



## UBURENGANZIRA BW'INDISHYI KUBAROKOTSE JENOSIDE

IBITEKEREZO KU NDISHYI ZIGENEWE ABACITSE KU  
ICUMU RYA JENOSIDE YAKOREWE ABATUTSI MU  
1994

INYANDIKO ITANGA IBITEKEREZO

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## I. Inshamake

1. IBUKA, AVEGA, AERG, GAERG, AOCM, Duhozanye, Duharanire Kubaho, Barakabaho, Survivors Fund (SURF) na REDRESS igejeje kuri Leta y'u Rwanda iyi nyandiko mu rwego rwo gukomeza no kunganira ibiganiro ku ndishyi zigenewe abacitse ku icumu rya Jenocide hagati y'abarokotse ubwabo, imiryango iharanira inyungu z'abarokotse n'abandi bafatanyabikorwa. Iyi miryango iragaragaza uburyo bunyuranye bwakwifashishwa kugira ngo abacitse ku icumu babone indishyi, by'umwihariko ku byerekeye gusanirwa, gusubizwe ibyabo cyangwa guhabwa ingurane.
2. icyifuzo nyamukuru ni ugushishikariza Leta kureba uko ishyiraho itsinda ryiga ikibazo cy'indishyi n'ibindi bigishamikiyeho. Ibi byafasha kugira ibyumvikanwaho biganisha ku buryo buboneye bwahesha abacitse ku icumu indishyi zikwiye. By'umwihariko, ibibazo bikomeye birimo (1) Kumenya umubare n'ingano by'indishyi byagenwe n'inkiko zisanzwe ndetse n'inkiko Gacaca ariko kugeza ubu zikaba zitaratangwa; (2) Kumenya indishyi zaciwe abakoze Jenocide b'abakene cyane ku buryo batabasha kuzitanga; (3) Kwiga ikibazo cy'abahohotewe muri jenocide ariko ababahohoteye ntibabasha kumenyekana (4) Kuganira n'abarokotse ndetse n'imiryango yabo mu Rwanda hose kugira ngo bagaragaze ibyo bakeneye kandi barebere hamwe uburyo buboneye bwo kugera ku ndishyi; (5) Gushyiraho uburyo bwo guhitamo abagenerwa indishyi mu gihe hagaragaye abahohotewe ku buryo buziguye; (6) Gusaba gushyiraho ikigega cy'indishyi ubwoko bw'indishyi n'uburyo buboneye abazigenewe bazihabwamo, bushoboka kandi bwabasha kubonerwa amafaranga.
3. Iryo tsinda riramutse rigiyeho ryakwita kandi rikigira ku ku byabaye mu bindi bihugu aho indishyi zatanzwe, by'umwihariko aho ku ishyirwaho ry'ikigega cy'indishyi muri South Africa ( Afurika y'Epfo), Moroco (Maroke) na Sierra Leone (Siyera Lewone). Iryo tsinda ryakwigira kandi kuri komite ku ndishyi no gusana ibyangijwe yashyizweho na Komisiyo y'Ukuri n'Ubwiyunge muri Afurika y'Epfo yashyinzwe kwiga no gushyira mu bikorwa imyanzuro kuri gahunda y'indishyi zagenewe abahohotewe n'ivanguramoko ryabereye muri icyo gihugu. Amasomo yavuye mu Itsinda ry'indishyi muri Siyera Lewone ryashyizweho ngo ritegure ingamba ya gahunda y'indishyi muri Siyera Lewone na yo yazitabwaho.

## II. Iriburiro

*Nta butabera budatanga indishyi, ni yo mpamvu tubona ari ikibazo gikomeye Leta ikwiye kwiga.*"<sup>1</sup> Dr Jean Pierre Dusingizemungu, Perezida wa IBUKA, Mata 2012

4. Miliyoni irengay'Abatutsi n'Abahutu batari bashyigikiye ingengabitekerezo ya Jenocide barishwe maze abayirokotwe basigara iheruheru. Abacitse ku icumu babajijwe mu myaka itanu ishize bakomeje gutangaza uruhare rukomeye ubutabera n'indishyi byagira mu guhangana n'ingaruka za jenocide. Muri zo hari ugukurikirana ba rukarabankaba ku byo bakoze no gutanga indishyi zikwiye kandi hagamijwe gutanga umusanzu mu bwiyunge no gufasha abarokotse kongera kwiyubaka.
5. Gutanga indishyi zikwiye harimo gusana ibyangijwe, ingurane no gusubiza abarokotse ibyabo ni ingorabahizi mu Rwanda. Mu myaka cumi n'umunani ishize Jenocide yo mu 1994 ihagaritswe, Leta y'u Rwanda, ifatanyije n'imiryango iharanira inyungu z'abacitse ku icumu ndetse n'ubuvugizi bukorwa n'imiryango iharanira uburenganzira bwa muntu bagera gushaka uburyo abarokotse Jenocide babona uburenganzira bwabo ku ndishyi. Kugeza ubu ariko nta muti uhamye urabonerwa icyo kibazo.
6. Ku wa 17 Kanama 2011, Tharcisse Karugarama, Minisitiri w'Ubutabera akaba n'intumwa ya Leta yatangiye mu nama nyunguranabitekerezo yateguwe kugira ngo ikibazo cy'indishyi ku barokotse kuganirweho, ashimangira ko indishyi ku barokotse Jenocide ari ikibazo gikwiye gushakirwa umuti, ati "aho guhera byatinda".<sup>2</sup>
7. Iyi nyandiko itanga ibitekerezo igenewe gufasha abafatanyabikorwa ba ngombwa mu biganiro ku bizakurikiraho bigamije gukemura ikibazo cy'indishyi. Iyi nyandiko ishingiye ku mabazwa anyuranye yakorewe abarokotse, abayobozi b'inzego za Leta n'abahagarariye imiryango yo mu gihugu n'imiryango mpuzamahanga iharanira uburenganzira bwa muntu mu myaka itanu ishize ku kibazo cy'indishyi, n'inama n'ibiganiro nyunguranabitekerezo byateguwe n'iyi miryango. By'umwihariko, harimo ibitekerezo byavuye mu nama yabaye ku wa 17 Kanama 2011 i Kigali,<sup>3</sup> n'inama ebyiri zabaye ku wa 20 na 21 Werurwe 2012 in Kigali. Iyi nyandiko kandi iragaragaza uko indishyi zatanze mu bindi bihugu nyuma y'amakimbirane cyangwa se igisubizo cyatanze aho uburenganzira bwa muntu bwabangamiwe bikomeye cyane cyane muri Afurika y'Epfo, Siyera Lewone na Maroke. Ibitekerezo bikubiyemo bishobora kuba amasomo akomeye ariko si ibisubizo kamara ku

<sup>1</sup> The New Times, 'The Legacy of Gacaca', 10 April 2012, at <http://www.newtimes.co.rw/news/index.php?i=14958&a=52323>.

<sup>2</sup> Speech of Tharcisse Karugarama, African Rights, REDRESS and IBUKA Conference on "Access to Reparation for Survivors of the 1994 Genocide in Rwanda, 17 August 2011, Conference Agenda at [http://www.redress.org/downloads/Conference\\_Programme\\_English.pdf](http://www.redress.org/downloads/Conference_Programme_English.pdf); speech on file with the Authors.

<sup>3</sup> Ibid; Conference Background Note at [http://www.redress.org/downloads/17August2011\\_Torture\\_Survivors\\_Conference\\_BackgroundNote.pdf](http://www.redress.org/downloads/17August2011_Torture_Survivors_Conference_BackgroundNote.pdf).

kibazo cy'indishyi mu Rwanda. Leta y'u Rwanda hamwe n'abarokotse n'imiryango iharanira inyungu zabo bagomba gushakira hamwe inzira n'uburyo bwo gukemura ibibazo by'inzitane abacitse ku icumu bafite no kubahiriza uburenganzira bwabo ku ndishyi.

8. Iyi nyandiko igizwe n'ibice bitanu: igice cya mbere kivuga mu magambo avunaguye ku burenganzira ku ndishyi bw'abarokotse jenocide n'ibindi byaha ndengakamere mu mategeko mpuzamahanga. Igice cya kabiri gisuzuma ibyakozwe na Leta y'u Rwanda mu gutanga uburenganzira ku ndishyi cyane cyane ku byerekeye gusana ibyangijwe, ingurane no gusubiza abarokotse ibyabo byangijwe ndetse n'uko abarokotse babona ibyakozwe kugeza ubu. Igice cya gatatu kirerekana uburyo bushoboka bwashuzumwa kugira ngo abacitse ku icumu babone indishyi ku buryo bukwiye hashingiwe ku byabaye mu bindi bihugu. Igice cya nyuma gitanga ibyifuzo ku bikorwa byakurikiraho mu gukemura ikibazo cy'indishyi.

### III. Uburenganzira ku ndishyi mu mategeko mpuzamahanga<sup>4</sup>

9. Ubundi Indishyi ni ubugombe ku ruhande rw'uwakoze icyaha bugamije gusubiranya ibyangijwe n'icyaha. Amategeko mpuzamahanga yemera ko indishyi igomba guhanagura mu buryo bwose aho bishoboka ingaruka zicyaha no kugerageza gusubiza ibintu uko byari kumera iyo icyo cyaha kitabaho.<sup>5</sup> Amasezerano mpuzamahanga aharanira uburenganzira bwa muntu ateguka ibihugu guha abantu bahohotewe ibibafasha kuvurwa ku buryo bukwiye, gusubira mu buzima busanzwe n'uburenganzira bukwiye ku ndishyi. Ku byerekeye u Rwanda aya mategeko arimo: ingingo ya 2 (3) y'amasezerano mpuzamahanga ku burenganzira bwa gisivili na politiki (ICCPR), ingingo ya 8 y'itangazo mpuzamahanga ry'Uburenganzira bwa Muntu (UDHR), ingingo ya 14 y'Amasezerano y'Umuryango w'Abibumbye arwanyaga iyicarubozo n'ibindi bikorwa by' ubwicanyi cyangwa ibihano bya kinyamaswa n'ibitesha agaciro umuntu (UNCAT), ingingo ya 39 y'amasezerano mpuzamahanga ku burenganzira bw'umwana n'ingingo ya 7 y'amasezerano nyafurika ku burenganzira bwa muntu n'abaturage (ACHPR). Amahame remezo n'amabwiriza y'Umuryango w'Abibumbye ku burenganzira ku ndishyi z'abahohotewe n'ibikorwa bibangamira cyane uburenganzira mpuzamahanga bwa muntu n'ibikorwa bibangamira cyane amategeko mpuzamahanga ry'ubutabazi ashingiye ku nshingano mpuzamahanga zisanzeho kandi ashimangira ko za Leta zifite inshingano yo guha abahohotewe " indishyi

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<sup>4</sup> For further information on the right to reparation, see: Redress. *Reparation: A sourcebook for victims of torture and other violations of human rights and international humanitarian law*, 2003. Available at <http://www.redress.org/downloads/publications/SourceBook.pdf>; REDRESS, 'Implementing Victims' Rights- A Handbook on the implementation of Basic Principles and Guidelines on the Right to a Remedy and Reparation, March 2006, available at <http://www.redress.org/downloads/publications/Reparation%20Principles.pdf>; see also Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, at <http://www2.ohchr.org/english/law/pdf/victims.pdf>.

