhabasanga, ko ariko adasobanura aho Birindabagabo Jean Paul yari aturutse n'icyo yakoze usibye kuvuga gusa ko yahabasanze, bakaba bibaza uburyo bahuye saa moya z'ijoro (19h00) zo ku wa 06 Mata 1994

nk'aho bari bamenye ko indege yari itwaye Perezida Habyarimana Juvénal ihanuka agapfa, ko ikindi ari uko uwo mutangabuhamy augeze asobanura uburyo yabagezeho avuye i Kigali. [19] Banenze kandi Urukiko Rukuru kuba rwaracye urubanza hashingiwe ku ngingo ya 3 y'Itegeko rigenga ibimenyetso mu manza n'itangwa ryabyo, rukavuga ko Birindabagabo Jean Paul atashoboye kuvuguruza imvugo y'Ubushinjacyaha, nyamara ivuguruzanya riri mu mvugo z'abatangabuhamy bagaragajwe haruguru rigaragaza neza ko Birindabagabo Jean Paul atari muri Komine Sake ku itariki ya 6 - 07/04/1994. [20] Basobanura ko mu gika cya 42 cy'urubanza rujuzirirwa, umutangabuhamy Habimana Raymond nawe asobanura ko yabonye Birindabagabo Jean Paul inshuro ebyiri mu gihe cya jenocide, ko nka saa kumi n'ebiri n'igice za mu gitondo (06h30) ku wa 07/04/1994 yamubonye

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ari kumwe n'abasirikare muri double cabine ye yari atwaye, bageze iwe barahagarara bagota inzu ye aho yacururizaga muri Shori, nyamara umutangabuhamy Mubirigi Jean Népomuscène we akavuga ko, ku wa 7/04/1994, mu gitondo, Birindabagabo Jean Paul na Député Mutabaruka Sylvain baje mu rugo rwa Niyonshuti Silas, muri Segiteri Rubungu i Rukumberi, nyuma haza kuza interahamwe n'abasirikare zirasa kwa Nkusi na Bodouin, nyamara Ubushinjacyaha bwo bukaragaza ko uyu Bodouin yapfuye ku wa 6/04/1994, ko banishe Nkeramiheto n'abana be na Simon. [21] Basanga hakwiye kwibazwa mu by'ukuri aho Birindabagabo Jean Paul yari ku wa 07/04/1994 kuko abatangabuhamy ubwabo badahuza, ko umwe avuga ko yari i Sake mu gitondo nk'uko bamaze ku byerekana haruguru, undi akavuga ko mu gitondo yari i Gafunzo, undi akavuga ko muri icyo gitondo yari i Rukumberi, undi akavuga ko yari i Kibungo, undi akavuga ko yari i Rukumberi, undi akavuga ko yari i Shori, undi akavuga ko yari i Rubungo, ko bibaza icyafatwa nk'ukuri kuko abatangabuhamy batanze amakuru atandukanye kandi bikaba bidashoboka ko mu gitondo kimwe Birindabagabo Jean Paul yashoboraga kubonekera rimwe aho hantu hatandukanye, kuko iyo barebye intera ihari kujya Sake, i Gafunzo, Rukumberi na Kibungo, bibaza ikimenyetso Ubushinjacyaha butanga cyerekana ko Birindabagabo Jean Paul yari i Sake ku wa 7/04/1994, mu gihe abatangabuhamy bwatanze nabo bivugira ko yari ahandi. [22] Bavugaga kandi ko mu by'ukuri ari Ntwari Claver wemeje ko yabonye Birindabagabo Jean Paul yerekeza i Sake mu gitondo, i saa yine za mu gitondo (10h00), amubona aha i Sake hamwe n'abasirikari benshi, yongera kumubona ku manywa no ku gicamunsi i Sake, bakaba bibaza uburyo imvugo y'uyu mutangabuhamy yafatwa nk'ukuri kandi Gakwerere Emmanuel, Nkundibigwira Idephonse, Rurinda Déo, Mubirigi Jean Népo, Habimana Raymond bo bivugira ko yari ahandi, ndetse n'aho bahuje ko yari ariko ntibahuze ku bikorwa yahakoraga nk'uko babisobanuye haruguru, kuko buri wese yivugiye ibye, ko rero ibyo bitera gushidakanya, bityo bakaba bibaza niba Birindabagabo Jean Paul akeneye gutanga ibimenyetso by'aho yari mu gihe Ubushinjacyaha buterekana nta shiti ko yari i Sake ku wa 6 - 07/04/1994. [23] Basaba ko hashingirwa ku manza zacyiwe n'Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda (ICTR), urubanza rwa Ndahimana Grégoire, n'urwa Musema Alfred, aho urwo Rukiko rwasobanuye ko iyo uregwa yireguye "SINARI MPARI", bihuzwa niba uregwa ataragize uruhare mu bikorwaaregwa, maze hemezwa ko icyo gihe Ubushinjacyaha aribwo bufite inshingano yo

gutanga ibimenyetso bidashidikanywaho byerekana ko yari ahari. (The Appeals Chamber recalls that the burden of proof rests with the Prosecution to prove its case beyond reasonable doubt. The sole purpose of an alibi, when raised by a defendant, is only to cast a reasonable doubt on the Prosecution case). [24] Bavuga ko ku birebana n'agaciro k'ubuhamya bwatanzwe n'abatangabuhamya bakoze icyaha bya jenocide, Urukiko Mpanabyaha rwatanze umurongo mu rubanza rwa Col. KABIRIGI Gracien na Bagambiki Emmanuel, aho rwasobanuye ko ubuhamya bwa bene abo batangabuhamya bugomba kwitonderwa, kuko buba ari ubuhimbano, ko ibyo byatumye ICTR ibagira abere kubera imyitwarire y'abatangabuhamya harebwe ukuntu bagenda bivuguruzanya kandi abaregwa bireguje "sinari mpari". [25] Basobanura ko ICTR mu gufata icyemezo mu gika cya 321 na 322 by'urubanza n° ICTR - 99-46-T, rwemeje ko ubuhamya bwa LAP bukwiye kwitonderwa kuko ari umufatanyacyaha

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n'abaregwa, rwemeza ko ubuhamya bwe nta gaciro bufite kuko rusanga bugenda buvuguruzanya n'ibyo abandi bavuze, cyane cyane ku bikorwa byakozwe n'igihe byakorewe, ahubwo ruvuga ko ibyo avuga byerekana ko abiyihimbira (leaves the impressions of fabrication). Bavuga kandi ko mu gika cya 323 cy'urwo rubanza, urwo Rukiko rwemeje ko ubuhamya bwa LY, NL, LCJ n'abandi butagaragaza icyo bushingiyeho ku buryo rutabugenderaho. [26] Mu gusoza, bavuga ko iyo bahuje n'ibivuzwe mu gika kibanzirije iki, n'uru rubanza rwa Birindabagabo Jean Paul, basanga imyitwarire n'imimerere y'abatangabuhamya ari kimwe n'uko byagenze mu rubanza rwa Gracien Kabirigi na Bagambiki Emmanuel kuko naho habayeho kuvuguruzanya, ko bashingiyeho ku byo bamaze gusobanura haruguru, babona bitumvikana ukuntu Birindabagabo Jean Paul mu gitondo kimwe no mu masaha amwe, yari gukora ibikorwa by'ubwicanyi ahantu henshi hatandukanye, bityo ko imvugo z'abo batangabuhamya zitagombaga guhabwa agaciro. B. Imiburanire y'Ubushinjacyaha [27] Ubushinjacyaha buvuga ko ntakuvugurazanya kuri hagati y'imvugo ya Gakwerere Emmanuel n'Ubushinjacyaha kubera ko GAKWERERE Emmanuel ari umutangabuhamya, naho Ubushinjacyaha bukaba umuburanyi, kandi ko umuburanyi aburanisha ibimenyetso byatanzwe n'abatangabuhamya n'ibinidi bitandukanye bwagezeho mu iperereza, ahubwo ikigaragara, ari uko mu ijoro ryo ku wa 6 Mata 1994, no mu gitondo cyo ku wa 7 Mata 1994, Birindabagabo Jean Paul yari muri Komini Sake nk'uko byemejwe n'abatangabuhamya batandukanye, ko kandi mu gitondo cyo ku wa 7 Mata 1994 yari yazindukiye i Kibungo kuzana abasirikare nk'uko Gakwerere Emmanuel yabisobanuye. [28] Ubushinjacyaha buvuga ko ibyo Gakwerere Emmanuel, Rurinda Déo na Ntwari Claver bavuze ku bijyanye n'uko mu gitondo cyo ku wa 07/04/1994, babonye Birindabagabo Jean Paul mu buryo butandukanye, bishimangirwa n'ibyavuzwe na Baratsikira Jean wavuze ko ku wa 7 Mata 1994, Birindabagabo Jean Paul yazanye abasirikare abavanye i Kibungo bageze i Rukumberi bahica abatutsi benshi, anavuga ko Birindabagabo Jean Paul yari afite imbaraga zidasanzwe nk'uko byanashimangiwe na Umuraza Alphonsine nawe wavuze ko ku wa 07/04/1994, Habyarimana Juvénal yaraye apfuye jenocide yahise itangira hapfa abatutsi benshi, ndetse ko ubwo bwicanyi bwatangijwe na Birindabagabo Jean Paul na Mutabaruka wari Député, bityo ko iyo mvugo ye yumvikanyishye ko Birindabagabo Jean Paul yari yaraye i Sake kuri iyo tariki Habyarimana Juvénal yapfuyeho, bivuze

rero ko atari i Kigali nk'uko abivuga. [29] Ubushinjacyaha buvuga kandi ko uwitwa Kaguge Frédéric yavuze ko Habyarimana Juvénal amaze gupfa ku wa 06/04/1994, bukeye bwaho ku wa 07/04/1994, abantu batangiye kwicwa, akavuga ko yabonye Birindabagabo Jean Paul mu modoka ye y'umweru ari kumwe n'abasirikare, ibyo avuga bikaba bihura n'ibyavuzwe na Gakwerere Emmanuel na Ntwari Claver ko ku wa 7/4/1994, Birindabagabo Jean Paul yari yagiye kuzana abasirikare i Kibungo abazana i Rukumberi kwica abatutsi, ko iyo mvugo ya Kaguge Frederic nayo yumvikanisha ko mu ijoro ryo ku wa 06/04/1994, Birindabagabo Jean Paul yari i Sake, ahiciwe abatutsi. [30] Ubushinjacyaha buvuga ko uwitwa Ntampaka Ladislav nawe yavuze ko ubwicanyi bwatangijwe na Birindabagabo J Paul, ko iyo mvugo ye ihuje kandi n'imvugo za bagenzi be bavuzwe haruguru bemeje ko ubwicanyi bwatangijwe mu gitondo cyo ku wa 07/04/1994,

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bigaragaza ko tariki ya 6 – 7 Mata 1994, Birindabagabo Jean Paul yari i Rukumberi muri Sake. Bukomeza busobanura ko Ntampaka Ladislav yakomeje avuga ko tariki ya 07/04/1994, hishwe abitwa Gombaniro wari kontabure wa Komini, hicwa Michel wari Agronome, hicwa Padiri Michel, ko ababishe bavugaga ko babitegetswe na Birindabagabo Jean Paul, bityo ko iyo mvugo nayo igaragaza ko tariki ya 06/04/1994, Birindabagabo Jean Paul yari i Rukumberi muri Sake. Buvuga na none ko Ntampaka Ladislav yakomeje avuga ko Birindabagabo Jean Paul yari afite ijamba rikomeye, ko ibyo kugira ijamba rikomeye byashimangiwe kandi n'uwitwa Baratsikira Jean wavuze ko Birindabagabo Jean Paul yari afite imbaraga zidasanzwe, ibyo rero bikagaragaza ko kuva ku wa 06/04/1994, Birindabagabo Jean Paul yari i Sake kuri icyo tariki. [31] Ubushinjacyaha buvuga na none ko uwitwa Bicomumpaka Mathias yavuze ko tariki ya 07/04/1994, saa ine z'amanya yabonye haje abasirikare benshi bafite imbunda, abona na Birindabagabo Jean Paul yambaye gisirikare atwaye n'imodoka ye, batangira abasiviri bababwira kwitwaza intwari gakondo, ko Birindabagabo Jean Paul ariwe wabayoboraga aho abatutsi bari, ndetse ko Gakwerere Emmanuel nawe yavuze ko ku wa 07/04/1994, saa kumi n'imwe n'igice za mu gitondo (5h30), yabonye Birindabagabo Jean Paul agiye i Kibungo kuzana abasirikare, Bicomumpaka Mathias akavuga ko yamubonye saa yine (10h00) avuye i Kibungo apakiye abasirikare, ari ikigaragaza ko ibyo Gakwerere Emmanuel na Ntwari Claver bavuze bitavuguruzanya, ko ahubwo byuzuzanya kuko kugenda ibilometero 84 kms mu masaha arenga atatu ku modoka ya Toyota 4x4, ari ibintu byumvikana ko uwagiye i Kibungo avuye i Rukumberi yaba yagarutse rwose uko umuhanda waba uteye kose (kaburimbo cyangwa igitaka). [32] Ku birebana no kuba Birindabagabo Jean Paul n'abamwunganira bavugaga ko imvugo ya Ntwari Claver y'uko yabonye Birindabagabo Jean Paul mu gitondo cyo ku wa 07/04/1994 harimo kwivuguru, Ubushinjacyaha buvuga ko busanga nta kwivuguruza guhari kuko igitondo ari kirekire ukigereranyije n'uko umunsi ungana, ko kuva saa kumi n'imwe (5h00) kugeza saa ine (10h00) ari amasaha y'igitondo, hakaza amanywa, igicamusu, umugoroba n'ijoro, bivuze ko kuba Ntwari Claver yamubonye saa kumi n'imwe n'igice (5h30) za mu gitondo akongera kumubona saa mbiri za mugitondo (8h00), akongera kumubona saa tatu (9h00) ahandi hantu, ibyo bitakwitwaga kwivuguruza ku muntu wagenda n'imodoka nshya nk'uko Birindabagabo Jean Paul yabyivugiye ko icyatumye imodoka

ye ariyo abasirikare bashaka kubohoza, ari uko yari nshya. [33] Ubushinjacyaha buvuga ko kuba abatangabuhamyaha bose baturiza ku kuba tariki ya 6 – 7 Mata 1994, Birindabagabo Jean Paul yari i Sake muri Kibungo, bivuze ko hatashyirwa ku manza zaciwe na TPIR yatanze zavuzwe haruguru ku birebana na alibi yatanze muri uru Rukiko kuko Ubushinjacyaha bwatanze ibimenyetso bihagije bigaragaza ko Birindabagabo Jean Paul yari muri Komini Sake kuri ayo matariki yombi. [34] Mu gusoza, Ubushinjacyaha buvuga ko ku birebana n'ibivugwa na Birindabagabo Jean Paul n'abamwunganira by'uko uru Rukiko rutashyirwa ku buhamya bw'abakoze jenocide, nta shingiro bifite kuko TPIR itigeze ivuga ko ubuhamya bwabo bukwiye guteshwa agaciro kubera ko ababutanze baba ari abafatanyacyaha, ko ahubwo ubuhamya bwabo bukwiye guhabwa agaciro kuko bamwe abagize uruhare muri jenocide yakorewe abatutsi, abandi bakaba abayirokotse, bityo

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ko hashyirwa ku ngingo ya 48 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ubuhamya bwabo bukwiye gushyirwaho. UKO URUKIKO RUBIBONA [35] Ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana". [36] Naho ingingo ya 107, igika cya 1, y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, igateganya ko "Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho uburenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga ibimenyetso byemeza icyaha". [37] Ku kibazo cyo kumenya niba Birindabagabo Jean Paul yari i Kigali cyangwa muri Komini Sake ku itariki ya 6 - 7 Mata 1994, imikuriza y'urubanza rujurirwa mu bika bya 18 – 20, igaragaza ko Urukiko Rukuru rwashyirwa ku mvugo z'abatangabuhamyaha Ntwari Claver, Rurinda Déo, Gakwerere Emmanuel, na Nkundibigwira Ildephonse bavuze ko kuri ayo matariki mu bihe bitandukanye bamubonye ahantu hatandukanye muri Komini Sake, rwemeza ko Birindabagabo Jean Paul yari i Sake ku matariki yavuzwe haruguru. [38] Mu gika cya 19 cy'urubanza rujurirwa, Urukiko Rukuru rwasanze umutangabuhamyaha Ntwari Claver ahamya ko ku itari ya 7 Mata 1994, yabonye Birindabagabo Jean Paul mu bihe bitatu bitandukanye, mu gitondo saa kumi n'imwe n'igice (5h30') yamubonye yerekeza i Sake, i saa yine za mu gitondo (10h00) amubona aha i Sake hamwe n'abasirikari benshi, yongera kumubona ku manywa no ku gicamunsi ari kumwe n'igitero cy'abasirikari n'interahamwe barimo kwica abatutsi. [39] Mu Bugenzacyaha, umutangabuhamyaha Gakwerere Emmanuel yasobanuye ko tariki ya 07/04/1994, Birindabagabo Jean Paul yazindukiye i Kibungo azana abasirikare mu modoka ye yari yanditseho « Twibumbire hamwe Bahinzi », ageze i Gafunzo ahasanga Mutabaruka ari kumwe n'igitero cyari kivuye kwica kwa Sengoga, ubwo amanukana n'abaturage bajya kwica abatutsi kwa Muganga. [40] Mu ibazwa rye mu Bugenzacyaha, umutangabuhamyaha Ntwari Claver yasobanuye ko tariki ya 7 Mata 1994, saa kumi n'imwe n'igice za mu gitondo (5h30'), Birindabagabo Jean Paul yamunyuzeho yerekeza kuri Komini Sake, yongera kumubona nka saa yine (10h00) azanye abasirikare, yongera kumubona ku mwanya no ku gicamunsi. [41] Mu ibazwa rye mu Bugenzacyaha, umutangabuhamyaha Rurinda Déo, yasobanuye ko tariki ya 6 Mata 1994, saa tatu z'ijoro (21h00), yabonye Birindabagabo Jean

Paul i Sake ubwo yabasangaga mu kabare hamwe n'izindi nterahamwe bari kunywa inzoga, bari baguriwe na Mutabaruka Sylvain wari umu Député na Rutayisire wari Burugumesitiri, yongera kumubona bukeye mu gitondo (tariki 7 Mata 1994) ari kumwe na Rutayisire bagiye gutangiza ubwicanyi i Rukumberi.

5 Iyo ngingo ivuga ko: umuntu wese wagize uruhare mu ikorwa ry'icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk'umutangabuhamya

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[42] Umutangabuhamya Nkundibigwira Ildephonse wari Assistant Bourgumestre wa Komini Sake, abazwa mu Bugenzacyaha, yasobanuye ko mu gitondo cyo ku itariki ya 07/04/1994 bari i Gafunzo, yabonye Birindabagabo Jean Paul ari kumwe na Mutabaruka, ndetse ko Mutabaruka yabahaga amabwiriza yo kwica abatutsi, noneho bamaze guhabwa ayo mabwiriza, bajyanye na Birindabagabo Jean Paul ku bitaro kwica abatutsi afite imodoka ye yari yanditseho « Twibumbire hamwe bahinzi ». [43] Hari kandi umutangabuhamya witwa Habimana Raymond wasobanuye ko yabonye Birindabagabo Jean Paul ku wa 07/04/1994, saa kumi n'ebiri n'igice (6h30') za mugitondo ari kumwe n'abasirikare benshi mu modoka ye yari atwaye, bageze iwe (muri Segiteri Rukumberi, Komini Sake) abasirikare bava mu modoka bagota inzu ye, we n'umugore we banyura mu muryango w'inyuma barabacika, ariko ko abashyitsi basize muri iyo nzu batamenye uko babishe kuko imirambo yabo itaraboneka kuva icyo gihe. Avuga kandi ko nka saa mbiri (8h00') za mu gitondo, yongeye kubona Birindabagabo Jean Paul ari mu modoka ye n'abasirikare imbere yo kwa Rusagara ahita ajya kubihisha mu masaka. [44] Hari na none umutangabuhamya witwa Mubiligi Jean Népomuscène, wasobanuye uburyo ubwicanyi bwagenze muri Komini Sake, ariko ku birebana no kuba Birindabagabo Jean Paul yari muri Komini Sake ku matariki ya 6 – 7 Mata 1994, ntacyo yigeze abivugaho. [45] Uretse no kuba binateganyijwe mu ngingo ya 107, igika cya 1, y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryavuzwe haruguru, ivuga ko Ubushinjacyaha (...) aribwo bugomba gutanga ibimenyetso byemeza icyaha, Urukiko rw'Ubujurire rurasanga nk'uko n'Urukiko Rukuru rwabibonye mu gika cya 29 cy'urubanza rujuririwa, ku birebana n'ugomba gutanga ibimenyetso mu gihe umuburanyi aburanisha "Sinari mpari" (alibi) by'umwihariko, Inkiko Mpuzamahanga nazo zemeje ko, Ubushinjacyaha aribwo bukomeza kugira inshingano yo gutanga ibimenyetso bidashidikanywaho byemeza ko ukurikiranywe yakoze icyaha nk'uko byemejwe mu manza nyinshi zaciwe n'izo nkiko, harimo urubanza rw'Ubushinjacyaha na Kamuhanda Jean de Dieu⁶, naho ukurikiranyweho icyaha uvuga ko atari aho icyaha cyakorewe mu gihe runaka ku buryo atari kubasha gukora ibyaha ashinjwa, akagira inshingano zo kugaragaza gusa ko atari ahakorewe icyaha nk'uko byagiye byemezwa mu

6 Case n° ICTR-99-54A Kamuhanda Jean de Dieu Appeal Judgement, 19 September 2005, para. 38 : "When an alibi is submitted by the Accused, the burden of proof rests upon the Prosecution to prove its case beyond a reasonable doubt in all aspects. Indeed, the Prosecution must prove "that the accused was present and committed the crimes for which he is charged and thereby discredit

the alibi defence". If the alibi is reasonably possibly true, it will be successful" ; Case n° ICTR-05-88-A Kalimanzira Callixte, Appeal Judgement, 20 October 2010, para. 67; Case n° ICTR-01-73-A Zigiranyirazo Protais, Appeal Judgement, 16 November 2009, paras. 17, 18 ; Case n° ICTR-99-52-A Nahimana et al., Appeal Judgement, 28 November 2001, para. 414 ; Case n° ICTR-96-14-A Niyitegeka Eliézer, Appeal Judgement, 9 July 2004, para. 60; Case n° ICTR-96-3-A Rutaganda George, Appeal Judgement, 26 May 2003, para. 172; Case n° ICTR 97-36A-A Munyakazi Yussuf Appeal, Judgement, 28 September 2011, para. 24; Case n° ICTR- 01-68-A Ndahimana Grégoire, Appeal Judgement, 16 December 2013, para. 91; Case n° IT-98-29/1-A Milošević Dragomir, Appeal Judgement, 12 November 2009, para. 287; Case n° IT 98-32/1-A Lukić & Lukić et al., Appeal Judgement, 4 December 2012, paras. 72. 361.

