

UBUSHINJACYAHA v NSANZUMUHIRE

[Rwanda URUKIKO RW'UBUJURIRE – RPAA 00064/2018/CA (Rugabirwa, P.J, Kaliwabo, J, Tugireyezu, J.) 15 Gicurasi 2019]

Amategeko agenga imiburanishirize y'imanza nshinjabyaha nyito y'icyaha – Inyito y'icyaha – Guhindura inyito y'icyaha – Guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe, hakurikijwe ihame ry'uko umucamanza aregerwa ibikorwa bigize icyaha.

Amategeko agenga ibimenyetso – Ubuhamya – Ubuhamya buvuguruzanya – Iyo ubuhamya buvuguruzanya kandi ababutanze bose bavuga ko bari aho igikorwa kiregerwa cyakorewe, bituma habaho gushidikanya.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru, Ubushinjacyaha burega Nsanzumuhire icyaha cyo guteza imvururu cyangwa imidugararo muri rubanda, buvuga ko yagikoreye mu rusengero rwa ADEPR ubwo yararimo kubwiriza akavuga amagambo yateje imvururu aho yavuze ko nyuma y'intambara y'abacengezi, abasirikare b'Inkotanyi bishe abantu banze gusubiza ibikoresho bya gisirikare bari bafite, ngo ko abishwe icyo gihe baruta abapfuye muri Genocide. Urukiko Rukuru rwamuhamije icyaha rumukatira igifungo cy'imyaka 10.

Urega yajuririye Urukiko rw'Ikirenga, urubanza rwimurirwa mu Rukiko rw'Ubujurire nyuma y'ishyirwaho ry'urwo Rukiko; avuga ko Urukiko rwamuhamije icyaha atakoze rushingiye ku binyoma by'Abatangabuhamya, ko rutahaye agaciro ibyo yarugaragariye kuko nta hantu yigeze yangisha abaturage Leta ndetse rukaba rutaragaragaje ikimenyetso simusiga cyerekana ko yateje imvururu n'imidugararo muri iryo torero. Yongeraho kandi iyo aba yarateje umwuka mubi mu rusengero hari kuba imvururu ndetse na Police ikahagera agahita afatwa agafungwa hatabanje gutegereza iminsi aba iwabo.

Ubushinjacyaha buvuga ko mu Bugenzacyaha, Uregwa yemeye ko imvugo ze zateje intugunda mu rusengero, abakristu bamwe basaba ko yakomeza akavuga, abandi basaba ko aceceka, bugasanga icyaha aregwa kimuhama. Kubyererekeye no kuba atarahise afatwa akimara kuvuga ayo magambo, Ubushinjacyaha buvuga ko icyo ataricyo kibazo kuko yakurikiranywe hatarabaho ubusaze bw'icyaha.

Incamake y'Icyemezo: 1. Guhindura inyito y'icyaha ni uburenganzira n'inshingano umucamanza afite mu gihe asanga ibikorwa uregwa akurikiranyweho bidahuye n'inyito byahawe, hakurikijwe ihame ry'uko umucamanza aregerwa ibikorwa bigize icyaha, bityo ibikorwa uregwa akurikiranweho ntibigize icyaha cyo kwamamaza nkana ibihuha bigamije kugomesha rubanda arwangisha ubutegetsi buriho ahubwo bigize icyaha cyo gupfobya Genocide akaba aricyo kimuhama.

Iyo ubuhamya buvuguruzanya kandi ababutanze bose bavuga ko bari aho igikorwa kiregerwa cyakorewe bituma habaho gushidikanya, bityo bikarengera ushinjwa.

Ubujurire nta shingiro bufite;

Imikirize y'urubanza rwajuririwe ihindutse ku byerekeranye n'inyito y'icyaha n'igihano;

Amategeko yashingiweho:

Itegeko N° 59/2018 ryo ku wa 22/08/2018 ryerekeranye n'icyaha cy'ingengabitekerezo ya jenocide n'ibyaha bifatanywe isano nayo, ingingo ya 6

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano, ingingo ya 6

Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, ingingo ya 116 n’iya 165;

Itegeko-Ngenga N°01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy’amategeko ahana, ingingo ya 463

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, ingingo ya 65

Imanza zifashishijwe:

Urubanza RPAA 0110/10/CS rw’Ubushinjacyaha v Uwamurengeye Vénant, icyegeranyo cy’ibyemezo by’inkiko V.1, Nyakanga 2014, p.133-140,

Urubanza RPAA 0117/07/CS rw’Ubushinjacyaha v CPL NGABONZIZA Faustin na SGT BIZIYAREMYE Jean Baptiste, icyegeranyo cy’ibyemezo by’inkiko, Igitabo cya kabiri 2011, n° 9, P.57- 62.

