UBUSHINJACYAHA v. Col.BYABAGAMBA N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RPA00001/2019/CA (Mukanyundo, P.J.,Kanyange na Rugabirwa,J.) 12 Nyakanga 2019]

Amategeko mpanabyaha – Igihano cy'igifungo – Kuba ufunze afungiwe ahantu ha wenyine, ubwabyo ntibyakwitwa iyicarubozo mu gihe uburyo afunzwemo bwubahirije uburenganzira bw'ikiremwamuntu.

Ubwishingizi bw'indwara – Ubwishingizi bw'indwara bukoreshwa ku muntu ufunze – Ku byerekeye ubwishingizi bukoreshwa mu kwivuza icyangombwa si ubwoko bw'ubwishingizi bukoreshwa ahubwo icyangombwa ni ukumenya niba ufunze avurwa uko bikwiye, kuba hadakoreshwa ubwishingizi ufunzwe yifuza gukoresha, ubwabyo ntibyafatwa nk' impamvu yo gufungurwa by'agateganyo.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru rwa Gisirikare, abaregwa aribo Col. Tom Byabagamba, Rtd Brig Gen Frank Kanyambo Rusagara na Rtd. Sgt Kabayiza François bakurikiranywe n'Ubushinjacyaha bwa Gisirikare ibyaha binyuranye.

Urwo rukiko rwabahamije ibyaha baregwaga uretse Rtd. Sgt Kabayiza utarahamijwe icyaha cyo gutunga imbunda mu buryo bunyuranije n'amategeko maze urwo Rukiko ruhanisha Col. Byabagamba igihano cy'igifungo cy'imyaka 21, ruhanisha Rtd Brig.Gen. Rusagara igihano cy'igifungo cy'imyaka 20 naho Rtd. Sgt Kabayiza ahanishwa igihano cy'igifungo cy'imyaka 5.

Abaregwa ntibishimiye imikirize y'urubanza maze bajuririra Urukiko rw'Ikirenga, nyuma y'ivugururwa ry'amategeko urubanza rwabo rwaje kwimurirwa mu Rukiko rw'Ubujurire maze muri uru rukiko Ubushinjacyaha bwa Gisirikare butanga inzitizi yo kutakira ubujurire bw'abaregwa buvuga ko butakozwe nk'uko amategeko abiteganya. Abaregwa nabo batanze inzitizi basaba ko bafungurwa by'agateganyo bakaburana bari hanze, bagaragaza ko bafite ikibazo cy'uburwayi, bavugaga kandi ko batishimiye uburyo bavuzwa kubera ko ngo batabonana n'abaganga igihe babishakiye kandi ko Gereza itabemerera gukoresha ubwishingizi bw'indwara bari basanganywe bwa MMI. Bakomeza bavuga ko nta banga ribaho hagati yabo na muganga mu gihe basuzumwa kuko baba bahagarikiwe n'umusirikare wa *military police*.

Ubushinjacyaha bwa Gisirikare bwo buvuga ko kuba abaregwa barwaye, igisubizo kuri ubwo burwayi bwabo kitaba kubafungura, kuko iyi mpamvu idateganywa n'amategeko kugira ngo ishingirweho hemezwa ko umuntu arekurwa by'agateganyo. Ku byerekeranye no kwivuza, buvuga ko abaregwa bivuza uko bikwiye, ko hari n'umuganga wa *Military Police* ubakurikirana umunsi ku wundi, naho kuvuga ko muganga abasuzuma hari umusirikare ucunga umutekano, igihari nuko baherekezwa kwa muganga, kandi bakavurwa uko bikwiye.

Indi mpamvu abaregwa batanga basaba gufungurwa by'agateganyo, bavuga ko bafunzwe mu buryo bunyuranyije n'amategeko bavuga ko bafungiwe ahantu hatategetswe n'Urukiko kuko ubu bafungiye muri Military Police i Kanombe aho kuba muri Gereza ya Gisirikare ya Mulindi, bongeraho ko bafungiye mu kato**,** ko baba ahantu hafunganye cyane kandi hashyizwe za cameras, bakaba nta muntu n'umwe bashobora kubonana nawe uretse umusirikare ubazanira ibiryo, ikindi kibazo bavuga bafite nuko nta burenganzira bafite bwo gusurwa n'imiryango yabo

bityo rero bakaba babona nta mpamvu nimwe ituma batabemerera gusurwa nk'uko bimeze ku bandi bagororwa.

Ubushinjacya bwa Gisirikare bwo buvuga ko akato abaregwa bavuga ko bafungiyemo nta kuri kurimo kuko nk'uko Urukiko rwabyiboneye mu gihe cy'iperereza, baryama ahantu hisanzuye, ko aho bafungiye hatabangamiye ikiremwamuntu kuko bafite ibyangombwa byose ndetse bemererwa ko imiryango yabo ibohereza amafaranga bakagura icyo bashatse, ko ariko batagomba kwirengagiza ko iyo ufunzwe hari ibyo udashobora kubona nk'uko ubyifuza, busaba Urukiko ko rwazita kucyarujyanye igihe rwari rugiye gukora iperereza kuko ibindi abagororwa bavuga ntaho bihuriye n'urubanza.

Ubushinjacyaha bwa Gisirikare bukomeza buvuga ko kuba hari cameras zashyizwe aho bafungiye nta kibazo kibirimo, kuko ziriya cameras zashyizweho mu rwego rwo gucungira abafungwa umutekano kandi ko ibihugu byose bifite amikoro bibikora, naho kuba badafungiye muri Gereza ya Gisirikare ya Mulindi, Ubushinjacyaha buvuga ko bafungiye muri extension ya Gereza ya Gisirikare ya Mulindi(i Kanombe) bikaba byaratewe n'urwego barimo (rank bafite) ari nayo mpamvu aho Col. Byabagamba na Rtd Brig.Gen. Rusagara bafungiye hatandukanye naho Rtd Sgt Kabayiza afungiye kuko we afungiye mu nzu ya rusange.

Incamake y'icyemezo: 1. Kuba ufunze afungiwe ahantu ha wenyine, ubwabyo ntibyakwitwa iyicarubozo mu gihe uburyo afunzwemo bwubahirije uburenganzira bw'ikiremwamuntu.

2. Kuba abaregwa batabonera muganga igihe bamushakiye si ikibazo gihoraho cyangwa cy'umwihariko kuri bo kubera ko bafunzwe, ahubwo bagisangiye n'abandi badafunzwe kuko ahanini biterwa n'ubucye bw'abaganga b'inzobere igihugu gifite, bityo iyo mpamvu ikaba itatuma abaregwa bafungurwa by'abyagatenyo.

3. Ku byerekeye ubwishingizi bukoreshwa mu kwivuza icyangombwa si ubwoko bw'ubwishingizi bukoreshwa ahubwo icyangombwa ni ukumenya niba ufunze avurwa uko bikwiye, kuba hadakoreshwa ubwishingizi ufunzwe yifuza gukoresha, ubwabyo ntibyafatwa nk' impamvu yo gufungurwa by'agateganyo.

4. Uburenganzira kw'ibanga ryo kwivuza ku muntu ufunzwe bugomba guhuzwa n'inshingano y'Ubuyobozi bwa Gereza yo kurinda buri gihe cyose abo bashinzwe, ariko bigakorwa mu buryo nta kibangamiye ikindi.

5. Abafungwa bagomba kwemererwa, ariko babigenzurwamo, gushyikirana n'imiryango yabo n'iy'inshuti zabo zashobora kwizerwa, buri gihe runaka byaba mu nyandiko cyangwa se byaba gusurwa, bityo abaregwa bakaba bagomba gusubizwa uburengazira bwo gusurwa n'imiryango yabo.

Inzitizi zisaba gufungurwa by'agateganyo nta shingiro zifite;
Urubanza ruzakomeza mu mizi.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu mwaka wa 2003 ryavuguruwe mu mwaka wa 2015, ingingo ya 14 (1), (2), iya 21 n'iya 22.
Itegeko Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko, ingingo ya 176.