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manza zitantandukanye harimo urw'Ubushinjacyaha na Zigiranyirazo Protais⁷ n'urw'Ubushinjacyaha na Ndahimana Grégoire⁸. [46] Mu rubanza rwa Musema Alfred kandi, Urukiko Mpuzamahanga rwashyiriweho u Rwanda rwasobanuye ko "... iyo uregwa yiyambabaje imyiregurire ya "Sinari mpari" (alibi) mu buryo bwemewe, Porokireri ari we ugomba kwerekana, ku buryo budashidikanywaho, ko nta shingiro ifite, ku buryo iyo atabikoze, bitera Urugereko gushidikanya ku byo avuga. Ariko, uregwa akaba ariwe ugomba guhitamo uburyo bwo kwiregura kugira ngo ateze abacamanza gushidikanya ku byerekeye kumwitirira ibikorwa bivugwa, ibyo akabikora atanga ibimenyetso bigaragaza cyangwa bishyigikira imyiregurire ya "Sinari mpari"⁹. [47] Urukiko rw'Ubujurire rurasanga ibimenyetso Birindabagabo Jean Paul atanga byemeza ko atari i Sake ku matariki yavuzwe haruguru, ari imvugo z'abatangabuhamya Ntwari Claver, Rurinda Déo, Gakwerere Emmanuel, Nkundibigwira Ildephonse, Habimana Raymond na MUBIRIGI Jean Népomuscène, avuga ko zivuguruzanya, ndetse zikanavuguruzanya n'imvugo z'Ubushinjacyaha ku bijyanye n'aho yari ari ku matariki ya 6 – 7 Mata 1994. Asobanura ko bamwe bavugaga ko mu gitondo kimwe bamubonye i Sake, i Gafunzo, i Rukumberi na Kibungo, akaba asanga imvugo zabo zitafatwa nk'uko kuko mu gitondo kimwe atabashaga kuboneka ahantu hatandukanye icyarimwe kandi hari intera ndende kuva hamwe ujya ahandi, ibyo bikaba bigaragaza ko yari i Kigali kuko Ubushinjacyaha nta kimenyetso bwagaragaje cyerekana nta shiti ko yari i Sake, bityo Urukiko rukaba rugomba gusuzuma niba koko izi mvugo z'abo batangabuhamya zivuguruzanya, ku buryo zitera gushidikanya ku kuba yari ari i Sake kuri ariya matariki. [48] Ku bijyanye n'imiburanire ya Birindabagabo Jean Paul y'uko mu gitondo kimwe bitari gushoboka ko azinduka ajya kuzana abasirikare i Kibungo, ngo yongere aboneke i Gafunzo, ndetse no kwa Niyonshuti Silas nk'uko bivugwa n'umutangabuhamya Gakwerere Emmanuel, Urukiko rw'Ubujurire rurasanga uretse n'uko uwo mutangabuhamya yamwiboneye, bishoboka kuba yarageze i Kibungo, i Gafunzo no kwa Niyonshuti Silas wari utuye muri Segiteri Rubungo i Rukumberi kuko aho hose yazengurutse hari mu karere kamwe nk'uko byemejwe n'abatangabuhamya bavuzwe haruguru, ikindi kandi igitondo kikaba ari kirekire ku buryo ku muntu wari ufite imodoka nshya nk'ya Birindabagabo Jean Paul yari yaratoranijwe n'abasirikare

7 Case n° ICTR-01-73-A Zigiranyirazo Protais, Appeal Judgement, 16 November 2009, para. 17 : “An alibi does not constitute a defence in its proper sense. By raising an alibi, an accused is simply denying that he was in a position to commit the crime with which he was charged. An accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather, he must simply produce the evidence tending to show that he was not present at the time of the alleged crime or, otherwise stated, present evidence likely to raise a reasonable doubt in the Prosecution case.” If the alibi is reasonably possibly true, it must be accepted” 8 Case n° ICTR-OI-68-A Ndahimana Grégoire, Appeal Judgement, 16 December 2013, para. 91. “The Appeals Chamber recalls that an accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather, he must simply produce evidence tending to show that he was not present at the time of the alleged crime. If the alibi is reasonably possibly true, it must be accepted. ” Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true” 9 Urubanza n° -96-13-A rwa Musema Alfred n’Ubushinjacyaha, rwaciwe ku wa 25 Gashyantare 2014, impapuro za 110-111, igika cya 201 : In other words, when the alibi has been properly raised, the onus is on the Prosecution to disprove it beyond a reasonable doubt failing which the Prosecution case would raise a reasonable doubt as to the accused’s responsibility. However, "it is up to the accused to adopt a defence strategy enabling him to raise a doubt in the minds of the Judges as to his responsibility for the said crimes, and this, by adducing evidence to justify or prove alibi.

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kubera ubushya bwayo nk’uko yabiyemereye imbere y’uru Rukiko, yashoboraga kugera aho hantu hose mu gitondo kimwe. [49] Ku birebana n’imiburanire ya Birindabagabo Jean Paul n’abamwunganira y’uko ubuhamya bwa Rurinda Déo butashingirwaho kubera ko budasobanura aho yari avuye, uburyo yabagezeho avuye i Kigali n’uko atari kumenya ko indege ya Habyarimana Juvénal yari buraswe kuri iyo tariki ya 6 Mata 1994, Urukiko rurasanga ikigibwaho impaka kuri iyi ngingo ya « alibi » ari ukumenya niba Birindabagabo Jean Paul yari i Sake ku wa 6 Mata 1994 no ku wa 7 Mata 1994 cyangwa niba yari i Kigali, kuba rero Rurinda Déo ahamya ko yamubonye i Sake mu ijoro ryo ku wa 6 Mata 1994 bikaba bihagije mu kwemeza ko yari i Sake kuri iyo tariki, bitabaye ngombwa ko amenya aho yari aturutse n’uburyo yabagezeho, Urukiko Rukuru rukaba nta kosa rwakoze mu gushingira ku buhamya bwe. [50] Ku bijyanye no kuba Birindabagabo Jean Paul n’abamwunganira bavuga ko ubuhamya bwa Rurinda Déo, Ntwari Claver ndetse n’ubwa Gakwerere Emmanuel buvuguruzanya ku birebana no kuba yari i Sake ku matariki ya 6 – 7 Mata 1994, Urukiko rw’Ubujurire rurasanga ntaho buvuguruzanya, ahubwo bwuzuzanya, kuko Rurinda Déo asobanura ko yamubonye i Sake ku wa 6 Mata 1994, saa tatu z’ijoro (21h00), yongera kumubona bukeye ku wa 07 Mata 1994, Ntwari Claver nawe akemeza ko ku wa 7 Mata 1994 yamubonye inshuro eshatu, mu gitondo saa kumi n’imwe n’igice (5h30), saa yine (10h00) no ku gicamusi, ndetse na Gakwerere Claver akemeza ko ku wa 7 Mata 1994, yamubonye mu gitondo ageze i Gafunzo avuye kuzana abasirikare i Kibungo. [51] Ku bijyanye n’imiburanire ya Birindabagabo Jean Paul n’abamwunganira y’uko umutangabuhamya Nkundibigwira Ildephonse yivugurujye aho yemeje ko ku itariki ya 7 Mata 1994, yabonye Birindabagabo Jean Paul i Gafunzo

ari kumwe na Mutabaruka sylvain atanga amabwiriza yo kwica abatutsi, naho Ubushinjacyaha bukavuga ko kuri iyo tariki, yageze kwa Niyonshuti Silas, Urukiko rw'Ubujurire rurasanga nta kuvuguruzanya kurimo kuko kuba Birindabagabo Jean Paul yarageze i Gafunzo no kwa Niyonshuti Silas wari utuye muri Segiteri Rubungo i Rukumberi bidatangaje, kuko aho hose yazengurutse hari mu karere kamwe nk'uko byemejwe n'abatangabuhamya bavuzwe haruguru, ikindi kandi igitondo kikaba ari kirekire ku buryo ku muntu wari ufite imodoka nshya nk'ya Birindabagabo Jean Paul yari yaratoranijwe n'abasirikare kubera ubushya bwayo nk'uko yabiyemereye, yashoboraga kugera kuri Centre ya Gafunzo no kwa Niyonshuti Silas wari utuye muri Segiteri Rubungo kuri uwo muni, tariki ya 07/04/1994. [52] Ku bijyanye n'imiburanire ya Birindabagabo Jean Paul n'abamwunganira y'uko imyitwarire y'abatangabuhamya bavuguruzanya kuri "Sinari mpari" yagaragaye mu rubanza rwa Ndahimana Grégoire, n'urwa Musema zaciwe n'Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda (ICTR), ko muri izo manza urwo Rukiko rwasobanuye ko uregwa yireguje "Sinari mpari", bihuza no kuba ibikorwa aregwa aba atarabigizemo uruhare, ruvuga ko icyo gihe Ubushinjacyaha aribwo buba bufite inshingano yo gutanga ibimenyetso bidashidikanywaho byerekana ko uregwa wireguje "Sinari mpari", yari ahari, bityo bakaba basaba ko izo manza zashingirwaho muri uru rubanza hakemezwa ko Birindabagabo Jean Paul atari i Sake ku matariki yavuzwe haruguru; Urukiko rw'Ubujurire rurasanga iyo myiregurire nta shingiro ifite kuko kuri Birindabagabo Jean Paul imvugo z'abatangabuhamya zashingiweho mu kwemeza ko yari i Sake ku matariki ya 6 – 7 Mata 1994 zitavuguruzanya, ahubwo zuzuzanya.

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[53] Urukiko rw'Ubujurire rurasanga na none imiburanire ya Birindabagabo Jean Paul n'abamwunganira y'uko hagendewe ku mimerere (Status) y'abatangabuhamya aho abatangabuhamya nabo baba barakoze ibyaha bya Jenocide, nabyo Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda rwabitanzeho umurongo mu rubanza rwa Col. Kabirigi Gracien na Bagambiki Emmanuel ko bene ubwo buhamya buba bugomba kwitonderwa kuko buba ari ubwo kwihimbira, ibyo bikaba byaratumye abo bombi ICTRI ibagira abere kubera imyitwarire y'abatangabuhamya ukuntu bagenda bivuguruzanya kandi abaregwa bireguza "Sinari mpari", Urukiko rw'Ubujurire rurasanga iyo myiregurire nayo nta shingiro ifite kuko umuntu wese wagize uruhare mu ikorwa ry'icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk'umutangabuhamya¹⁰. [54] Urukiko rw'Ubujurire rurasanga na none, usibye no kuba mu Rukiko Rukuru nta kibazo cy'ivuguruzanya hagati y'ubuhamya bwa Habimana Raymond n'ubwa Mubiligi Jean Népomuscène, Birindabagabo Jean Paul yatanze ku cyerekeranye n'uko atari i Sake ku matariki ya 6 - 7/04/1994, n'iyi urwo Rukiko ruba rwarasuzumye ubuhamya bwabo, ntacyo rwari guhindura ku byemejwe mu bika bya 18, 19 na 20 by'urubanza rujurirwa byavuzwe haruguru, kuko ubuhamya bwabo butavuguruzanya, kubera ko Habimana Raymond yemeje ko ku wa 07/04/1994, saa kumi n'ebiri n'igice (6h30') za mugitondo, yabonye Birindabagabo Jean Paul n'abasirikare baza mu rugo rwe, akizwa n'uko yanyuze mu muryango w'inyuma ari kumwe n'umugore we, ndetse ko bongeye guhurira imbere yo kwa Rusagara nka saa mbiri (8h00') za mu gitondo,

akizwa n'uko yabihishe mu masaka, nyamara Mubiligi Jean Népomuscène we akaba ntacyo yigeze avuga ku birebana no kuba Birindabagabo Jean Paul yari muri Komini Sake ku matariki ya 6 – 7 Mata 1994. [55] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rw'Ubujurire rurasanga, imvugo z'abatangabuhamya Rurinda Déo, Ntwari Claver, Gakwerere Emmanuel n'ubwa Nkundibigwira Ildephonse, Urukiko Rukuru rwashingiyeho mu kwemeza ko Birindabagabo Jean Paul yari i Sake ku matariki ya 6 - 7 Mata 1994 zitavuguruzanya ku buryo byatesha agaciro ireme ry'ubuhamya bwabo nk'uko Birindabagabo Jean Paul n'abamwunganira babivuga, bityo ingingo ye y'ubujurire y'uko atari i Sake ku matariki ya 6 - 7 Mata 1994 ku buryo atakurikiranwaho icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu byahakorewe kuri ayo matariki, ikaba nta shingiro ifite. II.2. Kumenya niba Birindabagabo Jean Paul atakurikiranwaho icyaha cya jenocide kuko cyakozwe atari muri Komini Kibirira muri Gicurasi 1994 A. Imiburanire ya Birindabagabo Jean Paul [56] Birindabagabo Jean Paul n'abamwunganira bavuga ko Urukiko Rukuru rwamuhamije icyaha cya jenocide n'icyaha cyibasiye inyoko muntu byakorewe muri Komini Kibirira mu kwezi kwa Gicurasi 1994, nyamara muri uko kwezi atari ari muri Komini Kibirira kuko yahageze ahunga ku wa 3 Kamena 1994, ubwicanyi bwararangiyeho aho kuba mu kwezi kwa Gicurasi nk'uko abatangabuhamya b'Ubushinjacyaha babivuga. Anavuga kandi ko uretse kuba atari ahari, yahamijwe ibi byaha hashingiwe ku buhamya bw'abantu batandukanye aribo Munyarukiko

10Reba ingingo ya 48 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

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Léodomir, Kayitare Manassé, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul, Nsabimana Jean bavuze ko yari Kibirira muri Gicurasi 1994 nyamara ubuhamya bwabo buvuguruzanya ku gihe nyirizina yagereye Kibirira. [57] Mu gusobanura uburyo ubwo buhamya buvuguruzanya ku gihe nyirizina yagereye Kibirira, bavuga ko ubuhamya bwa Munyarukiko Léodomir bugenda bwivuguruza ubwabwo ndetse bukanavuguruzanya n'ubwa bagenzi be, ko ubwo yabazwaga mu Bushinjacyaha ku wa 15/05/2014 yavuze ko Birindabagabo Jean Paul yageze Kibirira mu ntangiriro z'ukwezi kwa Gicurasi 1994, ageze mu Rukiko Rukuru ku wa 21/5/2019 avuga ko Birindabagabo Jean Paul yageze Kibirira muri Mata 1994 ko abyibuka neza, ndetse anavuga ko Birindabagabo Jean Paul yahunze mu kwezi kwa Gicurasi 1994 ariko nyuma aza kuvuga ko atabyibuka, ko bimwe mu bikorwa yibanzeho harimo ko Birindabagabo Jean Paul yari ayoboye bariyeri, anayikoraho yitwaje imbunda muri Mata 1994 afatanyije na Makerere ndetse no gukwirakwiza gerenade mu baturage, anashishikariza guhiga no kwica abatutsi muri Mata 1994 barimo Nyirinkindi Théoneste wishwe muri Mata 1994 afatanyije na Harerimana Jean. [58] Bakomeza basobanura ko umutangabuhamya Kayitare Manassé avuguruza ibyavuzwe na Munyarukiko Léodomir kuko we abazwa mu Rukiko Rukuru ku wa 21/05/2019 yavuze ko Birindabagabo Jean Paul yageze Kibirira mu kwezi kwa Gicurasi 1994 ku itariki atibuka neza, ubundi yivuguruza ku byakozwe avuga ko Birindabagabo Jean Paul akimara kuhagera ngo yakoresheje inama ariko ko we atari ahari. Aha bakibaza uburyo umuntu utari uhari yemeza ko

yahageze mu kwezi kwa Gatanu, bamubajije igihe Nyirinkindi Théoneste yiciwe avuga ko yishwe mu kwezi kwa Mata 1994, ko byumvikana ko ugendeye ku buhamya bwe Birindabagabo Jean Paul yari ataragera i Kibirira, akibaza ukuntu yababwiye ngo bamuhige kandi atari ahari. [59] Ku byerekeye umutangabuhamya Ndaruhutse Emile, Birindabagabo Jean Paul n'abamwunganira bavuga ko abazwa mu Rukiko Rukuru ku wa 21/05/2019 yasobanuye ko Birindabagabo Jean Paul yageze i Kibirira mu mpera z'ukwezi kwa Kane 1994, ngo ariko akajya agenda agaruka, anavuga ko Nyirinkindi Théoneste yishwe mu mpera z'ukwezi kwa kane 1994 mu matariki ya nyuma. [60] Bakomeza bavuga ko mu manza zaciwe n'Inkiko Gacaca zo mu Murenge wa Nyamisa na Remera, abatangabuhamya bavuzwe haruguru bemeje ko Nyirinkindi Théoneste yiciwe Kibirira muri Mata 1994, hagendewe ku mabwiriza yatanze na Birindabagabo Jean Paul nyamara abo batangabuhamya babajijwe mu Rukiko Rukuru barivuguruzwa, bavuga ko Nyirinkindi Théoneste yishwe muri Gicurasi 1994 ariko ko ibyo bihe byombi bavuga yaba muri Mata cyangwa Gicurasi Birindabagabo Jean Paul yari ataragera muri Kibirira. [61] Bavuga kandi ko n'Urukiko Rukuru narwo rwemeje ko abatangabuhamya bavuguruzanya ku bihe ibikorwa byabereye, aho rwavuze ko uko kuvuguruzanya ari inenge itatuma ubuhamya budahabwa agaciro, ndetse n'Ubushinjacyaha nabwo bukaba bwaremeye ko hari ukuvuguruzanya, ariko ko kutatera gushidikanya ku gihe Birindabagabo Jean Paul yagereye Kibirira bushingiye ku rubanza rwa TPIR rwa Karera François, nyamara bakaba basanga urwo rubanza rutandukanye n'urwa Birindabagabo Jean Paul, kuko muri urwo rubanza abatangabuhamya babwiye Urukiko n'Ubushinjacyaha ko bibeshye, bakanakosora ubuhamya bwabo, bakanavuga ko bibagiwe bitandukanye no mu rubanza rwa Birindabagabo Jean Paul, aho abatangabuhamya bamushinja bivugira ko bibuka neza igihe yagereye Kibirira, ko rero Urukiko rwazasesengura ibika

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by'urubanza rwa Karera François cyane cyane ibika bya 296, 298, 299, 300 na 301 rukabona ko ibyemejwe muri TPIR mu rubanza rwa Karera François bitandukanye n'ibiri muri uru rubanza rwa Birindabagabo Jean Paul. [62] Birindabagabo Jean Paul n'abamwunganira bavuga na none ko ibyo abatangabuhamya bavuga bivuguruzwa n'inyandiko yanditswe na Kabanda Callixte Perezida w'Ishyirahamwe ry'Abarokotse Jenoside i Rukumberi (ARGR)11, aho yandikiye Umuyobozi Mukuru wa Polisi y'igihugu, amumenyesha ikibazo cya Birindabagabo Jean Paul, ko yakoze ibikorwa bya jenoside i Rukumberi hagati y'ukwezi kwa Kane n'ukwa Gatanu 1994 mu cyahoze ari Komini Sake ndetse no muri Kibirira aho yavukaga, akaba yarahishe mu kwezi kwa 6 (Kamena) 1994. Basobanura kandi ko ayo matariki avugwa na Perezida w'Ishyirahamwe ry'Abarokotse Jenoside i Rukumberi ahura n'ayo n'Ubushinjacyaha bwemeje, ubwo bwatangaga ikirego ku ifunga n'ifungurwa ry'agateganyo bugaragaza ko yageze i Kibirira muri Kamena 1994 ndetse ko kuba bwaraje kwisubiraho bukavuga ko bwabikosoye nyuma yo gukora iperereza, ari ugushaka kuyobya Urukiko. [63] Birindabagabo Jean Paul n'abamwunganira bavuga na none ko kuba abatangabuhamya bashingiweho n'Urukiko Rukuru ari abicinyi babyemera kandi bakaba bemera ko ari abafatanyacyaha ba Birindabagabo Jean Paul, ubuhamya bwabo ari ubwo kwitondera nk'uko TPIR yabitanzeho umurongo, ko bene ubwo buhamya bw'abantu bafatanyije kwica buba ari ibihimbano, kandi ko ku bw'ibyo bikwiye gutuma Urukiko rubutesha agaciro nk'uko

byemejwe mu rubanza rwa Bagambiki Emmanuel na Gracien Kabirigi, bityo ko basaba Urukiko rw'Ubujuje kwemeza ko ubu buhamya ntacyo bushingiyeho rukemeza ko atari i Kibirira muri Gicurasi 1994. [64]

[64] Mu gusozza, Birindabagabo Jean Paul n'abamwunganira basabye ko abatangabuhamya batashingiyeho n'Urukiko Rukuru barimo Rwagasana, Nibonshuti Protogene, Karegeya Théophile, Harerimana Jean, Ngendahabware Pierre, Rutaganira Ubushinjacyaha buvuga ko baza bashimangira ibyavuzwe na Kayitare Manassé, Munyarukiko Léodomir, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean, Urukiko rw'Ubujuje rudakwiye kongera gusuzuma ubwo buhamya batanga kuko bazanwa n'Ubushinjacyaha nk'abantu bashya mu bujuje kandi ataribwo bwajuriye. B. Imiburanire y'Ubushinjacyaha [65] Ubushinjacyaha buvuga ko imiburanire ya Birindabagabo Jean Paul y'uko yavuye Sake ku wa 03/06/1994, ko ari nabwo yageze Kibirira intambara yarangiye, ko abamushinja ko yahageze mbere y'iyi tariki bivuguruzwa nta shingiro yababwira, kuko kuba avugaga ko kwivuguruzwa kw'abo batangabuhamya gushingiyeho ku kuba Munyarukiko Léodomir abazwa mu Bushinjacyaha yaravuye ko Birindabagabo Jean Paul yageze Kibirira muri Gicurasi 1994, mu gihe abazwa mu Rukiko Rukuru ku wa 21/05/2019 yavuye ko yahageze muri Mata 1994 atari ukwivuguruzwa kwatera gushidikanywa ku gihe Birindabagabo Jean Paul yahagereye kuko, mu gika cya 42 na 43 by'urubanza rujuzirirwa, Urukiko Rukuru rwavuye ko ukunyuranya ku matariki kutafatwa nk'ingenze ikabije yatesha agaciro ubu buhamya bwatanzwe n'abari mu bitero ku ruhande rumwe n'abarokotse ubwicanyi ku rundi ruhande, cyane cyane ko kwibuka neza itariki ibikorwa byabereyeho mu gihe cy'ubwicanyi biba bitoroshye, ko rero ugereranyije n'igihe ibintu byabereye

11 Association des Rescapés du Génocide de Rukumberi.

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n'igihe ubuhamya bwatangiye haciyemo igihe kirekire bikaba byatuma kudahuza neza amatariki yegeranye bitafatwa nko gushidikanywa kurengera uregwa, cyane ko Mata na Gicurasi ari amezi abiri yegeranye, uwaba yarahageze mu mpera za Mata n'uwahageze mu ntangiro za Gicurasi baba basa n'abahagereye rimwe. [66] Ubushinjacyaha buvuga kandi ko uwo murongo ari wo wafashwe na TPIR12 mu rubanza rwa François Karera aburana n'Ubushinjacyaha, ku rupapuro rwa 77, mu gika cya 248, aho urwo Rukiko rwavuye ko ugereranyije n'igihe gishize ndetse no kuba umutangabuhamya ashobora kwibagirwa, Urukiko rutitaye cyane ku kunyuranya ku matariki avugwa ku birebana n'abasirikare bari bahari¹³, byumvikana rero ko Munyarukiko Léodomir ashobora kwitiranywa aya mezi yombi cyane ko anegeranye, ko icy'ingenzi ari ukureba ko Birindabagabo Jean Paul yari i Kibirira muri Gicurasi 1994 kuko anabishinjwaga n'abandi batangabuhamya benshi Urukiko Rukuru rwashingiyeho nka Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul, na Nsabimana Jean, bese bemeza ko Birindabagabo Jean Paul yageze Kibirira muri Gicurasi 1994. [67] Ku bijyanye n'ibyo Birindabagabo Jean Paul avugaga ko Ubushinjacyaha bwemeye ko Munyarukiko Léodomir yivuguruye, Ubushinjacyaha buvuga ko nta shingiro bifite kuko kuvugaga ko Birindabagabo Jean Paul yageze Kibirira muri Mata 1994, akongera

akavuga ko yahageze muri Gicurasi 1994 atari ukwivuguruza, kuko ireme (substance) ry'ubuhamya bwe ari uko Birindabagabo Jean Paul yari muri Komini Kibirira, bariyeri yashinze no gutegeka ko Nyirinkindi Théoneste ashakishwa akicwa kandi ibi byose abihurizaho n'abandi batangabuhamya batandukanye bagaragajwe, ko kudahuza neza itariki bititwa kwivuguruza ukurikije ibyavuzwe mu rubanza n° RPAA 0117/07/CS Ubushinjacyaha buburana na SGT Biziyaremye na CPL Ngabonziza, mu gika cya 14 Urukiko rw'Ikirenga rwavuze ko, ku birebena n'ubuhamya bwatanzwe, ukwivuguruza kudafatirwa gusa ku magambo umutangabuhamya akoresha cyangwa kudahuza neza imvugo mu gusobanura neza imigendekere y'ibyo atangira ubuhamya, icyangombwa ari uko ireme ry'ibyo avuga (substance) ridahinduka, ko rero Ubushinjacyaha butigeze buvuga ko Munyarukiko Léodomir yivugurujye ku bijyanye n'ireme ry'ubuhamya atanga. [68] Ubushinjacyaha busobanura ko ubuhamya bwatanzwe butavuguruzanya kuko Kazungu Vénant, Ndaruhutse Emile, Nsengamihigo Jean Paul, na Nsabimana Jean bahuriza ku kuba Birindabagabo Jean Paul yarageze Kibirira muri Gicurasi 1994, kandi bikaba bihura n'ibyo Munyarukiko Léodomir yavugiye mu Bushinjacyaha, ko rero abatangabuhamya batavuguruzanya, ko ahubwo buzuzanya cyane ko banahuriza ku gihe yahagereye n'ibikorwa yahakoze birimo gushinga bariyeri no gutegeka ko hashakishwa Nyirinkindi Théoneste akicwa kandi ko byabaye ndetse bikaba bishimangirwa n'ibindi bimenyetso birimo imvugo z'abandi batangabuhamya barimo Rwagasana, Nibonshuti Protogène, Karegeya Théophile, Harerimana Jean, Ngendahabware Pierre, Munyakazi Faustin na Rutaganira Venuste bahuje imvugo n'abo Birindabagabo Jean Paul anenga, kandi bose bakababaramushinje ko yageze Kibirira muri Gicurasi 1994, akanatega ko hashakishwa Nyirinkindi Théoneste, bakamuzana, agatega ko yicwa, ko izi mvugo z'abatangabuhamya zishimangira ko Birindabagabo Jean Paul yageze Kibirira muri Gicurasi 1994 aturutse Kibungo.