Inyandiko z’abahanga:

KOLB Patrick et LETURMY Laurence, Droit Pénal Général, Mementos LMD, 10è Edition, 2015-2016, P. 64 “.

Urubanza

I. IMITERERE Y’URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Ubushinjacyaha burega Nsanzumuhire Jean Baptiste icyaha cyo guteza imvururu cyangwa imidugararo muri rubanda, buvuga ko yagikoze ku wa 5/9/2016 ari mu Rusengeru rwa ADEPR ruri Kimironko, ubwo yarimo kubwiriza, agera aho aravuga ngo : « *Iwacu i Bulinga, nyuma y’intambara y’abacengezi, abasirikare b’inkotanyi bakanguriye abaturage gusubiza ibikoresho bya gisirikare basigiwe n’abacengezi, nyuma abo baje kubisangana barakubiswe cyane baricwa, ku buryo abapfuye icyo gihe baruta abapfuye mu gihe cy’intambara* ». Ubushinjacyaha buvuga ko yakomeje avuga ko : « *Mu Ruhengeri, Abapolisi bafashe imodoka bakeka ko yarimo ibiyobyabwenge, maze basaka abagore bakajya babakorakora mu mabere na hahandi hepfo* » (ashaka kuvuga mu gitsina). Ubushinjacyaha buvuga kandi ko akimara kuvuga aya magambo, Pasteur Matabaro, Umuyobozi w’iryo torero, n’abo bafatanyije bamwambuye ijambo, ababaza impamvu bamubujije kuvuga, abari mu iteraniryo bamwe barijuzuta babaza impamvu ahagaritswe gutyo banasaba ko yakomeza kubwiriza kuko ibyo avuga ari ukuri, abandi nabo basaba ko aceceka, maze biteza umwuka mubi n’imvururu mu itorerero.

[2] Ku wa 20/03/2017, Urukiko rwaregwe rwaciye urubanza RP 00092/2016/HC/KIG rwemeza ko Nsanzumuhire Jean Baptiste ahamwa n’icyaha cyo kwamamaza nkana ibihuha, agamije kugomesha rubanda arwangisha ubutegetsi buriho, rusingiye ku mvugo z’abatangabuhamya bemeje ko ayo magambo yayavuze koko ndetse ko nawe ubwe mu Bugenzacyaha yemeye ko hari amagambo yavugiye mu itorerero atari meza, rumuhanisha igifungo cy’imyaka icumi (10).

[3] Nsanzumuhire Jean Baptiste ntiyishimiye imikirize y’urwo rubanza, ajuririra Urukiko rw’Ikirenga, avuga ko Urukiko Rukuru rwamuhamije icyaha atakoze rusingiye ku binyoma by’abatangabuhamya bari bahagarariye itorerero, ko Urukiko rutahaye agaciro ibyo yarugaragarije kuko nta hantu yigeze yangisha abaturage Leta ndetse rukaba rutaragaragaje ikimenyetso simusiga cyerekana ko yateje imvururu n’imidugararo muri iryo torero.

[4] Nyuma y'ishyirwaho ry'Urukiko rw'Ubujurire, ubujurire bwa Nsanzumuhire Jean Baptiste bwoherejwe muri urwo Rukiko hashingiwe ku ngingo ya 52 n'ya 105 z'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko¹, buhabwa N° RPA 00064/2018/CA.

[5] Urubanza rwaburanishijwe mu ruhame ku itariki ya 28/05/2019, Nsanzumuhire Jean Baptiste yunganiwe na Me Mukamasoni Antoinette afatanyije na Me Mbituyimana Jean de Dieu, Ubushinjacyaha buhagarariwe na Harindintwali Côme, Umushinjacyaha ku rwego rw'Igihugu, iburanisha risojwe, Urukiko, rwemeza ko urubanza ruzasomwa ku itariki ya 21/06/2019. Uwo munsu ugeze, Urukiko ruca urubanza rubanziriza urundi, rwemeza ko mbere yo guca urubanza ari ngombwa gukora iperereza aho icyaha cyakorewe, maze iburanisha risubukurwa ku wa 16/07/2019, ariko uwo munsu urubanza ntirwaburanishwa kuko umwe mu bacamanza bagize inteko atari yabonetse, iburanisha ryimurirwa ku wa 30/07/2019.