Itangazo Mpuzamahanga ku burenganzira bwa muntu ryo ku wa 10/12/1948, Ingingo ya 25, igika cya mbere.
Amasezerano Mpuzamahanga mu by'imbonezamubano na politiki yo ku wa 19/12/1966 yashyizweho umukono n'u Rwanda ku wa 12/02/1975, ingingo ya 7, n'iya 10, igika cya mbere.
Amasezerano Mpuzamahanga ajyanye n'uburenganzira mu by'ubukungu, imibereho y'abantu n'umuco yo ku wa 19/12/1966 u Rwanda rwemeje ku wa 12/02/1975, ingingo ya 12
Amasezerano Nyafurika y'uburenganzira bwa muntu n'abaturage yo ku wa 27/06/1981, u Rwanda rwashyizeho umukono ku wa 11/11/1981, rukayemeza ku wa 17/05/1983, ingingo ya 16, igika cya mbere.
Amabwiriza Mpuzamahanga agenga uburyo abagororwa bafatwamo yitiriwe Mandela (Nelson Mandela rules), Ingingo ya 10, iya 37 n'iya 44

Imanza zifashishijwe:
Bagosora v. the Prosecutor, ICTR,Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motions for Provisional Release and Leave to File Corrigendum, 2 September 2009.
Prosecutor v. Rašić, ICTY, Case No. IT-98-32/1-R77.2-A, Judgement, 16 November 2012.
Karemera et al. v. the Prosecutor, ICTR, Case No. ICTR-98-44-A, Decision on Mathiew Ngirumpatse's Motion for Provisional Release, 11 December 2012.
Rhode v.Denmark, European Court of Human rights, application Nº10263/83
Ramirez Sanchez v. France, European Court of Human rights, application Nº59450/00.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru rwa Gisirikare, Ubushinjacyaha bwa Gisirikare burega Col. Tom Byabagamba, Rtd Brig Gen Frank Kanyambo Rusagara na Rtd. Sgt Kabayiza François ibyaha byavuzwe haruguru, urwo Rukiko ruca urubanza RP0006/014/HCM ku wa 31/03/2016, rwemeza ko icyaha cyo guteza imvururu cyangwa imidugararo, icyaha cyo gukora igikorwa kigamije gusebya Igihugu cyangwa Leta uri umuyobozi, icyaha cyo guhisha nkana ibintu byagombye gufasha kugenza icyaha cy'ubugome cyangwa gikomeye, gutahura ibimenyetso cyangwa guhana abakoze icyaha n'icyaha cyo gusuzugura ibendera ry'Igihugu, bihama Col.Tom Byabagamba akaba agomba kubihanirwa, ko icyaha cyo guteza imvururu cyangwa imidugararo muri rubanda, icyaha cyo gukora igikorwa kigamije gusebya Leta ari umuyobozi n'icyaha cyo gutunga imbunda mu buryo bunyuranyije n'amatgeko bihama Rtd Brig Gen Frank Kanyambo Rusagara akaba agomba kubihanirwa, rwemeza kandi ko icyaha cyo gutunga imbunda mu buryo bunyuranyije n'amategeko kidahama Rtd Sgt Kabayiza François akaba atagomba kugihanirwa, rwemeza ko ahamwa n'icyaha cyo guhisha nkana ibintu byagombye gufasha kugenza icyaha cy'ubugome cyangwa gikomeye, gutahura ibimenyetso cyangwa guhana abakoze icyaha, akaba agomba kugihanirwa.

[2] Urukiko rwahanishije Col. Tom Byabagamba igifungo cy'imyaka 21, rumuhanisha kandi igihano cy'ingereka cyo kunyagwa amapeti ya Gisirikare, ruhanisha Rtd Brig Gen Frank Kanyambo Rusagara igifungo cy'imyaka 20, naho Rtd Sgt Kabayiza François rumuhanisha igifungo cy'imyaka 5 n'ihazabu ya 500.000Frw.

[3] Col. Tom Byabagamba, Rtd Brig Gen Frank Kanyambo Rusagara na Rtd Sgt Kabayiza François, bajuririye Urukiko Rw'Ikirenga. Nyuma y'ivugururwa ry'amategeko, urubanza rwimuriwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko Nº30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, ikirego gihabwa Nº RPA 00001/2019/CA.

[4] Mu Rukiko rw'Ubujurire, Ubushinjacyaha bwa Gisirikare bwatanze inzitizi yo kutakira ubujurire bw'abaregwa kuko butakozwe nk'uko amategeko abiteganya. Col. Byabagamba Tom, Rtd Brig. Gen Frank Kanyambo Rusagara na Rtd Sgt Kabayiza François nabo batanze inzitizi basaba ko bafungurwa by'agateganyo bakaburana bari hanze, bavuga ko ifungurwa ry'agategtanyo basaba barishingira ku ngingo ya 105, igika cya mbere n'icya kabiri, y'Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

[5] Urubanza rwaburanishijwe mu ruhame ku wa 22/05/2019, Col. Byabagamba Tom yunganiwe na Me Musore Gakunzi Valery, Rtd Brig. Gen. Kanyambo Rusagara Frank yunganiwe na Me Buhuru Pierre Célestin, naho Rtd Sgt Kabayiza Francois yunganiwe na Munyandatwa S. Nkuba Milton, Ubushinjacyaha bwa Gisirikare buhagarariwe na Cpt Nzakamwita Faustin, habanza gusuzumwa inzitizi zatanzwe, ababuranyi bamenyeshwa ko icyemezo ku nzitizi kizasomwa ku wa 31/05/2019.

[6] Ku wa 31/05/2019, Urukiko rw'Ubujurire rwaciye urubanza rubanziriza urundi ku nzitizi yo kutakira ikirego cy'ubujurire yatanzwe n'Ubushinjacyaha maze rwemeza ko iyo nzititizi nta shingiro ifite. Ku birebana n'inzitizi yatanzwe n'abajuriye, Urukiko rwemeje ko mbere yo kuyifataho icyemezo, ruzabanza gukora iperereza rukagera aho bafungiye, ko iburanisha rizasubukurwa ku wa 13/06/2019.

[7] Iperereza ryashyizwe ku wa 05/06/2019, saa tatu n'igice za mu gitondo, uwo munsi ugeze, rirakorwa hari abaregwa, ababunganira mu mategeko hamwe n'Ubushinjacyaha.

[8] Ku itariki ya 13/06/2019, urubanza rwarasubukuwe, abaregwa bajuriye ndetse n'Ubushinjacyaha, bunganiwe banahagarariwe nka mbere, buri ruhande ruhabwa umwanya kugira ngo rugire icyo ruvuga ku byavuye mu iperereza.

[9] Ku wa 28/06/2019, Urukiko rwafashe icyemezo gitegeka Ubuyobozi bwa Gereza ya Military Police, Rtd Sgt Kabayiza Francois afungiyemo cyo kumujyana kwa muganga usanzwe amuvura, kugira ngo amusuzume, akore raporo azageza ku rukiko yerekana uko ubuzima bwe buhagaze muri iki gihe kandi anerekane niba uburwayi bwe busaba ko avuririrwa mu bitaro cyangwa ko yajya yivuza ataha kuri Gereza nk'uko bisanzwe.

[10] Iburanisha ryasubukuwe ku wa 08/07/2019, abaregwa bitabye kandi bunganiwe nk'uko bisanzwe, Ubushinjacyaha buhagarariwe ndetse na Dr Nahayo wakoze raporo ashingiye kuri dosiye yo kwa muganga (electronic medical file) ya Rtd Sgt Kabayiza François, yitabye Urukiko kugira ngo agire ibisobanuro atanga kuri iyo raporo yakoze.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1.Kumenya niba Col Tom Byabagamba, Rtd Brig. Gen Frank Kanyambo Rusagara na Rtd Sgt Kabayiza François bafungurwa by'agateganyo kubera ko batavuzwa mu buryo bukwiye

[11] Col.Tom Byabagamba avuga ko imwe mu mpamvu zituma asaba gufungurwa by'agateganyo, ari uko afite ikibazo cy'uburwayi bw'umugongo bumukomereye, ko umuti we ari siporo yo kugenda ndetse no koga, ko rero ibyo bitashoboka agumye aho afungiye kuko ari hato cyane kandi ko aho kogera ho atahabona. Rtd Brig. Gen Frank Kanyambo Rusagara we avuga ko arwaye indwara y'izabukuru yitwa prostate imukomereye, ko ariko afunguwe yashobora kwivuza neza ikaba yakworoha.