<sup>5</sup> Ibid

ikwiye, ibagirira akamaro kandi itanzwe vuba”<sup>6</sup> “igomba kuba aho bishoboka hose ihwanye n’uburemere bw’ihohoterwa bakorewe”.<sup>7</sup>

10. Na none kandi ku byerekeye u Rwanda, amasezerano yashyiriweho umukono i Nairobi muri Kenya ku burenganzira bw’abakobwa n’abagore ku ndishyi<sup>8</sup> ateganya inzira iganisha ku ngamba zihanye zo guhangana n’ihohoterwa rishingiye ku gitsina n’ibindi byaha by’ihohoterwa ry’abagore n’abakobwa. Ayo masezerano yemera kandi ko abagore n’abakobwa bacitse ku icumu bakwiye kugira uruhare rw’ingenzi mu gutegura no gushyira mu bikorwa gahunda z’indishyi. Yemera kandi akamaro ko gutanga indishyi irenze impamvu n’ingaruka z’ako kanya zatewe n’ihohoterwa n’ibyaha bakorewe. Izo ndishyi zigomba kuvanaho ubusumbane mu bya politiki n’inzego biba byaratewen’ingaruka mbi z’icyaha ku buzima bw’abagore n’abakobwa.
11. Nk’ihame rusange, uko ingamba zo gutanga indishyi zirushaho kumvikana kandi zikaba nyinshi, niko ibibazo by’abacitse ku icumu byabonerwa umuti ukwiriye kandi bagasubizwa icyubahiro cyabo. Mu magambo akoreshwa mu gusobanura indishyi, ijambo “INDISHYI/REPARATION” rikoresha ku buryo bunyuranye busobanura ubwoko bunyuranye bw’indishyi, burimo ingurane(Compensation), gusubiza ibyabandi cyangwa gusana ibyangijwe(restitution et rehabilitation). Mu rwego rwo gusobanura *neza* ibyo abacitse ku icumu bakeneye n’ubwoko bw’indishyi bwihariye, iyi nyandiko yifashishije ijambo ribumbye andi yose asobanura indishyi nk’uko yakoreshejwe mu mahame n’amabwiriza y’Umuryango w’Abibumbye atanga ibisonanuro birambuyeku bwoko bw’indishyi bukenewe. Turashishikariza abantu bose gukoresha amahame n’amabwiriza y’Umuryango w’Abibumbye mu gutegura ingamba zo guha indishyi abacitse ku icumu rya Jenocide yakorewe abatutsi.<sup>9</sup>
  - **Kugarurirwa (restitution):** bigamije gusubiza uwahohotewe mu buzima yarimo, mbere yo guhohoterwa, kugarurirwa bishobora kuba gusubizwa uko bishobotse ubwigenge, gusubizwa uburenganzira bwe, irangamuntu, ubuzima mu muryango, ubwenegihugu, gusubira aho umuntu yari atuye, gusubizwa ku murimo no gusubizwa umutungo;
  - **Ingurane(compensation)** ishobora kuba mu mafaranga icyo gihe akabbaro kose uwakorewe icyaha yagize gahabwa agaciro mu rwego rw’bukungu bitewe n’uburemere bw’ibyaha n,ibihe byakorewemo, nk’ibi bikurikira: a) ubumuga bwo ku mubiri no mumutwe b) amahirwe uwahohotewe yavukijwe arimo gutakaza umurimo, amashuri n’ibijyanye n’ubwitaganyirize, ibintu byangijwe no gutakaza umutungo ndetsen’

<sup>6</sup> The UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (‘Basic Principles and Guidelines’), adopted by the UN General Assembly on 16 December 2005, Resolution 147 (A/Res/60/147), principle 15

<sup>7</sup> Ibid, principle 18

<sup>8</sup> See, [http://www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php).

<sup>9</sup> UN Basic Principles and Guidelines, principles 19-23.

ubushobozi bwo kubona umutungo c) ububabare bwo ku mutima, d) ikiguzi gisabwa kugira ngo abone ubufasha mu rwego rw'amategeko n'umwunganizi, ubuvuzi n'imiti ndetse n'ibyerekeye ubuzima bwo mu mutwe na serivisi rusange zerekeye imibereho mbonezamubano.

Ingurane ishobora kugira akamaro ku buryo bw'umwihariko aho gusubizwa bitagishoboka kubera imiterere y'icyaha, nk'igihe habayeho ibyaha mpuzamahanga nko gukoreshwa imibonano mpuzabitsina ku ngufu cyangwa iyicarubozo.

- **Gusana** bishobora kubamo ubufasha mu bijyanye n'amategeko, ubuvuzi, ubuzima bwo mu mutwe n'ubundi bufasha bujyanye n'imibereho myiza<sup>10</sup>;
- **Kunezerwa**: guhagarika ibyaha bibangamira uburenganzira bwa muntu ndetse no gushyiraho uburyo bwo gutangaza ukuri kubyabayemu ruhame.
- **Kwizezwa ko bitazongera ukundi**: gukora ku buryo ibyo byaha bitasubira ukundi binyuze mu mavugurura y'inzego ( ubutabera, igisirikari, igipolisi,, n'ibindi) no gushyira mu bikorwa uburyo bwo gukurikirana no gukumira amakimbirane mu mibanire y'abantu.

#### IV. Icyo amategeko ateganya n'uko byagendekeye abacitse ku icumu mu gusaba indishyi no gusubizwa ibyabo mu Rwanda

##### a. Gusaba indishyi mu "ngereko zihariye"

12. Itegeko ngenga ryo muri 1996 ku "mitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cya Jenocide cyangwa ibyaha byibasiye inyoko muntu byakozwe kuwa ku wa 1 Ukwakira 1990" riteganya ko " amategeko asanzwe agenga ibirego n'ibikorwa bya gisivili yubahirizwa mu manza zaciwe n'ingereko zihariye" kandi ayo mategeko agateganya ko abacitse ku icumu bashobora gukurikirana ababahohoteye hifashishijwe ubushinjacyaha bwigenga.<sup>11</sup> Iri tegeko riteganya ko indishyi zigenewe abacitse ku icumu batabashije kumenyekana zigomba gushyirwa mu kigega rusange cy'indishyi " *kigomba gushyirwaho n'itegeko ryihariye rikagena n'imikorere yacyo*". Mbere y'uko icyo kigega gishyirwaho, indishyi zose zagenwe n'inkiko zagombaga gushyirwa kuri konti yihariye iri muri banki Nkuru y'u Rwanda.<sup>12</sup>

<sup>10</sup> For a comprehensive analysis of the right to rehabilitation under international law, see REDRESS, 'Rehabilitation as a Form of Reparation Under International Law, December 2009, at <http://www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf>.

<sup>11</sup> Organic Law No. 08/96 of 30 August 1996 on the Organisation of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since October 1, 1990, Article 29 (1), (2), (3), ANNEX 3.

<sup>12</sup> Ibid, Article 32.

13. Kuva mu mwaka w'1996 kugeza ku ishyirwaho ry'inkiko Gacaca mu w' 2001, abacitse ku icumu bagize uruhare muri 2/3 by'imanza mpanabyaha mu ngereko zihariye zashyizweho mu nkiko zisanzwe bari mu ruhande rw'abahohotewe. Ugereranyije 50% by'abacitse ku icumu baregaga abantu ku giti cyabo bahawe indishyi ku bintu byangijwe cyangwa guteshwa agaciro nk'umuntu. Mu ntangiriro, inkiko zacaga abatsinzwe indishyi zifite agaciro kanini, bikaba byaravuzwe ko zageraga kuri za miliyoni 100 z'amadolari zabazwe nyuma y'imanza 4000 zaciwe.<sup>13</sup> icyagenderwagaho mu kugena izo ndishyi ntigisobanutse kuko indishyi zasabwaga zatandukanaga cyane (urugero: ku wapfushije umugabo, urukiko rwagenaga hagati y'amafaranga 250,000 na 8,000,000 y'u Rwanda), kandi akenshi ntihatangwa ibisobanuro ku buryo izo ndishyi zagenwe.<sup>14</sup>
14. Abahohotewe kandi baregeye indishyi zisabwa Leta. N'ubwo byagaragaye ko Leta yasabwaga gufatanya n'uwakoze icyaha gutanga indishyi mu manza nyinshi kandi n'indishyi zikagenwe, nta cyemezo na kimwe muri ibi cyigeze gishyirwa mu bikorwa.<sup>15</sup>
15. Kugeza ubu, nta cyemezo na kimwe ku ndishyi zaregowe abantu ku giti cyabo cyangwa Leta mu nkiko zisanzwe cyari cyashyirwa mu bikorwa. Ibi byatewe n'impamvu zinyuranye, zirimo ahanini ko abakoze jenocide b'abakene badafite ubwishyu, cyangwa se badafite ubushake bwo kwishyura indishyi. Ahantu hamwe na hamwe nk'uko byagaragaye mu bushakashatsi imiryango iharanira inyungu z'abacitse ku icumu yakoze, abakoze jenocide bari bafite ubushobozi bwo kwishyura barabyangiriye baha ruswa abashinzwe gushyira mu bikorwa ibyemezo byo kwishyura izo ndishyi<sup>16</sup>. Byongeye kandi, nta n'umwe mu bacitse ku icumu cyangwa umuyobozi muri Leta wabajijwe waba yaremeje ko hari indishyi zagenwe n'inkiko zashyizwe kuri konti muri Banki Nkuru y'u Rwanda nk'uko biteganywa n'itegeko ngenga ryo mu w'1996.
16. Urugero rumwe rwerekana aho icyemezo cy'urukiko ku ndishyi cyashyizwe mu bikorwa nabwo mu buryo bw'igicagata ni mu rubanza rwa Karamira Flouard wakatiwe igihano cy'urupfu. Muri uru rubanza, uwacitse ku icumu umwe yahawe indishyi y'amafaranga 15,800 Frw kuri miliyoni 17 bari batsindiye. Nabwo kandi muri urwo rubanza, uburyo abacitse ku icumu bahawemo izo ndishyi ntabwo busobanutse na gato. Biragaragara ko hari ibintu byakozwe mu buryo busa n'ubutubahirije amategeko, aho abari bashinzwe gushyira

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<sup>13</sup>International Crisis Group, Africa Report No 30, 7 June 2001, p.33, at <http://www.crisisgroup.org/~media/Files/africa/central-africa/rwanda/International%20Criminal%20Tribunal%20for%20Rwanda%20Justice%20Delayed.pdf>.

<sup>14</sup> Stef Vandeginste, 'Reparation pour les victimes de genocide, de crimes contre l'humanite et de crimes de guerre au Rwanda', in 'L'Afrique des Grands Lacs. Annuaire 2000-2001', p.10.

<sup>15</sup> Ibid, pp.12, 13.