[6] Kuri iyo tariki, ababuranyi bitabye Urukiko rusanga Nsanzumuhire Jean Baptiste yunganiwe na Me Mukamasoni Antoinette naho Ubushinjacyaha buhagarariwe nka mbere, uwo munsu humvwa umutangabuhamya witwa Muvandimwe Jeannette ndetse Urukiko rusomera ababuranyi ibyavuye mu iperereza rwakoze, ababuranyi b'impande zombi bagira icyo babivugaho, isomwa ry'urubanza rishyirwa ku wa 13/09/2019.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO

I.1. Kumenya inyito y'icyaha Nsanzumuhire Jean Baptiste yakoze

[7] Nsanzumuhire Jean Baptiste avuga ko impamvu yatumye ajurira, ari uko Urukiko Rukuru rwamuhamije icyaha rushingiye ku mvugo z'abatangabuhamya bamushinja akaba ari nabo bagiye gutanga ikirego, kandi bagenda bivuguruzwa mu buhamya bwabo, ndetse bamutwerera amagambo atavuze kuko umwe muri bo yavuze ko basatse abagore bakabakora ku myanya ndangagitsina, undi akavuga ko basatse na hahandi hepfo. Asobanura ko mu buhamya bwa Rachel Nyiranzeyimana na Kamanzi Mugeni, bavuga ko bamucecekesheje, abakrisito bagasaba ko akomeza kuvuga, ibi bikaba bitagaragaza ko yangishije abaturage Leta.

[8] Akomeza avuga ko umutangabuhamya witwa Pasteur Matabaro yagiye gutanga ikirego mu Bugenzacyaha amuhimbira amagambo atavuze, ibi akaba yarabitewe n'uko yari abangamiye inyungu ze zo kwambura abakrisito amafaranga, ubwo yanengaga imikorere ye aho yabeshyaga abakristo ko afite amavuta, bakamuha amafaranga agaragara we agahita avuga ko abahaye amavuta atagaragara.

[9] Ku birebana n'amagambo yavuze ubwo yari ahawe ijamba mu itorerero, Nsanzumuhire Jean Baptiste avuga ko yasomye mu gitabo cya Yeremiya, ahavuga ko buri wese agomba kureka gusakuma ibya Satani kuko ku marembo y'ijuru hazaba isaka. Avuga ko ubwo yakomeje inyigisho ye avuga ko Leta y'u Rwanda yasukuye igihugu nk'uko Yesu azasukura imitima kugira ngo abantu bajye mu ijuru, agaragaza ubwami bubiri (2), ubwa satani n'ubw'ijuru bukorera muri iki gihugu, agereranya abacengezi na satani maze Imana ayigereranya n'inkotanyi, kandi ko satani yanyanyagije abacengezi iwabo i Bulinga, Imana ikazana inkotanyi zakanguriye abaturage bose kwitandukanya n'abacengezi, no gutanga ibikoresho bya gisirikare byose bafite. Avuga ko yavuze kandi ko hari ubwo Imana ikangurira abantu kwitandukanya na satani no kuvana mu mitima yabo ibikorwa bya

¹ Ingingo ya 52 iteganya ko "Urukiko rw'Ubujurire rufite ububasha bwo kuburanisha ku rwego rw'ubujurire bwa mbere, imanza zaciwe mu rwego rwa mbere n'Urukiko Rukuru, Urukiko Rukuru rw'Ubucuruzi n'Urukiko Rukuru rwa Gisirikare naho ingingo ya 105, igika cya I, ivuga ko : « Guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywan'iri tegeko »

satani, bamwe bakabivamo, abandi bakabigumamo, ko ari nako abaturage banze gutanga ibikoresho basabwe maze hagakorwa isaka, bikaboneka.

[10] Akomeza asobanura ko mu nyigisho ze yanatanze urugero rw'imodoka yafatiwe i Nyabihu, Abapolisi bagasaka buri muntu wese wari muri iyo modoka hakurikijwe uko usaka abishaka atari uko usakwa abishaka, bakibanda cyane muni y'intebe no mu mizigo, maze bakuramo ibyo bari bashyizemo birimo ibiyobyabwenge, ko uko ari nako ku marembo y'ijuru bizaba bimeze.