[12] Me Munyandatwa S.Nkuba Milton wunganira Rtd. Sgt. Kabayiza François avuga ko kuva agitangira kuburanishwa, atigeze ahwema kugaragariza Inkiko ikibazo cy'ubuzima bw'umukiliya bubangamiwe n'uburwayi avuga ko bwatewe n'iyicarubozo yakorewe akimara gufatwa aho avuga ko ryamuteye uburwayi bw'imitsi ndetse n'ubujyanye n'umuvuduko w'amaraso uri hejuru cyane (180) (hypertension), ibyo bikaba byaraje byiyongera ku bundi burwayi bw'umwijima wa Hepathite B yari asanganywe. Avuga ko yivuriza muri CARAES i Ndera no muri RMH, akaba anywa ibinini 25 ku munsi. Asaba ko yafungurwa kuko n'igihano yakatiwe kigiye kurangira, ariko ko kuba aho afungiye nta bwinyagamburiro buhari bitewe n'uko aba mu buryamo bwa rusange, bikaba bimubangamiye nk'umurwayi urembye, ndetse n'Ubuyobozi bwa Gereza bukaba bwaranze ko ajya kurwarira mu bitaro nk'uko Muganga yabimwandikiye.

[13] Urukiko rwategetse ko Rtd Sgt Kabayiza François yazashyikirizwa Umuganga kugira ngo azamusuzume maze akore raporo yerekana uko ubuzima bwe bumeze muri iki gihe. Ubushinjacyaha bwavuze ko Rtd Sgt Kabayiza François yanze ko bamujyana kuri RMH, nyirubwite we akavuga ko atanze, ko ahubwo yashakaga ko bamujyana ku Bitaro bya CARAES i Ndera kuko aribo basanzwe bamuvura. Dr Ndahayo Ernest wasuzumye dosiye ye ibitse mu buryo bw'ikoranabuhanga, yasobanuriye mu Rukiko ibikubiye muri raporo yakoze, avuga ko ubwe atasuzumye Kabayiza ariko yagendeye kuri raporo z'abandi baganga bamuvuye mbere. Yavuze ko Kabayiza afite uburwayi butuma igice gihera cy'amaguru n'icy'amaboko bigira intege nkeya, ko afite uburwayi bwa Hepatite B ndetse n'umuvuduko w'amaraso uri hejuru (hypertension), yagaragaje kandi ko izo ndwara arwaye ari izisanzwe ndetse ko bitamubuza kugira icyo akora keretse ari igisaba ingufu, ko ibimenyetso agaragaza bitatuma ajya mu bitaro keretse bibaye ngombwa ko aterwa imiti yo mu mutsi kandi nabwo yakoroherwa agataha.

[14] Abaregwa bose bavuga ko batishimiye uburyo bavuzwa kubera ko batabonana n'Abaganga igihe babishakiye kuko gereza hari ubwo ivuga ngo nta modoka ihari, ubundi ntibabajyane mu buryo bwihuse kandi Muganga hari ibyo aba yategetse bikenewe gusuzumwa, ko ikindi kibazo bafite mu kwivuza ni uko akenshi bahabwa abaganga batari inzobere zifite ubumenyi bujyanye n'indwara barwaye (specialists).

[15] Kuri icyo kibazo cyo kwivuza, Rtd Brig. Gen Frank Kanyambo Rusagara na Me Buhuru Pierre Célestin umwunganira, Rtd Sgt Kabayiza François na Me Munyandatwa S.Nkuba Milton, umwunganira, bavuga ko bafunguwe by'agateganyo, babasha kwivuza mu bwisanzure kuko uko bikorwa ubu, bivuza bahagarikiwe n'umusirikare wa Military Police, ku buryo batabona uko bavugana na Muganga ku burwayi bwabo, ko ibanga rigomba kuba hagati ya Muganga

n'umurwayi ntaryo bagirirwa bikaba bibangamiye ubuzima bwabo. Bakaba basaba ko mu gihe Urukiko rwasanga bagomba gukomeza gufungwa, rwategeka ko bafungwa mu buryo butabangamiye ubuzima bwabo kandi bakavuzwa uko bikwiye.

[16] Rtd Brig Gen Frank Kanyambo Rusagara avuga na none ko afite ubwishingizi bwa MMI ariko ko yimwe uburenganzira bwo kubukoresha, ko ahubwo bamujyanye mu bwishingizi bwa Mutuelle de santé kandi hari imiti atabona bitewe n'ubwo bwishingizi ndetse no kuba yasuzumwa n'abaganga b'inzobere. Iki kibazo agihuriyeho na Col Tom Byabagamba uvuga ko cyagakwiye gusuzumwa mu buryo bugari kuko atumva impamvu umuntu ufunzwe yari umusirikare, yahagarikirwa ubwishingizi bwe muri MMI igihe cyose atarahamwa n'icyaha burundu, kuko igihe akiburana, aba agifatwa nk'umwere ku byaha uregwa(presumption of innocence) nk'uko biteganywa n'Itegeko Nshinga rya Repubulika y'u Rwanda.

[17] Me Munyandatwa S.Nkuba Milton avuga ko ingingo ya 14 n'iya 15 z'Itegeko Nshinga rya Repubulika y'u Rwanda ziteganya ko umuntu afite uburenganzira bwo kuvurwa, kandi ko umuntu ari umunyagitinyiro, ko ariko Rtd Sgt Kabayiza François we yahohotewe akimara gufatwa ari nabyo byamuviriyemo uburwayi afite, akaba asaba Urukiko ko rwamurekura by'agateganyo kugirango ashobore gushaka Umuganga umuvura kandi yihitiyemo.

[18] Uhagarariye Ubushinjacyaha avuga ko kuba abaregwa barwaye(Rtd Brig Gen Frank Kanyambo Rusagara uvuga ko arwaye prostate), asanga igisubizo kuri ubwo burwayi bwabo kitaba kubafungura, kuko iyi mpamvu idateganywa n'amategeko kugira ngo ishingirweho hemezwa ko umuntu arekurwa by'agateganyo. Avuga ko ifungurwa ryabo ry'agateganyo basaba uru Rukiko bashingira ku ngingo ya 105 y'Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryavuzwe haruguru, ataribyo, ko ahubwo bagombye kurisaba bashingira ku ngingo ya 184 y'iryo tegeko, iteganya ko umucamanza wo mu Rukiko rwajuririwe ashobora gusabwa gufungura umuntu by'agateganyo.

[19] Ku byerekeranye no kwivuza, avuga ko abaregwa bivuza uko bikwiye, ko hari n'umuganga wa Military Police ubakurikirana umunsi ku wundi, naho kuvuga ko muganga abasuzuma hari umusirikare ucunga umutekano, Urukiko ntabyo rwabonye gusa igihari nuko baherekezwa kwa muganga, kandi bakavurwa uko bikwiye.

UKO URUKIKO RUBIBONA

[20] Urukiko rurasanga, kugira ngo umuntu ufunzwe akurikiranyweho icyaha afungurwe by'agateganyo, agomba kwerekana impamvu zidasanzwe zituma arekurwa, Urukiko rusuzuma ishingiro ryazo harebwe umwihariko w'ikibazo cy'uregwa.

[21] Ingingo ya 21 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu mwaka wa 2003 ryavuguruwe mu nwaka wa 2015, iteganya ko "Abanyarwanda bose bafite uburenganzira bwo kugira ubuzima bwiza", naho ingingo ya 22 yaryo ikavuga ko "Umuntu wese afite uburenganzira bwo kuba ahantu hatunganye kandi hadafite ingaruka mbi ku buzima."

[22] Ingingo ya 16, igika cya mbere, y'Amasezerano Nyafurika y'uburenganzira bwa muntu n'abaturage yo ku wa 27/06/1981, u Rwanda rwashyizeho umukono ku wa 11/11/1981,

rukayemeza ku wa 17/05/1983[1], iteganya ko buri muntu afite uburenganzira ku buzima bwiza bw'umubiri no mu mutwe ashobora kwigezaho. Igika cya kabiri giteganya ko Ibihugu byasinye aya masezerano byiyemeje gufata ingamba za ngombwa kugirango zirengere ubuzima bw'abaturage no kubafasha kwivuza igihe barwaye.

[23] Ingingo ya 10, igika cya mbere, y'Amasezerano Mpuzamahanga mu by'imbonezamubano na politiki yo ku wa 19/12/1966 yashyizweho umukono n'u Rwanda ku wa 12/02/1975[2] ateganya ko buri muntu wese ufunzwe agomba gufatwa neza kandi hubahirijwe agaciro gakwiye ikiremwa muntu. Naho ingingo ya 12 y'Amasezerano Mpuzamahanga ajyanye n'uburenganzira mu by'ubukungu, imibereho y'abantu n'umuco yo ku wa 19/12/1966 u Rwanda rwemeje ku wa 12/02/1975[3] ivuga ko Ibihugu byayashyizeho umukono byemeye ko buri muntu afite uburenganzira bwo kugira ubuzima bwiza bw'umubiri no mu mutwe ashobora kwigezah**o**. Igika cya 2, agace ka d) k'iyo ngingo kongeraho ko mu ngamba ibihugu bigomba gufata kugirango ubwo burenganzira bwubahirizwe harimo no gushyiraho uburyo bwihariye butuma buri wese abasha kuvurwa kandi akabona ubwishingizi cyangwa ubufasha bwo kuvurwa mu gihe arwaye.

