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ICYEGERANYO CY'IBYEMEZO BY'INKIKO

Icyegeranyo V. 2 - 2021
Mata, 2021



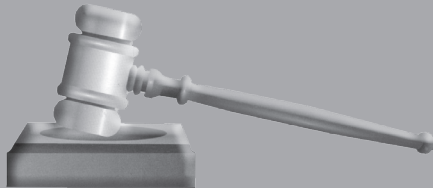
RWANDA LAW REPORTS

Law Reports V. 2 - 2021
April, 2021



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ABAGIZE KOMITE Y’UBWANDITSI

I. ITSINDA RY’ABANYAMATEGEKO BATEGUYE IMANZA

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KUBWIMANA Jean Claude

MUJABI K. Naphtal

UMUHOZA Ange Mireille

UWINKINDI Angelique

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Dr. MUHIRE G. Yves	: Visi Perezida wa Komite, Umwalimu muri Kaminuza y'u Rwanda
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KALIWABO Charles	: Umucamanza w' Urukiko rw'Ubujurire
Dr. KAYIHURA Didas	: Umuyobozi wa ILPD
BURAYOBERA UMUZAYIRE Bibiane	: Visi Perezida wa Komisiyo y'u Rwanda ishinzwe Ivugururwa ry'Amategeko

- BWIZA N. Blanche** : Umugenzuzi w'Inkiko
- KIBUKA Jean Luc** : Umucamanza w'Urukiko
Rukuru rw'Ubucuruzi
- HABARUREMA Jean Pierre** : Umushinjacyaha ku
Rwego rw'Igihugu
- BUNYOYE Grace** : Umushinjacyaha ku
Rwego rw'Igihugu
- KABIBI Specioza** : Intumwa ya Leta
- MUREREREHE Saouda** : Umucamanza mu Rukiko
Rukuru
- Lt. col. MADUDU A. Charles** : Umucamanza mu Rukiko
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RWIGEMA Royck	:	Umucamanza mu Rukiko rw'Ubucuruzi
YANKURIJE Dorothée	:	Perezida w'Urukiko rw'Ibanze

IRIBURIRO

Basomyi bacu,

Tunejejwe no kubagezaho icyegeranyo cy'Ibyemezo by'Inkiko, Volime 2 [2021]. Nk'uko mubizi, tubahitiramo imanza zikubiyemo bimwe mu bisubizo by'ibibazo muhura nabyo kenshi, haba mu mirimo yanyu ndetse no buzima bwa buri muni.

Muri iyi numero murasangamo imanza eshatu (3) zikurikira: urubanza rumwe (1) rw'imbonezamubano, urubanza rumwe (1) rw'inshinjabyaha n'urundi rumwe (1) rwerekeranye n'imiburanishirize y'imanza.

Nk'uko mumaze kubimenyera imanza ziri muri iki cyegeranyo ziboneka no kurubuga rwa murandasi rw'Urukiko rw'Ikirenga: <http://decisia.lexum.com/rlr/kn/nav.do>.

Dr NTEZILYAYO Faustin

Perezida w'Urukiko rw'Ikirenga akaba na

Perezida w'Inama Nkuru y'Ubucamanza

IBIKUBIYE MURI IKI CYEGERANYO

Iki cyegeranyo gikubiyemo imanza zaciwe n’Urukiko rw’Ikirenga n’Urukiko rw’Ubujurire zikoreshwa hakurikijwe inyito ivugwa hasi.

INYITO

Imanza ziri muri iyi volume zikoreshwa muri ubu buryo:

[2021] 2 RLR

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- 1. Amategeko agenga ibimenyetso** – Agaciro k’ubuhamya – Ubuhamya butanzwe nyuma y’igihe kinini bureberwa mu ireme ryabwo kabone n’iyo ababutanga baba bakoresha amagambo yabo bwite mu gusobanura ibyo biyumviye cyangwa ibyo babwiwe.

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- 2. Amategeko agenga imiburanishirize y’imanza** – Gusubirishamo urubanza ingingo nshya – Uburiganya – Kugira ngo urubanza rusubirishwemo kubera uburiganya – Hagomba kuba harabaye ibikorwa by’uburiganya hagamijwe kubeshya umucamanza kugira ngo nyiri ugukora ibyo bikorwa atsinde urubanza kandi icyemezo cyafashwe kigomba kuba cyarashingiye gusa ku makuru y’ibinyoma – Ntibifatwa nk’uburiganya kuba umuburanyi yifashe ntagaragaze inyangiriki zari gushyigikira ingingo z’undi muburanyi ndetse no guceceka kwe ku bintu atigeze aregwa cyangwa ngo asabwe gutangaho ibisobanuro – Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 170

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- 3. Amategeko agenga umuryango** – Kororoka –Kororoka hifashishijwe ikoranabuhanga (Assisted Reproductive Technology) – Kororoka hakoreshejwe uburyo bw’ikoranabuhanga bivugwa mu ngingo ya 254 y’Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango bishobora gukorwa bitewe n’aho ikoranabuhanga rigeze – Uburyo bwo gutwitira undi

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Ibyaha mpuzamahanga – Ibyaha byibasiye inyoko muntu – Ibyaha by'ubugome n'ubunyamaswa ndengakamere – Ibyaha by'ubugome n'ubunyamaswa ndengakamere cyangwa kuba ibyo byaha byakorewe abantu benshi nizo mpamvu zituma bifatwa nk'ibyaha byakorewe umuryango mpuzamahanga cyangwa byahonyanze indangagaciro za kimuntu.

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Ibyaha mpuzamahanga – Ibyaha byibasiye inyoko muntu – Icyaha cyo gushishikariza abantu guukora jenocide – Icyaha cyo gutoteza – Icyaha cyo kubiba urwango – Iyo hamaze kugaragazwa icyaha cy’iremezo biba bitakiri ngombwa gufata nk’icyaha ibikorwa bitandukanye byatumye icyo cyaha gikorwa.

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- 5 Itegeko Nshinga** – Ubutegetsu bw’Ubucamanza – Ubwingenge bw’ubutegetsu bw’Ubucanza – Ubutegetsu bw’Ubucamanza burigenga kuko butandukanye n’Ubutegetsu Nshingamategeko n’Ubutegetsu Nyubahirizategeko, kandi mu murimo w’Ubucamanza, abacamanza bakurikiza amategeko, kandi bawukora mu bwigenge kuko batajya bavugirwamo n’ubutegetsu cyangwa ubuyobozi ubwo aribwo bwose – Itegeko Nshinga rya Repubulika y’u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 140, igika cya 2; Itegeko N° 10/2013 ryo ku wa 08/03/2013 rigena Sitati y’Abacamanza n’abakozi b’Inkiko, ingingo ya 33, igika cya mbere n’icya 2

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**URUBANZA RWEREKERANYE
N'IMIBURANISHIRIZE Y'IMANZA**

RUTAZIBWA v LETA Y’U RWANDA (MINIRENA) N’ABANDI

[Rwanda URUKIKO RW’IKIRENGA – RS/REV/RAD
00001/2018/SC – (Kayitesi Z, P.J., Nyirinkwaya, Cyanzayire,
Hitiyaremye na Rukundakuvuga, J.) 27 Nzeri 2019]

Amategeko agenga imiburanishirize y’imanza – Gusubirishamo urubanza ingingo nshya – Uburiganya – Kugira ngo urubanza rusubirishwemo kubera uburiganya – Hagomba kuba harabaye ibikorwa by’uburiganya hagamijwe kubeshya umucamanza kugira ngo nyiri ugukora ibyo bikorwa atsinde urubanza kandi icyemezo cyafashwe kigomba kuba cyarashingiye gusa ku makuru y’ibinyoma – Ntibifatwa nk’uburiganya kuba umuburanyi yifashe ntagaragaze inyandiko zari gushyigikira ingingo z’undi muburanyi ndetse no guceceka kwe ku bintu atigeze aregwa cyangwa ngo asabwe gutangaho ibisobanuro – Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ingingo ya 170.

Incamake y’ikibazo: Fundi witabye Imana mu 1997 asiga umugore w’isezerano Mukandutiye n’abana be hamwe n’abo yabyaye ku bandi bagore. Umwe mu bana be witwa Rutazibwa yegeranyije imitungo yose ya Se igomba kuzungurwa, mu gihe cyo kuyizungura ntibumvikanye nk’umuryango bituma aregera Urukiko Rwisumbuye rwa Karongi asaba ko yahabwa umugabane we ndetse agasubizwa amafaranga yakoresheje yegeranya uwo mutungo.

Mu kuburana, Rutazibwa yasanze hari imitungo imwe yanditse kuri MINIRENA, Mukandutiye no ku bandi bantu biba ngombwa ko ahita atanga ikirego cy'ubutegetsu muri urwo Rukiko arega Mukandutiye n'Ikigo Gishinzwe umutungo kamere mu Rwanda ariko gisaba ko Leta y'u Rwanda igobokeshwa mu izina rya MINIRENA. Muri uru rubanza, Urukiko rwemeje ko imitungo yanditse kuri Mukandutiye igaruka mu mutungo w'umuryango naho iyanditse kuri MINIRENA n'abandi bantu bakayigumana.

Rutazibwa yajuririye Urukiko Rukuru, urwo Rukiko rwemeza ko ubujurire bwe nta shingiro bufite. Yajuririye kandi mu Rukiko rw'Ikirenga naho Mukandutiye atanga ubujurire bwuririye ku bundi, ariko Urukiko rwemeza ko ubujurire bwabo nta shingiro bufite ndetse Rutazibwa ategukwa kwishyura indishyi.

Rutazibwa yasubirishijemo urubanza ingingo nshya mu Rukiko rw'Ikirenga avuga ko habonetse ikimenyetso gishya kigaragaza ko Umubitsi w'impapurompamo yandikiye amabaruwa Abayobozi b'Akarere n'imirenge uwo mutungo uherereyemo ajyanye no gukosora amakosa kugira ngo ubwo butaka bwandikwe kuri ba nyirabwo ariko ntizashyikirizwa abo zari zandikiwe, kubera ibyo akaba asanga Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda cyaragize uburiganya bwagize ingaruka ku mikirize y'urubanza kandi ko ubwo buriganya bwagaragaye nyuma y'uho urubanza ruciwe, iyo akaba ariyo mpamvu asaba ko uru rubanza rwasubirishwamo ingingo nshya.

Leta y'u Rwanda ivuga ko ikimenyetso gishya cyatanze n'Urega cyo gusubirishamo urubanza ingingo nshya kidasobanutse, kuko ntawamenya niba urukomatane rw'amabaruwa atandukanye yatanze aribyo yita ikimenyetso

gishya, akaba yivugira ko ayo mabaruwa yayashyikirije Urukiko, bivuze ko atari ibimenyetso bishya kuko yari asanzweho mu gihe urubanza rwaburanishwaga, akaba atanerekana uburyo kivuguruza ibyashyingiweho mu ica ry'urubanza, bityo rero ikirego cye kikaba kidakwiye kwakirwa.

Mukandutiye avuga ko Umubitsi w'Impapururompamo yari azi ukuri ku mitungo y'umuryango wa Fundi, ariko atanga amakuru atuzuye bituma Urukiko rufata icyemezo kitari cyo, bikaba ari uburiganya bwabaye bukagira ingaruka ku rubanza bityo, kuba harabonetse ikimenyetso kigaragaza amakuru yashyingiweho ko atariyo, cyagombye kwifashishwa amakosa yabayemo agakosorwa.

Incamake y'icyemezo: 1. Kugira ngo urubanza rusubirishwemo kubera uburiganya, hagomba kuba harabaye ibikorwa by'uburiganya hagamijwe kubeshya umucamanza kugira ngo nyiri ugukora ibyo bikorwa atsinde urubanza kandi icyemezo cyafashwe kigomba kuba cyarashingiye gusa ku makuru y'ibinyoma.

2. Ntibifatwa nk'uburiganya kuba umuburanyi yifashe ntagaragaze inyandiko zari gushyigikira ingingo z'undi muburanyi ndetse no guceceka kwe ku bintu atigeze aregwa cyangwa ngo asabwe gutangaho ibisobanuro.

**Gusubirishamo urubanza ingingo nshya ntibyakiriwe;
Amagarama ahwanye n'ibyakozwe.**

Amategako yashingiweho:

Itegeko N° 22/2018 ryo ku wa 13/06/2018 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano, iz'Ubucuruzi, iz'Umurimo n'iz'Ubutegetsi, ingingo ya 170.

Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi (ryakoreshwaga icyo gihe), ingingo ya 118.

Nta manza zifashishijwe.**Inyandiko z'Abahanga:**

Gérard Cornu, Vocabulaire juridique, 6ème éd., Paris, Presses Universitaires de France, 1987, p. 291

Hakim Boularbah, Olivier Caprasse, Georges de Leval, Frédéric Georges, Pierre Moreau, Dominique Mougenot, Jacques Van Compernelle, Jean-François Van Drooghenbroeck, Droit Judiciaire, Manuel de procédure civile T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

Izabelle Despres et Laurent Dargent, Code de Procédure Civile, 107ème éd., Dalloz, 2016, p. 709.

Urubanza**I. IMITERERE Y'URUBANZA**

[1] Uwitwa Fundi Project yitabye Imana mu 1997, asiga umugore w'isezerano witwa Mukandutiye Bellancile n'abana be, asiga n'abandi bana yabyaye ku bandi bagore. Rutazibwa Alexandre, umwe mu bana ba Fundi Project yaje gushakisha no

kwegeranya imitungo yasizwe na se igomba kuzungurwa, igizwe n'ubutaka buherereye mu karere ka Karongi, Rutsiro na Nyamasheke, ariko mu kuzungura no kugabana iyo mitungo haba ubwumvikane buke hagati ye n'abandi bazungura ba Fundi ndetse n'umugore yasize, bituma Rutazibwa aregera Urukiko Rwisumbuye rwa Karongi asaba kumurika umutungo wa Fundi Project yataruye akegeranya, guhabwa umugabane we akava mu ifatanyamutungo no gusubizwa amafaranga yatanze mu gushakisha no kwegeranya uwo mutungo uzungurwa.

[2] Mu gihe baburanaga urubanza rw'izungura, Rutazibwa Alexandre yasanze imwe mu mitungo avuga ko ari iya se Fundi Project, yanditse kuri MINIRENA, indi yanditse kuri Mukandutiye Bellancille, hari n'indi yanditse ku bandi bantu batandukanye, bituma atanga ikirego cy'ubutegetsi mu Rukiko Rwisumbuye rwa Karongi arega Mukandutiye Bellancille n'Ikigo gishinzwe umutungo kamere mu Rwanda (cyahindutse Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda). Iki Kigo nicyo cyasabye ko Leta y'u Rwanda, mu izina rya Minisiteri y'Umutungo Kamere (MINIRENA), igobokeshwa mu rubanza. Rutazibwa Alexandre, mu kirego yatanze, yasabaga gusubiza abazungura ba Fundi Project ubutaka bwanditswe kuri MINIRENA no kuri Mukandutiye Bellancille, kimwe n'amasambu ataboneka ku rutonde rw'amasambu rwatanzwe n'Umubitsi w'Impapururompamo z'Ubutaka.

[3] Urwo rubanza rwahawe numero RAD 0039/14/TGI/KRG, rucibwa ku wa 14/07/2016, Urukiko Rwisumbuye rwa Karongi rwemeza ko ubutaka bufite UPI 03/07/4/5439, 03/07/4/5442, 03/07/4/5452, 03/07/4/5482, 03/07/4/5489, 03/07/4/5490, 03/07/4/5491, 03/07/4/5493,

03/07/4/5501, 03/07/4/5509, 03/07/4/5516, 03/07/4/5534, 03/07/4/5506 bukurwa kuri Mukandutiye Bellancille bwari bwanditseho, bukarurwa mu muryango wa Fundi Project ugizwe n'abazungura be bakaba aribo bwandikwaho, kandi ko ubutaka bwanditse kuri MINIRENA ibugumana, naho ubwo Rutazibwa Alexandre yasabye Umubitsi w'Impapurompamo z'Ubutaka gushyira ku rutonde rw'amasambu agomba kugarurwa mu muryango wa Fundi Project bukababugomba bukarurwa ahubwo bugomba kuguma kubo bwanditseho.

[4] Rutazibwa Alexandre ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko Rukuru, Urugereko rwa Rusizi, rukorera i Karongi, ruhabwa N° RADA 00001/2016/HC/RSZK, rucibwa ku wa 17/3/2017, Urukiko rwemeza ko ubujurire bwa Rutazibwa Alexandre nta shingiro bufite, ko imikirize y'urubanza N° RAD 0039/14/TGI/KGI rwaciwe n'Urukiko Rwisumbuye rwa Karongi idahindutse mu ngingo zayo zose.

[5] Rutazibwa Alexandre na none ntiyishimiye imikirize y'urwo rubanza, arujuririra mu Rukiko rw'Ikirenga, ruhabwa numero RADAA 00004/2017/SC; Mukandutiye Bellancille atanga ubujurire bwuririye ku bundi. Urukiko rw'Ikirenga rwaciye urubanza ku wa 02/02/2018, rwemeza ko ubujurire bwa Rutazibwa Alexandre budafite ishingiro, ko n'ubujurire bwuririye ku bundi bwa Mukandutiye Bellancille budafite ishingiro, rutegeka Rutazibwa Alexandre kwishyura MINIRENA na RNRA indishyi zingana na 400.000 Frw.

[6] Ku wa 06/11/2018, Rutazibwa Alexandre yasubirishijemo urwo rubanza N° RADAA 00004/2017/SC ingingo nshya mu Rukiko rw'Ikirenga. Mu myanzuro ye, avugako nyuma y'icibwa ryarwo habonetse ikimenyetso gishya, icyo kimenyetso kikaba cyarabonetse ku wa 17/09/2018. Asobanura

icyo kimenyetso gishya avuga ko, Umubitsi w'Impapururompamo yagaragarije Urukiko ko yandikiye Abayobozi b'Akarere n'ab'Imirenge ubutaka buzungurwa bubereye mu ifasi kugira ngo akosore amakosa, ubutaka bwandikwe kuri ba nyirabwo, ariko amabaruwa ntiyashyikirizwa abo yandikiwe, bikaba byaratumye amakosa adakosorwa. Avuga ko iyo Urukiko rumenya, mbere y'icibwa ry'urubanza RADAA 00004/2017/SC, ukuri kugaragazwa n'ibaruwa y'Umurenge wa Musasa yo ku wa 12/09/2018 (yasubizaga iyo Me MUTEMBE yanditse ku wa 20/08/2018), ivuga ko amabaruwa y'Umubitsi w'Impapururompamo atashyikirijwe abo yandikiwe, urubanza rutari gucibwa mu buryo rwaciwe.

[7] Iburanisha ry'urubanza ryashyizwe ku wa 19/03/2019, ariko urubanza rwimurirwa ku wa 11/06/2019 kugira ngo abaturanyi bajye kumvikana nk'uko bari babisabye (Urubanza rwigijwe imbere ku wa 7/6/2019 n'Ubwanditsi bw'Urukiko kubera gahunda nshya y'iburanisha). Kuri uwo muni, urubanza ntirwaburanishijwe, rwimurirwa ku wa 10/09/2019 ku busabe bw'uhagarariye Leta y'u Rwanda, avuga ko yamenye atinze itariki nshya urubanza rwimuriweho bituma atabasha kwitegura.

[8] Ku wa 10/09/2019, urubanza rwaburanishirijwe mu ruhamwe, Rutazibwa Alexandre yitabye yunganiwe na Me Mutembe Protais, Mukandutiye Bellancille aburanirwa na Me Owerisima Honorine, naho Leta y'u Rwanda iburanirwa na Me Cyubahiro Fiat, abaturanyi bajya impaka ku bijyanye no kumenya niba ikirego cyo gusubirishamo urubanza ingingo nshya, cyatanzwe na Me Mutembe Protais mu izina rya Rutazibwa Alexandre, gishobora kwakirwa.

[9] Mu miburanire ye, Me Mutembe Protais wunganira Rutazibwa Alexandre yavuze ko impamvu bashingiraho basaba

ko urubanza rusubirwamo, ari uko habaye uburiganya bwakozwe n'Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, bwagize ingaruka ku mikirize y'urubanza; bitandukanye n'ibyari mu myanzuro by'uko kuva aho urubanza ruciriwe habonetse ikimenyetso gishya. Kuba harabaye uburiganya bwagize ingaruka ku mikirize y'urubanza bishimangirwa n'uhagarariye Mukandutiye Bellancille, mu gihe Intumwa Nkuru ya Leta ivuga ko nta buriganya bwabayeho.

[10] Ikibazo nyamukuru kigomba gusuzumwa muri uru rubanza rero, akaba ari ukumenya niba Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda cyaragize uburiganya bwagize ingaruka ku mikirize y'urubanza, ku buryo byatuma rusubirwamo.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda (RNRA) cyaragize uburiganya bwagize ingaruka ku mikirize y'urubanza, ku buryo byatuma rusubirwamo.

[11] Mu miburanire ye, Me Mutembe Protais wunganira Rutazibwa Alexandre avuga ko impamvu ashingiraho asaba ko urubanza rusubirishwamo ingingo nshya, ari izi zikurikira:

- a. kuba harabaye uburiganya bwagaragaye nyuma y'uko urubanza ruciwe. Avuga ko nyuma y'aho Umubitsi w'Impapurompamo aboneye ko yibeshye, yanditse amabaruwa atatu, harimo agenewe Umurenge wa Gihombo n'Umurenge wa Musasa, asaba ko abantu banditse ku butaka buburanwa

bagarura ibyangombwa by'ubutaka bahawe, kubera ko hakoze amakosa bakandikwa ku butaka bw'umuryango wa Fundi Project;

- b. ibaruwa ya gatatu, yandikiwe Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, irebana n'ibishanga byanditswe kuri Leta nyamara nayo ari amasambu yasaranganyijwe hagati y'abazungura ba Fundi n'abaturage. Avuga ko kubireba ayo masambu yiswe ibishanga, Umubitsi w'Impapurompamo yandikiye Umuyobozi w'Akarere ka Nyamasheke, amusaba gushimangira amakuru y'uko ariya masambu yasaranganyijwe koko, muri iyo baruwa akaba atarigeze avuga ko ubwo butaka, bwanditswe kuri MINIRENA, ari ibishanga;
- c. nyuma yo gutsindwa mu Rukiko rw'Ikirenga, bamenye ko amabaruwa y'Umubitsi w'Impapurompamo atigeze agera kubo yari agenewe, bakaba barabimenye ari uko yandikiye Umuyobozi w'Umurenge wa Gihombo n'uwa Musasa, nabo bagasubiza ko ayo mabaruwa atigeze abageraho;
- d. kuba amabaruwa atarashyikirijwe abo yari agenewe, ni uko habayeho kujijisha, aribyo bigaragaza uburiganya. Niba Umubitsi w'Impapurompamo ataragejeje ayo mabaruwa kuri ba nyirayo, ni uko yabikoze nkana. Uburiganya bukaba bushingiye ku kuba imiburanire y'Ikigo cy'Ubutaka itandukanye n'ibyo Umuyobozi wacyo yandikiye abayobozi b'Inzego z'Ibanze, kandi iyo Urukiko rw'Ikirenga rubona ko ayo mabaruwa atageze kubo yari agenewe

ntirwari kwemeza ko amasambu 5 ari igishanga, ko n'amasambu 31 aguma kubo yanditseho nyamara yari yarasaranganyijwe hagati y'abazungura ba Fundi n'abaturage;

- e. kuba ibaruwa yaranditswe nyuma y'aho urubanza ruciriwe, byatewe n'uko batigeze bamenya niba amaburuwa yarageze kuri ba nyirayo, ko kandi mu kuburana batigeze bagira igitekerezo cy'uko ariya maburuwa yaba ataragejewe kubo yari agenewe;
- f. uburiganya bwakozwe n'Umubitsi w'Impapurompamo ubwo yandikaga amaburuwa ntayageze kubo agenewe, yanabukoreye mu Rukiko, kuko atigeze aha amakuru abaje kuburana kugira ngo bemere ko yibeshye.

[12] Me Mutembe Protais asoza avuga ko ashingiye ku ngingo ya 170 y'Itegeko N° 22/2018 ryo ku wa 13/06/2018 ryerekeye imiburanishirize y'Imanza z'Imbonezamubano, iz'Ubucuruzi, iz'Umurimo n'iz'Ubutegetsi, asanga ikirego cya Rutazibwa Alexandre gikwiye kwakirwa kubera ko atari gutekereza ko amaburuwa atageze kuri ba nyirayo.

[13] Me Kayiranga Rukumbi Bernard wari uhagarariye Leta y'u Rwanda mu iburanisha ryo ku wa 19/03/2019 no ku wa 07/06/2019, avuga ko ikimenyetso gishya Rutazibwa Alexandre ashingiraho, mu myanzuro yashyikirije Urukiko, asubirishamo urubanza ingingo nshya kidasobanutse, kuko ntawamenya niba urukomatane rw' amaburuwa atandukanye yatanze aribyo yita ikimenyetso gishya. Byongeye kandi, Me Mutembe Protais nawe ubwe avuga ko ayo maburuwa yayashyikirije Urukiko, bivuze ko atari ibimenyetso bishya kuko yari asanzweho mu gihe urubanza rwaburanishwaga. Muri ayo maburuwa harimo:

- a. iyo Me Mutembe Protais yandikiye Umuyobozi w'Umurenge wa Gihombo;
- b. iyo yandikiye Umuyobozi w'Umurenge wa Musasa;
- c. amaburawa Umubitsi w'Impapururompamo Wungirije yandikiye Abayobozi b'iyo Mirenge;
- d. ibaruwa Me Mutembe Protais yandikiye Umuyobozi w'Akarere ka Nyamasheke;
- e. na kopi y'inyandiko yasinyweho n'uwahoze ari « Mandataire » wa Leta Rusanganwa Eugène.

[14] Avuga kandi ko, hashingiwe ku ngingo ya 170 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 rigenga imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ikimenyetso gishya ari ikimenyetso umuburanyi atashoboraga kumenya ko cyaba gihari, akakibona nyuma cyangwa akaba atarabashaga kukigeraho igihe yaburanaga, kandi kikaba gihabwa agaciro iyo gishobora kuvuguruza ibyari byashingiweho mu ica ry'urubanza rusabirwa gusubirwamo. Ku bireba uru rubanza, Rutazibwa Alexandre akaba aterekana ikimenyetso kitari gihari mu iburanisha ry'urubanza rusabirwa gusubirwamo, akaba atanerekana uburyo kivuguruza ibyashingiweho mu ica ry'urubanza, bityo rero ikirego cye kikaba kidakwiye kwakirwa.

[15] Me Cyubahiro Fiat, wari uhagarariye Leta y'u Rwanda mu iburanisha ryo ku wa 10/09/2019, avuga ko:

- a. ibaruwa yo ku wa 12/9/2018 Me Mutembe Protais yita ikimenyetso gishya, ivugwamo ubutaka buherereye mu Murenge wa Musasa (AKarere ka Rutsiro), mu gihe ubwo asaba kwandikwaho ku

bireba MINIRENA buherereye mu Murenge wa Gihombo (Akarere ka Nyamasheke), bukaba ntaho buhuriye n'ubuvugwa mu ibaruwa yita ikimenyetso gishya;

- b. ikimenyetso Me Mutembe Protais yita gishya atari gishya, kuko ari ibaruwa yanditse nyuma y'icibwa ry'urubanza, bivuze ko yashoboraga no kukibona mbere y'urubanza;
- c. amabaruwa yavuzwe haruguru yaburanyweho kuva urubanza rugitangira, ndetse na mbere mu Rukiko Rwisumbuye rwa Karongi Umubitsi Wungirije w'Impapurompamo z'Ubutaka akaba yari yarezwe kubera izo nyandiko. Kuri ibi, Me Mutembe Protais yasubije ko batigeze bamurega uburiganya, ko ahubwo icyo bamureze ari indishyi z'akababaro kuko yaruhije Rutazibwa yanga kumwandika ku masambu yasaranganyije;
- d. ibyo Umubitsi Wungirije w'Impapurompamo z'Ubutaka yanditse nta buriganya burimo, akaba yarabyandikiraga abayobozi b'inzego z'ibanze abasaba kwemeza amakuru afite kandi bikaba biri mu nshingano ze;
- e. Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda kitandika ubutaka ku muntu kubera ko abisabye, ahubwo cyandika ubutaka ku muntu amaze kugaragaza uburenganzira abufiteho. Kuba rero Rutazibwa Alexandre yarananiwe kwerekana aho akomora ubutaka aburana kuva mu Rukiko Rwisumbuye rwa Karongi no mu Rukiko

Rukuru, Urugereko rwa Rusizi, nta hantu Ikigo cy'Ubutaka cyahera kibumwandikaho;

- f. icyagiye gitsinda Rutazibwa Alexandre mu manza zose, ari uko yabuze ibimenyetso by'uko ubutaka aburana bwahoze ari ubw'umubyeyi we.

[16] Mu myiregurire ye, Me Owerisima Mungwe Honorine uhagarariye Mukandutiye Bellancille avuga ko:

- a. Umubitsi w'Impapurompamo yari azi ukuri ku mitungo y'umuryango wa Fundi Project, ariko agaha Urukiko amakuru atuzuye, bigatuma rufata icyemezo kitari cyo, bikaba ari uburiganya bwabaye bukagira ingaruka ku rubanza;
- b. kuba harabonetse ikimenyetso kigaragaza ko amakuru yashingiweho atariyo, cyagombye kwifashishwa kugira ngo ayo makosa akosorwe, ubutaka bukandikwa kuri ba nyirabwo;
- c. uhereye igihe ikimenyetso gishya cyabonekeye n'uburiganya bukihishe inyuma, asanga bihagije ngo ikirego cyo gusubirishamo urubanza ingingo nshya cyakirwe;
- d. imikirize y'urubanza yagize ingaruka kuri Mukandutiye Bellancille kubera uburiganya, ubwo buriganya akaba ari uko amabaruwa atageze kubo yoherejwe, kuko iyo abageraho ibibazo bivugwa muri uru rubanza byari kuba byarakemutse;
- e. ashingiye ku ingingo ya 58, agace ka d, k'Iteka rya Minisitiri N° 002/2008 ryo ku wa 01/04/2008 rigena uburyo iyandikisha ry'ubutaka rikorwa, asanga ikibazo cyarashoboraga gukemuka batagiye mu

nkiko, kuko Umubitsi w'Impapururompamo yagombaga guhita yandika ubwo butaka ku muryango wa Fundi Project.

UKO URUKIKO RUBIBONA

[17] Mu mpamvu zishobora gutuma urubanza rusubirishwamo ingingo nshya, ziteganywa n'ingingo ya 170 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, harimo kuba mu rubanza harabayemo uburiganya (fraud/dol personnel) bwagize ingaruka ku mikirize y'urubanza, kandi bukaba butarigeze bumenywa n'uwatsinzwe mu gihe cy'iburana.

[18] Uburiganya (dol personnel) busobanurwa n'Umuhanga mu mategeko Gérard CORNU avuga ko hakubiyemo ikitwa “fraude” cyose, ni ukuvuga kubeshya, kugura abatangabuhamya, kumvikana n'Avoka w'undi muburanyi n'ibindi, hagamijwe kubeshya umucamanza kugira ngo utsinde urubanza¹.

[19] Abahanga mu mategeko bayobowe na Georges de LEVAL, nabo basobanura ko kugira ngo urubanza

¹ “Ancienne cause d'ouverture de la requête civile englobant toute fraude (mensonge, subornation de témoins, collusion avec l'avocat de l'adversaire, etc.) destinée à tromper le juge pour obtenir de lui une décision à son profit, aujourd'hui remplacée par la “fraude”, cas d'ouverture du recours en révision; Gérard CORNU, Vocabulaire juridique, 6^{ème} éd., Paris, Presses Universitaires de France, 1987, p. 291.

NB: Mu mategeko y'Ibihugu bimwe harimo n'u Rwanda, “requête civile” yasimbuwe na “recours en révision”.

rusubirishwemo kubera uburiganya, hagomba kuba harabaye ibikorwa by'uburiganya hagamijwe kubeshya umucamanza kugira ngo nyiri ugukora ibyo bikorwa atsinde urubanza. Basobanura kandi ko uburiganya butagomba kwitiranywa no kuba umuburanyi yifashe ntagaragaze inyandiko zari gushyigikira ingingo z'undi muburanyi. Ibyo bikaba bitandukanye no kuba umuburanyi yabeshya umucamanza amubwira ibinyoma cyangwa ahisha inyandiko mu buryo bw'uburiganya. Basobanura kandi ko kugira ngo urubanza rusubirishwemo ku mpamvu z'uburiganya, icyemezo cyafashwe kigomba kuba cyarashingiye gusa ku makuru y'ibinyoma².

[20] Abahanga mu mategeko Izabelle DESPRES na Laurent DARGENT, bahereye ku bisobanuro byatanzwe n'inkiko, bagaragaje igihe guceceka(le silence) bishobora gufatwa nk'uburiganya (fraude), basobanura ko igishobora gufatwa

² “L’ouverture à requête civile sur la base du dol personnel est ainsi soumise à quatre conditions...Il faut d’abord qu’il y ait eu des manoeuvres frauduleuses déployées en vue d’obtenir une décision favorable en trompant le juge. L’on ne peut à cet égard assimiler la simple et inévitable subjectivité dans la défense de ses propres intérêts à un dol personnel. De même, la simple abstention d’une partie de produire par loyale spontanéité, devant le juge, des documents de nature à faire triompher la prétention de la partie adverse ne constitue pas en soi un dol.....Il en est autrement, et il y a dol, lorsque la partie trompe le juge par une affirmation mensongère et une dissimulation frauduleuse de pièces, constituant ensemble une manoeuvre dolosive. En d’autres termes, pour que le dol personnel puisse fonder une requête civile, il faut que la décision entreprise repose tout entière sur des informations à ce point mensongères qu’elles ont aveuglé le juge et l’adversaire “; Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, Droit Judiciaire, Manuel de procédure civile, T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

nk'uburiganya ari uguceceka kw'umwe mu baburanyi ku bintu yarezwe cyangwa yasabwe gutangaho ibisobanuro, ariko ko bidafatwa nk'uburiganya guceceka kw'umuburanyi ku bintu atigeze aregwa cyangwa ngo asabwe gutangaho ibisobanuro³.

[21] Ibi bisobanuro by'abahanga, bihujwe n'ibiteganywa n'ingingo ya 170 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, byumvikanisha ko:

- a. kugira ngo urubanza rusubirishwemo ku mpamvu z'uburiganya:
 - i. hagomba kuba habaye ibikorwa bigamije kubeshya umucamanza kugira ngo uwakoze ibyo bikorwa atsinde urubanza;
 - ii. icyemezo cyafashwe kigomba kuba gishingiye gusa ku makuru y'ibinyoma;
 - iii. uburiganya bugomba kuba bwaragize ingaruka ku mikirize y'urubanza;
- b. guceceka kw'umuburanyi ku bintu atigeze asabwa gutangaho ibisobanuro bidafatwa nk'uburiganya;
- c. kwifata kw' umuburanyi ntagaragaze inyandiko zari gushyigikira ingingo z'undi muburanyi bititwa uburiganya.

³ “Seul peut constituer un acte frauduleux le silence gardé par une partie sur des faits contestés par l'autre partie ou dont il lui est demandé de rendre compte (à l'exclusion du silence d'une partie sur des faits qui ne lui sont pas reprochés et sur lesquels aucune explication ne lui est demandée)”; Isabelle DESPRES et Laurent DARGENT, Code de Procédure Civile, 107^{ème} éd., Dalloz, 2016, p. 709.

[22] Muri uru rubanza, icyo Rutazibwa Alexandre ashingiraho avuga ko habaye uburiganya, ni ukuba uwaje kuburanira Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda, atarabwiye abacamanza ko hari amabaruwa Umubitsi Wungirije w'Impapurompamo z'Ubutaka mu ifasi y'Intara y'Uburengerazuba yandikiye ubuyobozi bw'Umurenge wa Musasa (Rutsiro) n'uwa Gihombo (Nyamasheke) ku wa 7/01/2015, n'iyo yandikiye Umuyobozi w'Akerere ka Nyamasheke ku wa 29/01/2015, ntagezwe kubo yari agenewe.

[23] Nk'uko bigaragara muri dosiye, ayo mabaruwa (Rutazibwa Alexandre yaboneye kopi) yanditswe urubanza rukiburanishwa ku rwego rw'Urukiko Rwisumbuye rwa Karongi, kuko rwaciye ku wa 14/07/2016, rwararegwe mu 2014. Hashingiwe ku bigaragara muri kopi y'urubanza no mu nyandikomvugo z'iburanisha, uretse ibaruwa yo ku wa 29/01/2015⁴, andi nta muburanyi wayavuzeho, kugira ngo bibaye ngombwa abayavugwamo bahatirwe kugoboka mu rubanza. Ntiyanagarutsweho ku rwego rw'ubujurire mu Rukiko Rukuru, Urugereko rwa Rusizi. Mu Rukiko rw'Ikirenga, bigaragara mu nyandikomvugo y'iburanisha ryo ku wa 19/12/2017 ko ayo mabaruwa yavuzweho, ariko Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda ntikigire icyo gisobanuzwa ku bijyanye no kumenya niba yaragejewe kubo yari yandikiwe.

[24] Hagendewe ku bisobanuro byatanzwe mu bika bibanza, Urukiko rurasanga kuba Ikigo gishinzwe imicungire

⁴ Urukiko rwabajije Me Mutembe icyo avuga kuri iyo baruwa, asubiza ko ibiyikubiyemo byanditse kuri MINIRENA, bakaba bemera ko byandikwa kuri "succession" FUNDI.

n'imikoreshereze y'ubutaka mu Rwanda kitarabwiye Urukiko ko amabaruwa Umubitsi Wungirije w'Impapururompamo z'Ubutaka mu ifasi y'Intara y'Ubugerazuba yandikiye ubuyobozi bw'Umurenge wa Musasa, uwa Gihombo, n'Akarere ka Nyamasheke, atageze ku bo yari agenewe, bitafatwa nk'igikorwa cy'uburiganya kubera impamvu zikurikira:

- a. Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda ntikigeze gisabwa ibisobanuro ku bijyanye no kumenya niba amabaruwa yanditswe n'umukuzi wacyo yaragejejwe kubo yari agenewe ngo cyange kubitanga cyangwa ngo gitange amakuru y'ibinyoma kigamije gutsinda urubanza. Rutazibwa Alexandre wari uzi ko ayo mabaruwa yanditswe kuko yagenewe kopi, ntiyigeze abaza icyakurikiyeho nyuma y'uko yandikwa, kandi ariwe byari bifitiye akamaro;
- b. Nta kimenyetso kigaragaza ko hari ibyo Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda cyabeshye umucamanza kigamije kumuyobya kugira ngo gitsinde urubanza, kandi ihame mu rwego rw'amategeko ari uko uburiganya budakwira ahubwo bugomba gutangirwa ibimenyetso⁵.

⁵ “Il convient enfin que le dol soit-par toutes voies de droit-prouvé par celui qui l'allègue; il y va d'une application du principe général en vertu duquel le dol ne se présume pas; Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, op. cit, p. 1184.

[25] Urukiko rurasanga kandi, n'iyo abacamanza baza kubwirwa ko amabaruwa yavuzwe haruguru yanditswe n'Umubitsi Wungirije w'Impapurompamo z'Ubutaka, atageze kubo yari agenewe, ntacyo byari guhindura ku mikirize y'urubanza ku mpamvu zikurikira:

- a. Urukiko rw'Ikirenga, mu rubanza rusabirwa gusubirwamo, rwasobanuye ko RNRA itahatirwa kwandika kuri "Succession" Fundi Project ubutaka bwanditswe ku bandi bantu (barondoye muri urwo rubanza), kuko batigeze baregwa cyangwa ngo bahatirwe kugoboka mu rubanza. Rwasobanuye ko ibyo byaba ari ugufata icyemezo ku muntu cyangwa ku bantu batabaye ababuranyi muri urwo rubanza, hakemzwa ko bamburwa ubutaka bataburanye, bakavutswa uburenganzira bwo kwiregura;
- b. ntibyari gushoboka ko abantu bavugwa mu mabaruwa y'Umubitsi Wungirije w'Impapurompamo z'Ubutaka, bahatirwa kugoboka mu rubanza, kuko hashingiwe ku ngingo ya 118 y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu ryakoreshwaga igihe urubanza rwacibwaga, kugoboka bigamije gusaba ko uhatiwe kugoboka agira ibyo acibwa bidashobora gukorwa bwa mbere mu rwego rw'ubujurire;
- c. n'iyo rero Urukiko ruza kubwirwa ko amabaruwa yavuzwe haruguru atageze kubo yari agenewe, ntibyari gutuma imikirize y'urubanza ihinduka kuko rutari gufata icyemezo ku bantu batarubayemo ababuranyi.

[26] Urukiko rurasanga rero, hashingiye ku ngingo ya 170 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, no ku bisobanuro bimaze gutangwa, nta buriganya Ikigo gishinzwe imicungire n'imikoreshereze y'ubutaka mu Rwanda (RNRA) cyakoze, bwagize ingaruka ku mikirize y'urubanza, ku buryo byatuma rusubirwamo; bityo ikirego cyatanzwe na Rutazibwa Alexandre kigamije gusubirishamo urubanza ingingo nshya kikaba kidashobora kwakirwa ngo gisuzumwe.

III. ICYEMEZO CY'URUKIKO

[27] Rwemeje ko ikirego cyatanzwe na Rutazibwa Alexandre cyo gusubirishamo urubanza ingingo nshya kitakiriwe ngo gisuzumwe, kuko cyatanzwe mu buryo budakurikije amategeko;

[28] Rwemeje ko imikirize y'urubanza N° RADAA 0004/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 02/02/2018, igumyeho;

[29] Rutegetse ko ingwate y'amagarama yatanzwe na Rutazibwa Alexandre ihwanye n'ibyakozwe mu rubanza.

IMANZA ZACIWE MU MIZI

URUBANZA MBONEZAMUBANO

Re. N.A N’UNDI

[Rwanda URUKIKO RW’ISUMBUYE RWA – RCA
00161/2020/TGI/NYGE (Udahemuka, P.J, Mukamana na
Nshimiyimana, J.) 11 Nzeri 2020]

Amategeko agenga abantu n’umuryango – Kororoka – Kororoka hifashishijwe ikoranabuhanga (Assisted Reproductive Technology) – Kororoka hakoreshejwe uburyo bw’ikoranabuhanga bivugwa mu ngingo ya 254 y’Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango bushobora gukorwa bitewe n’aho ikoranabuhanga rigeze. – Uburyo bwo gutwitira undi atewe igi ryahuriyemo intanga z’undi mugore n’undi mugabo (Gestational surrogacy) ni bumwe mu buryo bwemewe) – Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango, ingingo ya 254

Amategeko agenga abantu n’umuryango–uburenganzira bw’umwana – Umwana uvutse hakoreshejwe uburyo bw’ikoranabuhanga bwo gufasha umugore kororoka nyuma yo gutwitirwa n’undi mugore, agira uburenganzira bwo kwandikwa mu irangamimerere ku mazina y’ababyeyi batanze intanga, ariko akagira n’uburenganzira bwo konswa n’uwamutwite igihe bishoboka – Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n’umuryango, ingingo ya 254.

Incamake y’ikibazo: Urubanza rwatangiriye mu Rukiko rw’Ibanze rwa Kicukiro, aho umugore n’umugabo babana mu buryo byemewe n’amategeko (muri iki Cyegeranyo, umugabo aritwa N.A naho umugore yitwe N.O) basaba Urukiko ko rwakwemerera uwundi umuryango w’umugore n’umugabo (nabo muri iki Cyegeranyo, umugabo aritwa K.F naho umugore

yitwe M.G) kubabyarira hakoreshejwe ikoranabuhanga. Bakaba barabisabaga bashingiye kumasezerano iyo miryango yombi yakoranye bemeranywa ko umuryango wa K.F na M.G uzatwitira N.A na N.O hakoreshejwe uburyo bw'ikoranabuhanga kuko kuva bo babana ntibyabakundiye ko bashobora kwibaruka abana, ayo masezerano bayashyira umuganga w'impuguke wazabibafashamo kuko byari gukorwa batanga intanga za bombi zigahurizwa hanze muri *laboratoire* maze igi zatanze rigashyirwa mu mugore ariwe M.G, umuganga yababwiye ko adashobora kubibakorerango kuko ngo hatashyizweho amabwiriza y'uho byakorwa, yahise abasaba kugana inzego zibishinzwe kugira ngo zerekane uburyo byazakorwamo nibwo N.A na N.O bahise bitabaza urukiko ngo rutegeke muganga gukora ibyo bamusabaga. Urukiko rw'Ibanze rwemeje ko ikirego cyabo kidafite ishingiro ngo kuko basaba ibidateganijwe mu mategeko y'u Rwanda kuko ngo kororoka bibaho hagati y'umugore n'umugabo atari hagati y'imiryango ibiri.

Abatanze ikirego ntibanyuzwe n'umwanzuro w'Urukiko maze bajuririra mu Rukiko Rwisumbuye rwa Nyarugenge bagaragaza ko ngo umucamanza yavugishije itegeko ibyo ritavuze ngo kuko yavuze ko kororoka bibaho hagati y'umugore n'umugabo atari hagati y'imiryango ibiri, ngo mu gihe nyamara bo basanga bitabujijwe ko byanakorerwa hagati y'imuryango yabyemeranijweho. Muri uru rubanza hiyambajwe inshuti z'urukiko arizo umuryango Haguruka, Kaminuza y'u Rwanda ishami ry'amategeko na HDI.

Mu kumenya niba M.G washakanye na K.F yakwemererwa gutwitira inda N.A na N.O, abatanze ikirego bavuze ko Urukiko rukwiye gutegeka ko muganga ashyira mu bikorwa icyifuzo cy'imiryango yombi yagiranye ku rundi ruhande M G na K F nabo bavuga ko batumva impamvu umuganga yanze ko bikorwa

mu gihe nta n'umwe byari bibangamiye kuko bari babyemeranijweho. Uwunganira abatanze ikirego avuga ko kororoka hakoreshejwe ikoranabuhanga ari ikintu gishya mu gihugu cy' u Rwanda, ko mbere abantu batuye mu Rwanda batashoboye kororoka mu buryo busanzwe bitabazaga ibihugu byo hanze kugira ngo bororoke hakoreshejwe ikoranabuhanga ariko nyuma iryo koranabuhanga riza kugera mu Rwanda, bityo abo yunganira nabo bakaba bararyiyambaje, yasobanuye ko ikoranabuhanga rituma hafatwa intanga z'abantu babiri bakazihuriza hanze bakazitera mu mugore bityo akabyarira uwo muryango wamuhaye iryo gi, akomeza avuga ko mu mategeko y'u Rwanda kororoka hakoreshejwe ikoranabuhanga birateganijwe , ariko ntibyasobanurwa neza .

Kaminuza y'u Rwanda ishami ry'amategeko ivuga ko amategeko y'u Rwanda yemera ubu buryo bwo kororoka butari ubwa kamere k'ubw' ibyo basanga muri uru rubanza nta mbogamizi zikwiriye kugirwa mu kwibaza niba amategeko y'u Rwanda yemera ko kororoka mu buryo butari ubwa kamere, bityo abajuriye bakwiye guhabwa ibyo basabye, ariko ko inyungu z'umwana zigomba kuzitabwaho cyane izijyanye no kubana n'uwamutwise nibura mu gihe cy'amazi 6 kugira ngo ashobore kumwonsa.

Haguruka Asbl, ivuga ko ibyasabwe n'ababuranyi bakwiye kubihabwa ngo kuko bishyigikirwa n'amategeko atandukanye, ko Itegeko Nshinga rya Repubulika y'u Rwanda riteganya ko umuntu afite uburenganzira bwo kugira ubuzima bwiza, kubona ubuvuzi n'ukugira umuryango kandi ko uburenganzira bwo kugira abana ari ingenzi nayo ivuga ko kugira ngo uburenganzira bw'umwana bwubahirizwe uwamutwise yamugumana mu gihe cy'amezi 6 kuko za anticorps ziba zitarakura.

Health Development Initiative, nayo ivuga ko yemeranywa n' abamubanjirije ko ubujurire bukwiye guhabwa ishingiro no kuzasuzuma uburenganzira bw' umwana uzavuka ntibuzahutazwe.

Incamake y'icyemezo:1. Uburyo bw'ikoranbuhanga ryo kuba umuntu yatwitira undi atewe igi ryahurijwemo intanga z'abandi bantu (*Gestational surrogacy*) ni bumwe mu buryo bwemewe gukoreshwa mu kororoka, iyo byumvikanyweho n'abo bireba kuko Itegeko riteganya ko kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga cyane cyane ko uburyo bw' ikoranabuhanga buteganywa n'itegeko ari ikintu kigari bukaba bushobora gukorwa bijyanye naho ikoranabuhanga rigeze.; bityo amasezerano M.G washakanye na K.F bagiranye na N.A na M.O yo kwemererwa kubatwitira igi rizavamo umwana agomba kubahirizwa uko yakabaye.

2. Umwana uvutse mu buryo bw'ikoranbuhanga ryo kuba umuntu yatwitira undi atewe igi ryahurijwemo intanga z'abandi bantu (*Gestational surrogacy*), agira uburenganzira bwo kwandikwa mu irangamimerere ku mazina y'ababyeyi batanze intanga ariko akagira n'uburenganzira bw'ubuzima bwiza akonswa mu gihe cy'amezi 6 n'uhamutwite, bityo umwana akimara kuvuka azandikwa ku babyeyi be aribo N.A na M.O ariko azabana na M.G washakanye na FL bakabana mu gihe cy'amezi 6 akimara kuvuka.