[11] Nsanzumuhire Jean Baptiste akomeza asobanura ko amaze gutanga izo ngero, Pasteur Matabaro yamucecekesheje, ko ariko icyatumye ahagarikwa ari ukubera ko yari anenze imikorere y'Itorero aho ryaka abakristo amafaranga babeshywa ko bazahabwa amavuta atagaragara, aribyo yise *Dime Revenue*, nyamara ntibahabwe *quittance* mu gihe nyamara *Rwanda Revenue Authority* yo iha umuntu wese *quittance* iyo imusoresheje.

[12] Me Mbituyimana Jean de Dieu avuga ko ibyo Nsanzumuhire yavuze ku birebana n'uko abacengezi bageze iwabo i Bulinga n'uko abayobozi b'Itorero baka abakristo amafaranga ariko ntibabaha *quittance*, aribyo abakristu benshi basabaga ko akomeza akavugaho, ariko ko abamushinja bo bivugiye ibindi bamuhimbira ko Abapolisi basatse abagore no kugera hepfo, ko kandi abasirikare bishe abaturage i Bulinga hagapfa abantu baruta abo muri jenoside. Avuga kandi ko asanga mu iperereza harabajijwe abayobozi b'itorero gusa, aho kubaza n'abakristu basanzwe, asaba ko n'abakristo basanzwe nabo babazwa kuko Ubugenzacyaha bwamwandikiye ibyo atavuze.

[13] Me Mukamuzoni Antoinette avuga ko ikibazo kiri muri uru rubanza atari abacengezi cyangwa gusakwa, ahubwo ari ukuba Abayobozi b'Itorero bajya basaba amafaranga abakristo babo bababeshya ko bazabaha amavuta atagaragara. Asobanura ko nk'umuvugabutumwa, Nsanzumuhire Jean Baptiste yatumiye mu rusengero, akagaragaza ko amavuta avugwa mu rusengero ari ubujura bukorerwa abakristu, ko iyo aba yarateje umwuka mubi mu rusengero hari kubaho imvururu ndetse na Police ikahagera agahita afatwa agafungwa hatabanje gutegereza iminsi 15 yose akiri iwabo, maze asoza asaba ko abandi bakristu bari aho batumizwa bakabazwa iby'ayo magambo.

[14] Uhagarariye Ubushinjacyaha avuga ko mu Bugenzacyaha, Nsanzumuhire Jean Baptiste yemeye ko amagambo yavuze ari mabi, kandi ko yateje imvururu muri rubanda, kuko mu ibazwa rye yemeye ko imvugo ze zateje intungunda mu rusengero, abakristu bamwe basaba ko yakomeza akavuga, abandi basaba ko aceceka.

[15] Ku birebana n'uko Nsanzumuhire Jean Baptiste atahise akurikiranwa akimara ~~kumya~~ ayo magambo, uhagarariye Ubushinjacyaha avuga ko icyo atari cyo kibazo kuko yakurikiranywe hatarabaho ubusaze bw'icyaha (*prescription de l'infraction*), kandi ko ikirego kimaze gutangwa ari bwo habonetse ituze mu itorero. Avuga ko ikibazo cyateye intungunda ari uko Nsanzumuhire Jean Baptiste yavuze ko inkotanyi zimaze gusaka abataratanze imbunda yavuze ko hapfuye abantu benshi baruta abapfuye mu gihe cy'intambara. Asaba kandi Urukiko kudaha agaciro imiburanire ye y'uko yafunzwe kubera kunenga imikorere y'Itorero aho yavuze ko abayobozi baka abakristo amafaranga babizeza kubaha amavuta atagaragara kuko bitavuzwe n'abatangabuhamya.

[16] Urukiko rwakoze iperereza ku Rusengero rwa ADEPR ruri Kimironko ku itariki ya 11/07/2019, maze rubaza abatangabuhamya batandukanye barimo Rwirasira, Mukangamije Séraphine, ntakiyende Samuel na Kampire Angélique na Muvandimwe Jeannette wabarijwe mu Rukiko.