12 Tribunal Pénal International pour le Rwanda 13 Compte tenu du temps considérable qui s'est écoulé, et des défaillances possibles de la mémoire des témoins, la chambre n'attache pas d'importance aux divergences concernant les militaires présents”.

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[69] Ubushinjacyaha buvuga ko ikindi kigaragaza ko ibyo aba batangabuhamya bavuga ari ukuri ari uko ayo matariki yo ku wa 03/06/1994 aho Birindabagabo Jean Paul avuga yaviriye Kibungo ajya Kibirira atariyo, ari uko atashoboraga kuba yari akiri Kibungo kandi haramaze gufatwa n'ingabo za RPF14 kera, kubera ko Sake yafashwe ku wa 05/05/1994, Bugesera ifatwa ku wa 15/05/1994, Kabgayi ifatwa ku wa 02/06/1994, ndetse ko Birindabagabo Jean Paul aburana ku wa 31/01/2022 yavuze ko bavuye Sake bajya Gashora ku wa 23/04/1994, bitandukanye n'ibyo avuga ko yavuye Kibungo ku wa 03/06/1994, ko rero nawe uku kwivuguruza kwe nako kwasuzumwa hagamijwe kugaragaza ko ibyo yavuze bidakwiye guhabwa ishingiro. [70] Ku birebana n'imvugo ya Birindabagabo Jean Paul n'abamwunganira ko Ubushinjacyaha nabwo bushyigikira ukwivuguruza aho mu rubanza rw'ifunga n'ifungurwa ry'agateganyo nabwo bwavuze ko Birindabagabo yageze i Kibirira muri Kamena 1994, Ubushinjacyaha bwagaragaje ko mu gihe bwababaga ifunga ry'agateganyo bwari bukiri mu iperereza ariko ko nyuma yo kurirangiza bwasanze BIRINDABAGABO Jean Paul yarageze

Kibirira muri Gicurasi 1994, ko rero adakwiye kubyitwaza kuko mu gihe cy'iperereza hagenda haboneka byinshi bitari byakabonetse mbere, bituma ibintu bihinduka. [71] Ku birebana n'imvugo ya Birindabagabo Jean Paul n'abamwunganira bavuze ko ikigaragaza ko atageze Kibirira muri Gicurasi 1994 ari ibarwa ya Kabanda Callixte Perezida w'Ishyirahamwe ry'Abarokotse Jenoside i Rukumberi (ARGR) yanditse agaragaza ko Birindabagabo Jean Paul yageze Kibirira muri Kamena 1994, Ubushinjacyaha buvuga ko iyo baruwa atari ikimenyetso kimushinjura kuko itanditswe n'uhagariye abarokotse jenoside ba Kibirira nk'uwari uhari Birindabagabo Jean Paul ahagera, kandi anahaguruka Kibungo akaba atari kumwe na Kabanda Callixte, kuko uyu yihishaga ndetse ayo makuru akaba yarayatanze nta perereza rihagije ryakozwe byatuma yitwa ay'ukuri, bugasanga rero iyo baruwa itashingirwaho ngo hemezwe ko Birindabagabo Jean Paul yageze Kibirira muri Kamena 1994, mu gihe abatangabuhamya bari bahibereye bemeje ko yahageze muri Gicurasi 1994, bagasobanura n'uburyo yahageze n'uko yari yambaye n'ibyo yari yitwaje, kuko bo bamubonye imbonankubone. [72] Ku birebana n'imvugo ya Birindabagabo Jean Paul yo kuba Ubushinjacyaha bwazanye abandi batangabuhamya Urukiko Rukuru rutigeze rushingiraho bagasaba ko imvugo zabo zitashingirwaho, Ubushinjacyaha buvuga ko ari ukwigiza nkana kubera ko ibimenyetso Ubushinjacyaha bwashingiyeho butanga ikirego byose biri muri dosiye kandi bigomba kwitabwaho kugira ngo ukuri kujye ahagaragara, ko uretse ibyo bimenyetso bwatanze, n'iyi haboneka n'ibindi butaburanishije mu nkiko zombi zibanza bubona byagirira akamaro Urukiko, nta cyabuza ko nabyo bubizana kandi Urukiko rukabishingiraho kuko nta tegeko ribibuza. Mu gusoza, busaba uru Rukiko kudaha agaciro impamvu zose Birindabagabo Jean Paul n'abamwunganira bashingiraho bavuga ko atari ari i Kibirira muri Gicurasi 1994. UKO URUKIKO RUBIBONA [73] Ingingo ya 3 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo iteganya ko buri muburanyi agomba kugaragaza ukuri, kw'ibyo aburana.

14 Rwandan Patriotic Front.

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[74] Ingingo ya 107, igika cya 1, y'Itegeko no 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ivuga ko Ubushinjacyaha, uwakorewe icyaha cyangwa se abamufiteho uburenganzira iyo baregeye indishyi z'akababaro cyangwa biregeye umuburanyi, ni bo bagomba gutanga ibimenyetso byemeza icyaha. [75] Nk'uko byasobanuwe haruguru kuri "Sinari mpari" ya Sake, yaba ingingo ya 107 n'imanza zaciwe na TPIR, byasobanuye neza ko ari Ubushinjacyaha bugomba gutanga ibimenyetso byemeza icyaha muri rusange, by'umwihariko ko ari Ubushinjacyaha bukomeza gutanga ibimenyetso bidashidikanywaho byemeza ko uregwa yari aho icyaha cyakorewe mu gihe umuburanyi aburanisha "Sinari mpari" (alibi)¹⁵, ko ariko ukurikiranyweho icyaha uvuga ko atari aho icyaha cyakorewe mu gihe runaka ku buryo atari kubasha gukora ibyaha asigarana inshingano zo kugaragaza gusa ko atari ahakorewe icyaha¹⁶. [76] Nk'uko byasobanuwe haruguru kandi kuri "Sinari mpari" ya Sake, mu rubanza rwa Musema Alfred, Urukiko Mpuzamahanga rwashyiriweho u Rwanda rwasobanuwe ko "... iyo uregwa yiyambabaje

imyiregurire ya “Sinari mpari” (alibi) mu buryo bwemewe, Porokireri ari we ugomba kwerekana, ku buryo budashidikanywaho, ko nta shingiro ifite, ku buryo iyo atabikoze, bitera Urugereko gushidikanya ku byo avuga. Ariko, uregwa akaba ariwe ugomba guhitamo uburyo bwo kwiregura kugira ngo ateze abacamanza gushidikanya ku byerekeye kumwitirira ibikorwa bivugwa, ibyo akabikora atanga ibimenyetso bigaragaza cyangwa bishyigikira imyiregurire ya “Sinari mpari”¹⁷. [77] Ku birebana n’uburyo Birindabagabo Jean Paul yireguye kuri “Sinari mpari”, Urukiko Rukuru rwagaragaje ko imyiregurire ye ya “Sinari mpari” ishingiyeye ku kuba avuga ko yageze i Kibirira ahunga ku wa 3 Kamena 1994 ubwicanyi bwararangiye, aho kuba mu kwezi kwa Gicurasi nk’uko abatangabuhamya b’Ubushinjacyaha babivugaga nta shingiro ifite, kuko izi mvugo ze ubwazo zidatuma haba ugushidikanya ku kirego cy’Ubushinjacyaha, mu gihe ibimenyetso

15 Case n° ICTR-99-54A Kamuhanda Jean de Dieu Appeal Judgement, 19 September 2005, para. 38 : “When an alibi is submitted by the Accused, the burden of proof rests upon the Prosecution to prove its case beyond a reasonable doubt in all aspects. Indeed, the Prosecution must prove “that the accused was present and committed the crimes for which he is charged and thereby discredit the alibi defence”. If the alibi is reasonably possibly true, it will be successful” ; Case n° ICTR-05-88-A Kalimanzira Callixte, Appeal Judgement, 20 October 2010, para. 67; Case n° ICTR-01-73-A Zigiranyirazo Protais, Appeal Judgement, 16 November 2009, paras. 17, 18 ; Case n° ICTR-99-52-A Nahimana et al., Appeal Judgement, 28 November 2000, para. 414 ; Case n° ICTR-96-14-A Niyitegeka Eliézer, Appeal Judgement, 9 July 2004, para. 60; Case n° ICTR-96-3-A Rutaganda George, Appeal Judgement, 26 May 2003, para. 172; Case n° ICTR 97-36A-A Munyakazi Yussuf Appeal, Judgement, 28 September 2011, para. 24; Case n° ICTR- 01-68-A Ndahimana Grégoire, Appeal Judgement, 16 December 2013, para. 91; Case n° IT-98-29/1-A MILOŠEVIĆ Dragomir, Appeal Judgement, 12 November 2009, para. 287; Case n° IT 98-32/1-A Lukić & Lukić et al., Appeal Judgement, 4 December 2012, paras. 72. 361. 16 Case n° ICTR-OI-68-A Ndahimana Grégoire, Appeal Judgement, 16 December 2013, para. 91. “The Appeals Chamber recalls that an accused does not bear the burden of proving his alibi beyond reasonable doubt. Rather, he must simply produce evidence tending to show that he was not present at the time of the alleged crime. If the alibi is reasonably possibly true, it must be accepted. ” Where an alibi is properly raised, the Prosecution must establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true”. 17 Urubanza n° -96-13-A rwa MUSEMA Alfred n’Ubushinjacyaha, rwaciye ku wa 25 Gashyantare 2014, impapuro za 110-111, igika cya 201 : In other words, when the alibi has been properly raised, the onus is on the Prosecution to disprove it beyond a reasonable doubt failing which the Prosecution case would raise a reasonable doubt as to the accused’s responsibility. However, “it is up to the accused to adopt a defence strategy enabling him to raise a doubt in the minds of the Judges as to his responsibility for the said crimes, and this, by adducing evidence to justify or prove alibi.

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Ubushinjacyaha butanga bishingiye ku buhamya bw'abantu bemeza ku buryo budashidikanywaho ko bamubonye mu gihe n'ahantu ibyaha aregwa byakorewe. [78] Mu gika cya 28 cy'urubanza rujuririrwa, Urukiko Rukuru rwavuze ko kuba mu iburanisha ku ifunga n'ifungurwa ry'agateganyo Umushinjacyaha yaba yaravuze ko Birindabagabo Jean Paul yageze Kibirira muri Kamena 1994, ariko mu rubanza mu mizi akavuga ko yari i Kibirira mu kwezi kwa Gicurasi 1994, bitafatwa nko kwivuguruza kuko mu gihe cy'iburanisha ku ifunga n'ifungurwa by'agateganyo iperereza riba rigikorwa ku buryo inyandiko itanga ikirego ishobora kuzamo ibindi byuzuza cyangwa bikosora ibyari byagezweho mbere. [79] Mu gika cya 28 cy'urubanza rujuririrwa, Urukiko Rukuru rwavuze kandi ko imanza z'Inkiko Gacaca Birindabagabo Jean Paul ashingiraho avuga ko abatangabuhamya bivuguruza ku gihe yagereye i Kibirira zateshejwe agaciro nk'uko biteganywa n'ingingo ya 8 y'Itegeko Ngenga n° 04/2012/OL ryo ku wa 15/06/2012 rikuraho Inkiko Gacaca, rikanagena uburyo bwo gukemura ibibazo byari mu bubasha bwazo iteganya ko umuntu wohererejwe u Rwanda n'Igihugu cy'amahanga kugira ngo aburanishwe, yari yarakatiwe n'Inkiko Gacaca, aburanishwa n'Urukiko rubifitiye ububasha, icyemezo cyari cyaramufatiwe n'Inkiko Gacaca kibanje guteshwa agaciro n'urwo Rukiko. [80] Birindabagabo Jean Paul n'abamwunganira bavuga ko atari i Kibirira muri Gicurasi 1994, ko abatangabuhamya batandukanye bamushinja aribo Munyarukiko Léodomir, Kayitare Manassé, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul, Nsabimana Jean bivuguruza ku gihe nyacyo yagereye i Kibirira haba ku byo bavugiye mu Nkiko Gacaca no kubyo bavugiye mu Rukiko Rukuru, ku ibaruwa Kabanda Callixte Perezida w'Ishyirahamwe ry'Abarokotse Jenoside i Rukumberi (ARGR) yandikiye Umuyobozi wa Polisi y'Igihugu ihamya ko yageze i Kibirira muri Kamena 1994, ndetse n'ibyo Ubushinjacyaha bwavuze mu nyandiko yayo itanga ikirego ku ifunga n'ifungura ry'agateganyo, ivuga ko Birindabagabo Jean Paul yageze i Kibirira muri Kamena 1994, akaba ari nabyo ashingiraho avuga ko yageze muri Komine Kibirira mu kwezi kwa Kamena 1994. [81] Mu Bugenzacyaha, umutangabuhamya Munyarukiko Léodomir (cote ya 264) yavuze ko Nyirinkindi Théoneste yiciwe kuri bariyeri ya Birindabagabo Jean Paul hari mu kwezi kwa 5 (Gicurasi) 1994 ndetse ko ari ko kwezi Birindabagabo Jean Paul yari yajemo aturutse aho yari atuye i Kibungo. Yongeye kubazwa mu Bugenzacyaha ku wa 17/06/2015 ntiyagira icyo avuga ku byerekeye igihe Birindabagabo Jean Paul yagereye i Kibirira, uretse ko yasubiyemo ko yagize uruhare mu rupfu rwa Nyirinkindi Théoneste aho bamugejeje kuri bariyeri abasaba kujya kumwicira ku ruzi (cote 578). Yongeye kubazwa mu Rukiko Rukuru avuga ko Birindabagabo Jean Paul yageze Kibirira mu kwezi kwa 4 (Mata) ariko ko hashize igihe gito ahita ahunga, naho abajijwe igihe Nyirinkindi Théoneste yapfiriye avuga ko yapfuye mu kwezi kwa kane mu mpera zako uretse ko atabyibuka neza, ariko ko bamwishe hashize iminsi nk'itatu barahunga¹⁸. [82] Mu Bugenzacyaha umutangabuhamya Kayitare Manassé yabajijwe ku wa 16/05/2014, yongera kubazwa mu Bushinjacyaha ku wa 17/06/2015 ntiyagira icyo avuga ku bijyanye n'igihe Birindabagabo Jean Paul yagereye i Kibirira uretse kwemeza ko yagiye mu gitero cyajyanye Nyirinkindi Théoneste kuri bariyeri ya Birindabagabo Jean Paul akaba ari naho yiciwe (cote 42- 43 na 565-566). Yongeye kubazwa mu Rukiko Rukuru asubiza ko Birindabagabo Jean Paul yageze

18 Inyandikomvugo y'iburanisha ku wa 21/05/2019, urupapuro rwa 4.

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i Kibirira mu kwezi kwa 5 (Gicurasi) ku itariki atibuka neza, anahamya ko yari kumwe na Munyarukiko Léodomir¹⁹. [83] Mu Bugenzacyaha, umutangabuhamya Ndaruhutse Emile yavuze ko Birindabagabo Jean Paul yageze i Kibirira mu kwezi kwa 5 (Gicurasi) 1994 (cote 284). Yongeye kubazwa mu Rukiko Rukuru, avuga ko Brindabagabo Jean Paul yageze i Kibirira mu mpera z'ukwezi kwa 4 (Mata) ariko ko yajyaga agenda akagaruka²⁰. [84] Mu ibazwa rye mu Bugenzacyaha, umutangabuhamya Harerimana Jean yavuze ko Birindabagabo Jean Paul yageze i Kibirira mu kwezi kwa 5 (Gicurasi) 1994 (cote 287). [85] Mu ibazwa rye mu Bugenzacyaha, umutangabuhamya Kazungu Vénant yavuze ko BIRINDABAGABO Jean Paul yaje mu ntangiriro z'ukwezi kwa 5 (Gicurasi) ahita ashinga bariyeri muni y'iwabo (cote 229). [86] Mu Bugenzacyaha, umutangabuhamya witwa Nsengamihigo Jean Paul yavuze ko Birindabagabo Jean Paul yageze i Kibirira mu ntangiriro za Gicurasi 1994. [87] Muri dosiye hagaragaramo ibaruwa yo ku wa 30/01/2015, Kambanda Callixte Perezida w'Ishyirahamwe ry'Abarokotse Jenoside i Rukumberi (ARGR) yandikiye Umuyobozi Mukuru wa Police y'Igihugu, ifite impamvu yiswe "ikibazo cya Birindabagabo Jean Paul", amugaragariza ko yakozwe Jenoside muri Rukumberi (Komini Sake) hagati y'ukwezi kwa 4 (Mata) n'ukwa 5 (Gicurasi) 1994 ndetse no muri Komini Kibirira mu kwezi kwa 6 (Kamena) 1994, ndetse ko yakatiwe igihano cya burundu y'umwihariko n'Inkiko Gacaca zo muri ibyo bice, anasaba ko yafungwa akarangiza ibyo bihano yahawe, ndetse haba hari ibindi byaha atakurikiranyweho, akaba yaburanira aho yakoreye ibyaha i Rukumberi (cote 155). [88] Muri dosiye hagaragaramo kandi inyandiko itanga ikirego ku ifunga n'ifungura ry'agateganyo muri dosiye no DP 140 Kgli yo ku wa 26/01/2015 yiswe "umwanzuro kuri dosiye" igaragaza ko Birindabagabo Jean Paul amaze kwica no kurimbura Abatutsi i Kibungo, mu kwezi kwa 5 (Gicurasi) 1994, yahungiyeye Kibirira aho yakomereje ubwicanyi ashinga bariyeri aranayigenzura ndetse hicirwa abatutsi benshi (cote 410), ko ariko mu rubanza ku ifunga n'ifungura ry'agateganyo, Ubushinjacyaha bwavugaga ko Birindabagabo Jean Paul yageze muri Kibirira muri Kamena 1994 mu gihe nyamara mu iburana ry'urubanza mu mizi bwavuze ko yageze i Kibirira muri Gicurasi 1994. [89] Muri dosiye hari icyemezo no 2 mu rubanza n° RP/GEN 0004/16/TGI/ Ngoma cyafashwe n'Urukiko Rwisumbuye rwa Ngoma ku wa 09/03/2016 cyatesheje agaciro kinavanaho imanza zaciwe n'Inkiko Gacaca z'Imirenge ya Nyamisa na Nshili bisabwe n'Ubushinjacyaha binashyigikiwe na Birindabagabo Jean Paul. [90] Ku birebana n'imiburanire ya Birindabagabo Jean Paul y'uko abo batangabuhamya bavugiye mu Nkiko Gacaca ko yageze muri Kibirira muri Mata 1994, ubwo Nyirinkindi Théoneste yicwaga icyo gihe, aho kuba yari ari i Kibirira muri Gicurasi 1994 nk'uko byemejwe n'Urukiko Rukuru, Urukiko rw'Ubujurire rurasanga rutakwirirwa rusuzuma izo mvugo abo batangabuhamya

19 Inyandikomvugo y'iburanisha ku wa 21/05/2019, urupapuro rwa 9. 20 Inyandikomvugo y'iburanisha ku wa 21/05/2019, urupapuro rwa 14.

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bavugiye mu Nkiko Gacaca, mu gihe imanza zaciwe n'Inkiko Gacaca zateshejwe agaciro ku rwego rwa mbere nk'uko byemejwe n'Urukiko Rukuru. [91] Urukiko rw'Ubujurire rurasanga Ubushinjacyaha bwaratanze ibimenyetso bigaragaza ko Birindabagabo Jean Paul yari i Kibirira mu gihe ibyaha ashinjwa byakorwaga, bikaba rero bihuje n'ibiteganywa n'ingingo ya 107, igika cya 1, y'Itegeko no 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ivuga ko Ubushinjacyaha, (...), aribwo bugomba gutanga ibimenyetso byemeza icyaha nk'uko byanemejwe mu manza zaciwe na TPIR zavuzwe haruguru, aho zisobanura ko no mu gihe haburanisha "Sinari mpari" ari bwo bukomeza gutanga ibimenyetso byemeza icyaha, naho Birindabagabo Jean Paul n'abamwunganira bo bakavuga ko abatangabuhamya bivuguruza ku gihe yagereye Kibirira, bashaka kumvikanisha ko atakurikiranwaho ibyaha byakorewe muri Komini Kibirira mu kwezi kwa Gicurasi 1994 kuko atari ahari, ku bw'ibyo, uru Rukiko rukaba rukwiye kubanza gusuzuma niba koko abo batangabuhamya baba bivuguruza ndetse bakanavuguruzanya hagati yabo ku birebana no kuba Birindabagabo Jean Paul yari ari muri Komini Kibirira mu kwezi kwa 5 (Gicurasi) 1994. [92] Urukiko rw'Ubujurire rurasanga invugo z'abatangabumya batanzwe n'Ubushinjacyaha bavugiye mu Rukiko Rukuru zihuriza ku kuba Birindabagabo Jean Paul yari ari muri Komini Kibirira mu kwezi kwa 5 (Gicurasi 1994) kuko yaba Munyarukiko Léodomir, Kayitare Manassé, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul, Nsabimana Jean nta n'umwe wahakanye ko muri icyo gihe (ukwezi kwa Gicurasi 1994) Birindabagabo Jean Paul yari ari muri Komini Kibirira, ahubwo icyo batandukaniraho n'igihe yagereye i Kibirira aho bamwe barimo Munyarukiko Léodomir na Ndaruhutse Emile babwiye Urukiko ko yahageze mu kwezi kwa 4 (Mata), naho abandi barimo Kayitare Manassé, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean, bose bagahuriza hamwe mu kwemeza ko yahageze mu kwezi kwa 5 (Gicurasi), ariko muri bose hakaba nta n'umwe wivuguruza cyangwa ngo avuguruzwe undi ku kuba Birindabagabo Jean Paul yari ari i Kibirira mu kwezi kwa Gicurasi 1994 cyangwa se ngo avuge ko yari atarahagera, ku bw'ibyo imiburanire ya Birindabagabo Jean Paul y'uko abo batangabuhamya bivuguruza ku kuba yari ari i Kibirira muri Gicurasi 1994 ikaba nta shingiro ifite. [93] Urukiko rw'Ubujurire rurasanga ariko kandi Birindabagabo Jean Paul n'abamwunganira batakwitwaza ko abatangabuhamya Munyarukiko Léodomir na Ndaruhutse Emile bavuze ko yageze Kibirira muri Mata 1994 ngo babishingireho bavuga ko atakurikiranwaho ibyaha byakozwe mu kwezi kwa 5 (Gicurasi 1994) kuko ikiburanwa muri uru rubanza atari itariki nyirizina yagereye i Kibirira, ko ahubwo ari ukumenya niba mu kwezi kwa 5 (Gicurasi 1994) yari ari i Kibirira, kandi akaba atagaragaza ko haba hari abatangabuhamya bavuguruzanya ku kuba yari ari i Kibirira muri Gicurasi 1994, bityo kuba rero Urukiko Rukuru rwarashingiye ku buhamya bw'abo batangabuhamya rukemeza ko Birindabagabo Jean Paul yari ari i Kibirira muri Gicurasi, bigaragaza ko akwiye gukurikiranwaho ibyaha byakorewe i Kibirira muri uko kwezi. [94] Urukiko rw'Ubujurire rurasanga kandi kuba hari aho mu buhamya bwe Munyarukiko Léodomir yavuze ko Nyirinkindi Théoneste yapfuye mu mpera z'ukwezi kwa kane 1994, akongeraho ko ariko ko atabyibuka neza bitatesha agaciro ubuhamya bwe bwashobanuye neza mu yandi mabazwa ye ko Nyirinkindi Théoneste yiciwe kuri bariyeri ya Birindabagabo Jean Paul mu kwezi kwa 5 (Gicurasi) 1994, ndetse ko ari nako kwezi Birindabagabo Jean Paul yari yajemo aturutse aho yari atuye i

Kibungo, kuko kuba Munyarukiko Léodomir anyuranya ku matariki Nyirinkindi Théoneste yapfiriyeho bitafatwa nk'inenge ikabije yatesha agaciro ubuhamya bwe,