[24] Ingingo ya 25, igika cya mbere, y'Itangazo Mpuzamahanga ku burenganzira bwa muntu ryo ku wa 10/12/1948, iteganya ko buri muntu wese afite uburenganzira ku mibereho myiza kugirango yite ku buzima bwe n'ubw'umuryango we, abona ibiryo, imyambaro, icumbi, ubuvuzi n'ibindi bikenewe.

[25] Ku bijyanye n'uburenganzira bw'abagororwa ku buvuzi, Inama Rusange y'Umuryango w'Abibumbye yabifasheho umwanzuro A/RES/70/175 ku wa 17/12/2015 mu rwego rwo kuvugurura Amabwiriza Rusange ajyanye n'uburyo bwo kwita ku bagororwa azwi cyane nka Nelson Mandela Rules, yemeza ko mu byo abagororwa bemerewe harimo ibi bikurikira:

a) ko kuvurwa kw'abagororwa ari inshingano ya Leta, bagahabwa serivisi nk'iz'abandi baturage kandi mu buryo bwikurikiranya (ibwiriza rya 24);

b) ko buri gereza igomba kuba ifite serivisi z'ubuvuzi zitandukanye, zifite abakozi babifitiye ubumenyi, zikurikirana ubuzima bw'abagororwa hitawe cyane cyane ku bakeneye ubuvuzi bwihariye (ibwiriza rya 25);

c) ko serivisi zo kwa muganga zishobora kubika dosiye z'abagororwa barwaye, abagororwa bagahabwa dosiye zabo igihe bazikeneye cyangwa zikaba zasuzumwa n'undi muntu, umugororwa yifuza (ibwiriza rya 26)

d) ko mu gihe bikenewe, umugororwa ashobora kugezwa kwa muganga vuba kandi agahabwa ubuvuzi butanzwe n'inzobere hagendewe ku mwihariko wa buri ndwara (ibwiriza rya 27).

[26] Ku bijyanye n'ifungurwa ry'agateganyo kubera impamvu zidasanzwe z'uburwayi, mu gihe urubanza rw'ubujurire rukiburanishwa, Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda, n'Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho icyahoze cyitwa Yugoslaviya, zahurije ku kwemeza ko nta hame runaka ririho inkiko zikwiye

---

[1] Reba Itegeko Nº 10/1983 ryo ku wa 17/05/1983.
[2] Reba Itegeko-Teka Nº 85/75 ryo ku wa 12/02/1975.
[3] Reba Itegeko-Teka Nº 85/75 ryo ku wa 12/02/1975.

kugenderaho, ko ahubwo uko byagenda kose, bene izo mpamvu zisuzumwa hitawe ku mwihariko wa buri rubanza.[4] Izo nkiko zasobanuye kandi ko impamvu zidasanzwe zituma uregwa afungurwa by'agateganyo zigomba kuba zishingiye ku bisobanuro bifatika (an acute justification) bijyanye no kugira ubumuntu.[5]

[27] Urukiko rurasanga, uburenganzira ku buzima buteganywa n'ingingo ya 21 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu mwaka wa 2003 ryavuguruwe mu mwaka wa 2015, bushyirwa mu bikorwa hakurikijwe ingamba Leta yafashe kugirango abaturage bashobore kuvurwa kandi babone ubufasha bwatuma bavurwa igihe barwaye, iyi nshingano akaba ariyo u Rwanda rwiyemeje mu ngingo 16, igika cya mbere, y'Amasezerano Nyafurika y'uburenganzira bwa muntu n'abaturage yo ku wa 27/06/1981 no mu ngingo ya 12 y'Amasezerano Mpuzamahanga ajyanye n'uburenganzira mu by'ubukungu, imibireho y'abantu n'umuco yo ku wa 19/12/1966, gushyira mu bikorwa izi nshingano akaba ari uguhesha agaciro ikiremwa muntu kabone nubwo yaba ari umuntu ufunzwe, nk'uko biteganywa n'ingingo ya 10, igika cya mbere y'Amasezerano Mpuzamahanga mu by'imbonezamubano na politiki yo ku wa 19/12/1966 yibukijwe haruguru.

[28] Urukiko rurasanga, buri muntu afite uburenganzira ku mibereho myiza kugirango yite ku buzima bwe, ingingo ya 25, igika cya mbere, y'Itangazo Mpuzamahanga ku burenganzira bwa muntu ryo ku wa 10/12/1948, ikaba ivuga ko kubera iyo mpamvu umuntu wese ahabwa amahirwe ku ifunguro, ubuvuzi, imyambaro n'ibindi.

[29] Ku bijyanye n'ikibazo cyo kwivuza muri rusange, biragoye kumenya niba abagororwa bavurwa uko bikwiye, ariko na none byose biterwa n'intera ubuvuzi buba bugezeho mu gihugu. Kugira ngo umugororwa yivuze biramugora koko kuko nta baganga bahagije Gereza ziba zifite kandi kwivuza bikaba bihenze, ariko ku birebana n'uru rubanza, nubwo abaregwa bavuga ko batishimiye uburyo ubuyobozi bwa gereza bubavuza, ntibahakana ko bavurwa, kuko nk'inyandiko yo kwa muganga Rtd Brig Gen Frank Kanyambo Rusagara yeretse uru Rukiko igaragaza ko yasuzumwe kandi yakurikiranywe n'Umuganga w'inzobere ubifitiye ubumenyi. Nanone kandi, inyandiko zo kwa Muganga, Sgt Kabayiza François yivurizaho, zeretswe uru Rukiko, zigaragara ko nawe avurirwa mu bitaro bishoboye nka RMH, CARAES i Ndera ndetse ko hari n'ibizamini yandikiwe kujya gukorera kuri Mediheal. Ikibazo bahura nacyo cyo kutabonera Muganga igihe bamushakiye,Urukiko rwasanze atari ikibazo gihoraho cyangwa se cy'umwihariko kuri bo kubera ko bafunzwe, ko ahubwo bagisangiye n'abandi baturage badafunzwe kuko ahanini biterwa n'ubucye bw'abaganga b'inzobere Igihugu gifite, ibi rero bikaba bitaba impamvu yatuma bafungurwa by'agateganyo mu gihe Ubuyobozi bwa Gereza bukurikiranira hafi ubuzima bwabo hakaba hari n'Umuganga ubasura hafi buri munsi areba ibibazo bafite, byaba ngombwa akabasabira rendez-vous ku muganga w'inzobere bifuza kwivurizaho.

---

[4] Reba *Bagosora v. the Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motions for Provisional Release and Leave to File Corrigendum, 2 September 2009, para. 16; *Prosecutor v. Rašić*, Case No. IT-98-32/1-R77.2-A, Judgement, 16 November 2012, para. 6. Reba kandi *Karemera et al. v. the Prosecutor*, Case No. ICTR-98-44-A, Decision on Matthiew Ngirumpatse's Motion for Provisional Release, 11 December 2012, para. 4.

[5] *Bagosora v. the Prosecutor*, Case No. ICTR-98-41-A, Decision on Aloys Ntabakuze's Motions for Provisional Release and Leave to File Corrigendum, 2 September 2009, para. 23; *Karemera et al. v. the Prosecutor*, Case No. ICTR-98-44-A, Decision on Matthiew Ngirumpatse's Motion for Provisional Release, 11 December 2012, para. 4. Reba kandi *Karemera et al. v. the Prosecutor*, Case No. ICTR-98-44-A, Decision on Matthiew Ngirumpatse's Motion for Provisional Release, 11 December 2012, para. 11.

[30] Ku kibazo cya Rtd Brig Gen Frank Kanyambo Rusagara uvuga ko ibanga ryo kwivuza riba hagati y'umurwayi na Muganga ritubahirizwa iyo arimo asuzumwa, Urukiko rurasanga n'ubwo umuntu afite uburenganzira bwo gusuzumwa na muganga nta wundi uhari, byumvikana na none ko umuntu ufunzwe atafatwa nk'umuturage usanzwe, kumuherekeza aho asuzumirwa bikaba byakumvikana ko bikorwa mu rwego rwo kumucungira umutekano, uwa rubanda n'uw'Igihugu, ubwo burenganzira kw'ibanga ryo kwivuza bukaba bugomba guhuzwa n'inshingano y'Ubuyobozi bwa Gereza yo kurinda buri gihe cyose abo bashinzwe, ariko bigakorwa mu buryo nta kibangamiye ikindi.