[17] Abatangabuhamya Ntakiyende Samuel na Kampire Angélique, bavuga ko Nsanzumuhire Jean Baptiste yavuze ko iwabo abasirikare basabye abaturage gutanga ibikoresho bya gisirikare baba bafite, nyuma y'uko bamwe babitanze habaho isaka, ko kandi abo abasirikare babisanganye

babakubise inkoni nyinshi ndetse bamwe bakanapfa ku buryo umubare w'abapfuye ujya kungana n'uw'abapfuye muri jenocide; ayo magambo atuma habaho urusaku mu iteraniriro, mwalimu Rachel ahita amuhagarika, naho Niyomwungeri Emmanuel we yavuze ko yumvise Nsanzumuhire Jean Baptiste mu nyigisho ye avuga ko inkotanyi zagiye mu Ruhengeri gusaka hapfa abantu benshi baruta abapfuye mu 1994, maze abantu bamera nk'abaguye mu kantu bituma Pasteur James Matabaro ahita amuhagarika.

[18] Umutangabuhamya Rwirasira André yavuze ko Nsanzumuhire Jean Baptiste arimo kubwiriza yavuze ko muri Congo habaye jenocide maze FPR igakurikirana impunzi ngo izice, bituma abantu baba nk'abadatuje maze Pasteur Matabaro ahita amuhagarika kuko yari atandukiriye agapfobya jenocide, naho Mukangamije Seraphine we yavuze ko mu ntambara y'abacengezi, abaturage bategetswe gutanga ibikoreho bamwe barabitanga abandi barabyimana, ko ibyo byatumye abacengezi bica abantu benshi baruta abapfuye muri jenocide, maze nyuma yo kuvuga ayo magambo, Pasteur Matabaro James ahita amuhagarika bituma abakristo basakuza babaza impamvu bamuhagaritse.

[19] Umutangabuhamya Muvandimwe Jeannette we yabarijwe mu Rukiko mu iburanisha ryo ku wa 30/07/2019, avuga ko Nsanzumuhire Jean Baptiste ubwo yazaga mu Rusengeru rwabo yari afite insanganyamatsiko yo kuvuga ko Imana izasaka, atanga ingero z'ibyaha Imana izasaka, avuga ko abacengezi baje mu gihugu barimo basaka bakica abantu benshi, Imana igakoresha inkotanyi zikaza zigahosha, asoza avuga ko umuntu wumva hari ibintu yinjiranye mu nzu y'Imana yahaguruka bakamusengera kugira ngo bitazamubera ikibazo, Pasteur Matabaro ahita amuhagarika avuga ko igihe bamuhaye kirangiye.

UKO URUKIKO RUBIBONA

[20] Ingingo ya 65 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko Urukiko arirwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa. Ntirwitsitsa ku mubare w'abatangabuhamya. Rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira.

[21] Inyandiko zigize dosiye y'urubanza, zigaragaza ko Ubushinjacyaha bwareze Nsanzumuhire Jean Baptiste icyaha cyo guteza imvururu cyangwa imidugararo muri rubanda giteganywa mu ngingo ya 463 y'Itegeko-Ngenga N° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana², bugaragaza ko ibigize icyo cyaha (*élément matériel*) ari uko amagambo yavuze yari agendereye kubyutsa urwango kugira ngo imvururu zibyuke muri rubanda, ko izi mvugo zishobora gutuma abaturage basubiranamo kuko abari bamushyigikiye bijujutaga bavuga ko ibyo avuga ari ukuri, bakaba barashoboraga kubyutsa imvururu bashaka kwihorera kuko bumva ko hari abapfuye mu buryo yavugaga³.

[22] Urukiko rurasanga Nsanzumuhire Jean Baptiste yarahamijwe icyaha cyo guteza imvururu cyangwa imidugararo muri rubanda rushingiye ko abatangabuhamya bamushinja kuba yaravuze ko iwabo i Bulinga nyuma y'intambara y'abacengezi, abasirikare b'Inkotanyi bakanguriye abaturage

²Iyo ngingo iteganya ko “umuntu wese, witwaza, ari disikuru avugiye mu nama cyangwa mu giterane, ari inyandiko z'ubwoko bwose, amashusho cyangwa ibimenyetso by'amoko yose, bimanitswe, bitanzwe, biguzwe cyangwa bigurishijwe cyangwa bishyizwe mu maso ya rubanda, uwamamaza nkana ibihuha akagomesha cyangwa akagerageza kugomesha rubanda arwangisha ubutegetsu buriho, agatera cyangwa akagerageza guteza imvururu mu baturage ashaka ko basubiranamo, agatera rubanda intugunda ashaka kubyutsa imidugararo muri Repubulika y'u Rwanda, ahanishwa igifungo kuva ku myaka icumi (10) kugeza ku myaka cumi n'itanu (15).“