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mu gihe mbere yari yasobanuye neza ko Birindabagabo Jean Paul yari ari i Kibirira muri Gicurasi 1994, cyane cyane ko igihe yavugaga ko Nyirinkindi Théoneste yishwe muri Gicurasi 1994 yanongeyeho ko atabyibuka neza, kuko harebwe igihe gishize hagati y'igihe baboneye Birindabagabo Jean Paul muri 1994 n'igihe batangiye ubuhamya mu nzego z'iperereza no mu Nkiko babarijwemo muri 2007, 2014, 2015 na 2019 hari hashize imyaka irenga 23, bikaba biba bitoroshye kwibuka buri kintu cyose cyabaye n'amatariki cyabereyeho, cyane cyane ku mezi akurikiranye nka Mata na Gicurasi. Iby'uko umutangabuhamya atakwibuka buri cyose cyabaye n'amatariki igikorwa cyabereyeho iyo hashize igihe kinini bikaba byaranemejwe mu rubanza rwa KARERA François rwaciwe na TPIR21. [95] Urukiko rw'Ubujurire rusanga kandi kuba Ndaruhutse Emile mu Bugenzacyaha yaravuze ko Birindabagabo Jean Paul yageze i Kibirira mu kwezi kwa 5 (Gicurasi) 1994 (cote 284) naho mu Rukiko Rukuru, akavuga ko Birindabagabo Jean Paul yageze i Kibirira mu mpera z'ukwezi kwa 4 (Mata) ariko ko yajyaga agenda akagaruka, bitafatwa nk'inenge ikabije yatesha agaciro ubuhamya bwe, kuko harebwe igihe gishize hagati y'igihe abatangabuhamya baboneye Birindabagabo Jean Paul i Kibirira muri 1994 n'igihe batangiye ubuhamya mu nzego z'iperereza no mu Nkiko babarijwemo muri 2007, 2014, 2015 na 2019 hari hashize imyaka irenga 23, bikaba biba bitoroshye kwibuka buri kintu cyose cyabaye n'amatariki cyabereyeho cyane cyane ku mezi akurikiranye nka Mata na Gicurasi nk'uko byasobanuwe haruguru. Iby'uko na none umutangabuhamya atakwibuka buri cyose cyabaye n'amatariki cyabereyeho iyo hashize igihe kinini bikaba byaranemejwe mu rubanza rwa KARERA François rwaciwe na TPIR rwavuzwe haruguru22. [96] Urukiko rw'Ubujurire rurasanga kandi nk'uko byagaragajwe haruguru mu manza zaciwe na TPIR, uregwa uburanisha "Sinari mpari (alibi)" aba agomba kugaragaza ko ibikorwa ashinjwa byakozwe mu gihe atari ari aho byakorewe, ku bw'ibyo rero mu gihe ibyaha BIRINDABAGABO Jean Paul akurikiranweho byakorewe i Kibirira mu kwezi kwa 5 (Gicurasi 1994) akwiye kugaragaza ko muri icyo gihe atari ari i Kibirira nk'uko biteganywa mu ngingo ya 3 y'Itegeko ryerekeye ibimeyetso mu manza n'itangwa ryabyo ryavuzwe ku buryo imyiregurire ye kuri "Sinari mpari" itera gushidikanya ku kuba koko yari ari aho icyaha akurikiranyweho cyabereye. Urukiko rw'Ubujurire rurasanga, nyamara we atarashoboye kuvuguruza ibimenyetso by'Ubushinjacyaha bigizwe n'imvugo z'abatangabuhamya bose bavuzwe haruguru baturije hamwe mu kwemeza ko yari ari Kibirira muri Gicurasi 1994 ndetse nk'uko Urukiko Rukuru rwabibonye, ari nako n'uru Rukiko rubibona, akaba mu myiregurire ye ya "Sinari mpari" atarateye abacamanza gushidikanya ku birebana no kumenya niba koko atari ari i Kibirira muri Gicurasi 1994 nk'uko bivugwa mu manza zaciwe na TPIR zavuzwe haruguru. [97] Ku bivugwa na Birindabagabo Jean Paul n'abamwunganira y'uko yageze i Kibirira mu kwezi kwa 6 (Kamena) 1994 bashingiye ku nyandiko yo ku wa 30/01/2015, Kabanda Callixte, wari Perezida w'Ishyirahamwe ry'Abarokotse Jenocide i Rukumberi (ARGR) yanditse avuga ko Birindabagabo Jean Paul yageze i Kibirira muri Kamena 1994, Urukiko rw'Ubujurire rurasanga iyi nyandiko ubwayo itashingirwaho nk'ikimenyetso kigaragaza ko Birindabagabo Jean Paul atari

21 Urubanza n° ICTR- 01 -74 -T, Le Procureur vs François KARERA, du 7 Décembre 2007, P. 73, Par. 248: “Compte tenu du temps considerable qui s'est écoulé et des défaillances possibles de la mémoire des témoins, la Chambre n'attache pas d'importance aux divergences concernant les militaires présents”. 22 Idem.

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i Kibirira mu kwezi kwa 5 (Gicurasi) 1994, kuko iyo nyandiko Kambanda Callixte yanditse idashobora kuvuguriza ubuhamya bwatanzwe na Munyarukiko Léodomir na bagenzi be biboneye Birindabagabo Jean Paul i Kibirira nk'abari bahibereye muri icyo gihe yahageraga. Byongeye kandi, iyo baruwa ntiyanditswe hagamiye kugaragaza igihe Birindabagabo Jean Paul yagereye i Kibirira, cyane cyane ko yanditswe n'umuntu batajyanye i Kibirira agamije kwemeza igihe nyacyo yahageraye cyangwa se ngo abe ariho yari ari yemeze igihe yahamusangiye. [98] Ku birebana n'imvugo ya Birindabagabo Jean Paul n'abamwunganira y'uko yageze i Kibirira mu kwezi kwa 6 (Kamena) 1994 bashingiye ku byo Ubushinjacyaha bwemeje mu nyandiko itanga ikirego ku ifungwa n'ifungura ry'agateganyo, Urukiko rw'Ubujurire rurasanga iyi mvugo nayo nta shingiro yababwira, kuko inyandiko itanga ikirego igihe haburanywaga urubanza ku ifungwa n'ifungura ry'agateganyo ku wa 26/01/2015 igaragaza ko Birindabagabo Jean Paul amaze gukora akazi ko kwica no kurimbura abatutsi i Kibungo mu kwezi kwa 5 (Gicurasi) 1994, yahungiyeye i Kibirira aho yakomereje ubwicanyi ashinga bariyeri akanayigenzura, ndetse hicirwa abatutsi benshi, ikaba rero igaragaza ko Birindabagabo Jean Paul yageze i Kibirira mu kwezi kwa 5 (Gicurasi) 1994 bitandukanye n'ibyo Birindabagabo Jean Paul n'abamwunganira bavugaga. Ku birebana no kuba mu gihe cy'iburanisha ku ifungwa n'ifungura ry'agateganyo, Ubushinjacyaha bwavuze ko yageze i Kibirira muri Kamena 1994, Urukiko rw'Ubujurire rurasanga nk'uko n'Urukiko Rukuru rwabibonye, icyo gihe hari hagikorwa iperereza ku byaha yaregwaga, bikaba rero nta cyari kubuza ko igihe cy'iburanisha ry'urubanza mu mizi, Ubushinjacyaha bwemeza ko Birindabagabo Jean Paul yari i Kibirira muri Gicurasi 1994 hashingiye ku bindi bimenyetso byabonetse nyuma. [99] Urukiko rw'Ubujurire rurasanga kandi ibivugwa na Birindabagabo Jean Paul by'uko Urukiko Rukuru rutagombaga kwemeza ko yari i Kibirira muri Gicurasi 1994 hashingiye ku buhamya bwatanzwe na Munyarukiko Léodomir, Kayitare Manassé, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean kubera ko bahaniye icyaha cya jenocide nta shingiro ifite, kuko nk'uko biteganywa n'ingingo ya 48 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, umuntu wese wagize uruhare mu ikorwa ry'icyaha ashobora kumvwa nk'umutangabuhamya.

[100] Ku miburanire ya Birindabagabo Jean Paul y'uko Urukiko rw'Ubujurire rutashingira ku batangabuhamya b'inyongera b'Ubushinjacya batumviswe n'Urukiko Rukuru mu kwemeza niba Birindabagabo Jean Paul yari cyangwa atari ari i Kibirira barimo Rwagasana, Nibonshuti Protogène, Karegeya Théophile, Harerimana Jean, Ngendahabware Pierre, Rutaganira, Urukiko rw'Ubujurire rurasanga rutakwirirwa rusuzuma ubuhamya bwabo kubera ko ubwashingiweho haruguru buhagije mu kugaragaza ko Birindabagabo Jean Paul yari i Kibirira muri Gicurasi 1994.

[101] Hashingiwe ku bisobanuro byatanze haruguru, Urukiko rw'Ubujuje rurasanga nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Birindabagabo Jean yari i Kibirira muri Gicurasi 1994 hashingiwe ku buhamya bw'abatangabuhamya bwavuzwe, bityo ingingo ye y'ubujire y'uko atari i Kibirira muri Gicurasi 1994, ku buryo atakurikiranwaho icyaha cya jenocide, ikaba nta shingiro ifite. II.3. Kumenya niba Birindabagabo Jean Paul yarahamijwe ibyaha aregwa hashingiwe ku buhamya buvuguruzanya

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II.3.1. Kumenya niba Birindabagabo Jean Paul yarahamijwe icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu bivugwa ko yakoreye muri Komini Sake hashingiwe ku buhamya buvuguruzanya A. Imiburanire ya Birindabagabo Jean Paul

- [102] Birindabagabo Jean Paul n'abamwunganira bavugaga ko Urukiko Rukuru rutagombaga kumuhamya icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu byakorewe muri Komini Sake kubera ko ubuhamya bwatanze na Rurinda Déo, Ntwari Claver, Gakwerere Emmanuel, Nkundibigwira Ildephonse, Mukinisha Bonaventure, Mukamana Odette, Ngamiye Faustin, Nyinawabega Jeanne d'Arc na Habimana Raymond buvuguruzanya ku birebana n'amatariki ibyo byaha byakoreweho.
- [103] Basobanura ko Rurinda Déo yavuze ko yabonye Birindabagabo Jean Paul mu ijoro ryo ku wa 06/04/1994, saa tatu z'ijoro (21h00), afite imbunda yari avanye i Kigali, ari kumwe na Député Mutabaruka Sylvain hamwe na Rutayisire Evariste wari Burugumesitiri wa Komini Sake, bagiyeye gutangiza ubwicanyi i Rukumberi.
- [104] Naho mu buhamya bwe, Ntwari Claver avugaga ko yabonye Birindabagabo Jean Paul mu gitondo cyo ku wa 07/04/1994, saa kumi n'imwe n'igice (5h30') za mu gitondo, ari mu modoka ye yerekeje i Sake, i Kibungo, anamubona saa yine za mu gitondo avuye i Sake ari kumwe n'abasirikare benshi, yongera kumubona ku manywa ari kumwe n'igitero cy'interahamwe bagiyeye kwica Abatutsi bari bahungiyeye mu Rusengero rwa ADEPR, ariko ko atabibonye n'amaso ye. Bavugaga ko ubuhamya bwa Ntwari Claver butahabwa agaciro kuko uretse ko buvuguruzanya n'ubwa Rurinda Déo, yavuze ibyo yumvanye abandi bantu batigeze babazwa.
- [105] Bavugaga kandi ko ubuhamya bwa Gakwerere Emmanuel butahabwa agaciro kuko buvuguruzanya n'ubwa Rurinda Déo kubera ko yavuze ko mu gitondo cyo ku wa 07/04/1994, saa mbiri zitaragera, yabonye Birindabagabo Jean Paul i Gafunzo ari kumwe n'abasirikare yari avanye i Kibungo, hari na Député Mutabaruka Sylvain wari kumwe n'igitero cyari kivuye kwica kwa Sesonga barangije, bajya kwica Abatutsi i Rukumberi, mu gihe nyamara, hari abatangabuhamya bavuze ko bari batangiriyeye kwica Abatutsi b'i Rukumberi.
- [106] Bavugaga ko ubuhamya bwa Gakwerere Emmanuel butahabwa agaciro kuko uretse ko buvuguruzanya n'ubw'abandi batangabuhamya bavuzwe haruguru, nta kuntu mu gitondo kimwe Birindabagabo Jean Paul yashoboraga kujya kwica Abatutsi i Gafunzo iri muri Mubuga ya mbere iri hafi y'i Burundi, mbere ya saa mbiri, ngo anagaruke muri icyo gitondo

kimwe kwica abandi Batutsi muri Sake kuko kuva i Sake kugera i Kibungo, aho bivugwa ko yari yagiye kuzana abasirikare muri icyo gitondo, hari ibirometero 42, bivuze ko kugenda no kugaruka, ari ibirometero 84, ngo anajye kwica kwa Sesonga, anagabe igitero kwa Niyonshuti Silas.

- [107] Bakomeza bavuga ko ubuhamya bwa Rurinda Déo n'ubwa Nkundibigwira Ildephonse bavuguruzanya ku birebana n'igihe baherewe amabwiriza yo kwica Abatutsi kuko Rurinda Déo avuga ko bayahawe mu ijoro ryo ku wa 06/04/1994, naho Nkundibigwira Ildephonse akavuga ko bayahawe ku wa 07/04/1994, ndetse ko bunavuguruzanya n'ubwa Nyinawabega Jeanne d'Arc wavuze ko mu gitondo cyo ku wa 07/04/1994, Birindabagabo Jean Paul yagiye kwa muramu we witwa Mugabo muri Shori ajyanwe no kugira ngo yumvikane n'abasirikare ku buryo bwo

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kumurindira umutekano, bukanavuguruzanya n'ubwa Habimana Raymond wavuze ko Mugabo yari iwe mu nzu mu gihe cya saa kumi n'ebiri n'igice (6h30').

- [108] Bavuga na none ko Birindabagabo Jean Paul atagize uruhare mu gitero cyabereye kwa Nyagasaza Claver kubera ko ubuhamya bwa Mukamana Odette buvuguruzanya n'ubwa Ngamiye Faustin nk'uko n'Ubushinjacyaha bubivuga kubera ko Mukamana Odette yavuze ko igitero cyo kwa Nyagasaza cyabaye ku wa 12/04/1994, naho Ngamiye Faustin akavuga ko atibuka itariki cyabereyeho, ubundi akavuga ko abizi neza kuko cyabaye ku wa 09/4/1994, ndetse ko n'Ubushinjacyaha buvuguruzanya n'abo batangabuhamya babwo kuko buvuga ko icyo gitero cyabaye ku wa 07/04/1994.
- [109] Bongeyeho ko Birindabagabo Jean Paul atagize uruhare mu bwicanyi bwabereye ku Rusengero rwa ADEPR kuko Mukinisha Bonavanture amushinja avuga ko igitero cyo kuri "Chapelle" cyabaye hagati yo ku wa 9-10/4/1994, naho Mukamana Odette akavuga ko cyabaye ku wa 11/04/1994.
- [110] Birindabagabo Jean Paul yongeyeho ko icyo yemera muri uru rubanza, ari uko muri Mata 1994, nyuma ya saa sita, yatwaraga abasirikare mu modoka ye i Shori, i Rukumberi, i Sake, i Gashora n'ahandi, bahagera, agasigara mu modoka n'abandi basirikare bake, naho abandi bakajya kwica abaturage kuko yumvaga babarasa bakoresheje imbunda nini babaga bazanye muri iyo modoka ye, ndetse ko bukeye bwaho, yabonaga imirambo y'abasivile. B. Imiburanire y'Ubushinjacyaha
- [111] Ubushinjacyaha buvuga ko Urukiko Rukuru rwahamije Birindabagabo Jean Paul icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu, hashingiwe ku mvugo z'abatangabuhamya batandukanye zigaragaza ko yakozwe ibyo byaha igihe yari muri Komini Sake muri Mata 1994 nk'uko rwabisobanuye mu gika cya 42 kugeza ku cya 47 by'urubanza rujuririrwa, ariko ko Birindabagabo Jean Paul n'abamwunganira batagaragaza inenge ziri mu buhamya bwabo.

- [112] Ku birebana n'ubuhamya bwa Rurinda Déo, Ubushinjacyaha buvuga ko bufite agaciro kuko butarimo urujijo kubera ko yasobanuye ko mu ijoro ryo ku wa 06/04/1994 yagiye gusangira inzoga mu kabari na Député Mutabaruka Sylvain na Rutayisire Evariste wari Burugumesitiri wa Komini Sake, ubwicanyi buhita butangira muri iryo joro kubera ko babasomeye urutonde (liste) rw'interahamwe bize imbunda, barangije, babasaba kujya kuzana izindi Nterahamwe zabitojwe neza, barangije, bahita binjira mu modoka ya Birindabagabo Jean Paul bajya kwica Abatutsi bari mu ngo zabo kuko bari bazibwiwe, maze bica Sesonga, Semuhungu, Kagame Alex n'abandi, ariko ko atigeze avuga ko Birindabagabo Jean Paul yavanye imbunda i Kigali.
- [113] Ubushinjacyaha buvuga kandi ko ubuhamya bwa Ntwari Claver bufite agaciro kuko butarimo gushidikanya kubera ko yasobanuye ko yiboneye Birindabagabo Jean Paul ku wa 07/04/1994, mu gihe bitatu (3) bitandukanye: mu gitondo saa kumi n'imwe n'igice (5h30'), igihe uregwa yamunyuzeho yerekeje i Sake, kandi ko yamubonye saa yine za mu gitondo, avuye i Sake ari kumwe n'abasirikare benshi, yongera kumubona ku manywa no ku gicamunsi ari kumwe n'igitero cy'abasirikare n'interahamwe barimo kwica Abatutsi nk'uko n'Urukiko Rukuru rwabisobanuye mu gika ka 19 cy'urubanza rwajuririwe, ariko ko Ntwari Claver atigeze avuga ko "yaba yarabwiwe iby'icyo gitero cyo ku Rusengeru" nk'uko uregwa n'abamwunganyira babivuga.

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- [114] Ubushinjacyaha buvuga ko ubuhamya bwa Gakwerere Emmanuel bufite agaciro kubera ko ativugurujye kuko atashinje Birindabagabo Jean Paul ibikorwa by'ubwicanyi byabaye mu ijoro ryo ku wa 06/04/1994, ko ahubwo yamushinje ibyo yakoze guhera ku wa 07/04/1994 kuko mu Bugenzacyaha no mu Rukiko Rukuru yasobanuye ko mu gitondo cyo ku wa 07/04/1994, yamubonye i Gafunzo ari kumwe n'abasirikare yari avanye i Kibungo, hari na Député Mutabaruka Sylvain wari kumwe n'igitero cyari kivuye kwica kwa Sesonga, ko nyuma y'aho, yamubonye amanukanye n'abaturage bajya kwica Abatutsi baribihishe kwa muganga, ndetse ko yajyanye n'abasirikare kwica Abatutsi i Rukumberi nk'uko uwo mutangabuhamya yabyemeje mu iburanisha ryo ku wa 07/05/2019.
- [115] Ubushinjacyaha buvuga ko ubuhamya bwa Gakwerere Emmanuel bufite agaciro kuko buhuje n'ubwa Nkundibigwira Ildephonse wasobanuye mu iburanisha ryabereye mu Rukiko Rukuru ko mu gitondo cyo ku wa 07/04/1994, yiboneye Birindabagabo Jean Paul i Gafunzo yambaye imyenda ya gisirikare anafite imbunda mu modoka ye yari yanditseho "Twibumbire hamwe Bahinzi", ari kumwe n'abasirikare, ndetse ko yanatanze amabwiriza agira ati: "I Kigali ntimuzi ko ibintu byacitse, Mwe muragenda biguru ntege".
- [116] [116] Ubushinjacyaha busobanura ko kuba Rurinda Déo yaravuze ko bahawe amabwiriza yo kwica Abatutsi mu ijoro ryo ku wa 06/04/1994, naho Nkundibigwira Ildephonse akavuga ko bayahawe ku wa 07/04/1994, ubuhamya bwabo butavuguruzanya kuko ubwicanyi bwabaye mu ijoro ryo ku wa 06/04/1994 rishyira ku wa 07/04/1994, kandi ko nyuma ya saa sita z'ijoro (0h00'), hari habaye ku wa 07/04/1994, kuko abo batangabuhamya bombi batagaragaje isaha

nyakuri Abatutsi biciweho. Bukomeza busobanura ko ikindi kigaragaza ko nta vuguruzanya riri mu buhamya bwabo, ari uko abishe Abatutsi mu bice bitandukanye byo muri Komini Sake, batahawe amabwiriza yo kwica Abatutsi mu ijoro ryo ku wa 06/04/1994 kubera ko batari kumwe bose icyo gihe, ko ahubwo bayahawe mu bihe bitandukanye bitewe n'uko bari batuye ahantu hatandukanye, kandi ko buri wese yagiye avuga igihe yaboneye Birindabagabo Jean Paul n'igihe yamuhereye ayo mabwiriza akanasobanura n'ibikorwa by'ubwicanyi yagiyemo bitewe n'uko bari batuye ahantu hatandukanye kuko bemeje ko ubwicanyi bwatangiye muri Komini Sake ku wa 06/04/1994, bukomeza ku wa 07/04/1994 no ku wa 08/04/1994 kugeza mu mpera z'ukwezi kwa Mata 1994.

- [117] Ubushinjacyaha buvuga na none ko imvugo ya Birindabagabo Jean Paul y'uko atari gutangiza ubwicanyi bw'Abatutsi mu bice bitandukanye byo muri Komini Sake mu ijoro ryo ku wa 06/04/1994, kubera ko atari azi ko uwari Perezida Habyarimana Juvénal yapfuye, kandi ko atashoboraga kugenda muri ibyo bice bitandukanye mu gihe kimwe no mu gihe gito, bitahabwa agaciro kuko ku wa 06/04/1994, Birindabagabo Jean Paul atari i Kigali, ko ahubwo yari muri Komini Sake, aho yatangiye ubwicanyi bwakorewe Abatutsi bitewe n'uko bwari bwateguwe kuva kera, ndetse ko n'imodoka ye nshya ya "Pick Up" yari afite icyo gihe yamufashaga kugenda ibilometero yifuzaga mu gihe gito kuko yashoboraga kugenda ibilometero cumi na bibiri (12 kms) mu gihe kitarenze iminota mirongo itatu (30 minutes).
- [118] Ubushinjacyaha bukomeza busobanura ko ubuhamya bwa Mukinisha Bonaventure bugaragaza ko Birindabagabo Jean Paul yagabye igitero kuri "Chapelle" ya ADEPR ku wa 09/04/1994 no ku wa 10/04/1994, bufite agaciro kuko bwuzuzanya n'ubwa Gakwaya Reverien wemeje ko Birindabagabo Jean Paul yahagabye igitero ku wa 10/04/1994.