[31] Ku kibazo cya Col Tom Byabagamba na Rtd Brig Gen Frank Kanyambo Rusagara cy'uko Ubuyobozi bwa Gereza butabemerera kwivuza bakoresheje ubwishingizi bari basanganywe bwa MMI, Urukiko rurasanga icyangombwa atari ubwoko bw'ubwishingizi bakoresha bavurwa ahubwo ari ukumenya niba bavurwa uko bikwiye, imbere y'uru Rukiko bakaba baremeye ko bavurirwa mu Bitaro bya Gisirikare bya Kanombe, bimwe mu bitaro bikomeye mu gihugu, bifite inzobere zifite inararibonye mu kuvura indwara zitandukanye, kuba bavurwa hakoreshejwe Mutuelles de Santé akaba ataribyo byaba impamvu idasanzwe yatuma bafungurwa by'agateganyo kuko iyo bibaye ngombwa, ubuyobozi bwa Gereza bubavuza aho basuzumwa n'abaganga babifitiye ubushobozi.

[32] Ku kibazo cya Rtd Sgt Kabayiza François uvuga ko afite uburwayi butatuma akomeza gufungwa, Urukiko rurasanga mu cyemezo cyarwo cyo ku wa 28/06/2019, rwarifuje kumenya uko ubuzima bwe bwifashe muri iki gihe, niba ari ngombwa ko avurwa ari mu bitaro, ariko nk'uko byagaragariye urukiko igihe cy'iburanisha ryo ku wa 08/07/2019, ntiyatumye icyo cyemezo gishyirwa mu bikorwa, kuko uwagombaga kumujyana kwa muganga kugira ngo asuzumwe, yabwiye urukiko ko yanze ko ajyanwa gusuzumirwa mu bitaro bya Kanombe, ko ashaka gusuzumirwa mu bitaro by'i Ndera, kandi na Rtd Sgt Kabayiza François ubwe akaba yemera ko yagaragaje icyo cyifuzo, mu gihe nyamara iyo ajyanwa gusuzumirwa mu bitaro bya Kanombe, aribyo byashoboraga kumwohereza ahandi igihe byari gusanga ari ngombwa.

[33] Byongeye kandi, nk'uko byavuzwe no ku bandi, Rtd Sgt Kabayiza François akurikiranwa n'abaganga, ndetse ubwo Urukiko rwakoraga iperereza aho afungiye, rwiboneye dosiye ye yo kwa muganga, igaragaza ko anashakirwa rendez-vous ku baganga b'inzobere, ndetse no mu iburanisha ry'ubushize, akaba yareretse Urukiko ko afite *rendez-vous* yo gukoresha ibizamini kuri MEDIHEAL.

[34] Urukiko rurasanga imvugo z'abaregwa ko batishimiye uburyo bavurwa, nta bimenyetso bifatika byerekana ko uko bikorwa bibangamiye ubuzima bwabo, kuko Leta ibavuza nk'uko ibikora ku bandi baturage bose, ndetse bo bakaba bafite akarusho kuko hari Umuganga wa Gereza ukurikiranira hafi ubuzima bwabo, igihe umuturage usanzwe utari mu gihano atari igihe cyose abona amahirwe n'amikoro yo gusuzumwa n'inzobere uko abishatse. Byongeye kandi, igihe Urukiko rwajyaga mu iperereza, abaregwa barubwiye ko Gereza yemerera imiryango yabo kubashakira imiti ihenze igihe ikiguzi cyayo kirenze amikoro ya Leta, kuba rero ibiteganywa n'Itegeko Nshinga, amategeko n'Amasezerano Mpuzamahanga ndetse n'amabwiriza y'Umuryango w'Abibumbye byavuzwe haruguru, ku birebana n'uburyo imfungwa n'abagororwa bavuzwa, byubahirizwa uko bikwiye, iyi mpamvu yo gusaba gufungurwa kubera kutavurwa mu buryo bukwiye nta shingiro ifite.

II.2. Kumenya niba Col Tom Byabagamba, Rtd Brig. Gen Frank Kanyambo Rusagara na Rtd Sgt Kabayiza François bafungurwa by'agateganyo kubera ko bafunzwe mu buryo bunyuranyije n'amategeko

[35] Me Buhuru Pierre Célestin wunganira Rtd Brig Gen Frank Kanyambo Rusagara, Me Musore Gakunzi Valery wunganira Col Tom Byabagamba na Me Munyandatwa S.Nkuba Milton, umwunganira, avuga ko Rtd. Sgt Kabayiza François bavuga ko abo bunganira bafungiwe ahantu hatategetswe n'Urukiko kuko ubu bafungiye muri Military Police i Kanombe aho kuba muri Gereza ya Gisirikare ya Mulindi, ko ibyo Ubushinjacyaha buvuga ko Military Police i Kanombe ari extension ya Gereza ya Gisirikare ya Mulindi atari byo kuko nta teka ryigeze riyishyiraho, kandi ko niyo yaba ari extension, Military Police itagomba gukuraho icyemezo cy'Urukiko Rukuru rwa Gisirikare rwategetse aho bafungirwa . Bavuga ko aho abagororwa bafungirwa n'uburyo bafungwamo, bigengwa n'amategeko aho kuba imicungire ya Gereza (management) nkuko Uhagarariye Ubushinjacyaha bwa Gisirikare abivuga, kuko byaba ari ukwirengagiza ibiteganywa n'Itegeko Nshinga by'uko ibyemezo by'inkiko bigomba gukurikizwa na buri wese.

[36] Me Buhuru Pierre Célestin na Me Musore Gakunzi Valery bavuga kandi ko abo bunganira bafungiye mu kato**,** ko baba ahantu hafunganye cyane kandi bakaba nta muntu n'umwe bashobora kubonana nawe uretse umusirikare ubazanira ibiryo, ko aho bafungiye ubuyobozi bwa Military Police bwabanje kuhakora basiba imyanya yose yatuma bumva amajwi y'abandi bantu cyangwa bakabonana, yemwe n'abandi bahafungiye, ibyo bikaba bimaze igihe kijya kungana n'imyaka itanu (5), ko rero basanga abaregwa barimo gukorerwa iyicarubozo ryo mu mutwe no mu bitekerezo (torture psychologique) kandi bibuzwa n'ingingo ya 6 y'amahame agenga abafungwa.

[37] Col.Tom Byabagamba asobanura ko impamvu avuga ko afungiye mu kato, ari ko aba wenyine akaba nta muntu ahura nawe (human contact), ko adashobora no kubonana na Rtd Brig Gen Frank Kanyambo Rusagara bavuga ko ari icyitso cye. Avuga ko yibaza impamvu afunzwe muri ubwo buryo nyamara ibyaha aregwa bidahanishwa gufungirwa mu kato, ibi we akaba abifata nk'iyicarubozo bakorerwa kuko amabwiriza mpuzamahanga azwi ku izina rya Mandela Rules abibuza, cyane cyane ingingo yayo ya 43 iteganya ko akato kadafite aho kagarukiye mu gihe kabujijwe, kuko n'igihe byaba ngombwa ko bagashyiramo umufungwa, bidakwiye ko birenga iminsi 15, naho ingingo ya 41(2) y'amabwiriza amaze kugvugwa ikavuga ko umuntu ufungiwe mu kato agomba kumenyeshwa impamvu afashwe gutyo, ko rero we kugeza ubu atigeze amenyeshwa impamvu yashyizwe muri ako kato.

[38] Akomeza asobanura ko n'ubushakashatsi bw'abahanga bwagaragaje ko iyo umuntu amaze amasaha 22 ku munsi adahuye n'undi muntu ngo baganire amubwire icyo ashatse ndetse anamubaze icyo ashatse atariwe ubyishakiye, bikamara iminsi 15 ikurikiranye, biba byabaye akato kandi ko banabonye ko akato (social isolation) gashobora kwangiza umuntu mu mutwe kurusha ibiyobyabwenge.

[39] Col.Tom Byabagamba avuga ko asaba Urukiko ko rwamufungura by'agateganyo agakurikiranwa ari hanze, kuko ingingo ya 45 ya Mandela Rules ibuza ko umufungwa ashyirwa mu kato mu gihe afite ikibazo cyo mu mutwe, cyangwa cy'ubuzima muri rusange, nitewe n'uko

ako kato katuma icyo kibazo kiyongera, ku bimurena akaba yerekanye ko afite ikibazo cy'ubuzima butameze neza.