**Ubujurire bufite ishingiro;
Imikirie y'urubanza rwajuririwe irahindutse;
Amagarama ahwanye n'ibyakozwe mu rubanza.**

Amategeko yashingiweho :

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003.
ryavuguruwe mu 2015, ingingo ya 17 na 18.

Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu
n'umuryango, ingingo ya 254.

Nta manza zifashishijwe.

Urubanza**I. IMITERERE Y'URUBANZA**

[1] N.A na M.O basezeranye kubana nk'umugore n'umugabo mu buryo byemewe n'amategeko, kuwa 22/12/2013, kuva babana ntibyabakundiye ko bashobora kwibaruka abana, ibyo byatumye biyamabaza abaganga batandukanye ngo barebe ko baba bafite uburwayi bityo niba bishoboka bavurwe, bavuga ko abaganga bababwiye ko M. O adashobora kubyara, ngo ibyo bikaba byaragaragajwe na raporo ya muganga yo kuwa 20/01/2020, ko mu gushaka igisubizo cy'ikibazo cyari kibugarije, batekereje gukoresha uburyo bw'imyororokere hifashishijwe ikoranabuhanga.

[2] N.A na M.O nyuma yo gusuzuma neza uburyo butandukanye bushobora kwiambazwa bahisemo ko batanga intanga za bombi zigahurizwa hanze muri (laboratoire) maze igi zatanze rigashyirwa mu mugore nyuma yo kubyunguranaho inama bifuje ko uwo mugore yaba umuvandimwe wa M.O witwa M.G washakanye na K.F, bahise babagezaho icyo cyifuzo maze yaba M.G ndetse n'umugabo we witwa K.F bemera ubwo busabe, bahise bagirana amasezerano yanditse

yemera ko uwo uzabatwitira igi ryakomotse kuri izo ntanga, umwana yamara kuvuka bakamubaha, nyuma yo kwemeranywa kuri ayo masezerano bahise berekeza ku mpuguke yagombaga gukoresha ubwo buryo bw'ikoranabuhanga, ariwe Dr. Ngoga Eugene ukorera mu bitaro bya gisirikare bya Kanombe nyuma yo kubona ubwo busabe yakoze raporo, ababwira ko adashobora kubikora ngo kuko hatashyizweho amabwiriza y' uko byakorwa yahise abasaba kugana inzego zibishinzwe kugira ngo zerekane uburyo byazakorwamo, N.A na M.O bahise bitabaza urukiko ngo rutegeke muganga gukora ibyo bamusabaga.

[3] Nyuma y'iburanisha ry'urubanza Urukiko rw'Ibanze rwa Kicukiro rwemeje ko ikirego cya N.A na M.O kidafite ishingiro ngo kuko basaba ibidateganijwe mu mategeko y'u Rwanda, uwo mwanzuro ntiwabanyuze maze bahita bawujuririra mu Rukiko rw'Isumbuye rwa Nyarugenge, impamvu zabo z'ubujurire akaba ari uko ngo umucamanza yavugishije Itegeko ibyo ritavuze ngo kuko yavuze ko kororoka bibaho hagati y'umugore n'umugabo atari hagati y'imiryango ibiri, ngo mu gihe nyamara bo basanga bitabujijwe ko byanakorerwa hagati y'imiryango yabyemeranijwe.

[4] Bitewe nuko ikirego nk'iki aribwo bwa mbere cyari kigaragaye mu nkiko kandi hifuzwa ko cyatangwaho umucyo n' abantu batandukanye urukiko rwasabye inshuti z'urukiko zifuza kuzatanga ibitekerezo ko zakwimenyekanisha maze Umuryango Haguruka, Unirivesite y'u Rwanda Ishami ry'Amategeko na Health Development Initiative, bagaragaza ubwo bushake, urukiko nyuma yo gusuzuma ubusabe bwabo n'ubumenyi bafite mu bijyanye n' ikibazo cyagombaga gusuzumwa bose uko ari 3 rwabemereye kuba inshuti z'urukiko. Nyuma yo kubona

imiterere y'urubanza urukiko rusanga ingingo zikwiye gusuzumwa ari izi ikurikira.

- **Kumenya niba M.G washakanye na K.F yakwemererwa gutwitira inda N.A na M.O**
- **Kumenya niba Dr Ngoga hari impungenge yaba yarahuye nazo no kumenya uburyo zakemuka.**

II ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

- **Ku byerekeranye no kumenya niba M.G washakanye na K.F yakwemererwa gutwitira inda N.A na M.O**

[5] N.A na M.O bavuga ko bajuriye bashaka ko Urukiko Rwisumbuye ruhindura icyemezo cy'Urukiko rw' Ibanze ko rero urukiko rukwiye gutegeka ko muganga ashyira mu bikorwa icyifuzo cy'imiryango yombi yagiranye ndetse amasezerano agakorerwa imbere ya notaire, ku rundi ruhande M.G na K.F nabo bari batumijwe mu rukiko bahawe ijambo bavuga ko batumva impamvu umuganga yanze ko bikorwa mu gihe nta n' umwe byari bibangamiye; bakomeje basobanura ko kuba iyo miryango yaremeranijwe kuri ayo masezerano binaterwa n' uko M.O ava indimwe na M.G, ngo kuburyo rero M.G yunvaga icyo kibazo umuvandimwe we yari amaranye iminsi nawe kimuremereye, ngo kuburyo biramutse bishoboka ko yamutwitira hiyambajwe ikoranabuhanga yakwifuzza kukimufashamo nk' umuvandimwe we.

[6] Me Kabasinga wunganiraga N.A na M.O yakomeje asobanura ko "Kwororoka hakoreshejwe ikoranabuhanga ari ikintu gishya mu gihugu cy' u Rwanda , ko kuba rero mu

gihugu hari abantu batashoboye kororoka mu buryo busanzwe hashakishijwe ibisubizo mbere na mbere abanyarwanda bitabazaga ibihugu byo hanze ariko nyuma iryo koranabuhanga riza kugera mu rwanda ngo abo yunganira rero nabo bakaba bararyiyambaje, yasobanuye ko ikoranabuhanga rituma hafatwa intanga z'abantu babiri bakazihuriza hanze bakazitera mu mugore bityo akabyarira uwo muryango wamuhaye iryo gi, ko hari ahantu hatandukanye ubu buryo bwatangiye gukoreshwa kandi bukaba nta ngaruka mbi bwigeze bugira ku buzima yavuze ko mu Rwanda kororoka hakoreshejwe ikoranabuhanga amategeko y'u Rwanda yabiteganije, ariko ntihasobanurwa neza niba no kwororoka hagize ugutwitira nabyo byaba byemewe ko rero ibyo bisobanuro bicukumbuwe Urukiko rw'Ibanze rutakoze bikwiye gukorwa n'Urukiko Rwisumbuye bityo uwo yunganira akabona uburenganzu bwe.

[7] Abarimu bigisha amategeko boherejwe na UR nk'inshuti y'Urukiko, aribo Turatsinze Emmanuel, Uwineza Odette, Serugo Jean Baptiste batangiye basobanura ko uko babyumva ibibazo bikwiye kwibazwa kuri uru rubanza ari ukumenya niba Urukiko rukwiye gusobanura niba ibijyanye no kororoka hifashishijwe ikoranabuhanga mu Rwanda byemewe. Mu gutanga ibisobanuro byabo bavuga ko ari ingenzi gutandukanya ibyitwa mu rurimi rw'icyongereza *Medically Assisted Reproduction* cyangwa "MAR" mu magambo ahinnye y'icyongereza, hamwe n'ibizwi nka "*Assisted Reproductive Technology*" cyangwa se "ART" mu magambo ahinnye y'icyongereza. bahise batanga ibisobanuro bw'ubwo buryo bwombi nkuko bwasesengurwe na OMS, bavuga kandi ko uburyo bwo kororoka hifashishije ikoranabuhanga bwa "ART" ari uburyo bumenyerewe mu bihugu byateye imbere, ko ndetse bimwe muri ibyo bihugu byatoye amategeko abyemera nka USA, ibindi bihugu

bikagaragaza ko bidakwiye kwemerwa kubera impamvu zitandukanye nk'Ubufaransa bubihakana bushingiye ku impamvu mbonezamuco (“*ethical reasons*”) nk’uko byagaragajwe mu manza za *Mennesson v. France* hamwe n’urubanza rwa *Labassee v. France* . ibi ndetse ngo binatuma abafaransa babifuza kubyara muri ubu buryo baja kubikorera muri USA, Mu gusoza bavuga ko uburyo bwa ART ari bumwe mu bugize MAR.

[8] Uwineza Odette wo muri university of Rwanda nk’inshuti y’urukiko avuga ko asanga umucamanza yasobanuye ingingo nabi, ngo kuko amategeko y’u Rwanda asobanura neza ko kororoka hakoreshejwe ikoranabuhanga byemewe; yakomeje avuga ko muganga atigeze yanga kubikora ngo icyo yashakaga gusa ari amabwiriza ajyanye nabyo ko rero Ministeri y’ubuzima ariyo ifite ububasha bwo kuba yashyiraho ayo mabwiriza, yasoje avuga ko asanga ayo mabwiriza yatangwa n’ababifitiye ububasha, ngo kuko kwitabaza urukiko byakorwa ari uko muganga yanze gukora ibyo amategeko ateganya ko ariko nkuko bigaragara muri uru rubanza muganga atigeze yanga kubikora.

[9] Bakomeje bagaragaza ko n’ubwo bwose *surrogacy* hari ibihugu byayemeye hakunze kugaragara ibibazo bimwe na bimwe muri byo hakaba harimo nk’ikirebana n’uwitwa nyina w’umwana, incuti y’urukiko yavuze ko kuri icyo kibazo bifatwa ku buryo butandukanye ibihugu bimwe na bimwe byemeza ko uwatwise akabyara ariwe nyina w’umwana nko muri Afrika yepfo mu gihe abandi batabivuga batyo bakemeza ko umwana ari uw’uwatanze igi yasoje avuga ko mu byemezo urukiko ruzafata inyungu z’umwana zigomba kuzitabwaho cyane

izijyanye no kubana n' uwamutwise nibura mu gihe cy'amazi 6 kugira ngo ashobore kumwonsa.

[10] Turatsinze Emmanuel yongeye kwibutsa ko Urukiko rudakwiye kurengera ngo rufate ibyemezo bireba izindi nzego, avuga ko hari imanza bashyize muri system, harimo ibibazo bya etat civil, uburenganzira bw'umwana, izungura n'ibindi izo manza zisa nizatanga umurongo, ko uru rukiko narwo rwari gutanga umurongo iyo hajya kuba uregera ko yabangamiwe n'amasezerano bagiranye, ibi rero ngo siko bimeze muri uru rubanza kuko ngo kuko ntawareze, ko bityo urukiko rukwiye kugarukira mu isuzuma ryo kumenya niba uburenganzira bw' uko umuryango watwitira undi bwemewe cg butemewe, rukirinda gusuzuma mbere impaka zazavuka ngo ruzishakire n'ibisubizo bitaragaragazwa. Yanzuye avuga ko u Rwanda rwafashe icyemezo cyo kwemera ubu buryo bwo kororoka butari ubwa kamere nk'uko bigaragazwa n'agace ka kabiri k'ingingo ya 254 y'Itegeko rigenga umuryango. Ko kubw'ibyo basanga muri uru rubanza nta mbogamizi zikwiriye kugirwa mu kwibaza niba amategeko y'u Rwanda yemera ko kororoka mu buryo butari ubwa kamere harimo na gestational surrogacy byemewe kuko itegeko risobanutse mu buryo budateje urujijo, ko kubw' ibyo abajuriye bakwiye guhabwa ibyo basabye

[11] Maître Garuka Chritian watumwe n' incuti y'urukiko Health Development Initiative, nawe yavuze ko yemeranywa n'abamubanjirije ko ubujurire bukwiye guhabwa ishingiro, bityo amasezerano yo gutwitirana bakoranye agashyirwa mu bikorwa ko kandi hakwiye no kuzasuzumwa uburenganzira bw' umwana uzavuka ntibuzahutazwe.

[12] Me Mugemanyi Jean Nepomscene mu izina ry'intumwa y'urukiko Haguruka Asbl, avuga ko ibyasabwe n'ababuranyi

bakwiye kubihabwa ngo kuko bishyigikirwa n'amategeko atandukanye, muri yo yavuze ingigo ya 17,18, 21 z'Itegeko nshinga rya Repubulika y'u Rwanda ryo mu 2003 nkuko ryavugururwe kugeza ubu ahavugwa ko umuntu agira uburenganzira bwo kugira umuryango (umugore, umugabo n'abana) uburenganzira bwo kugira abana bukaba ari ingenzi, yavuze kandi ko hari n'uburenganzira bwo kugira ubuzima bwiza, harimo no kubona ubuvuzi ngo bukaba buteganywa mu ngingo ya 25 y' iryo tegeko nshinga ryavuzwe hejuru , avuga ko bemeranywa na UR, ngo kuko mu gika cya 2 cy'ingingo yashingiweho batanga ikirego hakoreshejwe interuro ngo: bashobora kwororoka mu buryo bwa kamere cg hakoreshejwe ikorana buhanga, Yanzuye ko ubwo buryo bwatakagombye gushyirwa hagati y'abashyingiranywe gusa ahubwo byakwaguka urebye n'aho ikoranabuhanga rigeze; yakomeje avuga ko hakwiye no kuzasuzumwa iyandikwa ry'umwana mu bitabo by'irangamimerere avuga ko kuri iyo ngingo urukiko rukwiye kugira icyo ruyivugaho rudakwiye kuzategereza ko impaka zavuka zirebana n'ingingo y'uburenganzira bw'umwana uwamutwise akaba yamugumana mu gihe cy'amezi 6 kuko za anticorps ziba zitarakura, nabyo byazatekerezwaho mbere.

[13] Urukiko rusanga ku rwego rwa mbere umucamanza yaranzuye urubanza mu buryo bukurikira: Urukiko rusanga nubwo abarega bagaragaza amasezerano y'ubwumvikane hagati yabo n'umuryango wemeye kubatwitira bakaba bayashingiraho basaba urukiko kuyemeza, ariko rusanga ingingo y'amategeko bashingiraho bagira ibyo basaba urukiko ntaho ihuriye nibyo basaba kuko iyi ngingo iteganya kororoka hashingiwe ku ikoranabuhanga hagati y'umugabo n'umugore mugihe bo basaba kororoka hagati y'imiryango ibiri, ariyo mpamvu urukiko rugomba kwemeza ko ikirego cyabo nta shingiro gifite,

uyu mwanzuro rero akaba ariwo abajuriye bahakana kuko bavuga ko iyo havuzwe ikoranabuhanga aba ari ikintu cyagutse ngo rero we akaba yarafashe akantu gato cyane; urukiko rero rukaba rugomba kwemeza koko niba yarakoze *interpertation* itariyo bityo bagahabwa uburenganzira bavuga ko bavukijwe

[14] Urukiko rusanga kuba N.A na M.O batarashoboye kororoka mu buryo bwa kamere byaratewe n'ibibazo by'ubuzima bwabo nkuko byagaragajwe na raporo yakozwe n'impuguke yiyambajwe ariyo Dr Eugene Ngoga yo kuwa 20/01/2020 aho yagaragaje ko yakurikiranye ubuzima bwa M.O mu gihe cy'amezi 18 yose agasanga adashobora gusama ibibazo by'ubuzima rero ntibyasibye kubaho ndetse ntibizabura kubaho ariko uko byigaraza niko yaba abahanga mu bya science mu mategeko n'abandi bose bagenda bashaka ibisubizo by'ibibazo biba byugarije isi, aha akaba ari naho hagiye havukira ikoranabuhanga ritandukanye nko kubya umuntu bitanyuze mu buryo kameremano ahubwo agashobora kubya bamubaze, muri ibi bihe rero ibibazo byo kudashobora gusama mu buryo karemano byarushijeho kwiyoungera, mu rwego rwo kubikemura ikoranabuhanga ryagaragaje ko umugore ashobora kubya nyamara atarigeze atwita, ndetse n'umuryango (ni ukuvuga umugore n'umugabo) bakabyara kandi mu kuri uwo mugore atarigeze asama ngo atwite inda ibyo nibyo science yagaragaje ko bishoboka bizwi nka surrogacy¹.

¹*Surrogacy is an arrangement, often supported by a legal agreement, whereby a woman (the **surrogate** mother) agrees to bear a child for another person or persons, who will become the child's parent(s) after birth. ... **Surrogacy** is considered one of many assisted reproductive technologies.* [<https://en.wikipedia.org/wiki/Surrogacy>] rwasuwe kuwa 10/09/2020.

[15] Ku rwego rw'abashingamategeko nabo bateye intambwe maze bemeza ko iyo surrogacy ikwiye kwemerwa mu mategeko y'ibihugu hari n'ibindi bihugu ariko batabikozwa; kubijyanye n'u Rwanda itegeko nshinga cyane ingingo ya 17 na 182 zivuga ko Leta ifite inshingano yo kubungabunga umuryango nyamara ntiwabungabunga umuryango mu gihe ukororoka kwawo mu buryo bwa kamere bidashoboka haramutse hadafashwe ingamba umuryango wazima, mubihe nk'ibyo haba hakwiye kwiambazwa ikoranabuhanga ryaramuka rigaragaje ko ryatanga umusaruro rikiyambazwa. Leta y'u Rwanda igendeye kubyo itegekwa n' iyo ingingo ya 17 ndetse na 18 yakoze umushinga w'itegeko maze uza gutorwa nk'itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango ingingo yaryo ya 254 igira iti: Kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga. Kororoka mu buryo bwifashishije ikoranabuhanga bigomba kuba byumvikanyweho n'abo bireba.³

² Ingingo ya 17: Uburenganzira bwo gushyingiranwa no kugira umuryango Uburenganzira bwo gushyingiranwa no kugira umuryango burengerwa n'amategeko. Ugushyingiranwa k'umugabo umwe n'umugore umwe gukorewe mu butegetsi bwa Leta ni ko kwemewe.

Ingingo ya 18: Kurengera umuryango Umuryango, ari wo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta. Ababyeyi bombi bafite uburenganzira n'inshingano zo kurera abana babo. Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.

³ Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango ingingo yaryo ya 254 igira iti : “Kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga. Kororoka mu buryo bwifashishije ikoranabuhanga bigomba kuba byumvikanyweho n'abo bireba.”

[16] Urukiko rero mu buryo budashidikanywaho rusanga ikorana buhanga mu rwego rw'imyororokere mu Rwanda ryemewe, ikorana buhanga kandi akaba ari ikintu kigari ndetse gihinduka amanywa n'ijoro, ku buryo ikorana buhanga riyambazwa none atariryo rizaba riyambazwa ejo, mu rwego rwo kugira amategeko ahamywe umushingamategeko yaravuze ati: Kororoka bikorwa hagati y'umugabo n'umugore mu buryo busanzwe cyangwa bwifashishije ikoranabuhanga. Urukiko rusanga iyo nteruro yuzuye kandi ari ngari, byongeye ikemuye ikibazo cyabajijwe, bitabaye ibyo hajya havuka ikorana buhanga uko rivutse umushingamategeko akajya mu nteko gutora itegeko rijyanye n'ikoranabuhanga ryavumbuwe cyangwa rigezweho, mu byukuri akaba arinayo mbogamizi nini umucamanza wa mbere yahuye nayo kuko atashoboye kwimbika ngo yunve ko ikoranabuhanga ryavuzwe ari ikintu kigari.

[17] Urukiko kandi rusanga nk'uko abahanga babisobanura, surrogacy igizwe n'uburyo bubiri ari bwo: Traditional surrogacy: the surrogate's eggs are used, making her the biological mother of the child she carries. Ugenekereje mu Kinyarwanda bikaba bisobanuye ko muri ubu buryo bwa Traditional surrogacy, hakoreshwa igi ry'uwemeye kubyarira undi, bityo bikamugira nyina w'umwana mu buryo bw'amaraso (*biological*)-*Gestational surrogacy: The surrogate has no biological link to the baby.* Ugenekereje mu Kinyarwanda bikaba bisobanuye ko umubyeyi nta sano y'amaraso umubyeyi ubyara aba afitanye n'umwana.

[18] Nk'uko bigaragara mu busobanuro bwo kororoka hakoreshejwe ikoranabuhanga bizwi nka ART, icyitwa gestational surrogacy ni kimwe mu bigize Assisted

Reproductive Technology, iyi na yo ikaba imwe mu bigize *Medically Assisted Reproduction* (MAR). kubijyanye n'igikorwa cyifuzwa gukorwa na N.A na M.O cyo guha igi umuryango wa K.F na M.G ukababyarira umwana, akaba ari icyitwa mu mvugo ya gihanga "*Gestational surrogacy*". Mugihe bahisemo ubwo buryo, bivuze ko M.G nta sano y'amaraso azaba afitanye n' umwana azabyara.

[19] Urukiko Rwisumbuye rwa Nyarugenge nyuma y'ibimaze gusobanurwa hejuru rwanzura ko amasezerano umuryango wa K.F na M.G bagiranye n'umuryango wa N.A na M.O wo kubabyarira hakoreshejwe ikoranabuhanga. ntaho ahabanye n'amategeko igihugu cy'u Rwanda kigenderaho, akaba agomba gushyirwa mu bikorwa uko yakabaye. hejuru y'ibyo ariko rusanga kuvuga ko byemewe gusa ubwabyo bidahagije mu gihe imbogamizi zagaragajwe na Dr. Eugene Ngoga zitakemuwe ariyo mpamvu urukiko rufite inshingano yo kugira icyo ruzivugaho.

- **Ku bijyanye no kumenya niba Dr. Ngoga hari impungenge yaba yarahuye nazo no kumenya uburyo zakemuka.**

[20] Urukiko rusanga muganga wiyambajwe ariwe Dr. Ngoga nawe atarigeze ahakana ko yakora ibyo yasabwe , yatanze ibisobanuro byimbitse by'ikibazo yagize mbere yo gukora ibyo yasabwaga⁴ nyuma yo kugaragaza ko ibisabwa

⁴ Ibarwa ya Dr Ngonga isubiza Florida Kabasinga Managing Partner at Certa Law Chambers Re: Your request concerning the case N0 RC 00161/2020/TGI/NYGE Dear Madam,

I am a Chief Consultant Obstetrician Gynecologist working at Rwanda Military hospital. For the past 6 years I have been taking care of infertility couples including providing Assisted reproductive techniques. In the

bisanzwe bikorwa ku isi , hashize imyaka irenga kuri 30, ko kandi abifitemo uburambe bw' imyaka 6 yose, Dr Ngoga yagaragaje ko impungenge ihari gusa ari uko mu mategeko y' u Rwanda umubyeyi wibarutse ariwe uhita yitwa nyina w' umwana akaba rero yari akeneye indi nyandiko yazifashishjwa mu kwandika umwana ku babyeyi b' ukuri b' umwana , nawe ubwe yemera ko ari abatanze intanga.

[21] Urukiko rusanga kandi uretse izo mpunge zagaragajwe na Muganga, Me Ndayisenga Jean Claude nubwo nawe yatumwe na Haguruka yatanze igitekerezo gihabanye n'icya mugenzi we avuga ko Urukundo hagati y'umwana n'ababyeyi be (*affection/relation sentimentale*) mu gihe habayeho “*gestational surrogacy*” bikwiye gutekerezwaho yavuze ko Impuguke Prof Dr. Gakwavu ivuga ko mu gihe habayeho kubyara muriburiya buryo, n'ubwo umwana avuka adahuje

mentioned case, I advised the couple to seek the experts in law opinion as the only treatment which they could benefit from is surrogacy. This is part of assisted reproductive technic where the embryo from a couple (in this case husband and wife) is placed in the uterus of another woman who will carry the pregnancy till term and deliver. Biologically speaking this child belongs to the couple which had their gametes fertilized. So, the child belongs to them and the surrogate mother is just a pregnancy carrier. This practice has been there for 3 decades. In Rwanda as the baby born is automatically related to person giving birth and written on her name, there is a need to have all important documents before the procedure to avoid any misunderstanding at the time of birth. Of course, the surrogate mother should be aware of what she is doing and a consent signed is required. The parents couple and the surrogate always get the explanations about the procedure and are counselled accordingly. I believe that when both sides are comfortable then we should support them so that they can fulfill their dream of being parents. Let me hope this has clarified the situation and I am available to clarify more even before the court of law.”

DNA/ADN n'uwamutwise, kumutwita ubwabyo no kumwonsa birema/byongera urukundo rwe hagati y'uwamutwise/wamwonkoje, bityo uko umubyeyi wamutwise amutindana muri cya gihe cyo kumwonsa cya ngombwa (kigamije gutera imbaraga “*anticorps/antibodies*”) birushaho kongera umubano we n'umwonsa bikaba byatuma umwonsa agira ingingimira zo kumushyikiriza ababyeyi batanze intanga ndetse no mu gihe batandukanye, bikaba byatera agahinda umwana kubera uko kumenyerana kuba kwarabaye hagati yabo , ko rero mu gukemura icyo kibazo umwana aba akwiye gushyikirizwa ababyeyi batanze intanga akivuka mu rwego rwo kwirinda ko urukundo rwe n'uwamutwise rwakomeza kwiyongera bikazamugiraho ingaruka babatandukanyije. Ko rero nubwo muri Haguruka asbl bemera ko konsa umwana ari ingenzi ariko ibyo nabyo byazatekerezwaho.

[22] Urukiko rwemeranywa na Dr. Ngoga ko impungenge yagize zifite ishingiro kuko nkuko byanagaragajwe n'inshuti z'urukiko, hari igihe umubyeyi amara kwibaruka akabona uwo muziranenge akibuka uko yarushye amutwita akisubiraho, umwana akamwimana , imanza zikavuka, kubijyanye kandi n'amategeko y'u Rwanda koko nyina w'umwana ni uwamwibarutse, iki kibazo rero koko kidakemukiye mu ntangiriro cyatera impagaragara arizo muganga yangaga , cyane ko aho ikorana buhanga mu Rwanda rigeze, rimaze gukataza kuburyo umwana akivuka ahita yandikwa mu bitabo by'iranga mimerere akiri mu ibyariro (*maternite*), bityo rero urukiko rushingiye ku masezerano agaragara muri dosiye ndetse n'invugo z'imiryango yombi zavugiye imbere y'urukiko rwanzura ko umwana azahita yandikwa ko abyawe na M.O na N.A, bityo rero impungenge za Dr Ngoga zikaba zibonewe igisubizo.

[23] Urukiko kandi rusanga uburenganzira bw'umwana bukwiye kubungwabugwa kandi ntibugarukira gusa ku kwandikwa mu bitabo by' irengamimerere kuko umwana uzavuka akwiye kugira n'uburenganzira k'ubuzima bwiza burimo kumwonsa niburamu gihe cy' amezi 6 akonswa n' uwamwibarutse kandi muri icyo gihe akonka amashereka gusa nta kindi avangiwemo, ibi bikaba ari nabyo byemezwa n' ishami ry' umuryango w'abibumbyuye ryita ku buzima OMS, ndetse n'ishami ryawo ryita kubana UNICEF⁵, ibijyanye n'uko uwamutwise yamukunda mugihe yamarana nawe igihe kirekire nkuko bivugwa na Me Ndayisenga Jean Claude ayo marangamutima y'uwamwonkeje ahita azitirwa n'ubwo burenganzira bw'umwana bwo konka ndetse n'ubukubiye mu masezeno yagiranye n'abo yatwitiye, rwanzuye rero ko muri ayo mezi yose 6 umwana azabana n'uwamutswise ariwe M.G ariko ababyeyi be bakajya bamubona igihe cyose bamushakiye nabwo bigakorwa mu buryo bitabangamiye umuryango M.G na K.F uko kubana n'uwamutwise mu gihe cy'amezi 6 bituruka ku kintu kimwe cy'ingenzi aricyo kumwonsa, bivuze ko mu gihe

⁵ In *Infant and Young Child Feeding, lesson 1*, it is stated as follow “Adequate nutrition during infancy and early childhood is essential to ensure the growth, health, and development of children to their full potential. Poor nutrition increases the risk of illness.....RECOMMENDED INFANT AND YOUNG CHILD FEEDINGPRACTICES: WHO and UNICEF's global recommendations for optimal infant feeding as set out in the Global Strategy are: exclusive breastfeeding for 6 months (180 days) (11); Exclusive breastfeeding means that an infant receives only breast milk from his or her mother or a wet nurse, or expressed breast milk, and no other liquids or solids, not even water, with the exception of oral rehydration solution, drops or syrups consisting of vitamins, minerals supplements or medicines (12).” WHO. *Infant and young child feeding: model chapter for textbooks for medical students and allied health professionals*. Geneva, World Health Organization, 2009, [\[https://www.who.int/nutrition/publications/infantfeeding/9789241597494.pdf\]](https://www.who.int/nutrition/publications/infantfeeding/9789241597494.pdf) rwasuwe kuwa 10/08/2020.

uwamutwise yaba adashobora kubona amashereka nta mpamvu yo gukomeza kubana nawe , ahubwo azahita ahabwa ababyeyi be aribo NA na MO.

III. ICYEMEZO CY' URUKIKO

[24] Rwemeje ko urubanza rwajuririwe arirwo RC 00168/2020/TB/ KICKI ruhindutse mu ngingo zarwo zose;

[25] Rutegetse ko amasezerano M.G washakanye na K.F bagiranye na N.A na M.O yo kwemererwa kubatwitira igi rizavamo umwana yubahirizwa uko yakabaye;

[26] Rutegetse ko umwana akimara kuvuka azandikwa ku babyeyi be aribo N.A na M.O;

[27] Rutegetse ko umwana uzavuka azabana na M.G washakanye na K.F bakabana mu gihe cy' amezi 6 akimara kuvuka;

[28] Ruvuze ko amagarama yatanzwe ahwanye n' ibyakozwe mu rubanza.

URUBANZA NSHINJACYAHA

UBUSHINJACYAHA v. MUGESERA

[Rwanda URUKIKO RW'UBUJURIRE – RP/GEN
00003/2019/CA (Rugabirwa, P.J, Kaliwabo na Tugireyezu, J.)
25 Nzeri 2020]

Itegeko Nshinga – Ubutegetsu bw'Ubucamanza – Ubwigenge bw'ubutegetsu bw'Ubucamanza – Ubutegetsu bw'Ubucamanza burigenga kuko butandukanye n'Ubutegetsu Nshingamategeko n'Ubutegetsu Nyubahirizategeko, kandi umurimo w'Ubucamanza, abacamanza bakurikiza amategeko, kandi bawukora mubwigenge kuko batajya bavugirwamo n'ubutegetsu cyanga ubuyobozi ubwo aribwo bwose – Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 140, igika cya 2; Itegeko N° 10/2013 ryo ku wa 08/03/2013 rigena Sitati y'Abacamanza n'abakozi b'Inkiko, ingingo ya 33, igika cya mbere n'icya 2.

Itegeko Nshinga – Uburenganzira bwo kunganirwa mu Rukiko – Ntawukwiriye kwitwaza Uburenganzira bwo kunganirwa kugira ngo adindize imigendekere myiza y'iburanisha n'inyungu z'ubutabera.

Ibyaha mpuzamahanga – Ikurikiranacyaha – Ibyaha mpuzamahanga ntibigombera kuba biri mu mategeko y'ibihugu kugira ngo bikurikiranwe kandi bihanwe kuko biba bisanzwe bibujijwe n'umuco mpuzamahanga, bityo amategeko ateganya ibyaha byibasiye inyako muntu ntakwiye gufatwa nk'ayashyizeho ibyaha bishya ahubwo yemeza ibyari bisanzwe biri mu muco mpuzamahanga.

Ibyaha mpuzamahanga – Ibyaha byibasiye inyoko muntu – Ibyaha by'ubugome n'ubunyamaswa ndengakamere – Ibyaha

by'ubugome n'ubunyamaswa ndengakamere cyangwa kuba ibyo byaha byakorewe abantu benshi nizo mpamvu zituma bifatwa nk'ibyaha byakorewe umuryango mpuzamahanga cyangwa byahonyanze indangagaciro za kimuntu.

Ibyaha mpuzamahanga – icyaha cyo gushishikariza abantu guukora jenocide – icyaha cyo gutoteza – icyaha cyo kubiba urwango – Iyo hamaze kugaragazwa icyaha cy'iremezo biba bitakiri ngombwa gufata nk'icyaha ibikorwa bitandukanye byatumye icyo cyaha gikorwa.

Amategako agenga ibimenyetso – Agaciro k'ubuhamya – Ubuhamya butanzwe nyuma y'igihe kinini bureberwa mu ireme ryabwo kabone n'iyi ababutanga baba bakoresha amagambo yabo bwite mu gusobanura ibyo biyumviye cyangwa ibyo babwiwe.

Incamake y'ikibazo: Mu Rukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibe, uregwa yakurikiranyweho ibyaha bitandukanye birimo: Gushishikariza abandi umugambi wa jenocide; Gucura no gutegura umugambi w'icyaha cya jenocide; Ubufatanyacyaha mugukora icyaha cya jenocide; Gutoteza nk'icyaha cyibasiye inyoko muntu; Kubiba urwango kubaturage ashingiye ku bwoko, inkomoko cyangwa idini. Ibi byaha aregwa bikaba bikomoka ku ijamba yavugiye muri mitingi y'ishyamba rya MRND yabereye mu cyahoze ari Perefegitura ya Gisenyi, Superefegitura ya Kabaya ku wa 22/11/1992, n'amagambo bivugwa ko yavugiye mu nama zitandukanye zabereye hirya no hino mu gihugu harimo amagambo. bivugwa ko yavugiye mu nama y'i Nyamyumba yo ku wa 06/07/1992. Urwo Rukiko rwaracye urubanza rwemeza ko ahamwe n'ibyaha bikurikira; icyaha cyo kuba icyitso cy'abakoze

jenocide kubera gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide, icyaha cyo gutoteza nk'icyaha cyibasiye inyoko muntu n'icyaha cyo kubiba urwango rushingiye ku bwoko, kandi rumuhanaguraho icyaha cy'ubwumvikane bugamije gukora jenocide n'icyo kuba icyitso cy'abakoze jenocide kubera gutanga amabwiriza n'imbunda, maze rumuhanisha igifungo cya burundu

Uregwa yajuririyeye urwo rubanza mu Rukiko rw'Ikirenga, ariko nyuma y'ivugurura ry'inkiko, ubwo bujirire bwoherejwe mu Rukiko rw'Ubujirire kugira ngo rubusuzume, akaba yarajuririyeye avuga ko Urukiko Rukuru rwakoze amakosa yo mu rwego rw'ibyabaye (erreur des faits) n'amakosa yo mu rwego rw'amategeko (erreur de Droit) kuko rwirengagije ko atagombaga gukurikiranwaho ibyaha aregwa kuko bivugwa ko byakozwe atakiri mu Rwanda kuko yari yarahungiyeye muri Canada mu mwaka wa 1992, ko rwemeje ko rudafite ububasha bwo kumuburanisha, ariko rubirengaho ruramuburanisha, ko rwirengagije ko yagombaga gufatwa nk'umwere kugeza igihe urubanza rwe ruzacibwa burundu (violation du principe de la présomption d'innocence), ko rwirengagije kumva abatangabuhamya bamushinjura, ko rwamuvukije uburenganzira yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda bwo kwiregura mu iburanisha n'ubwo gusubiza ku bihano yari yasabiwe n'Ubushinjacyaha kuko atari yunganiwe na Avoka, ko rwaciye urubanza hashingiwe ku itegeko ritariho kuko rwishe ihame ry'uko itegeko mpanabyaha ritajya risubira inyuma, ko rwamuhamije ibyaha hashingiwe kuri kasete itari umwimerere, ko rwamuhamije ibyaha hashingiwe kuri disikuru bivugwa ko yavugiye ku Kabaya iri kuri iyo kasete, rwirengagiza ko iyo rutayicagaguramo ibice ngo runayishyire muri "*contexte general*" yayo, rwari gusanga uwayivuze atarakoze icyaha kuko yasabaga ko hakorwa amatora mu

gihugu, kandi ko rwanirengagije ko atakoze icyaha kuko disikuru yavugiye hirya no hino mu gihugu, yise amahembe ane ya shitani (Discours de quatre cornes de satan) idashishikariza gukora jenocide, ko ahubwo ikubiyemo ubutumwa bwo kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi, ndetse inakubiyemo n'intwaro umurwanashyaka wa MRND yagombaga kugendana buri muni zirimo amatora, ubutwari n'urukundo, bityo agasaba ko yagirwa umwere.

Ubushinjacyaha buvuga ko ibyo uregwa avuga ko atakurikiranwaho ibyo byaha kuko byakozwe atakiri mu Rwanda, iyi mpamvu nta shingiro ifite kubera ko ibyaha akurikiranyweho byavuzwe haruguru byakozwe akiri mu Rwanda mu mwaka wa 1992, igihe yavugaga amagambo agize ibyaha aregwa.

Ku birebana nuko Urukiko rwavuzeko rudafite ububasha ariko rugakomeza rukamuburanisha, akaba nabyo ataribyo kubera ko Urukiko Rukuru rutavuze ko rudafite ububasha bwo kumuburanisha, ko ahubwo rwemeje ko rufite ububasha bwo kumuburanisha ku birebana n'ikirego yarezwe n'Ubushinjacyaha, ndetse ko rwasanze ikirego yarushyikirije ari ikirego kidateganyijwe mu mategeko y'u Rwanda kuko kitarebana n'ububasha bw'inkiko bushingiye ku kiburanwa, ku ifasi, ku gihe no ku muburanyi, ko kandi atari ikirego cyo kwihana abacamanza bw'urwo Urukiko kugira ngo bohereze urubanza rwe mu zindi nkiko z'u Rwanda.

Kwihame avuga ko Urukiko rwirengagije ko yagombaga gufatwa nk'umwere kugeza igihe urubanza rwe ruzacibwa burundu (violation du principe de la présomption d'innocence), Ubushinjacyaha buvuga ko ku bw'ibanze (*à titre principal*) iyo mpamvu takwagirwa kubera ko itari mu mbibi z'icyajuririwe bitewe n'uko itigeze iburanwaho ku rwego rwa mbere kuko

itagaragara mu nzitizi zasuzumwe n'urwo Rukiko nk'uko zivugwa muri kopi y'urubanza rujuririrwa. Bukomeza buvuga ko (*à titre subsidiaire*), nabwo nta shingiro ifite kubera ko nta kimenyetso yatanze kigaragaza ko amagambo yavuzwe n'Abayobozi, n'inyigisho zakozwe cyangwa «film » yerekanwe byavuzwe haruguru, byagize ingaruka ku rubanza rwajuririwe kuko atavuze ko byakozwe n'Urukiko Rukuru, ko ahubwo yivugiye gusa ko byakozwe n'abayobozi batandukanye, ibinyamakuru n'ama radio bitandukanye.

Ku yindi mpamvu y'uko yavukijwe uburenganzira yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda bwo kwiregura mu iburanisha n'ubwo gusubiza ku bihano yari yasabiwe kuko atari yunganiwe na Avoka, Ubushinjacyaha buvuga ko Urukiko Rukuru rwafashe icyemezo cyo gukomeza iburanisha atunganiwe kubera ko uregwa n'umwunganizi we bashakaga gutinza urubanza nkana ariko akaba ntacyo yashoboye kunenga icyo cyemezo. Bukomeza buvuga ko uregwa ataragize icyo avuga ku bihano yari yasabiwe, nabyo byatewe n'uko we n'umwunganira bagaragaje ubushake buke bwo kwitabira iburanisha, bituma Urukiko rusubika urubanza inshuro 13 zose mu gihe cy'amezi agera kuri atatu (3), ko rero nta kosa urwo Rukiko rwakoze kuko uregwa yahawe igihe gihagije cyo kugira ngo uburenganzira bwe bwubahirizwe ariko ntagikoreshe uko bikwiye, ko rero iyi mpamvu ye y'ubujurire nta shingiro yahabwa.

Ku byerekeranye n'impamvu ko Urukiko Rukuru rwirengagije kumva abatangabuhamya bashinjura uregwa, Ubushinjacyaha buvuga ko Urukiko rwasabye abaturanyi b'impande zombi gutanga imyirondoro y'abatangabuhamya babo, icyo bazatangaho ubuhamya, aho babarizwa n'uburyo buzakoreshe babazwa kandi Urukiko rwabyibukije inshuro nyinshi cyane,

kuko uregwa yavugaga ko afite abatangabuhamya bamushinjura atari yashoboye kubahiriza ibyo yasabwaga kugeza ubwo yahabwaga umunsi ntarengwa nawo ntiyawubahiriza, bityo kuba ataratanze imyirondoro y'abatangabuhamya avuga ko bari kuza kumushinjura atabiryoza Urukiko kuko ari we wivukije ubwo burenganzira.

Ku mpamvu yindi uregwa avuga ko Urukiko rwaciye urubanza hashingiwe ku itegeko ritariho kuko rwishe ihame ry'uko itegeko mpanabyaha ritajya risubira inyuma, Ubushinjacyaha buvuga ko nta shingiro ifite kubera ko Amasezerano Mpuzamahanga yerekeranye no gukumira no guhana icyaha cya jenocide, arondora ibikorwa bigize icyaha cya jenocide, akanavuga ibikorwa bihanwa, ko kuba u Rwanda rwarifashe ku ngingo irebana n'imihaniye bitagira ingaruka ku zindi ngingo zigize aya Masezerano, kandi ko ubwo u Rwanda rwashyiraga umukono ku Masezerano Mpuzamahanga akumira kandi ahana icyaha cya jenocide, icyo cyaha cyari giteganyijwe mu mategeko y'u Rwanda, bityo ibikorwa akurikiranyweho kuba yarakoze mu mwaka wa 1992, bikaba byari bisanzwe bigize icyaha cya jenocide hakurikijwe amategeko y'u Rwanda. Ubushinjacyaha buvuga kandi ko, icyaha cya jenocide, ari icyaha ndengakamere ku rwego Mpuzamahanga, ko u Rwanda rwashyizeho Itegeko rihana ibyaha by'itsembabwoko n'itsembatsemba byakozwe hagati y'itariki ya 01/10/1990 n'ya 31/12/1994, muri *“preamble”* y'iri Tegeko, Umushingamategeko akaba yarasobanuye ko mu mwaka wa 1975 u Rwanda rwashyize umukono ku Masezerano Mpuzamahanga akumira kandi ahana icyaha cya jenocide, bityo ko byari ngombwa gushyiraho itegeko rihana abakozwe ibikorwa bigize icyo cyaha, akaba ari iryo mu 1996.

Naho ku mpamvu y’uko uregwa yahamijwe ibyaha hashingiwe kuri disikuru bivugwa ko yavugiye ku Kabaya iri kuri kasete akavuga ko iyo kasete atari umwimerere, Ubushinjacyaha buvuga ko Urukiko rutakoze ikosa mu kwemeza ko kasete ikubiyemo disikuru uregwa yavugiye ku Kabaya, ari ikimenyetso gikwiye gushingirwaho muri uru rubanza kuko n’Urukiko rw’Ikirenga rwo muri Canada rwayishingiyeho mu rubanza rw’ubutegetsi igihe rwemezaga ko uregwa atemerewe gutura muri icyo gihugu kubera ibyaha akekweho nk’uko byanemejwe n’umuhanga wemeje ko ijambo riri kuri iyo kasete ritahinduwe, nyamara ko nta kimenyetso Mugesera yatanze kigaragaza ko iryo jambo ryahinduwe, uretse kubivuga gusa; Ubushinjacyaha buvuga kandi ko Urukiko rwamuhamije ibyaha hashingiwe kuri iyo kasete n’ibindi bimenyetso biri muri dosiye birimo imvugo z’abatangabuhamya bari muri mitingiri yo ku Kabaya biyumviye amagambo yahavugiye agize ibyaha aregwa, kandi ko ubuhamya bwabo bukwiye guhabwa agaciro kuko buhuye n’amagambo akubiye muri iyo kasete.

Incamateza y’icyemezo: 1. Ubutegetsi bw’Ubucamanza burigenga kuko butandukanye n’Ubutegetsi Nshingamategeko n’Ubutegetsi Nyubahirizategeko, kandi mu murimo w’Ubucamanza, abacamanza bakurikiza amategeko, kandi bawukora mu bwigenge, bityo iyi mpamvu y’ubujurire ko uregwa atarirwa urubanza n’inkiko z’u Rwanda ngo kuko afitanye ibibazo na Leta y’u Rwanda nta shingiro ifite.

2. Ntawukwiriye kwitwaza Uburenganzira bwo kunganirwa kugira ngo adindize imigendekere myiza y’iburanisha n’inyungu z’ubutabera, bityo iyi mpamvu y’ubujurire y’uko uregwa yimwe uburenganzira bwo kunganirwa mu Rukiko nta shingiro ifite.

3. Ibyaha mpuzamahanga ntibigombera kuba biri mu mategeko y'ibihugu kugira ngo bikurikiranwe kandi bihanwe kuko biba bisanzwe bibujijwe n'umuco mpuzamahanga, bityo amategeko ateganya ibyaha byibasiye inyakomuntu ntakwiye gufatwa nk'ayashyizeho ibyaha bishya ahubwo yemeza ibyari bisanzwe biri mu muco mpuzamahanga, bityo impamvu y'ubujurire y'uko ibyaha aregwa atabihanirwa kuko bitari biteganijwe mu mategeko y'igihugu igihe icyaha cyakorwaga nta shingiro ifite.

4. Ibyaha by'ubugome n'ubunyamaswa ndengakamere cyangwa kuba ibyo byaha byakorewe abantu benshi nizo mpamvu zituma bifatwa nk'ibyaha byakorewe umuryango mpuzamahanga cyangwa byahonyanze indangagaciro za kimuntu, bityo impamvu y'ubujurire y'uko uregwa yahanwe hirengagijwe ihame ry'uko amategeko ahana atakoresheya ku byaha byakozwe mbere y'uko ajyaho, nta shingiro ifite.

5. Iyo hamaze kugaragazwa icyaha cy'iremezo biba bitakiri ngombwa gufata nk'icyaha ibikorwa bitandukanye byatumye icyo cyaha gikorwa, bityo bikaba bitari bikwiye ko uregwa ahamwa na none n'icyaha cyo kubiba urwango rushingiye ku bwoko kandi urukiko rwanamuhamije icyaha cyo gushishikariza abantu gukora jenocide ndetse n'icyaha cyibasiye inyoko muntu cyo gutoteza.

6. Ubuhamya butanzwe nyuma y'igihe kinini bureberwa mu ireme ryabwo kabone n'iyi ababutanga baba bakoresheya amagambo yabo bwite mu gusobanura ibyo biyumviye cyangwa ibyo babwiye, bityo impamvu y'ubujurire ko uregwa yahamijwe ijambo ryavugiye ku Kabaya rushingiye ku buhamya butavugisha ukuri, nta shingiro ifite.

**Ubujurire nta shingiro bufite;
Amagarama y'urubanza aherereye kw'isanduku ya Leta.**

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 140 igika cya 2.

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaye ibyaha n'ibihano muri rusange, ingingo ya 94.

Itegeko – Ngenga N° 08/2013 ryo ku wa 16/06/2013 rihindura kandi ryuzuzanya Itegeko – Ngenga N° 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 5bis.

Itegeko - Ngenga N° 02/2013/OL ryo ku wa 16/06/2013 rihindura kandi ryuzuzanya Itegeko - Ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu (ryakoreshwaga icyo gihe), ingingo ya 18.

Itegeko - Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana (ryakoreshwaga icyo gihe), ingingo za 20, 83, 105, 120 agace ka 8, 121 n'ya 132 agace ka 3.

Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenocide, ingingo ya 3.

Statute of the International Criminal Tribunal for Rwanda, article 3.

Rome Statute of the International Criminal Court, article 7.2

Statut du Tribunal Militaire International de Nuremberg, article 6

Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, ingingo ya 18.

Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 2,3, 62, 5 na 66.

Itegeko -Teka N° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana (ryakoreshwaga icyo gihe) ingingo ya 393.

Itegeko – Teko 08/75 ryo ku wa 12/02/1975, iteganya icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide (ryakoreshwaga icyo gihe).

Imanza zifashishijwe:

Prosecutor v Ferdinand Nahimana et al., ICTR-99-52-A, rwaciwe na TPIR ku wa 28/11/2007.

Prosecutor v Muvunyi Tharcisse, ICTR-00-55A-T, 11th February 2010, para. 56, 58, 91-94.

Prosecutor v Ngeze Hassan, ICTR- 99-52-A

Prosecutor v Alfred Musema, ICTR-96-13-T rwaciwe na TPIR ku wa 27/01/2000, para 19, 20 na 21.

Prosecutor v Akayezu Jean – Paul, ICTR-96-4-T

Prosecutor v. Bikindi Simon, ICTR-2001-72-T, rwaciwe na TPIR kuwa 2/12/2008.

Prosecutor v Vujadin Popovic, ICTY-05-88-A

Mugesera v Canada (Minister of Citizenship and Immigration), Supreme Court of Canada, file N° 30025, para. 68.

Croatia v. Serbia, International Court of Justice, Judgment of 03/02/2015, para 87.

Mugesera Léon v Canada Urubanza N° 2005 S.C.R. 40, rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005.