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- [119] Ubushinjacyaha bwongeyeho ko kuba Mukamana Odette yaravuze ko igitero cyo kwa Nyagasaza cyabaye ku wa 12/04/1994, naho Ngamije Faustin akavuga ko atibuka itariki neza cyabereyeho, bitatesha agaciro ubuhamya bwabo, kuko icy'ingenzi baturizaho, ari uko icyo gitero cyabaye muri Mata 1994, kandi nk'uko n'Urukiko Rukuru rwabisobanuye mu gika cya 42 cy'urubanza rujuririrwa, ukunyuranya ku matariki ibitero by'ubwicanyi byakoreweho kutafatwa nk'inenge ikabije yatesha agaciro ubuhamya bwatanzwe n'abari muri ubwo bwicanyi ndetse n'ubw'abarokotse jenocide bagaragaje ko Birindabagabo Jean Paul yari muri ibyo bitero, cyane cyane ko kwibuka neza itariki ibyo bikorwa byabereyeho mu gihe cy'ubwicanyi biba bitoroshye igihe ubuhamya bwatanzwe nyuma y'igihe kirekire ubwicanyi bukoze. UKO URUKIKO RUBIBONA
- [120] Ku birebana n'icyaha cya jenocide, ingingo ya 2 y'Amasezerano Mpuzamahanga yo ku wa 09 Ukuboza 1948 agamije gukumira no guhana icyaha cya jenocide yemejwe mu Rwanda binyuze mu Itegeko - Teka no 08/75 ryo ku wa 12/02/1975, ndetse n'ingingo ya 114, agace ka 1o z'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategako ahana, ziteganyako "Icyaha cya Jenocide ari kimwe mu bikorwa bikurikira cyakozwe mu buryo bwateguwe 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 (..).²³

[121] Icyo gisobanuro cy'icyaha cya jenocide gihuje kandi n'ibyemejwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Porokireri na Alfred Musema, aho rwasobanuye ko kugira ngo uregwa ahamwe n'icyaha cya jenocide hagomba gutangwa ibimenyetso bigaragaza ko yari afite igitekerezo cyo kurimbura abantu bose cyangwa igice kimwe cyabo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini.²⁴

[122] Naho icyaha cyibasiye inyokomuntu ni kimwe mu byaha umuco mpuzamahanga (La Coutume Internationale) wemera nk'ibikorwa bibangamira ku buryo bukomeye uburenganzira bw'ibanze bwa muntu nk'uko na TPIR yabyemeje mu rubanza rwa Akayesu Jean - Paul²⁵, kandi bikaba bigomba guhanwa n'ibihugu byose byo ku isi kabone n'ubwo ibyo bikorwa bidateganyijwe mu mategeko yabyo nk'uko ibihugu n'Inkiko Mpanabyaha Mpuzamahanga byaje kubishyira mu mategeko mpanabyaha yabyo, urugero ni nk'aho biteganyijwe mu ngingo ya 7. 2. (g) ya Sitati y'i Roma ishyiraho Urukiko Mpanabyaha Mpuzamahanga yatangiye gukurikizwa ku wa 01/07/2002

23 Iyi ngingo ihuje n'ingingo ya 91 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "Icyaha cya Jenocide ni kimwe mu bikorwa bikurikira, gikozwe kigambiriwe, kigamiye 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 bibabuza kubyara; 5° kubambura ku ngufu urubyaro rwabo ukaruha abandi bantu badahujwe". 24 Urubanza n° ICTR- 96 -13 -A, haburana Porokireri na Alfred MUSEMA rwaciwe na TPIR ku wa 25/02/2014, mu gika cyarwo cya 366. 25 « De l'avis de la Chambre, aussi bien le crime contre l'humanité, déjà puni par les juridictions de Nuremberg et de Tokyo, que le génocide, crime dont le concept même n'a été défini qu'ultérieurement, sont des crimes qui choquent particulièrement la conscience de l'humanité », Affaire No ICTR-96-4-T/Peine/leg/fra, Procureur c/ AKAYEZU Jean

- Paul, p.6.

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nk'ibikorwa bikabije bikozwe ku bushake bibangamiye uburenganzira bw'ibanze kubera impamvu z'ivangura rishingiye ku biranga itsinda umuntu arimo hirengagijwe amategeko mpuzamahanga²⁶. Icyaha cyibasiye inyokomuntu giteganyijwe kandi mu ngingo ya 6, c) ya Sitati ya Nuremberg²⁷, no mu ngingo ya 3 ya Sitati ya TPIR nka kimwe mu bikorwa byibasira inyokomuntu bikorwa mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivile bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko cyangwa idini²⁸, nk'uko byasobanuwe n'Urukiko Rukuru, mu gika cya 58 cy'urubanza rwajuririwe.

- [123] Ku birebana n'igisobanuro cy'icyaha cyibasiye inyoko muntu, ingingo ya 120 y'Itegeko – Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe urubanza rujuririrwa rwacibwaga, iteganya ko "Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare bazira ubwengehugu bwabo, ibitekerezo bya politiki, ubwoko, cyangwa idini: kurimbura (...)"²⁹.
- [124] Naho ingingo ya 65 y'Itegeko no 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, igateganya ko Urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ko ikwiye kwemerwa cyangwa guhakanwa.
- [125] Mu gika cya 42 na 43 by'urubanza rwajuririwe muri uru Rukiko, Urukiko Rukuru rwasobanuye ko n'ubwo hari ivuguruzanya ry'abatangabuhamya ku birebana n'amatariki ibikorwa bigize ibyaha Birindabagabo Jean Paul aregwa byakorewe kuri ADEPR Sake, kuri "Chapelle", ADEPR kwa Gasasira n'ubwicanyi bwakorewe kwa Nyagasaza nk'uko abivuga, ariko ko uko kwivuguruza kwabo kutafatwa nk'inenge ikabije yatesha agaciro ubuhamya bw'abari muri ubwo bwicanyi n'abarokotse jenocide, kuko buhuriza ku kuba Birindabagabo Jean Paul

26 Article 7.2. (g) of Rome Statute of the International Criminal Court: "Persecution means the international and severe deprivation of fundamental rights to international law by reason of the identity of the group or collectivity"; "Par « persécution », on entend le déni international et grave de droits fondamentaux en violation du droit international, pour des motifs liés à l'identité du groupe ou de la collectivité qui en fait l'objet". 27 Article 6 (c) du Statut du Tribunal Militaire International de Nuremberg : « Les Crimes contre l'Humanité : c'est-à-dire l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime ». 28 Article 3, h, du Statut du TPIR, stipule que "Le Tribunal international pour le Rwanda est habilité à juger les personnes responsables des crimes suivants lorsqu'ils ont été commis dans le cadre d'une attaque généralisée et systématique dirigée contre une population civile quelle qu'elle soit, en raison de son appartenance nationale, politique, ethnique, raciale ou religieuse: Persécutions pour des raisons politiques, raciales et religieuses". 29 30 Iyo ingingo ihuje n'ingingo ya 94 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, iteganya ko "Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare: "1° kwica; 2° kurimbura; 3° gushyira mu bucakara; 4° gutwara bunyago cyangwa kubimura ku ngufu aho bari batuye; 5° gufunga umuntu cyangwa kumwambura uburenganzira bwe bwo kujya aho ashaka mu buryo bunyuranyije n'amategeko; 6° kwica urubozo; 7° gusambanya ku gahato, ubucakara bushingiye ku gitsina, gukoresha uburaya ku gahato, guhagarika urubyaro ku gahato cyangwa ikindi gikorwa icyo ari

cyo cyose cy'ihohotera rishingiye ku gitsina risa n'ibimaze kuvugwa; 8° gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiyeye ku rindi vangura iryo ari ryo ryose; 9° kurigisa abantu; 10° ivangura rishingiye ku ibara ry'uruhu; 11° ibindi bikorwa birenze kamere-muntu bisa n'ibimaze kuvugwa bikozwe ku bushake bigamije kubabaza cyangwa kwangiza bikabije umubiri cyangwa ubwenge”.

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yaragaragaye muri ibyo bitero, ko ahubwo ari inenge ntoya zigaragara mu buhamya bwabo ku buryo zitatesha agaciro ireme ryabwo harebwe igihe kinini gishize hagati y'igihe ibikorwa by'ubwicanyi byakoreweho n'igihe ubuhamya bwatangiye kuko bishoboka ko umutangabuhamya atakwibuka neza ibyo atangira ubuhamya nk'uko byemejwe mu manza zaciye na TPIR zirimo urubanza rwa François Karera³⁰, urwa Gatete Jean Baptiste³¹ n'urwa Seromba Athanase³².

[126] Urwo Rukiko rwasobanuye kandi ko ubuhamya bwatanzwe na Babuziyobajya na MUDAGE butavuguruzanya, ko ahubwo bwuzuzanya ku birebana n'igitero cyo kuri ADEPR Rukumberi, kuko Birindabagabo Jean Paul yakigaragayemo nk'uwari uyoboye abandi bicanyi nk'uko rwabisobanuye mu gika cya 44 cy'urubanza rujuririrwa.

[127] Mu gika cya 45 cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko ubuhamya bwatanzwe ku iyicwa rya Munyaneza Callixte na mushiki we Nyirahabineza ryabereye kuri bariyeri ya Karengye (Ntahorutaba Jean de Dieu, Kamuhanda na Ngomayubu Célestin)³³ butavuguruzanya ku birebana n'uruhare Birindabagabo Jean Paul yagize mu rupfu rwabo, ko ahubwo bugaragaza ko ariwe wafashe umwanzuro w'uko abo bana bicwa, baranicwa, nyuma yo gukubita Munyaneza Callixte “grenade” mu mutwe.

[128] Na none mu gika cya 59 cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko Birindabagabo Jean Paul yagize uruhare mu iyicwa ry'Abatutsi bari hirya no hino mu ngo zabo, ku mabariyeri, no ku mavuriro, ubwo yabaga ari mu bitero by'abacanyi bagizwe n'abasirikare, interahamwe n'impunzi z'Abarundi, kuko bishe icyarimwe abantu bagera ku gihumbi na magana inani (1.800) kuri ADEPR Sake, kuri “Chapelle” yo kwa Gasasira, bahiciye Abatutsi bari hagati ya magana abiri (200) na magana ane (400), ku rusengeri rw'Abadivantisiti i Ntende, bahicira Abatutsi bari hagati ya magana ane (400) na magana atanu (500), i Rwimibabi bahicira Abatutsi bari hagati y'ijana (100) na magana abiri (200), i Ntovi kwa Ruhumuriza bahiciye Abatutsi barenga ijana (100), kwa Nyagasaza Claver bahicira abarenga magana atatu (300), maze rusanga Birindabagabo Jean Paul yarakoze icyaha cya jenocide kubera ko yari afite umugambi wo kurimbura igice kimwe cy'Abatutsi kubera ubwoko bwabo, n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu kuko ibyo bitero byishe Abatutsi byakozwe n'abantu benshi no mu buryo bwateguwe, byibasiye abaturage benshi batari abasirikari hakoreshejwe intwari za gakondo n'iza kizungu, no kubatwika hagamijwe kwica abantu benshi vuba kandi icyarimwe.

[129] Urukiko rw'Ubugurire rurasanga rutasesengura imvugo z'abatangabuhamya bitwa Babuziyobajya, Mudage, Ntahorutaba Jean de Dieu, Kamuhanda na Ngomayubu Célestin bavuzwe mu bika bya 44 na 45 by'urubanza rujuririrwa, kuko ntacyo Birindabagabo Jean Paul anenga ubuhamya bwabo muri uru rubanza, ahubwo rugomba gusesengura imvugo z'abatangabuhamya bitwa Rurinda Déo , Ntwari Claver, Gakwerere Emmanuel, Nkundibigwira Ildephonse, Mukinisha Bonaventure, Mukamana Odette, Ngamije Faustin, Nyinawabega Jeanne

30 Urubanza n° ICTR- 01 -74 -T, haburana Porokireri na François KARERA rwaciwe na TPIR ku wa 07/12/2007, p.73, par. 248. 31 Urubanza n° ICTR- 2000 -61 -T, haburana Porokireri na GATETE Jean Baptiste rwaciwe na TPIR ku wa 31/03/2011, page. 210 32 Urubanza n° ICTR- 2001 -66-I, haburana Porokireri na SEROMBA Athanase rwaciwe na TPIR ku wa 13 Ukuboza 2006, page 44. 33 Abo batangabuhamya bavugwa mu gika cya 37 cy'urubanza rujuririrwa.

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d'Arc na Habimana Raymond batangiye mu Nzego z'iperereza no mu Nkiko zabanje kuko arizo Birindabagabo Jean Paul anenga muri uru rubanza.

- [130] Mu buhamya bwe, Rurinda Déo , wari ushinze kurinda umutekano wa Député Mutabaruka Sylvain mu gihe cya jenocide, yasobanuye ko ku wa 06/04/1994, saa tatu z'ijoro, Birindabagabo Jean Paul, Député Mutabaruka Sylvain na Rutayisire Evariste wari Burugumesitiri, bamaze kumenya ko indenge ya Habyarimana Juvénal yahanutse, bahamagaje interahamwe zose zize imbunda zinjira mu modoka ya Birindabagabo Jean Paul bajya kuzana abasirikare barindwi
- (7) mu kigo cya gisirikare cyabaga ahitwa i Mbuye, bagaruka kwa Député Mutabaruka Sylvain, bababwira ingo z'Abatutsi bagomba kwicwa, maze bica Kanyamibwa, Sesonga, Semuhungu, Kagame Alex, ndetse ko bukeye bwaho, Birindabagabo Jean Paul na Rutayisire Evariste wari Burugumesitiri bagiye gutangiza ubwicanyi i Rukumberi.
- [131] Hari kandi Ntwari Claver wasobanuye ko ku wa 07/04/1994, saa yine za mu gitondo yiboneye n'amaso ye Birindabagabo Jean Paul azanye abasirikare bane (4), batangira gukubita abantu, bigeze nimugoroba, bagaba igitero ku rusengero rwa ADEPR ruri ahitwa Maswa, ko kubera ko Abatutsi bwirwanyeho uwo munsu, yongeye kuzana n'abasirikare n'interahamwe ku wa 08/04/1994, bica Abatutsi benshi bari bahungiyeye muri urwo rusengero bakoresheje imbunda na "grenades", barangije, babatwikisha "essence".
- [132] Hari na none Gakwerere Emmanuel wasobanuye ko ku wa 07/04/1994, yabonye Birindabagabo Jean Paul azindukiye i Kibungo kuzana abasirikare, noneho ageze i Gafungo ahasanga Député Mutabaruka Sylvain wari kumwe n'igitero cyari kivuye kwica kwa Sesonga, ko Birindabagabo Jean Paul yamanukanye n'igitero cy'abaturage cyagiye kwica Abatutsi bari bihishe kwa muganga, bahageze, ababwira ko abafite imbunda aribo bahinjira, maze Ntampongano abateramo "grenade". Yongeyeho ko Birindabagabo Jean Paul yasize atangije ubwo bwicanyi, ajya kwica Abatutsi i Rukumberi afatanyije

n'abasirikare yari afite.

- [133] Nkundibigwira Ildephonse nawe avuga ko Birindabagabo Jean Paul na Député Mutabaruka Sylvain bakimara kubaha amabwiriza yo kwica Abatutsi, ku wa 07/04/1994, Birindabagabo Jean Paul yabatwaye mu modoka ye yari yanditseho “Twibumbire Hamwe Bahinzi” n'abasirikare batatu (3) bari bafite imbunda, abajyana ku bitaro, bagezeyo, uwitwa Ntampongano ateramo “grenade”, ubwicanyi buhita butangira.
- [134] Mukinisha Bonaventure nawe yasobanuye ko ku itariki atibuka neza, ariko hagati yo ku wa 9-10/04/1994, yabonye Birindabagabo Jean Paul afite imbunda anambaye imyenda ya gisirikare, azana abasirikare bafite imbunda, ashorera abaturage n'interahamwe barasa Abatutsi bari kuri “Chapelle” yo kwa Gasasira barabica, abandi babicisha imihoro n'impiri, ndetse ko nawe yari ahari.
- [135] Mu buhamya bwe, Mukamana Odette avuga ko ku wa 10/04/1994, yiboneye Birindabagabo Jean Paul yambaye imyenda ya gisirikare ari kumwe n'abasirikare benshi bari mu modoka ye kuri “Chapelle” asaba Abahutu kwivangura n'Abatutsi bakareka Gasasira Osée agapfana n'abana be, ko kubera ko banze kwivangura, bahise bagenda, ariko bagaruka bukeye bwaho ku wa 11/04/1994 bica Abatutsi benshi bari bahungiyeye kuri “Chapelle”, banatera kwa Nyagasaza ku wa 12/04/1994. Yongeyeho ko Birindabagabo Jean Paul yashishikarizaga Abahutu kwica Abatutsi, akanahagarikira Abahutu barimo kubica.

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- [136] Hari kandi uwitwa Ngamije Faustin wasobanuye ko yiboneye n'amaso ye Birindabagabo Jean Paul agaba igitero kuri “Chapelle” kwa Gasasira ku wa 09/04/1994 cyaguyemo Abatutsi benshi cyane bagera nko kuri magana abiri (200) bicishijwe amasasu na za “grenades”, barimo Kankera Marie, Kanusu Vianney n'abana be, Gasasira Osée, Mukandahindurwa Claire n'abana be, ndetse ko yanagabye igitero kwa Nyagasaza Claver ari kumwe n'abasirikare yari yazanye mu modoka ye bafatanyije n'interahamwe, ku itariki atibuka neza, ariko ko hari hagati yo ku wa 9 - 11/04/1994, cyaguyemo Abatutsi bari hagati ya mirongo irindwi (70) n'ijana (100) barimo Nyagasaza Claver, Gatsimbanyi Leonidas, Ndekezi Charles n'umugore we, Ntaganda Aimable, Fundi Joseph n'abandi benshi cyane.
- [137] Nyinawabega Jeanne d'Arc yatanze ubuhamya mu Rukiko Rwisumbuye rwa Ngoma, asobanura ko mu gitondo cyo ku wa 07/04/1994, yabonye Birindabagabo Jean Paul ajya kwa muramu we witwa Mugabo kugira ngo yumvikane n'abasirikare ku buryo bwo kumurindira umutekano kubera ko Abatutsi bashize i Sake, bamubuza baza mu rugo rwe, baramukubita, ariko basiga batamurashe.
- [138] Mu buhamya bwe, Habimana Raymond asobanura ko igihe cya jenocide yabonye Birindabagabo Jean Paul ku wa 07/04/1994, saa kumi n'ebiri n'igice (6h30') za mu gitondo ari kumwe n'abasirikare benshi mu modoka ye yari atwaye, bageze iwe, abasirikare bavuye mu modoka bagota inzu ye, ariko ko we n'umugore we bashoboye kubacika banyuze mu muryango w'inyuma, ariko ko abashyitsi basize muri icyo nzu barimo Fidélité na Immaculée

bo kwa Ruberandinda, murumuna we witwaga Dukuzumuremyi Claudien, Mugabo Gaspard na Anaclet wo kwa Gafuku atamenye uko babishe kuko imirambo yabo itaraboneka kuva icyo gihe. Avuga kandi ko nka saa mbiri (8h00') za mu gitondo, yongeye kubona Birindabagabo Jean Paul ari mu modoka ye n'abasirikare imbere yo kwa Rusagara ahita ajya kubihisha mu masaka. Yongeyeho ko n'ubwo atabonye Birindabagabo Jean Paul yica umuntu ku giti cye, ariko ko yagiye mu bitero byinshi byishe abantu benshi i Gituza, Shori, Rubago, Sake na Nshili.

[139] Hashingiwe ku ngingo ya 65 y'Itegeko no 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, iteganya ko ari Urukiko rufite ububasha bwo kwemeza ko ubuhamya bufite agaciro cyangwa butagafite, Urukiko r'Ubujurire rurasanga ubuhamya bwatanzwe na Rurinda Déo , Ntwari Claver, Gakwerere Emmanuel, Nkundibigwira Ildephonse, Mukinisha Bonaventure, Mukamana Odette na Ngamiye Faustin bwavuzwe haruguru, bukwiye guhabwa agaciro kuko bavuga ibyo bazi neza, bahagaze ho, kubera ko bamwe bagize uruhare muri jenocide, naho abandi barayirokoka, kandi icy'ingenzi ari uko bose baturiza ku kuba Birindabagabo Jean Paul yarayoboye ibitero byishe imbaga y'Abatutsi bari bahungiyeye ku rusengeri rwa ADEPR Sake, kuri "Chapelle" kwa Gasasira, mu bitaro (kwa muganga), kwa Nyagasaza Claver, kuri bariyeri y'i Karege n'ahandi, afatanyije n'abasirikare n'interahamwe yari ayoboye icyo gihe, bityo kuba Birindabagabo Jean Paul yarayoboye ibitero byishe Abatutsi benshi cyane bari bihishye ahantu hatandukanye abaziza ubwoko bwabo agamije kurimbura igice kimwe cyabo, bigaragara ko yakozwe icyaha cya jenocide giteganywa n'ingingo ya 2 y'Amasezerano Mpuzamahanga yo ku wa 09 Ukuboza 1948 agamije gukumira no guhana icyaha cya jenocide yemejwe mu Rwanda binyuze mu Itageko - Teka no 08/75 ryo ku wa 12/02/1975, ndetse n'ingingo ya 114 y'Itegeko - Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru nk'uko byemejwe n'Urukiko Rukuru.

[140] Urukiko rw'Ubujurire rurasanga kandi, kuba Birindabagabo Jean Paul yaragabye ibitero rusange kandi bya simusiga ahantu hatandukanye havuzwe haruguru afatanyije n'abasirikare

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n'interahamwe yari ayoboye muri Mata 1994, agamije kurimbura Abatutsi batari abasirikare abaziza ubwoko bwabo nk'uko na Birindabagabo Jean Paul yabyiyemereye imbere y'uru Rukiko, aho yasobanuye ko yajyanaga abasirikare mu modoka ye kuri Komini Sake bakarasa amasasu mu baturage b'abasivire bakoresheje imbunda nini cyane babaga batwaye mu modoka ye nshya, bwacya mu gitondo akabona imirambo yabo, kandi bikaba bigaragara ko ibyo bikorwa by'ubwicanyi yakozwe hirya no hino muri Komini Sake yabikoze ku bwende bwe, bigaragara ko BIRINDABAGABO Jean Paul yakozwe icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu giteganywa n'ingingo ya 120, agace ka 2°, y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, nk'uko byemejwe n'Urukiko Rukuru.

- [141] Urukiko rw'Ubujurire rurasanga nk'uko n'Urukiko Rukuru rwabisobanuye mu bika bya 42 na 43 by'urubanza rujuririrwa, iby'uko abatangabuhamya bavuzwe haruguru banyuranya ku matariki ibikorwa bigize icyaha cya jenocide n'icyaha cyibasiye inyokomuntu (kurimbura) byakoreweho na Birindabagabo Jean Paul nk'uko byasobanuwe haruguru, ari inenge ntoya zitatesha agaciro ubuhamya bwabo harebwe igihe kinini gishize hagati y'igihe jenocide yabereye mu Rwanda muri Mata 1994 n'igihe batangiye ubuhamya bwabo mu Nzego z'iperereza no mu Nkiko zabanje baburaniyemo mu myaka ya 2007, 2014, 2015 na 2019, ko ahubwo icy'ingezi, ari uko ubuhamya bwabo bufite ireme kuko buhuriza ku kuba bariboneye BIRINDABAGABO Jean Paul ayoboye cyangwa ari mu bitero bitandukanye byishe imbaga y'Abatutsi ahantu hatandukanye muri Komini Sake nk'uko byasobanuwe haruguru.
- [142] Urukiko rw'Ubujurire rurasanga nk'uko n'Urukiko Rukuru rwabisobanuye mu gika cya 43 cy'urubanza rujuririrwa, iby'uko abatangabuhamya bashobora kugira ibyo batavuga kimwe cyangwa bakwibeshyaho ariko ntibiteshe agaciro ireme ry'ubuhamya bwabo byemejwe mu manza nyinshi zaciwe na TPIR zirimo urubanza rwa François Karera³⁴, Bikindi Simon³⁵ n'urwa Muvunyi Tharcisse³⁶, aho urwo Rukiko rwasobanuye ko n'ubwo hari ibyo abatangabuhamya batavuga kimwe cyangwa bakwibeshyaho bishobora guterwa n'igihe cyari gishyize ariko ko bitagira ingaruka ku kwizerwa kwabo no ku ireme rw'ubuhamya bwabo.
- [143] Urukiko rw'Ubujurire rusanga na none imvugo ya Birindabagabo Jean Paul y'uko ubuhamya bwa Ntwari Claver bukwiye guteshwa agaciro kuko yahamije ibyo yabwiwe n'abandi bantu nta shingiro ifite, kubera ko yemeje ko yiboneye n'amaso ye Birindabagabo Jean Paul ayoboye igitero cyishe Abatutsi benshi bari bahunguye mu rusengero rwa ADEPR nk'uko byasobanuwe haruguru, ko ahubwo amakuru yabwiwe ari ayerekeranye n'urupfu rw'Abatutsi bishwe ku wa 07/04/1994, barimo Kagame Alexis, Semuhungu Ladislas, Gombaniri François, Boduin n'abandi nk'uko bigaragarira mu gika cya 141 cy'urubanza rwaciwe n'Urukiko Rwisumbuye rwa Ngoma.
- [144] Urukiko rw'Ubujurire rurasanga ibivugwa na Birindabagabo Jean Paul by'uko ubuhamya bwa Rurinda Déo n'ubwa Nkundibigwira Ildephonse butahabwa agaciro kuko bavuguruzanya ku birebana n'itariki bahereweho amabwiriza yo kwica Abatutsi kuko Rurinda Déo avuga ko bayahawe mu ijoro ryo ku wa 06/04/1994, naho Nkundibigwira Ildephonse akavuga ko bayahawe

34 Case n° ICTR- 01 -74 -T, haburana Porokireri na François KARERA rwaciwe na TPIR ku wa 07/12/2007, p.73, par. 248. 35 Case n° ICTR- 2001 -72 -T, haburana Porokireri na BIKINDI Simon rwaciwe na TPIR ku wa 02/12/2008, par.32. 36Case n° ICTR- 00 -55A -T, haburana Porokireri na MUVUNYI Tharcisse rwaciwe na TPIR ku wa 11/02/2010, par.56, 91-94.