<sup>16</sup> Interview with survivor, Kigali, 10 December 2010; interview with a civil party, Kigali, 21 December 2010.



mu bikorwa icyemezo barangiyeye abacitse ku icumu aho amafaranga yari ari bakajya kuyafata kandi byose byakozwe mu buryo bwihuse”<sup>17</sup>

#### **b. Gusaba ingurane no gusubizwa ibyasahuwe mu nkiko Gacaca**

17. Ishyirwaho ry’inkiko Gacaca mu itegeko ngenga No. 40/2000 ryagabanuye cyane amahirwe y’abacitse ku icumu mu kuregera indishyi nk’abahohotewe. icya mbere, binyuranyije n’itegeko mpuzamahanga,<sup>18</sup> itegeko rishyiraho inkiko Gacaca rivuga ko ibirego kuri Leta bitemewe ngo “ *kuko Leta yemeye uruhare rwayo muri Jenocide kandi ikaba itanga umugabane mu kigega cy’indishyi ku ngengo y’imari ya buri mwaka*” Uwo mugabane ugenwa n’itegeko ry’ingengo y’imari.”<sup>19</sup> Iri tegeko ntiryemerera abacitse ku icumu kuregera indishyi zigomba kwishyurwa na Leta gusa, ahubwo rinavanaho indishyi zagombaga kwishyurwa na Leta zagenwe n’ingereko zihariye kuo iryo tegeko ryahawe ububasha bwo gushyirwa mu bikorwa no ku byabaye mbere y’uko rijyaho. icya kabiri, iri tegeko riteganyaga ko uretse abaregwa bo mu icyiciro cya mbere cya ba ruharwa baregwa kuba ku isonga y’ubwicanyi muri Jenocide, izindi manza zose zerekeye jenocide zagombaga gucibwa n’inkiko gacaca. Nyamara ariko muri izi nkiko, abacitse ku icumu bashoboraga kuregera indishyi ku mitungo yangijwe cyangwa yasahuwe cyangwa gukomeretswa ku mubiri gusa kuko inkiko gacaca zitari zifite ububasha bwo gutanga indishyi z’akababaro.<sup>20</sup>
18. Inkiko Gacaca zagombaga gukora urutonde rw’abacitse ku icumu babuze imitungo cyangwa bakomerekejwe ku mubiri hamwe n’imitungo iregerwa ndetse n’indishyi bihwaye. Imanza zose zaciye n’inkiko zisanze ndetse n’inkiko Gacaca zigatanga indishyi ku mitungo yangijwe cyangwa ibyaha byo gukomeretswa ku mubiri zagombaga koherezwa mu “ *Kigega cy’indishyi ku bacitse ku icumu rya Jenocide n’ibindi byaha byibasiye inyoko muntu*” kugira ngo icyo kigega gishyireho uburyo bwo gutanga izo ndishyi.”<sup>21</sup> Ubwo rero ishyirwaho ry’ikigega cy’indishyi ryakabaye ryarafashije abacitse ku icumu kubona indishyi zabo aho kugira ngo bazibaze ababiciye cyangwa ababahohoteye ku giti cyabo kandi cyakabaye cyarafashije gukemura ibibazo bigaragara mu gushyira mu bikorwa ibyemezo by’inkiko ku ndishyi zagombaga gutangwa n’abakoze Jenocide ku giti cyabo cyangwa Leta. Ikigega cy’indishyi cyagombye kuba cyarafashije na none mu guha indishyi abacitse ku icumu batabashije kumenya ababahohoteye.

<sup>17</sup> Interview with one of the civil parties, Kigali, 21 December 2010.

<sup>18</sup> According to the principle of continuity, successor States can be held accountable for violations committed by the predecessor State, see for instance Menno T. Kamminga, ‘State Succession in Respect of Human Rights Treaties’, in *European Journal of International Law* (1996), pp. 469-484.

<sup>19</sup> Organic Law No 40/2000 Setting up Gacaca Jurisdictions and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994, Article 91.

<sup>20</sup> Ibid, Article 90, limiting the possibility for survivors to claim reparation to restitution of property or, alternatively, claim for compensation for property and bodily related damage only.

<sup>21</sup> Organic Law No 40/2000 of 26 January 2001 Setting up Gacaca Jurisdictions and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994, Article 90, ANNEX 4.

19. Ivugurura ry'itegeko ngenga No 40/ 2000 ryabaye mu mwaka w'2004, ryateganyije ko *"ubundi bwoko bw'indishyi ku bacitse ku icumu bugomba gushyirwaho n'itegeko ryihariye,"* rikaba rero ryarahaga abacitse ku icumu amahirwe yo gusaba indishyi zitari amafaranga zagombaga gutegereza itorwa ry'itegeko ryihariye.<sup>22</sup>
20. Muri make, ikigega cy'indishyi abacitse ku icumu bari bijewe n'itegeko ryihariye ryavugwaga ko rizajyaho byarirengagijwe mu itegeko rishyiraho inkiko Gacaca kandi byari gufasha abacitse ku icumu kubona indishyi.
21. Nyamara, nk'uko biza kugaragara hanyuma, ikigega cy'indishyi ntikirashyirwaho kugeza ubu. Nk'uko byatangajwe n'Urwego rw'Igihugu rw'Inkiko gacaca, ntabwo inkiko Gacaca zigeze zikora urutonde rw'indishyi n'ibyangijwe.<sup>23</sup> Abenshi mu bacitse ku icumu ntibashobora kurangirisha imanza zaciwe n'inkiko Gacaca, bakaba rero batarabona indishyi bemerewe muri izo nkiko cyangwa se barabonye agace gato k'indishyi bagombaga kubona ku ndishyi z'amafaranga. Ubushakashatsi bwashyizwe ahagaragara na Legal Aid Forum (Rwanda) muri uku kwezi bwashingiye ku ibazwa ry'abantu barenga 2,700 baregeye indishyi mu Rwanda bwemeza ko indishyi zatanzwe mu nkiko gacaca zigoye kubona kuko 92% by'imanza zaciwe n'inkiko Gacaca zitararangizwa kugeza ubu.<sup>24</sup>
22. Abacitse ku icumu babajijwe n'imiryango yabo bagaragaje ipfunywe baterwa no kubura gishyigikira mu gihe basaba irangizwa ry'imanza zaciwe n'inkiko Gacaca batsindiyemo indishyi. Umwe mu bacitse ku icumu yagaragaje ipfunwe n'agahinda aterwa n'ububasha budahagije bw'inkiko Gacaca mu gushyira mu bikorwa ibyemezo byazo muri aya magambo:

*"Abagombaga kwishyura icyo batwaye, ibyo basahuye ntabwo bakoze. Bakora uko bashoboye ntibatwishyure ibyo batugomba. Mu by'ukuri nta cyo inkiko Gacaca zagezeho ku byerekeye indishyi. Twabwese abacitse ku icumu tugomba guhakwa ku bakoze Jenocide. Twicisha bugufi, duhitamo guceceka kandi dufite isoni ngo tutaba nkabo."*

*"Abayobozi bakadufashije mu bibazo byacu babisubiza irudubi. Abo bayobozi barya ruswa. Mu rubanza rwanjye, numvise ko umunyamabanga nshingwabikorwa wa gacaca yagabanyaga n'uwanyicyiye amafaranga nagomgaga guhabwaho indishyi. Mu*

<sup>22</sup> Organic Law No 16/2004 of 19 June 2004 Establishing the organisation, competence and functioning of gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994, Art. 75, ANNEX 5.

<sup>23</sup> Interview with Interview with Domitilla Mukantaganzwa, Executive Secretary NSGJ, Kigali, 28 March 2012.

<sup>24</sup> Power Point Presentation at Conference convened by the Legal Aid Forum, Kigali, June 2012, copy on file with the organisations.

*by'ukuri simbona neza uko ibyemezo by'inkiko kuri iki kibazo cy'indishyi n'ingurane bizashyirwa mu bikorwa.”<sup>25</sup>*

23. Kuva mu mwaka wa 2009, uburenganzira bw'abacitse ku icumu mu kuregera indishyi abakoze jenoside bo mu cyiciro cya mbere cya ba ruharwa bwabangamiwe n'itegeko rishyiraho Ikigega cya Keta gitera inkunda Abacitse ku icumu batishoboye (FARG) riteganyaga ko “ Ikigega cyonyine ni cyo gifite uburenganzira bwo kuregera indishyi mu izina ry'abacitse ku icumu rya jenoside yakorewe abatutsi n'ibindi byaha byibasiye inyoko muntu, kikaba cyarega abakekwaho ibyaha bibashyira mu rwego rwa ba ruharwa.”<sup>26</sup> FARG ntirigera itanga ikirego mu izina ry'abacitse ku icumu, kandi iyo ngingo ihangayikishije abacitse ku icumu n'ababunganira mu by'amategeko mu manza zarezwemo ba ruharwa. Abunganira abantu mu nkiko babajijwe bemeje ko iyi ngingo inyuranyije n'itegeko Nshinga rya repubulika y'u Rwanda rigena ko abahohotewe bafite uburenganzira bwo gutanga ibirego kandi bikakirwa.<sup>27</sup> Iryo tegeko kandi ribangamiye abacitse ku icumu rya jenoside ugereranyije “n'ibyaha bisanzwe” aho abahohotewe bafite uburenganzira busesuye bwo gutanga ibirego bisaba indishyi mu mategeko y'u Rwanda.<sup>28</sup> Uko kunyuranya n'itegeko Nshinga ndetse no kuvangura abahohotewe biboneka mu itegeko rigenga FARG byakemanzwe mu nyandiko IBUKA iherutse gushyikiriza FARG.<sup>29</sup>

#### **V. Ipfunwe n'impungenge abacitse ku icumu baterwa n'uko ibintu byifashe**

24. Inkiko Gacaca zashoje imirimo yazo ku mugaragaro muri kamena 2012. Imanza za Jenoside zasigaye zidaciwe zizakurikiranwa mu nkiko zisanzwe cyangwa inkio za gisirikari aho bishoboka. Ntibyumvikana ukuntu uburenganzira bw'abacitse ku icumu ku ndishyi buzubahirizwa. Na none, ntibyumvikana neza ukuntu akayabo k'indishyi zatsindiwe mu nkiko gacaca ariko zikaba zitaratangwa kugeza ubu zizaboneka. IBUKA yagaragaje ibitekerezo ku itegeko rishya risesa inkiko gacaca, isaba ibisobanuro ku ngingo zerekeye izo

<sup>25</sup> Interview with survivors, 2 December 2010

<sup>26</sup> Organic Law No 69/2008 of 30 December 2008 relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994, and determining its organisation, powers and functioning, Article 20, ANNEX 6.

<sup>27</sup> Constitution of the Republic of Rwanda, 4 June 2003, Article 19; REDRESS/ African Rights workshop organised with Kigali based lawyers, 15 August 2011.

<sup>28</sup> See for instance Law No 13/2004 of 17 May 2004 Relating to the Code of Criminal Procedure, O.G. Special No of 30 July 2004, Articles 9-17, at [http://www.amategeko.net/display\\_rubrique.php?ActDo=ShowArt&Information\\_ID=1333&Parent\\_ID=30693517&type=public&Langue\\_ID=An&rubID=30693524#30693524](http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=1333&Parent_ID=30693517&type=public&Langue_ID=An&rubID=30693524#30693524).

<sup>29</sup> IBUKA and its constituent Member Organisations, 'Submission on the FARG Draft Report compiled by GPO Partners, Rwanda (May 2012)', Addendum 'Submission on No 69/2008 of 30/12/2008 Law relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994, and determining its organisation, powers and functioning ANNEX 1.

ndishyi<sup>30</sup>, ariko biragaragara ko bimwe mu bitekerezo bya IBUKA ku ngingo zitareba indishyi ari byo byonyine byahawe agaciro.