³Reba inyandiko ikubiyemo ikirego y'Ubushinjacyaha (Acte d'Accusation) iri muri dosiye.

gusubiza ibikoresho bya gisirikare bafite, ko ababyanze bakubiswe cyane ndetse bamwe bibaviramo gupfa, ku buryo abapfuye baruta abapfuye muri jenocide no kuba yavuze ko mu Ruhengeri, abapolisi bafashe imodoka bakeka ko yarimo ibiyobyabwenge basaka abagore babakorakora mu mabere na ha handi hepfo, ashaka kuvuga mu gitsina.

[23] Ku birebana n'amagambo yerekeranye n'uko Polisi yasatse imodoka byakekwaga ko ifite urumogi mu Ruhengeri maze abagore bagasakwa mu myanya ndangagitsina, Urukiko rurasanga Nsanzumuhire Jean Baptiste ubwe adahakana ko yavuze ko abaturage basatswe, ariko agahakana ibirebana n'uko basatswe bakagera no mu gitsina. Ku rundi ruhande, abatangabuhamya babajijwe mu Bugenzacyaha barimo Pasteur Matabaro James, Nyiranzeyimana Rachel na Kamanzi Mugeni Denyse muri bo bamwe bemeje ko Nsanzumuhire Jean Baptiste yavuze ko abaturage basatswe kugera hahandi hepfo abandi bavuga ko yavuze ko abagore basatswe kugera ku myanya ndangagitsina ariko abatangamuhamya babajijwe n'Urukiko rw'Ubujurire igihe cy'iperereza aribo Rwirasira André, Mukangamije Séraphine, Ntakyende Samuel, Kampire Angélique na Niyomwungeri Samuel bose bakaba baremeje ko mu nyigisho yatanze atavuze ku iryo saka ryo mu Ruhengeri.

[24] Kubera rero ko abatangabuhamya bose batavuga rumwe ku byerekeranye n'uko abagore basatswe kugera mu myanya ndangagitsina, Urukiko rurasanga hari ugushidikanya ku birebana n'uko Nsanzumuhire Jean Baptiste yaba yaravuze ayo magambo, ku bw'ibyho, rushingiye ku ngingo ya 165 y'Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko, gushidikanya birengera ushinjwa, ntaho rwahera rwemeza ko yavuze ayo magambo koko.

[25] Ku birebana n'invugo Nsanzumuhire Jean Baptiste y'uko i Bulinga abasirikare bakubise abaturage banze gutanga ibikoresho basigiwe n'abacengezi maze hagapfa abantu baruta abapfuye muri jenocide, Urukiko rurasanga muri dosiye hari ibimenyetso bihagije bishingiye ku mvugo z'abatangabuhamya batandukanye babajijwe mu iperereza ryakozwe n'Urukiko rw'Ubujurire aribo Ntakyende Samuel, Kampire Angélique na Niyomwungeri Emmanuel, nk'uko bagaragajwe haruguru ndetse n'abari babajijwe mu Bugenzacyaha barimo Kamanzi Mugeni Denyse, Pasteur Matabaro James na Nyiranzeyimana Rachel bose bemeje ko koko ayo magambo Nsanzumuhire James yayavuze, rukaba rusanga invugo zabo zikwiye guhabwa agaciro, kuko bavuze ibyo biyumviye ubwabo nk'abantu bari bari mu Rusengero bakurikiye inyangisho za Nsanzumuhire Jean Baptiste kandi abo batangabuhamya bose bakaba babihurizaho.