Prosecutor v Ntakirutimana Jean Claude, RPA 0197/10/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 21/11/2014.

Inyandiko z'Abahanga zifashishijwe:

Stanton, G. H. (2013). 10 Stages of Genocide. Retrieved April 22, 2016, from Genocide watch net:

<http://www.genocidewatch.org/genocide/tenstagesofgenocide.html>, Raporo yakozwe na Sena y'u Rwanda yo mu mwaka wa 2019 ku miterere y'ihakana n'ipfobyabya jenoside yakorewe Abatutsi bibera mu mahanga n'ingamba zo kubirwanya, pp 29-33.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Nyuma y'ijambo ryavugiye muri mitingiri (*meeting*) y'ishyamba rya MRND¹ yabereye mu cyahoze ari Perefegitura ya Gisenyi, Superefegitura ya Kabaya ku wa 22/11/1992, n'amagambo bivugwa ko yavugiye mu nama zitandukanye zabereye hirya no hino mu gihugu harimo amagambo bivugwa ko yavugiye mu nama y'i Nyamyumba yo ku wa 06/07/1992, Ubushinjacyaha bwakurikiranyeho Mugesera Léon ibyaha byo guhungabanya umudendezo w'igihugu, kubiba urwango muri rubanda, n'icyaha cyo gushishikariza abayoboke b'ishyamba rya MRND kwica abatutsi, ariko ntabwo yafashwe kuko yari yarahungiyeye mu gihugu cya Canada, aho yaburanye imanza zirebana n'uburenganzira bwo gutura muri icyo gihugu kubera ibyaha yakekwagaho birimo gukangurira kwica no gukora jenoside, kubiba urwango n'ibyaha byibasiye inyoko muntu, ariko bigeze mu mwaka wa 2012, yimwa ubwo burenganzira, bituma yoherezwa kuburanira mu Rwanda.

¹ Muvoma Revolisiyoneri Ihanganira Demokarasi n'Amajyambere y'u Rwanda (Mouvement Républicain National pour le Développement et la Démocratie).

[2] Mugesera Léon agejejwe mu Rwanda, Ubushinjacyaha bwamureze mu Rukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi², kuba yarakoze ibyaha bitandukanye bikubiye mu kirego cyavuzwe haruguru.

[3] Igihe cy'iburanisha ry'urubanza, urwo Rukiko rwasuzumye inzitizi zitandukanye zabyukijwe na Mugesera Léon, maze rufata ibyemezo ku birebana no kugenera Mugesera Léon igihe, ibikoresho n'ibyangombwa kugira ngo abashe gutegura urubanza, ndetse no ku burenganzira bwo kunganirwa. Urukiko rwasuzumye kandi inzitizi irebana n'ibyaha Mugesera Léon, nk'uwoherejwe n'ikindi gihugu agomba gukurikiranwaho, hemezwa ko akurikiranwaho n'ibyaha byakozwe mbere ya 1994 kubera ko atoherejwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR). Rwanasuzumye kandi inzitizi yo guhagarika iburanisha kubera imishyikirano Mugesera Léon yavugaga ko arimo kugirana na Minisiteri y'Ubutabera ku birebana n'ubufasha buhabwa abunganira abaregwa batishoboye, urwo Rukiko rwemeza ko rutahagarika iburanisha kuko nta cyagaragazaga ko iyo mishyikirano ihari.

[4] Urwo Rukiko rwasuzumye kandi inzitizi yari yabyukijwe na Mugesera Léon ijyanye no guhagarika iburanisha kubera ubujurire bw'imanza zibanziriza izindi, rwemeza ko ubwo bujurire butahagarika iburanisha, kuko izo manza zijuririrwa hamwe n'urubanza mu mizi, ku birebana no kwimura iburanisha ry'urubanza ku mpamvu z'uburwayi,

² Muri uru rubanza, mu rwego rwo guhina amagambo, harakoreshwa Urukiko Rukuru mu kuvuga Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi

hemezwa ko hagomba kugaragazwa icyemezo cy'ikiruhuko cy'uburwayi gitanzwe n'umuganga. Urwo Rukiko rwafashe kandi icyemezo ku nzitizi yerekeranye no kwanga cyangwa kwemera bimwe mu bimenyetso bitangwa mu rubanza nshinjabyaha, aho Ubushinjacyaha bwashyikirije Urukiko Rukuru ari ryo Mugesera Léon yavugiye ku Kabaya ku wa 22/11/1992, no kuba hari ibitabo Mugesera Léon atakomeza kwifashisha mu rubanza, urwo Rukiko rwemeje ko gusuzuma no guha agaciro ibimenyetso bikorwa mu gihe cyo guca urubanza, ko kandi mu manza nshinjabyaha ibimenyetso byose bitabujijwe n'amategeko byemewe.

[5] Urukiko Rukuru rwasuzumye na none indi nzitizi yari yabyukijwe na Mugesera Léon yerekeranye n'uburenganzira bwo kuburanishwa n'umucamanza itegeko rigenera umuburanyi, hemezwa ko kuba umwe mu bacamanza batangiye urubanza yarashinzwe indi mirimo, inteko igahinduka, bitanyuranyije n'amategeko, ko no guhindura umucamanza watangiye urubanza bitavutsa Mugesera Léon uburenganzira bwo kuburanishwa n'umucamanza itegeko rimugenera kandi bidatuma urubanza rwongera gutangira bundi bushya kuko amategeko ateganya ko igihe umucamanza asimbuwe n'undi iburanisha rikomereza aho ryari rigeze.

[6] Urwo rukiko rwemeje kandi ko bamwe mu batangabuhamya barindirwa umutekano, hanakurwa ku rutonde rwemejwe n'urukiko bamwe mu batangabuhamya b'ubushinjacyaha ku mpamvu zinyuranye zirimo uburwayi, kutaboneka aho bari bavuze ko babarizwa, hanatashwa agaciro zimwe mu nyandiko mvugo zakozwe mu gihe cy'iperereza zitariho imikono. Urukiko rukuru rwemeje kandi ko kuba

mugesera léon adatanga ibisabwa kugira ngo abatangabuhamya bamushinjura bahamagazwe birimo imyirondoro yabo yuzuye, aho babarizwa n'icyo yifuza ko babazwaho, bitahagarika iburanisha ry'urubanza.

[7] Ku birebana n'urubanza mu mizi, Urukiko Rukuru rwaciye urubanza RP 0001/12/CCI ku wa 15/04/2016, rwemeza ko Mugesera Léon ahamwa n'icyaha cyo kuba icyitso cy'abakoze jenocide kubera gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide, icyaha cyo gutoteza nk'icyaha cyibasiye inyoko muntu n'icyaha cyo kubiba urwango rushingiye ku bwoko, rwemeza kandi ko adahamwa n'icyaha cy'ubwumvikane bugamije gukora jenocide n'icyo kuba icyitso cy'abakoze jenocide kubera gutanga amabwiriza n'imbunda, rumuhanisha igifungo cya burundu.

[8] Mugesera Léon yajuririye urwo rubanza mu Rukiko rw'Ikirenga avuga ko Urukiko Rukuru rwakoze amakosa yo mu rwego rw'ibyabaye (*erreur des faits*) n'amakosa yo mu rwego rw'amategeko (*erreur de droit*) kuko rwirengagije ko atagombaga gukurikiranwaho ibyaha aregwa kuko bivugwa ko byakozwe atakiri mu Rwanda kuko yari yarahungiyeye muri Canada mu mwaka wa 1992, ko rwemeje ko rudafite ububasha bwo kumuburanisha, ariko rubirengaho rumuburanisha, ko rwirengagije ko yagombaga gufatwa nk'umwere kugeza igihe urubanza rwe ruzacibwa burundu (*violation du principe de la présomption d'innocence*), ko rwirengagije kumva abatangabuhamya bamushinjura, ko rwamuvukije uburenganzira yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda bwo kwiregura mu iburanisha ryo ku wa 14/10/2015 n'ubwo gusubiza ku bihano yari yasabiwe n'Ubushinjacyaha kuko atari yunganiwe na Avoka, ko rwaciye

urubanza hashingiwe ku itegeko ritariho kuko rwishe ihame ry'uko itegeko mpanabyaha ritajya risubira inyuma (*violation du principe de la non rétroactivité de la loi pénale*), ko rwamuhamije ibyaha hashingiwe kuri kasete itari umwimerere (*original*), ko rwamuhamije ibyaha hashingiwe kuri disikuru bivugwa ko yavugiye ku Kabaya iri kuri iyo kasete, rwirengagiza ko iyo rutayicagaguramo ibice (*charcuter*) ngo runayishyire muri « *contexte général* » yayo, rwari gusanga uwayivuze atarakoze icyaha kuko yasabaga ko hakorwa amatora mu gihugu, kandi ko rwanirengagije ko atakozwe icyaha kuko disikuru yavugiye hirya no hino mu gihugu, yise amahembe ane ya shitani (*Discours de quatre cornes de satan*) idashishikariza gukora jenocide, ko ahubwo ikubiyemo ubutumwa bwo kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi, ndetse inakubiyemo n'intwari umurwanshyaka wa MRND yagombaga kugendana buri munsu zirimu amatora, ubutwari n'urukundo. Asaba ko yagirwa umwere kuko nta cyaha yakozwe, ariko nyuma y'ivugurura ry'ububasha bw'inkiko, ubwo bujirire bwoherejwe mu Rukiko rw'Ubujurire hashingiwe ku ngingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko³ kugira ngo rubusuzume, bwandikwa kuri RPA/GEN 00003/2019/CA.

[9] Urubanza rwaburanishijwe mu ruhamu inshuro cumi n'ebyiri (12), Mugesera Léon yunganiwe na Me Rudakemwa Jean – Félix, naho Ubushinjacyaha buhagarariwe na

³ Ingingo ya 105 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, iteganya ko «Guhera igihe iri tegeko ritangiriye gukurikizwa, uretse imanza zatangiye kuburanishwa, imanza zose zitakiri mu bubasha bw'Urukiko zaregewe, zohererezwa Urukiko rubifitiye ububasha hakurikijwe ibiteganywa n'iri tegeko

Dushimimana Claudine afatanyije na Habineza Jean - Damascène, Abashinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

A. KU BIREBANA N'IBIBAZO BY'IBANZE N'UBURENGANZIRA MUGESERA Léon AVUGA KO YAVUKIJWE:

1. Kumenya niba Mugesera Léon atakurikiranwaho ibyaha bifitanye isano na jenocide n'ibyaha byibasiye inyoko muntu kuko byakozwe mu mwaka wa 1994 atakiri mu Rwanda.

[10] Mugesera Léon avuga ko Ubushinjacyaha butagombaga kumukurikiranaho ibyaha bifitanye isano na jenosoide byavuzwe haruguru birimo icyaha cyo gushishikariza gukora jenocide kubera ko igihe jenocide yakorwaga mu Rwanda mu mwaka wa 1994 na Leta y'icyo gihe, atari mu Rwanda, ko ahubwo yari yarahungiyeye mu gihugu cya Canada mu mwaka wa 1992 kugira ngo arokore ubuzima bwe, ariko ko atakoraga politiki muri Canada kubera ko nta Shyamba rya Politiki na rimwe yigeze ajyamo agamije kugaruka ku butegetsi mu Rwanda, ko ahubwo yigishaga muri Kaminuza nk'uko byemejwe na Me Stanislas Mbonampeka wari Minisitiri w'Ubutabera icyo gihe. Avuga kandi ko atakurikiranwaho icyaha cya jenocide kubera ko atigeze agira uruhare mu myivumbagatanyo (*troubles*) yabaye mu cyahoze ari Perefegitura ya Gisenyi, Ruhengeri na Byumba kuko Guverinoma y'u Rwanda yari yaramwirukanye ku wa 03/02/1993.

[11] Avuga rero ko hashingiwe ku ngingo ya 111 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko gushidikanya birengera ushinjwa, no ku ngingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi⁴, akwiye kugirwa umwere kubera ko Ubushinjacyaha butatanze ikimenyetso kigaragaza ko yari mu Rwanda mu mwaka wa 1994, igihe jenoside yakorewe Abatutsi yakorwaga.

[12] Uhagarariye Ubushinjacyaha avuga ko iyi mpamvu y'ubujurire ya Mugesera Léon nta shingiro ifite kubera ko ibyaha akurikiranyweho byavuzwe haruguru byakozwe akiri mu Rwanda mu mwaka wa 1992, igihe yavugaga amagambo agize ibyaha aregwa.

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[13] Dosiye y'urubanza igaragaza ko Mugesera Léon yatanze inzitizi mu Rukiko Rukuru avuga ko rudafite ububasha bwo kumuburanisha ku byerekeranye n'ibyaha akurikiranyweho byavuzwe haruguru, kubera ko bitari mu bubasha bw'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR)⁵

⁴ Ingingo ya 12 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, iteganya ko Urega agomba kugaragaza ibimenyetso by'ibyo aregera. Iyo abibuze, uwarezwe aratsinda

⁵ Ingingo ya mbere ya Sitati ya "TPIR", iteganya ko Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rufite ububasha bwo kuburanisha ibyaha bibangamira amategeko mpuzamahanga (*violations graves du droit international humanitaire*) byakozwe kuva ku wa 01/01/1994 kugera ku wa 31/12/1994

bitewe n'uko bivugwa ko byakozwe mbere y'umwaka wa 1994, ni ukuvuga ku wa 22/11/1992, ku birebana n'ijambo bivugwa ko yavugiye ku Kabaya, no ku wa 06/07/1992, ku birebana n'inama bivugwa ko yakoresheje i Nyamyumba.

[14] Urukiko Rukuru rwafashe icyemezo kuri iyo nzitizi ku wa 24/12/2012, rwemeza ko inzitizi yatanzwe na Mugesera Léon ijyanye n'ububasha bw'urwo Rukiko bushingiye ku gihe (*compétence ratione temporis*) nta shingiro ifite, kuko rufite ububasha bwo kumuburanisha kubera ko atoherejwe na « TPIR », no kuba amasezerano yabaye hagati ya Leta y'u Rwanda na Canada atavugaga ko azakurikiranwaho gusa icyaha cya jenocide n'ibindi byaha bibangamiye amategeko mpuzamahanga (*violations graves du droit international humanitaire*) byakozwe kuva ku wa 01/01/1994 kugeza ku wa 31/12/1994.

[15] Dosiye y'urubanza igaragaza kandi ko imbere y'uru Rukiko, Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, bavuze ko atakurikiranwaho ibyaha aregwa kubera ko igihe byakorwaga mu mwaka wa 1994, atari mu Rwanda, ko ahubwo yari yarahungiyeye muri Canada, aho yakoraga akazi ko kwigisha muri Kaminuza.

[16] Urukiko rurasanga, kuba amategeko y'u Rwanda ateganyaga ko Inkiko zo mu Rwanda zifite ububasha bwo kuburanisha icyaha cya jenocide n'ibyaha byibasiye inyoko muntu byakozwe kuva ku wa 01/10/1990 kugeza ku wa 31/12/1994, kandi ibyaha Mugesera Léon akurikiranyweho n'Ubushinjacyaha byavuzwe haruguru bikaba bivugwa ko byakozwe ku wa 22/11/1992, bigaragara ko nta kosa Urukiko Rukuru rwakoze ubwo rwemezaga ko rufite ububasha bwo kumuburanisha kuri ibyo byaha kuko bivugwa ko byakozwe

akiri mu Rwanda ku wa 22/11/1992, ni ukuvuga mu gihe giteganywa n'ayo mategeko⁶.

[17] Urukiko rurasanga ariko, ikibazo cyo kumenya niba Mugesera Léon yarakoze cyangwa atarakoze ibyo byaha kigomba gusuzumwa mu bindi bice bigize uru rubanza.

2. Kumenya niba Urukiko Rukuru rwaremeje ko rudafite ububasha bwo kuburanisha Mugesera Léon, ariko rubirengaho ruramuburanisha.

[18] Mugesera Léon avuga ko yasabye Urukiko Rukuru, ko rutaburanisha urubanza RP 0001/12/CCI aburana n'Ubushinjacyaha kuko rutazamucira urubanza ruboneye kubera ko ari umwanzi wa Leta y'u Rwanda kuko yamaganye ingabo za Uganda igihe zateraga u Rwanda mu mwaka wa 1990, ariko ko ku wa 25/04/2013, urwo Rukiko rwafashe icyemezo, rwemeza ko nta bubasha rufite bwo kumuburanisha, nyamara ntirwahagarika iburanisha ngo runamugaragarize urundi Rukiko rufite ububasha bwo kumuburanisha nk'uko biteganywa n'ingingo ya 166 y'Itegeko N° 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ko ahubwo rwemeje ko iburanisha rizakomeza ku wa 29/04/2013.

⁶ Itegeko Ngenga N° 08/96 ryo ku wa 30 Kanama 1996 ryujijwe n'Itegeko Ngenga N° 40/2000 ryo ku wa 26/01/2001 rishyiraho Inkiko Gacaca nk'uko ryavanweho rinasimburwa n'Itegeko Ngenga N° 16/2004 ryo ku wa 19/06/2004 rishyiraho Inkiko Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenocide n'ibindi byaha byibasiye inyokomuntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994 nk'uko ryahinduwe kandi ryujijwe n'Itegeko Ngenga N° 13/2008 ryo ku wa 19/05/2008, ndetse n'Itegeko Ngenga N° 02/2013/OL ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko Ngenga N° 51/2008 ryo ku wa 51/2008 ryo ku wa 09/09/2008

[19] Avuga kandi ko n'ubwo ntacyo apfa n'abacamanza b'u Rwanda, ariko asanga Inkiko z'u Rwanda ziramutse zimuciriye urubanza kandi Urwego rw'Ubucamanza ari rumwe mu nzego za Leta y'u Rwanda abereye umwanzi, Leta y'u Rwanda yaba ihindutse umucamanza n'umuburanyi mu rubanza rumwe, kandi ibyo binyuranyije n'ingingo ya 140, igika cya 4, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, iteganya ihame ry'uko ntawe ushobora kwicira urubanza ubwe (*Nemo debet esse judex in propia causa*).

[20] Asobanura ko ibimenyetso bigaragaza ko ari umwanzi wa Leta y'u Rwanda ku buryo itamucira urubanza ruboneye birimo urutonde (liste) rwakozwe muri Mutarama 1994, runasinywaho na Kanyarengwe, wahoze ari Perezida wa FPR⁷, wavuze ko Mugesera Léon ari umwanzi wa FPR kuko atavugaga rumwe (*opposant*) nayo, ndetse ko Gérard Gahima, wahoze ari Umunshinjacyaha Mukuru, yanditse inyandiko ivuga ko atariwe wakoze urwo rutonde (liste) ku giti cye, ko ahubwo rwakozwe ku mpamvu za Politiki, ko Me Stanislas Mbonampeka wari Minisitiri w'Ubutabera nawe yavuze ko Mugesera Léon ari umwanzi wa FPR, binashimangirwa na Uwizeyimana Evode wari wanditse ibaruwa ivuga ko Mugesera Léon adashobora kubona ubutabera mu Rwanda, ndetse ko n'Umuryango w'Abibumbye wari wararegewe n'Abavoka bo muri Canada, utishimiye icyemezo cyafashwe n'icyo gihugu cyo kumwohereza mu Rwanda.

[21] Me Rudakemwa Jean Félix, umwunganira, avuga ko ubusanzwe Inkiko z'u Rwanda zifite ububasha bwo kuburanisha ikirego cyari cyatanze na Mugesera Léon cy'uko ataburanishwa n'Inkiko z'u Rwanda kandi ari umwanzi wa Leta

⁷ Front Patriotique Rwandais

y'u Rwanda, ariko asanga Urukiko Rukuru rwarakoze amakosa kuko rwemeje ko nta bubasha rufite bwo kugisuzuma, ariko rubirengaho rukomeza kuburanisha urubanza RP 0001/12/CCI rujuririrwa, kandi rwaragombaga kugaragaza urundi Rukiko rufite ububasha bwo kuburanisha icyo kirego nk'uko biteganywa n'amategeko. Asaba uru Rukiko gutegeka ko uru rubanza rwoherezwa mu Rukiko Rukuru kugira ngo ruvuge Urukiko rufite ububasha bwo kuburanisha icyo kirego nk'uko biteganywa n'amategeko.

[22] Uhagarariye Ubushinjacyaha avuga ko Urukiko Rukuru rutavuze ko rudafite ububasha bwo kuburanisha Mugesera Léon ngo rukomeze rumuburanishe, ko ahubwo mu cyemezo cyarwo cyo ku wa 25/04/2013, rwemeje ko rufite ububasha bwo kumuburanisha ku birebana n'ikirego yarezwe n'Ubushinjacyaha runagaragaza ingingo z'amategeko rwashingiyeho rufata icyo cyemezo arimo Itegeko Nshinga rya Repubulika y'u Rwanda n'Itegeko - Ngenga rigena ububasha bw'Inkiko, ndetse ko rwasanze ikirego yarushyikirije ari ikirego kidateganyijwe mu mategeko y'u Rwanda kuko kitarebana n'ububasha bw'inkiko bushingiye ku kiburanwa, ku ifasi, ku gihe no ku muburanyi, ko kandi atari ikirego cyo kwihana abacamanza bw'urwo Rukiko kugira ngo bohereze urubanza rwe mu zindi Nkiko z'u Rwanda.

[23] Avuga kandi ko kuba nta tegeko riha Urukiko Rukuru ububasha bwo kohereza Mugesera Léon mu bindi bihugu kugira ngo bimuburanishe, bivuze ko urwo Rukiko rutari rufite inshingano zo kumugaragariza urundi Rukiko rufite ububasha bwo gusuzuma ikirego cyihariye (*requête*) yarushyikirije cyavuzwe haruguru cyangwa bwo kuburanisha urubanza rwe.

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[24] Ingingo ya 14 y'Itegeko - Ngenga N° 02/2013/OL ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko - Ngenga N° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi ryujijwe kugeza ubu ryakurikizwaga igihe Mugesera Léon yaburaniraga mu Rukiko Rukuru, iteganya ko Urugereko rwihariye rw'Urukiko Rukuru rufite ububasha bwo kuburanisha ku rwego rwa mbere: icyaha cya jenocide n'ibyaha byibasiye inyoko-muntu.

[25] Inyandiko itanga ikirego iri muri dosiye, igaragaza ko Ubushinjacyaha bwareze Mugesera Léon mu Rukiko Rukuru busaba ko rwamuburanisha ku birebana n'ibyaha bitandukanye birimo icyaha cya jenocide, icyaha cyibasiye inyoko-muntu n'icyaha cyo kubiba urwango mu baturage, icyo kirego cyandikwa kuri RP 0001/12/CCI.

[26] Dosiye y'urubanza igaragaza ko igihe cy'iburanisha ry'urwo rubanza, Mugesera Léon yarushyikirije ikibazo cy'uko urubanza RP 0001/12/CCI rutaburanishwa n'inkiko z'u Rwanda kubera ko yabaye umwanzi wa Leta y'u Rwanda, ko ahubwo rwakoherezwa mu bindi bihugu kugira ngo acirwe urubanza rw'indakemwa kandi rutabaganye (*procès juste et équitable*).

[27] Mu cyemezo cyarwo cyo ku wa 25/04/2013, Urukiko Rukuru rwasobanuye ko ubusanzwe rufite ububasha bwo kuburanisha urubanza rw'Ubushinjacyaha na Mugesera Léon, ariko ko yarushyikirije ikibazo cyihariye kuko atari ikibazo cyihana abacamanza, kandi ko kidasaba kohereza urwo rubanza mu zindi nkiko z'u Rwanda, ndetse ko kitanagamije kugaragaza

ko urwo Rukiko rudafite ububasha bushingiye ku ifasi, ku kiburanwa, ku gihe no ku muburanyi, bwo kuburanisha urwo rubanza, ko ahubwo kirusaba kwemeza ko urwo rubanza rutaburanishwa n'inkiko z'u Rwanda kubera ko Urwego rw'Ubutabera ari rumwe mu nzego zigize Leta y'u Rwanda bafitanye ikibazo ku buryo yumva itamucira urubanza rw'indakemwa, maze rwemeza ko nta bubasha rufite bwo gusuzuma ikibazo cya Mugesera Léon kirebana n'uko urwo rubanza rutaburanishwa n'Inkiko za Leta y'u Rwanda kubera ko nta tegeko na rimwe⁸, riha urwo Rukiko ububasha bwo gusuzuma ikibazo kirusaba kohereza urwo rubanza mu nkiko zitari iz'u Rwanda.

[28] Urukiko rurasanga, mu cyemezo cyarwo cyavuzwe haruguru, Urukiko Rukuru rutarigeze rwemeza ko rudafite ububasha bwo kuburanisha urubanza RP 0001/12/CCI rwa Mugesera Léon ku byerekeranye n'ibyaha aregwa, ko ahubwo icyo rwemeje rudafitiye ububasha, ari ugusuzuma ikibazo yarushyikirije kirebana n'uko urwo rubanza rwakoherezwa mu

⁸Urukiko Rukuru rwasobanuye ko muri ayo mategeko harimo Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, mu ngingo yaryo ya 149 ; Itegeko - Ngenga N° 11/2007 ryo ku wa 16/03/2007 rigena kwimurira muri Repubulika y'u Rwanda imanza zivuye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda n'izivuye mu bindi bihugu nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko - Ngenga n° 03/2009 ryo ku wa 26/05/2009, mu ngingo yaryo ya 2; Itegeko - Ngenga n° 51/2008 ryo ku wa 09/09/2008 rigena imiterere, imikorere n'ububasha by'inkiko nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko - Ngenga n° 04/2009/OL ryo ku wa 29/07/2009, mu ngingo zaryo za 89, 90, 120, 171, 176 na 178 ; n'Itegeko n° 13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe kandi rikuzuzwa n'Itegeko n° 20/2006 ryo ku wa 22/04/2004, mu ngingo yaryo ya 154.

zindi Nkiko zitari iza Leta y'u Rwanda nk'uko byasobanuwe haruguru.

[29] Urukiko rurasanga ariko, Urukiko Rukuru rutaragombaga kwemeza ko rudafite ububasha bwo gusuzuma ikibazo cya Mugesera Léon cyavuzwe haruguru, ko ahubwo rwagombaga kwemeza ko nta shingiro gifite kubera ko atarugaragarije uburyo ikirego cyatanzwe n'Ubushinjacyaha cyavuzwe haruguru, cyavanwa mu bubasha bw'Inkiko z'u Rwanda, kandi ibyaha aregwa biri mu bubasha bw'Urukiko Rukuru nk'uko biteganywa n'ingingo ya 14 y'Itegeko - Ngenga ryavuzwe haruguru.

[30] Urukiko rurasanga, kuba Inkiko z'u Rwanda zifite ububasha bwo kuburanisha urubanza RP 0001/12/CCI rw'Ubushinjacyaha na Mugesera Léon nk'uko n'Urukiko Rukuru rwabibonye, bigaragara ko urwo rubanza rujuririrwa rutateshwa agaciro kuko rwaciwe n'Urukiko rubifitiye ububasha, bivuze ko Mugesera Léon atakoherezwa kuburanira mu gihugu cya Canada nk'uko abyifuza.

[31] Byongeye kandi, Urukiko rurasanga imvugo ya Mugesera Léon y'uko Inkiko z'u Rwanda zitamucira urubanza ruboneye kubera ko afitanye ikibazo na Leta y'u Rwanda nta shingiro ifite, kubera ko hakurikijwe ibiteganywa n'ingingo ya 140, igika cya 2, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, Ubutegetsu bw'Ubucamanza bwigenga kuko butandukanye n'Ubutegetsu Nshingamategeko n'Ubutegetsu Nyubahirizategeko, kandi ko mu murimo wabo w'ubucamanza, abacamanza bakurikiza itegeko, kandi bawukora mu bwigenge busesuye kuko batajya bavugirwamo n'ubutegetsu cyangwa ubuyobozi ubwo ari bwo bwose nk'uko biteganywa n'ingingo ya 33, igika cya mbere

n'icya 2, y'Itegeko N° 10/2013 ryo ku wa 08/03/2013 rigena Sitati y'Abacamanza n'abakozi b'Inkiko, bityo iyi mpamvu y'ubujurire ya Mugesera Léon ikaba nta shingiro ifite.

3. Kumenya niba ihame ry'uko Mugesera Léon agomba gufatwa nk'umwere mu gihe urubanza rutaracibwa burundu (principe de la présomption d'innocence) ryaraburanweho ku rwego rwa mbere ku buryo yarigira nk'impamvu y'ubujurire muri uru rubanza.

[32] Mugesera Léon avuga ko ihame ry'uko umuntu agomba gufatwa nk'umwere mu gihe icyaha aregwa kitaramuhama burundu (*principe de la présomption d'innocence*) riteganywa n'ingingo ya 19 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, ingingo ya 7, igika cya mbere, b, y'Amasezerano Nyafurika yerekeye uburenganzira bw'ikiremhamuntu n'ubw'abaturage, ingingo ya 11 y'Itangazo mpuzamahanga ryerekeye uburenganzira bw'ikiremhamuntu, n'ingingo ya 14, igika cya 2, y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki, ariko ko iryo hame ritubahirijwe n'Abayobozi batandukanye, ama Radio n'ibinyamakuru bitandukanye kubera ko barangije kumucira urubanza burundu nk'uwakoze icyaha cya jenocide mbere y'uko Urukiko rumucira urubanza, kandi hakurikijwe iryo hame, agomba gufatwa nk'umwere kugeza igihe urubanza rwe ruzacibwa burundu.

[33] Asobanura ko mu mwaka wa 2016 na 2019, Abayobozi batandukanye batanze ibiganiro na za « *déclarations* » zitandukanye bavuga ko Mugesera Léon yakoze icyaha cya jenocide kubera ko muri « *discours* » yavugiye ku Kabaya ngo yavuze ko Abatutsi bagomba kwicwa bakajugunywa muri Nyabarongo kugira ngo basubire iwabo muri Etiyopiya, aho

bavuye, ko muri abo Bayobozi harimo Umuyobozi wa Gereza ya Mpanga afungiyemo kuko yamwerekanye igihe yerekanaga « film » y'uware Perezida Habyarimana Juvénal mu mwaka wa 2016, Senateri Tito Rutaremara, Madamu Mureshyankwano, wari Umuyobozi w'Intara y'Amajyepfo, Madamu Mukasonga Solange, wari Umuyobozi w'Akarere ka Nyarugenge, Umuyobozi w'Akarere ka Nyanza, Umuyobozi wa Komisiyo y'Igihugu yo kurwanya Jenoside, na Bwana Ngoga Martin wahoze ari Umunshinjacyaha Mukuru, kandi ko Radio Rwanda na KT Radio zagiye zivuga izina rye muri bene ibyo biganiryo, ndetse ko n'izina rye ryagaragajwe ku rutonde rw'abakekwaho icyaha cya jenoside n'ubwo Gérard Gahima wari Umushinjacyaha Mukuru yavuze ko urwo rutonde rwakozwe ku mpamvu za politiki. Avuga kandi ko ku Rwibutso rwa Jenoside ruri ku Gisozi hari za disikuru ze, ndetse ko bajya bavugaga izina rye mu nyigisho Abarimu bajya baha abanyeshuri babo.

[34] Avuga ko mu rubanza ICTR-2005-89-R 11 bis rw'Ubushinjacyaha na Munyagishari Bernard rwaciye ku wa 06/06/2012, Urukiko Mpanabyaha Mpuzamahanga rwashyirweho u Rwanda, mu bika byarwo bya 47, 50, 51, 54 na 55, rwashimangiye ihame ry'uko umuntu agomba gufatwa nk'umwere igihe atarahamwa n'icyaha burundu, ndetse ko n'Umwarimu wigisha muri Kaminuza yo muri Canada yavuze ko iyo ibitangazamakuru byikomye umuntu bikamuhindura umunyabyaha, icyo gihe ihame ry'uko umuntu ari umwere riba ritakiriho, bivuze ko n'umucamanza ashobora kubishingiraho akemeza ko uwo muntu yakozwe icyaha koko.

[35] Yongeraho ko kuba Urukiko Rukuru rwarirengagije ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*), uru Rukiko rukwiye gutesha agaciro

urubanza rwajuririwe, rukamugira umwere, cyangwa rukamwohereza mu gihugu cya Canada kugira ngo kizamuburanishe kuko kitamwirukanye nk'umuntu utaragombaga kuba ku butaka bwacyo, ko ahubwo icyo gihugu cyamwohereje mu Rwanda hashingiwe ku masezerano yo ku wa 18/02/2009, akubiyemo za « *garanties* » u Rwanda rwahaye Canada ko ruzamucira urubanza rw'indakemwa, ariko ko atariko byagenze kuko Abayobozi batandukanye n'ibinyamakuru bitandukanye byo mu Rwanda byamufashe nk'uwakoze jenocide kandi atararangiza kuburana. Ikindi kandi amagambo bamuvuzeho yavuzwe haruguru akaba yaragize « *influence* » ku Bacamanza b'Urukiko Rukuru kuko bamuhamije icyaha bashingiye kuri « *paragraphes* » enye (4) ziri muri disikuru yo ku Kabaya.

[36] Urukiko rwabajije Mugesera Léon niba ikibazo kijyanye n'uko yagombaga gufatwa nk'umwere cyaraburanweho ku rwego rwa mbere ku buryo agomba kukigira impamvu y'ubujurire, avuga ko icyo kibazo cyaburanweho agitangira kuburana n'Umushinjacyaha Mukuru, Bwana Ngoga Martin, kuko yabanje gusomerwa « *paragraphe* » ya 18 ivuga ku ihame ry'uko agomba gufatwa nk'umwere, ndetse ko yanamwandikiye ibaruwa amubaza iby'iryo hame anaha Madamu Mukasonga Solange na Komisiyo y'Igihugu yo kurwanya Jenocide kopi y'iyi baruwa, bivuze ko afite ibimenyetso by'icyo aregera, uretse ko atabona ibimenyetso biri ku Rwibutso rwa Jenocide ruri ku Gisozi n'iby'inyigisho zagiye zitangwa hirya no hino mu gihugu zivuga izina rye nk'uwakoze jenocide.

[37] Me Rudakemwa Jean - Félix, umwunganira, avuga ko ihame ry'uko umuntu agomba gufatwa nk'umwere nk'uko

ryavuzwe mu rubanza rwa Munyagishari Bernard rwavuzwe haruguru, rituma umuntu atarenganywa, ko kuba Mugesera Léon yarangirijwe iryo hame nk'uko byasobanuwe haruguru, akwiye gusubizwa mu gihugu cya Canada kugira ngo kimuburanishe. Avuga kandi ko icyo kibazo cyaburanweho mu Rukiko Rukuru, ko kandi bibaye ngombwa, bazashyikiriza uru Rukiko inyandikomvugo zigaragaza aho cyaburanwe, uretse ko Urukiko Rukuru, rutagishyize muri kopi y'urubanza.

[38] Uhagarariye Ubushinjacyaha avuga ko ku bw'ibanze (*à titre principal*), impamvu y'ubujurire ya Mugesera Léon y'uko Urukiko Rukuru rwirengagije ihame ry'uko agomba gufatwa nk'umwere, itakwagirwa kubera ko itari mu mbibi z'icyajuririwe bitewe n'uko itigeze iburanwaho ku rwego rwa mbere kuko itagaragara mu nzitizi zasuzumwe n'urwo Rukiko nk'uko zivugwa muri kopi y'urubanza rujuririrwa.

[39] Avuga kandi ko « *à titre subsidiaire* », hashingiwe ku ngingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko “Buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana”, iyi mpamvu y'ubujurire ya Mugesera Léon nta shingiro ifite kubera ko nta kimenyetso yatanze kigaragaza ko amagambo yavuzwe n'Abayobozi bavuzwe haruguru, n'inyigisho zakozwe cyangwa « *film* » yerekanwe byavuzwe haruguru, byagize ingaruka ku rubanza rwajuririwe kuko atavuze ko byakozwe n'Urukiko Rukuru, ko ahubwo yivugiye gusa ko byakozwe n'Abayobozi batandukanye, ibinyamakuru n'ama Radio bitandukanye.

[40] Yongeraho ko uru Rukiko rutashingira ku rubanza rwa Munyagishari Bernard rwavuzwe haruguru kubera ko uyu yoherejwe mu Rwanda n'Urukiko Mpanabyaha Mpuzamahanga

rwashyiriweho u Rwanda, ariko ko Mugesera Léon atoherejwe n’urwo Rukiko, ko ahubwo yoherejwe n’igihugu cya Canada ubwo cyamwirukanaga ku butaka bwacyo.

UKO URUKIKO RUBIBONA

[41] Ingingo ya 18, igika cya mbere, y’Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y’u Rwanda, iteganya ko “Umushinjacyaha n’uregwa bafite bombi uburenganzira bwo kujuririra icyemezo icyo ari cyo cyose cyafashwe n’Urukiko Rukuru mu gihe hari imwe cyangwa zose mu mpamvu zikurikira: 1° ukwibeshya gushingiye ku ngingo y’itegeko gutuma icyo cyemezo gita agaciro; 2° ukwibeshya gushingiye ku byabaye kwatumye urubanza rucibwa nabi”.

[42] Mu manza nyinshi zaciwe n’Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR), n’Urugereko rw’Ubujurire rwa TPIY zirimo urubanza ICTR –96-13-A rwaciwe ku wa 16/11/2001, haburana Porokireri na Alfred Musema, urwo Rukiko rwasobanuye ko «Ujurira atagomba kubyutsa mu bujurire ingingo yagombye kuba yatanze ku rwego rwa mbere kuko ubujurire butashyiriweho kuburanisha urubanza bundi bushya nk’uko byemejwe n’Urugereko rw’Ubujurire hakurikijwe ibiteganywa na Sitati yarwo⁹, bivuze ko umuburanyi ufite ikibazo runaka agomba kugaragariza Urugereko rwa Mbere rw’Iremezo inzitizi ziriho hakiri kare kugira ngo urwo rugereko rurebe niba hari ibisubizo bitangwa

⁹ Urubanza rwa Akayezu, inyandiko y’urubanza mu bujurire, igika cya 177, ahandukuwe imyanzuro y’Urugereko rw’Ubujurire rwa TPIY mu cyemezo rwafashe mu rubanza rwa Tadic, igika cya 41, no mu nyandiko y’urubanza rwa Furundzija yo mu bujurire, igika cya 40

n'Amategeko na Sitati kuri ibyo bibazo, ariko ko uwo muburanyi adashobora kwinumira, ngo nyuma y'aho azasabe kuburana bundi bushya mu bujurire¹⁰. Muri urwo rubanza, Urugereko rw'Ubujurire rwibukije umwanzuro rwafashe mu rubanza rwa Kambanda Jean, aho rwemeje ko kuba ujurira nta kibazo yabyukije imbere y'Urugereko rwa Mbere rw'Iremezo, bisobanura ko yivukije uburenganzira bwe bwo gutanga icyo kibazo nk'impamvu y'ubujurire yemewe, keretse haramutse hariho impamvu zihariye zabimubujije. Ko kubera ibivugwa haruguru, no kubera ko nta mpamvu zihariye ziriho zatumye rusuzuma iyi mpamvu y'ubujurire, Urugereko rw'Ubujurire rwemeje ko nta shingiro ifite»¹¹.

[43] Urukiko rurasanga, mu Rukiko Rukuru, Mugesera Léon atarigeze atanga inzitizi y'uko ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*) ritubahirijwe n'Abayobozi batandukanye cyangwa na rubanda, kuko iyo nzitizi itagaragara mu nzitizi yabyukije zafashweho ibyemezo n'urwo Rukiko nk'uko zigaragarira mu bika bya 6, 7 na 8, by'urubanza RP 0001/12/CCI rujuririrwa nk'uko byasobanuwe haruguru.

[44] Urukiko rurasanga, ahubwo igihe urwo Rukiko rwaburanishaga inzitizi yerekeranye no kumenya niba urubanza RP 0001/12/CCI rugomba kuburanishwa ku wa 19/11/2012 cyangwa gusubikwa, aribwo Mugesera Léon yavuze ko

¹⁰ Urubanza rwa Tadic, inyandiko y'urubanza mu bujurire, igika cya 55

¹¹ Urubanza rwa Kambanda, inyandiko y'urubanza mu bujurire, igika cya 25, n'inyandiko y'urubanza mu bujurire mu rubanza rwa Akayezu, igika cya 113. Ihame ryo kwivutsa uburenganzira ryemejwe kenshi n'Urugereko rw'Ubujurire rwa TPIY mu manza zikurikira: Urubanza rwa Celebici, inyandiko y'urubanza mu bujurire, igika cya 640; urubanza rwa Furundzija, inyandiko y'urubanza mu bujurire, igika cya 174.

impamvu Umushinjacyaha Mukuru, Bwana Ngoga Martin, n'Abashinjacyaha ayoboye, bamuhatira kuburana kuri iyo tariki, ari uko batahaye agaciro ihame ry'uko agomba gufatwa nk'umwere, ko ahubwo barangije kumucira urubanza burundu nk'uko bigaragazwa n'amagambo Mugesera Léon yasomye mu kinyamakuru kimwe, maze asaba ko Ubushinjacyaha bwakubahiriza iryo hame kugeza igihe urubanza rwe RP 0001/12/CCI ruciriwe burundu. Urwo Rukiko rwafashe icyemezo ku wa 20/11/2012, rwemeza ko iburanisha ry'urwo rubanza ryimuriwe ku wa 17/12/2012, ariko rukaba rutarafashe icyemezo kuri icyo cyifuzo cya Mugesera Léon cy'uko agomba gufatwa nk'umwere kugeza aciriwe urubanza burundu kuko rutigeze rugifata nk'ikibazo yarushyikirije rwagombaga gufatira icyemezo.

[45] Urukiko rurasanga, ku bw'ibanze (*à titre principal*), kuba Mugesera Léon atarigeze ashyikiriza Urukiko Rukuru, ikibazo cy'uko ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*) ryangijwe n'itangazamakuru n'Abayobozi b'Inzego zitandukanye bavuzwe haruguru, nk'ikibazo cyihariye rwagombaga gusuzuma no gufatira umwanzuro, bigaragara ko atagitanga nk'impamvu y'ubujurire muri uru rubanza kuko ntacyo anenga imikirize y'urubanza rujuririrwa, cyane cyane ko atagaragarije uru Rukiko impamvu yihariye yatumye adatanga icyo kibazo ku rwego rwa mbere.

[46] « *A titre subsidiaire* », n'ubwo uru Rukiko rwafata ko Mugesera Léon yagejeje ku Rukiko Rukuru ikibazo cyerekeranye n'uko ihame ry'uko agomba gufatwa nk'umwere (*principe de la présomption d'innocence*) ryangijwe n'Ubushinjacyaha cyangwa itangazamakuru (*médias*)

n'Abayobozi b'Inzego zitandukanye bavuzwe haruguru, ariko rwirengagiza kugifataho icyemezo, ntacyo byamumarira muri uru rubanza, kuko atagaragaza ingaruka amagambo yavuzwe n'izo Nzego yagize ku mikirize y'urubanza rujuririrwa rwaciwe n'Urukiko Rukuru.

[47] Byongeye kandi, Urukiko rurasanga imvugo ya Mugesera Léon y'uko Inkiko z'u Rwanda zitamucira urubanza rw'indakemwa kubera ko ihame ry'uko agomba gufatwa nk'umwere ryangijwe n'amagambo yavuzwe n'Inzego zitandukanye zavuzwe haruguru nta shingiro ifite, kubera ko nk'uko byasobanuwe haruguru, Abacamanza bigenga mu murimo wabo wo guca imanza kuko bazica mu bwigenge busesuye hashingiwe ku mategeko¹² no ku bimenyetso biri muri dosiye, ariko ko bataca urubanza hashingiwe ku magambo yavuzwe na rubanda (*public*) nk'uko Mugesera Léon ashaka kubyumvikanisha. Ibyo byashimangiye kandi n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, mu rubanza ICTR -2005-89- R 11 bis rwaciye ku wa 06/06/2012, Porokireri aburana na Bernard Munyagishari, aho rwasobanuye ko ibyatangajwe n'intangazamakuru (*médias*) n'Abayobozi batandukanye, bitazagira ingaruka ku burenganzira bw'uregwa kubera ko Abacamanza (b'u Rwanda) bafite ubumenyi n'inararibonye bihagije ku buryo bafite ubushobozi bwo gutandukanya amagambo yavuzwe n'Abayobozi b'Inzego za Leta n'ibimenyetso bashyikirijwe igihe cy'iburanisha. Rwasobanuye kandi ko rufite icyizere cy'uko nta kizatuma

¹² Ingingo ya 33, igika cya 2, y'Itegeko N° 10/2013 ryo ku wa 08/03/2013 rigena Sitati y'Abacamanza n'Abakozi b'Inkiko, iteganya ko Mu murimo wabo w'ubucamanza, abacamanza bakurikiza itegeko, kandi bakawukora mu bwigenge batavugirwamo n'ubutegetsi cyangwa ubuyobozi ubwo ari bwo bwose

ihame rivugwa na Bernard Munyagishari ry'uko agomba gufatwa nk'umwere ritubahirizwa¹³, maze rufata icyemezo (*ordonnance de renvoi*) kimwohereza kuza kuburanira mu Rwanda.

[48] Hashingiwe ku bisobanuro bivuzwe haruguru, Urukiko rurasanga, kuba Inkiko z'u Rwanda zifite ububasha bwo kuburanisha Mugesera Léon kuko zifite ubushobozi bwo kumucira urubanza ruboneye hashingiwe ku bimenyetso biri muri dosiye nk'uko byasobanuwe haruguru, bigaragara ko icyifuzo cye cy'uko agomba kujya kuburanira mu gihugu cya Canada nta shingiro gifite.

4. Kumenya niba Urukiko Rukuru rwaravukije Mugesera Léon uburenganzira bwo kunganirwa mu iburanisha ryo ku wa 14/10/2015 n'ubwo gusubiza ku bihano yari yasabiwe n'Ubushinjacyaha.

[49] Mugesera Léon avuga ko yavukijwe uburenganzira bwe bwo kunganirwa mu iburanisha ryo ku wa 14/10/2015 mu Rukiko Rukuru kuko rwafashe icyemezo cyo gupfundikira iburanisha, rukanavuga ko urubanza ruzasomwa ku wa 15/04/2016 kandi rubibona neza ko atunganiwe, ko rero rwirengagije ibiteganywa n'amategeko harimo Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu

¹³ *S'agissant des commentaires des médias et des autorités publiques, la Chambre est d'avis que les juges sont des professionnels qualifiés et expérimentés, capables de dissocier les déclarations de responsables publics des éléments de preuve présentés à l'audience. En conséquences, ces commentaires ne portent pas, en eux-mêmes, atteinte au droit de l'accusé. (...) A ce stade, la Chambre ne s'inquiète pas du non-respect éventuel de la présomption d'innocence de l'accusé, Affaire ICTR -2005-89- R 11 bis, Procureur c. Bernard Munyagishari, rendue par le TPIR, en date du 06/06/2012, para. 54 na 55*

2015, mu ngingo yaryo ya 18, ivuga ko kwiregura no kunganirwa ari uburenganzira budahungabanywa ahantu hose, n'iya 19, igika cya mbere, ivuga ko umuntu agomba gucirwa urubanza iyo rubereye mu ruhame kandi yahawe uburyo bwose bwo kunganirwa. Avuga kandi ko Urukiko Rukuru rutubahirije ingingo ya 150 na 153 z'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryo muri 2013 ryavugaga ko urubanza rugomba kubera mu ruhame no mu bwisanzure hubahirizwa uburenganzira bwo kunganirwa nk'uko binateganywa n'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki u Rwanda rwashyizeho umukono.

[50] Mugesera Léon asaba ko, kuba urubanza RP 0001/12/CCI rwaraciwe n'Urukiko Rukuru hirengagijwe uburenganzira bwe bw'ibanze bwo kunganirwa, ku bw'iyi mpamvu rugomba guteshwa agaciro nk'uko byemejwe mu rubanza RPA 0043/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 18/11/2011, haburana Ubushinjacyaha na Pte Habufite Vincent, aho rwasanze umuburanyi yaravukijwe uburenganzira bwo kunganirwa, maze rutegeka ko urwo rubanza rugomba kongera gusubirwamo n'Urukiko rw'Ikirenga, ariko we akaba asanga, aho kugira ngo urubanza rwe ruburanishwe n'Urukiko rw'Ubujurire, rwasubira mu Rukiko Rukuru, rukaburanishwa n'indi nteko kugira ngo atavutswa urwego rw'ubujurire.

[51] Avuga kandi ko yavukijwe uburenganzira bwe bwo kugira icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, ubwo Urukiko Rukuru rwapfundikiraga mu buryo buhutiye iburanisha adahawe umwanya wo kugira icyo abivugaho nk'uko itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryariho ryabiteganyaga, ku bw'ibyo akaba asaba kurenganurwa.

[52] Ubushinjacyaha buvuga ko Urukiko Rukuru rwafashe icyemezo cyo gukomeza iburanisha Mugesera Léon atunganiwe kubera ko uyu na Me Rudakemwa Jean – Félix wamwunganiraga bashakaga gutinza urubanza nkana ariko akaba ntacyo yashoboye kunenga icyo cyemezo cy’Urukiko Rukuru, aho rwasobanuye ko Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, batinza iburanisha ku bwende, kugeza igihe Urukiko Rukuru rwafatiye icyemezo ku itariki ya 14/10/2015 cyo gukomeza iburanisha Mugesera Léon atunganiwe kubera ko rwasanze kuba Me Rudakemwa Jean – Félix atitabira iburanisha bitabangamiye uburenganzira bwa Mugesera Léon bwo kunganirwa no kwiregura.