25. Ikiri ukuri ni uko kugeza uyu muni abacitse ku icumu benshi nta ndishyi bahawe haba mu nkiko zisanzwe cyangwa mu nkiko Gacaca. Ibyo basezeranyijwe mu myaka 18 ishize ko hazashyiraho ikigega cy'indishyi byari byabazamuriye icyizere ariko ntibyashyizwe mu bikorwa. Kuba imanza zaciwe n'inkiko zisanzwe cyangwa inkiko Gacaca zitarangizwa bifite ingaruka zikomeye ku buzima bw'abacitse ku icumu no ku myumvire yabo ku butabera bwatangijwe na Leta- ndetse n'ibindi bihugu n'umuryango w'abibumbye ( " umuryango mpuzamahanga") - Kugeza ubu:

- Abacitse ku icumu babajijwe batangaje ko ubutabera ntacyo bwabamariye kuko butatanze indishyi;
- Ibiganiro n'inama nyunguranabitekerezo byateguwe n'imiryango y'abacitse ku icumu ifatanyije na SURF na REDRESS byagaragaje ko kuba gusaba indishyi, ingurane cyangwa gusubizwa ibyabo abacitse ku icumu bahura na byo bibangamira cyangwa bikadindiza inzira y'ubwiyunge;<sup>31</sup>
- Abacitse ku icumu bagaragaje ko bafite ubwoba ko uburenganzira bwabo ku ndishyi butazigera bwubahirizwa, cyane cyane ko inkiko gacaca zafunze n'urukiko mpuzamahanga rwashyirweho u Rwanda rukaba rwenda kurangiza imirimo yarwo;<sup>32</sup>

## **VI. Uburyo bushoboka bwo guha indishyi ikwiye abacitse ku icumu rya Jenocide yakorewe Abatutsi: Ibikorwa na Leta y'u Rwanda na ICTR**

### **a. Umushinga w'Itegeko rishyiraho ikigega cy'indishyi zigenewe abacitse ku icumu**

26. Nk'uko byavuzwe haruguru, amategeko ya ngombwa yemerera abacitse ku icumu kuregera indishyi mu nkiko zisanzwe n'inkiko gacaca yari ashingiyeye ku ishyirwaho ry'ikigega cy'indishyi. Byongeye kandi, itegeko ngenga ryashizeho inkiko gacaca ryemeraga ko

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<sup>30</sup> IBUKA submission to the Parliament of Rwanda on 'Draft Organic Law Terminating Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed Between October 1, 1990 and December 31, 1994, 26 March 2012, ANNEX 2.

<sup>31</sup> Interview with Kigali based lawyer, 5 January 2011; workshop organised by SURF, African Rights, REDRESS with IBUKA, AVEGA, AERG, GAERG, Solace Ministries, Kigali, on 8 November 2010; workshops organised by SURF and REDRESS with IBUKA in March 2012.

<sup>32</sup> Interview with IBUKA, Kigali, 4 November 2010; interview with AVEGA, Kigali, 4 November 2010.

hakenewe itegeko ryihariye rigenga ubundi bwoko bw'indishyi zitari izerekeye imitungo n'ibikomere byo ku mubiri.<sup>33</sup>

27. Inkiko Gacaca zikiyaho mu mwaka wa 2001, Leta y'u Rwanda yateguye umushinga w'itegeko rishyiraho ikigega cy'indishyi z'abacitse ku icumu, isaba ko imiryango iharanira inyungu z'abacitse ku icumu nka IBUKA iwutangaho ibitekerezo hagamijwe gushyira mu bikorwa ingingo zivugwa mu itegeko ngenga No 40/2000. Uwo mushinga w'itegeko wagarazaga neza uko ikigega cy'indishyi cyashyirwaho, uko cyacungwa n'uko cyatanga indishyi ku bazigenewe.<sup>34</sup> Kurangiza imanza z'indishyi zaciwe n'inkiko zisanzwe no mu nkiko gacaca.<sup>35</sup> Ibintu n'abantu bishwe bagombaga gutangirwa indishyi, harimo urupfu n'ibikomere ndetse n'indishyi z'akababaro.<sup>36</sup>
28. Mu gihe umushinga w'itegeko wagibwagaho impaka mu ruhamye n'imiryango ya sosiyete sivile yagishijwe inama, ariko uwo mushinga ntiwatowe none kugeza ubu nta kigega cy'indishyi kirashyirwaho. Bamwe mu bayobozi bo mu nzego zo hejuru batangaje ko ishyirwaho ry'icyo kigega ryabangamira ingufu Leta ishyira mu kunga umuryango nyarwanda kandi ko muri rusange bitashoboka kubona amafaranga yishyura abacitse ku icumu bose. N'ubwo wa mushinga w'itegeko ryagombaga gushyiraho ikigega cy'indishyi wasobanuraga neza abagomba guhabwa indishyi, byagaragaye ko itsinda ry'abakwiye indishyi ari rigari cyane kuko umushinga w'itegeko wateganyaga ko kugeza ku ngazi ya gatandatu umuntu yashoboraga guhabwa indishyi mu gihe uwahohotewe ku buryo butaziguye yafuye.<sup>37</sup>
29. Hatitawe ku bibazo byatumye uwo mushinga w'itegeko udatorwa, umubare munini w'imiryango y'abacitse ku icumu yabajijwe yatangaje ko yemera ko Leta igomba gutanga indishyi. Kuri icyo miryango, ishyirwaho ry'ikigega cy'indishyi ni bwo buryo bwiza bwo gutanga indishyi zinyuranye zisabwa n'abacitse ku icumu, harimo gusubizwa ibyabo, gusanirwa n'ingurane ku bacitse ku icumu. Iyo miryango iri mu Rwanda hose isaba kandi ko yatanga ibitekerezo mbere y'ishyirwaho ry'icyo kigega kandi ikagira abayihagararira mu buyobozi bw'icyo kigega (bityo hagakemurwa ikibazo cyo kudahagararirwa mu buyobozi bwa FARG nk'uko bigaragara hepfo). Ikigega cy'indishyi cyafasha gukemura ikibazo cyo kutabasha kurangiza imanza z'indishyi kandi kigafasha abacitse ku icumu gukemura ibibazo bikomeye basigiwe na jenocide ndetse n'ingaruka zayo.

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<sup>33</sup> Organic Law No. 16/2004 of 19 June 2004 establishing the organisation, competence and functioning of gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994, Article 90.

<sup>34</sup> Projet de Loi No.....Du..... Portant Creation, Organisation et Fonctionnement du Fonds D'Indemnisation des Victims des Infractions Constitutives du Crime de Genocide ou de Crimes Contre l'Humanite commises entre le 1<sup>er</sup> Octobre 1990 et le 31 Décembre 1994 (copy of draft law available with the signatory organisations of this discussion paper).

<sup>35</sup> Chapter I, Article 2.

<sup>36</sup> Chapter 5, Articles 16-19.

<sup>37</sup> Ibid, Article 14; Interview with government officials, Kigali, 17 November 2010.

30. Imbogamizi isigaye kuri Leta y'u Rwanda ni ugutanga umusanu ugaragara mu gushyiraho ikigega cy'indishyi. Abacitse ku icumu n'abayobozi bakuru bagaragaje ko ku mitungo y'abahamwe n'icyaha cya Jenocide hamwe n'inkunga z'ibindi bihugu, inkunga z'abaterankunga babyifuzza ndetse n'Umuryango w'Abibumbye hava ubushobozi bujya mu kigega. Nyamara, hari ibibazo byagaragajwe na bamwe mu baterankunga mpuzamahanga bavugaga ko ikigega cy'indishyi cyagaragara nk'ikivangura amoko kiramutse gihaye indishyi abacitse ku icumu rya Jenocide gusa kitazihaye n'abahohotewe n'ibyaha byibasiye inyoko muntu n'ibyaha by'intambara baregaga ingabo za RPF mu gihe cya Jenocide na nyuma yayo.<sup>38</sup> Ibyi bibazo bishobora gukemurwa no guha ikigega ubushobozi bwo guha indishyi zikwiye abacitse ku icumu rya Jenocide bese, abahohotewe n'ibyaha byibasiye inyoko muntu n'ibyaha by'intambara byakorewe mu Rwanda hagati y'italiki ya 1 Ukwakira 1999 na 31 Ukuboza 1994.
31. Ibigege by'indishyi byashyizweho muri Afurika y'epfo, Maroke, Siyera Lewone n'ahandi kugira ngo bitange indishyi nyuma y'amakimbirane cyangwa ibikorwa bibangamira bisesuye uburenganzira bwa muntu.<sup>39</sup> Ishyirwaho ry'ibyo bigega ryabaga rivuye mu biganiriro birambuye byakozwehagamiye kurebera hamwe imyanzuro ku ndishyi byakozwe na za Komisiyo z'Ukuri n'Ubwiye (TRCs), no gutegura inzira zitandukanye zo kuregera indishyi no kuzibona ndetse n'ubundi buryo bwo kwishyura ( urugero: ibikorwa byo gusana) bivuye mu kigega cy'indishyi.
32. Muri Afurika y'Epfo, ikigega cyitiriwe umukuru w'igihugu cyashyizweho mu mwaka w'1995 kugira ngo gishyire mu bikorwa imyanzuro ya Komite y'indishyi no gusana (RRC) ya Komisiyo y'Ukuri n'Ubwiye (TRC ) yo kwishyura indishyi ku bahohotewe mu gihe cy'ivanguramoko ryabereye muri Afurika y'Epfo hagati y'imyaka y'1960 na 1994.<sup>40</sup> Ingengo y'imari y'amafaranga angana na miliyoni 100 z'amadolari ya Amerika yatowe n'Inteko ishingira amategeko kugira ngo afashe icyo kigega kurangiza inshingano zacyo. Kugeza ku musozo w'umwaka w'imari 2010/2011 abahohotewe 15,962 bari bamaze kubona indishyi mbumbe zigera ku mafaranga 30,000 akoresheye muri Afurika y'Epfo, ( ni ukuvuga agera kuri miliyoni 2 z'amafaranga y'u Rwanda) kuri buri wese.<sup>41</sup> Nyamara ariko, abahohotewe benshi ntibarabona izo ndishyi n'ubwo icyo kigega cyitiriwe umukuru w'igihugu cya Afurika y'Epfo kimaze imyaka 17 kigiyeho n'imyaka 9 imyanzuro ya Komisiyo y'Ukuri n'Ubwiye yemejwe.<sup>42</sup> Byongeye kandi, iryo tangwa ry'indishyi ntiryubahiriza umwanzuro wa Komisiyo

<sup>38</sup> Interview with embassy official, Kigali, March 2012.

<sup>39</sup> See Carla Ferstman, Mariana Goetz, Alan Stephens (eds.), 'Reparations for Victims of Genocide, War Crimes and Crimes against Humanity- Systems in Place and Systems in the Making, Martinus Nijhoff Publishers, 2009, pp. 385-541; Priscilla B. Hayner, 'Unspeakable Truths- Transitional Justice and the Challenge of Truth Commissions', Routledge, 2011.

<sup>40</sup> Promotion of National Unity and Reconciliation Act, 1995 (Act No 34 of 1995), section 42.

<sup>41</sup> President's Fund Annual Report for 2010/2011- The Department of Justice and Constitutional Development, p.4. .