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ku wa 07/04/1994, nta shingiro bifite, kuko kuba ubuhamya bwabo budahuza ku birebana n'itariki bahereweho ayo mabwiriza, ari nenge nto itatesha agaciro ireme ry'ubuhamya bwabo nk'uko byasobanuwe haruguru, kuko icy'ingenzi, ari uko bombi baturiza ku kuba Birindabagabo Jean Paul yarahaye interahamwe amabwiriza yo kwica Abatutsi nyuma y'ihanurwa ry'indege ya Habyalimana Juvénal kandi ingaruka z'ayo mabwiriza zabaye icyicwa ry'Abatutsi benshi cyane barimo Kanyamibwa, Semuhungu, Kagame Alex n'abandi nk'uko byasobanuwe haruguru.

[145] Urukiko rw'Ubujurire rurasanga na none, usibye kuba Birindabagabo Jean Paul atarabyukije ikibazo cy'ivuguruzanya ry'ubuhamya bwatanzwe na Nyinawabega Jeanne d'Arc n'ubwa Habimana Raymond mu Rukiko Rukuru, ariko n'ubwo ubuhamya bwabo buba bwarasuzumwe n'urwo Rukiko, ntacyo rwari guhinduka ku byo rwemeje mu bika bya 42, 43, 45 na 59 by'urubanza rujuririrwa byavuzwe haruguru, kuko ubuhamya bwabo bufite agaciro kuko bwavuzwe n'abantu biboneye n'amaso yabo Birindabagabo Jean Paul n'abasirikare yari atwaye mu modoka ye baza mu ngo zabo mu gitondo cyo ku wa 07/04/1994, kandi kubera ko igitondo ari kirekire, ntacyari kubuza Birindabagabo Jean Paul, wari ufite imodoka nshya, kugera mu ngo zabo bitewe n'uko bari batuye muri Segiteri imwe ya Rukumberi, muri Komini Sake nk'uko bigaragara mu nyandiko mvugo z'ibazwa ryabo mu Bushinjacyaha ku 23/06/2015 no ku wa 24/06/2015 ziri muri dosiye y'uru rubanza.

[146] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rw'Ubujurire rurasanga rero nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Birindabagabo Jean Paul yakoze icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu muri Komini Sake muri Mata 1994 nk'uko rwabisobanuye mu bika bya 42, 43, 44, 45 na 59 by'urubanza rujuririrwa, nk'uko binagaragazwa n'abatangabuhamya barimo Rurinda Déo, Ntwari Claver, Gakwerere Emmanuel, Nkundibigwira Ildephonse, Mukinisha Bonavanture, Mukamana Odette na Ngamiye Faustin nk'uko byasobanuwe haruguru. II.3.2. Kumenya niba Birindabagabo Jean Paul ataragize uruhare mu rupfu rwa Nyirinkindi Théoneste rwabereye muri Komini Kibirira ku buryo atakurikiranwaho icyaha cya jenocide A. Imiburanire ya Birindabagabo Jean Paul

[147] Birindabagabo Jean Paul n'abamwunganira bavuga ko Urukiko Rukuru rwemeje ko yakoze icyaha cya jenocide kubera ko yagize uruhare mu icyicwa rya Nyirinkindi Théoneste ryabereye muri Komini Kibirira hashingiwe ku buhamya bwatanzwe na Kayitare Manassé, Munyarukiko Léodomir, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean, nyamara ubuhamya bwabo butaragombaga guhabwa agaciro kuko burimo ivuguruzanya ku birebana n'igihe nyakwigendera yapfiriye kuko hari abemeje muri Gacaca ko yapfanye n'umuryango we muri Mata 1994 bakongera kwivuguruza bavuga ko yishwe muri Gicurusi 1994 kandi icyo gihe Birindabagabo Jean Paul akaba atari i Kibirira, ko ahubwo yari akiri i Sake, aho yari atuye.

- [148] Basobanura ko ubuhamya bwa Kayitare Manassé butahabwa agaciro kuko yavuze ibintu bitashoboka kuko yavuze ko Nyirinkindi Théoneste yahunze mu ntangiriro z'ukwezi kwa Mata 1994 bamaze kwica umuryango we, anavuga ko Birindabagabo Jean Paul yageze iwabo i Kibirira mu mpera z'ukwezi kwa 05/1994, bakibaza ukuntu Birindabagabo Jean Paul yamenye ko

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Nyirinkindi Théoneste yihishe kugira ngo ashishikarize Abahutu kujya kumushakisha no kumwica mu mpera z'ukwezi kwa 05/1994.

- [149] Bavuga kandi ko ubuhamya bwa Ndaruhutse Emile butahabwa agaciro kuko uretse ko burimo ivuguruzanya ubwarwo kubera ko mu Bushinjacyaha no mu Rukiko Rukuru, yavuze ko Nyirinkindi Théoneste yishwe mu mpera z'ukwezi kwa 5/1994, anasobanura ko Birindabagabo Jean Paul yageze i Kibirira mu kwezi kwa 05/1994, nyamara mu Rukiko Gacaca rw'Akagari ka Remera rwari i Kibirira, yemeje ko Nyirinkindi Théoneste yapfuye muri Mata 1994, ndetse ko bunavuguruzanya n'invugo y'Ubushinjacyaha ivuga ko Birindabagabo Jean Paul yagiye iwabo mu Ntara y'Iburengerazuba mu kwezi kwa 6/1994, amaze kwica Abatutsi i Rukumberi, ndetse ko iyi mvugo inahuje n'iy'Ubushinjacyaha bwavuze igihe yaburanaga ibijyanye n'ifunga n'ifungurwa ry'agateganyo nk'uko igaragarira mu cyemezo n° 0028/15/TB/NYRGA cyo ku wa 29/01/2015, ikanashimangirwa na Kabandana Callixte, wari Perezida w'Ishyirahamwe ry'Abarokotse Jenocide i Rukumberi (ARGR), mu ibaruwa yandikiye Umupolisi Mukuru wo ku rwego rw'Igihugu, ku wa 30/01/2015, amumenyesha ko Birindabagabo Jean Paul yishe i Kibirira mu kwezi kwa 06/1994.
- [150] Bakomeza bavuga ko ubuhamya bwa Munyarukiko Léodomir butahabwa agaciro kuko burimo ivuguruzanya kuko mu Rukiko rwa Gacaca rw'Akagari ka Remera n'imbere y'Urukiko Rukuru, yemeje ko Nyirinkindi Théoneste yapfanye n'umuryango we muri Mata 1994, naho Birindabagabo Jean Paul agera i Kibirira ku wa 03/06/1994, ndetse ko icyo gihe, Munyarukiko Léodomir na bagenzi be bafatanyije kumwica bari bararangije kugabana imitungo ye yose, ariko ko yongeye kwivuguruzanya avuga ko Birindabagabo Jean Paul yahageze muri Gicurasi 1994 nk'uko bigaragarira mu nyandiko itanga ikirego y'Ubushinjacyaha, nk'uko byanemejwe na Kazungu Vénant wasobanuye ko Birindabagabo Jean Paul yageze i Kibirira muri Gicurasi 1994 ashinga bariyeri.
- [151] Bongeyeho ko Urukiko Rukuru rwemeje ko abatangabuhamya bavuguruzanya ku birebana n'ibihe ibikorwa by'ubwicanyi byabereye, ariko ruvuga ko uko kuvuguruzanya kwabo, ari inenge ntoya itatuma ubuhamya bwabo budahabwa agaciro, ndetse n'Ubushinjacyaha nabwo bukaba bwaravuze ko ubuhamya bwabo burimo ivuguruzanya, ariko ko kudatera gushidikanya ku gihe Birindabagabo Jean Paul yagereye i Kibirira hashingiwe ku rubanza n° ICTR - 01-74 - T rwa François Karera rwaciwe na TPIR ku wa 07/12/2007, kandi rutandukanye n'urubanza rwa Birindabagabo Jean Paul, kuko muri urwo rubanza rwaciwe na TPIR, abatangabuhamya babwiye Urukiko rwa TPIR na Porokireri ko bibeshye, banakosozwa ubuhamya bwabo bavuga ko bibagiwe, nyamara ko mu rubanza rwa

Birindabagabo Jean Paul, abatangabuhamya bamushinja batigeze bakosoza ubuhamya bwabo, ko ahubwo bivugira gusa ko bibuka neza igihe yagereye i Kibirira.

- [152] Basaba uru Rukiko ko rutaha agaciro ubuhamya bw'abatangabuhamya bavuzwe haruguru hashingiwe ku rubanza rwa François Karera kuko rutandukanye n'urwa Birindabagabo Jean Paul, ko ahubwo rukwiye guha agaciro ubuhamya bwabo bugaragaza ko Nyirinkindi Théoneste yishwe muri Mata 1994 n'ubugaragaza ko Birindabagabo Jean Paul yageze i Kibirira mu kwezi kwa 6/1994, kuko aribwo buhuje n'uko bitewe n'uko bugaragaza ko Birindabagabo Jean Paul atagize uruhare mu rupfu rwa Nyirinkindi Théoneste kuko rwabaye atari i Kibirira, ko ahubwo rwabaye akiri i Sake. B. Imiburanire y'Ubushinjacyaha

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- [153] Ubushinjacyaha buvuga ko ubuhamya bwa Kayitare Manassé bufite agaciro kuko yavuze ko Birindabagabo Jean Paul yageze iwabo kw'ivuko mu mpera z'ukwezi kwa 5/1994 amenya ko umuryango wa Nyirinkindi Théoneste wishwe muri Mata 1994, ariko arabacika, maze Birindabagabo Jean Paul ababwira ko kuba bataramwica ntacyo bakoze, abaha amabwiriza yo kujya kumushaka kugeza bamubonye, bakanamwica, ndetse ko ikigaragaza ko ubuhamya bwe bufite agaciro, ari uko buhuje n'ubwa Munyarukiko Léodomir na Ndaruhutse Emile bafatanyije kumwica hashingiwe ku mabwiriza bari bahawe na Birindabagabo Jean Paul yo kumushakisha kugeza bamwishe nk'uko babigenje.
- [154] Buvuga kandi ko ubuhamya bwa Ndaruhutse Emile bufite agaciro kuko buhuje n'ubwa Kayitare Narcisse n'ubwa Munyarukiko Léodomir, bari Interahamwe zafatanyije kwica Nyirinkindi Théoneste bahawe amabwiriza na Birindabagabo Jean Paul yo kumushakisha kugeza bamwishe nk'uko babyiyemereye mu Nzego z'iperereza no mu Nkiko zabanje, nyuma yaho, imvugo bavugiye mu Nkiko Gacaca ziteshejwe agaciro.
- [155] Ubushinjacyaha bukomeza buvuga ko ubuhamya bwa Kayitare Manassé, Munyarukiko Léodomir, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean bufite agaciro kuko bativugurujwe, ko ahubwo bwuzuzanya, kuko mu gika cya 27 cy'urubanza rujuzirirwa, Urukiko Rukuru rwasanze ubuhamya bwabo bose buhuriza ku kuba baragize uruhare mu gushakisha, kwica no kujugunya Nyirinkindi Théoneste muri Nyabarongo muri Gicurasi 1994, babitegetswe na Birindabagabo Jean Paul wari muri Komini Kibirira icyo gihe.
- [156] Ubushinjacyaha busobanura ko mu guha agaciro ubuhamya bw'abatangabuhamya bavuzwe haruguru, Urukiko Rukuru rwasobanuye ko ukunyuranya ku matariki ibikorwa by'ubwicanyi byakoreweho kutafatwa nk'inenge ikabije yatesha agaciro ubuhamya bwatanzwe n'abari mu bitero n'abarokotse jenocide, no kuba bitoroshye kwibuka neza itariki ibyo bikorwa byabereyeho mu gihe cy'ubwicanyi, bikaba bigaragara ko uko kudahuza ku birebana n'amatariki Birindabagabo Jean Paul yagereye i Kibirira gushobora guterwa n'igihe kirekire gishize ibyo bikorwa bikozwe n'igihe batangiye ubuhamya nk'uko byemejwe mu rubanza n° ICTR - 01-74- T rwa François Karera rwaciwe na TPIR ku wa

07/12/2007, cyane cyane ko Mata na Gicurasi ari amezi abiri (2) yegeranye cyane ku buryo uwaba yarahageze mu mpera z'ukwezi kwa Mata n'uwahageze mu ntangiro za Gicurasi baba basa n'abahagereye igihe kimwe, ku buryo umutangabuhamya ashobora kuyitiranya, ko ahubwo icy'ingenzi, ari uko Birindabagabo Jean Paul yari i Kibirira muri Gicurasi 1994 nk'uko abishinjwa n'abatangabuhamya batandukanye bavuzwe haruguru, Urukiko Rukuru rwashingiyeho rumuhamya icyaha cya jenocide, kuko bose bemeje ko Birindabagabo Jean Paul yageze Kibirira muri Gicurasi 1994 anagira uruhare mu kwica Nyirinkindi Théoneste kubera ko ariwe watanze amabwiriza yo kumwica amuziza ubwoko bwe.

- [157] Ubushinjacyaha bwongeyeho ko ibyemejwe n'Urukiko Rukuru mu gika kibanziriza iki bihuje kandi n'ibyemejwe mu rubanza n° RPAA 0117/07/CS rwaciwe n'Urukiko rw'Ikirenga, Ubushinjacyaha buburana na Sgt Biziyaremye na Cpl Ngabonziza, aho rwasobanuye mu gika cyarwo cya 14, ko ku birebena n'ubuhamya bwatanzwe, ukwivuguruza kudafatirwa gusa ku magambo umutangabuhamya akoresha cyangwa kudahuza neza imvugo mu gusobanura neza imigendekere y'ibyo atangira ubuhamya, icyangombwa akaba ari uko ireme ry'ibyo avuga (substance) ridahinduka.

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UKO URUKIKO RUBIBONA

- [158] Ingingo ya 3, agace ka mbere, y'Itegeko n°15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko "Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana. Naho ingingo ya 65 y'iryo Tegeko, igateganya ko Urukiko rwonyine arirwo rupima ko imikirize y'abatangabuhamya ihuje n'ikiburanwa, ko ifite ingingo zikiranuye zituma ikwiye kwemerwa cyangwa guhakanwa, ko rutitsitsa ku mubare w'abatangabuhamya, ko ahubwo rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze nta cyo bahimba.
- [159] Na none ingingo ya 48 y'Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko "Umuntu wese wagize uruhare mu ikorwa ry'icyaha cyangwa uwakorewe icyaha ashobora kumvwa nk'umutangabuhamya".
- [160] Imikirize y'urubanza rwajuririwe muri uru Rukiko, igaragaza mu gika cyarwo cya 27, ko Urukiko Rukuru rwahamije Birindabagabo Jean Paul icyaha cya jenocide hashingiwe ku buhamya bwatanzwe n'abatangabuhamya bitwa Kayitare Manassé, Munyarukiko Léodomir, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean, bagize uruhare mu gushakisha Nyirinkindi Théoneste, kumwica no kujugunya umurambo we muri Nyabarongo nk'uko babyiyemereye bakanahuriza ku kuba bari barabitegetswe na Birindabagabo Jean Paul igihe yari muri Komini Kibirira muri Gicurasi 1994, akaba ariyo mpamvu uru Rukiko rugomba gusesengura ubuhamya bwabo kugira ngo rumenye agaciro kabwo.

- [161] Mu buhamya bwe, uwitwa Kayitare Manassé, yasobanuye ko we na Munyarukiko Léodomir, Kazungu Vénant n’abandi bapfuye cyangwa bahunze bari bari mu gitero cyagiye guhiga kinavumbura Nyirinkindi Théoneste muniyo kwa Kagina, bamujyana kuri bariyeri yari iriho Birindabagabo Jean Paul, bahamugejeje, yamusabye kumwerekana aho yatabye udusanduku tw’amasasu, undi aramuhakanira, batangira kumukubita ku buryo bamuvunye intoki bashakira kumwicira kuri icyo bariyeri, ariko Birindabagabo Jean Paul arababwirako ngo bajye kumwicira ku ruzi, bahamugejeje, bamwicisha ubuhiri, barangije bamuroha mu ruzi.
- [162] Hari kandi Munyarukiko Léodomir wasobanuye ko mu kwezi kwa 5/1994 ku itariki atibuka neza, bavumbuye Nyirinkindi Théoneste bamujyana kuri bariyeri yari iriho Birindabagabo Jean Paul, bahamugejeje, bamuhondaguza inkoni, Birindabagabo Jean Paul arababwirako ngo bajye kumwicira ku ruzi kubera ko ari umututsi, bajya kumwicira ku ruzi, barangije barumurohamo.
- [163] Hari na none uwitwa Ndaruhutse Emile wasobanuye ko igitero cyari kigizwe na we, Munyarukiko Léodomir, Kayitare Manassé, Kazungu Vénant n’abandi benshi, cyavumbuye Nyirinkindi Théoneste aho yari yihishe, kimujyana kuri bariyeri yari yarashinzwe na Birindabagabo Jean Paul, bahamugejeje, basanga ahari anafite “grenade”, atangira kumukubita no kumushinyagurira amubaza igihe yagereye i Kibirira kandi barahuriye muri “CND”³⁷, anamubaza aho yashyize agasanduku k’amasasu yari afite, arangije kumukubita, ategereye ko bajya kumwicira ku ruzi rwa Nyabarongo, bagenzi be bamujyanaye bamukubita, we ajya mu rugo rwabo, nyuma y’aho, yumva ko bamwishe banamuroha muri urwo ruzi.

37 CND : Conseil National de Développement.

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- [164] Mu buhamya bwe, uwitwa Kazungu Vénant yasobanuye ko we, Kayitare Manassé, Munyarukiko Léodomir n’abandi benshi, bagiye gushakira Nyirinkindi Théoneste babitegetswe na Birindabagabo Jean Paul, bamaze kumuvumbura muniyo kwa Kagina, aho yari yihishe, bamujyanye kuri bariyeri yari iriho Birindabagabo Jean Paul, bahamugejeje, amuhata ibibazo amubaza kwerekana aho yatabye amasasu, undi aricecekerako, batangira kumukubita, Birindabagabo Jean Paul ahita ategereye ko bajya kwicira uwo mututsi ku ruzi, bamutwara bamuhondaguza inkoni kugeza apfuye, barangije, bamujugunya muri Nyabarongo.
- [165] Na none Nsengamihigo Jean Paul asobanura ko Nyirinkindi Théoneste yafatiwe mu gihuru, bamujyana kuri bariyeri kugira ngo Birindabagabo Jean Paul amufatire icyemezo kuko yari amaze iminsi amubabaza ababwirako kuba Nyirinkindi Théoneste ataraboneka ari ikibazo, ko bamaze kumugeza kuri bariyeri, Birindabagabo Jean Paul yatangiye kumukubita anamuvuna intoki, anamushinyagurira amubaza aho yari yihishe n’abamugaburiraga, bigeze aho, ategereye ko bamujyana muri Nyabarongo, aba ari nako byagenze nk’uko byemejwe n’abamuvumbuye barimo Munyarukiko Léodomir, Ndaruhutse Emile na Kayitare Manassé n’abandi.

- [166] Uwitwa Nsabimana Jean nawe yasobanuye ko mu kwezi kwa 5/1994, Birindabagabo Jean Paul, Nsengamihigo Jean Paul n’uwari Konseye Nkubiri babategetse kujya guhiga Nyirinkindi Théoneste, bamaze kumuvumbura mu rubingo rwa Kagina, aho yari yihishe, bamuzamukanye kuri bariyeri, aho Birindabagabo Jean Paul yari ari, abategeka kujya kumwicira ku ruzi ngo kuko n’ubwo ari Umupantekote azamwicuza nyuma, bajya kumwicira ku ruzi, barangije, baroha umurambo we.
- [167] Hashingiwe ku ngingo ya 65 y’Itegeko n°15/2004 ryo ku wa 12/6/2004 ryavuzwe haruguru, iteganya ko ari Urukiko rufite ububasha bwo kwemeza ko ubuhamya bw’abatangabuhamya bufite agaciro cyangwa butagafite, Urukiko rw’Ubujurire rurasanga nk’uko n’Urukiko Rukuru rwabibonye, ubuhamya bwatanzwe n’abitwa Kayitare Manassé, Munyarukiko Léodomir, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean bwavuzwe haruguru bufite ireme kuko bwavuzwe n’abantu bagize uruhare mu gushakisha Nyirinkindi Théoneste, kumwica no kujugunya umurambo we muri Nyabarongo babitegetswe na Birindabagabo Jean Paul igihe yari iwabo i Kibilira muri Gicurasi 1994 nk’uko byasobanuwe haruguru muri “Sinari mpari”, “alibi” irebana na Kibirira, bityo ubuhamya bwabo bukaba bukwiye guhabwa agaciro maze bugafatwa nk’ikimenyetso kigaragaza ku buryo budashidikanywaho ko Birindabagabo Jean Paul yakoze icyaha cya jenocide kubera ko yagize uruhare mu iyicwa rya Nyirinkindi Théoneste amuziza ubwoko bwe nk’uko byemejwe n’Urukiko Rukuru.
- [168] Urukiko rw’Ubujurire rurasanga imvugo ya Birindabagabo Jean Paul y’uko ubuhamya bwa Kayitare Manassé, Munyarukiko Léodomir, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean, bukwiye guteshwa agaciro kuko buvuguruzanya ku birebana n’igihe nyakwigendera Nyirinkindi Théoneste yiciwe kuko mu Nkiko Gacaca bemeje ko yapfanye n’umuryango we muri Mata 1994, ariko bageze mu Nzego z’iperereza no mu Rukiko Rukuru, bivuguruzanya bavuga ko yapfuye muri Gicurasi 1994, nta shingiro ifite, kuko nk’uko byasobanuwe kuri “Sinari mpari”, “alibi” irebana na Kibirira, ubuhamya bwabo bufite agaciro kuko bose bahuriza ku kuba Birindabagabo Jean Paul yari ari muri Kibirira muri Gicurasi 1994, anagira uruhare mu iyicwa rya Nyirinkindi Théoneste amuziza ubwoko bwe ubwo yategekaga ko yicwa, bigakorwa nk’uko byasobanuwe haruguru, bivuze rero ko Birindabagabo Jean Paul yakoze icyaha cya jenocide nk’uko byemejwe n’Urukiko Rukuru.

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- [169] Urukiko rw’Ubujurire rurasanga kandi ibivugwa na Birindabagabo Jean Paul by’uko Urukiko Rukuru rutagombaga kumuhamya icyaha cya jenocide hashingiwe ku buhamya bwatanzwe na Kayitare Manassé, Munyarukiko Léodomir, Ndaruhutse Emile, Kazungu Vénant, Nsengamihigo Jean Paul na Nsabimana Jean, kubera ko bahaniwe icyaha cya jenocide nta shingiro bifite, kubera ko ingingo ya 48 y’Itegeko n° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, iteganya ko umuntu wagize uruhare mu ikorwa ry’icyaha ashobora kumvwa nk’umutangabuhamya.

[170] Ku birebana na none n'imiburanire ya Birindabagabo Jean Paul y'uko Urukiko rutashingira ku rubanza rwa François Karera rwaciwe na TPIR mu guca urubanza rwe kuko abatangabuhamya bemeye ko bibeshye ndetse banakosoza ubuhamya bwabo, nyamara mu rubanza rwe akaba atariko bimeze kuko abatangabuhamya Munyarukiko Léodomir na Ndaruhutse Emille banyuranya ku matariki yagereye i Kibirira n'igihe Nyirinkikdi Théoneste yapfiriye, ariko ko batakosojwe ubuhamya bwabo nta shingiro ifite, kuko nk'uko byasobanuwe haruguru, Urukiko rw'Ubujurire rurasanga iby'uko abatangabuhamya bashobora kugira ibyo batavuga kimwe cyangwa bakwibeshyaho ariko ntibiteshe agaciro ireme ry'ubuhamya bwabo, byanashimangiwe no mu zindi manza nyinshi zaciwe na TPIR zirimo urubanza rwa Bikindi Simon³⁸ n'urwa Muvunyi Tharcisse³⁹, aho urwo Rukiko rwasobanuye ko n'ubwo hari ibyo abatangabuhamya batavuga kimwe cyangwa bakwibeshyaho bishobora guterwa n'igihe cyari gishize hagati y'igihe jenoside yabereye n'icyo batangiyeho ubuhamya, ariko ko bitagira ingaruka ku kwizerwa kwabo no ku ireme rw'ubuhamya bwabo.