[53] Ubushinjacyaha buvuga kandi ko kuba Mugesera Léon ataragize icyo avuga ku bihano yari yasabiwe n’Ubushinjacyaha, nabyo byatewe n’uko we na Me Rudakemwa Jean – Félix, wamwunganiraga, bagaragaje ubushake buke bwo kwitabira iburanisha, bituma Urukiko Rukuru rusubika urubanza inshuro 13 zose mu gihe cy’amezi agera kuri atatu (3), ko rero nta kosa urwo Rukiko rwakoze kuko Mugesera Léon yahawe igihe gihagije cyo kugira ngo uburenganzira bwe bwubahirizwe ariko ntakikoreshe uko bikwiye, ko rero iyi mpamvu ye y’ubujurire nta shingiro yahabwa.

UKO URUKIKO RUBIBONA

[54] Dosiye igaragaza ko mu gika cya 6 cy’urubanza rwajuririwe, Urukiko Rukuru rwafashe icyemezo ku wa 14/10/2015 mu rubanza rubanziriza urundi ku birebana n’uburenganzira bwa Mugesera Léon bwo kunganirwa, maze ruvuga ko uburenganzira bwe bwo kunganirwa butagomba kuba

uburyo bwo kudindiza imikorere n'imigendekere myiza y'ubutabera.

[55] Dosiye igaragaza kandi ko amaburanisha yagiye yimurwa kuva urubanza rwatangira kuburanishwa ku wa 21/09/2012, maze bigeze mu iburanisha ryo ku wa 23/07/2015, Mugesera Léon amenyeshwa ko mu iburanisha rizakurikiraho azanzura ku rubanza rwe, akagira n'icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, ariko ku wa 30/07/2015, yitabye atunganiwe kubera ko Me Rudakemwa Jean – Félix, umwunganira, yanditse avuga ko arwaye, maze iburanisha ryimurirwa ku wa 03/08/2015, kuri uwo munsu nabwo Me Rudakemwa Jean – Félix ntiyitaba nta n'impamvu yagaragaje yatumye atitaba, iburanisha ryimurirwa ku wa 07/09/2015, uwo munsu na none iburanisha ryimurirwa ku wa 10/09/2015 bitewe n'uko Me Rudakemwa Jean – Félix yari yohereje icyemezo cya muganga kimuha ikiruhuko kigera ku wa 20/09/2015, maze Urukiko ruvuga ko rugiye gusuzuma ibirebana n'ibyo byemezo bya muganga bihora bigaragazwa (*repos médical*).

[56] Ku wa 10/09/2015, Mugesera Léon yongeye kwitaba atunganiwe, maze Urukiko Rukuru rumaze gukora iperereza, rusanga icyemezo Me Rudakemwa Jean – Félix ashingiraho asaba ikiruhuko cy'uburwayi yaragisabye mu rwego rwo gutinza urubanza¹⁴, ariko ku bw'imigendekere myiza y'ubutabera, Urukiko rufata icyemezo cy'uko iburanisha rizakomeza ku wa 15/09/2015. Me Rudakemwa Jean – Félix yandikiye Urukiko Rukuru avuga ko rutagombaga gukomeza iburanisha rwirengagije icyo cyemezo kimwemerera ikiruhuko

¹⁴ Reba icyemezo cyo ku wa 10/09/2015 ku bijyanye n'isubikwa ry'urubanza kubera ikiruhuko cy'uburwayi cyahawe Me Rudakemwa Jean- Félix (côtes 4415 -4416)

cy'uburwayi kigera ku wa 20/09/2015, avuga ko hirengagijwe uburenganzira bwa Mugesera Léon bwo kunganirwa no kwiregura buteganywa n'ingingo ya 25 y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki hamwe n'ingingo ya 18, igika cya 3, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryavuzwe haruguru.

[57] Ku wa 15/09/2015, Mugesera Léon yitabye yunganiwe na Me Rudakemwa Jean – Félix, ariko uyu avuga ko akirwaye, ko adashobora kuburana, ko ahubwo yitabye gusa kugira ngo asobanure ibirebana n'icyemezo cya muganga kimuha ikiruhuko cy'uburwayi, maze Urukiko Rukuru rushingiye ku ngingo ya 15 igika cya 2, y'Itegeko N° 21/2012 ryo ku wa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegets, iteganya igihano ku muburanyi wese utinza iburanisha ry'urubanza ku bushake, ruhanisha Me Rudakemwa Jean – Félix ihazabu y'amafaranga 500.000 Frw, kubera ko rwasanze Mugesera Léon na Me Rudakemwa Jean – Félix bagamije gutinza urubanza, bityo iburanisha ryimurirwa ku wa 21/09/2015 kugira ngo Mugesera Léon azaze gutanga umwanzuro ku rubanza.

[58] Ku itariki ya 21/09/2015, Mugesera Léon yitabye Urukiko yunganiwe na Me Rudakemwa Jean – Félix, maze asaba ko urubanza rusubikwa kubera ko arwaye, ariko Urukiko rufata icyemezo cyo gukomeza iburanisha kubera ko nta cyemezo cya muganga kimuha ikiruhuko yarugaragarije, yemera gukomeza kuburana ariko asaba na none ko Urukiko Rukuru rwategereza ko Urukiko rw'Ikirenga rufata icyemezo ku bujuririre yarugejejeho burebana n'umutangabuhamya yifuzaga

ko yabazwa, Urukiko Rukuru ruvuga ko ubwo bujuriye butahagarika iburanisha rushingiye ku biteganywa n'ingingo ya 1¹⁵ hamwe n'iya 162, igika cya 2, z'Itegeko N° 21/2012 ryo ku wa 14/06/2012 rigenga imiburanishirize y'imanza z'imbonezamubano, iteganya ko kujuririra imanza zibanziriza izindi bikorwa gusa iyo urubanza rw'iremezo rwaciwe kandi bigakorera rimwe (...), maze na Me Rudakemwa Jean – Félix avuga ko adashobora kugira icyo avuga ku bihano uwo yunganira yasabiwe kubera ko atabonye umwanya wo kwicarana nawe kuko ikiruhuko cye cy'uburwayi cyakurikiwe n'ikiruhuko cy'abacamanza, iburanisha ryimurirwa ku wa 22/09/2015 kugira ngo hazasuzumwe niba icyifuzo cya Mugesera Léon cyo guhabwa igihe cyo kwanzura gifite ishingiro.

[59] Ku wa 22/09/2015, Urukiko Rukuru rwasanze n'ubwo ingingo Mugesera Léon na Me Rudakemwa Jean – Félix bashingiragaho basaba ko bahabwa igihe cyo gutegura umwanzuro zidafite ishingiro, Mugesera Léon agomba kongererwa umwanya wo gutegura urubanza, iburanisha ryimurirwa ku wa 28/09/2015, uwo munsu ugeze, Urukiko Rukuru runatanga ingengabihe y'iburanisha igaragaza ko urubanza ruzakomeza kuburanishwa ku wa 29/09/2015, ku wa 01/10/2015, ku wa 05/10/2015 no ku wa 06/10/2015.

¹⁵ Urukiko Rukuru rwavuze ko ibivugwa mu ngingo ya 162 y'Itegeko n° 21/2012 ryo ku wa 14/06/2012 rigenga imiburanishirize y'imanza z'imbonezamubano bigomba gushingirwaho hakurikijwe ibiteganywa n'ingingo ya 1 y'iryo Tegeko n° 21/2012 ryo ku wa 14/06/2012, zivuga ko iri tegeko ari naryo rigenga imiburanishirize y'izindi manza mu gihe nta yandi mategeko yihariye agenga iyo miburanishirize kubera ko itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ntacyo rivuga ku manza zibanziriza izindi.

[60] Ku itariki ya 29/09/2015, Mugesera Léon yitabye atunganiwe avuga ko arwaye, naho Me Rudakemwa Jean – Félix wamwunganiraga, mu ibaruwa yanditse avuga ko atazagaruka mu rubanza imishyikirano arimo na Minisiteri y’Ubutabera ku byerekeranye n’ubufasha mu by’amategako (aide légale) itararangira, maze mu iburanisha ryo ku wa 30/09/2015, Urukiko rufata icyemezo cyo kwimurira iburanisha ku wa 05/10/2015 ruhamagazamo Minisiteri y’Ubutabera ndetse runasaba Me Rudakemwa Jean – Félix kwitabira iburanisha, kuri uwo munsu hitaba Ubushinjacyaha, Minisiteri y’Ubutabera ihagarariwe na Me Umwari Marie Claire hamwe na Me Mbonera Théophile, naho Mugesera Léon yitaba yunganiwe na Me Rudakemwa Jean – Félix. Urukiko rumaze kumva ibisobanuro batanga ku kibazo kirebana n’ubufasha bukenewe ku birebana no kunganira Mugesera Léon, rwasanze nta mishyikirano iri hagati ya Minisiteri y’Ubutabera n’uwunganira Mugesera Léon, ahubwo atarubahirije ibisabwa kugira ngo ahabwe ubufasha mu bwunganizi mu by’amategako, rwemeza ko urubanza ruzakomeza ku wa 12/10/2015.

[61] Ku wa 12/10/2015, Mugesera Léon yitabye atunganiwe kandi bigaragara ko Me Rudakemwa Jean – Félix, umwunganira, yasinye ku cyemezo kimenyesha umunsu iburanisha ryimuriweho, maze Urukiko rushingiye ku ngingo ya 15 y’Itegeko ryerekeye imiburanishirize y’imanza z’imbenezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, ruhanisha Me Rudakemwa Jean – Félix ihazabu mbenezamubano ya 500.000 Frw kubera gutinza urubanza nkana, urubanza rwimurirwa ku wa 14/10/2015 kugira ngo Urukiko ruzemeze niba iburanisha rigomba gukomeza, ariko na none kuri uwo munsu urubanza rwari rwimuriweho, Mugesera Léon yitaba atunganiwe, maze Urukiko rufata icyemezo cy’uko

iburanisha rigomba gukomeza kubera ko ukutitabira iburanisha kwa Me Rudakemwa Jean – Félix kutabangamiye uburenganzira bwo kunganirwa no kwiregura bya Mugesera Léon mu gihe yunganiwe mu yindi myiregure ye yose.

[62] Urukiko rw'Ubujurire rurasanga n'ubwo uregwa afite uburenganzira bwo kunganirwa nk'uko biteganywa n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu mwaka wa 2015¹⁶, no mu ngingo ya 14, d, y'Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano na politiki u Rwanda rwashyizeho umukono ku wa 12/02/1975¹⁷, ubu burenganzira ariko ntibugomba kuba uburyo bwo kudindiza imikorere n'imigendekere myiza y'ubutabera, kuko kuwa ku wa 23/07/2015, ubwo Mugesera Léon yasabwaga kwanzura mu rubanza ngo anagire icyo avuga ku bihano yari yasabiwe n'Ubushinjacyaha, urubanza rwasubitswe inshuro 13 zose ku mpamvu zimuturutseho n'umwunganizi we Me Rudakemwa Jean – Félix nk'uko zagiye zisobanurwa haruguru, inyinshi zikaba zari zigamiye gutinza urubanza, ndetse Me Rudakemwa

¹⁶ Kwiregura no kunganirwa ni uburenganzira budahungabanywa mu bihe byose, ahantu hose, mu nzego zose z'ubutegetsi, iz'ubucamanza n'izindi zose zifata ibyemezo.

¹⁷ Umuntu wese ukurikiranyweho icyaha afite uburenganzira bwo kuburanishwa ahibereye no kwiregura ubwe cyangwa kuburanirwa n'umwunganizi yihitiyemo, yaba atamufite akamenyeshwa ko afite uburenganzira bwo kumugira. Kubera inyungu z'ubutabera ashobora kumuhabwa ku buntu igihe adafite uburyo bwo kumuhemba: *"Toute personne accusée d'une infraction pénale a droit, en pleine égalité, au moins aux garanties suivantes [...] à être présente au procès et à se défendre elle-même ou à avoir l'assistance d'un défenseur de son choix ; si elle n'a pas de défenseur, à être informée de son droit d'en avoir un, et, chaque fois que l'intérêt de la justice l'exige, à se voir attribuer d'office un défenseur, sans frais, si elle n'a pas les moyens de le rémunérer[....]"*.

Jean – Félix akaba yaragiye abihanirwa nk’uko nabyo byagaragajwe, nyamara ntahindure imyitwarire ye, bityo uru Rukiko rukaba rusanga Urukiko Rukuru ntakosa rwakoze, ubwo ku wa 14/10/2015, rwafataga icyemezo cyo gukomeza iburanisha Mugesera Léon atunganiwe, kuko umwunganizi we yari yamenyeshejwe iburanisha ryo ku wa 12/10/2015, ariko uwo munsu ntiyitaba ari nabwo iburanisha ryongeraga gusubikwa rigashyirwa ku wa 14/10/2015, nabwo ntiyitaba, icyemezo cyafashwe n’Urukiko Rukuru kikaba kitafatwa nk’icyavukije Mugesera Léon uburenganzira bwe bwo bwo kunganirwa no kwiregura ku bihano yasabiwe n’Ubushinjacyaha nk’uko abivuga, kubera ko uburenganzira bwe butagombaga kudindiza imikorere n’imigendekere myiza y’ubutabera nk’uko bimaze kuvugwa

[63] Urukiko rurasanga icyemezo nk’iki cyaranafashwe n’Urukiko rw’Ikirenga mu rubanza RPA 0197/10/CS rwaciwe ku wa 21/11/2014, haburana Ubushinjacyaha na Ntakirutimana Jean Claude, aho rwasanze Ntakirutimana Jean Claude ataravukijwe uburenganzira bwo kunganirwa kuko hashingiwe ku myitwarire ye na Avoka we bagaragaje umwete muke kugira ngo urubanza ruburanishwe nyuma yo gusubikwa inshuro 13 zose, bityo rukemeza ko uburenganzira bwo kwiregura butagomba kwitiranywa no kubangamira uburenganzira bw’abandi, ndetse no kudindiza imikorere n’imigendekere myiza y’inzego z’ubutabera¹⁸; iki gitekerezo kikaba kandi gihura n’ibyemejwe n’Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rw’Ubushinjacyaha na Alfred Musema, aho rwasobanuye ko imyitwarire y’uwunganira Alfred Musema irimo kutaboneka mu iburanisha no kudakorana

¹⁸ Urubanza RPA 0197/10/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 21/11/2014, haburana Ubushinjacyaha na Ntakirutimana Jean Claude.

neza n'Urukiko (*manque de coopération*) ibangamira imigendekere myiza y'iburanisha n'inyungu z'ubutabera, runavuga ko ku rwego urubanza rwari rugezeho rwo kuburana avuga ko yemera icyaha cyangwa atacyemera umwunganizi we adahari, bitabangamiye uburenganzira bwo kunganirwa, ko aramutse yanze kugira icyo avuga kubera ko umwunganira adahari urukiko ruzafata ko aburana atemera icyaha¹⁹.

[64] Urukiko rurasanga kandi, kuba Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, bashingira ku rubanza RPA 0043/09/CS rw'Ubushinjacyaha na Pte Habufite Vincent rwaciwe n'Urukiko rw'ikirenga ku wa 18/11/2011, bagasaba ko urubanza RP 0001/12/CCI rwaciwe n'Urukiko Rukuru ruteshwa agaciro kubera ko rwirengagije uburenganzira bwe bw'ibanze bwo kunganirwa ahabwa n'amategeko bidafite ishingiro, kubera ko mu rubanza rwa Pte Habufite Vincent, Urukiko rw'Ikirenga²⁰ rwatesheje agaciro urubanza rwaciwe n'Urukiko Rukuru rwa Gisirikare kubera ko urwo Rukiko rwakoze ikosa ryo kwima Pte Habufite Vincent uburenganzira bwo gushaka umwunganira, bityo Urukiko rw'Ikirenga rutesha agaciro urwo rubanza, maze rusuzuma bundi bushya imiburanire ye ijyanye n'icyaha Pte Habufite Vincent yari akurikiranyweho, nyamara muri uru rubanza ho Mugesera Léon akaba ataravukijwe uburenganzira bwe bwo kunganirwa, ahubwo ari we n'umwunganizi we bakomeje kubangamira imigendekere myiza y'iburanisha n'inyungu z'ubutabera nk'uko byasobanuwe haruguru.

¹⁹ Case n° ICTR-96-13-T, Porokireri vs Alfred Musema rwaciwe na TPIR ku wa 27/01/2000, mu bika bya 19, 20 na 21.

²⁰ Icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri, 2012, n° 13, pp. 15-23.

[65] Urukiko rurasanga, na none imvugo ya Mugesera Léon y’uko yavukijwe uburengazira bwe bwo kugira icyo avuga ku bihano yari yasabiwe n’Ubushinjacyaha, ubwo Urukiko Rukuru rwapfundikiraga mu buryo buhutiye iburanisha adahawe umwanya wo kugira icyo abivugaho nta shingiro ifite, kuko nk’uko byasobanuwe haruguru, Me Rudakemwa Jean – Félix, wamwunganiraga, yakomeje kubura mu maburanisha yo ku wa 13/07/2015, ku wa 30/07/2015, ku wa 03/08/2015 ku wa 07/09/2015, ku wa 10/09/2015, ku wa 29/09/2015, ku wa 30/09/2015, ku wa 06/10/2015, no ku wa 12/10/2015, kugeza igihe Urukiko Rukuru rwafatiye icyemezo ku wa 14/10/2015 cyo gukomeza iburanisha Mugesera Léon atunganiwe, kubera ko kuba Me Rudakemwa Jean – Félix ataritabiraga iburanisha bitabangamiye uburenganzira bwa Mugesera Léon bwo kunganirwa no kwiregura. Uru Rukiko narwo rukaba rusanga ari we ubwe wanze gukoresha uwo mwanya yari yahawe kugira ngo agire icyo avuga ku bihano yari yasabiwe n’Ubushinjacyaha.

[66] Hakurikijwe ibisobanuro bitanzwe haruguru, Urukiko rw’Ubujurire rurasanga impamvu y’ubujurire yatanzwe na mugesera Léon y’uko Urukiko Rukuru rwamuvukije uburenganzira bwe bwo kunganirwa mu iburanisha ryo ku wa 14/10/2015 n’ubwo gusubiza ku bihano yari yasabiwe n’Ubushinjacyaha nta shingiro ifite.

5. Kumenya niba Urukiko Rukuru rwarishe ihame ry’uko itegeko rihana ridashobora gukurikizwa ku bikorwa byabaye mbere y’uko rijyaho.

[67] Mugesera Léon, yunganiwe na Me Rudakemwa Jean - Félix, mu mwanzuro we kimwe no mu miburanire ye, avuga ko Urukiko Rukuru rwakoze ikosa ryo gushingira ku ngingo ya

mbere y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenocide, nyamara ngo iyi ngingo itarebana n'ibihano, kuko mu Itegeko - Teko ryo ku wa 12/02/1975, u Rwanda rwemeje ko ayo Masezerano, ari mu mategeko yarwo, ariko rwifata ku bijyanye n'ingingo yayo ya 9 irebana n'ibihano, bityo ko icyaha cya jenocide yakorewe abatutsi muri 1994 kitahanwa hashingiwe kuri ayo Masezerano Mpuzamahanga.

[68] Mugesera Léon avuga kandi ko Urukiko Rukuru rwashingiye ku Itegeko - Ngenga N° 16/2004 ryo ku wa 19/06/2004 rigenga imiterere, imikorere n'ububasha by'Inkiko Gacaca kimwe n'Itegeko - Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ibyaha, kandi ayo mategeko yarashyizweho nyuma y'uko ibyaha ashinjwa bikozwe, ibyo ngo bikaba binyuranyije n'ihame ry'uko itegeko mpanabyaha ridashobora kwifashishwa mu guhana icyaha cyakozwe mbere y'uko rijyaho, ko ibyo binyuranyije n'igika cya 6 cy'ingingo ya 130 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015.

[69] Ubushinjacyaha buvuga ko iyi mpamvu y'ubujurire ya Mugesera Léon nta shingiro ifite kubera ko Amasezerano Mpuzamahanga yo ku wa 9/04/1948 yerekeranye no gukumira no guhana icyaha cya jenocide, mu ngingo yayo ya 2 arondora ibikorwa bigize icyaha cya jenocide, naho mu ngingo yayo ya 3 akavuga ibikorwa bihanwa, ko kuba u Rwanda rwarifashe ku ngingo ya 9 irebana n'imihanyire bitagira ingaruka ku zindi ngingo zigize aya Masezerano. Buvuga kandi ko, kuva mu mwaka wa 1975, ubwo u Rwanda rwashyiraga umukono ku Masezerano Mpuzamahanga akumira kandi ahana jenocide,

icyaha cya jenocide giteganyijwe mu mategeko y'u Rwanda, bityo ibikorwa Mugesera Léon akurikiranyweho kuba yarakoze mu mwaka wa 1992, bikaba byari bisanzwe bigize icyaha cya jenocide hakurikijwe amategeko y'u Rwanda.

[70] Ubushinjacyaha buvuga ko, icyaha cya jenocide, ari icyaha ndengakamere ku rwego Mpuzamahanga, ko u Rwanda rwashyizeho Itegeko - Ngenga N° 08/1996 ryo ku wa 30/08/1996 rihana ibyaha by'itsembabwoko n'itsembatsemba byakozwe hagati y'itariki ya 01/10/1990 n'iya 31/12/1994, muri « *préambule* » y'iri Tegeko, Umushingamategeko akaba yarasobanuye ko mu mwaka wa 1975 u Rwanda rwashyize umukono ku Masezerano Mpuzamahanga akumira kandi ahana icyaha cya jenocide, bityo ko byari ngombwa gushyiraho itegeko rihana abakoze ibikorwa bigize iki cyaha, akaba ari iryo mu 1996.

UKO URUKIKO RUBIBONA

a) Ku bijyanye n'icyaha cyo gushishikariza gukora jenocide.

[71] Urukiko rurasanga icyaha cyo gushishikariza gukora jenocide Mugesera Léon akurikiranyweho ari kimwe mu bikorwa bya jenocide biteganywa mu ngingo ya III, agace ka c) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeye gukumira no guhana icyaha cya jenocide yemejwe mu Rwanda binyuze mu Itegeko - Teka No 08/75 ryo ku wa 12/02/1975, inkomoko yo gukurikirana no guhana icyaha cya jenocide ikaba ihera ku kumva ko, uretse kuba gutoteza ba nyamuke hashingiwe ku vanguraruho, vangurabwoko, vangurabwenegihugu cyangwa vanguradini bihabanye n'indangagaciro za kimuntu bifite ingaruka mu rwego

rw'Amategeko. Urukiko rw'Ikirenga rwa Isiraheri mu rubanza Ubushanjacyaha bwaburanaga na Adolph Eichmann, rukaba rwarasanze ntawakwitwaza ko icyaha mpuzamahanga gikomeye yakoze kitari mu mategeko y'igihugu nk'impamvu yatuma atagikurikiranwaho kuko “mu gihe cyo guhana bene ibyo byaha, inkiko zikwiye gufata ko kuva kera byari ibyaha biryozwa gatozi bisanzwe bibujijwe n'umuco mpuzamahanga.”²¹

[72] Urukiko rurasanga muri urwo rubanza, Urukiko rwarasobanuye ko mu rwego rwo gutanga ubutabera buboneye, bidakwiye ko hagira uhanirwa igikorwa kitari icyaha ubwo cyakorwaga, ariko ko iryo hame ridakwiye gukoreshwa ku byaha by'ubugome ndengakamere, kuko iyo hakoze bene ibyo byaha indangagaciro zikubiye muri iryo hame zihita zita agaciro kazo bitewe n'uko uregwa atavuga ko, ubwo yakoraga bene ibyo byaha, atari azi ko ariguhonyanga izindi ndangagaciro zirutaho zashinze imizi kuva kera mu muco mpuzamahanga, ariyo mpamvu ihame rya nullum crimen nulla poena sine lege ridakwiye gukoreshwa kuri bene ibyo byaha,²² by'umwihariko, Urukiko rwibukije ko Urukiko Mpuzamahanga rwa Gisirikare rwa Nuremberg rwanze gushingira ku ihame rya nullum crimen nulla poena sine lege kubera ko abakoze Holocaust batari bayobewe ko bari gukora ibyaha, ahubwo ko bari bizeye kuzihisha inyuma y'amategeko y'Aba Nazi nibaramuka batsinze urugamba kugira ngo batazakurikiranwa:

“in repudiating the relevance of the ethical content of the principle of nulla poena to the parallel crimes of

²¹ the crimes established in the Law of 1950, ...must be seen today as acts that have always been forbidden by customary international law - acts which are of a 'universal' criminal character and entail individual criminal responsibility. *Prosecutor v Adolphe Eichmann, Appeal Judgment, para 11.*

²² *Prosecutor v Adolphe Eichmann, Appeal Judgment, para 8.*

*which the major war criminals were convicted in Nuremberg is also apposite here: "...the ethical import of the maxim is confronted by the countervailing ethical principles supporting the courts and sentences. Killing, maiming, torturing and humiliating innocent people are acts condemned by the value-judgments of all civilized men, and punishable by every civilized municipal legal system.... All this was known to the accused when they acted, though they hoped, no doubt, to be protected by the law of a victorious Nazi state from punishment. If, then, the rules applied at Nuremberg were not previously rules of positive international law, they were at least rules of positive ethics accepted by civilized men everywhere, to which the accused could properly be held in the forum of ethics."*²³

[73] Urukiko rurasanga mu rubanza hagati ya Serbia na Croatia, Urukiko Mpanabyaha Mpuzamahanga rwaribukije ko kuva mu mwaka wa 1951 rwakomeje kwemeza ko Amsezerano Mpuzamahanga yo gukumira no guhana icyaha cya jenocide akubiyemo amahame asanzwe mu muco mpuzamahanga: *"The Court has also repeatedly stated that the Convention embodies principles that are part of customary international law. That was emphasized by the Court in its 1951 Advisory Opinion. "The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and the spirit and aims of the United Nations (resolution 96 (I) of the General Assembly,*

²³ Prosecutor v Adolphe Eichmann, Appeal Judgment, para 8.

11 December 1946). The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge' (Preamble to the Convention) »²⁴

[74] Urukiko rurasanga uyu murongo warongeye kugarukwaho n'Urukiko rw'Ikirenga rw'Ubwongereza mu gika cya 17 cy'urubanza rwa Augusto Pinochet, aho rwasobanuye ko n'ubwo uregwa avuga ko nta kigaragaza ko iyicarubozo rikozwe na Leta ryari icyaha mbere y'uho Amasezerano Mpuzamahanga akumira iyicarubozo yemezwa mu mwaka wa 1984, nta gushidikanya guhari ko icyaha cy'iyicarubozo gikozwe na Leta cyari kimwe mu byaha bikomeye mu mategeko mpuzamahanga (I [Lord Browne-Wilkinson] have no doubt that long before the Torture Convention of 1984 state torture was an international crime in the highest sense...),²⁵ iki nacyo akaba ari ikigaragaza ko ibyaha mpuzamahanga bitagombera kuba biri mu mategeko y'ibihugu kugira ngo bikurikiranwe kandi bihanwe.

b) Ku bijyanye n'icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu (crimes contre l'humanité)

[75] Urukiko rurasanga icyaha cyo gutoteza gikorwa ahanini abantu babuzwa amahwemo kubera abo aribo, iryo vangura rigakorwa hagamiywe guhonyanga uburenganzira bw'ibanze

²⁴ Reba urubanza Croatia v. Serbia, International Court of Justice, Judgment of 03/02/2015, igika cya 87.

²⁵ Ex Parte Pinochet [1999] 2 All ER 97 at 17.

bw'ikiremawamuntu, Inkiko Mpanabyaha Mpuzamahanga zashiriweho u Rwanda n'icyahoze cyitwa Yugoslavia, zikaba zarasobanuye ko gutoteza ari kimwe mu byaha biteganywa n'umuco mpuzamahanga nk'ibyaha cyibasiye inyoko muntu.²⁶

[76] Urukiko rurasanga inkiko zaremeje ko kuva kera ibyaha byibasiye inyoko muntu byari bibujijwe ndetse binahanwa n'umuco mpuzamahanga, by'umwihariko, mu rubanza rwa Erdomivic, Urukiko Mpanabyaha Mpuzamahanga rw'icyahoze cyitwa Yugoslaviya rwavuze ko ubugome n'ubunyamaswa ndengakamere cyangwa kuba ibyo byaha byarakorewe abantu benshi aricyo kibitandukanya n'ibindi byaha, izo mpamvu akaba arizo zituma bifatwa nk'ibyaha byakorewe umuryango mpuzamahanga cyangwa byahonyanze indangagaciro za kimuntu : *'Isolated offences did not fall within the notion of crimes against humanity. As a rule systematic mass action, particularly if it was authoritative, was necessary to transform a common crime . . . into a crime against humanity . . . Only crimes which by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied at different times and places, endangered the international community or shocked the conscience of mankind . . .'*²⁷

[77] Urukiko rurasanga iki ari kimwe mu byatumye inkiko zemeza ko amategeko ateganywa ibyaha byibasiye inyoko muntu uyu muni, adakwiye gufatwa nk'ayashyizeho ibyaha bishya,

²⁶ Reba Urubanza rwa Nahimana Ferdinand, 28/11/2007, igika cya 985, urubanza rwa Brdanin, 2/04/2007, igika cya 296, Urubanza rwa Simic, 28/11/2006, igika cya 177.

²⁷ *Joint Separate Opinion of Judge McDonald and Judge Vohrah, Erdemović Appeal Judgement, para. 22 (quoting History of the United Nations War Crimes Commission and the Development of the Laws of War, p. 179).*

ahubwo ko yaje yemeza ibyari bisanzwe biriho. Uyu murungo wongeye kwibutswa n'Urukiko rw'Uburayi rushinzwe kurengera uburenganzira bw'ikiremwa muntu mu rubanza Korbely yaburanaga na Hongrie, aho rwavuze ko « Ku bireba ibigize ibyaha byibasiye inyoko muntu, hakwiye gufatwa ko Amasezerano y'i Roma y'Urukiko Mpuzamahanga Mpanabyaha akwiye gufatwa nk'ayemeza ibisobanuro by'icyo cyaha byari bisanzwe biriho mu mategeko mpuzamahanga. »²⁸

[78] Urukiko rursanga na none mu gusobanura ijamba aba sivili mu gihe cyo guhana ibyaha byibasiye inyoko muntu, Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahoze cyitwa Yugoslaviya, rwaravuze ko hashingiwe ku mucu mpuzamahanga, abantu bafatwa ko batakiri abarwanyi (*personnes hors de combat*) bashobora gushyirwa mubakorera ibyo byaha, iyo ibigize ibyo byaha byuzuye kabone nubwo bene abo bantu batabarirwa mu ba sivili.²⁹ Ku bijyanye n'icyaha cyo gutotezwa, urwo Rukiko rukaba rwaravuze ko ari ugukora ikintu cyangwa kutagikora hashingiwe ku ivangura hagamiywe kwangira umuntu cyangwa guhonyanga uburenganzira bwe bw'ibanze buteganyijwe mu mucu cyangwa mu masezerano mpuzamahanga, bigakorwa nkana, hagambiriwe kuvangura abantu ku bw'impamvu runaka, cyane cyane uruhu, idini

²⁸ “As regards the elements of the crimes against humanity, one may take the recent Rome Statute of the International Criminal Court as declaratory of the international law definition of this crime...” Reba Korbely v Hungary (App no 9174/02), 19/09/2008. Reba na Streletz, Kessler and Krenz v Germany (App. No 34044/96, 355532/97 na 44801/98) yo ku wa 22/03/2001.

²⁹ Reba urubanza rw'ubujurire rwa Mrkšić and Šljivančanin, Urubanza, igika cya. 35 (rwavuzemo urubanza rw'ubujurire rwa Blaškić, igika cya 113).

cyangwa ku mpamvu za politiki³⁰. Urukiko rwabishimangiye mu rubanza rwa Krnojelac mu magambo akurikira: *“the crime of persecution consists of an act or omission which discriminates in fact and which: denies or infringes upon a fundamental right laid down in international customary or treaty law (the actus reus); and was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics (the mens rea).”*³¹

[79] Rwongeye kandi kubigarukaho mu rubanza rwa Dorđević, aho rwagize ruti: *«the crime of persecutions requires that an act or omission – not a crime – which infringes upon a fundamental right laid down in customary international law, be committed with discriminatory intent...»*³²

[80] Urukiko rurasanga rero nta gushidikanya guhari ko u Rwanda nk’igihugu, nacyo cyabarizwaga mu bigengwa n’umuco mpuzamahanga, ndetse n’amasezerano mpuzamahanga rwemeye cyangwa rwashyizeho umukono kuva rwabona ubwigenge, bivuze ko abakoze ibyaha bisanzwe biteganyijwe n’amategeko mpuzamahanga yaba umuco cyangwa amasezerano mpuzamahanga batakwihisha inyuma yo kuba inyito z’ibyaha bakoze zitari ziri mu Itegeko-Teka No 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy’amategeko ahana ryakoreshwaga ibyaha bikorwa, kuko ku byumva utyo byaba ari ugupfobya ibyaha byakozwe, bikavanwa mu

³⁰ Reba urubanza rwa Nahimana Ferdinand, igika cya 985; urubanza rwa Krnojelac, igika cya 184, urwa Kordić na Čerkez, ibika bya 101, 110 (mens rea), 671 (actus reus), 674 (mens rea).

³¹ Reba urubanza rw’ubujurire rwa Krnojelac, ibika bya 184 na 185.

³² Reba urubanza rw’ubujurire rwa Dorđević, ibika bya. 557, 693, 876.

matageko mpuzamahanga asanzwe abigenga bikitirwanywa n'ibyaha bisanzwe, bishyirwaho n'amategeko y'ibihugu.

[81] Urukiko rurasanga icyaha cyo gushishikariza abantu gukora jenocide ndetse n'icyaha cyibasiye inyoko muntu cyo gutoteza, ari ibyaha byombi bishingiye ku ivangura, bityo mu gihe Mugesera Léon amaze guhamwa n'ibyo byaha byombi nk'ibyaha mpuzamahanga bikaba bitari bikwiye ko Urukiko Rukuru ruvuga ko ahamwa na none n'icyaha cyo kubiba urwango rushingiye ku bwoko, giteganywa kandi gihanwa n'ingingo ya 393 y'Itegeko-Teka No 21/77 ryo ku wa 18/07/1977 rishyiraho igitabo cy'amategeko ahana, kuko ivangura cyangwa kubiba urwango rushingiye ku bwoko ari kimwe mu bigize gushishikariza abantu gukora jenocide no gutoteza nk'icyaha cyibasiye inyoko muntu. Uyu murongo ukaba uhura na none n'uwemejwe n'Urukiko Mpuzamahanga Mpanabyaha rw'icyahoze cyitwa Yugoslavia, aho mu rubanza rwa Kuranac na bagenzi be, rwavuze ko iyo hamaze kugaragazwa icyaha cy'iremezo, biba bitakiri ngombwa gufata nk'icyaha ibikorwa bitandukanye byatumye icyo cyaha gikorwa.³³

[82] Urukiko rurasanga u Rwanda, rushingiye ku muco mpuzamahanga, ku Masezerano Mpuzamahanga yerekeye gukumira no guhana icyaha cya jenocide yo ku wa 09/12/1948 rwemeje mu Itegeko-Teka No 08/75 ryo ku wa 12/02/1975, rushingiye kandi ku Masezerano Mpuzamahanga arebana n'ukudasaza kw'ibyaha by'intambara n'ibyibasiye inyokomuntu yo ku wa 26/11/1968, rwemeje mu Itegeko Teka ryo ku wa 16/04/1975, rubinyujije mu Itegeko Shingiro ryo ku wa 18/01/1996, rwibukije mu ivugururwa ry'ingingo ya 12, igika

³³ Reba urubanza rw'ubujurire rwa Kuranac na bagenzi be, igika cya 153.

cya kane, y'Itegeko Nshinga ryo ku wa 10 Kamena 1991, ko "ibikorwa bitahanwaga n'amategeko y'Igihugu mu gihe byakorwaga, bishobora gukurikiranwa mu nkiko iyo, igihe byakorwaga, amahame rusange y'amategeko yemewe n'amahanga yabifataga nk'ibyaha", icyo iryo vugurura ryazanye akaba ari ukwibutsa gusa ko ntawakwihisha inyuma y'amategeko y'igihugu ngo avuge ko atakurikiranwaho ndetse ngo ahanirwe ibyaha yakoze bisanzwe bibujijwe n'amategeko mpuzamahanga.

[83] Urukiko rurasanga, ku bijyanye n'ibihano, ingingo ya V y'Amasezerano Mpuzamahanga yo gukumira no guhana icyaha cya jenocide iteganya ko "ibihugu, bishingiye ku biteganywa n'amategeko nshinga yabyo, byiyemeje gushyiraho amategeko ya ngombwa azatuma aya masezerano ashirwa mu bikorwa, by'umwihariko guteganya ibihano bikwiriye guhabwa abantu bazahamwa na jenocide cyangwa ikindi gikorwa giteganyijwe mu ngingo ya III.", iyi ngingo ikaba ari imwe mu mategeko mpuzamahanga yashingiweho, u Rwanda ruvugurura ingingo ya 12 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10 Kamena 1991³⁴, ndetse rushyiraho Itegeko-Ngenga No 08/96 ryo ku wa 30/08/1996 ryerekeye imitunganyirize y'ikurikiranwa ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba n'ibyaha byibasiye inyokomuntu byakozwe hagati y'itariki ya 1/10/1990 kugeza ku wa 31/12/1994, Itegeko ryasimbuwe n'Itegeko - Ngenga No 16/2004 ryo ku wa 19/06/2004 rigena imiterere, imikorere n'ububasha by'Inkiko Gacaca, iri naryo

³⁴ Ingingo ya 12 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10/06/1991 yavuguruwe ku wa 18/01/1996 yongererwa igika cya 4 kivuga ko "« Ibikorwa bitahanwaga n'amategeko y'Igihugu igihe byakorwaga, bishobora gukurikiranwa mu nkiko iyo, igihe byakorwaga, amahame rusange y'amategeko yemewe n'amahanga yabifataga nk'ibyaha".

rikaba ryarasimbuwe n'Itegeko - Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, aho mu ngingo yaryo ya 762 ryemeje ko, uretse ibiteganijwe ukundi, abakurikiranyweho ibyaha bya jenocide n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'itariki ya 01 Ukwakira 1990 n'itariki ya 31 Ukuboza 1994, bazahanwa hakurikijwe ibihano biteganijwe muri iri Tegeko Ngenga, ibikubiye mu ngingo ya 762 y'iryo Tegeko Ngenga, bikaba aribyo byagarutswaho mu ngingo ya 335, igika cya 2, y'Itegeko No 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange³⁵, ari naryo rikurikizwa kuri uyu muni.

[84] Urukiko rurasanga, uretse ko Urukiko Rukuru rwakoze ikosa ryo gushingira ku Itegeko – Ngenga N° 16/2004 ryo ku wa 19/06/2004 rishyiraho Inkiko Gacaca mu guhana Mugesera, igifungo cya burundu Mugesera Léon yahanishijwe hashingiwe ku ngingo ya 5 bis y'Itegeko – Ngenga N° 08/2013 ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko – Ngenga n° 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe kandi ryujijwe kugeza ubu, irebewe hamwe n'Itegeko - Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ryavuzwe haruguru, ari nacyo cyasimbuye igihano cyo kwicwa cyateganywaga n'ingingo ya 312 y'Itegeko -Teka No 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana, cyari giteganyirijwe ibikorwa by'ubwicanyi byabaye ingaruka z'amagambo yavugiye ku Kabaya n'i Nyamyumba

³⁵ Ingingo ya 12 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 10/06/1991 yavugururwe ku wa 18/01/1996 yongererwa igika cya 4 kivuga ko « Ibikorwa bitahanwaga n'amategeko y'Igihugu igihe byakorwaga, bishobora gukurikiranwa mu nkiko iyo, igihe byakorwaga, amahame rusange y'amategeko yemewe n'amahanga yabifataga nk'ibyaha”.

ashishikariza abantu gukora jenocide nk'uko yabihamijwe n'Urukiko Rukuru, bityo imvugo ya Mugesera Leon y'uko Urukiko Rukuru rwamuhanishije igihano kitari gisanzwe giteganyijwe mu mategeko y'u Rwanda ikaba nta shingiro ifite.

[85] Urukiko rurasanga iki gitekerezo cy'uko ibihano ku cyaha cya jenocide byari bisanzwe biteganyijwe mu mategeko y'u Rwanda cyaranemejwe mu rubanza rwa Akayesu Jean Paul rwaciwe n'Urukiko Mpanabayaha Mpuzamahanaga rwashyiriweho u Rwanda³⁶.

[86] Imiburanire ya Mugesera Léon y'uko atahanirwa icyaha cya jenocide kubera ko u Rwanda rwifashe ku ngingo ya IX yerekeye ibihano biteganyirijwe icyaha cya jenocide, Urukiko rurasanga nta shingiro ifite kubera ko ingingo ya IX y'Amasezerano Mpuzamahanga yo gukumira no guhana icyaha cya jenocide avuga ko “ Impaka hagati y'ibihugu ku bijyanye n'isesengura, ishyirwa mu bikorwa cyangwa iyuhabirizwa ryayo, harimo n'inshingano zibazwa ibihugu kubera ko byakoze jenocide cyangwa ibindi bikorwa biteganyijwe mu ngingo ya III, bizaregerwa Urukiko Mpuzamahanga (*International Court of Justice*) ku busabe bw'igihugu icyo aricyo cyose cyashyize umukono kuri ayo masezerano”,³⁷ bikaba bigaragara ko iyo

³⁶ *Affaire No ICTR-96-4-T/peine, Le Procureur c/ Jean Paul AKAYEZU, décision du 2 Octobre 1998, para.16* “A cet égard, le Tribunal rappelle toutefois que le Rwanda a adhéré par un décret-loi à la Convention sur le génocide le 12 Février 1975. Aussi comme la Chambre l'a rappelé dans son jugement, la répression pénale du crime de génocide existait au Rwanda en 1994, à l'époque des faits reprochés à AKAYESU, et leur auteur pouvait être traduit pour ce crime devant les tribunaux rwandais compétents”.

³⁷ *Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts*

ningo ntaho ihuriye n'imihanire y'umuntu ukurikiranyweho icyaha cya jenocide cyangwa ibikorwa biteganywa mu ngingo ya III y'amasezerano, ahubwo irebana n'ikurikiranwa ry'igihugu ubwacyo mu gihe cyananiwe gukumira jenocide cyangwa bimwe mu bikorwa biteganywa mu ngingo ya III.

[87] Urukiko rursanga uyu murongo ariwo Urukiko Mpanabyaha Mpuzamahanga rwashimangiye mu rubanza hagati ya Croatia na Bosnia,³⁸ aho rwavuze ko ingingo ya IX y'Amasezerano Mpuzamahanga yo gukumira no guhana icyaha jenocide igena ububasha bwarwo ku bijyanye no gusesengura, gushyira mu bikorwa no kubahiriza ayo masezerano, cyane cyane ku bireba inshingano z'ibihugu biregwa jenocide cyangwa ikindi gikorwa icyo aricyo cyose giteganyijwe mu ngingo ya III y'ayo masezerano, kandi ko, nk 'uko rwabyibukije mu rubanza hagati ya Bosnia na Herzegovina na Seribiya, mu mwaka wa 2007,³⁹ ingingo ya IX y'amasezerano ijyanye gusa n'ububasha bw'Urukiko Mpuzamahanga mu byerekeranye na jenocide, byumvikanisha ko ubwo u Rwanda rwifataga ku ngingo ya IX mu gihe cyo kwemeza ayo masezerano rwari rwanze ko nk'igihugu, ruzaregwa icyaha cya jenocide imbere y'Urukiko Mpuzamahanga⁴⁰, ibyo bikaba bitavanaho ko abantu ku giti cyabo bakoze jenocide mu Rwanda bakwiye gukurikiranwa no kugihanirwa kuko, nkuko byasobanuwe

enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

³⁸ Reba urubanza hagati ya Croatia v Serbia, International Court of Justice, Judgment of 03/02/2015, igika cya 85.

³⁹ Reba urubanza Bosnia and Herzegovina v. Serbia and Montenegro, International Court of Justice, Judgment of 26/02/2007

⁴⁰ Reba Democratic Republic of Congo v Rwanda, International Court of Justice, Application of 28/05/2002, igika cya 72.

haruguru, imihanire yabo ishingiyeye ku biteganywa n'ingingo ya VI aho kuba ku ngingo ya IX y'ayo masezerano.

[88] Hashingiye ku byasobanuwe haruguru, Urukiko rurasanga impamvu y'ubujurire ya Mugesera Léon y'uko yahanwe hirengagijwe ihame ry'uko amategeko ahanaatakoreshwa ku byaha byakozwe mbere y'uko ajyaho, nta shingiro ifite

6. Kumenya niba Urukiko Rukuru rwaranze kumva abatangabuhamya bashinjura Mugesera Léon.

[89] Mugesera Léon, mu mwanzuro we no mu miburanire ye, yavuze ko Urukiko Rukuru rwamuvukije ku buryo bukomeye uburenganzira bwo kwiregura buteganywa n'Itegeko Nshinga, rwanga kumva abatangabuhamya bamushinjura. Avuga ko muri abo batangabuhamya batumviswe harimo abatangabuhamya bazi ibyabaye (*témoins des faits*), abatangabuhamya b'imyitwarire (*témoins de caractère*), hamwe n'abatangabuyamya b'inzobere (*témoins experts*).

[90] Mugesera Léon avuga ko Ubushinjacyaha busanzwe bufite ubushobozi burenze ubw'ushinjwa, bwahawe igihe gihagije cyo gushaka abatangabuhamya bamushinja no kubajonjora, ariko we atahawe igihe n'uburyo bwo gushaka no kuvugana n'abantu yifuzaga ko baza kumutangira ubuhamya, ko ahubwo yasabwe urutonde no kuvuga ibyo bazaza gutangaho ubuhamya, hirengagijwe ko yagombaga kubanza kubonana n'abo yifuza ko bamutangira ubuhamya.

[91] Mugesera Léon yasabye uru Rukiko kuvanaho urubanza rujuririrwa no gusubizwa mu gihugu cya Canada kuko yaciriwe urubanza hirengagijwe ihame ryo kureshyeshya intwari hagati

y'ababuranyi b'impane zombi (*égalité des armes*), hamwe n'uburenganzira bwo kubona ubutabera butabogamye (*droit fondamental à un procès équitable*) yemererwa n'Itegeko Nshinga rya Repubulika y'u Rwanda kimwe n'Amasezerano Mpuzamahanga u Rwanda rwashyizeho umukono.

[92] Ubushinjacyaha buvuga ko Urukiko Rukuru rwasabye ababuranyi b'impane zombi gutanga imyirondoro y'abatangabuhamya babo, icyo bazatangaho ubuhamya, aho babarizwa n'uburyo buzakoreshwa babazwa, ko kandi Urukiko Rukuru rwabyibukije inshuro nyinshi cyane kuko Mugesera Léon wavugaga ko afite abatangabuhamya bamushinjura atari yashoboye kubahiriza ibyo yasabwaga kugeza ku wa 30/6/2014, ubwo yahabwaga umunsi ntarengwa nawo ntiyawubahiriza. Ubushinjacyaha buvuga ko, kuba Mugesera Léon ataratanze imyirondoro y'abatangabuhamya avuga ko bari kuza kumushinjura atabiryoza Urukiko Rukuru kuko ari we wivukije ubwo burenganzira.

UKO URUKIKO RUBIBONA

[93] Ingingo ya 66 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko « ibintu umuburanyi asaba gutangira abatangabuhamya agomba kubisobanura mu magambo afutuye kandi atarondogoye. Iyo Urukiko rusanze bikwiye, bifite ireme kandi bishobora kwemerwa, rushobora ku bwarwo gutegeka kubitangira abatangabuhamya ».

[94] Urukiko rurasanga Mugesera Léon wavuze ko afite abatangabuhamya bamushinjura yarasabwe n'Urukiko Rukuru mu ibarwa yo ku wa 06/11/2012, gutanga imyirondoro yuzuye

y'abatangabuhamya yifuza ko babazwa, aho babarizwa n'icyo yifuza ko bazatangaho ubuhamya, ibi kandi akaba yarabyibukijwe mu iburanisha ryo ku wa 18/01/2013, iryo ku wa 30/06/2014 n'iryo ku wa 14/01/2015, ariko ntiyubahiriza ibyo yasabwe kugeza urubanza rupfundikiwe ku wa 24/06/2020.

[95] Urukiko rurasanga, ingingo Mugesera Léon aburanisha y'uho yagombye guhabwa uburyo bwo kubanza gushaka no kwemeranywa n'abatangabuhamya bamushinjura mbere yo gutanga urutonde rwabo nta shingiro ifite kuko, ubwe yagombye kuba azi ingingo buri wese afite yamushinjura ho, Urukiko akaba arirwo rubatumiza mu gihe rusanze ari ngombwa, kandi ko ibyo bamushinjura bitagombera ko we abanza gukora « négociations » nabo, kuba atarigeze atanga urwo rutonde, uru Rukiko narwo rukaba rwemeranywa n'Urukiko Rukuru ko nta batangabuhamya bashinjura Mugesera Léon yigeze agaragaza, bityo ko nta n'uburenganzira bwo kubumva yigeze avutswa.