<sup>42</sup> See Lovell Fernandez, 'Reparations policy in South Africa for the victims of apartheid', Law, Democracy & Development, Vol 3 (2), 1999, University of Western Cape [http://www.idd.org.za/images/stories/Ready\\_for\\_publication/V3-](http://www.idd.org.za/images/stories/Ready_for_publication/V3-)

y'ukuri n'ubwiyunge wo gutanga indishyi ingana n'amafaranga 120,000 akoreshwa muri Afurika y'Epfo ( ni ukuvuga agera kuri 8,462,267 y'u Rwanda) ku muntu watoranyijwe na RRC.<sup>43</sup>

33. Leta ya Maroke ikigega cyashyizwemo akayabo k'amafaranga agenewe gahunda y'indishyi angana na miliyoni 85 z'amadolari ya Amerika kugira ngo yishyure indishyi abahohotewe n'ibyaha bibangamira uburenganzira bwa muntu byabaye muri Maroke ariko bigakara cyane cyane mu myaka iri hagati y' 1981 and 1991. Hejuru y'indishyi rusange, Leta yatangaga indishyi ku bantu ku giti cyabo bahohotewe bagera ku 16,000 cyangwa imiryango yabo, kandi ayo mafaranga ahanini yatangwaga na Leta ya Maroke.<sup>44</sup>
34. Muri Siyera Lewone ishagirwaho *"ry'ikigega cyihariye kigenewe abarokotse intambara"* cyategenywaga n'ingingo ya 29 y'amasezerano y'Amahoro yashyirweho umukono i Lomé mu 1999 kandi cyashyizweho mu Kuboza 2009. Inkunga y'ingenzi ijya muri icyo kigega ituruka ku ngengo y'imari ya Leta. Amafaranga angana n'ibihumbi 25 by'amadolari y'Amerika yari amaze gutangwa nk'ubwoko bw'ingurane mu mpera z'umwaka wa 2010 kugira ngo arihe ubuvuzi bw'ibanze ku bahohotewe. Nyamara ariko kubura uburyo bw'amafaranga ajya muri icyo kigega bituma kidatanga ubundi bwoko bw'indishyi cyakagombye gutanga. Gahunda y'indishyi iterwa inkunga n'imfashanyo zivuye mu kigega cy'Umuryango w'Abibumbye kigamije kubaka amahoro n'ikigega cy'Umuryango w'Abibumbye kigamije kurwanya ihohoterwa rikorerwa abagore kigafasha ikigega kurangiza inshingano zacyo ku buryo bw'igicagata. Icyo kigega cyabashije gutera inkunga abahohotewe bagera ku bihumbi 22 bahawe inkunga yo gutangira udushinga duciriritse ingana n'amadolari 100 ya Amerika. Abitabwagaho bwa mbere ni abakomerekeye n'abamugajwe n'intambara hamwe n'abakoreshejwe imibonano mpuzabitsina ku gahato. Ugeraranyije, abahohotewe bakoreshejwe imibonano mpuzabitsina bagera kuri 650 bahawe ubuvuzi bw'ibanze, bavurwa cyangwa babagwa fisitura.<sup>45</sup> Umuryango Mpuzamahanga ufasha Abimuka (IOM) ufasha Komisiyo y'igihugu y'ibikorwa by'imibereho myiza gutanga ingurane mu gihe cyo gutegura gahunda no kuyishyira mu bikorwa kandi ukakira imfashanyo zivuye mu kigega cy'Umuryango w'Abibumbye kigamije kubaka

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[2\\_Reparations\\_policy\\_SA.pdf](#); see also Khulumani Support Group, Letter sent to the President of South Africa on 7 February 2012, at <http://www.khulumani.net/khulumani/documents/category/7-engaging-state.html?download=89%3Akhulumani-submission-to-president-zuma-for-his-sona-7-february-2012>.

<sup>43</sup> Ibid.

<sup>44</sup> United States Institute for Peace, 'Truth Commission: Morocco', at <http://www.usip.org/publications/truth-commission-morocco>

<sup>45</sup> International Organization for Migration, 'IOM Provides Technical Assistance to Reparations Programme for Victims of Sexual Violence in Sierra Leone', 22 March 2010, at <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAF/cache/offonce?entryId=27138>; see also Priscilla B. Hayner, 'Unspeakable Truths, Transitional Justice and the Challenge of Truth Commissions, third edition, 2011, p.176; for the input of the UN Peacebuilding Fund see <http://www.unpbf.org/countries/sierra-leone/>.

Amahoro.<sup>46</sup> Nyamara, n'ubwo iki kigega cyageze kuri ibi kiracyafite ingorane zo kubona amafaranga yo gutanga indishyi. Mu mpera za Mutarama 2012, abahohotewe bagera ku 10,753 bari bataragira indishyi babona.<sup>47</sup>

35. Ibigeza na gahunda z'indishyi byashyizweho muri Afurika y'Epfo, MAroke na Siyera Lewone biragaragaza ko ingamba nyinshi zo gutanga indishyi bigendera ku kigega cy'indishyi kirimo amafaranga ahagije. Bisaba ko kandi habaho ubushake bwa Leta kugira ngo itange amafaranga. Kubura amafaranga bibangamira ishyingira mu bikorwa ry'itangwa ry'indishyi. Ibyabaye mu bindi bihugu n'amasomo yavuyemo bikenewe gusesengurwa birambuye kugira ngo harebwe uko byakwigirwaho ku byerekeye indishyi mu Rwanda, cyane cyane niba hafashwe icyemezo cyo gushyiraho ikigega cy'indishyi.

**b. Gushyira uburenganzira ku ndishyi z'abacitse ku icumu mu mushinga w'itegeko riteganywa uburenganzira bw'abahohotewe**

36. Leta y'u Rwanda yateguye umushinga w'itegeko ku masezerano y'uburenganzira bw'abahohotewe n'abahamya b'ibyaha mpuzamahanga.<sup>48</sup>

37. Uwo mushinga w'itegeko werekana ku buryo bw'amategeko uburenganzira bw'abahohotewe n'abahamya babonye ibyaha bikorwa bivugwa mu mategeko ahana n'andi mategeko bifatanyeho isano. Ubwo burenganzira burimo uburenganzira ku ndishyi ku ngamba " zigamije kvanaho, kugabanya ubukana cyangwa kuriha ingaruka z'ibyaha bakorewe", n'uburenganzira ku ndishyi zinyuranye ku bikomere byo ku mubiri cyangwa ku mutima.<sup>49</sup> Uwo mushinga w'itegeko uteganywa kandi ko ikigega cy'indishyi kigomba gushyirwaho " kigakurikiranwa n'urwego rw'igihugu rw'ubushinjacyaha".<sup>50</sup>

38. Umushinga w'itegeko uzakurikizwa ku bahohotewe n'ibyaha harimo n'ibyaha " bitarafatwa nko kubangamira amategeko mpanabyaha akurikizwe" ariko bikaba ari ibyaha bibangamira uburenganzira bwa muntu bwemewe ku rwego mpuzamahanga". Nyamara ariko uwo mushinga w'itegeko ntaho ufata nk'abagenerwabikorwa b'ikigega abacitse ku icumu rya jenocide cyangwa ibindi byaha byibasiye inyoko muntu n'ibyaha by'intambara byakozwe hagati y'italiki ya 1 Ukwakira 1990 na 31 Ukuboza 1994. Mu by'ukuri, imiryango y'abacitse ku icumu n'abacitse ku icumu ku giti cyaba babajijwe bagaragaje ko hakwiye kubaho itegeko ryihariye rigena indishyi n'itegeko ryihariye rishyiraho ikigega cy'indishyi cyubahiriza uburenganzira bw'abacitse ku icumu kandi ku bw'ibyho icyo kigega kigomba kugaragaza

<sup>46</sup> International Organisation for Migration, Support for Sierra Leone Reparations Programme, at <http://www.iom.int/jahia/Jahia/support-for-the-sierra-leone-reparations-programme>.

<sup>47</sup> UN Peacebuilding Fund, 'Project Document, 30 January 2012, at <http://mptf.undp.org/document/download/8202>.

<sup>48</sup> Copy available with the signatory organisations

<sup>49</sup> See Articles 4-11 of the Draft Law.

<sup>50</sup> Ibid, Article 23.



imiterere y'umwihariko n'uburemere bw'ibyaha bakorewe.<sup>51</sup>

39. Nyamara ariko, niba itegeko nk'iryo cyangwa ikigega bitabayeho mu minsi ya vuba, ibyo nabyo byaba ari nko kuvangura abacitse ku icumu n'abahohotewe n'ibyaha bisanzwe.<sup>52</sup> icyo gihe, hazagomba kuba ingingo mu mushinga w'itegeko iteganya ikurikizwa ry'uwo mushinga w'indishyi ku bacitse ku icumu kugeza igihe ikigega cyihariye cy'indishyi kizabashyirirwaho. Ibi byasaba ko umushinga w'itegeko uhabwa ububasha bwo gukurikizwa ku byabaye mbere y'uko ribaho kugira ngo hajyemo ibyaha byakozwe hagati y'italiki ya 1 Ukwakira 1990 na 31 Ukuboza 1994. Abahagarariye Minisiteri y'Ubutabera babajijwe bagaragaje ko ubwo bubasha bwo gukurikiza itegeko mbere y'igihe ryatorewe byaba binyuranye n'amategeko mpuzamahanga, bikaba rero bitashoboka. Ariko kuko mu mwaka w'1990 hakurikijwe amasezerano mpuzamahanga Jenocide n'ibyaha byibasiye inyoko muntu byafatwaga nk'ibyaha mu mategeko mpuzamahanga, ubwo bubasha bwo gukurikizwa ku byaha byakozwe mbere y'uko umushinga w'itegeko ubaho buremewe hakurikijwe ingingo ya 15 (2) ya ICCPR.
40. Haracyari na none impungenge ku rwego nyarwo rwacunga ikigega cy'indishyi. Ingingo ya 23 y'umushinga w'itegeko ivuga ko urwego rwigihugu rw'ubushinjacyaha rwaba ari rwo rwacunga ikigega cy'indishyi. Nyamara uru rwego ntirugaragara nk'urwigenga kandi rushobora kuba rudafite ubushobozi bwa ngombwa. Na none, imiryango y'abacitse ku icumu yifuza ko ingingo ya 23 ihindurwa igateganya urwego rwigenga rwacunga ikigega cy'indishyi, bigakorwa n'abantu bafite ubumenyi bwihariye mu icungu mutungo n'ubumenyi mu gufasha abahohotewe.<sup>53</sup>

### **c. Ikigega Mpuzamahanga gifasha abacitse ku icumu**

41. Ishyirwaho ry'Urukiko Mpuzamahanga rwashyiriweho u Rwanda (ICTR) mu Gushyirwaho 1994 ryagize impinduka ntoya ku bacitse ku icumu,<sup>54</sup> uretse uruhare rwagize mu gukurikirana ba ruharwa bo ku rwego rwo hejuru. Inshingano z'urukiko mpuzamahanga rwashyiriweho u Rwanda ntizirimo umurenganzira bw'abacitse ku icumu ku ndishyi kandi ntibemerewe kugira uruhare mu manza. Amategeko agenga ICTR aha abacamanza barwo ububasha bucagase bwo gutegeka ko umutungo uwakoze ibyaha yabonye mu buryo bw'icyaha usubizwa ba nyirawo. Ubwo kugeza ubu abakatiwe na ICTR ari 38, nta na rubanza na rumwe uwakatiwe yaba yarategetswe kugarura umutungo w'abahohotewe.<sup>55</sup>

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<sup>51</sup> Ibuka, SURF and REDRESS workshop with survivor organisations, Kigali, 20-21 March 2012;

<sup>52</sup> See above for discrimination of FARG law, para. 22.