[40] Me Buhuru Pierre Célestin na Rtd Brig Gen Frank Kanyambo Rusagara, bavuga ko ikindi kimubangamiye, ari uko nta bwisanzure afite mu buzima bwe bwite (privacy) kuko hari za cameras zitunze ku cyumba cye ; ikindi kibazo gikomeye afite kikaba kijyanye nuko ntahateganyirijwe imikino n'indi myidagaduro ku mfungwa (aha barinubira ko badakora siporo).

[41] Abajuriye uko ari batatu bahuriye kandi ku kibazom kijyanye n'uko badahabwa uburenganzira bwo kubonana na ba Avoka babo iyo atari igihe cyo kuburana, ko hari hashize imyaka itatu batabonana nabo, kuko baherukanaga igihe urubanza rwabo rwasomwaga mu Rukiko Rukuru rwa Gisirikare ku itariki ya 30/03/2016, aba Avoka bakaba bongeye gukomorerwa ejo bundi mu kwa Gicurasi 2019, ari uko urubanza rw'ubujurire ruhamagawe, nyamara nta mpamvu nimwe yatuma Avoka abuzwa gusura uwo yunganira nk'uko biteganywa n'amahame mpuzamahanga ajyanye n'uburyo abantu bafunze bagomba gufatwa. Rtd Brig Gen Frank Kanyambo Rusagara na Col Tom Byabagamba binubira na none kuba batabemerera gusurwa n'imiryango yabo, mu gihe ingingo ya 43 (3) ya Mandela Rules, ivuga ko mu bihano byose umufungwa ashobora guhabwa kubera imyitwarire ye, hatabamo kwamburwa uburenganzira bwo gusurwa n'umuryango we; bityo rero bakaba babona nta mpamvu nimwe ituma batabemerera gusurwa n'imiryango yabo nk'uko bimeze ku bandi bagororwa.

[42] Me Buhuru Pierre Célestin avuga ko ibisobanuro byatanzwe na Col. Kayigire Joseph, uyobora Military Police, igihe Urukiko rwajyaga mu iperereza aho abaregwa bafungiye, ko impamvu ituma uwo yunganira adasurwa ari ukubera imyitwarire ye, asanga imvugo ye itahabwa ishingiro, kuko iyo myitwarire itigeze igaragazwa. Byongeye kandi, ingingo ya 18 y'Amahame agenga abafumgwa itanga uburenganzira k'umufungwa bwo gusurwa na Avoka we ; ariko ko n'ubwo igihe urubanza rwari rumaze gushyirwa kuri gahunda y'iburanisha y'Urukiko baje guha abaregwa uburenganzira bwo gusurwa na ba Avoka babo, Urukiko rwabonye ko aho baganirira nta bwisanzure buhari, kuko bavugana hari abandi bantu, mu gihe nyamara nta muntu wemerewe kumviriza ibyo Avoka aganira n'umukiliya we.

[43] Me Musore Gakunzi Valery, ashimangira ibyavuzwe na mugenzi we haruguru, avuga ko umuntu uregwa afite uburenganzira ahabwa n'amategeko bwo kunganirwa, igihe cyose akiburana kabone n'iyo urubanza rwaba rwararangiye rwarabaye ndakuka, ko kuba baramubujije gusura umukiliya we mu gihe cy'imyaka itatu (3) yose nta kundi byakwitwa uretse gufungirwa mu kato kavugwa mu masezerano mpuzamahanga ku iyicarubozo (voir PIDCP) no mu mabwiriza mpuzamahanga yitiriwe Nelson Mandela azwi ku izina rya Mandela Rules. Asoza asaba ko uwo yunganira afungurwa by'agateganyo kuko impungenge zo kwotsa igitutu abatangabuhamya Inkiko zari zifite, nta zigihari bitewe nuko yamaze gucurwa urubanza ku rwego rwa mbere, ko ahubwo bibaye ngombwa yategekwa ibyo yakubahiriza mu gihe ari hanze.

[44] Me Musore Gakunzi Valery avuga ko imiburanire yabo yose igamije gushimangira ubusabe bwabo bunganira bwo gufungurwa by'agateganyo igihe urubanza ruriko kuburanishwa mu mizi, ko n'ubwo nawe yemera ko gufungwa ari ukwamburwa uburenganzira bwo kujya aho ushaka, asanga nta gufungwa neza kubaho kwatuma umuntu adahura n'abandi, ko ibyo Ubushinjacyaha buvuga ko aho Col.Tom Byabagamba na bagenzi be bari bahashyizwe kubera icyubahiro cyabo, abona atari byo kuko hari abandi ba Colonnels bafungiye ku Mulindi.

[45] Uhagarariye Ubushinjacyaha, Cpt.Faustin Nzakamwita, avuga ko akato abaregwa bavuga ko bafungiyemo nta kuri kurimo kuko nk'uko Urukiko rwabyiboneye, Rtd Brig Gen Frank Kanyambo Rusagara aryama ahantu hisanzuye, hari igitanda, umufariso, inzitiramibu, frigo, kandi muri icyo cyumba harimo ubwiherero, amazi n'amashanyarazi, ikindi kandi inzugi n'amadirishya birahagije ndetse birafungurwa. Ibyo kuvuga ko atabona aho akorera siporo, nabyo sibyo kuko imbere y'icyumba cye hari imbuga nini yatemberamo kandi nk'uko byagaragaye igihe cy'iperereza, abari aho basanze afite akagare ka siporo yanyonga, bityo rero, ibyo bavuga ko akorerwa iyicarubozo sibyo kandi umwunganizi we azi icyo iyicarubozo ari cyo, akaba yibaza niba koko gufungirwa ahantu ha wenyine ari iyicarubozo kandi nk'uko byagaragaye, aho bafungiye ntihabangamiye ikirenwamuntu kuko bafite ibyangombwa byose ndetse bemererwa ko imiryango yabo ibohereza amafaranga bakagura icyo bashatse, ko ariko batagomba kwirengagiza ko iyo ufunzwe hari ibyo udashobora kubona nk'uko ubyifuza, asaba Urukiko ko rwazita kucyarujyanye igihe rwari rugiye gukora iperereza kuko ibindi abagororwa bavuga ntaho bihuriye n'urubanza.

[46] Ku bijyanye no kuba hari inzugi n'amadirishya byishwe cyangwa hari cameras zashyizwe aho bafungiye, uhagarariye Ubushinjacyaha bwa Gisirikare abona nta kibazo kibirimo, kuko ziriya cameras zashyizweho mu rwego rwo gucungira abafungwa umutekano kandi ko ibihugu byose bifite amikoro bibikora. Ku bijyanye no kuba bafungiye muri extension ya Gereza ya Gisirikare ya Mulindi, avuga ko byatewe n'urwego barimo (rank bafite) ari nayo mpamvu aho bafungiye hatandukanye naho Rtd Sgt Kabayiza François afungiye kuko we afungiye mu nzu ya rusange. Yongeraho ko ikindi cyatumye nka Rtd Brig Gen Frank Kanyambo Rusagara avanwa muri Gereza ya Gisirikare ya Mulindi agashyirwa aho ari ubu, byatewe n'imyitwarire ye no kugirango adakomeza gushyira umwuka mubi mubandi bafungwa kuko yari yatangiye kubikora akiri muri Gereza ya Gisirikare ya Mukindi.

[47] Ubushinjacyaha buvuga ko ibi bibazo byose bijyanye n'aho abaregwa bafungiye, uburyo bafunzwe, isurwa ryabo, kwivuza n'ibindi bigomba guharirwa Management ya Gereza bafungiyemo, ko Ubuyobozi bwayo bujya gufata icyemezo cyo kugira ibintu bimwe na bimwe buba bubabujije mu gihe runaka, byatewe n'imyifatire yabo. Ku mvugo y'abaregwa ko badasurwa n'imiryango yabo, avuga ko nko kuri Col Tom Byabagamba, hari inyandiko yafatanywe zifitanye isano n'icyaha bakurikiranyweho, ko ariko nibahindura imyitwarire yabo bazakomorerwa bikongera gukorwa nk'uko mbere byari bimeze.