[96] Urukiko rurasanga Mugesera Léon utarujije inshingano ze kugira ngo haboneke ikimenyetso kimushinjura adashobora kubyitwaza nk'ingingo y'ubujurire. Ibi ninako Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwabibonye mu rubanza rwa Ngeze Hassan ku ngingo y'umutangabuhamya atigeze asaba ko atumizwa ku rwego rwa mbere kandi yari asanzwe azi ko yamukenera, ruvuga ko atakoze ibisabwa n'amategeko agenga urwo Rukiko ku buryo butuma ibimenyetso yari akeneye biboneka.⁴¹ Urukiko

⁴¹ 41ICTR- 99-52-A, haburana Porokireri na Ngeze Hassan, aho "TPIR" yasobanuye ko: *However, with respect to the availability of the proffered evidence at trial, the Appeals Chamber agrees with the Prosecution that the Appellant failed to exercise the due diligence required for the evidence to be*

Mpanabyaha Mpuzamahanga rwashyiriweho Yougoslavie na rwo niko rwabibonye mu rubanza rwa Vujadin Popovic, wirengagije gukoresha inzira yemererwa n'amategeko kugira ngo urwo Rukiko rusuzume ibimenyetso avuga ko byari kumurengera.⁴²

[97] Urukiko rurasanga, ibivuzwe mu bika bibanziriza iki byerekana ko Mugesera Léon atigeze avutswa uburenganzira bwe bwo kuzana abatangabuhamya bamushinjura, bityo iyi ngingo ye y'ubujurire ikaba nta shingiro ifite.

admissible on appeal. (...) The Appellant must demonstrate that the "proffered evidence was not available to him at trial in any form" and that he had made use of all mechanisms of protection and compulsion available under the Statute and the Rules to bring the evidence before the Trial Chamber. In the present case, the Appellant has not shown why he could not call [Witness ABC1] [Redacted] as a Defence witness at trial in order to refute the evidence provided by Witness EB stating that, on the morning of 7 April 1994, he saw the Appellant go into the compound of Samvura's house together with many Interahamwe. Therefore, the Appeals Chamber is not satisfied that this evidence was unavailable at trial.

⁴² ICTY-05-88-A, haburana Porokireri na Vujadin Popovic, aho urwo Rukiko rwasobanuye ko: *Dans la Requête, Popović n'offre aucun argument quant à la raison pour laquelle il n'a pas tenté de faire admettre le rapport par la Chambre de première instance, y compris par le biais d'une requête en réouverture de l'affaire comme suggéré par l'Accusation. (8) [...] La Chambre d'appel rejette l'argument de Popović selon lequel la décision du 22 juillet 2009 l'a catégoriquement empêché de déposer une nouvelle demande de réouverture du dossier et d'admission de nouveaux éléments de preuve au risque d'être sanctionné. La Chambre d'appel considère que Popović aurait pu explorer d'autres voies qui lui étaient encore ouvertes, notamment une demande de certification pour faire appel de la décision du 22 juillet 2009 ou une demande de réexamen avant ou après avoir reçu le rapport divulgué. [9] En ce sens, Popović n'a pas rempli son obligation de faire preuve de diligence raisonnable en tentant au moins de présenter les éléments de preuve devant la Chambre de première instance [10].*

7. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu kwemeza ko disikuru yiswe “amahembe ane ya shitani” atari ikimenyetso gishinjura Mugesera Léon.

[98] Mugesera Léon avuga ko Urukiko Rukuru rutagombaga guha agaciro ibyo aregwa n’Ubushinjacyaha, ko ahubwo rwagombaga kwita ku bikubiye mu ijambo yemera ko yavuze aho yajyaga hose, iryo yise amahembe ane ya shitani ”Discours de quatre cornes de satan”, kuko ubutumwa burikubiyemo aribwo yagendaga atanga ahantu hose yagiye muri mitingi, ko nta gikorwa kigize icyaha cyo gushishikariza gukora jenocide gikubiye muri iryo jambo yemera, ko ahubwo amagambo arivugwamo arebana no kwirinda agasuzuguro, ubugambanyi, ubushizi bw’isoni n’ubwirasi (*le mépris, l’insolence, la vanité et la trahison*), ndetse rikanavugwamo intwari umurwanashyaka wa MRND yagombaga kugendana buri muni zirimo amatora, ubutwari, urukundo, ko rero iryo jambo ntaho rihuriye no kwanga ndetse no kwica abatutsi, ko ahubwo rigaragaza ko Mugesera Léon atari umwicanyi, kandi ko atanga abatutsi, ko ahubwo ari umuntu mwiza.

[99] Akomeza avuga ko iryo jambo atarifite, ko atariryo yavugiye ku Kabaya, ko ariko yarivugiye ahandi hose habereye mitingi, ko atazi aho yarivugiye ndetse n’igihe yarivugiye, ko kuba atarifite bitavuga ko ridahari, ko ahubwo rigomba kubazwa Ubushinjacyaha kuko aribwo bwaryohereje muri Canada ndetse rikaba ryanakoreshejwe mu rubanza rwaciriwe muri Canada ku wa 08/09/2003, nk’uko bigaragara mu gika cya 155 kugera ku gika cya 162, ko kuba hari urundi rubanza rw’Urukiko rw’Ikirenga rwa Canada rwakuyeho icyemezo kibanza, bidakuraho kuba hari icyo kimenyetso cya disikuru kimushinjura.

[100] Ubushinjacyaha buvuga ko mu gika cya 109 cy'urubanza rujuririrwa, Urukiko Rukuru rwavuze ko ibisobanuro Mugesera Léon yatanze ku birebana na disikuru y'amahembe ane ya shitani nta shingiro bifite, kubera ko rwasanze hari irindi jambo yavugiye ku Kabaya n'i Nyamyumba rikangurira abanyarwanda gukora jenocide, ndetse ko nawe ubwe yiyemereye muri uru Rukiko ko iyo disikuru y'amahembe ane ya shitani atariyo yavugiye ku Kabaya, ko atazi igihe n'aho yayivugiye, bityo ko Urukiko rw'Ubujurire ntaho rwahera rusuzuma iyo ngingo ye y'ubujurire yerekeranye na disikuru nawe ubwe adafite.

[101] Ubushinjacyaha buvuga kandi ko hari abatangabuhamya bamushinja kuba yaravugiye disikuru ku Kabaya n'i Nyamyumba zikangurira abanyarwanda gukora jenocide, ko rero Urukiko Rukuru rutakoze ikosa kuko rwashingiye ku ngingo ya 119 y'itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, maze ruha agaciro ibimenyetso rwashyikirijwe, ko ndetse n'Urukiko rw'Ubujurire rutagomba gushingira ku rubanza rwasuzumye disikuru y'amahembe ane ya shitani ku rwego rwa mbere mu gihe hari urubanza rw'Urukiko rw'Ikirenga rwa Canada rwaciye ku wa 28/06/2005 rwakuyeho icyemezo kibanza.

UKO URUKIKO RUBIBONA

[102] Ingingo ya 3 y'Itegeko N°15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[103] Dosiye igaragaza ko mu gika cya 109 cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko nta kigaragaza ko disikuru y'amahembe ane ya shitani ikubiyemo ubutumwa bwo kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi (*le mépris, l'insolence, la vanité et la trahison*) ndetse n'intwari umurwanashyaka wa MRND yagombaga kugendana buri muni zirimo amatora, ubutwari, urukundo ariyo yavugaga aho yajyaga hose kuko rwasanze hari irindi jambo yavugiye ku Kabaya n'i Nyamyumba rikubiyemo ubutumwa bukurikira gukora jenocide.

[104] Dosiye igaragaza kandi ko mu iburanisha ryabereye mu Rukiko rw'Ubujurire ku wa 06/02/2020, Mugesera Léon yavuze ko iyo disikuru y'amahembe ane ya shitani atari yo yavugiye ku Kabaya, ko kandi atayifite, ko ndetse atazi n'aho yayivugiye cyangwa amatariki yayivugiyeho.

[105] Urukiko rurasanga disikuru yiswe “*amahembe ane ya shitani*” Mugesera Léon avuga ko ikubiyemo amagambo arebana no kwirinda agasuzuguro, ubugambanyi, ubushizi bw'isoni n'ubwirasi (*le mépris, l'insolence, la vanité et la trahison*), ndetse n'intwari umurwanashyaka wa MRND yagombaga kugendana buri muni zirimo amatora, ubutwari n'urukundo, atariyo yavugiye ku Kabaya n'ahandi hose habereye inama nk'uko nawe yabyemereye mu Rukiko rw'Ubujurire, ko kandi atayifite, ndetse ko atazi n'aho

yayivugiye cyangwa amatariki yayivugiyeho, bityo ikaba itafatwa nk'ikimenyetso kimushinjura nk'uko abivuga kuko ntaho ihuriye n'ibimenyetso Urukiko Rukuru rwashingiyeho rumuhamya ibyaha birimo disikuru aregwa ko yavugiye ku Kabaya n'inama yakoresheje I Nyamyumba, ndetse akaba atagaragaza ko iyo disikuru ivuguruza ibyo bimenyetso.

[106] Urukiko rurasanga kandi iyo disikuru yiswe “amahembe ane ya shitani” ntacyo yamarira Mugesera Léon muri uru rubanza kuko atariyo yashingiweho n'Urukiko Rukuru mu kumuhamya ibyaha akurikiranyweho, ko ahubwo yakurikiranywe anahamwa ibyaha hashingiwe kuri disikuru yavugiye ku Kabaya n'inama yakoresheje i Nyamyumba nk'uko byasobanuwe haruguru.

B. KU BIREBANA N'URUBANZA MU MIZI

1. Kumenya niba Urukiko Rukuru rwarakoze ikosa mu kwemeza ko ari Mugesera Léon wavuze disikuru (discours) yo ku Kabaya ku wa 22/11/1992, no kumenya niba igomba gufatwa nk'ikimenyetso muri uru rubanza.

[107] Mugesera Léon avuga ko Urukiko Rukuru rutagombaga kumuhamya icyaha rushingiye kuri disikuru (discours) yo ku Kabaya yo ku wa 22/11/1992 kubera ko itari umwimerere (*original*) bitewe n'uko yahinduwe (*truqué*) nk'uko byemejwe na Peter Fraser muri «*contre-interrogatoire*» yo ku wa 23/06/1995. Asobanura ko u Rwanda rwashyikirije Madame Diane Clément wari Prokireri wa Minisitiri wo muri Canada ushinze Abimukira (*Citoyenneté et Immigration*) kasete (*Cassette*) iriho disikuru (*discours*) yo ku Kabaya, nawe ayiha umuhanga witwa Peter Fraser kugira ngo ayisuzume, uyu nawe amaze kuyishyira mu imashini kabuhariwe, yasanze itari

umwimerere, ariko ko nyuma y’aho, yagiye muri Serivisi ya «*Citoyenneté et Immigration* », azana kasete n° 1 na kaseti n° 3, azihuriza hamwe mu imashini kabuhariwe yaguzwe muri Leta Zunze Ubumwe za Amerika, azikuramo kaseti imwe (1), amaze kuyihanagura avuga ko atari ikimenyetso yajyana imbere y’Urukiko kubera ko itari umwimerere.

[108] Avuga ko n’ubwo yibagiwe disikuru yavugiye ku Kabaya ku wa 22/11/1992, ariko ko afite uburenganzira bwo kugira icyo avuga kuri disikuru yaciriweho urubanza kuko ari ikimenyetso kimushinja icyaha cyatanzwe n’Ubushinjacyaha, kandi ko n’Urukiko Rukuru rwagishingiyeho rumuhamya icyaha atakoze, akaba yumva atabazwa niba ariwe wayivuze kubera ko ingingo ya 14, g, y’Amasezerano mpuzamahanga yo ku wa 16/12/1966 yerekeye uburenganzira mu by’imbenezamubano no mu bya politiki, n’ingingo ya 14, 7°, y’Itegeko - Ngenga N° 11/2007 ryo ku wa 16/03/2007 rigena kwimurira imanza muri Repubulika y’u Rwanda, ziteganyako ntawe ugomba kwishinja icyaha, ko ahubwo Ubushinjacyaha bugomba gutanga ibimenyetso bigaragaza ko yakoze icyaha nk’uko biteganywa n’amategeko.

[109] Avuga kandi ko Urukiko Rukuru rutubahirije ingingo ya 122 y’Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, igaragaza inkomoko y’ikimenyetso⁴³, uburyo cyakozwe n’uburyo cyabonetse,

⁴³Ingingo ya 122 y’Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, iteganyako “Umuburanyi ushaka gutanga ikimenyetso gishingiye ku kintu gifatika agomba kwerekana inkomoko yacyo kugira ngo hagaragare aho gihuriye n’ikiburanwa, n’uregwa cyangwa n’icyaha. Kubera iyo mpamvu agomba kugaragaza ko icyo kimenyetso ari cyo cyafatiriwe cyangwa cyakomotse ku byabaye, kwerekana

ingingo ya 123 y'iryo Tegeko⁴⁴ ibuza guhindura ikimenyetso (*montage*), n'ingingo ya 124 y'Itegeko rimaze kuvugwa⁴⁵, iteganya ko hagomba kuba hari umuntu wafashe amajwi n'amashusho, kuko rwamuhamije icyaha hashingiwe kuri disikuru yo ku Kabaya yo ku wa 22/11/1992, kandi rutagaragaje uburyo iyo kasete yahererekanyijwe hagati y'abantu batandukanye (*chaine de possession du discours de Kabaya*) kuva ku Kabaya, aho yayivugiye bwa mbere, kugera muri Orinfor n'uburyo yahavuye ikagera ku Mushinjacyaha Mukuru wayohereje muri Canada.

[110] Asobanura ko yagejeje ku Rukiko Rukuru ikibazo cyo kumenya uwafashe kasete iriho disikuru yo ku Kabaya n'iherekanywa ryayo, rusanga koko ari ikibazo, noneho rwandikira Orinfor ibaruwa yo ku wa 25/06/2014, ruyisaba kurumenyesha aho iyo kasete yaturutse n'uwayifashe, maze mu ibaruwa yayo yo ku wa 27/06/2014, Umuyobozi wa Orinfor yahindutse « RBA » yarusubije ko iyo kasete yabonetse mu bubiko bwayo, ariko ko atazi amazina y'uwayifashe n'uwayihagejeje, ko nta n'ijambo ry'amashusho ifite, ndetse ko

ko kitahindutse kubera kunyura mu ntoki nyinshi no gukorerwaho ubushakashatsi”.

⁴⁴ Ingingo ya 123 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, iteganya ko “Mu gihe umuntu, ikintu, cyangwa ibimenyetso bigaragaza ibyakozwe atari byo bishyikirijwe urukiko ngo rubyitegereze, amashusho cyangwa amafoto abyerekana agomba kuba agaragaza ntacyo ahinduye ishusho byari bifite igihe ibiburanwa mu rubanza byabaga. Ni na cyo gisabwa kugira ngo amajwi yafashwe hakoreshejwe uburyo bwo kumviriza atangweho ikimenyetso”.

⁴⁵ Ingingo ya 124 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryavuzwe haruguru, iteganya ko “Kugira ngo bigaragare ko nta cyahinduwe, hagomba ubuhamya bw'umuntu wafashe ubwe amajwi cyangwa wafashe amafoto ari agenda cyangwa atagenda, cyangwa washushanyije ku buryo ubwo ari bwo bwose, cyangwa uwari ahari ibyo bikorwa.

yanemeje ko atari Murutampunzi Boniface wayifashe ngo anayizane muri Orinfor, ko ahubwo yayikuye mu bubiko bwayo (Orinfor) ayiha Nyirantabashwa Ange kugira ngo ayikorere kopi yaje koherezwa muri Canada. Avuga ko urwo Rukiko rwakoze amakosa yo kumuhamya icyaha hashingiwe kuri iyo kasete rutagaragaje uwayifashe n'amazina y'abantu yagiye inyura mu ntoki bakanasinya inyandikomvugo ko bayibonye kuva ku Kabaya kugera ku Mushinjacyaha Mukuru, ko ahubwo asanga uruhererekane rwayo rugarukira ku Kabaya gusa.

[111] Mugesera Léon akomeza asobanura ko yari muri “meeting” y’ishyaka rya MRND yabereye ku Kabaya ku wa 22/11/1992, kandi ko yahavugiye disikuru (*discours*), ariko ko atari disikuru iri kuri kasete Urukiko Rukuru rwahawe n’Ubushinjacyaha yanaciriweho urubanza rujuririrwa kubera ko yahavugiye disikuru akuye mu mutwe we itari yanditse (*discours oral*) kuko yayivuze mu buryo butunguranye abisabwe na Perefe Banzi Wellars bari bicaranye. Avuga ko kuba yarabanje kuvuga ingingo z’ingenzi ari buze kuvugaho muri iyo « *meeting* », atari ikimenyetso kigaragaza ko yari yateguye iyo disikuru. Ikindi n’uko iryo jambo ritigeze rifatwa kuri kasete n’ishyaka rya MRND cyangwa we ubwe, uretse ko atakiriyibuka kubera igihe kirekire gishize, bityo ko ibyo Ubushinjacyaha buvuga ko umwimerere wayo ubitse muri « Rwanda Broadcasting Agency » (RBA) (ex - Orinfor), atari ukuri kubera ko Peter Fraser yemeje ko disikuri iri kuri kasete yahawe ikomoka kuri kasete cyangwa «CD»⁴⁶ ibitse mu bubiko bwa RBA (Orinfor) itari umwimerere, ko ahubwo yahinduwe (*truqué*) nk’uko byasobanuwe haruguru.

⁴⁶ CD = Compact Disc

[112] Asaba uru Rukiko ko rutamuhamya icyaha hashingiwe kuri disikuru yo ku Kabaya iri kuri kaseti itari umwimerere (*original*) kuko atari ikimenyetso kigaragaza mu buryo budashidikanywaho ko yakoze icyaha nk'uko bisabwa mu rubanza rw'inshinjabyaha, ko ahubwo mu rubanza rw'ubutegetsi yaburaniye muri Canada, ikimenyetso cyashingiweho kitari gikomeye cyane ukigereranyije n'igisabwa muri uru rubanza rw'inshinjabyaha.

[113] Uhagarariye Ubushinjacyaha avuga ko Urukiko Rukuru rutakoze ikosa mu kwemeza ko kasete ikubiyemo disikuru Mugesera Léon yavugiye muri mitingiri yo ku Kabaya tariki ya 22/11/1992, ari ikimenyetso gikwiye gushingirwaho muri uru rubanza kuko n'Urukiko rw'Ikirenga rwo muri Canada rwayishingiyeho mu rubanza rw'ubutegetsi igihe rwemezaga ko Mugesera Léon atemerewe gutura muri icyo gihugu kubera ibyaha akekwe nk'uko byanemejwe n'umuhanga witwaga Peter Fraser wemeje ko ijamba riri kuri icyo kasete ritahinduwe, nyamara ko nta kimenyetso Mugesera Léon yatanze kigaragaza ko iryo jambo ryahinduwe, uretse kubivugaga gusa, bivuze ko atubahirije ibisabwa n'ingingo ya 3 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko buri muburanyi agomba kugaragaza ukuri k'ibyo aburana, n'ingingo ya 85, igika cya 3, y'Itegeko N° 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, iteganya ko icyo icyaha cyamaze kubonerwa ibimenyetso, uregwa agomba gutanga ibimenyetso bigaragaza ko ari umwere.

[114] Avuga kandi ko Urukiko Rukuru rwahamije Mugesera Léon icyaha hashingiwe kuri icyo kasete n'ibindi bimenyetso biri muri dosiye birimo imvugo z'abatangabuhamya bari muri

mitingi yo ku Kabaya biyumviye amagambo yahavugiye agize ibyaha aregwa, kandi ko ubuhamya bwabo bukwiye guhabwa agaciro kuko buhuje n'amagambo akubiye muri iyo kasete, nyamara nta kimenyetso Mugesera Léon yatanze kivuguruzwa ibyo bimenyetso bimushinja.

[115] Ku bijyanye n'iherekanya rya disikuru yo ku Kabaya iri kuri kasete, uhagarariye Ubushinjacyaha avuga ko mu gika cya 13 n'ibikurikiraho by'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye uburyo iyo kasete yaherekeranyijwe, aho rwasobanuye ko Mugesera Léon akimara kuvuga iryo jambo ku wa 22/11/1992, nyuma y'iminsi ine (4) gusa, ni ukuvuga ku wa 26/11/1992, Ubushinjacyaha bwahise busohora inyandiko yo kumufata no kumufunga, maze bwandikira Orinfor buyisaba kasete ikubiyemo iryo jambo, maze iryohereza yemeza ko Radio Rwanda yarifashe ku wa 22/11/1992 mu rwego rwo gutara no gutangaza inkuru, kandi ko kasete y'umwimerere (*original*) ikubiyemo iryo jambo ibitse mu bubiko bwayo kuko ari umutungo wayo, uretse ko yahaye Ubushinjacyaha kopi yaryo mu rwego rw'ikurikiranacyaha. Avuga kandi ko ku wa 22/05/1995, Murutampunzi Boniface wari Umunyamakuru kuri Radio Rwanda yemeje ko ariwe wavanye iyo kaseti mu bubiko bwayo ayiha Nyirantabashwa Ange wari umutekinisiye kuri Radio Rwanda kugira ngo ayikorere kopi, ndetse ko n'Urukiko Rukuru rwasesenguye ibyo bimenyetso byose, rusanga ijamba Mugesera Léon yavugiye ku Kabaya ku wa 22/11/1992 riri kuri kasete cyangwa «CD», rikwiye gufatwa nk'ikimenyetso kuko ari umwimerere, ariko ko Mugesera Léon n'umwunganira batagaragaje inenge ziri muri ibyo bisobanuro kuko batigeze bagaragaza uburyo iryo jambo ryahinduwe (*montage*), ni ukuvuga ibyaryongewemo, ibyarikwemo cyangwa ibyarihinduwemo n'uwarihinduye.

[116] Yongeraho ko Mugesera Léon atatunguwe no kuvuga ijamba ryo ku Kabaya, ko ahubwo yarivuze yabanje kuritegura nk'uko byumvikana kuri kasete cyangwa «CD» nk'uko n'Urukiko Rukuru rwabisobanuye, harebwe n'uburebure bwaryo, uburyo mu kuritangira yabanje kuvuga ko ari buvuge ku ngingo enye (4) z'ingenzi zirigize, n'uburyo nyuma y'aho, yagiye avuga ingingo ku yindi kugeza azirangije zose, ariko ko n'ubwo Mugesera Léon yaba atari yariteguye, ataricyo cyamukuraho uburyozwacyaha.

UKO URUKIKO RUBIBONA

[117] Ingingo ya 119 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko « Mu manza nshinjabyaha, ibimenyetso bishingira ku mpamvu zose z'ibyabaye n'ibyemejwe n'amategeko, ababuranyi bapfa kuba barahawe uburyo bwo kuhaba ngo banyomozanye. Urukiko ruhamya ku buryo butavuguruzwa ko ibimenyetso byose birega cyangwa biregura ari byo kandi ko bishobora kwemerwa ».

[118] Naho ingingo ya 121 y'Itegeko ryavuzwe haruguru, iteganya ko « Urukiko rushobora gushingira na none ku majwi yafashwe hakoreshejwe ibyuma byabugenewe ibyo ari byo byose cyangwa amashusho yafashwe hakoreshejwe icyuma gifata amashusho agenda ». Na none ingingo ya 127 y'iryo Tegeko, iteganya ko « Umuburanyi utanze ikimenyetso gishingiye ku biganiro byafashwe agomba gutanga umutangabuhamya wari uhibereye bafata ayo majwi, cyangwa se ushobora kumenya nyiraryo. Urukiko rushobora gushyiraho umuhanga ugenzura ko iryo jwi ari iry'uwo ryitirirwa ».

[119] Muri dosiye hari inyangirakira – mvugo yo ku wa 17/01/1996, igaragaza ko Mugesera Léon yemereye imbere y’Umukemurampaka (*arbitre*) wo mu gihugu cya Canada ko amagambo (*thèmes*) n’ijwi yumvise biri kuri kasete bihujwe neza na disikuru yavuze⁴⁷.

[120] Dosiye igaragaza kandi ko mu gika cya 46 cy’urubanza 2005 S.C.R. 40, rwaciwe n’Urukiko rw’Ikirenga rwa Canada ku wa 28/06/2005⁴⁸, haburana mugesera Léon na Canada (M.C.I), urwo Rukiko rwasobanuye ko disikuru ya Mugesera Léon yafatiwenomero kuri kasete, yashyizwe mu rurimi rw’ikinyarwanda na Thomas Kamanzi wari wiyambajwe nk’umuhanga, ndetse ko mu iburanisha ryabereye imbere y’Umukemurampaka (*arbitre*) wo mu gihugu cya Canada ku wa 17/01/1996, hagaragajwe ko inyangirakira (*transcription*) y’iyo kasete (*composite n° 4*) yashyizwe muri dosiye, ihujwe neza (*correspondait en tous points*) na disikuru (*discours, speech*) Mugesera Léon yavuze, nk’uko na Mugesera Léon ubwe yabiyemereye mu Nama Ntegururubanza (*Conférence préparatoire*) yo ku wa 30/01/1997 nk’uko binagaragarira mu

⁴⁷ Umukemurampaka yabajije M. Mugesera ikibazo gikurikira: (...) *étant donné le thème ou les thèmes que vous avez développé et tout ça, la voix qu’on a entendu, est-ce qu’on peut dire que ça reflète sensiblement le discours que vous avez prononcé?* Mugesera Léon amusubiza ati: “Ah, oui, oui, ça reflète sensiblement le discours là, depuis le début on le voit bien”.

⁴⁸ Le discours de M. Mugesera a été enregistré puis transcrit. Lors de l’audience devant l’arbitre, il a été démontré que la transcription de la cassette (« composite n° 4 ») versée au dossier correspondait en tous points de vue au discours prononcé. M. Mugesera l’a reconnu officiellement au cours d’une conférence préparatoire tenue la 30 janvier 1997 (Jugement de la SAI, par. 135.). L’arbitre a retenu la version de M. Kamanzi. La question du choix de la traduction a été longuement débattue, mais lors des plaidoiries finales, les intimés ont convenu que celle de M. Kamanzi reflétait fidèlement le texte en Kinyarwanda”.

rubanza rwaciwe na «Section d'Appel de l'Immigration (SAI), mu gika cyarwo cya 135.

[121] Ibisobanuro bimaze kuvugwa haruguru bigaragarira kandi mu gika cya [14] cy'urubanza rujuririrwa, aho Urukiko Rukuru rwasobanuye ko umuhanga Peter Fraser wari wiyambajwe n'Umukemurampaka (*arbitre*) wo mu gihugu cya Canada yagaragaje ko ijambo riri kuri iyo kasete ariryo Mugesera Léon yavugiye ku Kabaya kuko nta cyarihinduweho nk'uko byasobanuwe mu rubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada rwavuzwe haruguru.

[122] Na none mu gika cya [15] na [19] by'urubanza rujuririrwa. Urukiko Rukuru rwasobanuye ko rwagereranyije ijambo ryoherejwe muri Canada riri kuri kasete n'ijambo riri kuri « *compact disk* » (CD) n'inyandukuro yaryo rwashyikirijwe n'Ubushinjacyaha, ko hanashingiwe no ku manza zaciwe n'Inkiko zo muri Canada zavuzwe haruguru, rwasanze ijambo rwashyikirijwe n'Ubushinjacyaha ariryo MUGESERA Léon yavugiye muri « *meeting* » ya MRND yo ku wa 22/11/1992 nk'uko yanabiyemereye mu Nkiko zo mu gihugu cya Canada, maze Urukiko Rukuru rwemeza ko iryo jambo ryafatiwe kuri kasete rikanashyirwa kuri « *compact disk* » (CD), ari ikimenyetso muri urwo rubanza kuko ryabonetse mu buryo butanyuranyije n'ibiteganywa n'ingingo ya 127 y'Itegeko ryavuzwe haruguru.

[123] Dosiye igaragaza na none ko muri uru Rukiko, Mugesera Léon yemeye ko yari muri « *meeting* » yabereye ku Kabaya ku wa 22/11/1992, kandi ko yahavugiye ijambo ari imbere y'abaturage benshi bari bateraniye muri iyo mitingiri, maze mu iburanisha avuga ko n'ubwo atibuka ijambo yavuze,

ashobora gusesengura ijambo ryashingiweho aregwa, aba aribyo akora ndetse arishyira muri « *contexte* » ryavugiwemo.

[124] Urukiko rurasanga, kuba umuhanga witwa Peter Fraser yaremeje ko ijambo riri kuri kasete (*composite n° 4*) rihuje neza na disikuru y'umwimerere Mugesera Léon yavuze, kandi na Mugesera Léon ubwe akaba yarabyemereye muri Canada ku wa 17/01/1996 no ku wa 30/01/1997, aho yemeje ko ijambo riri kuri kasete yumvise rihuje neza n'iryo yavugiye muri mitingi yabereye ku Kabaya ku wa 22/11/1992, ndetse n'imbere y'uru Rukiko, Mugesera Léon akaba yaremeye ko yari muri iyo mitingi, kandi ko yanayivugiyemo ijambo, ndetse akaba yaranasesenguye iryo jambo anarishyira muri « *contexte* » yaryo, bigaragara nta shiti ko iryo jambo ryafatiwe kuri kasete rikanashyirwa kuri « *compact disk* » (CD), ari ikimenyetso cy'uko iryo jambo ryavuzwe na Mugesera Léon nk'uko arikurikiranweho muri uru rubanza kuko ryabonetse mu buryo bukurikije amategeko yavuzwe haruguru nk'uko byemejwe n'Urukiko Rukuru.

[125] Urukiko rurasanga imvugo ya Mugesera Léon y'uko Urukiko Rukuru rutagombaga kumuhamya icyaha hashingiwe kuri kasete yavuzwe haruguru, kubera ko Peter Fraser yemeje ko atari umwimerere bitewe n'uko yahinduwe (*truqué*) nta shingiro ifite, kuko nta kuri kuyirimo, kuko muri « *contre-interrogatoire* » yo ku wa 23/06/1995, Peter Fraser yemeje ko ijambo riri kuri kasete (*composite n° 4*) rihuje na disikuru

y'umwimerere Mugesera Léon yavuze⁴⁹ nk'uko byanashimangiwe n'uwo Mukemurampaka⁵⁰.

[126] Urukiko rurasanga kandi imvugo ya Mugesera Léon y'uko Urukiko Rukuru rutagombaga kumuhamya icyaha hashingiwe ku ijambo riri kuri kasete ryavuzwe haruguru kubera ko rutagaragaje uwarifashe n'uburyo ryagiye rihererekanwa kuva ku Kabaya kugeza ku Mushinjacyaha Mukuru nta shingiro ifite, kuko uretse no kuba Mugesera Léon yariyemereye ko ariwe warivuze nk'uko byasobanuwe haruguru, mu bika bya [17] na [18] by'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko iryo jambo rikimara kuvugirwa muri mitingi yo ku Kabaya ku wa 22/11/1992, iryo jambo ryafashwe na Radio Rwanda mu rwego rwo gutara no gutangaza inkuru, ko kandi iyo kasete iri mu bubiko bwayo, ndetse ko ku wa 27/11/1992, Orinfor yohereje Ubushinjacyaha kopi y'iyi kasete, ibuha n'uburenganzira bwo kuyikoresha mu kazi kabwo. Urwo Rukiko rwasobanuye kandi ko ku wa 22/05/1995, Murutampunzi Boniface, wari Umunyamakuru kuri Radio Rwanda guhera mu kwezi kwa 11/1992, yemeje ko abisabwe n'Umuyobozi we hari n'uhagarariye « *Ambassade* » ya Canada mu Rwanda, i Kigali, yakuye mu bubiko bwa Orinfor kasete y'umwimerere yafatiweho iryo jambo, ayiha Nyirantabashwa Ange, wari umutekinisiye kuri Radio Rwanda, ayikorera kopi nk'uko n'uyu yabyemeje.

⁴⁹ (...) then tape number 4 would in all probability be what was given in the original speech. Probability. (...) It's my opinion that this and this would be the same.

⁵⁰ Nous avons ici un expert dans son domaine, qui a conduit certains examens, et qui nous dit que sur la balance des probabilités, le "tape" numéro 4 serait l'enregistrement original du discours».

[127] Hashingiwe ku bisobanuwe haruguru, Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze ubwo rwemezaga ko ijambo riri kuri kasete no kuri « compact disk » (CD) rwashyikirijwe n'Ubushinjacyaha nk'uko riri ku mugereka (annexe) w'uru rubanza rikwiye gufatwa nk'ikimenyetso mu rubanza kuko ryabonetse mu buryo bukurikije amategeko, kuko nta kimenyetso Mugesera Léon yatanze kibivuguruzwa, bityo iyi mpamvu ye y'ubujurire ikaba nta shingiro ifite.

2. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu guhamya Mugesera Léon ibyaha hashingiwe ku buhamya bumushinja ibinyoma.

2. 1. Ku birebana n'abatangabuhamya bamushinja ijambo yavugiye ku Kabaya.

[128] Mugesera Léon anenga ko Urukiko Rukuru rwashingiye ku batangabuhamya batavugisha ukuri no ku buhamya bwa bamwe badafite ubumenyi ku byo batangira ubuhamya, asobanura ibyo anenga abo yise abatangabuhamya basanzwe, n'ibyo anenga abatangabuhamya b'inzobere.

[129] Ku byerekeye abatangabuhamya basanzwe (*témoins ordinaires*), Mugesera Léon anenga ko Urukiko Rukuru, rubyibwirije, rwahisemo kumva gusa abatangabuhamya 28 mu batangabuhamya 45 bashingiweho n'Ubushinjacyaha bumurega, ko yagombye guhabwa umwanya wo kuvuguruzwa imvugo z'abatangabuhamya bose kuko imvugo zose ziri muri dosiye zigira uruhare mu isesengura ry'urubanza hatitawe ku kuba abatangabuhamya barahamagawe mu Rukiko cyangwa batarahamagawe mu Rukiko.

[130] Mu kunenga imvugo z'abatangabuhamya bashingiweho n'Urukiko Rukuru, Mugesera Léon avuga ko bamwe muri bo

bamushinja bibeshyera ko bari muri « *meeting* » yabereye ku Kabaya ku wa 22/11/1992, nyamara batarahageze, ko abandi bashyiramo amarangamutima bagakoresha amagambo ataboneka mu ijamba ashinjwa kuba yaravuze uwo muni, ko hari n'abagambanye kumubeshyera babitewe n'idini bahuriyemo cyangwa amasano y'ubuvandimwe, abandi nabo ngo bakaba bamushinja ko ijamba yavuze ryabaye imbarutso yo kwica abatutsi bari muri ako karere, nyamara ngo badashobora gutanga ikimenyetso cy'isano iri hagati y'abantu bishwe n'ijamba ashinjwa kuba yaravugiye ku Kabaya.

[131] Mugesera Léon avuga ko abatangabuhamya bavuze ko bumvise disikuru yo ku Kabaya kuri Radio Rwanda bamubeshyera kubera ko Higiro Jean Marie Vianney utaravugaga rumwe n'ubutegetsu bwariho icyo gihe, kandi wanakoraga kuri Radio Rwanda yavuze ko icyo disikuru itigeze inyura kuri Radio Rwanda.

[132] Mugesera Léon anenga ubuhamya bwatanze na Hategekimana Iddi uvuga ko yari mu nama yabereye ku Kabaya, kandi ko yiyumviye Mugesera Léon avuga ko agatutsi kose kagomba kunyuzwa muri Nyabarongo, nyamara ngo iri jambo ntaho riboneka muri « *discours* » ashinjwa, ko kandi uyu yavuze ko nyuma y'ijamba rya Mugesera Léon hari abagogwe bishwe, nyamara ibi ngo bikaba bivuguruzwa na Lt Ruzibiza Abdoul wasobanuye kuri Radio « *Voice of America* » ku wa 02/05/2004 ko abagogwe bishwe n'Inkotanyi, ndetse n'uware Ministiri w'Ubutabera mu mwaka wa 1992 nawe ngo akaba yarahamije ko nta muntu wishwe kubera ijamba ryavuzwe na Mugesera Léon.

[133] Mugesera Léon anenga Gashikazi Rajhab kuba abeshya ko yari muri « *meeting* » yo ku Kabaya kandi ko yiyumviye

ijambo rye, nyamara mu buhamya bwe akavuga ko atigeze yumva ijambo « amatora » mu gihe iri jambo rigaruka inshuro 17 muri « *discours* » ashinjwa.

[134] Mugesera Léon yakomeje anenga abandi batangabuhamya bamushinja amagambo ataboneka muri « *discours* » aregwa, nyamara bavuga ko bayiyumviye, abandi ko bayabwiwe n'abitabiriye « meeting » yo ku Kabaya. Abo ni Nyirabagirishya uvuga ko yabwiwe ko Mugesera Léon yavuze ko abatutsi ari inyenzi, Uwimana Salama wavuze ko yumvise Mugesera Léon avuga ko nta mututsi ugomba kubacika avuye muri Selire na Segiteri, Ntawuruhunga Hassan wavuze ko Mugesera Léon yavuze ko abahutu bagomba kwikiza abatutsi muri za Segiteri na Komini.

[135] Mugesera Léon anenga kandi Urukiko Rukuru kuba rwarashingiye ku buhamya bw'abantu bari baraciriwe imanza zo gutanga ubuhamya bw'ibinyoma. Abo ni PME waciriwe urubanza N° RP 320/R3/2001 n'Urukiko rwa Mbere rw'Iremezo rwa Gisenyi ku wa 13/09/2002, ku cyaha cy'ubwicanyi no kubeshya, na PMK waciriwe urubanza RP 0075/TGI/NYGE n'Urukiko Rwisumbuye rwa Nyarugenge ku wa 16/11/2009, ku cyaha cyo kubeshya inkiko.

[136] Mugesera Léon yaburanye avuga ko ikigaragaza ko abatangabuhamya bamubeshyera, ari uko mu manza zitandukanye hari abandi bagiye batanga ubuhamya bw'ibinyoma, kandi ko baje kubiyemerera bavuga ko babikoze kubera ko Ubushinjacyaha bwabijeje imbabazi ku bihano bakatiwe n'inkiko. Abo ngo ni Nyabyenda Jean Marie watanze ubuhamya mu rubanza rwa Mwigimba Jean Baptiste, na Baziga Emmanuel kimwe na Hakizimana De Gaulle bemeye ko batanze ubuhamya bubeshyera Bandora.

[137] Ku byerekeye abatangabuhamya b'inzobere, Mugesera Léon yanenze ubuhamya bwa Ruzindana Matthieu (ufite PhD mu ndimi mu bijyanye n'ubutinde bw'amajwi) na Ntakirutimana Evariste, bafashwe nk'inzobere mu guha ubusobanuro ijambo « inzoka » n'ijambo « inyenzi », ko uretse no kuba badafite ubumenyi mu byo bari bahamagariwe gusobanura (*ils n'ont pas les compétences académiques en Lexicologie*), ko nta hantu na hamwe bashingira bavuga ko ijambo « inyenzi » cyangwa « inzoka » bisobanura abatutsi, ko ahubwo bamwe mu biswe inzobere bagiye Arusha kwishakira amaramuko. Anenga kandi ko Urukiko Rukuru rwashingiye ku buhamya bwabo, nyamara rutarigeze rubahamagaza ngo rubumve, bityo nawe abone uburenganzira bwo kugira ibyo ababaza.

[138] Mugesera Léon anenga kandi Urukiko Rukuru kuba rwarashingiye ku ibarwa yitiriwe umutangabuhamya Rumiya Jean, nyamara ngo uyu muhanga mu mateka akaba adashobora guhamya ibyabereye ku Kabaya atarahageze, ko kandi imbere y'Urukiko muri Canada, uyu yavuze ko mu gihe cya jenocide, Mugesera Léon yari yaravuye muri MRND, ko yibwiraga ko yagiye muri FPR, bityo ko inyandiko yitirirwa Rumiya Jean nta gaciro yagombye guhabwa.

[139] Mugesera Léon avuga ko Urukiko Rukuru rwagombye kwita ku byagezweho n'abahanga bigereye mu Rwanda kuko ibyo bavuga babifitiye ubumenyi buhagije aribo, Jenerali Romeo Dallaire wari imbere y'Inteko Rusange ya ONU ku wa 30/03/1994 ayibwira ko nta kibazo kiri mu Rwanda, bityo ko atari kubura kuvuga imvururu zatewe n'ijambo rya Mugesera Léon iyo biza kubaho, ndetse ngo no mu gitabo cye yise « *j'ai serré la main du diable* », ntaho yavuze ibya Mugesera Léon.

Avuga kandi ko impuguke zirimo Eric Gillet na Alison Des Forges, bakoreye mu Rwanda iperereza rikomeye mu 1993, aba bombi ngo bakaba batarigeze bavuga ko ijambo Mugesera Léon yavugiye ku Kabaya ryaba ryarateje jenocide.

[140] Ubushinjacyaha buvuga ko nta kosa Urukiko Rukuru rwakoze mu guhamya Mugesera Léon ibyaha hashingiwe ku buhamya bwatanzwe n'abatangabuhamya kubera ko bahuriye ku ngingo z'ingenzi zigize ijambo Mugesera Léon yavugiye ku Kabaya ryashishikariye icyaha cya jenocide ari zo : Kwita abatutsi inyenzi (inzoka) no kuba ibyitso by'abateye i Gihugu ; kubakata amajosi ; kunyuza abatutsi iy'ubusamo muri Nyabarongo ; kuba ikosa ryakozwe mu 1959 ari uko baretse abatutsi bakagenda none abana babo akaba aribo bateye i Gihugu, kandi ko banahuriza ku kuba nyuma y'iryo jambo, ubwicanyi bw'abatutsi bari batuye muri ako karere bwarahise butangira.

[141] Ubushinjacyaha buvuga kandi ko Urukiko Rukuru rwashingiye ku ireme ry'ubuhamya bwatanzwe, n'ubwo ababutanze bashobora gukoresha amagambo atandukanye mu gusobanura ibyo biyumviye ubwabo cyangwa ibyo babwiwe, ko kandi nyuma y'imyaka irenga 20, umutangabuhamya adashobora gusubira mu nkuru akoresheje amagambo asa neza n'ayo Mugesera Léon yavuze, ibyo ngo Urukiko Rukuru rukaba rwarabihamije rushingiye no ku manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, busaba ko n'uru Rukiko rwabirebera muri uwo murongo.

[142] Ubushinjacyaha bwashobanuye ko Mugesera Léon adakwiye gushingira ku isano iri hagati y'abamushinja asaba ko ubuhamya bwabo buteshwa agaciro, kuko kuba bamwe muri bo

bafitanye isano n'abishwe no kuba bamwe mu bamushinja barakatiwe n'inkiko, ko ahubwo yagombye kunenga ireme ry'ubuhamya bumutangwaho, kandi ko ibyo atabishoboye nk'uko byahamijwe n'Urukiko Rukuru, ndetse ko n'ubu atavuguriza ubuhamya bumutangwaho kuko ibyo bahamije bihura n'ibikubiye mu ijamba ashinjwa kuba yaravugiye ku Kabaya.

[143] Ku birebana n'abatangabuhamya Mugesera Léon yita inzobere, Ubushinjacyaha buvuga ko nta nzobere ziyambajwe mu rubanza rujuririrwa, ko ahubwo ubuhamya izi nzobere zatanze mu manza zitandukanye zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (nko mu rubanza rwa Akayezu n'urwa Nyiramasuhuko Pauline na bagenzi be) n'ubwatanzwe mu rubanza Mugesera Léon yaciriwe mu gihugu cya Canada, ari bwo bwifashishijwe mu gusobanura amwe mu magambo akubiye mu ijamba Mugesera Léon yavugiye ku Kabaya ashishikariza abantu gukora jenocide. Buvuga ko amwe mu magambo yahawe ubusobanuro bwite hakurikijwe igihe yavugiye ari « inyenzi », « ibyitso by'abateye i Gihugu », amagambo yakoresheye n'abashishikarije umugambi wa jenocide, ariko ko birindaga kwereka ngo bavuye ko ari ubwoko bw'abatutsi, ko kandi aya magambo ari yo aboneka mu ijamba Mugesera Léon ashinjwa, aho yavuze ko aba aribo bagomba gukatwa amajosi, bakicwa kandi bakanyuzwa iy'ubusamo muri Nyabarongo bagasubira iwabo muri « Ethiopie »

UKO URUKIKO RUBIBONA

[144] Ingingo ya 18 y'Itegeko N^o 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u

Rwanda, ivuga ko Umushinjacyaha cyangwa uregwa bafite uburenganzira bwo kujuririra icyemezo cyafashwe n'Urukiko Rukuru mu gihe habayeho ukwibeshya gushingiye ku ngingo y'Itegeko gutuma icyemezo gita agaciro cyangwa ukwibeshya gushingiye ku byabaye kwatumye rucibwa nabi.

[145] Naho ingingo ya 65 y'Itegeko N^o 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ikavuga ko Urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa.

[146] Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze mu guhitamo kumva abatangabuhamya 28 mu mwanya wo kumva abatangabuhamya bose babajijwe n'Ubushinjacyaha kuko, Urukiko ari rwo rusuzuma imvugo zatanzwe n'abatangabuhamya rukamenya izihuje na kamere y'urubanza n'uko ibintu byagenze, bikaba bitari mu nyungu z'ubutabera n'iz'ababuranyi guhamagaza abatangabuhamya badafite ubumenyi ku kiburanwa, kandi batanashoboraga no gufasha Urukiko kugera ku kuri gukenewe nk'uko biteganywa mu ngingo ya 2⁵¹ n'ya 65⁵² z'Itegeko No 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo.

[147] Urukiko rurasanga ingingo Mugesera Léon ashingiraho anenga abatangabuhamya babajijwe ku bijyanye n'ijambo

⁵¹ Ingingo ya 2 y'Itegeko ryavuzwe haruguru, iteganya ko "Ikimenyetso cyo mu rubanza ni uburyo bukoreshwa kugira ngo ukuri kw' ibyabaye kugaragare.

⁵² Ingingo ya 65 y'Itegeko ryavuzwe haruguru, iteganya ko "Urukiko ni rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa.

ashinjwa kuba yaravugiye ku Kabaya ku wa 22/11/1992 ari nazo zasuzumwe n'Urukiko Rukuru ku rwego rwa mbere nk'uko biboneka mu rubanza rwaciye, kuva ku gika cya 67 kugeza ku cya 69, aho yavuze ko abatangabuhamya bivuguruzana ndetse bakavuguruzanya mu buhamya bwabo kuko bavugaga ibyo batahagazeho, ko hari amagambo bamushinja ataboneka mu ijambo aregwa kuba yaravugiye ku Kabaya ndetse ntibagaruke ku magambo y'ingenzi aboneka mu ijambo ryashyikirijwe Urukiko, kandi ko hari bamwe mu batangabuhamya bireze bakemera icyaha, bamushinja ibinyoma kubera kwigura, naho abandi ngo bakaba bamushinja ibinyoma kubera isano bafitanye n'abantu bishwe.

[148] Urukiko rurasanga, mu gika cya 71 cy'urubanza rujuririrwa, Urukiko Rukuru rwarasesenguye uko bikwiye aho rwahereye rushingira ku mvugo z'abatangabuhamya bavugwa muri uru rubanza, aho rwagaragaje ko ubuhamya bwabo bufite ireme, kuko n'ubwo babivugaga mu magambo yabo, ibyo bavugaga bihura n'ijambo Mugesera Léon yavugiye ku Kabaya nk'uko ryumvikana kuri « CD » no mu nyandukuro yarikorewe. Rwasanze kandi, uburyo abatangabuhamya bavugaga ibyo biyumviye cyangwa bumvanye abandi, bigaragara ko bavugaga ibyo bazi kuko bose baturutse ku ngingo z'ingenzi zigaruka ku magambo ashishikariza gukora jenocide arimo kwita abatutsi inyenzi, ibyitso by'abateye igihugu, ko bagomba kubakata amajosi, kubanyuza iy'ubusamo muri Nyabarongo bagasubira muri Etiyopiya, aho baturutse, ko ikosa ryakozwe mu 1959, ari uko babaretse bakagenda none abana babo bakaba aribo bateye igihugu. Rwasanze kandi aba batangabuhamya baturutse no kuba ijambo rya Mugesera Léon ryarabaye imbarutso y'ibitero

byahitanye abatutsi benshi ku Gisenyi no mu nkengero zayo, abandi bagasenyerwa.