<sup>53</sup> Ibuka, SURF and REDRESS workshop with survivor organisations, Kigali, 20-21 March 2012.

<sup>54</sup> See African Rights and REDRESS, 'Survivors and Post-Genocide Justice in Rwanda', November 2008, pp.55-72: <http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf>

<sup>55</sup> See Article 23 (3) of the ICTR statute and Rule 105 of the Rules of Procedure and Evidence, at <http://www.unict.org/Portals/0/English%5CLegal%5CROP%5C100209.pdf>.

42. Na none, ingingo ya 106 yo mu mategeko y'ibikurikizwa mu nkiko rivuga ko mu gihe cyo kuregera indishyi mu nkiko " zo mu gihugu" ibyemezo by'imanza zaciwe na ICTR zifatwa nk'aho zarangiye kandi zigarukira ku "ruhare rw'uwahamwe n'icyaha mu kwangiza"<sup>56</sup> Kugeza ubu, Itegeko No 106 ntiryafashije abacitse ku icumu kuregera indishyi mu nkiko zo mu guhugu. N'ubwo abacitse ku icumu bashobora kwifashisha imanza zaciwe na ICTR kugira ngo baregere indishyi, irangizwa ryazo n'itangwa ry'indishyi ryagorana bitewe n'uko benshi mu bakatiwe na ICTR badafite ubushobozi bwo kwishyura, kandi hakaba nta kigega cy'indishyi kiriho.
43. Mu ijambo uwiyeze kuyobora ICTR yagejeje ku kanama gashinzwe Umutekeno k'Umuryango w'Abubumbye yibukije ko " indishyi ku bacitse ku icumu ni ingenzi niba u Rwanda rugomba komora ibikomere bya Jenocide" kandi ko umushinga hari wagejejwe na ICTR ku Munyamabanga Mukuru w'Umuryango w'Abibumbye wagaragazaga ko abacitse ku icumu rya Jenocide bakwiye guhabwa indishyi.<sup>57</sup> Muri uwo mushinga, abacamanza ba ICTR bemera "ihame ry'indishyi ku bacitse ku icumu", ariko bakemera na none ko inshingano yo kwakira ibirego by'indishyi yahabwa urundi rwego mu zigize Umuryango w'Abubumbye.
44. Hari impungenge ko ICTR iramutse yakiriye ibirego by'indishyi byabangamira imikorere yayo ya buri muni kandi byaba "bibangamiye cyane" inshingano zayo, kandi rero n'ubushobozi bw'amafaranga ICTR ifite nitibwatumaze ibasha gukurikirana ibirego by'indishyi mu gihe gikwiye.<sup>58</sup> Kubera iyo mpamvu, abacamanza ba ICTR basabye ko hakwigwa izindi nzira zirimo urwego rwihariye rwashyirwaho mu Muryango w'Abibumbye " rwashyira mu bikorwa gahunda y'indishyi cyangwa rugacunga ikigega cy'indishyi zatangwa hakurikijwe uko zasabwe n'abantu ku giti cyabo, ibikenewe mu miryango y'abacitse ku icumu cyangwa amashyirahamwe yabo".<sup>59</sup>
45. icyakurikiyeho ni uko nta cyahawe agaciro, ari umushinga, ari n'impuruza y'abacamanza ba ICTR ku ruhare rukomeye Umuryango w'Abibumbye wagira mu gutanga indishyi z'abacitse ku icumu rya jenocide. Nta cyakozwe ku rwego rw'Umuryango w'Abibumbye mu gufasha abacitse ku icumu kubona indishyi.
46. Ku kibazo cy'u Rwanda, Inama Rusange yo ku wa 1 Ukuboza 2004 yatoye umwanzuro wo "gufasha abacitse ku icumu rya Jenocide yo mu 1994 mu Rwanda, cyane cyane imfubyi,

<sup>56</sup> Ibid, Rule 106.

<sup>57</sup> Statement by Judge Navanethem Pillay, President of the ICTR, to the United Nations Security Council, 29 October 2002, at <http://www.unictr.org/tabid/155/Default.aspx?id=1086>

<sup>58</sup> Letter dated 9 November from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General, U.N. Doc. S/2000/1198, 15 December 2000.

<sup>59</sup> Ibid, page.5.

*abapfakazi n'abahohotewe bakoresha imibobano mpuzabitsina ku ngufu". Uwo mwanzuro ntacyo uvuga ku kibazo cy'indishyi, ahubwo usaba ko:*

*Umunyamabanga Mukuru akomeza gushishikariza inzego za ngombwa, ibigega na za porogaramu by'Umuryango w'Abibumbye gushyira mu bikorwa umwanzuro wa 59/137 kugeneraabacitse ku icumu rya Jenoside imfashanyo mu burezi ku mfubyi, ubuvuzi no kwitabwaho ku bahohotewe bakoresha imibonano mpuzabitsina ku ngufu bakananduzwa virusi itera SIDA, ubujyanama mu by'ihungabana na gahunda z'imishinga iciriritse igamije kubafasha kwiteza imbere no kurwanya ubukene;*<sup>60</sup>

47. Umwanzuro wafashwe mu nama rusange zakurikiranye kuva icyo gihe kugeza ku yiheruka ya 66 yabaye mu mwaka wa 2011 ntiwigeze ushyirwa mu bikorwa ku buryo bugaragara.
48. Mu mwaka, inkunga yose Umuryango w'Abibumbye, inzego zayo na za porogaramu zayo bagenera imiryango y'abacitse ku icumu yo mu Rwanda ntigera ku bihumbi 250 by'Amadolari ya Amerika (ni ukuvuga hasi y'idolari 1 kuri buri muntu wacitse ku icumu). Nyamara kandi, ingengo y'imari Umuryango w'Abibumbye utanga ku Rukiko Mpuzamahanga rwashyiriweho u Rwanda mu mwaka wa 2012-13 ni miliyoni 174 z'amadolari ya Amerika.<sup>61</sup> Kugeza ubu, urwo rukiko rumaze gukoresha ingengo y'imari irenga miliyari 1 y'amadolari ya Amerika<sup>62</sup> (ugereranyije ni nka miliyoni 30 z'amadolari kuri buri muntu wakatiwe na rwo). Inkunga yose yatanze ku bikorwa byo gufasha abacitse ku icumu mu Rwanda ntigera no kuri 0.5 bya 1% by'ingengo y'imari ya ICTR.
49. Kuba ntacyo ICTR n'umuryango w'Abibumbye bakoze ngo abacitse ku icumu rya Jenoside babone indishyi binyuranye n'ibyakozwe n'urukiko Mpuzamahanga rwashyiriweho Yugosilaviya (ICTY). Impuruza za Perezida wa ICTY Robinson ngo hashyirweho ikigega cyo gufasha abahohotewe zatumye muri 2011 hajyaho ubwumvikane hagati ya ICTY n'Umuryango Mpuzamahanga ufasha Abimuka (OIM) kugira ngo hakorwe "inyigo yumvikana yaha Urukiko umurongo ku buryo bushoboka bwo gufasha abahohotewe n'aho amafaranga yaturuka."<sup>63</sup> Iyo nyigo yari igikomeza ubwo iyi nyandiko yakorwaga kandi nta gahunda nk'iyi iratekerezwa ku ruhande rwa ICTR.
50. Byongeye kandi, tugenekereje kuri ICTR, ingingo ya 75 y'Amategeko yashyiriweho umukono i Roma (1998) ashiraho urukiko Mpuzamahanga Mpanabyaha (ICC) iteganya indishyi ku bahohotewe, harimo gusubizwa ibyabo, ingurane no gusanirwa ibyangijwe.<sup>64</sup> Ikigega gifasha

<sup>60</sup> A/RES/66/228. See: <http://survivors-fund.org.uk/wp-content/uploads/2012/05/UN-Resolution-66-228.pdf>

<sup>61</sup> See Financing of the International Criminal Tribunal for Rwanda, December 2011: <http://bit.ly/JH6VbA>

<sup>62</sup> How Rwanda judged its genocide, Phil Clark, Africa Research Institute, April 2012, page 7.

<sup>63</sup> ICTY, 'President Robinson's address before the United Nations General Assembly', 11 November 2011, at <http://www.icty.org/sid/10850>.

<sup>64</sup> See for the ICC's reparation mandate, REDRESS, 'Justice for Victims: The ICC's Reparations Mandate, May 2011, at [http://www.redress.org/downloads/publications/REDRESS\\_ICC\\_Reparations\\_May2011.pdf](http://www.redress.org/downloads/publications/REDRESS_ICC_Reparations_May2011.pdf).

abahohotewe (TFV), giteganywa n’ingingo ya 79 y’Amategeko yashyiriweho umukono i Roma (1998) ni bwo buryo bw’ingenzi bwo gutanga indishyi bukoreshwa na ICC hamwe n’ububasha urukiko rwa ICC ruhabwa n’amategeko arugenga bwo gutegeka abahamwe n’icyaha guha indishyi abahohotewe.<sup>65</sup>

51. Ikigega cyo gufasha abahohotewe ni urwego rwanditse mu mateka kandi rw’ingenzi mu gufasha ICC kurangiza inshingano yayo ku bahohotewe kandi ni icyemezo cy’ uburenganzira bw’abacitse ku icumu rya Jenocide, abahohotewe n’ibyaha byibasiye inyoko muntu n’ibyaha by’intambara. Ikigega gikorera hamwe n’ububasha bw’urukiko bwo gusubiza ubutabera abahohotewe. Kugeza ubu, icyo kigega cyabonye inkunga zitangwa ku bushake n’ibihugu hamwe n’imiryango itegamiye kuri Leta.<sup>66</sup>
52. Kubera ko amategeko yashyiriweho umukono i Roma adafite ububasha bwo gukurikizwa ku byaha byakozwe mbere y’uko ajyaho, nta kigega nk’icyo cyagenewe abahohotewe mu mategeko ya ICTR. Nyamara ariko bigaragara ko gikenewe nk’uko byagaragajwe n’abacamanza barwo ko hari ibibura mu mategeko agenga ICTR na ICTY. Mu by’ukuri, umucamanza Byron wigeze kuyobora ICTR yavuze ko kuba urukiko rwa ICTR rutagenera indishyi abacitse ku icumu ari bwo busembwa bw’ingenzi bwarwo.<sup>67</sup>
53. Mu mwaka wa 2014 hazaba hashize imyaka 20 jenocide ikorewe Abatutsi mu Rwanda kandi ni nabwo urukiko rwa ICTR ruzarangiza imirimo yarwo. Iki ni igihe gikwiye kugira ngo umuryango mpuzamahanga cyane cyane umuryango w’Abibumbye utange indishyi ku bacitse ku icumu.
54. Ibi byakorwa byakorwa binyuze mu nyigo isa n’iriho ikorwa na IOM ku bufatanye na ICTY no mu buryo bwo kwakira inkunga nk’Ikigega cy’igihugu cy’indishyi cyangwa ubundi buryo bwunganira ubwo “nk’Ikigega Mpuzamahanga cyanga ikigega cy’Umuryango w’Abibumbye gifasha abacitse ku icumu.” Twatangiye inyigo igereranya ubwo buryo bwose burimo ikigega gifasha abahohotewe, ikigega cy’Umuryango w’Abibumbye gifasha Abahohotewe, ikigega cy’Umuryango w’Abibumbye kirwanya Ihohoterwa rikorerwa Abagore, Komisiyo y’ cy’Umuryango w’Abibumbye itanga indishyi na Komisiyo mpuzamahanga y’Ubwishingizi bw’Indishyi z’Abarokotse itsembabwoko ryakorewe Abayahudi.<sup>68</sup> Ibyavuye muri iyi nyigo

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<sup>65</sup> See Trust Fund for Victims: <http://www.trustfundforvictims.org/two-roles-tfv>

<sup>66</sup> Article 79 of the Rome Statute of the ICC provides that

A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

<sup>67</sup> 9<sup>th</sup> Annual Ruth Steinkraus- Cohen International Law Lecture “Lessons learned from the Rwanda Criminal Tribunal”, London, 16 March 2011.