[48] Ubushinjacyaha buvuga ko Rtd Sgt Kabayiza François yavanywe muri Gereza ya Gisirikare ya Mulindi ajyanywa gufungirwa muri Military Police i Kanombe kubera inyungu ze, kuko Ubuyobozi bwa Gereza bwagiraga ngo bumwegereze Umuganga w'inzobere muri Rwanda Military Hospital i Kanombe, ko ariko adashaka kuhaba yabisaba Military Police igahita imusubiza ku Mulindi, asoza avuga ko kubijyanye n'uburenganzira bwo gusurwa, Kabayiza we nta kibazo afite kuko umuryango we umusura.

[49] Ubushinjacyaha buvuga ko ibyo abaregwa bavuga ko bafungiye mu kato ataribyo, kuko Gereza ya Gisirikare yubahiriza amategeko nk'ayandi magereza, ko nta hantu igira ho gufungira mu kato kuko nta abahanishijwe icyo gihano ifite, naho ibyo bavuga ko bafungiye mu Kigo cya Gisirikare nabyo nta kuri kurimo, kukoaho bafungiwe i Kanombe ari ishami (extension) rya Gereza ya Gisirikare ya Mulindi.

[50] Ubushinjacyaha buvuga ko ibyo Avoka wa Rtd Brig Gen Frank Kanyambo Rusagara avuga ko bumvirizwa iyo aganira n'umukiliya we, nta bimenyetso abitangira uretse kubivuga gusa, bityo bikaba nta gaciro byahabwa.

UKO URUKIKO RUBIBONA

[51] Ingingo ya 14 (1) niya (2) y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015, iteganya ko "umuntu wese afite uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe. Ntawe ushobora kwicwa urubozo, gukorerwa ibibabaza umubiri cyangwa ngo akorerwe ibikorwa by'ubugome, ibikorwa bidakwiye umuntu cyangwa bimutesha agaciro".

[52] Ingingo ya 22 y'Itegeko Nshinga rimaze kuvugwa, iteganya ko "umuntu wese afite uburenganzira bwo kuba ahantu hatunganye kandi hadafite ingaruka mbi ku buzima".

[53] Ingingo ya 44 y'Amabwiriza Mpuzamahanga agenga uburyo abagororwa bafatwamo yitiriwe Mandela (Nelson Mandela rules) iteganya ko "akato (solitary confinement) ari ugufunga umugororwa igihe kingana n'amasaha 22 cyangwa umunsi wose nta muntu avugana nawe; gufungirwa mu kato bimara igihe kirekire ntibigomba kurenza iminsi 15 ikurikiranye[6]".

[54] Ingingo ya 10 y'amahame agenga imicungire ya gereza riteganya ko "muri buri cyumba umunyururu agomba kuryamamo nijoro bigomba kuba bihuje n'amategeko y'isuku, hakurikijwe imiterere y'ibihe, nk'ibyerekeye ibipimo by'umwuka ukenerwa, ubuso ntaregwa bugenewe buri munyururu, urumuri, ubushyuhe n'umwuka."

[55] Urukiko rurasanga, ibyo Rtd Brig Gen Frank Kanyambo Rusagara, Col Tom Byabagamba na Rtd Sgt Kabayiza François bavuga ko bafunzwe mu buryo bunyuranyije n'amategeko kubera ko bafungiye ahantu hanyuranye n'aho icyemezo cy'Urukiko cyategetse, ko aho kuba muri Gereza ya Gisirikare ya Mulindi, ahubwo bafungiye muri Military Police, nta shingiro bikwiye guhabwa, kuko kuba barindwa na Military Police ataricyo kigaragaza ko bafungiye muri kasho y'Ubugenzacyaha bwa Gisirikare mu gihe uwo mutwe ushinzwe no kurinda abakatiwe n'inkiko za gisirikare, ahubwo ubuyobozi bwa Military Police basobanuriye urukiko ko aho bafungiye ari ishami rya Gereza ya Gisirikare ya Mulindi, naho ku birebana n'amazu cyangwa ibyumba bagomba gufungirwamo, Urukiko rurasanga ari ikibazo kirebana n'imicungire ya Gereza kuko ariyo ifite ububasha bwo gushyira umugororwa aho ibona ari ngombwa ikurikije ubuzima bwe, imimerere ye bwite, imyifatire ye, ubuzima yabayemo, icyubahiro cye, uburemere bw'ibyaha akurikiranyweho n'ibindi, ibi bigakorwa hubahirijwe uburenganzira bwe bw'ibanze n'agaciro gahabwa ikiremwamuntu, bityo akaba nta bimenyetso batanga byerekana ko aho bafungiye hanyuranyije n'amategeko kuko Ubuyobozi bwa MIlitary Police n'Ubushinjacyaha basobanuye ko ari ishami rya Gereza ya Gisirikare ya Mulindi kandi ko bahabazanye kubera impamvu zumvikana zirimo nko kwegereza Sgt Kabayiza François abaganga ba RMH, bamukurikirana naho abandi hakaba harimo ikibazo cy'imyitwarire kuri Rtd

[6] Mandela rules, rule 44 provides that solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Brig Gen Frank Kanyambo Rusagara bangaga ko akomeza gushyira umwuka mubi mu bandi bafungwa, bityo akaba ntaho bashingira bavuga ko bafungiwe ahantu habyuranyije n'amategeko.

[56] Ku bivugwa na Rtd Brig Gen Frank Kanyambo Rusagara na Col Tom Byabagamba ko bafungiye mu kato kandi ko ibyo bisobanuye ko barimo gukorerwa iyicarubozo, ingingo ya 176 y'Itegeko Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'Amategeko ahana iteganya ko "Iyicarubozo ari igikorwa icyo ari cyo cyose kibabaza umubiri cyangwa ubwenge, cya kinyamaswa, gikoranywe ubugome cyangwa gitesha agaciro, gikozwe ku muntu ku bushake hagamijwe kumushakaho inkuru cyangwa ukwemera, kuryozwa igikorwa yakoze ubwe cyangwa akekwaho kuba yakoze, cyangwa cyakozwe n'undi uwo ariwe wese, hagamijwe kumutera ubwoba cyangwa kumushyiraho agahato cyangwa kubikorera undi n'izindi mpamvu zose zishingiye ku ivangura iryo ari ryo ryose".

[57] Ingingo ya 7 y'Amasezerano Mpuzamahanga mu bya Politiki n'Imbonezamubano yo ku wa 10/12/1966 yemejwe n'u Rrwanda, iteganya ko "umuntu atagomba kwicwa urubozo cyangwa ngo agiririrwe ibikorwa bibabaza umubiri, naho ingingo ya 10 (1) yayo igateganya ko buri muntu wese agomba gufatwa neza kandi hubahirijwe agaciro gakwiye ikiremwamuntu."

[58] Ikibazo cy'abagororwa bafungirwa ahabonyine, cyagiye kivugwaho n'abantu benshi, nk'Akanama k'uburenganzira bwa muntu mu Muryango w'Abibumbye, gasesengura urubanza rwa Vuolanne vs. Finland, wari wareze Igihugu cye avuga ko yafungiwe ahawenyine, iyo Komite yasanze hagomba gusuzumwa umwihariko wa buri rubanza kugira ngo hemezwe niba kuba umuntu ufungiwe ahawenyine (contextual appraisal) bisobanuye ko aba yakorewe iyicarubozo. Iyi Komite yemeje ko Vuolanne nta kato yashyizwemo kuko icyumba afungiwemo gifite ubuso bwa 2x3 metres, gifite amadirishya, uburiri, intebe, ameza n'umuriro w'amashanyarazi, kandi ko yemererwaga kujya hanze gukora imyitozo ngororamubiri no gufata umwuka wo hanze n'ubwo atari yemerewe kuvugana n'abandi bagororwa[7].

[59] Uyu ni nawo murongo wafashwe n'Urukiko rw'i Burayi ku burenganzira bw'ikiremwamuntu, aho mu rubanza rwa Rohde v. Denmark rwemeje ko n'ubwo Rhode afungiwe ahawenyine, nta yicarubozo akorerwa kuko afungiye mu cyumba gifite ubuso bungana na m^2 6, kandi akaba yemerewe kumva radiyo, kureba televiziyo, gukora imyitozo hanze mu gihe kingana n'isaha imwe buri munsi, ko yemerewe gutira ibitabo mu isomero rya gereza, ko avuzwa, ko avugana n'abakozi ba gereza harimo n'abamurinda, rimwe na rimwe n'abapolisi bamukoresha ibazwa cyangwa igihe yagiye mu Rukiko kuburana, ndetse ko yemerewe gusurwa n'umuryango we n'ubwo bavugana abamurinda bari hafi aho[8] ; ibi kandi binahura n'ibyemejwe n'urwo Rukiko mu rubanza rwa Ramirez Sanchez v. France, rwaburanishijwe n'abacamanza 17, bagasanga kuba umugororwa afite ibyangombwa by'ibanze umuntu akenera mu cyumba

[7]Communication N^O 265/1987, A. Vualanne v.Finland (view adopted on 7 April 1989) , in UN doc. GAOR, A/44/40, p.249,para.2.2 and p.250, para.2.6.