[149] Urukiko rurasanga na none ubuhamya bwashingiweho n'Urukiko Rukuru bwarasesenguwe neza, kuko uretse no kubugereranya n'ibyo rwiyumviye kuri « CD », mu gika cya 75 cy'urubanza rujuririrwa, rwasanze na none, amagambo yavuzwe n'abatangabuhamya ahuza n'ibyanditswe n'ibitangazamakuru byagarutse ku ijambo rya Mugesera Léon n'ingaruka ryagize, birimo ikinyamakuru Umurangi No 14 cyo ku wa 10/12/1992, cyanditse ko Mugesera Léon yavugiye ku Kabaya ijambo rivuga ko bagomba gukata abatutsi amajosi bakabaroha muri Nyabarongo, ikinyamakuru Rwanda Rushya No 34 cyo mu Ukuboza 1992, cyanditse ko Mugesera Léon yavugiye muri « meeting » yo ku Kabaya ko hari abanyarwanda b'abanyetiyoziya bagomba kunyuzwa muri Nyabarongo kugira ngo bagereye bwangu, ikinyamakuru Isibo cyo ku wa 24-31 Ukuboza 1992, cyavuze ko ibyo Mugesera Léon yavugiye ku Kabaya ku wa 22/11/1992 byashyizwe mu bikorwa n'Interahamwe n'Impuzamugambi muri Kibirira ku wa 28/12/1992, ikinyamakuru Kinyamateka No 387, cyasohotse muri Gashyantare 1993, cyanditse kuri disikuru Mugesera Léon yavugiye ku Kabaya asaba abanyagisenyi mu magambo ataziguye kwica abo batavugaga rumwe⁵³.

[150] Urukiko rurasanga na none, mu guha agaciro ubuhamya bwatanze, Urukiko Rukuru rwarasanze ibyo bavuze bihuza n'ibyo impuguke zemeje zirimo Komisiyo Mpuzamahanga ku burenganzira bwa muntu, aho muri raporo yayo yo ku wa 07-21/10/1993 yagarutse ku ijambo rya Mugesera Léon nk'umuntu washishikariye ku buryo bukomeye ubugizi bwa nabi, Rumiya

⁵³ Reba igika cya 75 cy'urubanza rujuririrwa No RP 0001/12/CCI

Jean, umwalimu muri Kaminuza, wandikiye Mugesera Léon urwandiko rufunguye rwo ku wa 02/12/1992 rwamagana ijambo rye ryahamagariye kwica abatutsi n'abayobokeye b'amashyamba ataravugaga rumwe na MRND na Philip Reyntjens, umwalimu muri Kaminuza, nawe wanditse avuga ko ijambo Mugesera Léon yavugiye ku Kabaya mu 1992 ryari rutwitsi, kuko rihamagarira kwica abatutsi n'abanyapolitike batavugaga rumwe n'ubutegetsi bwariho.

[151] Urukiko rurasanga nta kosa Urukiko Rukuru rwakoze mu isesengura rwakoze kuko rwasuzumye ireme ry'ubuhamya bwatanze rubugereranya n'amagambo bavuze n'ibindi bimenyetso byariho mbere yuko ubuhamya butangwa nk'uko bisobanuwe mu bika bivuzwe haruguru, by'umwihariko amagambo bavuze akaba ahuje n'akubiye muri *cassette* yafatiweho ijambo Mugesera Léon akurikiranyweho agashyirwa no kuri CD », ndetse agakorera inyandukuro. Urukiko Rukuru na none, rwasobanuye ku buryo bwumvikana ko kuba bamwe mu batangabuhamya bafitanye isano, abandi bahuriye ku idini, abandi bashobora kuba baraganiriye hagati yabo mbere yo gutanga ubuhamya, bitabuza Urukiko gushingira ku buhamya bwabo kuko bufite ireme kandi bugahuza n'ibindi bimenyetso byatanze n'Ubushinjacyaha.

[152] Urukiko rurasanga kandi, nk'uko biboneka mu gika cya 72 cy'urubanza rujurirwa, mu gutesha agaciro impamvu Mugesera Léon ashingiraho avuga ko Urukiko Rukuru rutagombaga gushingira ku buhamya bwa bamwe bavuze amagambo adahuza n'ijambo ashinjwa kimwe n'abandi batagarutse ku magambo yibanzeho muri iri jambo, Urukiko Rukuru rwarashingiye ku manza zaciye n'Urukiko Mpanabyaha Mpusamahanga rwashyirweho u Rwanda zirimo

urwa Bikindi Simon⁵⁴ n'urwa Muvunyi Tharcisse⁵⁵, zagaragaje ko ubuhamya butanzwe nyuma y'igihe kinini bureberwa mu ireme ryabwo kabone n'iyi ababutanga baba bakoresha amagambo yabo bwite mu gusobanura ibyo biyumviye cyangwa ibyo babwiwe.

[153] Urukiko rw'Ubujurire ruremeranywa n'umurongo uvuzwe haruguru kuko abatangabuhamya bumvise cyangwa babwiwe ijamba Mugesera Léon ashinjwa kuba yaravugiye ku Kabaya, buri wese, nyuma y'igihe kinini, yasigaranye mu mutwe we iryamukoze ku mutima, kandi mu kurisobanura akaba ashobora gukoresha amagambo ye, Urukiko akaba ari rwo rufite inshingano yo kwemeza ko ubuhamya butanzwe buhuje na kamere y'ikiburanwa kandi ko bukiranywe, ari byo Urukiko Rukuru rwakoze ubwo rwagereranyaga ubuhamya bwatanzwe n'ibindi bimenyetso rwashyikirijwe biri muri dosiye byavuzwe haruguru.

[154] Ku birebana n'imvugo ya Mugesera Léon y'uko hari abantu muri Gereza batanga ubuhamya bushinje ibinyoma kubera ko bijejwe kugabanyirizwa ibihano, aho atanga urugero rw'abemeye ko bashinje ibinyoma Bandora na Mwigimba, Urukiko rurasanga, uretse no kuba nta bimenyetso abitangira, aterekana isano bifatanye n'urubanza aburana.

[155] Urukiko rurasanga ku birebana n'abatangabuhamya b'inzobere, Mugesera Léon anenga ko Ntakirutimana Evariste na Ruzindana Mathias batanze ubusobanuro bw'ijamba «

⁵⁴ ICTR-2001-72-T, The Prosecutor vs. BIKINDI Simon, 2nd December 2008, para.32.

⁵⁵ ICTR-00-55A-T, The Prosecutor vs. MUVUNYI Tharcisse, 11th February 2010, para. 56, 58, 91-94 .

inyenzi » n'ijambo « ibyitso » babihuza n'ubwoko bw'abatutsi, nyamara ngo badafite ubumenyi buhagije ku bijyanye no gutanga ubusobanuro bw'amagambo. Urukiko rurasanga abahanga bavugwa muri iki gika barifashishijwe mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Muvunyi Tharcisse n'urwa Nyiramasuhuko Pauline⁵⁶, aho bagaragaje ko aya magambo yakoreshejwe n'abanyapolitike batifuzaga ko amahanga atahura umugambi bari bafitiye abatutsi.

[156] Urukiko rurasanga, mu miburanire ye mu Rukiko Rukuru, MUGESERA Léon yaraburanishije ibisobanuro byatanzwe n'umuhanga KAMANZI Thomas wavugiye mu Rukiko rwa Canada ko ijambo « inyenzi » rivuga « inyeshyamba », ko ijambo « ibyitso » ritavuga « abatutsi », ko ahubwo rivuga abemeye gufatanya n'abanzi bari bateye u Rwanda, naho ijambo « inzoka » ngo rikaba rishobora gusobanura umuntu w'indyadya Urukiko rurasanga kandi mu Rukiko Rukuru, MUGESERA Léon yaraburanye avuga ko amagambo atagira ibisobanuro, ko ahubwo agira uko akoreshejwe (*les mots n'ont pas de sens, ils ont des emplois*)⁵⁷.

[157] Urukiko rurasanga, mu gika cya 42 cy'urubanza rujuririrwa, Urukiko Rukuru ari rwo rwahaye ubusobanuro amagambo « inyenzi n'ibitso byazo », « inzoka », « abohereje abana babo mu Nkotanyi », « abemerewe gusohoka mu gihugu mu 1959 », ruhuje ayo magambo n'ibihe abatutsi barimo, bicwa bazira ko bafatanyije n'Inkotanyi zari zateye u Rwanda, rwemeza ko aya magambo yaganishaga ku batutsi, Urukiko rw'Ubujurire rukaba rwemeranywa n'umwanzuro wagezweho

⁵⁶ ICTR- 98-42-2183/01 rwaciwe na TPIR ku wa 14/12/2015

⁵⁷ Reba igika cya 34 cy'urubanza rujuririrwa N° RP 0001/12/CCI

n'Urukiko Rukuru kuko rwasesenguye ayo magambo ruyashyize mu gihe yavugiwemo rukurikije n'ubuhamya bwatanzwe na Kadogo Hachim, Nyirabagirishya Raphaël, PME, Ngerageze Muhamudu, Ntawuruhunga Hassan, na Hategekimana Iddi, bemeza ko iri jambo barifashe nko gushishikariza kwica abatutsi kuko nyuma ya « *meeting* » hatangiye ubugizi bwa nabi bica, basahura, banasenyera abatutsi⁵⁸. Rurasanga kandi, kuba ijambo « *inyenzi* » ryakoreshejwe muri disikuru Mugesera Léon ashinjwa, rivuga umututsi, Urukiko rubihurizaho n'Umwanditsi Susan Benesch⁵⁹ wasesenguye imikoreshereze y'iri jambo mu bihe bitandukanye byaranze amateka y'u Rwanda.

[158] Urukiko rurasanga, ingingo Mugesera Léon ajuririsha anenga ko Urukiko Rukuru rwashingiye ku buhamya bw'inzobere zitabifitiye ubumenyi nta shingiro ifite, kuko Urukiko Rukuru rutigeze rubiyambaza nk'abatangabuhamya mu rubanza rwaciye, ko ahubwo rwikoreye isesengura ry'amagambo nk'uko byasobanuwe mu gika kibanziriza iki, rukaba rwarashimangiye ubusobanuro bwahaye amagambo yavuzwe haruguru rwifashishije ibisobanuro byatanzwe n'impuguke Ruzindana Mathias na Ntakirutimana Evariste

⁵⁸ Reba igika cya 78 cy'urubanza rujurirwa N° RP 0001/12/CCI

⁵⁹ The term “*inyenzi*” was coined in the 1960s to refer to Tutsi rebel fighters who conducted nighttime attacks in Rwanda and then disappeared before daylight into neighboring countries. In the early 1990s the term referred to the Tutsi rebels of the RPF, but it also came to mean perceived enemies of the Hutu government, and later any Tutsi person, “*inyenzi*” was a leitmotif of Mugesera’s speech. Since the meaning of the word changed dramatically over time, it cannot be understood without asking: what did it mean to a particular audience at a particular moment?” (Susan Benesch: “Vile crime or inalienable right: Defining incitement to commit genocide” in Virginia Journal International Law, p. 486).

bitabajwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, aho nabo basobanuye ko amagambo « inyenzi n'ibytso byazo » yakoreshwaga havugwa abatutsi bakoresheje imvugo iziguye kugira ngo amahanga adatahura umugambi w'ubutegetsi bwariho mu gutoteza abatutsi.

[159] Rurasanga na none, Urukiko Rukuru mu gushimangira ubusobanuro bwahaye amagambo « inyenzi n'ibytso byazo » n'ijambo « inzoka », rwarifashishije inyandiko yo ku wa 21/09/1992 yavuye mu Buyobozi Bukuru bwa Gisirikari, yagarutsweho muri raporo y'impuguke⁶⁰ nayo ivuga ko umwanzi wavugwaga icyo gihe yari umututsi uri mu Gihugu, hanze yacyo cyangwa umushyigikiye, ibi bikaba biha ireme ubusobanuro bw'amagambo bwagezweho n'uru Rukiko.

[160] Urukiko rurasanga kandi, ubusobanuro bwatanze na Ruzindana Mathias na Ntakirutimana Evariste ku magambo « inyenzi n'ibytso byazo » buhuza n'ubwatanze n'Urukiko rw'Ikirenga rwa Canada rwasobanuye ko ijambo « inyenzi » ryakoreshejwe muri « discours » Mugesera Léon ashinjwa, rifite inkomoko mu bitero by'impunzi z'abatutsi zateraga u Rwanda mu 1960 zishaka gutaha, Mugesera Léon akaba yararisanishije n'ijambo « Inkotanyi », ubwo yavugaga ko abateye u Rwanda badakwiye izina ry'Inkotanyi, ko ahubwo bakwiye kwitwa inyenzi ndetse n'ubwo yavugaga ko ibytso by'inyenzi bigomba kwicwa kugira ngo ikosa ryakozwe mu 1959 ryo kubareka bagasohoka ridasubira, Urukiko ruhuje aya magambo n'igihe yavugiwemo ubwo abatutsi basaga 2.000 bicwaga hagati ya

⁶⁰ Rapport de la Commission Internationale d'enquête sur les violations des droits de l'homme au Rwanda depuis le 1er Octobre 1990, p. 63.

1990 na 1993, rwanzura ko inyenzi n'ibytso byazo bivugwa ari abatutsi⁶¹.

[161] Urukiko rurasanga, ubumenyi buke buvugwa na Mugesera Léon ku nzobere ziyambajwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ntaho abushingira kuko, ubusobanuro bahaye ijambo « inyenzi » buhura n'ibyangirikiye n'izindi mpuguke Mugesera Léon adafite icyo anenga barimo Jenerali Romeo Dallaire, wayoboye ingabo mpuzamahanga zari zishinzwe kugarura amahoro mu Rwanda, ndetse Mugesera Léon yemera nk'impuguke zari mu Rwanda, uyu nawe akaba yaranditse avuga ko abategetsi b'abahutu n'ibitangazamakuru bagereranyaga abatutsi n'« inyenzi »⁶²

[162] Urukiko, rushingiye ku bisobanuro bitanzwe mu bika bibanziriza iki, rurasanga ingingo Mugesera Léon ajuririsha avuga ko Urukiko Rukuru rwamuhamije ijambo ryavugiye ku Kabaya rushingiye ku buhamya butavugisha ukuri, nta shingiro ifite.

2.2. Ku birebana n'abatangabuhamya bamushinja ijambo yavugiye mu nama y'I Nyamyumba.

[163] Mugesera Léon, yunganiwe na Me Rudakemwa Jean - Félix, avuga ko uretse no kuba atarigeze aboneka mu nama ashinjwa ko yabereye i Nyamyumba ku wa 06/07/1992, ko yacukumbuye agasanga abatangabuhamya Rwasubutare Callixte na Sinayobye André barakoze akagambane ko

⁶¹ Supreme Court of Canada, file No 30025, Mugesera vs. Canada (Minister of Citizenship and Immigration), parag. 68.

⁶² (...) *for example, hutu leaders, editors and broadcasters famously described tutsi people as inyenzi or cockroaches* Romeo Dallaire: Shake the hand of the devil, 2005, p.142.

kumushinja ibinyoma, kuko yasanze ubuhamya bwanditse, aba bombi batanze busa mu miterere no mu myandikire yabwo, ndetse n'umukono uboneka ku buhamya bwitiriwe aba bombi ari uwa Rwasubutare Callixte kuko usa n'uboneka ku rwandiko rwe rwo ku wa 20/10/2008 yabonye muri Gereza, nyamara ngo mu Rukiko Rukuru aba bombi bakaba baravuze ko batari kumwe igihe batangaga ubwo buhamya.

[164] Mugesera Léon anenga kandi abamushinja kuba yari mu nama bivugwa ko yabereye I Nyamyumba avuga ko bamushinja ko yari kumwe n'uware Umunyamabanga Mukuru wa MRND, Habimana Bonaventure, kimwe na Ngirumpatse Matthieu bavuga ko yari Perezida wa MRND, nyamara ngo kuri iyi tariki ivugwa aba bombi bakaba batari bari muri iyi myanya y'ubuyobozi bitirirwa. Byongeye kandi ngo iyo aza kuba ari kumwe n'aba bombi, ngo atari gufata ijamba hari abamukuriye mu ishyamba rya MRND ku rwego rw'igihugu.

[165] Ubushinjacyaha buvuga ko inama yabereye i Nyamyumba ku wa 06/07/1992, Mugesera Léon yayivugiyemo amagambo ashishikariza abahutu gutsemba abatutsi kuko ngo ari abagome bashaka kubica, ko ari inzoka, ko kandi basigiye ubumuga abasekuruza b'abahutu, bityo ko bagomba kubahiga, bakabafata, bakanyuzwa iy'ubusamo bagahinguka aho baturutse muri Abisiniya, bagashiraho kuko ababatera ari abana babo babyariye mu mahanga. Bukomeza buvuga ko Mugesera Léon abishinjwa na Sinayobye André na Rwasubutare Callixte babaye interahamwe kandi bavuga ko nyuma y'iyi nama, ubwabo bafatanyije n'abandi bishe abatutsi bari muri ako Karere.

[166] Ubushinjacyaha bwashobanuye kandi ko nta kagambane kabaye hagati y'aba batangabuhamya bombi kuko bavuze ibyo biyumviye mu nama ubwabo bari barimo kandi ko ibyo bavuze mu nyandiko ishinja Mugesera Léon babigarutseho mu iperereza, ariyo mpamvu Urukiko Rukuru rwahaye agaciro imvugo zabo.

UKO URUKIKO RUBIBONA

[167] Ingingo ya 62 y'Itegeko N° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ubuhamya ari ibivugwa mu Rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa, naho ingingo ya 71 y'iri Tegeko, ikavuga ko abatangabuhamya bose batuma urubanza rucibwa neza, bagira icyo baruvugaho.

[168] Urukiko Rukuru mu guha agaciro ubuhamya bwa Sinayobye André na Rwasubutare Callixte rwashingiye ku kuba aba bombi, n'ubwo buri wese abivuga mu magambo ye, ariko bahuriza ku kuba mu nama yabereye i Nyamyumba, Mugesera Léon yashishikariye abahutu kurwanya no kwica abatutsi abibutsa ubugome bagiriye ababyeyi babo, no kuba barashobanuye ku buryo burambuye nk'abantu bari bahibereye koko, ingaruka zakurikiye iri jambo. Urukiko rwasanze kandi kuba aba bombi baba barahuye ubuhamya bwanditse bidatesha agaciro ubuhamya bwabo kuko babugarutseho mu iperereza no mu ibazwa ryabo mu Rukiko Rukuru, kandi Mugesera Léon akaba atagaragaza icyo bamubeshyeraho.

[169] Urukiko rurasanga koko, Rwasubutare Callixte na Sinayobye André barashobanuye ku buryo bwimbitse ubuhamya

bwabo imbere y'Ubushinjacyaha n'imbere y'Urukiko Rukuru, ndetse Mugesera Léon akaba yarahawe umwanya wo kubabaza ibibazo imbere y'urwo Rukiko, aba bakaba barasobanuye ibintu uko babibonye ndetse ubwabo bemera ko bagize uruhare mu gutoteza no kwica abatutsi bakimara kumva ijambo rya Mugesera Léon.

[170] Urukiko rurasanga nk'abantu bari mu nama, buri wese avuga amagambo yihariye mu byaranze disikuru ya Mugesera Léon, nk'aho Rwasubutare Callixte yavuze ko Mugesera Léon yababwiye ko ujya gusiga umuntu amurinda ndetse ngo akababwira ko kunyuza iy'ubusamo ari ugutsemba (côtes 111-112), naho Sinayobye André mu buhamya bwe avuga ko yababajije niba batazi gutandukanya icyatsi n'ururo, kandi ngo akababwira gusobanukirwa intambara barimo n'inkomoko yayo, abibutsa amateka y'u Rwanda kuva mu 1959 n'ibitero byagabwe n'abatutsi mu 1963, mu 1973 no mu 1990. Sinayobye André yasobanuye uburyo interahamwe (na we arimo) zasabiwe « uniformes » na « bus » yo kubatwara ahabereye « meeting » ngo Habimana Bonaventure abemerera « bus » 2, ko mu gihe bajyaga mu nama yabereye i Budaha aribwo hakozwe ama lisiti y'interahamwe yakurikiwe no kubajyana ku ngoro ya muvoma (MRND) kuri Perefegitura, aho baherewe « uniformes » n'ibikoreshe byo guhiga abatutsi (côtes 116 - 121). Rurasanga ibisobanuro byatanze n'aba bombi byerekana ko bavuze ibyo bahagazeho ubwabo, ari yo mpamvu ubuhamya bwabo bukwiye guhabwa ishingiro nk'uko byemejwe n'Urukiko Rukuru.

[171] Urukiko rurasanga kandi, Rwasubutare Callixte na Sinayobye André bahuriza ku ngingo z'ingenzi zaranze inama yabereye i Nyamyumba, aho bombi bavuga ko yabereye ku ishuri rya Trinité Kivumu, ko mu bayobozi bayitabiriye harimo

Mugesera Léon, Habimana Bonaventure na Ngirumpatse Matayo, Habiyaambere Cosima, Banzi Wellars, Colonel Gahimano na Karemera Egide, ko Mugesera Léon yabasobanuriye amateka y'ubugome bw'abatutsi n'uburyo bakwiye kubasubiza iwabo muri Abisiniya, ko urubwiruko rwari muri iyo nama rwasabwe guhiga abatutsi, kandi ko bahise batera abari batuye hafi aho. Rurasanga kuba bavuga ibijya guhura nk'abantu bari mu nama imwe, ku munsu umwe, waranzwe n'ibikorwa byihariye, bidakwiye gufatwa nk'inenge nk'uko Mugesera Léon ashaka kumvikanisha ko ari akagambane, ahubwo bikwiye guha ireme ubuhamya bwabo kubera ko bufite agaciro kuko kuba bavuga ibihuye bidaterwa n'akagambane, ahubwo biterwa n'uko babonye ibintu kimwe.

[172] Urukiko rurasanga, ingingo Mugesera Léon aburanisha avuga ko abatangabuhamya bamubeshyera kubera ko ku wa 06/07/1992, Habimana Bonaventure atari Umunyamabanga Mukuru wa MRND kimwe na Ngirumpatse utari Perezida wa MRND, ko ndetse atashoboraga gufata ijamba mu nama yitabiriye n'abamukuriye ku rwego rw'Igihugu, iyi ngingo nta shingiro ifite, kuko Mugesera Léon wenyine yemera ko Habimana Bonaventure na Ngirumpatse Matayo bari mu nzego z'Ubuyobozi bw'ishyamba rya MRND, kandi abatangabuhamya bakaba bavuga ko babamenye hashingiwe ko buri wese mu bashyitsi bakuru yibwiye abari bitabiriye inama n'imirimo akora, kuba abatangabuhamya badahuza neza ku muyobozi n'imirimo yari afite muri iryo shyamba, bitagize inenge yatesha agaciro ubuhamya bwe hashingiwe ku gihe kinini cyari gishize, uhareye igihe igikorwa cyabereye kugeza ku munsu wo gutanga ubuhamya. Rurasanga kandi, Mugesera Léon wari Umuyobozi wa MRND muri Perefegitura ya Gisenyi, kandi nawe ubwe akaba yemera ko muri icyo gihe yagiye hirya no hino mu

Gihugu aho yaremeshaga inama zari zatumijwe n'ishyaka rya MRND ngo yigisha « amahembe ane ya satani », adashobora kuvuguriza ubuhamya bumushinja ko yageze i Nyamyumba kandi akahavugira ijamba rishishikariza abahutu kwica abatutsi.

[173] Urukiko rurasanga Rwasubutare Callixte na Sinayobye André, nka bamwe mu bari bagize umutwe w'interahamwe wabarizwaga mu ishyaka rya MRND, mu buhamya batanze kuri Mugesera Léon nabo ubwabo barasobanuye uruhare bagize mu byaha byakozwe ku wa 06/07/1992, aho bemera ko basahuye ndetse bakica bamwe mu batutsi bari batuye i Nyamyumba no mu nkengero zayo, rukaba rutabona inyungu bari kugira yo gushinja ibinyoma Mugesera Léon ku byaha nabo bagizemo uruhare kandi bamaze guhanirwa.

3. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu kwemeza ko Mugesera Léon yakoze icyaha cyo kuba icyitso cy'abakoze jenocide kubera gushishikariza gukora jenocide.

[174] Mugesera Léon avuga ko iyo Urukiko Rukuru rusesengura disikuru yo ku Kabaya rukanayishyira muri « contexte » yayo, rwari gusanga uwayivuze atarakoze icyaha, ariko ko urwo Rukiko rwakozwe amakosa yo kumuhamya icyaha cyo gushishikariza gukora jenocide, rwirengagije ko iyo disikuru yavuzwe igihe u Rwanda rwari rwatewe n'Igihugu cya Uganda (guerre d'aggression) nk'uko na Perezida Yoweri Museveni wa Uganda yabiyemereye ku wa 10/10/1990, ubwo yavugaga ko ingabo z'u Rwanda zitazashobora ingabo ze z'imena mu kurwana zingana na 400.000 nk'uko byanashimangiwe n'umutangabuhamya w'Umuholande watanze ubuhamya muri Canada wemeje ko ingabo za Uganda zateye u Rwanda, ko na Remigius Kintu mu gitabo yanditse, yavuze ko Perezida Paul Kagame yari afite « numéro matricule

» 00007 icyo gihe, ndetse ko hari na « télégramme » yavuye muri « Ambassade » y'Ababirigi muri Otawa ku wa 16/07/1987, yavugaga ko hari aba « Experts » b'Abanyamerika n'abo muri Canada bangana na 300 barimo gutoza ingabo za FPR b'Abatutsi kugira ngo bazatere u Rwanda.

[175] Avuga kandi ko ikindi kimenyetso kigaragaza ko Igihugu cy'u Rwanda cyari cyatewe n'Igihugu cya Uganda, ari uko abasirikare baturutse muri Uganda, bari baracengeye mu baturage b'abasivile badafite intwaro (*contexte d'infiltration*) nk'uko byavuzwe na Senateri Tito Rutaremara igihe u Rwanda rwatwaga nk'uko byanashimangiwe na Philippe Reyntjens, mu gitabo cye yanditse mu mwaka wa 1994, aho yasobanuye uburyo iyo ntambara yabayeho, bivuze ko u Rwanda rwagombaga kwitabara (*Légitime défense*) nk'uko bigaragarira mu magambo amwe ari muri iyo disikuru ajyanye no « kutavogerwa », cyangwa « ntabwo nemera ko tuzemera kuraswa » cyangwa ko « abantu bitwa Inyenzi bafashe inzira baradutera, ariko ko bazisubije hanze y'umupaka », ariko ko ijamba Inyenzi », ritavuze Inkotanyi.

[176] Avuga ko Urukiko Rukuru rwirengagije ko iyo disikuru yavuzwe igihe abaturage benshi bari baravanywe mu byabo n'intambara (*déplacés de guerre*) bari i Byumba, ndetse ko hari n'abanyerezaga imfashanyo yabo bituma « *Croix Rouge* » iyihagarika nk'uko byanditswe na Philippe Reyntjens, mu gitabo cyavuzwe haruguru, ariko ko Mugesera Léon atashakaga intambara, ko ahubwo yasabaga ko yahagarikwa mu bwumvikane kuko yasabye Perezida Museveni ko yayihagarika akareka gutera u Rwanda, ndetse ko yanasabye Leta Zunze Ubumwe za Amerika na Canada ko bashyira ingabo zabo ku

mupaka w'u Rwanda na Uganda kugira ngo zihagarike intambara, ariko birananirana.

[177] Akomeza asobanura ko Urukiko Rukuru rwirengagije na none ko iyo disikuru yavuzwe igihe kibanziriza amatora y'amashyaka menshi (*pré – campagne électorale*) yari ashyushye cyane, kuko iyo ruyisuzumana ubushishozi, rukanayishyira muri «*contexte*» yaryo yo muri 1992, aho kurishyira muri «*contexte*» yo muri 1994 no muri 2020, rwagombaga kubona ko uwayivuze atakoze icyaha kuko atari agamije gushishikariza gukora jenocide, ko ahubwo yari agamije amatora (*esprit démocratique*), kuko ijamba amatora » ariryo ryagarutseweho inshuro nyinshi zigera kuri 17, kandi ko ariryo jambo abaturage batahanye mu mitwe yabo kuko ariryo yarangirijeho disikuru ye nk'uko bigaragarira ku rupapuro rwa 17 rwa kopi y'urubanza.

[178] Avuga na none ko Urukiko Rukuru rwakoze amakosa yo gucagaguramo (*charcuter*) disikuru yo ku Kabaya, kuko hari aho rwagiye rusimbuka amagambo amwe n'amwe y'ingezi, nk'ahanditse « *point de suspension* » (...) rukayishyiramo andi magambo atabaho « *interpolation d'un texte inexistant* », rukanifatira ayo hagati, rugamije kumuhamya icyaha atakoze, rukirengagiza ko Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, riteganyaga ko ikimenyetso kitagomba guhindurwa, ko ahubwo iyo ruyifatira hamwe rukanayishyira muri «*contexte général*» yayo, rwagombaga kubona ko uwayivuze yavugaga amatora nk'uko byasobanuwe haruguru.

[179] Akomeza asobanura ko Urukiko Rukuru rwirengagije amategeko «*application de la loi*» kuko iyo rutayirengagiza rwagombaga kubona ko uwavuze disikuru yo ku Kabaya

atakoze icyaha cyo gushishikariza gukora jenocide, kuko ama « *listes* » avugwa muri icyo disikuru, atari ama « *listes* » y’abantu bagombaga kwicwa, ko ahubwo yari ay’abagombaga gushyikirizwa Ubucamanza kugira ngo bubacire imanza kubera ibyaha bakoze, nk’aho yavuze ko « azahanishwa igihano cy’urupfu umuntu wese uzafata abasore ashatse mu giturage akabaha ingabo z’amahanga zitera Repubulika y’u Rwanda » kubera ko abakoze ibyo bikorwa bagombaga kubihanirwa n’Ubucamanza kuko byari ibikorwa bibujijwe n’Itegeko Nshinga ryo muri 1991, bikanahanwa n’Igitabo cy’amategeko ahana cyo muri 1977.

[180] Avuga na none ko Urukiko Rukuru rutagombaga kumuhamya icyaha hashingiwe kuri disikuru yo ku Kabaya kuko uwayivuze yakoresheje imvugo y’inziganyo (*conditionnel*), bivuze ko icyo yavugaga cyashoboraga kuba cyangwa ntikibe, nk’aho yavuze ngo « niba, nibakora, nimumara, nihashira, azahanishwa, nibagukupita urushyi ku itama rimwe uzababere ebyiri ku rindi biture hasi ubutazanzamuka », kuko mu gihe batagukubise urushyi, nawe ntawe warukubita, ko hari n’aho yakoresheje amagambo y’inzagihye (*futur*) nk’aho yavuze ngo « Azahanishwa », ndetse ko hari n’aho yagiye avuga cyangwa asubira mu magambo yavuzwe n’abandi (*citation*) nk’aho yavuze ko « Mwumvise ibyo Minisitiri w’Intebe yivugiye ngo : « Bagiye gushoka ibishanga », « Mwumvise », « mumaze iminsi mwumva », ndetse ko hari n’aho yatanze « *pétition comme un acte démocratique* », nk’aho yavuze ngo « mwakwandikira », « Mwamwandikira mukamumenyesha ».

[181] Yongeraho ko Urukiko Rukuru rutagombaga kwemeza ko yashishikariye gukora jenocide kubera ko ijamba yavugiye ku

Kabaya ritakurikiwe n'ubwicanyi bwakorewe Abatutsi nk'uko byemejwe na Me Mbonampeka Stanislas wari Minisitiri w'Ubutabera mu mwaka wa 1992, binashimangirwa na Eric Gillet na madame Alison Des Forges mu rubanza yaburanye muri Canada, ndetse ko na Professeur Filip Reytjens yemeje ko Nsanzuwera, wari Porokireri wa Repubulika i Kigali icyo gihe, yamubwiye ko mu rwego rw'amategako, atari kumenya aho yahera arega Mugesera Léon.

[182] Me Rudakemwa Jean – Félix, wunganira Mugesera Léon, avuga ko uru Rukiko rukwiye gukosora amakosa yakozwe n'Urukiko Rukuru yavuzwe haruguru, maze rukemeza ko Mugesera Léon ari umwere.

[183] Uhagarariye Ubushinjacyaha avuga ko ku bw'ibanze (*à titre principale*), mu gihe Mugesera Léon atemera ko ariwe wavuze disikuru yo ku Kabaya yaciriweho urubanza, nta bubasha afite bwo kuyisobanura no kuvuga ko yahinduwe (*truqué*), ko ahubwo yagombye kwemera ko ariwe wayivuze, nyuma y'aho, akabona gusobanura uburyo Urukiko Rukuru rwayicagaguyemo runayivugisha ibyo atashakaga kuvuga binatuma rugera ku mwanzuro umurenganya, ariko ko atavuga ko iyo disikuru yacagaguwemo ibice inavugishwa icyo itavuga mu gihe atibuka disikuru yavuze. Ikindi n'uko atabwiye uru Rukiko ko iyo Urukiko Rukuru ruyigumishamo interuro (*extraits*) rwayikuyemo, zari kubyara umwimerere wa disikuru yavuze, kuko hatarezwe disikuru, ko ahubwo harezwe Mugesera Léon kubera ijambo yavugiye ku Kabaya.

[184] Avuga ko « à titre subsidiaire », mu gihe uru Rukiko ruhisemo gusesengura disikuru yo ku Kabaya, ruzasanga nta kosa Urukiko Rukuru rwakoze mu guhamya Mugesera Léon icyaha cyo gushishikariza gukora jenocide hashingiwe kuri

disikuru yavugiye muri mitingi yo ku Kabaya tariki ya 22/11/1992 iri kuri kasete no kuri « CD », kuko muri kopi y'urubanza rwajuririwe, urwo Rukiko rwasesenguye iyo disikuru rusanga ariwe wayivuze, rugaragaza ko amagambo yavuze agize ibyaha birimo icyo gushishikariza gukora jenocide, runagaragaza ingingo z'amategeko rwashingiyeho rumuhamya ibyo byaha, kandi ko mu nama ntegururubanza yo ku wa 30/01/1997, Mugesera Léon yemereye muri Canada ko ijambo rikubiye kuri iyo kaseti nk'uko ryashyizwe mu nyandiko n'umuhanga rihuje neza n'iryo yavugiye ku Kabaya, ko kandi arinanyo ryatumye igihugu cya Canada kimwirukana ku butaka bwacyo bigatuma kimwohereza mu Rwanda, ndetse ko n'imbere y'uru Rukiko, yanyemereye ko yari ku Kabaya, kandi ko yanahavugiye ijambo ngo uretse ko atakiryibuka, nyamara nta kimenyetso yatanze kivuguruza ibyo Urukiko Rukuru rwashingiyeho rumuhamya ibyaha, ko kandi atagaragaje ingingo z'amategeko rwishe.

[185] Asobanura ko Mugesera Léon atagombye kuvuga ko Urukiko Rukuru rwirengagije gushyira ijambo ryo ku Kabaya muri « contexte » yaryo kuko avuga ko atakiryibuka, ko uretse n'ibyo, urwo Rukiko rutabyirengagije kuko mu bika bya 42 kugeza ku cya 46, no mu bika bya 115 na 165 by'urubanza rwajuririwe, urwo Rukiko rwahuje ijambo Mugesera Léon yavugiye ku Kabaya na « contexte » y'igihe cy'intambara igihugu cy'u Rwanda cyarimo kuva mu mwaka wa 1990, rusanga Mugesera Léon yarakoze ibyaha hashingiwe ku magambo akubiye muri iryo jambo y'uko Abahutu bagombaga gutsemba inyenzi n'ibyatso byazo, bakanabasubiza muri Etiyopiya babanyujije muri Nyabarongo, kandi ko iryo jambo ryabaye intandaro ya jenocide yakorewe Abatutsi kuko akimara kurivuga mu 1992, Abatutsi batangiye kwicwa.

[186] Avuga ko ikindi kimenyetso kigaragaza ko urwo Rukiko rwashyize ijambo ryo ku Kabaya muri « *contexte* » yaryo, ari uko rwahamije Mugesera Léon ibyaha rushingiye kuri raporo ya « *Commission Internationale d'Enquête* » yo muri Werurwe 1993, igaragaza *contexte général* yari mu gihugu cy'u Rwanda kuva mu mwaka wa 1990 kugeza ku wa 22/11/1992, igihe MUGESERA Léon yavugaga iryo jambo, ikanagaragaza ko icyo gihe hakorwaga ibikorwa byari byibasiye Abatutsi.

[187] Avuga na none ko kuba igihugu cy'u Rwanda cyari kiri mu ntambara igihe Mugesera Léon yavugaga iyo disikuru, bitamukuraho uburyozwacyaha bw'icyaha cyo gushishikariza gukora jenocide yakoze, kuko ingingo ya mbere y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenocide, ivuga ko jenocide ishobora gukorwa mu gihe cy'amahoro cyangwa mu gihe cy'intambara, ariko ko Mugesera Léon atagaragaje ko amagambo yavugiye ku Kabaya ku wa 22/11/1992 y'uko bakoze amakosa yo kureka Abatutsi bagasohoka mu gihugu bakajya hanze », yayabwiraga Abagande, ko kandi aribo bagombaga gucibwa amajosi.

[188] Yongeraho ko nta kosa Urukiko Rukuru rwakoze ubwo rwagendaga rusesengura buri gice kigize ijambo Mugesera Léon yavugiye ku Kabaya, kuko mu iburanisha ryo ku wa 10/02/2020, yivugiye ko disikuru yavugiye ku Kabaya yari igizwe n'ibice bine (4) by'ingenzi bikurikira : Kwirinda umugeri wa MDR, kutavogerwa, uko bagombaga kwifata kugira ngo birinde abagambanyi n'uko bagombaga kwifata mu matora, ko kandi ibyo bice byayo byose bitavuga amatora kuko bivuga ibintu bitandukanye birimo amagambo afitanye isano na jenocide nk'inzoka, kugura imipanga yo gutema amajosi y'Abatutsi no kubanyuza muri Nyabarongo bagasubira iwabo

muri Etiyopiya, ndetse ko hari n’aho yahamagariye abafite amafaranga kuyazana kugira ngo bayakoreshe, ko ahubwo iyo urwo Rukiko rwita ku nshuro amagambo yagiye agarukwaho (*fréquence des mots*), rwagombaga kwemeza ko Mugesera Léon yashishikarije gukora jenoside nk’uko rwabikoze kuko ijambo Inyenzi » ariryo ryagarutsweho inshuro nyinshi zingana na 27 ugereranyije n’ijambo amatora » Mugesera Léon yitwaza ko ariryo ryagarutsweho inshuro nyinshi zigera kuri 15.

[189] Urukiko rwabajije uhagarariye Ubushinjacyaha niba Urukiko Rukuru rwarakoze amakosa cyangwa rutarayakoze mu kwemeza ko Mugesera Léon yabaye icyitso cy’abakoze jenoside, avuga ko Mugesera Léon akwiye guhamwa n’icyaha cyo gushishikariza abandi gukora jenoside, aho kuba icyaha cyo kuba icyitso cy’abakoze jenoside, kuko ari ibyaha bibiri bitandukanye, ko kandi uru Rukiko rufite ububasha bwo guhindura inyito y’icyaha aho urubanza rwaba rugeze hose nk’uko byemejwe mu rubanza RPAA 0117/07/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 17/09/2010.

[190] Asobanura ko Urukiko Rukuru rutagombaga guhamya Mugesera Léon icyaha cyo kuba icyitso cy’abakoze jenoside, ko ahubwo rwagombaga kumuhamya icyaha cyo gushishikariza abandi gukora jenoside kubera ko ari icyaha cyihariye, gitandukanye n’icya mbere, kuko giteganyijwe mu ngingo ya 3 y’Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenoside yashyizwe mu mategeko ahana y’u Rwanda, ni ukuvuga mu Itegeko - Ngenga ryo ku wa 30/08/1996 ryahanaga icyaha cya jenoside, mu Itegeko - Ngenga ryagengaga Inkiko Gacaca ryo mu 2000, mu 2004 no mu 2008 yavanweho, ndetse no mu Itegeko - Ngenga rishyiraho igitabo cy’amategeko ahana ryo mu

mwaka wa 2012 ryakurikizwaga igihe Mugesera Léon yaburaniraga mu Rukiko Rukuru.

UKO URUKIKO RUBIBONA

[191] Ingingo ya 18, igika cya mbere, y'Itegeko N^o 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda, iteganya ko “Umushinjacyaha n'uregwa bafite bombi uburenganzira bwo kujuririra icyemezo icyo ari cyo cyose cyafashwe n'Urukiko Rukuru mu gihe hari imwe cyangwa zose mu mpamvu zikurikira: 1^o ukwibeshya gushingiye ku ngingo y'itegeko gutuma icyo cyemezo gita agaciro; 2^o ukwibeshya gushingiye ku byabaye kwatumye urubanza rucibwa nabi”.

[192] Iyo ngingo yumvikanisha ko ujurira agomba kugaragariza Urukiko rw'Ubujurire amakosa yo mu rwego rw'ibyabaye n'amakosa yo mu rwego rw'amategeko yatumye urubanza rucibwa nabi akanatanga ingingo zishyigikira ibyo avuga nk'uko byanemejwe mu rubanza numero ICTR-96-4-A rwa Akayezu Jean – Paul rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ku wa 01/06/2001⁶³.

⁶³ Mu gika cya 17 cy'urubanza n^o ICTR- 96-4- A, rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda ku wa 01/06/2001, haburana Porokireri na Akayezu Jean – Paul, urwo Rukiko rwasobanuye ko “Urugereko rw'Ubujurire rukosora gusa amakosa yakozwe mu rwego rw'amategeko yatuma icyemezo giteshwa agaciro cyangwa amakosa ku byabaye yatumye urubanza rucibwa nabi” nk'uko biteganywa n'ingingo ya 24 ya Sitati irugenga yerekana aho isuzumwa ry'ubujurire ritangirira n'aho rigarukira, igira ati: Urugereko rw'Ubujurire rwakira ubujurire butanzwe n'abakatiwe n'inteko z'Urugereko rwa Mbere rw'Iremezo, cyangwa butanzwe na Porokireri, kubera impamvu zikurikira: a) Ukwibeshya ku

[193] Ingingo ya 3 c) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenocide, u Rwanda rwashyize mu mategeko yarwo n'Itegeko – Teko 08/75 ryo ku wa 12/02/1975, iteganya icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide.

[194] Na none ingingo ya 132, 3° y'Itegeko – Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe MUGESERA Léon yacirwaga urubanza ku rwego rwa mbere, iteganya ko “Gushishikariza abantu gukora icyo cyaha n'ubwo bitashyirwa mu bikorwa, wifashishije amagambo, amashusho cyangwa inyandiko, ari igikorwa gihanwa nk'icyaha cya jenocide. Naho ingingo ya 114 y'iryo Tegeko – Ngenga, igateganya ko icyaha cya Jenocide ari kimwe mu bikorwa bikurikira cyakozwe mu buryo bwateguwe kigamije kurimbura abantu bose cyangwa bamwe muri bo, bahuriye ku bwenegihugu, ku bwoko, ku ibara ry'uruhu cyangwa ku idini, bazira icyo bari cyo, haba mu bihe bisanzwe cyangwa mu bihe by'intambara: 1° kwica abo bantu n'ibindi (..).

[195] Ku bijyanye n'icyaha cyo gushishikariza gukora jenocide, Urukiko Mpuzamahanga Mpanabyaha rwashyiriweho u Rwanda rwasobanuye ko icyo cyaha gishingiye ahanini ku mbwirwaruhame yagejejwe ku bantu benshi, ku bantu bahuriye hamwe, ku butumwa bwatanze hakoreshejwe itangazamakuru cyangwa amagambo yabwiwe abantu benshi bari bahuriye hamwe, ikigomba kwitabwaho akaba ari amagambo yakoreshejwe kabone n'ubwo, iyo avanwe aho yavugiwe

ingingo z'itegeko bituma icyemezo giteshwa agaciro, cyangwa b) Kwatumye urubanza rucibwa nabi.

cyangwa ashyizwe mu rundi rwego, yakumvikana ukundi,⁶⁴ by'umwihariko, Urukiko ruvuga ko mu bigomba kugenderwaho hashobora kubamo ibikurikira :

a. Umuco, harimo n'imvugo yakoreshejwe mu rurimi rw'ikinyarwanda kugira hamenyekane niba imbwirwaruhame yumvikanye kubo yari igenewe n'icyari kigenderewe n'awayivugaga ;⁶⁵

b. Gusuzuma niba uwayivuze ari umuyobozi cyangwa uvuga rikumvikana kugira ngo hamenyekane niba yari azi cyangwa ashobora guteganya ingaruka z'amagambo yavuze ku baturage yabwiraga;⁶⁶

c. Icyari kigambiriwe mu mbwirwaruhame nk'ishingiro ryo gushishikariza abantu mu ruhamu guhita bakora jenocide;⁶⁷

d. Kuba inkurikizi z'iyi mbwirwaruhame zarabaye gukora jenocide bikwiye gufatwa nk'ikimenyetso cy'uko icyari kigenderewe n'uwavuze iyi mbwirwaruhame ari ugushishikariza abantu gukora jenocide, kandi n'ubwo amagambo hari aho yaba ateye urujijo nta kibuzo ko afatwa nk'ayari agamije gushishikariza abantu gukora jenocide.⁶⁸

[196] Ku birebana n'uru rubanza, dosiye igaragaza ko mu bika bya [38] kugeza ku cya [49], no mu bika bya [110], [114], [117] na [118] by'urubanza rwajuririwe, Urukiko Rukuru

⁶⁴ Reba urubanza rw'ubujurire rwa Nahimana Nahimana Ferdinand, igika cya. 701

⁶⁵ Reba urubanza rw'ubujurire rwa Nahimana Ferdinand, igika cya 700.

⁶⁶ Reba urubanza rw'Ubujurire rwa Bikindi Simon, ibika bya 136-137.

⁶⁷ Reba urubanza rw'ubujurire rwa Nahimana Ferdinand, igika cya 706.

⁶⁸ Reba urubanza rw'ubujurire rwa Nahimana Ferdinand, ibika bya . 703 na 709.

rwasobanuye ko Mugesera Léon yakoze icyaha cyo gushishikariza mu ruhame kandi ku buryo butaziguye gukora jenocide giteganywa n'ingingo z'amategeko zavuzwe haruguru, kubera ko « *discours* » yavugiye ku Kabaya ku wa 22/11/1992 igaragaramo amagambo yakanguriraga abayoboke b'ishyaka rya MRND bayumvaga kwica abatutsi bose cyangwa bamwe muri bo, ko urugero ari nk'aho Mugesera Léon yavuze ko hari inyenzi ziri mu gihugu zafashe abana bazo zibohereza ku rugamba kujya gufatanya n'inkotanyi, maze yibaza impamvu abo babyeyi badafatwa ngo babatsembe, anibaza impamvu badafata abajyana abo bana ngo babatsembe, aho gutegereza ko bazaza kubatsemba. Yasabye kandi ko abo bantu bose bashyirwa kuri lisiti bakabashyira imbere y'ubucamanza, butabacira imanza, abaturage bagatsemba izo ngegera.

[197] Urukiko Rukuru rwasobanuye kandi ko muri iyo disikuru, hari aho Mugesera Léon yasabye Abaserire kwishyira hamwe kugira ngo bakande icyitso cyinjiye muri Selire kugira ngo kitayisohokamo, ko yanasabye abarwanashyaka ba MRND kwishyira hamwe bagatanga amafaranga kugira ngo babakate amajosi, kuko uwo batazakata ijosi ari we uzaribakata, ndetse ko yanabwiye umuntu wari umwiraseho wo muri PL⁶⁹ ko iwabo ari muri Ethiopiya, ko ikosa bakoze muri 59 n'ubwo yari akiri umwana, ari uko babaretse bagasohoka, ko bazabanyuza muri Nyabarongo bakagerayo bwangu.

[198] Mu gika cya [43] na [114] by'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko n'ubwo muri mitingi yo ku Kabaya, Mugesera Léon ateruraga ngo avuge ko bagomba gutsemba abatutsi, ariko ko harebwe amagambo yakoresheye icyo gihe nko gutsemba inyenzi n'ibyatso by'abateye igihugu,

⁶⁹ PL = Parti Libéral

hakanarebwa n'uburyo ayo magambo yumvikanaga icyo gihe, bigaragara ko Mugesera Léon yashishikarizaga ku mugaragaro kandi mu buryo butaziguye kwica abatutsi bose cyangwa bamwe muribo, kuko amagambo « Inkotanyi », « Inyenzi » cyangwa « ibyitso » yakoreshaga, yashakaga kuvuga « abatutsi » nk'uko byasobanuwe na Mathias Ruzindana wiyambajwe nk'impuguke n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR), mu rubanza rwa Akayezu Jean Paul⁷⁰.

[199] Ku birebana n'ubushake bwo gukora icyaha cyo gushishikariza gukora jenocide, mu gika cya [118]cy'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko ubushake bwihariye bwa Mugesera Léon bwo gukora icyaha cyo gushishikariza gukora jenocide, bugaragarira mu magambo yakoresheje yavuzwe haruguru nk'aho yavuze ko atumva impamvu badatsemba ababyeyi bohereje abana babo mu Nkotanyi n'ababajyana, no kuba yaribukije umuntu wo muri PL (bikaba byumvikana ko yari umututsi) ko iwabo ari muri Ethiopiya, ko ikosa bakoze muri 59, ari uko babaretse bagasohoka, ariko ko bazabanyuza muri Nyabarongo bakagerayo bwangu, no kuba abo yabwiraga barashoboraga kumwumva bakanashyira ayo magambo mu bikorwa kubera ko Mugesera Léon yayavugiye muri Perefegitura ya Gisenyi, aho yavukiye, akaba yari na Visi-Perezida w'ishyamba rya MRND, akaba yari Umwarimu muri Kaminuza n'Umujiyanama muri Minisiteri.

[200] Urukiko rurasanga, kuba Mugesera Léon yarafashe ijamba muri « meeting » yabereye ku Kabaya ku wa

⁷⁰ Case N° ICTR -96-4 -T, Porokireri v Akayezu Jean - Paul, rwaciwe na TPIR ku wa 02/09/1998, para. 147-150.