<sup>68</sup> A draft of the findings is on file with the authors.

biracyagibwaho impaka n'inzego zinyuranye z'abafatanyabikorwa mu Rwanda yerekana uko ikigega gikenewe cyazashyirwaho, uko cyayoborwa n'uko cyancungwa n'aho amafaranga agifasha yava.

55. Imiryango y'abacitse ku icumu n'abafatanyabikorwa b'abanyapolitiki babajijwe ku mishinga ya mbere y'inyigo igereranya<sup>69</sup> bagaragaje ko bashyigikiye ubwo buryo cyane cyane abenshi bakavuga ko " umuryango mpuzamahanga" ufite inshingano ku bacitse ku icumu. icyakora, kugira ngo ishyirwa mu bikorwa ry'umushinga rishoboke, birasaba ko leta y'u Rwanda iwushyigikira kandi kubera ko umushinga nk'uwo wo gushyiraho ikigega mpuzamahanga bisaba ubushakashatsi bwimbitse icyemezo cy'ubuyobozi cyo kugishyiraho kigomba gukurikiranwa.

#### **d. Ikigega cya Leta gifasha abacitse ku icumu batishoboye (FARG)**

56. Muri Gicurasi 2012, IBUKA yagejeje kuri FARG inyandiko ivuga ku itegeko riyishyiraho igaragaza impungenge z'ingenzi mu zagaragajwe n'abacitse ku icumu ku byerekeye FARG.<sup>70</sup> N'ubwo abacitse ku icumu bakira imfashanyo itangwa na FARG, abacitse ku icumu benshi batangaje ko FARG itafatwa nk'itanga indishyi.

57. Kuri ubu FARG itanga inkunga ku bacitse ku icumu batishoboye mu burezi, icumbi n'ubuvuzi. Nyamara kandi abahagarariye ubuyobozi bw'igihugu bagaragaje inshuro nyinshi ko FARG yagombye kumvikana nka bumwe mu buryo bwo gutanga indishyi, kandi ko mu gushyiraho FARG Leta yemeye ku rwego rwa politiki uruhare igomba abacitse ku icumu kandi ko nta yindi nzira y'indishyi ikenewe.<sup>71</sup>

58. Zimwe mu ngingo z'itegeko rishyiraho FARG zigaragara nk'iziha FARG inshingano zirimo gutanga inkunga no gutanga indishyi. Urugero: FARG yemererwa n'itegeko riyishyiraho kuregera indishyi mu manza za ba ruharwa. Indishyi ku bacitse ku icumu zitandukanye n'inkunga kuko indishyi zigamije kwemera no gukemura ubwangizi n'ingaruka z'icyaha uwahohotewe yakorewe naho inkunga ikaba ubutabazi. Ikinyuranyo hagati y'inkunga n'indishyi igaragarira ku mubare munini w'abacitse ku icumu basaba Leta kubafasha gusubizwa icyubahiro cyabo no kubizeza ko jenocide itazongera kubaho ukundi.

59. Ku bw'ibyo rero birakenewe ko abacitse ku icumu n'imiryango yabo bagirana ibiganiro niba FARG igomba gutanga indishyi kugira ngo inshingano za FARG zivuguruye zihagaciro ibyo abacitse ku icumu bayitegerejeho n'ibyo bakeneye. Indishyi iyo ari yo yose igomba gutandukana n'inkunga. Ibindi bikeneye guhindurwa ni imicungire ya FARG kugira ngo

<sup>69</sup> Consultation undertaken in the SURF / REDRESS workshop in March 2012 in Kigali, Rwanda

<sup>70</sup> Supra, n.29.

<sup>71</sup> See interview with Justice Minister and Attorney General Tharcisse Karugarama, New Times, 18 June 2012.

yongererwe ingufu mu buryo bwo kugaragaza ibikorwa byayo no kongera mu buyobozi bwabo abahagarariye abacitse ku icumu.

60. Kuri ubu, inama y'ubuyobozi ya FARG igizwe n'abantu 7 bashyizweho n'ibiro bya Minisitiri w'Intebe<sup>72</sup> Bibaye byiza hakabayeho abahagararira abacitse ku icumu bishyirihweho nabo ubwabo cyangwa imiryango y'abacitse ku icumu igahagararirwa mu nama y'Ubuyobozi kuko ubu Atari ko bimeze.<sup>73</sup>
61. Ibyo biganirwo hagati y'abacitse ku icumu n'imiryango yabo biramutse bibayeho maze izo mpinduka bifuzaga zigashyirwa mu bikorwa, FARG yabasha gushyirwa no gutanga indishyi nk'uko bigaragara mu myanzuro y'itsinda ryiga ikibazo cy'indishyi. FARG ibona inkunga itanzwe na Leta y'u Rwanda kandi mu by'ukuri ifite amafaranga menshi irimo gutanga muri iki gihe agera kuri miliyoni 700 y'u Rwanda ku ngengo y'imari y'umwaka wa 2011/12.<sup>74</sup>

## **VII. Intambwe zikurikiraho n'imyanzuro**

### **a. Ishyirwaho ry'itsinda ryiga ikibazo cy'indishyi mu Rwanda**

62. Nk'uko byagaragajwe haruguru, hari ibibazo binyuranye bikeneye ibisobanuro byimbitse. Kubera iyo mpamvu, imiryango y'abacitse ku icumu yifuje ko hajyaho itsinda ryiga ikibazo cy'indishyi kugira ngo rifashe gushyiraho gahunda y'indishyi yumvikana. Amatsinda nk'iri yashyizweho ahandi. Muri Afurika y'Epfo "Komite y'indishyi no gusana" yashinzwe gutanga imishinga ya politiki y'indishyi no gukusanya amakuru avuye ahantu hanyuranye yafasha gushyirwa mu bikorwa iyo mishinga ya politiki y'indishyi, harimo abahohotewe n'abarokotse, abantu bari baratanzwe amakuru muri Komisiyo y'Ukuri n'Ubwiyunge abahagarariye imiryango itegamiye kuri Leta, amashyirahamwe, amadini n'ibigo by'amashuri makuru na za kaminuza. Amakuru yakusanyijwe yafashije kumenya akarengane abahohotewe bakorewe, ibyo bakeneye n'ibyo bifuzaga kubona, gushyiraho uburyo bwo gutoranya abahohotewe bakeneye ubufasha bwihutirwa no gukora imishinga y'ingamba z'igihe kirekire ku ndishyi no gusana.<sup>75</sup> Muri Siyera Lewone aho Komisiyo y'Ukuri yatanze imyanzuro yihariye ku

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<sup>72</sup> Supra, n.27, Article 8, ANNEX 6.

<sup>73</sup> On the importance of victim representation see REDRESS, 'Conference: Reparations for Victims of Genocide, Crimes against Humanity and War Crimes: Systems in Place and Systems in the Making, The Hague, 1-2 March 2007', Lisa Magarrell, International Centre for Transitional Justice, ICTJ, 'Outreach to and engagement of victims on reparations- Lessons learned from truth and reconciliation processes, at:

<http://www.redress.org/downloads/events/OutreachEngagementLM.pdf>.

<sup>74</sup> New Times, Rwanda: Local Govt Allocates Lion's Share of Budget to Survivors, Veterans, 8 June 2012

<sup>75</sup> See Ministry of Justice, South Africa, 'Report of the Reparation and Rehabilitation Committee', Volume Six, Section Two, Chapter One, at Committee on Reparation and Rehabilitation', at [http://www.justice.gov.za/trc/report/finalreport/vol6\\_s2.pdf](http://www.justice.gov.za/trc/report/finalreport/vol6_s2.pdf); see also Ministry of Justice, South Africa, 'A summary of reparation and rehabilitation policy, including proposals to be considered by the President, at <http://www.justice.gov.za/trc/reparations/summary.htm>.

ndishyi z'abahohotewe, Itsinda ry'indishyi ryashyizweho kugira ngo ritegure gahunda yo gutanga indishyi no kumenya abahohotewe.<sup>76</sup>

63. Itsinda ry'Indishyi mu Rwanda (TFRR) ryakora ibi bikurikira:

1. *Gukusanya amakuru*: Itsinda ry'Indishyi riramutse rigiyeho ntiriyabura aho rihera kuko amakuru manshi ku byaha byakozwe muri Jenocide n'ihohotera ryabayemo ndetse n'abahohotewe byakusanyijwe mu gihe cy'imanza zaciwe mu nkiko zisanzwe n'inkiko Gacaca. Mu gutangira, Itsinda riga ikibazo cy'indishyi ryasuzuma neza indishyi zatsindiwe mu gihe gishize cy'imanza zaciwe n'inkiko zisanzwe n'inkiko gacaca zikaba zitaratangwa. Ibi ni ingenzi cyane kuko ntaho izo ndishyi zanditse. Iryo tsinda kandi ryareba niba hari amafaranga yashyizwe kuri kont muri banki nkuru y'u Rwanda cyangwa andi ma banki nk'uko byateganyijwe mu ngingo ya 32 y'itegeko ngenga No. 08/96 ryo ku wa 30 Kanama 1996;<sup>77</sup> *Gusaba ibitekerezo abantu banyuranye (consultations)*: byaragaragaye ko aho abacitse ku icumu bahawe uburyo bwo kugira uruhare mu gushyiraho gahunda y'indishyi n'aho bemererwa kuba abafatanyabikorwa aho kuba " abagenerwabikorwa" bifasha izo gahunda kugenda neza no kubagirira akamaro.
2. TFRR yazakomeza ibiganiro n'abacitse ku icumu byatangiye n'imiryango yabo, bikabera mu gihugu hose, mu miryango ya yigenga, inzego za Leta n'umuryango mpuzamahanga kugira ngo ibitekerezo binyuranye byitabweho mu gutegura imishinga y'ingamba z'igihe kirekire mu guhesha indishyi abahohotewe bose. TFRR yategura ibiganiro (dialogues) n'abasaba indishyi mu gihugu hose kugira ngo abacitse ku icumu n'imiryango babashe gutanga amakuru ya ngombwa mu gushyiraho gahunda y'indishyi. Ibiganirwa mu gihugu hose byafasha kandi TFRR kugira uko ifasha abacitse ku icumu gusobanura no kumva ibyo bategereje hitawe ku bishoboka hakurikijwe ubushobozi buriho
3. Kureba ubwoko bw'indishyi zikemura ibibazo by'abacitse ku icumu ku bufatanye n'abacitse ku icumu n'imiryango yabo harimo ingurane, gusubizwa ibyabo no gusanirwa.
4. *Kureba uburyo bwo gutanga indishyi* no kureba niba bishoboka gutanga indishyi ku muntu ku giti cye cyangwa se niba hakwitabwa ku ndishyi rusange, hitawe kubyo abacitse ku icumu bakeneye. Ibi bishobora kubamo kwita mbere na mbere ku matsinda

<sup>76</sup> Awareness Times, 'Taskforce on Reparation starts work in Sierra Leone', 30 January 2007, at <http://news.sl/drwebsite/exec/view.cgi?archive=4&num=4639&printer=1>; for further information on reparation for victims in Sierra Leone, see REDRESS, 'Implementation of the Sierra Leone Truth and Reconciliation Commission (TRC) Recommendations on Reparations- Preliminary Options Report', 30 January 2007, at <http://www.redress.org/downloads/publications/Draft%20Options%20Report%2030%20Jan%202007.pdf>.