[171] Hashingiwe ku bisobanuro bitanzwe haruguru, Urukiko rw'Ubujurire rurasanga rero nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Birindabagabo Jean Paul yakoze icyaha cya jenoside muri Gicurasi 1994 kuko yatanze amabwiriza yo gushakisha no kwica Nyirinkindi Théoneste no guta umurambo we muri Nyabarongo, bigakorwa, bityo ingingo ye y'ubujurire y'uko atagize uruhare mu rupfu rwa Nyirinkindi Théoneste rwabereye muri Komini Kibirira icyo gihe, ikaba nta shingiro ifite. II.4. Kumenya niba Birindabagabo Jean Paul yaratwaraga abasirikare mu modoka ye mu bikorwa by'ubwicanyi ashyizweho agahato katigobotorwa, no kumenya niba yahabwa imbabazi asaba. A. Imiburanire ya Birindabagabo Jean Paul

38 «The Chamber recognises that a significant period of time has elapsed between the events alleged in the Indictment and the testimonies given in court. Therefore, lack of precision or minor discrepancies between the evidence of different witnesses, or between the testimony of a particular witness and a prior statement, was not regarded in general as necessarily discrediting their evidence. When deciding not to rely on certain aspects of a witness's testimony, the Chamber nevertheless sometimes relied on other parts of the testimony deemed to be reliable and credible», in Case No. ICTR-2001 - 72-T, The Prosecutor vs Bikindi Simon, of 2nd December 2008, para.32. 39 «Nonetheless, the Chamber notes that fifteen years have passed since the date of the meeting in Gikore in mid to late May 1994 and recalls that discrepancies attributable to the passage of time do not necessarily affect the credibility or reliability of witnesses. The Chamber considers it reasonable that, fifteen years later, the Prosecution witnesses may have mistakenly recalled that Nteziryayo attended the meeting as préfet of Butare given that he was appointed to this position only a few weeks later.», in Case No. ICTR - 00 - 55A-T, The Prosecutor vs Tharcisse Muvunyi, of 11 February 2010, para.56, 58,91-94.

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- [172] Birindabagabo Jean Paul n'abamwunganira bavuga ko ingingo ya 86, agace ka 1°, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ivuga ko impamvu zikuraho uburyozwacyaha zishingiye ku wakoze icyaha zibaho iyo umuntu yakoreshejwe icyaha ku ngufu cyangwa ku gahato atashoboraga kwigobotora, ko nk'uko yabigaragaje mu iburanisha ry'urubanza rujuririrwa, ku wa 07 Mata 1994, saa kumi z'umugoroba (16h00), iwe haje abasirikare bane (4) bayobowe na Mbaberehe n'abandi makumyabiri na batatu
- (23) bari babaherekeje, bafite umugambi wo kumwica no kubohoza imodoka ye kubera amakuru bari bafite ko ari icyitso cy'Inkotanyi, ariko ko yababwiye ko atari icyitso cy'Inkotanyi, bituma uwo musirikare wari uyoboze abandi atamwica, ariko amubwira ko agomba kujya abatwara mu ntambara yo kurwanya Inkotanyi zari zageze muri Komini Sake akajya abatwara mu modoka ye imbunda ya Mortier 81, ndetse ko banamuhaye amabwiriza yagombaga kugenderaho ku buryo natayubahiriza bizamuviramo kwicwa.
- [173] Basobanura ko mu mikoranire ya Birindabagabo Jean Paul n'abasirikare yashyizweho agahato katigobotorwa, ibyo akaba abishingira ku kuba baramusanze mu rugo rwe bakamutegeka kujya abatwara mu modoka ariko atazi gahunda zabo, kuba iwe mu nzu harabaga abasirikare batatu
- (3) bamurindaga, n'undi wabaga mu modoka, no kuba iyo yabajyanaga akabageza aho bagomba kujya, bamusigaga mu modoka hamwe n'abasikare bakeya bo kumurinda, abandi bakajya kwica kuko yumvaga imbunda zivuga bakanica abantu kuko iyo bagarukaga mu gitondo bukeye bwaho, yabonaga imirambo y'abasivili bapfuye.
- [174] Basobanura ko impamvu abasirikare bari barahisemo gukoresha imodoka ye muri ibyo bitero, ari uko yari nshya no kuba yari yagambaniwe bitewe n'uko yari umwimukira kandi afitanye ikibazo n'Ubuyobozi bw'aho yari atuye, akaba asaba imbazizi z'uko yatwaraga abasirikare mu modoka ye yashyizweho agahato katigobotorwa, kuko we nk'umusivile atashoboraga kubona aho acikira abasirikare.
- [175] Bakomeza bavuga ko mu bika bya 46 – 47 by'urubanza rujuririrwa, Birindabagabo Jean Paul yasobanuriye Urukiko Rukuru impamvu yatwaraga abasirikare, anarusobanurira ko bari baramuhaye amabwiriza agizwe n'ingingo eshatu (3) zikurikira: Gukerererwa aho yategetswe gusanga abasirikari bihanishwa igihano cyo kwicwa, gutoroka abasirikari nyuma akaza gufatwa bihanishwa kwicwa, no kuva aho bamusize cyangwa kuva ku modoka nabyo bihanishwa kwicwa. Bavuga kandi ko yagaragarije Urukiko Rukuru ko atari afite ubushobozi bwo kwima abasirikare imodoka, akaba yarabisabiye imbabazi ariko Urukiko Rukuru rushingiye ku ngingo ya 86, agace ka 1°, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange⁴⁰, ruvuga ko ibyo nta shingiro byahabwa, kuko bitafatwa nk'agahato katigobotorwa bitewe n'uko yari afite uburyo yashoboraga gucika abasirikare akajya kure yabo, aho batari gukomeza kumukoresha mu bwicanyi adashaka cyangwa kumugirira nabi.

[176] Bavuga kandi ko kuba mu gika cya 54 cy'urubanza rujuririrwa, Urukiko Rukuru rwavuze ko hari izindi mpamvu zigaragaza ko mu gutwara abasirikare Birindabagabo Jean Paul nta gahato yashyizweho, zirimo kuba ku wa 06/04/1994, yarabaye mu nama itegura ubwicanyi arikumwe na Burugumesitiri Rutayisire Evariste na Député Mutabaruka Sylvain nk'uko byavuzwe n'umutangabuhamya witwa Rurinda Déo, nyamara ibyo ataribyo kuko igihe yaburanaga

40 Impamvu zikuraho uburyozwacyaha zishingiye ku wakoze icyaha zibaho iyo: 1° umuntu yakoresheje icyaha ku ngufu cyangwa ku gahato atashoboraga kwigobotora.

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yagaragarije Urukiko Rukuru ko yageze i Sake ku wa 07/04/1994, ndetse ko n'abatangabuhamya bandi basobanura ko aricyo gihe bamuboneye i Sake, ariko ko ibyo Rurinda Déo yavuze ko yatanze amabwiriza yo kwica abatutsi atari ukuri kuko atayagaragaje.

[177] Bavuga na none ko igihe cya jenocide, Birindabagabo Jean Paul yari umuturage usanzwe udafite ijamba ryo kuvuga imbere y'ingabo z'igihugu cyangwa ngo abe ya kwanga ibyo ategetswe, kandi ko abamushinja nta ruhare rwe bagaragaje mu gutwara abo basirikare muri ubwo bwicanyi, ko n'ubwo Urukiko Rukuru rwavuze ko yatwaye abasirikare kuva ku wa 08/04/1994 kugeza ku wa 22/04/1994, nyamara yarusobanuriye impamvu yabimuteye, kandi ko nta bushake bwo gukora icyaha yari afite, ko ahubwo yagikoresheje ku gahato, nawe akabikora kubera ibikangisho yari yashyizweho, kuko yatinyaga ko yicwa nk'uko yari yihanangirijwe, akaba asanga nta buryozwacyaha agomba kugira ku bikorwa by'ubwicanyi byakozwe n'abasirikare n'interahamwe yabaga yatije imodoka ye.

[178] Bakomeza bavuga ko Urukiko Rukuru rwabanje kwemera mu buryo bweruye ko Birindabagabo Jean Paul yakoresheje n'abasirikare nawe agakorana nabo kugira ngo batamwica nk'uko amabwiriza bari baramuhaye yavugaga, nyamara mu gufata icyemezo rwirengagije imbaraga igisikari n'interahamwe bari bafite muri kiriya gihe, ku buryo nta kuntu yari kubigobotora ngo abacike, ko ntaho yari guhungira, kuko bari ahantu hose, bakaba basanga rero ibyo Birindabagabo Jean Paul yakoze yarabikoze mu buryo bwo kwitabara ngo aticwa, kuko nta bushake yari afite bwo gukorana n'igisirikare, ariko ko Urukiko Rukuru rutigeze rugaragaza uburyo yari kubigobotora, n'aho yari kujya hatari abasirikare kugira ngo badakomeza kumukoresha.

[179] Bavuga na none ko kuba abasirikare barakoresheje imodoka ye akanabatwara, yitwa umufatanyacyaha wabo, kandi ko yemera icyaha kuko yabaye umushoferi wabo ubwo bakoraga ibyaha bakoresheje imodoka ye, akaba asaba imbabazi no kugabanyirizwa ibihano kuko iyo iyo modoka ye itahaba, ntanababere umushoferi, atari kuba ari imbere y'uru Rukiko, uretse ko atigeze akora ibyaha, ko ahubwo yari yarashyizweho gusa agahato katigobotorwa, ariko ko uru Rukiko rusanze nta gahato katigobotwa yari yarashyizweho, rwaha agaciro imbabazi yasabye.

- [180] Abunganira Birindabagabo Jean Paul bavuga ko imbabazi asaba atari izigira ingaruka ku gihano, ko ahubwo ari ukugira ngo yikiranure n'umutimanama we gusa, kuko ibyo yakoze byose yabikoze ku gahato, ndetse ko n'Urukiko Rukuru rwagaragaje uburyo yagendanaga n'abo basirikare ariko ruvuga ko yashoboraga kubacika, nyamara Birindabagabo Jean Paul we agaragaza ko atashoboraga kubacika, ko ku birebana n'agahato katigoborwa hazashingirwa ku rubanza rwaciwe na ICTR, Porokireri yaburanye na Gracien Kabirigi rwavuzwe haruguru.
- [181] Mu gusoza, bavuga ko Birindabagabo Jean Paul adahakana ko atafashije abasirikare igihe yabahaga imodoka ye bakayikoresha mu bikorwa by'ubwicanyi, ndetse ko akomeje kubisabira imbabazi kuko yabigizemo uruhare, ariko ko mu rwego rw'amategeko, basanga nta buryozwacyaha buriho kuko ibigize icyaha bidahari bitewe n'uko atari afite ubushake bwo gukora icyaha. B. Imiburanire y'Ubushinjacyaha

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- [182] Ubushinjacyaha buvuga ko Birindabagabo Jean Paul atashyizweho agahato katigobotorwa kuko yashoboraga guhunga abasirikare mu masaha yabaga yigenga, ko ahubwo yagiye mu bitero ku bushake bwe kubera ko umutangabuhamya Baratsikira Jean yavuze ko Birindabagabo Jean Paul yari afite imbaraga zidasanzwe, Ntampaka Ladislav avuga ko yari afite ijamba rikomeye, naho Bicomumpaka akavugaga ko ariwe wayoboraga ibitero.
- [183] Ubushinjacyaha buvuga kandi ko ikindi kigaragaza ko Birindabagabo Jean Paul atashyizweho agahato, ari uko mu iburanisha ryo ku wa 31/01/2022, igihe yasabaga imbabazi imbere y'Urukiko rw'Ubujurire avugaga ko yabaye umufatanyacyaha w'abasirikare, Me Ruberwa Silas wamwunganiraga icyo gihe yivugiye ko batabashije kugaragaza ko yari yarashyizweho agahato katigobotorwa ubwo baburanaga mu Rukiko Rukuru, no kuba Birindabagabo Jean Paul yarageze iwabo i Kibirira afite imbunda anambaye imyenda ya gisirikare, agashyira imbaraga muri za bariyeri, akanaha abaturage za grenades zifashishijwe mu kwicisha abatutsi, anatega ko bajya gushaka Nyirinkindi Théoneste kugira ngo yicwe, bamumuzanira akabatega kuja kumwicira kuri Nyabarongo, bigakorwa, Ubushinjacyaha bukaba busanga yarakoreshwaga n'ubugome bwe, aho kubihatirwa, kuko n'abatangabuhamya barimo Umuraza Alphonsine bemeje ko kuva mu mwaka wa 1992, Birindabagabo Jean Paul yari afite urwango abatutsi kuko yavugiye mu nama ko inkanga zabo zigomba kuribwa, ndetse ko yanagize uruhare mu gutegura jenocide yakorewe abatutsi afatanyije na Député Mutabaruka Sylvain.
- [184] Ubushinjacyaha bukomeza busobanura ko ikindi kimenyetso kigaragaza ko Birindabagabo Jean Paul atashyizweho agahato, ko ahubwo ibyo yakoze yabikoze ku bushake bwe, ari ubushakashatsi bwakozwe na CNLG41, aho umutangabuhamya uwitwaga Kabalisa Pacifique yavuze ko Birindabagabo Jean Paul yari umwami muto mu gace ka Sake binashimangirwa n'abandi batangabuhamya barimo Barashyikira Jean wemeje ko ku wa 07/04/1994, Birindabagabo Jean Paul yazanye n'abasirikare bakica abatutsi muri Rukumberi, ko Ntampaka Ladislav nawe yavuze ko mu bwicanyi bwabereye i Sake, Birindabagabo Jean

Paul yari afite ijamba rikomeye, kuko igihe ubwicanyi bwari bwakajije umurego Burugumesiti Byemero yamufunze ahita akurwa ku mwanya wa Burugumesiti, ko na Rurinda Déo wari Resiponsabure wa Serire yemeje ko Birindabagabo Jean Paul yabasanze mu kabare saa tatu z'ijoro (21h00) bari kunywa inzoga bari baguriwe na Rutayisire Evariste wari Burugumesitiri na Député Mutabaruka Sylvain kuko bari babahamagaje mu nama, bamaze kumenya iby'urupfu rw'uware Perezida Habyarimana Juvénal bababwira gushaka izindi nterahamwe n'abandi batojwe gisirikare kugira ngo bahabwe amabwiriza yo kwica abatutsi.

- [185] Ubushinjacyaha buvuga na none ko harebwe uruhare Birindabagabo Jean Paul yagize mu bwicanyi bwabereye muri Komini Sake n'uburyo yatangaga amabwiriza yo kwica abatutsi, bigaragara ko abasirikare yari afite batari abo kumurinda, ko ahubwo yari yarabahawe kugira ngo abakoreshe muri ubwo bwicanyi, kuko umutangabuhamya witwa Kaguge Frédéric yemeje ko ku wa 7/04/1994, yabonye Birindabagabo Jean Paul afite imbunda ari kumwe n'abasirikare, anamubona ku wa 09/04/1994, yambaye imyenda ya gisirikare, ko Nkundibigwira Ildephonse, Nyanzira Marie, Mukarurema Ancille, Mukandayisenga, Shirimpaka, Umuraza Alphonsine, Mukamana na Bicumumpaka Mathias nabo bagaragaje uruhare Birindabagabo Jean Paul yagize mu bwicanyi bwabereye muri Komini Sake kuva ku wa 07 – 23 Mata 1994.

41 National Commission for the Fight against Genocide / Commission Nationale de Lutte contre le Génocide.

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- [186] Ubushinjacyaha bwongeraho ko abatangabuhamya Ntahorutari Jean de Dieu na Kamuhanda basobanuye uruhare Birindabagabo Jean Paul yagize mu iyicwa rya Munyaneza Callixte na mushiki we Nyirahabineza ryabereye kuri bariyeri ya Karengye kuko yategetse ko bicwa, bahita babica. Ubushinjacyaha bwanzura buvuga ko ibikorwa byose Birindabagabo Jean Paul yakoze igihe cya jenocide, yabikoze ku bushake bwe, nta gahato ashyizweho, ariko ko asanga adasaba imbabazi kuko atemera ibyaha yakoze ku buryo budashidikanywaho. UKO URUKIKO RUBIBONA
- [187] Ingingo ya 3 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ivuga ko « Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana ».
- [188] Ingingo ya 103 y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategako ahana, iteganya ko: “Umuntu wakoreshejwe icyaha ku ngufu cyangwa ku gahato adashobora kwigobotora, ntaryozwa ibyo yakoze”⁴².
- [189] Ku bijyanye n'agahato, abahanga mu mategako basobanura ko ari uguhatira umuntu gukora igikorwa gihanwa n'amategako bidaturutse ku bushake bwe⁴³. Basobanura kandi ko byitwa agahato, iyo uwakoze icyaha atashoboraga kwanga kugikora, ariko iyo yari afite uburyo bwashoboraga gutuma atagikora nta bukoresha, bifatwa ko yagikoze ku bushake bwe.⁴⁴

- [190] Umutangabuhamy witwa Rurinda Déo asobanura ko ku wa 06/04/1994, mu gihe cya saa tatu z'ijoro, Birindabagabo Jean Paul ari kumwe na Député Mutabaruka Sylvain na Rutayisire Evariste wari Burugumesitiri, bakimara kumenya ko indenge ya Habyarimana Juvénal yahanutse, bahamagaje interahamwe zose zize imbunda baziha amabwiriza yo kwica abatutsi kuko bababwiye ingo z'abatutsi bagomba kwicwa, ku buryo bishe Kanyamibwa, Sesonga, Semuhungu, Kagame Alex, ndetse ko bukeye bwaho, Birindabagabo Jean Paul na Rutayisire Evariste bagiye gutangiza ubwicanyi i Rukumberi.
- [191] Hari kandi uwitwa Nkundibigwira Ildephonse wasobanuye ko Birindabagabo Jean Paul na Député Mutabaruka Sylvain babahaye amabwiriza yo kwica Abatutsi bagahera ku bakomeye, ndetse ko bakimara kuyabaha, Birindabagabo Jean Paul yabatwaye mu modoka ye n'abasirikare batatu (3) bari bafite imbunda, abajyana kwica Abatutsi bari mu bitaro, bagezeyo, uwitwa Ntampogano ateramo "grenade", ubwicanyi buhita butangira.
- [192] Mu iburanisha ryo ku wa 20/01/2022 mu Rukiko rw'Ubujurire, Birindabagabo Jean Paul yasobanuye ko ku ruhande rumwe, abasirikare bakoraga imirimo yabo mbere ya saa sita, nyuma y'aho akabatwara mu modoka ye bakajya kwica abantu Shori, Sake, Gashora, Rukumberi, Rubaga

42 Ibirebana n'agahato katigobotorwa binateganyijwe mu ngingo 86 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, itegana ko: "Impamvu zikuraho uburyozwacyaha zishingiye ku wakoze icyaha zibaho iyo: 1° umuntu yakoreshejwe icyaha ku ngufu cyangwa ku gahato atashoboraga kwigobotora" (...). 43 Patrick KOLB et Laurence LETURMY, Droit Pénal Général, 10 éd, 2015 – 2016, p.155, "... La contrainte ... un événement qui détruit la volonté de l'agent en le poussant irrésistiblement à commettre un acte incriminé par la loi 44 Frédéric Desportes et Francis Le Gunehec, Droit Pénal Général, 14ème éd, 2007, p.613, "La contrainte suppose que l'auteur des faits se trouvait dans l'impossibilité absolue d'y résister. Si l'auteur de l'infraction avait la possibilité de suivre un comportement et qu'il ne l'a pas fait, ses actes sont l'expression de sa propre volonté, et il n'y a aucune raison qu'il n'en réponde pas devant un tribunal répressif

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n'ahandi, kandi ko iyo bajyanaga abatwaye, bamusigaga ku modoka ye bakajya kwica abantu kuko yumvaga imbunda zivuga igihe babicaga, ko kandi mu gitondo iyo basubiragayo yabonaga imirambo y'abasiviri bishwe, baba abishwe n'abasirikare cyangwa abishwe n'interahamwe, uretse ko atabonaga aho babarasa, naho ku rundi ruhande, akavuga ko mu gihe abasirikare bajyaga kurasa, hari abandi basigaranaga nawe mu modoka.

- [193] Mu gika cya 54 cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko ikigaragaza ko Birindabagabo Jean Paul yatwaraga abasirikari mu modoka ye y'akazi bagiye kwica nta gahato, ari uko hari ibindi bikorwa yagaragayemo bitegura, bikangurira n'ibitegeka kwica, yakoze atari kumwe n'abasirikari aribyo kuba mu nama itegura ubwicanyi ari kumwe na Burugumesitiri Rutayisire Evariste na Député Mutabaruka Sylvain ku wa 06 Mata 1994

nk'uko byemejwe n'umutangabuhamya Rurinda Déo watwaraga imodoka ya Mutabaruka Sylvain, kuba hari aho Birindabagabo Jean Paul yagaragaye atanga amabwiriza y'uburyo ubwicanyi bukorwa kabone n'ubwo hari abasirikari nk'uko byemezwa na Babuziyobajya Samuel, no kuba igihe Birindabagabo Jean Paul yabaga atashye iwe, atakiri kumwe n'abasirikari, yategekaga abakoraga kuri bariyeri yari yarashinze, akagira n'ububasha bwo kwica no gukiza Abatutsi bazifatirwagaho nk'uko byemejwe na Ntahorutaba Jean de Dieu, Kamuhanda Augustin na Ngomayubu Célestin, aho mu buhamya bwabo bashinje Birindabagabo Jean Paul ko kuri Centre ya Karenge, hafi y'aho yari acumbitse, yategetse iyicwa rya Munyaneza Callixte, wari umwarimu, na mushiki we Nyirahabineza bari bayifatiweho, bigakorwa, kimwe n'uko Nyirinkindi Théoneste yiciwe i Kibirira bitegetswe na Birindabagabo Jean Paul nk'uko byasobanuwe n'abatangabuhamya barimo Kayitare Manassé, Munyarukiko Léodomir na Ndaruhutse Emile.

- [194] Urukiko rw'Ubujurire rurasanga nk'uko byemejwe n'Urukiko Rukuru, Birindabagabo Jean Paul yagaragaye mu nama yo ku wa 06/04/1994, ubwo abayobozi bakomeye barimo Député Mutabaruka Sylvain na Burugumesitiri Rutayisire Evariste bakoraga inama, bagahamagara interahamwe zose zize imbunda, bakaziha amabwiriza yo kwica Abatutsi, kuba hari aho Birindabagabo Jean Paul yagaragaye we ubwe atanga amabwiriza y'uburyo ubwicanyi bukorwa nk'uko byemejwe n'abatangabuhamya batandukanye, kuba muri uru Rukiko yaremeye ko hari igihe yabaga ari wenyine mu modoka ye mu gihe abasirikare babaga bagiye kwica cyangwa bamaze gutaha, kuba yarategekaga abakoraga ubwicanyi kuri bariyeri yari yarashinze, kandi akagira n'ububasha bwo kwica no gukiza Abatutsi bazifatirwagaho nk'uko abatangabuhamya Ntahorutaba Jean de Dieu, Kamuhanda Augustin na Ngomayubu Célestin batanze ubuhamya bumushinja kuba yarategetse iyicwa rya Munyaneza Callixte wari umwarimu na mushiki we Nyirahabinezabayifatiweho, bikubahirizwa, bityo imiburanire ye y'uko yakoze ibyaha bitewe n'uko yari yarashyizweho agahato ikaba nta shingiro ifite.
- [195] Urukiko rw'Ubujurire rurasanga kandi abatangabuhamya Rurinda Déo na bagenzi be baremeje ko bamubonye ayoboye ibitero byicaga abatutsi muri Komini Sake, (kuri ADEPR Sake, kuri "Chapelle", ADEPR kwa Gasasira n'ubwicanyi bwo kwa Nyagasaza, bivuze ko iby'uko Birindabagabo Jean Paul n'abamwunganira bavuga ko yari yarashyizweho agahato katigobotorwa nta shingiro bifite.
- [196] Urukiko rw'Ubujurire rurasanga rutemeranywa n'Urukiko Rukuru, aho rwivugurujye rukavuga ko ku ruhande rumwe, Birindabago Jean Paul yashoboraga kwigobotora abasirikare, bivuze ko rwemeye ko yari yarashyizweho agahato katigobotorwa, ku rundi ruhande rukavuga ko yatwaraga abasirikare mu modoka ye nk'aho yari umunyembaraga wari mu bindi bikorwa

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bitegura, bikangurira n'ibitegeka kwica abatutsi aribyo inama zateguwe, gutanga amabwiriza yo gutangiza ubwicanyi, iryo kosa rikaba rigomba gukosorwa. Uru Rukiko rwo rusanga ahubwo Birindabagabo Jean Paul nk'uwari Umuyobozi ku rwego rw'Igihugu w'ihuriro ry'imiryango y'abahinzi borozi mu Rwanda, nk'umuntu wagaragaye hamwe n'abayobozi bakomeye muri ako Karere, bagafatanyaga gutegura ubwicanyi, gutanga amabwiriza yo kwica abatutsi, gukangurira interahamwe gutangira ubwicanyi anabishyira mu bikorwa ubwo yatwaraga abasirikare mu bwicanyi, ahubwo yarabaye umwe mu bayoboze ibikorwa by'ubwicanyi bwakorewe muri Komini Sake, yakoze ku bushake bwe, ku buryo atakwitwaza ko hari agahato ako ariko kose yaba yarashyizweho n'abasirikare.