22/11/1992, akabwira abayoboke b'ishyaka ba MRND bamwumvaga ko atumva impamvu badatsemba inyenzi ziri mu gihugu, ni ukuvuga ababyeyi bohereje abana babo mu Nkotanyi n'ababajyana, kuba yarasabye ko hakorwa ama lisiti yabo kugira ngo babashyikirize Ubucamanza kugira ngo bubacire imanza, ko nibutazibacira, abaturage bazakora inshingano yo kwiha ubutabera babatsemba, kuba yarasabye aba Selire kujya bakanda icyitso cyinjiye muri Selire kugira ngo kitayisohokamo, kuba yarasabye ko abafite amafaranga bayazana kugira ngo babakate amajosi, kuba yarabwiye umuntu wo muri PL ko iwabo ari muri Ethiopiya, ko ikosa bakoze muri 59, ari uko babaretse bagasohoka, ko bazabanyuza muri Nyabarongo kugira ngo bagereye bwangu, no kuba Mugesera Léon nk'umuntu wari Visi - Perezida w'ishyaka rya MRND, akaba n'Umwarimu muri Kaminuza n'Umujyanama muri Minisiteri, yaravuze ayo magambo kandi azi neza ko Abatutsi yitaga Inyenzi bicwaga muri Kigali no hirya no hino mu gihugu, no kuba yari azi neza ko abaturage arimo kubwira ayo magambo bayafata nk'abahamagarira kwica abatutsi kuko bamufataga nk'umuntu ujijutse w'umunyabwenge unafite inararibonye muri Politiki nk'uko byasobanuwe haruguru, bigaragara ko Mugesera Léon yakoze icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide kubera ko yashishikariye abaturage kurimbura Abatutsi bose cyangwa bamwe muri bo abaziza ubwoko bwabo nk'uko biteganywa n'ingingo ya 3 c) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yerekeranye no gukumira no guhana icyaha cya jenocide, u Rwanda rwashyizeho umukono ku wa 12/02/1975, aho kuba icyitso cy'abakoze jenocide nk'uko byemejwe n'Urukiko Rukuru.

[201] Urukiko rurasanga ikindi kimenyetso kigaragaza ko Mugesera Léon yakoze icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide, ari uko ubuhamya bwa Sinayobye André na Rwasubutare Callixte bwavuzwe haruguru, bugaragaza ko mu nama yabereye i Nyamyumba ku wa 06/07/1992, Mugesera Léon yashishikariye abahutu kurwanya no kwica abatutsi nk'aho yababwiraga ko bagomba kurwanya no gutsemba abatutsi kuko bakandamije ababyeyi babo bashaka kubatwara Igihugu cyabo, kandi ko iryo jambo ryakurikiwe n'ingaruka zirimo kwica, gukubita no gusahura abatutsi nk'uko byasobanuwe n'Urukiko Rukuru, mu gika cya [89] cy'urubanza rujuririrwa.

[202] Urukiko rurasanga imvugo ya Mugesera Léon y'uko iyo Urukiko Rukuru rudacagagura (charcuter) ijambo yavugiye ku Kabaya ku wa 22/11/1992, ahubwo rukaba rwarayifatije hamwe muri « *contexte* » yayo muri rusange (*contexte général*), rwari gusanga yarasabaga ko hakorwa amatora, kuko ariryo jambo ryavuzwe inshuro nyinshi zigera kuri 17, iyi ngingo nta shingiro ifite, kuko mu gika cya [80] cy'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko Ubushinjacyaha bwasesenguye ijambo ryose bwashingiyeho burega Mugesera Léon icyaha cyo gushishikariza gukora jenocide, ko kuba Ubushinjacyaha bwaragiye bwibanda ku nteruro zimwe na zimwe zumvikanisha ko yakoze icyo cyaha, nta kosa bwakoze kuko mu rwego rw'amategeko, bitabujijwe ko hafatwa ibice bimwe by'ijambo bigaragaza ubutumwa uvuga ijambo ashaka gutanga, kandi Mugesera Léon akaba atagaragaza icyo anenga ibi bisobanuro.

[203] Byongeye kandi, Urukiko rurasanga n'ubwo muri disikuru ye, Mugesera Léon yavuze amagambo yerekeranye

n'amatora, kutavogerwa, no kwirinda imigeri yaterwaga n'amashyaka nka MDR na PSD ataravugaga rumwe na MRND, bidakuraho amagambo yavuzwe haruguru yashishikarizaga abarwanashyaka ba MRND gutsemba Abatutsi nk'uko byasobanuwe haruguru, kuko muri iyo disikuru ye, Mugesera Léon yakomeje kwita Abatutsi bari imbere mu gihugu, n'abayobozi b'andi mashyaka ataravugaga rumwe na MRND, Inyenzi n'ibitso by'Inkotanyi zateye igihugu, n'ubwo Mugesera Léon ateruraga ngo avuye ko bagomba kwica Abatutsi.

[204] Urukiko rurasanga, kandi imvugo ya Mugesera Léon y'uko ijambo abaturage batahanye mu mitwe yabo ari ijambo « amatora » kuko ariryo yasorejeho nta shingiro ifite, kuko nk'uko n'Urukiko Rukuru rwabisobanuye mu gika cya [81] cy'urubanza rujuririrwa, uwabwiwe ijambo adatahana byanze bikunze iryasorejweho, ko ahubwo ashobora no gutahana iryamukoze ku mutima, iryamuteye ubwoba, iryamushimishije, iryamubabaje n'irindi iryo ariryo ryose, kandi Mugesera Léon ntagaragaza icyo anenga ibi bisobanuro. Byongeye kandi, Urukiko rurasanga ijambo « amatora » atariryo Mugesera Léon yavuze inshuro nyinshi, kuko yarivuze inshuro zitarenze 17, ko ahubwo ijambo « Inyenzi » ariryo ryavuzwe inshuro nyinshi zigera kuri 30.

[205] Urukiko rurasanga imvugo ya Mugesera Léon y'uko ama lisiti avugwa muri iyo disikuru, atari ay'abantu bagombaga kwicwa, nta shingiro ifite, kuko muri iyo disikuru, yasabye ko hakorwa ama lisiti y'inyenzi cyangwa ababyeyi bohereje abana babo mu Nkotanyi n'ababajyana, kugira ngo Ubucamanza nibutabacira imanza, abaturage babatsembe, kandi MUGESERA Léon yemereye Umunyamakuru wa « Quotidien

Le Soleil⁷¹» ko abajyanaga abo bana mu Nkotanyi, ari intagondwa z'Abatutsi, bivuze ko ari Abatutsi bagombaga gushyirwa ku ma lisiti kugira ngo bicwe.

[206] Urukiko rurasanga ibyo Mugesera Léon aburanisha by'uko Urukiko Rukuru rwirengagije ko disikuru yo ku Kabaya yavuzwe ku wa 22/11/1992, igihe igihugu cy'u Rwanda cyari cyatewe n'igihugu cya Uganda ku buryo abasirikare bari baracengeye mu baturage b'abasivile badafite intwari (*contexte de guerre d'aggression et d'infiltration*), no ku buryo abaturage benshi bari baravanywe mu byabo n'intambara (*déplacés de guerre*), nta shingiro bifite, kuko mu gika cya [82] cy'urubanza rwajuririwe, Urukiko Rukuru rwasobanuye ko Mugesera Léon atavuze iryo jambo nk'uhagarariye igihugu cy'u Rwanda, ko ahubwo yarivuze gusa mu rwego rw'ishyamba rya MRND, kuko nta wundi mwanya w'ubuyobozi yari afite wamuheshaga ububasha bwo kuvuga iryo jambo nk'uhagarariye igihugu, bivuze ko mu rwego rw'amategeko, iryo jambo ritafatwa nko kwitabara kuko nta gikorwa Mugesera Léon yari yakorewe cyari gutuma yitabara nk'uko biteganywa n'ingingo ya 105⁷² y'Itegeko – Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe Mugesera Léon yaburaniraga mu Rukiko Rukuru, nyamara Mugesera Léon akaba atagaragaza icyo anenga ibyo bisobanuro byatanzwe n'Urukiko Rukuru.

⁷¹ Bivugwa mu gika cya 70 cy'urubanza n° 30025 rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, Mugesera Léon vs Ministère de la Citoyenneté et de l'Immigration de Canada (MCI).

⁷² Ingingo ya 105 y'Itegeko – Ngenga ryvuzwe haruguru, iteganya ko « Umuntu afatwa ko yitabara igihe: 1° yirukana nijoro uwinjiye ahantu hatuwe achiye urugi, yakoresheje ingufu cyangwa uburiganya; 2° ahanganye n'abajura cyangwa abandi bagizi ba nabi ».

[207] Urukiko rurasanga imvugo ya Mugesera Léon y’uko Urukiko Rukuru rwirengagije ko uwavuze disikuru yo ku Kubaya yasabaga ko amategeko yubahirizwa kugira ngo abohereje abana babo mu Nkotanyi n’ababajyanye, uwatanze ubutaka bw’igihugu n’uwaciye integer ingabo z’igihugu mu gihe cy’intambara bahanishwe igihano cy’urupfu nk’uko byateganywaga mu gitabo cy’amategeko ahana nta shingiro ifite, kuko atakwitwaza ko yasabaga ko amategeko yubahirizwa mu gihe muri iyo disikuru, yanahamagariye abaturage gutsemba Abatutsi n’ibytso byabo nk’uko byasobanuwe haruguru.

[208] Urukiko rurasanga kandi imvugo ya Mugesera Léon y’uko Urukiko Rukuru rwirengagije ko ijambo ryo ku Kabaya ridakangurira kwica Abatutsi kubera ko ibisabwa byose (*toutes les conditions*) bitari byuzuye kubera ko uwarivuze yakoresheje imvugo y’inziganyo (*conditionnel*) n’iy’inzagihwe (*futur*), nta shingiro ifite, kuko muri disikuru ye, Mugesera Léon yagaragarije abayoboke ba MRND bamwumvaga ko ibisabwa byose byuzuye (*conditions sont réalisées*) kugira ngo batsembe abo yitaga Inyenzi n’ibytso byazo, anabakangurira kubikora, urugero ni nk’aho yibajije impamvu badakora ama lisiti y’ababyeyi bari mu gihugu bohereje abana babo kwifatanya n’Inkotanyi kugira ngo babatsembe, cyangwa aho yabasabaga ubufatanye bagatanga amafaranga kugira ngo babakate amajosi, kuko nibatayabakata aribo bazaza kuyabakata, cyangwa aho yasabye abayobozi b’ama Selire ko bagomba gukanda (kwica) ibytso by’Inyenzi byinjiye mu ma Seliri bayobora kugira ngo bitayasohokamo nk’uko byasobanuwe haruguru.

[209] Urukiko rurasanga na none imvugo ya Mugesera Léon y’uko Urukiko Rukuru rutagombaga kwemeza ko yashishikarije gukora jenocide kubera ko ijambo yavugiye ku Kabaya

ritakurikiwe n'ubwicanyi bwakorewe Abatutsi nta shingiro ifite, kubera ko gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide ubwabyo ari icyaha kabone n'ubwo ababishishikarijwe batabishyira mu bikorwa nk'uko biteganywa n'ingingo ya 3 c) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 yavuzwe haruguru, hamwe n'ingingo ya 132, 3° y'Itegeko – Ngenga byavuzwe haruguru, bivuze ko Ubushinjacyaha budategetswe gutanga ikimenyetso kigaragaza ko disikuru Mugesera Léon yakurikiwe n'ubwicanyi bwakorewe Abatutsi cyangwa ibikorwa by'ihohoterwa.

[210] Ibimaze kwemezwa mu gika kibanziriza iki, bihuje kandi n'ibyemejwe mu rubanza numero 2005 S.C.R. 40, rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, mu gika cyarwo cya 85, aho rwasobanuye ko kubera ko Mugesera Léon aregwa kuba yarashishikarije gukora jenocide, Minisitiri adategetswe kugaragaza ko hari isano ritaziguye hagati ya disikuru Mugesera Léon yavuze n'igikorwa cy'ubwicanyi cyangwa cy'ihohoterwa, ndetse ko atanategetswe kugaragaza ko abantu bumvise iyo disikuru bishe cyangwa bagerageje kwica abagize itsinda yari yibasiye⁷³. Ibyo byemejwe kandi mu rubanza n° ICTR-99-52-T, rwaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, ku wa 03/12/2003, mu gika cyarwo cya 1029, haburana Porokireri na Ferdinand Nahimana, Jean-Bosco

⁷³ “Comme il allègue l'incitation au génocide, le ministre n'a pas à démontrer l'existence d'un lien de causalité direct entre le discours et un meurtre ou un acte de violence. Vu son caractère inachevé, l'incitation est punissable en elle-même, sans égard au résultat. Elle constitue un crime qu'elle produise ou non l'effet escompté. (...) Le ministre n'est donc pas tenu de prouver que les personnes ayant assisté au discours de M. Mugesera ont tué ou tenter de tuer les membres d'un groupe identifiable”.

Barayagwiza na Hassan Ngeze, aho rwasobanuye ko ugushishikariza gukora jenocide ubwabyo bigize icyaha⁷⁴.

[211] Urukiko rurasanga ikindi kimenyetso kigaragaza ko invugo ya Mugesera Léon y’uko ijambo yavugiye ku Kabaya ritakurikiwe n’ubwicanyi bwakorewe Abatutsi idafite ishingiro, ari uko abatangabuhamya babajijwe n’Urukiko Rukuru bemeje ko Mugesera Léon akimara kuvuga iryo jambo, Abatutsi batangiye kwicwa, gusahurwa no gutwikirwa amazu nk’uko bigaragarira mu gika cya [71] na [167] by’urubanza rujuririrwa.

4. Kumenya niba Urukiko Rukuru rwakoze amakosa mu guhamya ko Mugesera Léon yakoze icyaha cyo gutoteza nk’icyaha cyibasiye inyokomuntu

[212] Mugesera Léon avuga ko Urukiko Rukuru rwakoze amakosa mu rwego rw’amategeko (*erreur de droit*) no ku birebana n’ibyabaye (*erreur des faits*) kubera ko rwamuhamije icyaha cyo gutoteza nk’icyaha cyibasiye inyokomuntu, kandi atarigeze yibasira abantu ku giti cyabo cyangwa amashyaka ya Politiki ataravugaga rumwe n’ishyaka rya MRND, ko ahubwo yibasiye abari barateye u Rwanda baturutse mu gihugu cya Uganda.

[213] Avuga kandi ko urwo Rukiko rwamuhamije icyo cyaha, rwirengagiza ko disikuru yo ku Kabaya yavuzwe igihe

⁷⁴ “En ce qui concerne le lien de causalité, la Chambre rappelle que l’incitation est un crime, quel que soit l’effet vers lequel elle tend. En recherchant si tel ou tel discours manifeste l’intention de commettre le génocide et, par la suite, caractérise l’incitation, la Chambre considère que le fait qu’il y a bel et bien eu génocide est un élément important. Que les médias aient eu l’intention de créer cet effet ressort en partie de ce que leurs actes ont effectivement eu cet effet”.

gishyushye cy'ipiganwa ry'amashyaka menshi, aho buri shyaka ryafataga Minisitiri imwe rikayigira akarima karyo kubera ko ryrukanaga abayoboke b'ayandi mashyaka, bigatuma nabo birukana abakozi badahuje ishyaka muri Minisitiri yabo (réciprocité), urugero n'aho uwavuze iyo disikuru yavuze ngo « birinde imigeri MDR, PL, FPR, PSD na PDC bitera muri iki gihe », ariko ko atigeze avuga ko Uwiringiyimana yavanwa muri Minisitiri y'Uburezi akajyanwa iwabo.

[214] Avuga na none ko Urukiko Rukuru rwirengagije amategeko kuko iyo rutayirengagiza rwagombaga kubona ko uwavuze iyo disikuru atakoze icyaha, urugero ni nk'aho yavuze ko « azahanishwa igihano cy'urupfu umuntu wese uzaca intege ingabo z'u Rwanda ziri ku rugamba » nk'uko byavuzwe na Nsengiyaremye, wari Minisitiri w'Intebe, cyangwa ko « azahanishwa igihano cy'urupfu umuntu wese uzatanga igice cy'igihugu » nk'uko byakozwe na Twagiramungu watanze Perefegitura ya Byumba icyo gihe, kubera ko Nsengiyaremye na Twagiramungu bagombaga kubihanirwa n'Ubucamanza kuko ibikorwa bakoze byari bibujijwe n'Itegeko Nshinga ryo muri 1991, bikanahanwa n'Igitabo cy'amategeko ahana cyo muri 1977, ndetse ko no muri iki gihe bibujijwe kuko umuntu wese waca intege ingabo z'u Rwanda cyangwa wavuga ko ahaye FDRL imwe mu Ntara z'u Rwanda, cyangwa watera u Rwanda n'uwafatanyaga nawe babihanirwa n'amategeko nk'uko byemejwe mu rubanza RP 0009/14/HC/MUS rwaciwe n'Urukiko Rukuru, Urugereko rwa Musanze, ku wa 12/03/2015, aho abayoboke ba FDLR bahaniwe kuba barateye u Rwanda.

[215] Yongeraho ko uwavuze disikuru yo ku Kabaya atakoze icyaha kuko aho yavuze ngo « babandi bifuje ubutegetsu bagiye mu mishyikirano mu Bubiligi nka MDR, PL na PSD,

basezerana ko bazatanga Perefegitura ya Byumba, bakanaca intege abasirikare bacu », ayo magambo yerekeranye n'icyiswe « *complot de Bruxelles* », ko kandi atabeshye kuko iyo mishyikirano yabayeho koko nk'uko byasobanuwe na Philippe Reyntjens, mu gitabo cye yanditse mu mwaka wa 1994, aho yasobanuye uburyo intambara yo gutera u Rwanda yabayeho koko n'uburyo amashyaka menshi nka MDR, PL na PSD atari afite ububasha (*mandat*) bwo kujya muri iyo mishyikirano, ko ahubwo ubwo bubasha bwari bufitwe na Guverinoma y'u Rwanda nk'uko byanashimangiwe na Pierre Payant, mu gitabo yanditse mu mwaka wa 2005, ariko ko Mugesera Léon atatanze iki gitabo nk'ikimenyetso kimushinjura muri uru rubanza kuko cyafatiriwe n'Umuyobozi wa Gereza ngo kuko kivuga nabi Ubutegetsi bw'u Rwanda buriho ubu.

[216] Uhagarariye Ubushinjacyaha, avuga ko nta kosa Urukiko Rukuru, rwakoze mu guhamya Mugesera Léon icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu, kuko nk'uko byasobanuwe haruguru, urwo Rukiko rwasesenguye disikuru yavugiye ku Kabaya, runayishyira muri « *contexte* » yayo, rusanga amagambo yavuze ayikubiyemo nk'aho yise Minisitiri w'Uburezi, umushizi w'isoni, yatumye abanyepolitiki batavugaga rumwe n'ishyaka rya MRND batangira kwibasirwa no kwicwa hirya no hino mu gihugu, nyamara muri uru rubanza, nta kimenyetso Mugesera Léon yatanze kivuguruzwa ibimenyetso byashingiweho n'Urukiko Rukuru mu kumuhamya icyo cyaha birimo imvugo z'abatangabuhamya bamushinja na « *Rapport final de la Commission Internationale d'Enquête sur les violations des droits de l'Homme au Rwanda depuis le 1er Octobre 1990* » yanditswe muri Werurwe 1993 n'abahagarariye amashyirahamwe atandukanye aharanira uburenganzira bwa

muntu arimo CLADHO (*Comité de Liaison des Associations de Défence des Droits de l'Homme*).

UKO URUKIKO RUBIBONA

[217] Ingingo ya 18, igika cya mbere, y'Itegeko N° 47/2013 ryo ku wa 16/06/2013 rigena kwimurira imanza muri Repubulika y'u Rwanda ryavuzwe haruguru, iteganya ko Umushinjacyaha n'uregwa bafite uburenganzira bwo kujuririra icyemezo cyafashwe n'Urukiko Rukuru, kandi ko uwajuriye agomba kugaragariza Urukiko rwajuririwe ko habaye "1° ukwibeshya gushingiye ku ngingo y'itegeko gutuma icyo cyemezo gita agaciro", cyangwa ko habaye "2° ukwibeshya gushingiye ku byabaye kwatumye urubanza rucibwa nabi", kugira ngo ubujurire bwe bugire ishingiro.

[218] Ku birebana n'uru rubanza, icyaha cyibasiye inyokomuntu ni kimwe mu byaha umuco mpuzamahanga (La Coutume Internationale) wemera nk'ibikorwa bibangamira ku buryo bukomeye uburenganzira bw'ibanze bwa muntu nk'uko n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda rwabyemeje mu rubanza rwa AKAYESU Jean Paul⁷⁵, kandi bikaba bigomba guhanwa n'ibihugu byose byo ku isi kabone n'ubwo ibyo bikorwa bidateganyijwe mu mategeko yabyo nk'uko ibihugu n'Inkiko Mpanabyaha Mpuzamahanga byaje kubishyira mu mategeko mpanabyaha yabyo, urugero ni nk'aho biteganyijwe mu ngingo ya 7. 2. (g) ya Sitati y'i Roma

⁷⁵ *De l'avis de la Chambre, aussi bien le crime contre l'humanité, déjà puni par les juridictions de Nuremberg et de Tokyo, que le génocide, crime dont le concept même n'a été défini qu'ultérieurement, sont des crimes qui choquent particulièrement la conscience de l'humanité*, Affaire No ICTR-96-4-T/Peine/leg/fra, Procureur c/ Akayezu Jean - Paul, p.6.

ishyiraho Urukiko Mpanabyaha Mpuzamahanga yatangiye gukurikizwa ku wa 01/07/2002 nk'ibikorwa bikabije bikoze ku bushake bibangamiye uburenganzira bw'ibanze kubera impamvu z'ivangura rishingiye ku biranga itsinda umuntu arimo hirengagijwe amategeko mpuzamahanga⁷⁶. icyaha cyibasiye inyokomuntu giteganyijwe kandi mu ngingo ya 6,c) ya Sitati ya Nuremberg⁷⁷, no mu ngingo ya 3 ya Sitati y'Urukiko Mpanabyaha rwashyiriweho u Rwanda nka kimwe mu bikorwa byibasira inyokomuntu bikorwa mu bitero rusange cyangwa bya simusiga byibasiye abaturage b'abasivile bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko cyangwa idini⁷⁸, nk'uko byasobanuwe n'Urukiko Rukuru, mu gika cya [158] cy'urubanza rwajuririwe.

⁷⁶Article 7.2. (g) of Rome Statute of the International Criminal Court: *“Persecution means the international and severe deprivation of fundamental rights to international law by reason of the identity of the group or collectivity”; “Par «persécution», on entend le déni international et grave de droits fondamentaux en violation du droit international, pour des motifs liés à l'identité du groupe ou de la collectivité qui en fait l'objet.*

⁷⁷ Article 6 (c) du Statut du Tribunal Militaire International de Nuremberg : *« Les Crimes contre l'Humanité : c'est-à-dire l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime ».*

⁷⁸ Article 3, h, du Statut du TPIR, stipule que *“Le Tribunal international pour le Rwanda est habilité à juger les personnes responsables des crimes suivants lorsqu'ils ont été commis dans le cadre d'une attaque généralisée et systématique dirigée contre une population civile quelle qu'elle soit, en raison de son appartenance nationale, politique, ethnique, raciale ou religieuse: Persécutions pour des raisons politiques, raciales et religieuses”.*

[219] Ingingo ya 120 y'Itegeko – Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe urubanza rujuririrwa rwacibwaga, iteganya ko «Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko, cyangwa idini: 1° kwica; 2° kurimbura; (...) 8° gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiyeye ku rindi vangura iryo ari ryo ryose; (...)»⁷⁹.

[220] Ku birebana n'uru rubanza, Urukiko Rukuru rwasobanuye mu gika cya [160] cy'urubanza rwajuririwe, ko amagambo Mugesera Léon yavugiye muri « meeting » yo ku Kabaya agize icyaha cyo gushishikariza gukora jenocide anagize icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu kuko atesha agaciro abatutsi kubera ubwoko bwabo, akanahamagarira kubahohotera ku buryo bukomeye bamburwa

⁷⁹ Iyo ingingo ihuje kandi n'ingingo ya 94 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 iteganya ibyaha n'ibihano muri rusange, iteganya ko "Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare: 1° kwica; 2° kurimbura; 3° gushyira mu bucuza; 4° gutwara bunyago cyangwa kubimura ku ngufu aho bari batuye; 5° gufunga umuntu cyangwa kumwambura uburenganzira bwe bwo kujya aho ashaka mu buryo bunyuranyije n'amategeko; 6° kwica urubozo; 7° gusambanya ku gahato, ubucakara bushingiye ku gitsina, gukoresha uburaya ku gahato, guhagarika urubaro ku gahato cyangwa ikindi gikorwa icyo ari cyo cyose cy'ihohotera rishingiye ku gitsina risa n'ibimaze kuvugwa; 8° gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiyeye ku rindi vangura iryo ari ryo ryose; 9° kurigisa abantu; 10° ivangura rishingiye ku ibara ry'uruhu; 11° ibindi bikorwa birenze kamere-muntu bisa n'ibimaze kuvugwa bikozwe ku bushake bigamije kubabaza cyangwa kwangiza bikabije umubiri cyangwa ubwenge".

uburenganzira bwabo bw'ibanze, kuko uguhamagarira guhohotera abatutsi kwaje gushyirwa mu bikorwa bicwa, basahurwa, batwikirwa nk'uko byemejwe n'abatangabuhamya babajijwe n'urwo Rukiko n'ibindi bimenyetso biri muri dosiye birimo ibinyamakuru n'izindi nyandiko z'abahanga zagaragajwe zivuga ku ngaruka zakurikiye ijamba Mugesera Léon yavugiye ku Kabaya.

[221] Urukiko Rukuru rwasobanuye kandi mu gika cya [161] cy'urubanza rwajuririwe, ko rusanga mu ijamba Mugesera Léon yavugiye muri « meeting » yo ku Kabaya, yaribasiye abanyapolitiki bo mu yandi mashyaka nka MDR, PSD, PL na FPR ataravugaga rumwe n'ishyaka rya MRND, abita ibyitso by'inyenzi cyangwa abateye igihugu akanahamagararira kubatsemba no kubakatira urwo gupfa no kubica, ko ubundi yakoresheje amagambo yo kubatesha agaciro kuko hari uwo yise igisambo, undi amwita umushizi w'isoni, naho undi amwita nsengashitani, ndetse ko yanakoresheje n'amagambo abambura uburenganzira bwo gukora politiki mu bwisanzure nko kuvuga ko batagomba kongera gukorera politiki ku Gisenyi, ko ahubwo bagomba kujya kuyikorera iwabo.

[222] Na none mu gika cya [163] cy'urubanza rujuririrwa, Urukiko Rukuru rwasanze ibyo Mugesera Léon yakoze byo kwibasira abaturage b'abasivile bo mu bwoko bw'Abatutsi n'Abanyapolitiki batavugaga rumwe na MRND byari mu rwego rw'ibitero rusange cyangwa simusiga kuko yavuze ayo magambo mu gihe hirya no hino mu gihugu kwica abatutsi, kubafunga no gutoteza abanyepolitiki byari byaratangiye mu Rwanda guhera m'Ukwakira 1990 nk'uko byanemejwe mu

rubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005⁸⁰.

[223] Ku birebana n'ubushake bwo gukora icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu, mu gika cya [165] cy'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko harebwe amagambo Mugesera Léon yavugiye muri mitingi yo ku Kabaya ubwo yibasiraga abaturage b'Abatutsi cyangwa abanyapolitiki batavugaga rumwe na MRND mu gihe igihugu cyari mu ntambara, n'igihe abaturage bicwaga hirya no hino mu gihugu, abandi bagafungwa cyangwa bakagirirwa ubundi bugizi bwa nabi nko gutwikirwa amazu, gusahurwa, gukubitwa, kandi ababikoraga bakaba barabitaga ibyitso by'abateye igihugu nk'uko byasobanuwe haruguru, bigaragara ko igihe Mugesera Léon yavugaga ayo magambo, yari afite ubushake bwo kubatoteza kubera impamvu zishingiye ku bwoko no kuri politiki.

[224] Urukiko rurasanga, nk'uko n'Urukiko Rukuru rwabibonye, kuba muri « *meeting* » yo ku Kabaya, Mugesera Léon yaribasiye abaturage b'Abatutsi b'abasivile abaziza

⁸⁰ 80Mu gika cya 160 na 163 by'urubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, urwo Rukiko rwasobanuye ko “*Selon M. Duquette, l'année 1990 avait marqué le début d'une série de massacres que les dirigeants du MRND et les militaires avaient encouragés ouvertement et auxquels ils avaient parfois participé. (...) Les Tutsi et les Hutu modérés, deux groupes identifiables en raison de leurs caractéristiques ethniques et politiques, constituaient une populations civile au sens du droit international coutumier. Les conclusions de M. Duquette ne laissent aucun doute sur le fait que des attaques systématiques étaient menées contre eux. Pour ces raisons, nous reconnaissons qu'une population civile faisait l'objet d'une attaque systématique au Rwanda au moment où M. Mugesera a prononcé son discours*”.

ubwoko bwabo ubwo yahamagariraga abayoboze ba MRND kubatoteza no kubica kubera ko ari ibyitso by'Inyenzi zateye igihugu nk'uko byasobanuwe haruguru, kandi uko kubibasira kukaba kwarakozwe mu rwego rw'ibitero rusange cyangwa bya simusiga kuko yavuze ayo magambo igihe Abatutsi bagera ku bihumbi bibiri (2.000) bari bamaze kwicwa guhera ku wa 01/10/1990 kugera ku wa 22/11/1992, umunsi yavugaga iyo disikuru, ndetse n'igihe ubwo bwicanyi bwari bugikomeje hirya no hino mu gihugu kubera ko bwari bushyigikiwe ku mugaragaro na Guverinema y'u Rwanda ku buryo hari abayobozi ba MRND n'abasirikare babugizemo uruhare⁸¹, kandi ayo magambo akaba yaratumye abaturage b'abasivile bo mu bwoko bw'Abatutsi bicwa, basahurwa, banatwikirwa nk'uko byemejwe n'abatangabuhamya babajijwe n'urwo Rukiko, bigaragara ko Mugesera Léon yakozwe icyaha cyibasiye inyokomuntu kubera ko ibyo bikorwa byo gutoteza (*persécution*) no kwica Abatutsi b'aba sivile byakozwe mu rwego rw'ibitero rusange cyangwa bya simusiga kandi byari

⁸¹ Mu gika cya 159 na 160 by'urubanza rwaciwe n'Urukiko rw'Ikirenga rwa Canada rwavuzwe haruguru, urwo Rukiko rwasobanuye ko “*Au sujet de la question du caractère généralisé de l'attaque, M. Duquette (arbitre) a relevé que près de 2.000 Tutsi avaient été massacrés au Rwanda entre le 1er Octobre 1990 et le 22 Novembre 1992. (...) Selon M. Duquette, l'année 1990 avait marqué le début d'une série de massacres que les dirigeants du MRND et les militaires avaient encouragés ouvertement et auxquels ils avaient parfois participé. Nous avons vu précédemment que l'existence d'un type de comportement attentatoire, surtout lorsqu'il est cautionné ou adopté par le gouvernement et les militaires, suffira souvent à établir que l'attaque a eu lieu conformément à une politique ou à un plan et qu'elle était de ce fait systématique. Il est indubitable qu'une politique d'attaque, de persécution et de violence était menée contre les Tutsi et les Hutu modérés au Rwanda lorsque M. Mugesera a prononcé son discours. L'acte de persécution s'inscrivait donc dans le cadre d'une attaque systématique*”.

byibasiye Abatutsi kubera ubwoko bwabo nk'uko byasobanuwe n'Urukiko Rukuru.

[225] Urukiko rurasanga kandi, nk'uko n'Urukiko Rukuru rwabibonye, kuba muri « *meeting* » yo ku Kabaya, Mugesera Léon yaribasiye abayobozi b'amashyaka ataravugaga rumwe n'ishyaka rya MRND nka MDR, PSD, PL na PDC, ubwo yabitaga ibyitso by'Inyenzi zateye igihugu, kandi akaba yaranabatesheje agaciro ubwo yitaga Minisitiri w'Intebe Nsengiyaremye, Nsengashitani, naho Twagiramungu, Perezida w'ishyaka rya MDR, akaba yaramwise igisambo, Minisitiri w'Uburezi akaba yaramwise umushizi w'isoni, kandi akaba yarahamagariye kwica Minisitiri w'Intebe Nsengiyaremye na Twagiramungu kuko yibajije impamvu batarabica ngo kuko Minisitiri w'Intebe yaciye intege ingabo zari ku rugamba, ngo no kuba Twagiramungu yatanze Perefegitura ya Byumba, ndetse akaba yarakoresheje n'amagambo abambura uburenganzira bwo gukora politiki mu bwisanzure kuko yavuze ko batagomba kongera gukorera politiki muri Perefegitura ya Gisenyi, no kuhashinga ibyahi byabo ngo ni amabendera, ko ahubwo bagomba kujya kuyikorera iwabo cyangwa bakajya guturana n'Inyenzi, kandi ibikorwa by'itotezwa by'Abahutu batavugaga rumwe n'ishyaka rya MRND (*modérés*) bikaba byarakorwaga hirya no hino mu Rwanda, igihe Mugesera Léon yavugaga iyo disikuru, bigaragara ko Mugesera Léon yakoze icyaha cyibasiye inyokomuntu, aho kuba icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu nk'uko byemejwe n'Urukiko Rukuru, kubera ko abayobozi b'amashyaka ataravugaga rumwe na MRND batotejwe (*persécutés*) mu rwego rw'ibitero rusange cyangwa bya simusiga byabibasiye kubera ibitekerezo byabo bya Politiki nk'uko byasobanuwe n'Urukiko Rukuru.

[226] Byongeye kandi, Urukiko rurasanga ikindi kimenyetso kigaragaza ko Mugesera Léon yakoze icyaha cyibasiye inyokomuntu, ari uko abatangabuhamya Sinayobye André na Rwasubutare Callixte bemeje ko mu nama yabereye i Nyamyumba ku wa 06/07/1992, Mugesera Léon yibasiye abaturatione b'Abatutsi igihe Igihugu cyari mu ntambara, bituma bamwe muribo bicwa, abandi barafungwa, abandi batwikirwa amazu, baranasahurwa nk'uko byasobanuwe n'Urukiko Rukuru mu gika cya [165] cy'urubanza rujuririrwa.

[227] Urukiko rurasanga nk'uko n'Urukiko Rukuru rwabisobanuye mu gika cya [164] cy'urubanza rujuririrwa, ijamba ribiba urwango rikanahamagarira abayobohe ba MRND guhohotera abantu kubera ivangura rishingiye ku bwoko cyangwa ibitekerezo bya politiki rigize icyaha cyibasiye inyokomuntu nk'uko byasobanuwe mu manza nyinshi zaciwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda (TPIR) zirimo urubanza N° ICTR-99-52-A rwaciwe n'urwo Rukiko ku wa 28/11/2007, haburana Porokireri na Ferdinand NAHIMANA na bagenzi be, aho urwo Rukiko rwasobanuye mu bika byarwo bya 983 – 988, ko amagambo abiba urwango, akanahamagarira kwibasira Abatutsi ubwayo agize ibikorwa byo gutoteza bigize icyaha cyibasiye inyokomuntu⁸². Ibyo byemejwe kandi mu rubanza rwaciwe n'Urukiko

⁸² *En l'espèce, les discours haineux tenus après le 6 avril 1994 étaient accompagnés de discours appelant au génocide contre le groupe tutsi et tous ces discours s'inscrivaient dans le contexte d'une vaste campagne de persécution dirigée contre la population tutsie du Rwanda, cette campagne étant également caractérisée par des actes de violence (meurtres, sévices physiques, viols...) et de destruction de propriété. En particulier, les discours de la RTLM incriminés – qui ont tous été tenus par des subordonnés de l'Appelant Nahimana, lorsque considérés ensemble et dans leur contexte,*

rw'Ikirenga rwa Canada ku wa 28/06/2005, aho rwasobanuye ko ijambo Mugesera Léon yavugiye ku Kabaya ribiba urwango, rikanahamagarira abamwumvaga guhohotera, kwica no gutsemba Abatutsi n'abataravugaga rumwe n'ubutegets, kandi rikaba ryanatutse abamwumvaga bashaka kwirwanaho no kubahohotera bitewe n'uko bumvaga bugarijwe n'ibitero bya simusiga, rigize igikorwa cy'ihototera (la persécution) kigize icyaha cyibasiye inyoko muntu⁸³.

[228] Urukiko rurasanga imvugo ya Mugesera Léon y'uko iyo Urukiko Rukuru rushyira disikuru yo ku Kabaya muri « *contexte* » yayo rutari kumuhamya icyaha kuko rwari gusanga iyo disikuru yaravuzwe mu gihe gishyushye cy'ipiganwa ry'amashyaka menshi, nta shingiro ifite, kuko n'ubwo iyo disikuru yavuzwe icyo gihe, bidakuraho kuba yarhamagariraga abayoboze b'ishyamba rya MRND bamwumvaga kwica, gutoteza, no guhohotera Abatutsi b'abasivile babaziza ubwoko bwabo n'abayobozi b'amashyamba ataravugaga rumwe n'iryo

sont, de l'avis de la Chambre d'appel, d'une gravité équivalente aux autres crimes contre l'humanité”.

⁸³ Mu gika cya 148 cy'urubanza n° 2005 S.C.R. 40, rwaciwe n'Urukiko rw'Ikirenga rwa Canada ku wa 28/06/2005, MUGESERA Léon vs Canada (M.C.I), urwo Rukiko rwasobanuye ko “Selon M.Duquette, *le discours de M. Mugesera incitait à la haine contre les Tutsi et ses opposants politiques, notamment en encourageant des actes de violences extrêmes, telle l'extermination. (...) Une allocution comme celle considérée en l'espèce, où M. Mugesera a encouragé activement la haine, l'assassinat et l'extermination, et fait naître chez son auditoire le sentiment d'une menace imminente et le besoin de recourir à la violence contre la minorité ethnique et des opposants politiques, porte la marque d'un acte manifeste ou flagrant de discrimination équivalant en gravité aux autres actes sous-jacents énumérés au par. 7(3.76) du Code criminel du crime contre l'humanité. L'exigence d'un acte criminel sous-jacent, la persécution, se trouve donc remplie*”.

shyaka kubera ibitekerezo byabo bya Politiki nk'uko byasobanuwe haruguru.

[229] Urukiko rurasanga kandi imvugo ya Mugesera Léon y'uko iyo Urukiko Rukuru rutirengagiza amategeko rwari gusanga uwavuze disikuru yo ku Kabaya atarakoze icyaha kuko yasabaga ko amategeko yubahirizwa, maze Minisitiri w'Intebe Nsengiyaremye waciye ingabo intege igihe cy'intambara na Twagiramungu watanze Perefegitura ya Byumba bagahanishwa igihano cy'urupfu nk'uko amategeko yabiteganyaga nta shingiro ifite, kuko iby'uko Mugesera Léon yasabaga ko amategeko yubahirizwa bitamukuraho uburyozwacyaha mu gihe yanahamagariraga iyicwa rya Nsengiyaremye na Twagiramungu kuko yibazaga impamvu batarabica.

5. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu guhamya ko MUGESERA Léon yakoze icyaha cyo kubiba urwango rushingiye ku bwoko

[230] Mugesera Léon avuga ko Urukiko Rukuru rwakoze amakosa yo mu rwego rw'ibyabaye (*erreur des faits*) n'amakosa yo mu rwego rw'amategeko (*erreur de droit*) kuko rwamuhamije icyaha cyo kubiba urwango rushingiye ku bwoko, kandi ataragikoze. Asaba uru Rukiko ko rwashishoza rukamugira umwere kuko atakoze icyaha. Avuga kandi ko yatewe agahinda n'uko izina rye ryandujwe n'abantu batandukanye bavuzwe haruguru kuko bamuhinduye nk'innyamaswa n'uwakoze jenocide (*Le faux* Mugesera), kandi Mugesera Léon nyawe (*Le vrai* Mugesera) ari umuntu mwiza cyane ukunda Abatutsi kuko igihe yashyingirwaga, yifotoje ari kumwe na Musenyeri Bigirumwami wari Umututsi ari kumwe n'abandi Basenyeri babiri (2), kandi ko uru Rukiko ruramutse rubishatse yazarushyikiriza iyo foto ariko rukabigira ibanga.

Yongeraho ko n'Abacungagereza bazi ko ari umuntu mwiza kuko Umuyobozi wabo yaje muri Gereza ya Mpanga amubaza niba ntacyo yafasha u Rwanda, aho kwirirwa ategura imanza ze gusa, maze yandika inyandiko (*document*) izagirira Abanyarwanda akamaro, arayimuha, ndetse ko anafite igitabo azaha Me Rudakemwa Jean – Félix, umwunganira, kugira ngo akimushyikirize.

[231] Me Rudakemwa Jean – Félix, umwunganira, avuga ko Urukiko Rukuru rwahamije MUGESERA Léon ibyaha bitatu (3) birimo icyaha cyo kubiba urwango rushingiye ku bwoko rumurenganyije kubera ko nta rwango yigeze agirira Abatutsi. Asaba uru Rukiko ko rwahindura icyo cyemezo kigaragaramo akarengane rukamugira umwere.

[232] Uhagarariye Ubushinjacyaha avuga ko imikirize y'urubanza rwajuririwe itahinduka kubera ko Mugesera Léon atatanze ibimenyetso bivuguruza ibyo Urukiko Rukuru rwashingiyeho rumuhamya icyaha cyo kubiba urwango rushingiye ku bwoko.

[233] Asobanura ko Mugesera Léon akwiye guhamwa n'icyaha cyo kubiba urwango rushingiye ku bwoko kuko gitandukanye n'icyaha cyo gushishikariza gukora jenocide kubera ko iki cyaha giteganyijwe nk'icyaha cyihariye mu mategeko, kandi ko kibaho kabone n'ubwo abashishikarijwe gukora jenocide batayikoze kuko gisaba ubushake bwihariye bwo kurimbura abantu cyangwa igice kimwe cyabo hashingiwe ku bwoko bwabo, ku ibara ry'uruhu, cyangwa ku idini, ariko ko icyaha cyo kubiba urwango cyateganywaga nk'icyaha cyihariye mu ngingo ya 393 y'Itegeko -Teka no 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, n'ubwo nacyo kijya

gikorwa hashingiwe ku bwoko, inkomoko cyangwa ku idini. Yongeraho ko ikindi kigaragaza ko ibyo byaha byombi bitandukanye, ari uko abahanga mu mategeko basobanura ko icyaha cyo gushishikariza abandi gukora jenocide kibaho iyo hari uwahamagariye abandi kugira icyo bakora, naho icyo kubiba urwango kiba gikozwe igihe umuntu avuze amagambo abiba urwango gusa.

UKO URUKIKO RUBIBONA

[234] Mu gika cya [176] na [178] by’urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko hashingiwe ku ngingo ya 393 y’Itegeko -Teka No 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy’amategeko ahana ryakurikizwaga igihe icyaha cyakorwaga, Mugesera Léon agomba guhamwa n’icyaha cyo kubiba urwango mu baturage kubera ko amagambo yakoresheje muri disikuru yavugiye muri “meeting” yo ku Kabaya n’i Nyamyumba agaragaza urwango yari afitiye Abatutsi ubwo yabitaga inyenzi, ibyitso by’abateye igihugu n’ibindi nk’uko byemejwe n’abatangabuhamya babajijwe n’urwo Rukiko, bityo ko ayo magambo agaragaza ko yari afite ubushake bwo kwanga Abatutsi no gushishikariza abandi kurubagirira, bityo ko Mugesera Léon yakozwe icyaha cyo kubiba urwango mu baturage rushingiye ku bwoko nk’uko biteganywa n’ingingo ya 393 y’iryo Tegeko –Teka.

[235] Raporo yakozwe na Sena y’u Rwanda mu mwaka wa 2019 ku birebana n’imiterere y’ihakana n’ipfobya ya jenocide yakorewe Abatutsi, isobanura ko Umwanditsi witwa Gregory Stanton wasobanuye byimbitse uko Jenocide itegurwa ikanashyirwa mu bikorwa, yerekanye ko jenocide yakorewe Abatutsi mu Rwanda yateguwe mu byiciro icumi (10) mu buryo

bukurikira⁸⁴: 1) kuvangura abantu no kubaremamo ibice (*Classification*), 2) kubaha ibibaranga (*Symbolization*), 3) ivangura (*Discrimination*), 4) kubambura ubumuntu (*Déshumanisation/ Dehumanization*), 5) gushyiraho gahunda (*Organisation/ Organization*), 6) guhanganisha abagomba kwicwa n'abazabica (*Polarisation/ Polarization*), 7) imyiteguro ya nyuma (*Préparation/Preparation*), 8) gutoteza bikomeye (*Persécution/Persecution*), 9) kurimbura (Extermination), 10) guhakana no gupfobya Jenocide (*Déni/Denial; Révisionisme/ Revisionism*).

[236] Mu gusobanura ibyiciro bimaze kuvugwa haruguru, iyo raporo ivuga ko mu Rwanda, abateguye jenocide babanje gucamo Abanyarwanda ibice, maze buri tsinda rihabwa izina ryihariye, ni ukuvuga “Abahutu n’Abatutsi”, binashimangirwa n’inyigisho z’urwango zarushijeho gutandukanya ayo matsinda yombi, kugeza ubwo itsinda ryibasiwe ry’Abatutsi ryafashwe nk’umwanzi ku buryo buhoro buhoro bagiye bamburwa ubumuntu binyujijwe mu itangazamakuru n’icengezamatwara ry’urwango, ndetse ko n’indangamuntu bahawe zatumaga bamenyekana, kandi ko bahawe n’amazina menshi yabamburaga ubumuntu nk’aho biswe inyenzi, inzoka n’andi, ndetse ko politiki y’iringaniza yatumye bamburwa uburenganzira bwabo bw’ibanze mu gihugu kuko yatumye batiga cyangwa batajya mu mirimo ya Leta ari benshi. Ikindi n’uko buri jenocide igira gahunda ikorwamo na Leta ku buryo

⁸⁴ Stanton, G. H. (2013). 10 Stages of Genocide. Retrieved April 22, 2016, from Genocide watch net: <http://www.genocidewatch.org/genocide/tenstagesofgenocide.html>, in Raporo yakozwe na Sena y’u Rwanda yo mu mwaka wa 2019 ku miterere y’ihakana n’ipfobye bya jenocide yakorewe Abatutsi bibera mu mahanga n’ingamba zo kibirwanya, pp 29-33.

inakoresha imitwe yitwara gisirikare kugira ngo uruhare rwayo rutagaragara, ko mu Rwanda hakoreshejwe Interahamwe, Impuzamugambi na «Hutu Power», banigishwa kwikiza umwanzi banahabwa ibikoresho bitandukanye bizifashishwa (imipanga, amahiri ...), ko nyuma y’aho hakurikiyeho imvugo n’ingengabitekerezo ivuga ngo “utari kumwe natwe araturwanya”, bigakurikizwa, bikanasakazwa mu bagomba gushyira mu bikorwa uwo mugambi, ko mu Rwanda, habayeho gusobanura ko umwanzi ari Umututsi w’imbere mu gihugu cyangwa uwo hanze yacyo, ko nyuma y’aho hakurikiyeho kwica no gutoteza Abatutsi bikomeye, guhakana no gupfobya Jenoside yakorewe Abatutsi.

[237] Urukiko rurasanga, ku birebana n’uru rubanza, ibikorwa byo kubiba urwango mu baturage rushingiye ku bwoko Mugesera Léon yakozze harebwe amagambo yavugiye ku Kabaya n’i Nyamyumba nk’uko byasobanuwe haruguru, ari imwe mu ntambwe (*les étapes*) ziganisha kuri jenocide Mugesera Léon yakoresheje agamije kugera ku cyaha cyo gushishikariza abandi gukora jenocide nk’uko byasobanuwe muri raporo ya Sena yavuzwe haruguru, bivuze ko Urukiko Rukuru rutagombaga kubifata nk’icyaha cyihariye cyo kubiba urwango cyateganywaga n’ingingo ya 393 y’Itegeko-Teka ryavuzwe haruguru, kuko kuba Mugesera Léon yarabibye urwango mu baturage ubwo yitaga Abatutsi inyenzi n’ibytso by’abateye igihugu, ari uko yashakaga ko nabo barubagirira bagatsemba Abatutsi.

6. Kumenya niba Urukiko Rukuru rwarakoze amakosa mu guhanisha Mugesera Léon igifungo cya burundu

[238] Mugesera Léon na Me Rudakemwa Jean – Félix, umwunganira, bavuga ko Urukiko Rukuru rutagombaga

kumuhanisha igifungo cya burundu hashingiwe kuri disikuru yo ku Kabaya kuko yahinduwe (*truqué*), ko ahubwo rwagombaga kumugira umwere kubera ko atakoze ibyaha aregwa.

[239] Uhagarariye Ubushinjacyaha avuga ko Mugesera Léon akwiye guhanishwa igifungo cya burundu yahawe n'Urukiko Rukuru kubera ko yakoze ibyaha yahamijwe n'urwo Rukiko nk'uko byasobanuwe haruguru.