<sup>77</sup> The Executive Secretary of the National Service of Gacaca Courts informed SURF and REDRESS that at least 21 million RWF have been deposited in a bank account as a result of gacaca awards for the unknown victims of Nyagatare that have yet to be enforced, Interview with Domitilla Mukantaganzwa, Kigali, 28 March 2012.

amwe n’amwe y’abacitse ku icumu kugira ngo ahabwe indishyi z’ako kanya nk’abakorewe ibya mfura mbi, abana bavutse ku babyeyi bafashwe ku ngufu, abasheshe akanguhe n’abandi bacitse ku icumu bababaye kurusha abandi.

5. *Gusuzuma uburyo bwo gutoranya abakwiye indishyi*: gukora ubushakashatsi ku rwego abagirana isano n’abacitse ku icumu bafatwa nk’abakwiye kubona indishyi, hitaweho ko ubushobozi bushobora kuba buke bityo abacitse ku icumu bose n’imiryango yabo ntibabashe kubona indishyi;
6. *Gutanga raporo ku buryo indishyi zatangwa*: hagendewe ku byagezweho n’Itsinda, gushyiraho uburyo bwo gutanga indishyi zisubiza ibibazo abacitse ku icumu bafite, bushoboka kandi yabasha kubonerwa amafaranga. Ubwo buryo bwabamo imyanzuro ku ishikirwa mu bikorwa rya gahunda yo gushyikiriza indishyi abacitse ku icumu hitawe ku bibazo bishobora kubaho nko kuba harimo abatarize, abatuye mu turere tw’ibyaro by’u Rwanda. Iyo myanzuro yashyirwa muri raporo ya nyuma yashyikirizwa Inteko ishingamamategeko kugira ngo wemezwe mbere yo gushyikirizwa Perezida wa Repubulika;
64. TFRR yaba igizwe n’impuguke mu bumenyi bunyuranye, harimo abantu bazi neza ibibazo by’abacitse ku icumu bo mu Rwanda kandi basobanukiwe na Jenocide mu mpande zayo zose, basobanukiwe neza ubwoko bw’ibyaha bya Jenocide ndetse n’impuguke mu by’indishyi, ubwuzuzanye bw’abagabo n’abagore n’amamategeko mpuzamahanga. Iri tsinda ryareberwa mu ndorerwamo y’iryashyizweho muri Siyera Lewone ryari rigizwe n’abafatanyabikorwa benshi barimo abahagarariye Komisiyo y’Igihugu y’Imibereho Myiza (ikaba yari ishinze gushyira mu bikorwa gahunda y’indishyi), Umuryango w’Abibumbye, abahagarariye Komisiyo y’Ukuri n’Ubwiyunge n’abahagarariye abahohotewe mu ntambara.
65. TFRR yaba ifite abakozi barimo impuguke 2 z’abanyamahanga n’impuguke 2 z’abanyarwanda zajya zihanga raporo Akanama (steering committee) kagizwe n’umubare ungana w’abahagarariye imiryango y’abacitse ku icumu n’abahagarariye ubuyobozi bw’igihugu. Ako kanama kagomaga guha umurungo iryo tsinda ry’abakozi kandi ni ko Katanga raporo ya nyuma ya TFRR. Zimwe mu Impuguke zizakoresha ibiganiriro mu gihugu hose zishobora kuva mu Muryango Mpuzamahanga w’Abimuka ( IOM) wakoze akazi nk’ako muri Siyera Lewone, icyahozze ari yugosilaviya n’ahandi. Impuguke z’abanyarwanda zigomaga zabamo impuguke yatanze n’imiryango y’abacitse ku icumu n’indi mpuguke yashyizweho na Leta.
66. TFRR iramutse ishizweho hakurikijwe ibyavuzwe haruguru, byaba ngombwa ko itsinda ry’abakozi ryaba ryigenga kandi bakomoka mu nzego zitandukanye nko mu miryango y’abacitse ku icumu, Leta ndetse n’umuryango mpuzamahanga (ibi byakongera amahirwe y’uko TFRR ibona inkunga y’amafaranga ituruka munzega nyinshi). Abakozi bagomba kujya



baha Akanama raporo buri mugoroba mu gihe bazaba bakorera hanze bakoresha ibiganiro, kugira ngo Akanama kabe kabasha gukemura ibibazo cyangwa impungenge uko bivutse. Byafasha na none TFRR kurangiza akazi kayo mu gihe cyagenwe. Raporo za buri kwezi zigomba kuzajya zitangazwa kugira ngo habemo gukorera mu mucyo no gufasha abacitse ku icumu n'abafatanyabikorwa babo kubona amakuru ku byo Itsinda TFRR rigenda rigeraho.

67. Itsinda TFRRrimaze kujyaho, ryazarangiza ibiganiro bya mbere mu gihugu hose mu gihe cy'ibyumweru icumi, impuguke zikoresheje byibura ibiganiro bibiri bimara umunsi umwe muri buri Ntara. Hagomba kuzabaho n'igihe cyo gutegura raporo. Byazaba ngombwa kandi ko impuguke zisubira kugaragariza n'imiryango baganiriye mbere ibyavuyemo, ibyo na byo bikaba byafata igihe cy'ibyumweru bitanu. Muri rusange, Itsinda TFRR riramutse rishyizweho ryazahabwa igihe cy'amezi atanu ashobora kongerwa bibaye ngombwa.
68. Hakurikijwe ibyavuzwe haruguru, impuguke zahabwa amasezerano y'akazi mu igihe cy'amezi ane, yazakorwamo akazi ko gushaka amakuru no gutegura raporo. Akanama ko kakora mu buryo bwo kwitanga kandi igihe kamara cyaba gito ugereranyije n'itsinda ry'abakozi. Bibaye byiza kurushaho, TFRR yashyirwaho na Perezida wa Repubulika kandi kandi rikaba ari we rishyikiriza raporo. Ingengo y'imari yakoresha yatangwa na Leta binyuze mu mafaranga IKigega cya Leta gitera inkunga Abacitse ku icumu batishoboye (FARG) kijya gisagura. Andi mafaranga yakenerwa yakurwa mu muri porogramu ICTR nk'uko inyigo y'indishyi irimo ikorwa n'urukiko rumeze nka ICTR mu cyahoze ari Yugosilaviya.

## Umugereka n'inyandiko zifashishijwe

### Inyandiko igenewe Perezida wa Repubulika ku ndishyi zigenewe abacitse ku icumu rya Jenoside yakorewe Abatutsi mu 1994.

1. IBUKA n'imiryango iyigize, 'Ibitekerezo ku mushinga wa Raporo ya FARG yakozwe na GPO Partners, Rwanda (Gicurasi 2012)', Inyongera ku 'Bitekerezo ku itegeko No 69/2008 ryo ku wa 30/12/2008 rigena ishyirwaho ry'Ikigega cy'Igihugu gifasha Abacitse ku icumu rya Jenoside yakorewe abatutsi batishoboye n'abahohotewe n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'italiki ya 1 Ukwakira 1990 na 31 Ukuboza 1994, rikagena imiterere, ububasha n'imikorere yacyo.'
2. Ibitekerezo IBUKA yashyikirije Inteko ishingira Amategeko y'u Rwanda ku wa 26 Werurwe 2012 ku 'Mushinga w'Itegeko ngenga risesa Inkiko Gacaca zashinzwe gukurikirana no gucira imanza abakoze ibyaha bya Jenoside n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'italiki ya 1 Ukwakira 1990 na 31 Ukuboza 1994.'
3. Itegeko Ngenga No. 08/96 ryo ku wa 30 Kanama 1996 rigena imitunganyirize n'ikurikiranwa ry'ibyaha bigize icyaha cya Jenoside cyangwa ibyaha byibasiye inyoko muntu byakozwe kuva ku wa 1 Ukwakira 1990.
4. Itegeko Ngenga No 40/2000 ryo ku wa 26/01/2001 rishyiraho "Inkiko Gacaca" rigatunganya imikurikiranire y'ibyaha bigize icyaha cya Jenoside n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'italiki ya 1 Ukwakira 1990 na 31 Ukuboza 1994.'
5. Itegeko Ngenga No 16/2004 ryo ku wa 19/6/2004 rigena imitunganyirize, ububasha n'imikorere n'imikorere y'inkiko Gacaca zashinzwe gukurikirana no kuburanisha abakekwaho ibyaha bya Jenoside n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'italiki ya 1 Ukwakira 1990 na 31 Ukuboza 1994.'
6. Itegeko No 69/2008 ryo ku wa 30/12/2008 ryerekeye ishyirwaho ry'Ikigega gifasha abacitse ku icumu rya Jenoside yakorewe Abatutsi n'abahohotewe n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'italiki ya 1 Ukwakira 1990 na 31 Ukuboza 1994, rikagena imiterere, ububasha n'imikorere yacyo.'

**Izindi nyandiko zifashishijwe muri iyi nyandiko:**

7. Amahame remezo n'amabwiriza y'Umuryango w'Abibumbye ku burenganzira ku ndishyi z'abahohotewe n'ibikorwa bibangamira cyane uburenganzira mpuzamahanga bwa muntu n'ibikorwa bibangamira cyane integeko mpuzamahanga ry'ubutabazi [riboneka aha hakurikira: <http://www2.ohchr.org/english/law/remedy.htm>].
8. Itangazo ryashyiriweho umukono i Nairobi mu 2007 ku burenganzira bw'Abagore n'Abakobwa ku ndishyi [aboneka ku murongo ukurikira: [http://www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php)].
9. Inyandiko ya 34 yo mu 1995 Ishyigikira Ubumwe n'Ubwiyunge bw'Abanyarwanda [Iboneka ku murongo ukurikira: [http://www.saflii.org/za/legis/num\\_act/ponuara1995477/](http://www.saflii.org/za/legis/num_act/ponuara1995477/)]
10. Ibaruwa yo ku wa 9 Ugushyingo 2000 Perezida w'Urukiko Mpuzamahanga rwashyiriweho u Rwanda yandikiye Umunyamabanga Mukuru w'Umuryango w'Abibumbye, U.N. Doc. S/2000/1198, 15 December 2000 [Iboneka ku murongo ukurikira: <http://www.un.org/Docs/sc/letters/2000/sglet00.htm>]
11. Itangazo ry'amahame shingiro y'Ubutabera ku Bahohotewe n'icyaha cyo gukoresha nabi ububasha ryashyizwe ahagaragara n'Umwanzuro w'Inama Rusange No 40/34 yo ku wa 29 Ugushyingo 1985 [<http://www2.ohchr.org/english/law/victims.htm>]