[26] Urukiko rurasanga ibyo Nsanzumuhire Jean Baptiste avuga ko abayobozi b'itorero babajijwe barimo Kamanzi Mugeni Denyse, Pasteur Matabaro James na Nyiranzeyimana Rachel bamuhimbiye ibyo atavuze kuko bari bafitanye ibibazo by'uko yabanenze ko baka abakristo amafaranga bababeshya ko bazabaha amavuta atagaragara bikaba nta shingiro bifite kuko atari yigeze abiburanisha kuva mu Bugenzacyaha kugeza mu Rukiko Rukuru, ndetse aba batangabuhamya akaba ari we ubwe wasabye ko babazwa mu bantu bari bahari. Ikindi kandi abatangabuhamya babajijwe igihe cy'iperereza ryakozwe n'Urukiko rw'Ubujurire mu itorero rya ADEPR aribo Ntakyende Samuel, Kampire Angélique na Niyomwungeri Emmanuel muri bo nta n'umwe wigeze avuga ko hari icyo Nsanzumuhire Jean Baptiste yari asanzwe apfa n'abo bayobozi b'itorero cyangwa ko Nsanzumuhire Jean Baptiste yaba yarigeze yigisha ku kuba abayobozi b'itorero bambura abakristo amafaranga yabo.

[27] Urukiko rurasanga rero hari ubuhamya budashidikanywaho bwemeza neza ko Nsanzumuhire Jean Baptiste yavuze ko i Bulinga abasirikare bakubise abaturage banze gutanga ibikoresho basigiwe n'abacengezi maze ngo hagapfa abantu baruta abapfuye muri jenocide cyane ko nawe ubwe mu ibazwa rye mu Bugenzacyaha yari yiyemereye ko hari amagambo atari meza yavugiye mu Rusengero.

[28] Urukiko ariko, nyuma yo gusesengura ayo magambo, rurasanga atagize icyaha cyo kwamamaza nkana ibihuha bigamije kugomesha rubanda arwangisha ubutegetsu buriho, kuko ayo magambo atagamije gutuma abaturage basubiranamo cyangwa kubyutsa imvururu bashaka kwihorera nk'uko Ubushinjacyaha bubiburanisha, ahubwo rusanga agize icyaha cyo gupfobya jenocide, kuko muri ayo magambo humvikanamo kugabanya uburemere bwa jenocide (*minimiser la gravité du génocide*) ku birebana n'ingano y'abishwe, abagereranya n'abantu baba barapfuye i Bulinga nyuma y'intambara y'abacengezi, nyamara nabyo atagaragaza aho abishingira ahubwo ari ugupfa kubivuga gusa, akaba yumvikanisha ko abapfuye muri jenocide ari bakeya, nyamara bizwi ko ari bwo bwicanyi bw'indengakamere bwabayeye mu Rwanda.

[29] Hashingiye ku bisobanuro bivuzwe mu gika kibanza, Urukiko rw'Ubujuje rukaba rufashe icyemezo cyo guhindura inyito y'icyaha kuko ari uburenganzira n' inshingano by'umucamanza guhuza inyito y'icyaha n'igikorwa ubwacyo gikurikiranywe iyo asanga inyito y'igikorwa gikurikiranywe atari yo ihura n'ibyabaye nk'uko Urukiko rw'ikirenga rwabyemeje mu manza zitandukanye⁴.

[30] Urukiko rw'Ubujuje rukaba rero rusanga ubujurire bwa Nsanzumuhire Jean Baptiste bugamije gusaba kugirwa umwera ku cyaha cyo guteza imvururu cyangwa imidugararo muri rubanda nta shingiro bufite, cyakora inyito y'icyaha yari akurikiranyweho yo ikaba ihindutse nk'uko byagaragajwe haruguru.

I.2 Kumenya igihano Nsanzumuhire Jean Baptiste yahanishwa

[31] Nsanzumuhire Jean Baptiste n'abamwunganira basaba ko yagirwa umwera ku cyaha akurikiranyweho kubera ko nta cyaha yakoze, naho Ubushinjacyaha bugasaba ko hagumishwaho imikirize y'urubanza rwajuririwe, aho Urukiko Rukuru rwahanishije Nsanzumuhire Jean Baptiste igifungo cy'imyaka icumi (10) nyuma yo kumuhanyira icyaha cyo kwamamaza nkana ibihuha agamije kugomesha rubanda arwangisha ubutegetsu buriho.

UKO URUKIKO RUBIBONA

[32] Ingingo ya 116 y'Itegeko-Ngenga N° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga ubwo icyaha cyakorwaga iteganya ko Umuntu wese ugaragaje mu ruhame haba mu mvugo, mu nyandiko, mu mashusho cyangwa ubundi buryo ubwo ari bwo bwose ko atemera jenocide yakorewe Abatutsi, uyipfobya, ugerageza gusobanura cyangwa kwemeza ko yari ifite ishingiro cyangwa uhishira cyangwa wonona ibimenyetso byayo ahanishwa igifungo kirenze imyaka itanu (5) kugeza ku myaka icyenda (9).