[8] European commission of human right, R v. Denmark, application Nº10263/83, PP.153-154: Commission concluded that having regard to the particular circumstances of the confinement in question , it was not of such of such severity as to fall within the scope of article 3 of the convention, because the applicant was kept in cell of approximately six square metres, that he was allowed to listen radio and watch television , he allowed exercise in open air for one hour every day , he could borrow books from prison library , he was in daily contact with the prison staff several times a day and sometimes also with other persons in connection with police interrogations and the courts hearings, he was under medical observation , and finally , that although he was subjected to restrictions with regard to visits during this period, he was allowed to receive controlled visits by his familly.

aryamano, afite umwanya uhagije, ubwiherero, aho kwiyuhagirira, afite ibitabo n'ibinyamakuru asoma,televiziyo na radiyo ndetse akagira aho atemberera hafi y'icyumba cye, aba afunzwe mu buryo bukwiye ikiremwamuntu, ko kuba umuntu afungiwe ahawenyine ubwabyo bitafatwa nk'igikorwa kidakwiye ikiremwamuntu. Basanze kandi kuba uwo mufungwa yarasurwaga rimwe mu cyumweru n'umupadiri na rimwe mu kwezi n'Abavoka be, atari afunzwe mu buryo bw'akato kuzuye (isolement social total) ko akato yarimo katari kari igice (isolement partiel).[9]

[60] Mu gusesengura urundi rubanza rw'uwitwa Gomez de Voituret v. Uruguay, Akanama k'uburenganzira bwa muntu mu Muryango w'Abibumbye kabonye ariko, ko kuba yari afungiye ahawenyine mu gihe kingana n'amezi arindwi (7) ari iyicarubozo kuko mu cyumba cye nta rumuri rw'izuba rwahageraga (natural light), ibyo bikaba bitubahirije agaciro gakwiye ikiremwamuntu, bityo kemeza ko ingingo ya 10 (1) y'Amasezerano Mpuzamahanga mu bya Politiki n'Imbonezamubano[10] itubahirijwe.

[61] Urukiko rurasanga, hashingiwe ku byemezo byafashwe mu nkiko z'ahandi zavuzwe haruguru, ndetse no ku isesengura ryakozwe n'Akanama k'uburenganzira bwa muntu mu muryango w'abibumbye ku manza zaciwe n'izo nkiko hasuzumwa ibirego by'abafungwa bavugaga ko kuba bafungiye mu cyumba cya bonyine ari iyicarubozo bakorerwa, hagomba kurebwa niba ibyo Rtd Brig Gen Frank Kanyambo Rusagara na Col Tom Byabagamba bavuga ko kuba buri wese afungiye mu cyumba cya wenyine (solitary confinement) ari ugukorerwa iyicarubozo imbere y'amategeko y'u Rwanda n'Amasezerano Mpuzamahanga u Rwanda rwashyizeho umukono.

[62] Mu iperereza Urukiko rwakoreye aho abaregwa bafungiye, rwasanze Col. Tom Byabagamba na Rtd Brig Gen Frank Kanyambo Rusagara bahabwa iby'ibanze umugororwa akenera kuko icyumba buri wese abamo gifite ubuso buhagije, kirimo igitanda n'umufariso, inzitiramibu, ubwiherero bwo mu nzu, amazi, amashanyarazi; gifite inzugi n'amadirishya bihagije, buri wese afite kandi imbuga ashobora kugendagendamo igihe abishatse akaba yakota n'izuba. Byagaragariye Urukiko kandi ko bakorerwa isuku, bafite ubamesera, bafite igare rya siporo bakoresha imyitozo ngororamubiri, kandi Col. Kayigire Joseph uyobora Military Police yarusobanuriye (bahari) ko imiryango yabo iboherereza amafaranga bibikira bakayagura ibyo bakeneye. Urukiko rurasanga kandi, kuvuga ko nta muntu babonana (human contact), atari byo, kuko bahura n'abakozi ba Gereza, bafite Umuganga wa Gereza ubasura uko bamukeneye, byaba ngombwa bakajyanwa kwa muganga, ndetse bahawe umusirikare ubafasha bakamutuma ibyo bakeneye byose, akabategurira amafunguro akanayabazanira.

[63] Ku birebana no gusurwa, Col Kayigire Joseph yabwiye Urukiko ko abagororwa basurwa n'imiryango n'inshuti zabo hakurikijwe amabwiriza ya Gereza, ko udasurwa ari uko umuryango we uba utabisabye kuko ntawe ubyangirwa, yongerako ko icyatumye muri iki gihe barahinduye gahunda y'isurwa ya Rtd Brig Gen Frank Kanyambo Rusagara na Col Tom Byabagamba, byatewe n'imyitwarire yabo, ko ariko nibayihindura bakubahiriza amabwiriza ya gereza, bazongererwa ibihe byo gusurwa, ibi byose bikaba byumvikanisha ko ibyo baburanisha ko bafungiye mu kato nta shingiro bifite.

---

[9] Cour europpenne des droits de l'homme, requête N° 59450/00: l'exclusion d'un détenu de la collectivité carcérale ne constitue pas en elle-même une sorte de traitement inhumain.
[10] Communication Nº 109/1981, T. Gomez de Voituret v. Uruguay (views adopted on 10 April 1984) in UN doc. GAOR, A/39/40, p.168, paras.12.2-13.

[64] Urukiko rurasannga ariko, hashingiwe ku biteganwya n’amabwiriza agenga imicungire y’amagereza, mu mutwe wa gatanu wayo, mu ihame rya 37, ateganya ko abafungwa bagomba kwemererwa, ariko babigenzurwamo, gushyikirana n’imiryango yabo n’iy’inshuti zabo zashobora kwizerwa, buri gihe runaka byaba mu nyandiko cyangwa se byaba gusurwa, bityo rero Col Tom Byabagamba na Rtd Brig Gen Frank Kanyambo Rusagara bakaba bagomba gusubizwa uburengazira bwo gusurwa n’imiryango yabo, bigakorwa hakurikijwe amabwiriza y’imicungire ya Gereza bafungiyemo.

[65] Urukiko rurasanga kuba Col. Tom Byabagamba na Rtd Brig Gen Frank Kanyambo Rusagara, buri wese afungiye mu cyumba cya wenyine, bitakwitwa iyicarubozo ubwabyo ku mpamvu zasobanuwe haruguru, kuko uburyo bafunzwemo bwubahirije uburenganzira bw’ikiremwamuntu, bitandukanye n’ibyo Urukiko rwasanze mu rubanza rwa Gomez de Voituret wareze igihugu cye Uruguay, kuko we icyumba yabagamo kitageragamo urumuri nk’uko byasobanuwe haruguru.

[66] Hashingiwe ku byasobanuwe haruguru, Urukiko rurasanga ifungurwa ry’agateganyo abaregwa basaba batarihabwa kuko impamvu bashingiraho babisaba, nta shingiro zifite.

III. ICYEMEZO CY’URUKIKO

[67] Rwemeje ko inzitizi yatanzwe na Col. Tom Byabagamba, Rtd Brig Gen Frank Kanyambo Rusagara na Rtd Sgt Kabayiza François yo gufungurwa by’agateganyo igihe bakiburana ubujurire bwabo, nta shingiro ifite.

[68] Rutegetse ko Col. Tom Byabagamba, Rtd Brig Gen Frank Kanyambo Rusagara na Rtd Sgt Kabayiza François bakomeza kuburana urubanza ku bujurire bwabo bafunzwe.

[69] Rutegetse ko Col. Tom Byabagamba na Rtd Brig Gen Frank Kanyambo Rusagara basubizwa uburenganzira bwo gusurwa n’imiryango yabo, bigakorwa hakurikijwe amabwiriza y’imicungire ya Gereza bafungiyemo.

[70] Rwemeje ko iburanisha ry’urubanza mumizi rizaba ku wa 24/07/2019, saa mbiri n’igice za mu gitondo.

[71] Ruvuze ko amagarama y’urubanza asubitswe.