[197] Urukiko rw'Ubujurire rurasanga kandi nk'uko byemejwe n'Urukiko Rukuru, ikindi kigaragaza ko Birindabagabo Jean Paul atashyizweho agahato, ko ahubwo yakoze ubwicanyi ku bushake bwe, kandi nk'uwari umwe mu bayoboze ubwicanyi muri Komini Sake, ari uko n'igihe yari ageze iwabo muri Komini Kibirira, yari afite intwari, ashya imbaraga kuri banyarwanda yaguyeho abatutsi benshi ndetse anatega ko Nyirinkindi Théoneste ashakishwa, akicwa ko kandi umurambo we ujugunywa muri Nyabarongo nk'uko byasobanuwe n'abatangabuhamya barimo Kayitare Manasse, Munyarukiko Léodomir na Ndaruhutse Emile nk'uko byasobanuwe haruguru.

[198] Urukiko rw'Ubujurire rurasanga kuba Birindabagabo Jean Paul aburana mu Rukiko Rukuru, atari yigeze agaragaza ko yari afite abasirikare bamurinda iwe mu rugo, ku modoka ye, ndetse n'abasigaraga bamurinzwe igihe abandi basirikare babaga bagiyeye kwica abatutsi, ari uko bitabayeho, ko ahubwo ari ibyo ahimba ashaka guhunga icyaha yakoze, ibyo rero bikaba bigaragaza ko nta gahato katigobotorwa yashyizweho, ahubwo ibyo yakoraga yabikoraga ku bushake bwe, kuko uretse n'uko byagaragajwe haruguru ko ibikorwa yakoze yabikoze hamwe nk'ubwiyoboraga ibitero, ahandi nk'uwari mu bitero byishe abatutsi, ikindi ari uko iyo aza kuba yarakoresheye ibyo adashakaga yashoboraga gucika igihe yabaga ari wenyine atari kumwe n'abasirikare nk'uko yabyemereye mu Rukiko Rukuru ndetse no muri uru Rukiko, ko hari igihe yabaga ari wenyine.

[199] Ku birebana n'imbabazi Birindabago Jean Paul yasabye mu mwanzuro we w'ubujurire, ariko mu gihe cy'iburanisha we n'Abavoka bamwunganira bakavugaga ko zitagamijwe gusaba kugabanyirizwa igihano, ko ahubwo zigamijwe kwikiranura n'umutima nama we, Urukiko rw'Ubujurire rurasanga, uretse n'uko atemera icyaha cya jenocide n'icyo kurimbura nk'icyaha cyibasiye inyokomuntu yakoreye muri Komini Sake na Komini Kibirira, yakoranye ubugome bukabije binatwaga ingaruka zikomeye ku muryango Nyarwanda, rusanga bene izo mbabazi asaba zitashyirwaho mu kumugabanyiriza igihano nk'uko abiyugirira, ko ahubwo zigamijwe kwikiranura n'umutima nama we gusa.

- [200] Hashingiwe ku bisobanuro byatanze haruguru, Urukiko rw'Ubujurire rurasanga nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Birindabagabo Jean Paul atashyizweho agahato mu ikorwa ry'ibyaha bya jenocide n'icyo kurimbura nk'icyaha cyibasiye inyoko muntu byakorewe muri Komini Sake muri Mata 1994. II.5. Kumenya niba Birindabagabo Jean Paul atahamwa n'icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu hashingiwe ku bikorwa bimwe. A. Imiburanire ya Birindabagabo Jean Paul

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- [201] Birindabagabo Jean Paul n'abamwunganira bavuga ko yajurijwe n'uko Urukiko Rukuru rwamuhamije icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu hashingiwe ku bikorwa bimwe.
- [202] Basobanura ko Birindabagabo Jean Paul atashoboraga guhamwa ibyo byaha hashingiwe ku bikorwa bimwe hagenda ku bisobanuro bitangwa n'ingingo ya 91, igika cya 1, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, isobanura ko icyaha cya jenocide ari kimwe mu bikorwa, 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 no ku bisobanuro bivugwa mu ngingo ya 94 igika cya 1, n'agace ka 2 y'iryo tegeko, ivuga ko icyaha cyibasiye inyokomuntu kirimo kurimbura bikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare.
- [203] Bakomeza bagaragaza ko iyo usesenguye ibyo Urukiko Rukuru rwemeje mu gika cya 54 cy'urubanza rujuzirirwa, ko Birindabagabo Jean Paul yagiye agira uruhare mu icyicwa ry'Abatutsi hirya no hino mu ngo, ku mabariyeri, ku mavuriro ndetse no mu bitero byari bigizwe n'abacanyu benshi bagizwe n'abasirikari, interahamwe n'impunzi z'abarundi, bakoresha essence, intwari za gakondo, amasasu na grenades, bica icyarimwe kuri ADEPR Sake Abatutsi bagera ku 1800, kuri chapelle yo kwa Gasasira bica Abatutsi hagati ya 200 na 600 barimo abana, abagabo, abagore, abazasa n'abakecuru nta kurobanura, ku rusengero rw'Abadivantisiti i Ntende bica Abatutsi bari hagati ya 400 na 500, i Rwimibabi kwa Mushozi hicwa Abatutsi bari hagati ya 100 na 200, i Ntovi kwa Ruhumuriza Evariste hicwa abarenga 100, kwa Nyagasaza Claver hicwa abarenga 300, ko uburyo ibitero byakozwemo n'intwari zakoreshejwe bigaragaza ko ubwicanyu babukoranye umugambi wo kurimbura igice cy'Abatutsi kubera gusa ko ari abo muri ubwo bwoko, ku buryo bigize icyaha cya jenocide.
- [204] Basobanura kandi ko mu gika cya 60 cy'urubanza rujuzirirwa, Urukiko Rukuru rwavuze ko ibitero bivugwa mu gika kibanziriza iki byakozwe n'abantu benshi, mu buryo buteguwe, kandi byibasira cyane cyane ahahungiyemo abaturage benshi batari abasirikari, hakoreshejwe intwari za gakondo, iza kizungu ndetse no gutwika hagamijwe kwica abantu benshi vuba kandi icyarimwe, ibyo bigize icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu, ko iyo usesenguye izi ngingo zombi, usanga icyo zihurizaho ari ukurimbura, ariko zigatandukanira ku bwoko buba bugomba kurimburwa ndetse n'abantu batandukanye baba bishwe cyangwa bagomba kwicwa.

[205] Bakomeza basobanura ko Urukiko Rukuru rwerekanye ko abantu bishwe ari abo mu bwoko bw'Abatutsi ndetse ko rwanerekanye n'umubare w'abishwe ruvuga ubwo bwicanyi kuri Birindabagabo Jean Paul ko bwakoranywe umugambi wo kurimbura igice cy'Abatutsi kubera gusa ko ari abo muri ubwo bwoko, ku buryo bigize icyaha cya jenocide, rushingiye kuri ibyo bikorwa ruhamya Birindabagabo Jean Paul icyaha cya jenocide, ko ariko no mu kumuhamya icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu n'ubundi rwongeye gushingira kuri ibyo bikorwa rushingiye ku kuba ibyo bitero byarakozwe n'abantu benshi, mu buryo buteguwe, kandi byibasira cyane cyane ahahungiyeye abaturage benshi batari abasirikari, hakoreshejwe intwari za gakondo, iza kizungu ndetse no gutwika hagamijwe kwica abantu benshi vuba kandi icyarimwe, bagasanga ibisobanuro Urukiko Rukuru rwatanze ku cyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu bitari gushingirwaho kuko rutagaragaje ko habayeho kurimbura gutandukanye n'uko rwemeje ku cyaha cya jenocide, kuko hose hicwaga ubwoko bw'Abatutsi gusa, ko Urukiko Rukuru

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ruterekanye ko haba harishwe abandi bantu batandukanye n'ubwo bwoko nk'Abahutu, Abatwa, abazungu cyangwa abandi banyamahanga, kuko ari byo byakwitwa kurimbura imbaga igihe harimo ubundi bwoko butandukanye n'ubwashakwaga bw'Abatutsi gusa.

[206] Bavuga ko ari nako byemejwe mu rubanza rwa Colonel Bagasoro Théoneste, kuko we yicaga atagendeye ku bwoko we yarimbura ahateraniye abantu benshi atitaye ko hari Abatutsi, Abahutu, abanyapolitiki, abanyamahanga n'abandi, akarimbura, ari nayo mpamvu ku rwego rwa mbere bemeje ko yagize uruhare mu iyicwa rya Uwiringiyimana Agatha, Kavaruganda Joseph, Nzamurambaho Frédéric, Ndasingwa Landuard, Rucogoza Faustin, aba bese n'ubwo yabishe ariko bakaba batari Abatutsi, ahubwo bari abanyapolitike b'Abahutu ariko batavugaga rumwe n'ubutegetsi bwariho ndetse mu bo yishe harimo n'abanyamahanga (Belgian Peace keepers), akaba ari byo byatumye ahamwa n'ibyaha 12 harimo n'icyaha cyo kurimbura imbaga.

[207] Bavuga ko ibikorwa bya Colonel Bagasoro Théoneste ntaho bihuriye n'ibya Birindabagabo Jean Paul kuko ubwicanyi bugaragazwa ari ubuhura no kwica Abatutsi gusa akaba nta buryo byakwitwa icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu mu gihe nta mpurirane mbonezamugambi igaragara ko yabaye mu bikorwa akurikiranyweho, akaba yaragombaga gukurikiranywaho gusa icyaha kimwe cya jenocide kuko ibikorwa bikigize aribyo byagaragajwe n'Ubushinjacyaha, ariko ko budasobanura ukuntu ibyo bikorwa bigize icyaha kimwe bishobora kuvamo ibyaha bibiri bitandukanye. B. Imiburanire y'Ubushinjacyaha

[208] Ubushinjacyaha buvuga ko ibivugwa na Birindabagabo Jean Paul n'abamwunganira by'uko atakurikiranwaho ibyaha bibiri bitandukanye hashingiwe ku bikorwa bimwe nta shingiro bifite kubera ko ingingo z'amategeko ateganywa akanahana icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu asobanutse nk'uko n'Urukiko Rukuru rwabisobanuye mu bika bya 57, 58, 59, 60, 61 na 62, rwifashishije imanza zaciwe na TPIR

zirimo urubanza rwa Nahimana Ferdinand na bagenzi be, aho rwagaragaje ko ibyaha yakoze bigize impurirane y'imbenezamugambi, ko rero kuba urwo Rukiko rwaramuhamije icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu, nta kosa rwakoze.

- [209] Ubushinjacyaha busobanura kandi ko ukurikije ibivugwa mu ngingo ya 91 n'ya 94 z'itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, bigaragara ko icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu, ari ibyaha bibiri bitandukanye kubera ko icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu ari ibikorwa by'ubwicanyi bikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare, ko rero abicwaga muri ibyo bitero byari biyobowe na Birindabagabo Jean Paul ari abaturage b'abasivire nk'uko nawe yagiye abyemera mu iburanisha, aho Urukiko rwamubajije niba yarabonaga Inkotanyi, akavuga ko abo yabonaga bapfuye ari abasivire. Ibi rero bigatuma kiba icyaha cyo kurimbura nk'icyahacyibasiye inyokomuntu gitandukanye n'icyaha cya jenocide kuko cyo kiba kigamije kwica abantu bahuriye ku bwenegihugu, ubwoko, ibara ry'uruhu, idini n'ibindi, ko rero atari ngombwa ko abasivire bishwe mu bitero rusange cyangwa bya simusiga baba byanze bikunze bahuriyemo abantu b'ubwoko bubiri cyangwa butatu, ko icy'ingenzi ari uko baba ari abaturage b'abasivire bibasiwe n'ibitero rusange cyangwa bya simusiga. UKO URUKIKO RUBIBONA

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- [210] Ingingo ya 2 y'Amasezerano Mpuzamahanga yo ku wa 09 Ukuboza 1948 agamije gukumira no guhana icyaha cya jenocide nk'uko yemejwe mu Rwanda n'Itegeko - Teka no 08/75 ryo ku wa 12/02/1975, n'ingingo ya 114, agace ka 10 y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, zisobanura ko igikorwa cyo kwica kigambiriwe hagamijwe kurimbura abantu bose cyangwa bamwe muri bo bahuriye ku bwoko, ku bwenegihugu, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, haba mu bihe bisanzwe cyangwa mu bihe by'intambara bigize icyaha cya jenocide.
- [211] Naho ingingo ya 120, agace ka 20, y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rimaze kuvugwa haruguru, igasobanura ko igikorwa cyo kurimbura gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare kiba kigize icyaha cyibasiye inyokomuntu.
- [212] Na none ingingo ya 83, agace ka 20, a na b, y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, iteganyaga ko habaho impurirane y'imbenezamugambi, iyo: igikorwa kimwe gishobora kubyara ibyaha byinshi cyangwa igikorwa kimwe kigizwe n'ibikorwa bitandukanye bigize ubwabyo ibyaha bitandukanye, bihujwe n'uko bigamije umugambi w'icyaha kimwe cyangwa n'uko bimwe muri byo ari impamvu zongera ububi bw'ibindi.

- [213] Mu bika bya 59 - 61 by'urubanza rujuririrwa, Urukiko Rukuru rwasanze harebwe uburyo Birindabagabo Jean Paul yagiye agira uruhare mu iyicwa ry'Abatutsi hirya no hino mu ngo, ku mabariyeri, ku mavuriro ndetse no mu bitero byari bigizwe n'abicyanyi benshi bakoresha intwari zitandukanye, hakicwa abatutsi benshi muri Komini Sake, bigaragaza ko ubwo bwicanyi bwakoranywe umugambi wo kurimbura igice cy'Abatutsi kubera gusa ko ari abo muri ubwo bwoko, ku buryo bigize icyaha cya jenocide. Urukiko Rukuru rwasanze na none ibyo bitero byarakozwe n'abantu benshi, mu buryo buteguwe, kandi byibasira cyane cyane ahahungiyemo abaturage benshi batari abasirikari, hakoreshejwe intwari za gakondo, iza kizungu ndetse no gutwika hagamijwe kwica abantu benshi vuba kandi icyarimwe, ibyo bikaba bigize icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, bityo ibikorwa Birindabagabo Jean Paul akurikiranyweho bikaba bigize impurirane mbonezamugambi nk'uko biteganywa n'ingingo ya 83, agace ka 2o, a na b, y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru.
- [214] Urukiko rw'Ubujurire rurasanga nk'uko n'Urukiko Rukuru rwabibonye, kuba Birindabagabo Jean Paul yaragize uruhare mu iyicwa ry'Abatutsi benshi haba mu ngo zabo, ku mavuriro, ku mabariyeri, ndetse no mu bitero byari bigizwe n'abicyanyi benshi bakoresha intwari zitandukanye, hakicwa abantu benshi muri Komini Sake na Kibirira, bigaragaza ko ubwo bwicanyi bwakoranywe umugambi wo kurimbura igice cy'Abatutsi kubera gusa ko ari abo muri ubwo bwoko, ku buryo bigize icyaha cya jenocide. Rurasanga na none kuba ibyo bitero byarakozwe n'abantu benshi, mu buryo buteguwe muri Komini Sake, kandi byibasira cyane cyane ahahungiyemo abaturage benshi batari abasirikari, hakoreshejwe intwari za gakondo, iza kizungu, ndetse no gutwika hagamijwe kwica abantu benshi vuba kandi icyarimwe, bigize icyaha cyo kurimbura nk'icyaha cyibasiye inyoko muntu.
- [215] Urukiko rw'Ubujurire rurasanga iby'uko uregwa ashobora gukurikiranwaho icyaha cya jenocide nk'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu hashingiwe ku bikorwa bimwe byemejwe kandi mu manza zaciwe na TPIR zirimo urubanza rwa Porokireri na Elizaphan Ntakirutimana na Gérard Ntakirutimana, aho rwasobanuye ko ushinjwa ahamwa n'ibyo byaha

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byombi kubera ko ibigize ibyo byaha bitandukanye, kuko umugambi wo gukora icyaha cya jenocide ugaragarira mu gushaka kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwoko cyangwa ku ibara ry'uruhu, mu gihe ku cyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, ibyo bidasabwa nk'ibigize icyaha, kuko ho umugambi wo gukora icyaha ugaragarira ku kuba ugikora aba azi neza ko gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivili bazira impamvu z'ivangura⁴⁵.

- [216] Urukiko rw'Ubujurire rurasanga na none iby'uko uregwa ashobora gukurikiranwaho no guhanirwa icyaha cya jenocide nk'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu hashingiwe ku bikorwa bimwe, byanemejwe mu rubanza n° RPA 00002/2016/CA rwaciye n'Urukiko rw'Ubujurire ku wa 24/12/2020, Ubushinjacyaha buburana na Uwinkindi Jean,

aho rwasobanuyeko nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Uwinkindi Jean ashobora gukurikiranwaho icyarimwe ibyo byaha byombi kuko ibishingirwaho kugira ngo hemezwe ko ibyo byaha byakozwe bitandukanye⁴⁶.

[217] Urukiko rw'Ubujuje rurasanga kuba harabaye ibitero biteguwe kandi bya simusiga byibasiye abaturage batari abasirikari muri Komini Sake, bihagije kugira ngo BIRINDABAGABO Jean Paul, wayoboye ibyo bitero, akurikiranweho icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, akanakurikiranwaho n'icyaha cya jenocide yakoreye muri Komini Sake na Kibirira kubera ko abiciwe muri ibyo bitero bari abo mu bwoko bumwe bw'Abatutsi nk'uko byasobanuwe haruguru, ibyo bikorwa bikaba byarakozwe mu buryo bw'impurirane y'imbonezamugambi nk'uko byemejwe n'uko n'Urukiko Rukuru hashingiwe ku ngingo ya 83, agace ka 2o, a na b, y'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru, aho rwasobanuye ko icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, bihama Birindababo Jean Paul byakozwe mu buryo bw'impurirane y'imbonezamugambi, bityo Birindabagabo Jean Paul akaba atakwitwaza ko ibikorwa yakoze ari bimwe mu gihe ibigize ibyo byaha byombi bitandukanye nk'uko byasobanuwe haruguru.

[218] Urukiko rw'Ubujuje rurasanga imvugo ya Birindabagabo Jean Paul n'abamwunganira y'uko atakurikiranwaho ibyaha bibiri hashingiwe ku bikorwa bimwe nta shingiro ifite, kuko nk'uko byasobanuwe haruguru, umugambi wo gukora icyaha cya jenocide ugaragarira mu gushaka kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwoko cyangwa ku ibara ry'uruho, mu gihe ibyo bidasabwa ku birebana n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, aho umugambi wo gukora icyo cyaha ugaragarira ku kuba ugikora aba azi neza ko gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivili, hatitawe ku kuba abibasiwe bari mu bwoko bumwe cyangwa butandukanye.

45Affaires no ICTR-96-10-T et ICTR-96-17-T, Le Procureur contre Elizaphan Ntakirutimana et Gérard Ntakirutimana, 21 février 2003, par. 864, "Par contre, le cumul de déclaration de culpabilité n'est admissible que lorsque les éléments constitutifs des crimes considérés sont nettement distincts. En l'espèce, Gérard Ntakirutimana est coupable de génocide et de crime contre l'humanité (assassinat). La chambre estime que les éléments constitutifs des deux infractions sont nettement distincts. Ainsi l'élément moral du crime de génocide réside dans l'intention de détruire, en tout ou en partie, un groupe ethnique ou racial. Or, cet élément n'est pas requis pour qu'un crime contre l'humanité soit constitué. En effet l'élément moral du crime contre l'humanité (assassinat) réside dans le fait que l'agent sait que le meurtre qu'il commet s'inscrit dans le cadre d'une attaque généralisée ou systématique dirigée contre une population civile pour des motifs discriminatoires. Par conséquent, Gérard Ntakirutimana sera déclaré coupable des deux chefs d'accusation" ; IT-98-33-A, Prosecutor v. Radislav Krstić, Appeal Judgement, para. 220. 46 Urubanza n° RPA 00002/2016/CA rwaciye n'Urukiko rw'Ubujuje ku wa 24/12/2020, Ubushinjacyaha buburana na Uwinkindi Jean, igika cya 104 na 105.

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- [219] Urukiko rw'Ubujurire rurasanga kandi imvugo ya Birindabagabo Jean Paul n'abamwunganira y'uko Urukiko Rukuru rutagombaga kumuhamya icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu hashingiwe ku rubanza rwa Colonel Bagasoro Théoneste rwaciye na TPIR, aho rwamuhamije icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu bitewe n'uko yishe abantu b'amoko atandukanye barimo abanyapolitiki, abanyamahanga n'abandi, nta shingiro ifite, kuko muri urwo rubanza, nta na hamwe TPIR yigeze ishingira ku kuba Bagasoro Théoneste yarishe abantu b'amoko atandukanye nk'uko uregwa n'abamwunganira bashaka kubyumvikanisha, ko ahubwo rwamuhamije icyo cyaha hashingiwe ku rupfu rwa Augustin Maharangari no ku bundi bwicanyi bwabereye kuri za bariyeri zitandukanye zari ziri mu Muji wa Kigali, inamuhamya icyo cyaha nk'umuyobozi wategetse ko hicwa⁴⁷ Uwingiringiyimana Agatha, Kavaruganda Joseph, Nzamurambaho Frederic, Ndasingwa Landoard na Rucogoza Faustin, hashingiwe ku kuba abicaga bari bazi neza ko abicwaga nta ruhare bari bafite mu ntambara yari iri kuba hagati ya Leta y'u Rwanda na FPR⁴⁸, bivuze ko bari abasiviri badafite aho bahuriye n'ntambara, bikaba bitandukanye n'urubanza rwa Birindabagabo Jean Paul, aho ahamwa n'icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu kubera ko yayoboye ibitero byishe abatutsi mu mwaka wa 1994 ahantu hatandukanye abaziza ubwoko bwabo nk'uko byasobanuwe haruguru.
- [220] Hashingiwe ku bisobanuro byavuzwe haruguru, Urukiko rw'Ubujurire rurasanga nta kosa Urukiko Rukuru rwakoze mu guhamya Birindabagabo Jean Paul icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu byakorewe muri Komini Sake na Komini Kibirira hashingiwe ku bikorwa bimwe, bityo imvugo ya Birindabagabo Jean Paul y'uko atagombaga guhamwa n'ibyo byaha byombi hashingiwe ku bikorwa bimwe, ikaba nta shingiro ifite.
- [221] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rw'Ubujurire rurasanga rero, nta kosa Urukiko Rukuru rwakoze mu kwemeza ko Birindabagabo Jean Paul yari muri Komini Sake na Komini Kibirira muri Mata na Gicurasi 1994, kandi ko yahakoreye icyaha cya jenocide n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, hashingiwe ku mvugo z'abatangabuhamya batandukanye nk'uko byasobanuwe haruguru, bigaragara ko imikirize y'urubanza rujuririrwa itagomba guhinduka mu ngingo zarwo zose, bityo hakaba hagumye imikirize y'urubanza rwajuririwe. III. ICYEMEZO CY'URUKIKO
- [222] Rwemeje ko ubujurire bwa Birindabagabo Jean Paul nta shingiro bufite.
- [223] Ruvuze ko imikirize y'urubanza N° RPA/GEN 00003/2017/HC/HCCIC rwaciye n'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha Mpuzamahanga n'ibyaha byambuka imbibi, ku wa 30/10/2019, idahindutse.
- [224] Rwemeje ko igifungo cya burundu Birindabagabo Jean Paul yahanishijwe n'urwo Rukiko kidahindutse.

47 Case No. ICTR-98-41, The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi Aloys, Ntabakuze, Anatole Nsengiyumva, par. 2245, 18 December 2008. 48 Case No. ICTR-98-41, The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi Aloys, Ntabakuze, Anatole Nsengiyumva, par. 2244, 18 December 2008.

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[225] Rutegetse ko amagarama y'uru rubanza aherera ku Isanduku ya Leta.

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Prepared on 11 October 2026 · Esheria