[33] Ingingo ya 6,1 y'Itegeko N° 59/2018 ryo ku wa 22/08/2018 ryerekeranye n'icyaha cy'ingengabitekerezo ya jenocide n'ibyaha bifitanye isano nayo iteganya ko Umuntu, ugaragaza mu ruhame kandi ku bushake, imyitwarire igamije kugabanya uburemere cyangwa ingaruka za jenocide (...) aba akoze icyaha kandi ko iyo agihamijwe n'Urukiko, ahanishwa igifungo kitari munsi y'imyaka itanu (5) ariko kitarenze imyaka irindwi (7) n'ihazabu y'amafaranga y'u Rwanda atari munsi y'ibihumbi magana atanu (500.000) ariko atarenze miliyoni imwe (1.000.000).

[34] Ingingo ya 6 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange riteganya ko mu gihe hari amategeko ahana, rimwe ryariho mu gihe icyaha cyakorwaga,

⁴ Urubanza RPAA 0110/10/CS rw'Ubushinjacyaha na Uwamurengeye Vénant, icyegeranyo cy'ibyemezo by'inkiko V.1, Nyakanga 2014, p. 133-140 ;

irindi ryatangajwe nyuma y'uko icyaha gikorwa, ariko urubanza rutaracibwa burundu, itegeko rishya ni ryo rikurikizwa iyo riteganywa igihano cyoroheje⁵.

[35] Hashingiwe ku ngingo ya 6 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, Urukiko rurasanga kuba Nsanzumuhire Jean Baptiste yarakoze icyaha akurikiranyweho ku wa 05/09/2016 nk'uko byasobanuwe haruguru, agomba guhanwa hashingiwe ku Itegeko N° 59/2018 ryo ku wa 22/08/2018 kuko ari ryo riteganywa ibihano bito⁶ ubigereranyije n'ibyateganywaga n'ingingo ya 116 y'Itegeko-Ngenga N° 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga ubwo Nsanzumuhire Jean Baptiste yakoraga icyaha, kuko rihanisha uhamwe n'icyaha cy'ipfobya rya jenoside igifungo kirenze imyaka itanu (5) kugeza ku myaka icyenda (9), mu gihe Itegeko n° 59/2018 ryo ku wa 22/08/2018 ryerekeranye n'icyaha cy'ingengabitekerezo ya jenoside n'ibyaha bifitanye isano nayo rihanisha uhamwe n'icyo cyaha igifungo kitari muni y'imyaka itanu (5) ariko kitarenze imyaka irindwi (7) n'ihazabu y'amafaranga atari muni y'ibihumbi 500.000Frw ariko atarenze 1.000.000Frw.

[36] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rw'Ubujurire ruhanishije Nsanzumuhire Jean Baptiste igifungo cy'imyaka itanu (5).

III. ICYEMEZO CY'URUKIKO

[37] Rwemeje ko ubujurire bwa Nsanzumuhire Jean Baptiste nta shingiro bufite;

[38] Rwemeje ko imikirize y'urubanza RP 00092/2016/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 20/03/2017 ihindutse ku byerekeranye n'inyito y'icyaha n'igihano Nsanzumuhire Jean Baptiste ahanishijwe;

[39] Rwemeje ko Nsanzumuhire Jean Baptiste ahamwa n'icyaha cyo gupfobya jenoside;

[40] Ruhanishije Nsanzumuhire Jean Baptiste igifungo cy'imyaka itanu (5);

[41] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta.

⁵ Urubanza RPAA 0117/07/CS rw'Ubushinjacyaha na CPL Ngabonziza Faustin na SGT Biziyaremye Jean Baptiste, icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri 2011, N° 9, P.57- 62

⁶ Ibiteganywa muri iyi ngingo binajyanye n'ibivugwa n'abahanga mu mategeko mu buryo bukurikira : “*Selon le principe de la rétroactivité de la loi pénale plus douce, la loi pénale, plus douce, va saisir non seulement les faits qui lui sont antérieurs mais encore toutes les situations qui sont pendantes devant les juridictions*”, KOLB Patrick et LETURMY Laurence, Droit Pénal Général, Mementos LMD, 10^e Edition, 2015-2016, P. 64 “