UKO RUKIKO RUBIBONA

[240] Ingingo ya 132, 3° y'Itegeko – Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategako ahana ryakurikizwaga igihe Mugesera Léon yacirirwaga urubanza ku rwego rwa mbere, iteganya ko “Ibindi bikorwa bihanwa nk'icyaha cya jenoside, ari ugushishikariza abantu gukora icyo cyaha n'ubwo bitashyirwa mu bikorwa, wifashishije amagambo, amashusho cyangwa inyandiko. Naho ingingo ya 115 y'iryo Tegeko – Ngenga, igateganya ko icyaha cya Jenoside gihanishwa igifungo cya burundu cy'umwihariko.

[241] Ingingo ya 120, agace ka 8°, y'Itegeko – Ngenga ryavuzwe haruguru, iteganya ko «Icyaha cyibasiye inyokomuntu ni kimwe mu bikorwa bikurikira gikozwe mu bitero rusange cyangwa bya simusiga byibasiye abaturage batari abasirikare bazira ubwenegihugu bwabo, ibitekerezo bya politiki, ubwoko, cyangwa idini: gutoteza umuntu umuziza ibitekerezo bye bya politiki, ubwoko, idini cyangwa se ushingiye ku rindi vangura iryo ari ryo ryose; (...). Naho ingingo ya 121 y'iryo Tegeko – Ngenga, igateganya ko «Umuntu wese ukora icyaha cyibasiye inyokomuntu nk'uko biteganywa mu gace ka 8° k'ingingo ya 120 y'iri Tegeko –

Ngenga, ahanishwa igifungo kuva ku myaka icumi (10) kugeza ku myaka makumyabiri n'itanu (25) ».

[242] Na none ingingo ya 83, 2^o, a, y'Itegeko – Ngenga ryavuzwe haruguru, iteganya ko haba impurirane y'imbonezamugambi iyo igikorwa kimwe ubwacyo gishobora kubyara ibyaha byinshi (...). Naho ingingo ya 84 y'iryo Tegeko – Ngenga, igateganya ko « Iyo ku gikorwa kimwe gusa cyangwa byinshi, uwakoze icyaha yari guhanishwa ibihano byinshi byo gufungwa cyangwa by'ihazabu, umucamanza amuhanisha igihano kiruta ibindi yongeraga igihe cyangwa umubare bitewe n'uburyo ibyaha byakozwe ariko ntarenze urugero ntarengwa wongeyeho icya kabiri (1/2) cy'icyo gihano kirushije ibindi gukomera ».

[243] Mu bika bya [189] na [192] by'urubanza rujuririrwa, Urukiko Rukuru rwasobanuye ko ibyaha Mugesera Léon yakoze byo kuba icyitso cy'abakoze jenocide kubera gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide, icyaha cyo gutoteza nk'icyaha cyibasiye inyokomuntu n'icyaha cyo kubiba urwango rushingiye ku bwoko, byakozwe mu mugambi umwe wo gukora jenocide no kugirira nabi abo yitaga ibyitso by'abateye igihugu, bityo ko agomba guhanishwa igifungo cya burundu giteganyirijwe icyaha cyo kuba icyitso cy'abakoze jenocide nk'uko byasobanuwe haruguru.

[244] Urukiko rurasanga ibikorwa byo kubiba urwango mu baturage rushingiye ku bwoko MUGESERA Léon yakoze bitaragombaga gufatwa nk'icyaha cyihariye, ko ahubwo byagombaga gufatwa nk'imwe mu ntambwe (*les étapes*) ziganisha kuri jenocide Mugesera Léon yakoresheje agamije kugera ku cyaha cyo gushishikariza abandi gukora jenocide nk'uko byasobanuwe haruguru, bivuze ko Mugesera Léon

agomba guhamwa n'icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide n'icyaha cyibasiye inyokomuntu (gutoteza), bityo kuba ibyo byaha byombi byarakozwe mu mugambi umwe wo gukora jenocide no kugirira nabi abo yitaga Inyenzi n'ibytso by'abateye igihugu, agomba guhanishwa igifungo cya burundu giteganyirijwe icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide kuko aricyo kiremereye kurusha ikindi nk'uko biteganywa n'ingingo ya 84 y'Itegeko – Ngenga ryavuzwe haruguru, ariko ko Mugesera Léon atahanishwa igifungo cya burundu cy'umwihariko giteganywa n'ingingo ya 132, 3° y'Itegeko – Ngenga ryavuzwe haruguru, kuko yoherejwe n'igihugu cya Canada nk'uko biteganywa n'ingingo ya 5 bis y'Itegeko – Ngenga N° 08/2013 ryo ku wa 16/06/2013 rihindura kandi ryuzuza Itegeko – Ngenga N° 31/2007 ryo ku wa 25/04/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu,⁸⁵ nk'uko n'Urukiko Rukuru rwabibonye.

[245] Hashingiwe ku bisobanuro byatanze haruguru, Urukiko rurasanga nta kosa n'Urukiko Rukuru rwakoze mu guhanisha Mugesera Léon igifungo cya burundu, bityo iyi mpamvu ye y'ubujurire ikaba nta shingiro ifite.

III. ICYEMEZO CY'URUKIKO

[246] Rwemeje ko ubujurire bwa Mugesera Léon nta shingiro bufite;

⁸⁵ Ingingo ya 5 bis y'Itegeko – Ngenga ryavuzwe haruguru, iteganya ko “Uregwa wahamwe n'icyaha mu rubanza rwimuriwe mu Rwanda ruvuye mu Rukiko Mpanabyaha rwashyiriweho u Rwanda cyangwa mu kindi gihugu, ntashobora guhanishwa igifungo cya burundu cy'umwihariko».

[247] Rwemeje ko imikirize y'urubanza RP 0001/12/CCI rwaciwe n'Urukiko Rukuru, Urugereko Rwihariye ruburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi, ku wa 15/04/2016, ihindutse gusa ku birebana n'ibyaha Mugesera Léon ahamijwe;

[248] Rwemeje ko Mugesera Léon ahamwa n'icyaha cyo gushishikariza ku mugaragaro kandi ku buryo butaziguye gukora jenocide n'icyaha cyibasiye inyokomuntu;

[249] Ruhanishije Mugesera Léon igifungo cya burundu;

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

UMUGEREKA W'URUBANZA RP/GEN **00003/2019/CA**

Ijambo rikurikira niryo Ubushinjacyaha buvuga ko MUGESERA Léon yavugiye muri *meeting* y'ishyaka rya MRND yabereye ku Kabaya kuwa 22/11/1992:

Muvoma yacu, ramba...

Perezida Habyalimana, narambe...

Abarwanashyaka ba Muvoma turi hano twese, turambe...

Barwanashyaka ba Muvoma yacu, twese uko duteraniye hano, ngirango ijambo ndi buvuge muranyumva, ndababwira ibintu bine gusa: mu

minsi ishize nababwiye ko twanze agasuzuguro, n'ubu turacyakanga! Ibyo ntabwo mbigarukaho!

Uko nitegereje imbaga nyamwinshi twese duteraniye hano, biragaragara ko icya mbere nari kuvuga nari nkwiye kukireka: kuko nari ngiye kubabwira ngo mwirinde umugeri wa MDR irimo gusamba! Icyo ni icya mbere.

Icyo kabiri, ngirango tujyeho inama: twivogerwa! Haba hano turi, haba no mu gihugu; icyo ni icya kabiri.

Icyo gatatu, ngira ngo mbabwire, nacyo ni ikintu gikomeye, ni ukuntu tugomba kwifata kugira ngo twirinde abagambanyi n'abashaka kutumerera nabi. Hanyuma rero icyo ndi busozerezeho nyine, ni uburyo tugomba kwifata.

Icyo mbere rero ngira ngo mbagezeho, icyo kintu gikomeye ndagira ngo mukimenye... Kuko imigiri MDR na PL, na FPR, hamwe na rya shyaka ryitwa PSD na PDC ndetse bitera muri iki gihe, mumenye impamvu ritera imigiri. Rikayitera rero rishaka ko urwara rwagera kuri perezida wa repubulika bikanga, ari we perezida wa Muvoma yacu. Rikayitera ku barwanashyaka bacu... Mumenye impamvu iyo migeni irimo guterwa: Burya ujya gupfa aba afite indwara!!!

Igisambo Twagiramungu yagiye kuri Radiyo kuko ari perezida w'ishyaka, ariwe wayihamagariye ngo agiye kuhicira CDR, irahamutsinda! Imaze kuhamutsinda, mu matagisi hose i Kigali, abarwanashyaka ba MDR, PSD n'ibyo byitso

by'inyenzi, barakonje pe! benda guhwera na we ubwe ararigita, ntiyasubira no mu biro yakoreragamo, ndababwira ko uwo muntu, ishyaka rye ryataye isaro, bose bagira ubwoba bahita bapfa!

Kubera rero ko iryo shyaka hamwe n'andi bafatanyije kuko ari ibyitso by'inyenzi, umugabo uririmo witwa Murego ageze i Kibungo afata ijamba aravuga ati: Twe dukomoka ku Bahutu kandi turi abahutu.” Bati: “Urakavuna umuheto! Shahu ibyo by'Abahutu urabivuga ubibwiwe na nde? Bararakara ubwo barahwera!

Noneho Minisitiri w'intebe witwa ngo niba ari Nsengashitani cyangwa iyaremye simbizi, afata inzira n'i Cyangugu ngo agiye kubuza Abahutu kwirwanaho, Abatutsi babatega za mines, mwabyumvise kuri radiyo, maze bamuha urw'amenyo, namwe mwarabyiyumviye ata umutwe n'abarwanashyaka be bose n'amashyaka bafatanyije.

Ubwo rero murumva abo bantu bimaze kugenda gutyo...Mwiyumviye Perezida w'ishyaka ryacu, Nyakubahwa Jenerali-Majoro Habyalimana Juvénal, ageze mu Ruhengeri, avuze, Ikinani kiragaragara, babandi bahita baja mu mva, murumva rero umugeri w'abo bantu ko bahwereye, bateye umugeri bumvise u Rwanda rwose n'abo mu yandi mashyaka barimo kuyavamo bagaruka mu ishyaka ryacu, kubera ijamba ry'umukuru wacu.

Umugeri wabo rero urindwa mubi, icyakora uko tungana dutya ndabona turi benshi, nta n'aho bawunyuzababara barata igihe.

Ibyo rero ni icya mbere, MDR n'amashyamba bifatanyije birimo gusamba, umugeri wabyo, muwirinde, ariko uko nabibonye n'urwara ntiruzabageraho!

Icyo kabiri nagenywe kubabwira: ni ukutavogerwa. Muve aha rwose mujyanye iryo jambo rivugabwira kutavogerwa.

Mbe wa mugabo we, nawe wa mubyeyi we muri hano, harya umuntu azaza yicare mu rugo rwawe, ahanywe, wongere wemere ko ahagaruka koko? Uwo ni umuziro rwose!

Mumenye ko ikintu gikomeye cyari mbere... hano mwabonye abavandimwe bacu b'i Gitarama; amabendera ni jye wayatanze nkora mu biro by'ishyamba ryacu, yose i Gitarama barayashyamba ariko icyo uturutse i Kigali ukaza ugatambuka, ukinjira muri Kibirira nta bendera rya MRND rikihatamba barayamanywe!

Ibyo aribyo byose namwe murabyumva, abapadiri batwigishije byiza na Muvoma yacu ni Muvoma y'amahoro, ariko bamenye ko natwe amahoro yacu nta kuntu umuntu ashobora kuyagira nawe atirwanyeho.

Hari abaciye umugani ngo: "Ushaka amahoro ahari yiteguye intambara". Maze rero, muri perefegitura yose yacu ya Gisenyi, ni ubwa kane cyangwa ubwa gatanu mbivugaga, ni bo babanje. Mu

Ivanjiri biranditse ngo: “Nibagukubita urushyi ku itama rimwe uzatega irindi bakubiteho”. Njye mbabwiye ko iyo vanjili yahindutse muri Muvoma yacu: nibagukubita urushyi ku itama rimwe, uzabatere ebyiri ku rindi hanyuma biture hasi ubutazanzamuka!

Aha rero, nta kantu kitwa ibendera ryabo, nta cyitwa ingofero yabo, nta cyitwa n’umurwanashyaka wabo ugomba kongera kuza ku butaka bwacu kuhavugira: ndavuga Gisenyi yose uko yakabaye!

Ngo: “Kiryabandi bajya kukirya kikishaririza” !Bamenye ko umugabo ari nk’undi, natwe urugo rwacu ntiruvogerwa. Kuvogerwa rero mumenye ko ari umuziro!

Ikindi kintu ngira ngo mbabwire ku byerekeranye no kuvogerwa, mugomba kwanga, ni ibintu biteye ubwoba; mukuru wacu, Munyandamutsa, amaze kubabwira uko byifashe. Ati: “Ba ensipegiteri bacu, ubu mu gihugu hose ni 59 birukanye”. Muri perefegitura yacu ya Gisenyi ni 8 !

Maze se mwa babyeyi mwe muteraniye hano, mwari mwabona niba akiri umutegarugori simbizi ariko mwari mwabona uwo mugore uyobora Minisiteri y’uburezi ari we uza kumenya ko abana banyu bavuye mu ngo, bakajya kwiga cyangwa bagasubira mu ishuri? !? Ntimwumvise ko yavuze ndetse ngo ntihakagire uwongera no kwiga? None rero yahutse no mu barezi! Ndagira ngo mbamenyeshe ko yabahamagaye i Kigali, akababwira ngo:

“Ntihakagire umuntu n’umwe yumva ko ngo ensipegitari, umurezi, wagiye mu ishyamba” !

Baramushubije bati: “Banza urivemo nawe kuko uri minisitiri kandi uri mu ishyamba, natwe tuzagukurikira” ! Aracyaririmo, kandi mwumvise no kuri radiyo ukuntu asigaye atuka na Perezida wacu. Hari umubyeyi wagiye gukoranga ku gasozi? !? Maze rero icyo ngira ngo mbabwireho, ni amanyakuri ntabwo ari ugukomeza ngo byaba ari ibi, ngo hari ababa barakubaganye muri bo. Icyo bazira ni uko bari muri MRND none bazaza kutuvogera ... muri MRND, badukuremo abantu twemere?

Mbasabye ibikorwa bibiri bikomeye cyane: icya mbere ni uko mwakwandikira uwo mushizi w’isoni utukana riva no kuri radiyo yacu twese y’Abanyarwanda, mwamwandikira mukamumenyesha ko abo barezi bacu ari indakemwa mu mico no mu myifatire kandi badufatiye abana neza, ko abo barezi bakomeza kurera abana, ko yisubiraho. Icyo ni icya mbere mbasabye.

Maze mwese mugasinye pe! Impapuro ntabwo zizabura rwose! Maze rero nimumara iminsi mikeya adashubije, nk’irindwi gusa, kuko ibaruwa muzayohereza ijyane umuntu ayigeze, abimenye ko yayibonye, maze nihashira iminsi irindwi adashubije... maze rero nihashira iminsi irindwi adashubije... Kandi akiha kugira ngo hagire undi muntu uza gusimbura ba ensipegitari bari mu myanya, icyo mugifate, akibwira ko hari uza kumusimbura, uwonguwo uzaza rero aho minisitiri

akomoka ni ahantu bita i Nyaruhengeri ku nkengero z'u Burundi i Butare, muzabwire uwo muntu afate inzira yikorere impamba ye aje kuba ensipegiteri i Nyaruhengeri!

Bazakoranireyo bese abo azashyiraho bese bajye i Nyaruhengeri kurera abana be naho abacu bazakomeza barerwe n'abacu. icyo ni ikintu na none gikomeye tugomba gufatira ibyemezo ni ukutavogerwa pe! Ni umuziro!

Ikindi cyitwa kutavogerwa mu gihugu murabizi: abantu bitwa inyenzi mukongere kuvuga Inkotanyi: ni inyenzi pe! Abantu bitwa inyenzi bafashe inzira baradutera.

Jenerali-Majoro Habyarimana Yuvenali afatanyije dore Serubuga, mwamubonye Koloneli ari hano yari umwungiriza we mu ngabo icyo gihe duterwa barahaguruka barahagarara, inyenzi bazijugunya hanze y'umupaka zisubira icyo zaturutse. Maze rero reka mbasetse: reka hazaze babandi bifuje ubutegetsi, nibamara kubushyikira, bafate inzira bajye i Buruseli. Bamaze ngo abasirikare bacu bagomba kubaca intege!

Mwumvise ibyo minisitri w'intebe yivugiyemo ngo: "Bagiye gushoka ibishanga" kandi urugamba rushyushye! icyo gihe abari bafite umutima woroshye muri bo bavuye mu birindiro inyenzi zirinjira mu by'ukuri zijya hariya i Byumba nabo bajya gusahura amaduka, bacuza abacuruzi bacu b'i Byumba, Ruhengeri na Gisenyi, ubungubu ni na leta igomba kwishyura ibyo bintu kuko niyo yateye ibyo.

Ntabwo ari umucuruzi wacu, nta n'umwenda ashaka: umwenda w'iki se? Maze rero abo bantu batuma tuvogerwa. Igihanishwa abo bantu nta kindi rero: "Azahanishwa urupfu umuntu wese uzaca intege ingabo z'igihugu ku rugamba" biranditse mu mategeko. Kuki uwo batamwica?

Nsengiyaremye agomba gushyikirizwa ubucamanza agacirwa urubanza, amategeko arahari aranditse, bakamucira urubanza rwo gupfa nk'uko byanditse. Ibyo ntibibakange ngo ni uko ari minisitri w'intebe, mumaze iminsi mwumva ku maradiyo ko n'abaminisitri b'u Bufaransa basigaye bahamagarwa mu bucamanza! "Azahanishwa urupfu mu gihe cy'intambara, umuntu uzatanga ubutaka bw'igihugu, n'agatanyu". Twagiramungu yabivugiye kuri radiyo, na CDR imutsinda kuri Radiyo. Abarwanashyaka be bata umutwe, namwe mwiyumvire rero. Ndagira ngo mbamenyeshe ko uwo muntu watanze Byumba kuri radiyo twese twumva, n'Abanyanvanda n'amahanga bumva, yacirwa urubanza; azahanishwa urupfu biranditse mubaze abacamanza babereke aho biri ntabwo mbabeshya, azahanishwa urupfu umuntu uzatanga n'agatanyu k'u Rwanda. None uwo muntu aracyakora iki?

Kutavogerwa rero murabizi mwa babyeyi mwe, murabizi, muzi y'uko hari inyenzi ziri mu gihugu, zafashe abana bazo zibohereza ku rugamba kujya gufatanyu n'inkotanyi. Ibyo n'ibintu mwiyumvira, muzi. Ejo navuye muri Nshili ku Gikongoro ku mupaka w'u Burundi, nyura n'i Butare hose bagiye

bambwira umubare w'abana bagiye, bakambwira bati: "Aho banyura, n'ubajyana kuki badafatwa, n'iyi miryango"? None rero mbabwire: biranditse mu mategeko ngo mu gitabo cy'amategeko ahana ngo:

"Azahanishwa urupfu umuntu wese uzafata abasirikare ashatse mu giturage hose ashaka abana abaha ingabo z'amahanga zitera Repubulika". Biranditse. Kuki abo babyeyi bohereje abana batabafata ngo babatsembe? Kuki badafata abo babajyana nabo bose ngo babatsembe? Ubu mutegereje ko bazaza kudutsemba koko?

Maze rero ndagira ngo mbabwire iki: ni uko ubu dusabye ko abo bantu bose babashyira kuri lisiti bakabashyira imbere y'ubucamanza, bakabacira urubanza tukabumva; nibaramuka biyangiye rero mu itegeko-nshinga biranditsemo ngo "ubutabera bubera abaturage" mu gifaransa biravuga ngo: "La justice est rendue au nom du peuple". Igihe rero ubucamanza butagikorera rubanda nk'uko byanditse mu itegeko-nshinga ryacu twishyiriyeho, icyo gihe ni ukuvuga ko twebwe abaturage bwagombye gukorera tugomba kwikorera, izo ngegera tukazitsemba.

Ibi mbibabwiye mu manyakuri nk'uko byanditse mu ivanjiri: igihe muzemera ko inzoka iza kubarya mukayireka ikabagumamo, ni mwebwe muzashira.

Ndabamenyesha ko hashize umunsi umwe n'ijoro rimwe, sinzi ko rigezeho, i Kigali, agatsiko k'abantu bafite imbunda bagiye mu kabari, baravuga ngo: "amakarita muyerekane". Aba MDR babashyira

hariya, aba PL murabizi, babashyira hariya n'aba PDC, ba bandi biyise abakiristu, bajya hariya. Uwa MRND agaragaje ikarita bahita bamurasa urufaya, simbabeshya bazabibabwire no kuri radiyo, barashe uwo muntu barigitira mu bishanga by'i Kigali baratoroka, bamaze kuvuga ngo ni Inkotanyi. None mumbwire rero abo bana baragenda bafite ikarita y'indangamuntu yacu, bakagaruka bafite imbunda ari inyenzi n'ibitso byazo, bakaza kuturasa.

Ntabwo rero nemera ko tuzemera kuraswa. Umuntu uhagarariye MDR hano uhavugira ntakongere kuba muri iyi komini no muri iyi perefegitura... kuko ni icyitso. Abahagarariye ariya mashyaka afatanyaga n'inyenzi, abahagarariye... ndabibabwiye simbabeshya, ni ukugira ngo... bashaka kudutsemba! Bashaka kudutsemba! Nta kindi bagamije kandi tugomba kubabwiza ukuri; ntabwo nje mbahisha rwose! Icyo bagamije ni icyo.

Ndagira ngo mbabwire rero ko abahagarariye ya mashyaka afatanyaga n'inyenzi ari iyo MDR, ari iyo PSD, ari yo PL, ari iyo PDC n'utundi tw'intarutsi tugenda tuyegera, ayo mashyaka n'abayahagarariye bagomba kujya gutura i Kayenzi kwa Nsengiyaremye tukamenya abo turasana aho bari!

Bavandimwe, barwanashyaka ba Muvoma yacu, ibi mbabwira ntabwo ari ibikino, ni ukubabwiza ukuri kugira ngo hatazagira uwumva bamurashe mukazatubwira ngo twe duhagarariye ishyamba ngo ntitwababwiye. Ubwo rero ndababwiye mubimenye, n'ufite umwana yohereje mu nyenzi azisange n'umuryango we n'umugore we hakiri kare, kuko

igihe kirageze ko natwe twirwanaho, kugira ngo... Ntabwo tuzemera gupfa amategeko yanze gukora!

Ndabamenyesha ko umunsi bakoze imyigaragambyo, kuwa kane, bakubise abantu bacu, bagahungira no mu kiriziya iri munsi ya Rond Point, abo bantu ngo bitwa abakiristu ba PDC nabo bakabirukaho bakajya kubakubitira mu kiriziya. Abandi bahungiyeye muri Centre culturel y'Abafaransa rwose!

None ndagira ngo mbabwire ko batangiye kwica, nta kindi ni uko bimeze, batera mu ngo bakica ubu uwumviswe ko ari MRND bakica, bagakubita, ni uko bimeze. None rero ni uko, abo bahagarariye amashyamba muri prefegitura yacu nibafate inzira bajye gutura hamwe n'inyenzi! Ntabwo dushaka abantu batubamo ngo bazaturase baturi impande.

Ikindi kintu gikomeye nagira ngo mbabwire kugira ngo tudakomeza kuvogerwa: mwumva bavuga ngo imishyikirano ya Arusha! Simbivugaho kuko... umwanya munini kuko ngira ngo uhagarariye umunyamabanga mukuru wa Muvoma araza kubivuga ku buryo burambuye. Ariko icyo nababwira ni uko intumwa mwumva ngo ziri Arusha, ntabwo zihagarariye u Rwanda... Ibyo bajya kuvuga Arusha mbabwije amanyakuri! Intumva z'u Rwanda zitwa iz'u Rwanda ziyobowe n'inyenzi! Ikagenda ikajya kuvugana n'inyenzi!Nk'uko babivuga mu ndirimbo mujya mwumva ngo "Ni Imana yavuye ku Mana", nabo ni inyenzi yavuye ku nyenzi ivugira inyenzi !

Ibyo baja kuvuga Arusha ni ibyo ibyo byitso by'inyenzi birimo byagiye i Buruseli, baja gukorera Arusha ngo byitirirwe u Rwanda, nta na kimwe kitari icy'i Buruseli gikorera aho; n'ikivuye mu Rwanda, ntabwo ari ikiba kivuye muri guverinoma yacu: ni icy'i Buruseli bagenda bikoreye bakajyana Arusha! Ni inyenzi rero ivugana n'indi, ibyo bita imishyikirano ntitwanga gushyikirana ndagira ngo mbabwire ko atari iy'u Rwanda: ni inyenzi zivugana n'inyenzi! Mubimenye rwose! Kandi ntabwo tuzemera ibyo bintu bizava ahongaho.

Ikindi nababwiye rero ni uko tugomba kwirwanaho. Bimwe nabinyuzemo, ariko ndababwiye ngo: duhaguruke! Banyongoreye mu kanya ngo ni ababyeyi bagomba guhaguruka hamwe n'abarimu kuri cya kibazo cy'aba ensipegitari bacu. Ariko n'udafite umwana mu ishuli, nawe yabashyigikira, kuko nawe ejo azamugira, cyangwa ejo bundi yaramwigeze. Maze twese duhagurukire icyarimwe dusinye pe!

Icyi kabiri nababwira ni ikingiki: ni uko dufite abaminisitiri 9 muri iyi guverinoma. Uko bahagurutse ngo birukane ba ensipegitari bacu bagendeye kuri minisitari yabo, bagahaguruka ngo birukane abarimu bigisha mu mashuri yisumbuye mumaze iminsi mwumva wa mugore azunguruka mu mashuri, nta kiba kimujyanye ni ukwirukana ba diregitari n'abarimu bayarimo batari mu ishyamba rye. Mwumvise ibikorwa muri MINITRAPE: si ubujura gusa, n'abakozi bacu barabahagurukiye.

Mwumvise ibikorera kuri radiyo, n'ikiganiro banyanze cy'i Byumba; mwumvise uko byifashe.

Ndagira ngo mbabwire rero dusabeho abaminisitiri bacu nabo, hari abakora mu mashyamba yabo bari muri minisitiri zacu. Mwumvise nk'umurwanashyamba minisitiri Ngirabatware utari hano kubera ko igihugu cyamutumye ahakomeye. Minisitiri ye rero nayigezemo kuwa kane harimo utuntu duke si uko nisuzugura ngo ndi muri MRND twa MRND, abarimo ni inyenzi nsa, bari muri PL na MDR ni bo bari muri minisitiri rwose y'imigambi ya Leta! Murumuna uwo mu minisitiri avuze ati: "Nimukora ku ba ensipigiteri bacu namwe abanyu ndabakunkumura" byagenda gute? Abaminisitiri bacu nabo nibakunkumure isaho ingegera ziri iwabo zigende zijye muri minisitiri za bene wabo!

Ikintu mbasabye gikomeye na none abantu bari ku mirimo bese bari muri MRND ni ubufatanye. Uri ku kigega cy'amafaranga, nk'uko bayakoreshe nawe nayazane tuyakoreshe. Uyafite ku giti cye ni uko MRND yayamuhaye imufasha imushyigikira, nawe akirwanaho kuko ari umugabo; kuko na we bateze kumukata ijosi, nayazane tubakate amajosi.

Mwibuke Muvoma yacu ko ishingiyemo muri serire, Muvoma yacu igashingira muri segiteri no muri komine, Perezida yababwiye ko igiti gifite amashamba kikagira amababi ntikigire imizi, gipfa! Imizi yacu ni aho ishingiyemo. Nimushyigikira hamwe n'ubwo nta mafaranga bakibahemba abaserire bacu nimujye hamwe: uwinjiye muri selire mumubone,

mumukande, niba ari icyitso, ye kuyisohokamo. Ye kuyisohokamo!

Mperutse kubwira umuntu wari unyiraseho ngo ni za PL. Ndamubwina nti “ikosa twakoze muri 59 n’ubwo nari umwana ni uko twabaretse mugasohoka”. Mubaza niba atarumvishe inkuru y’aba Falasha, basubiye iwabo muri Isiraheri bavuye muri Ethiopia ambwira ko atayizi, nti: Ntabwo uzi kumva no gusoma? Jye ndakumenyesha ko iwanyu ari muri Ethiopia, ko tuzabanyuza muri Nyabarongo mukagerayo bwangu”!

Maze rero icyo mbabwiye cyo kugira ngo duhaguruke, tugomba guhaguruka koko. Icyo ngiye gusozerezaho rero... Icyo ngiye gusozerezaho ni ikintu gikomeye: ejo nari muri Nshiri. Mwumvise ko Abarundi batubeshyeye, nari nagiye kureba uko kuri. Mu kujyayo abantu barankanga ngo simvayo, ngo ndapfirayo. Ndavuga nti: “Nimpfa sinzaba mbye igitambo cya mbere”.

Maze rero muri Nshiri bavanyeho burugumesitiri wahozeho, ngo kuko ngo ashaje da! Ngo yatangiye muri za 60, n’ejo naramubonye aracyari umusore! Ngo kuko ari MRND, avaho! Bajya gushyiraho igisambo, nabyo biranga! Hagiye umunyamurava, baramwanga! Ubu iyo komini yitwa Nshiri iyoborwa n’umukonseye nawe byayobeye uko abigenza. Aho hantu rero muri Nshiri dufiteyo ingabo z’igihugu zirinda umupaka. Hari abantu bitwa aba JDR...

Kubera ko ingabo zacu zitonda zitarasana, cyane cyane ntizirasa Umunyarwanda kereka ari inyenzi,

abasirikare ntibakamenye ko n'abantu bo muri MDR bose babaye inyenzi, ntibabimenye, barabagota badufatira abajandarume ku buryo umuturage utari no mu ishyamba ryacu yanyibwiriye ati: "Icyo twifuzaga, uwazana amatora, tugatora burugumesitiri; bita ibi se, igihe ataraza, bakaba bashubijeho uwahozeho, kuko aho ibintu bigeze, n'uzaza ntazashobora kugarura abaturage mu nzira'.

Maze rero babyeyi, bavandimwe, nagira ngo mbabwire ikintu gikomeye: amatora agomba kuza tugomba gutora pe! Ubu uko duteraniye aha mbese, hari uwariye undi urwara ra? Ngo umutekano!... Ngo ntitwatora... Ntimujya mu misa ku cyumweru ra? Ntimwaje hano muri mitingiri ra? Muri MRND ntimwatoye abayobozi b'inzego zose ra? Abo babivugaga se bo si ko babigenza ntibatoye? Icyo kintu bitwaga barabeshya nta mpamvu yatuma tudatora ngo kubera umutekano, kuko na bo ubwabo bagenda mu gihugu, n'imvururu ziriho ni bo bazikurura; icyo ni icya mbere nagira ngo mbabwire: banatubeshya: twese nk'aha turi dushobora no gutora.

Icyo kabiri: bitwaga abavanywe mu byabo n'iyi ntambara bari i Byumba. Ndagira ngo mbamenyeshe ko nta wagiye kubaza abo bantu ko badashakaga gutora, njye banyibwiriye ko bahoranye abakonseye bamwe baba abanebwe, ndetse ngo bamwe mu ba burugumesitiri babo babaye abanebwe. Kubera ko ya minisiteri ibajyanira ibiryo icungwa n'Inkotanyi... nako inyenzi Lando, yafashe abantu bitwa inyenzi n'ibitso ziri mu gihugu aba ari bo aha kujyanira ibiryo abo bantu; aho kubijyanayo rero

bakabicuruza bikajya kugura amasasu bashyira za nyenzi ziturasa! Ndagira ngo mbabwire rero y'uko baravuze bati: "Namwe muratwo... turaraswa inyuma, mukaturasa n'imbere mutwoherereza izo ngegera kutuzanita ibiryo"?

Nabuze icyo mbabwira. Baravuga rero bati: "Icyo twifuzaga ni uko muri twe twakwitoreramo abayobozi, abakonseye, abaselire, burugumestiri, tukamenya ko turi hamwe hano muri camp, akaturwanaho, akadushakira ibiryo". Murumva ko icyo abo bagabo bambwiye n'abo bagore bahungiye mu bintu hirya iriya ibyo mujya mwumva, barifuza nabo amatora; igihugu cyose kirifuza amatora, kugira ngo kiyoborwe n'intwari nk'uko gisanze kuri. Umva rero natwe twese icyo twakora ni icyo: ni ugusaba aya matora.

Maze rero kugira ngo nsoze, ndagira ngo mbibutse ibintu maze kubabwira bikomeye: icy'imenya, ni ukutavogerwa, kugira ngo n'abasamba batagira uwo bahitana muri mwe. Ntimugatinye: mumenye ko uwo mutazakata ijosi ari we uzaribakata! Nkababwira rero ko abo batangira kugenda hakiri kare, bakajya gutura muri bene wabo, bakajya no mu nyenzi, aho kuduturamo ngo babike imbunda, nidusinzira baturase! Maze rero mubahambirize, bafate inzira bagende, ntihakagire n'ugaruka kuvugira aha, uzana n'ibiyahi ngo n'amabendera!

Ikindi gikomeye n'uko tugomba guhaguruka, tugahaguruka icyarimwe, ukoze ku wacu tukaba umwe, akabura aho anyura! Ba ensipegitari bacu ntaho bazajya, abo bazashyiraho bazafata inzira

bajye i Nyaruhengeri, iwabo wa minisitiri Agatha kurera abana be! Icyo mugifate!

Icyo nshojerejeho ni ikintu gikomeye: ni amatora. Maze ndabashimira kuba munteze amatwi, kandi nkaba mbashimiye ubutwari mufite mu maboko yanyu no mu mutima wanyu, nzi ko muri abagabo, mukaba n'inkumi n'ababyeyi batavogerwa, banga agasuzuguro. Murakaramba !

Perezida Habyalimana, ramba!

MURAKARAMA!"

**RWANDA LAW
REPORTS**

ENGLISH VERSION

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PREFACE

Dear Readers,

The Rwandan judiciary is pleased to publish the second volume of Rwanda Report for the year 2021. We reiterate our thanks to you for regularly providing us with your ideas and showing us the areas of improvement. This helps us to publish a more enhanced Law Report, useful to those who face legal challenges in their profession.

This volume of Rwanda Law Reports, contains the following three (3) cases; one (1) procedural case, one (1) civil case and one (1) criminal case.

We are also pleased to remind you that published cases can also be accessed on the website of the judiciary <http://decisia.lexum.com/rlr/kn/nav.do>.

We still encourage all legal practitioners and others who regularly deal with the law in their work to use these Law Reports.

Dr NTEZILYAYO Faustin
President of the Supreme Court and
President of the High Council of Judiciary.

SCOPE OF THE REPORTS

These reports cover cases decided by the Supreme Court and the Court of appeal cited under the heading below:

CITATION

The Reports in this volume are cited thus:
[2021] 2 RLR

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PROCEDURAL CASE

RUTAZIBWA v. GOVERNMENT OF RWANDA (MINIRENA)

[Rwanda SUPREME COURT – RS/REV/RAD 00001/2018/SC
– (Kayitesi, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye and
Rukundakuvuga, J.) September 27, 2019]

Civil procedure – Case review – Fraud – Review of the case due to fraud – For the case to be reviewed on the ground of fraud, it should first be established that a party was involved in fraudulent acts aimed at misleading the judge so that the outcome of the case is in that party's favour and the ruling of the case must have been solely based on the false information relied upon – It is not considered as fraudulent act when a party does not put at disposal the documents in his/her possession which might be in favour of the adversary's claims – Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, article 170.

Fact: Fundi died in 1997, he left behind a widow, Mukandutiye and the children including those he born outside the wedlock. One of his children, Rutazibwa, inventoried all his father's property to be inherited, during the process of inheritance there were some misunderstandings among the family members, thus he filed a case at the Intermediate Court of Karongi, requesting that he should be given his share and reimbursed the money he used to make the inventory of the property.

During the trial, Rutazibwa found that some of the assets were registered in the names of MINIRENA, Mukandutiye, and others, therefore he lodged an administrative case against Mukandutiye

and Rwanda Natural Resources Authority, requesting that the Government of Rwanda on behalf of MINIRENA be forced to intervene. The Court ordered the assets registered in the names of Mukandutiye be included among the family property and that MINIRENA retains those registered on it.

Rutazibwa appealed to the High Court, which found the appeal with no merit. He further appealed to the Supreme Court and Mukandutiye filed a cross-appeal. The Court found the appeal and the cross appeal with no merit and Rutazibwa was ordered to pay damages.

Rutazibwa applied for the review of the case in the Supreme Court, claiming that new evidence was discovered which prove that there are letters which the Land Registrar wrote to the authorities of the District and Sectors where those assets are located, requesting them to rectify the errors so that the land be registered on the rightful owner but those letters were not delivered to the intended recipient, therefore he finds that the Rwanda Land Management and Use Authority acted fraudently which affected the outcome of the case and that those fraudulent acts were discovered after the judgment had been rendered, that is the reason he requests for a review of that case.

The government of Rwanda argues that the new evidence produced by the Plaintiff for the case to be reviewed is ambiguous because it is not clear whether those letters are the ones he considers as new evidence and moreover he states that he submitted those letters to the Court, implying that it is not new because he already had it even during the hearing of the case, and also he does not demonstrate how it contradicts the evidences based upon in rendering the judgment, thus his application should be rejected.

Mukandutiye claims that the Land Registrar knew the properties which belonged to the family of Fundi, but gave half baked information that led the Court to make a wrong ruling, which was a fraudulent act that affected the outcome of the case, therefore, since there is now a piece of evidence proving that the information based on in making the rulings was false, it should be based on to rectify the errors contained in that judgment.

Held: 1 For the case to be reviewed on the ground of fraud, it should first be established that a party was involved in fraudulent acts aimed at misleading the judge so that the outcome of the case is in that party's favour and the ruling of the case must have been solely based on the false information relied on.

2. It is not considered a fraudulent act when a party to the case does not put at disposal the documents in his/her possession that might be in favour of the adversary's claims.

**Application for case review is rejected.
Court fees cover the expenses of the case.**

Statutes and statutory instruments referred to:

Law N° 22/2018 of 13/06/2018 relating to civil, commercial, labour, and administrative procedure, article 170.

Law N° 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure (which was in force at that time), article 118.

No cases referred to.

Authors cited:

Gérard Cornu, Vocabulaire juridique, 6ème éd., Paris, Presses Universitaires de France, 1987, p. 291

Hakim Boularbah, Olivier Caprasse, Georges de Leval, Frédéric Georges, Pierre Moreau, Dominique Mougenot, Jacques Van Compernelle, Jean-François Van Drooghenbroeck, Droit Judiciaire, Manuel de procédure civile T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

Izabelle Despres et Laurent Dargent, Code de Procédure Civile, 107ème éd., Dalloz, 2016, p. 709.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Fundi Project died in 1997, leaving behind a widow, Mukandutiye Bellancile and her children, he also left behind other children he sired out of wedlock. Rutazibwa Alexandre, one of the deceased's children searched for all of the deceased estates for inheritance, these consists of land located in Karongi, Rutsiro and Nyamasheke districts, but during the process of inheritance and distribution of the property there was some misunderstandings between him and the other heirs of Fundi and the widow, this led Rutazibwa to file a suit before the Intermediate Court of Karongi requesting to show the assets of the late Fundi Project, he was able to come across, be allocated his share and move out of joint ownership and be reimbursed the money he used to search for those assets.

[2] During the hearing of the case for the inheritance, it came to the attention of Rutazibwa Alexandre that some of the assets of his late father, were registered on MINIRENA, another to MUKANDUTIYE Bellancille, and others to various people, this prompted him to file an administrative case against MUKANDUTIYE Bellancille and the Rwanda Natural Resources Agency (which became the Rwanda Land Management and Use Agency) in the Intermediate Court of Karongi. That institution requested that the Government of Rwanda, on behalf of the Ministry of Natural Resources (MINIRENA), intervene in the case. In his claim, RUTAZIBWA Alexandre requests that the land registered on MINIRENA and to MUKANDUTIYE Bellancille, as well as those pieces of land which is not on the list provided by the Land Registrar be handed to the heirs of Fundi Project.

[3] The case was registered RAD 0039/14 / TGI / KRG, decided on 14/07/2016, the Intermediate Court of Karongi held that the land UPI 03/07/4/5439, 03/07/4/5442, 03 / 07/4/5452, 03/07/4/5482, 03/07/4/5489, 03/07/4/5490, 03/07/4/5491, 03/07/4/5493, 03/07 / 4/5501, 03/07/4/5509, 03/07/4/5516, 03/07/4/5534, 03/07/4/5506 registered on Mukandutiye Bellancille be removed and registered to the family of Fundi Project which is his heirs and that the MINIRENA remains with the land registered in its name, and the land which Rutazibwa Alexandre requested that the Land Registrar includes on the list of the assets to be inherited should remain in the ownership of those in whose names are registered.

[4] Rutazibwa Alexandre was not contented with the rulings of the case and therefore, appealed to the High Court, chamber of Rusizi, based in Karongi, the appeal was registered on RADA

00001/2016 / HC / RSZK, rendered on 17/3/2017, the Court found the appeal of Rutazibwa Alexandre without merit and thus sustained the ruling of the judgment RAD 0039/14 / TGI / KGI which was rendered by the Intermediate Court of Karongi.

[5] Rutazibwa Alexandre was again not satisfied with the judgment and appealed to the Supreme Court, the appeal was registered on number RADAA 00004/2017 / SC; Mukandutiye Bellancille filed a cross-appeal. The Supreme Court rendered the judgment on 02/02/2018 and held that the appeal of Rutazibwa Alexandre is not founded and also the cross appeal of Mukandutiye Bellancille lacks merit, it ordered Rutazibwa Alexandre to pay MINIRENA and RNRA Rwf400,000 in damages.

[6] On 06/11/2018, Rutazibwa Alexandre requested for the review of case N°. RADAA 00004/2017 / SC in the Supreme Court. In his submissions, he argues that rendering the judgment new evidence was got, that evidence was got on 17/09/2018. Explaining the new evidence, he states that the Land Registrar demonstrated to the Court that he wrote to the District and Sectoral Officers where the land to be inherited is situated to rectify the errors, so that the land is registered in the names of its owners, but the letters were not delivered to the recipient, thus the errors were not rectified. He states that if the Court had found the truth contained in the letter from t Musasa Sector dated 12/09/2018 (which he replied to when Counsel. MUTEMBE wrote on 20/08/2018). 2018), out, before the adjudication of case RADAA 00004/2017 / SC, the Court should not have taken the same decision as it took.

[7] The hearing of the case was scheduled on 19/03/2019, but the case was adjourned to 11/06/2019 for the parties to reach an

amicable agreement as they had requested (The hearing was postponed to 7/6/2019 by the Registry of the Court due to the new trial schedule). On that day, the case was not heard, it was postponed to 10/09/2019 at the request of the representative of the Government of Rwanda, who claimed that he found out late the new date that the case had been transferred and that he could not adequately prepare for it.

[8] The case was heard in public on 10/09/2019, Rutazibwa Alexandre was assisted by Counsel Mutembe Protais, Mukandutiye Bellancille assisted by Counsel Owerisima Honorine, and the Government of Rwanda represented by Counsel Cyubahiro Fiat, the parties gave their submissions of determining whether the claim for review filed by Counsel Mutembe Protais on behalf of Rutazibwa Alexandre, is admissible

[9] In his defense, Counsel Mutembe Protais, assisting Rutazibwa Alexandre, states that the reason they request for the review of the case is the fraud which was committed by the Rwanda Land Management and Use Authority, which affected the outcome of the case; contrary to the court submission that new evidence has been obtained since the judgment was rendered. The fact that there was a fraud that affected the outcome of the case is concurred by the counsel of Mukandutiye Bellancille, while the State Attorney differs that there was no fraud.

[10] The main issue to be considered in this case, therefore, is whether the Rwanda Land Management and Use Authority acted in a fraudulent way which affected the outcome of the case, to the extent that it should be reviewed.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the Rwanda Land Management and Use Authority acted in a fraudulent way which affected the outcome of the case, for this case to be reviewed.

[11] In his submission, the counsel for Rutazibwa Alexandre, Advocate Mutembe Protais, argues that the grounds for his claim for the review are the following:

- a. The fraudulent acts that were noticed after the judgment has been rendered. He argues that after the Land Registrar realizing that he had made a mistake, he wrote three letters, some were sent to Gihombo Sector and Musasa Sector, requesting that people who are registered on the land which is under litigation should return the land titles, because it was erroneous that they were issued with titles for the land which belongs to Fundi Project family;
- b. The third letter addressed to the Rwanda land management and use authority, regarding the wetlands which were registered on the Government but were plots that were shared between the heirs of Fundi and the community. He argues that concerning the so-called wetlands, the Land Registrar wrote to the Mayor of Nyamasheke District, requesting him to confirm whether that land was shared among the community, but in that letter, he did not indicate that the land, which was registered to MINIRENA, was wetlands;
- c. after losing the case in the Supreme Court, it came to their notice that the letters of the Land Registrar were

not delivered to the recipients, they found out this when he wrote to the Mayor of Gihombo and Musasa Sectors, who also replied that the letters had not been delivered to them;

- d. the fact that the letters were not delivered to their intended recipients, is that there was a trick, which is a sign of fraud. If the Land Registrar did not deliver the letters to the recipients, it was because he did so on purpose. The fraud is based on the fact that the Land Authority' pleadings are different from what its Director wrote to the Local Authorities, and if the Supreme Court had found that the letters did not reach their intended recipient it would not have held that the 5 lands were swamps and that 31 plots of land remain in the names of those who possess it, yet they had been already divided between the heirs of Fundi and the community;
- e. the fact that the letter was written after the judgment had been rendered was due to the fact that they did not know whether the letters had been received by the recipient and that during the hearing they had no idea that the letter had not been delivered to the intended recipient;
- f. the fraudulent act done by the Land Registrar of not delivering the letters he wrote to the recipient was also done in the court because he did not give that information to the parties for them to acknowledge that it was an error.

[12] Counsel Mutembe Protais concludes that based on article 170 of Law N° 22/2018 of 13/06/2018 relating to Civil,

Commercial, Labour and administrative procedures, he finds that the application of Rutazibwa Alexandre should be admitted because he couldn't know by then that those letters had not reached the intended recipient.

[13] Counsel Kayiranga Rukumbi Bernard representing the Government of Rwanda at the hearings of 19/03/2019 and 07/06/2019, states that the new evidence of Rutazibwa Alexandre on which he bases his application for review of the case which is contained in his court submissions is ambiguous because no one knows if those various letters he submitted are the ones that he calls new evidence. In addition, Counsel Mutembe Protais himself stated that the letters were submitted to the Court, which means that it was not new evidence because it was already in place at the time of the trial. These letters include:

- a. the one Counsel Mutembe Protais wrote to the Mayor of Gihombo;
- b. the one he wrote to the Executive of Musasa Sector;
- c. letters which the Deputy Land Registrar wrote to the executives of the Sectors;
- d. letter of Counsel Mutembe Protais to the Mayor of Nyamasheke District;
- e. a copy of the document signed by the former State Attorney Rusanganwa Eugène.

[14] He further states that pursuant to article 170 of Law N°. 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedures, new evidence is the piece of evidence which a party could not know that it exists, which he later finds or could not access it during the court trial, and it has weight when

it contradicts those that were based on in rendering the judgment which is being requested for review. Regarding this case, Rutazibwa Alexandre does not produce the piece of evidence that was not available during the hearing of the case requested to be reviewed and does not demonstrate how it contradicts those relied on in adjudicating the case, therefore his claim is inadmissible.

[15] Counsel Cyubahiro Fiat, representing the Government of Rwanda in the hearing held on 10/09/2019, states that:

- a. The letter dated 12/9/2018, which Counsel Mutembe Protais consider as new evidence, refers to the land located in Musasa Sector (Rutsiro District), while the one he requests to be given, regarding the one registered on MINIRENA is located in Gihombo Sector (Nyamasheke District), therefore it is not connected to the one referred to in the letter he considers as new evidence;
- b. The evidence which Counsel Mutembe Protais considers as new is not, because it is a letter he wrote after rendering the judgment, which means that he could have got it before the hearing ;
- c. The above mentioned letters were debated upon from the beginning of the case and even before the Intermediate Court of Karongi, whereby the Deputy Land Registrar was sued because of those documents. Regarding this statement, Counsel Mutembe Protais replied that they did not sue him because of fraud, but rather that what they had brought a case against him was requesting for damages because he stressed Rutazibwa when he refused to register him on the pieces of land he was given ;

- d. There was no fraud in the letters written by the Deputy Land Registrar, he wrote to the local authorities asking them to confirm the information he has and it is his responsibility ;
- e. The Rwanda Land Management and Use Authority does not register land on a person at that person's request, but rather registers it after that person has demonstrated the right he/she has on that land. The fact that Rutazibwa Alexandre failed to prove the right he has on that land before the Intermediate Court and before the High Court, chamber of Rusizi, the Land Authority could not register the land on him ;
- f. Rutazibwa Alexandre, lost all the cases because he failed to submit the evidence proving that the land he was litigating for belonged to his parent.

[16] In his defense, Counsel Owerisima Mungwe Honorine representing Mukandutiye Bellancille states that:

- a. The Land Registrar knew the truth about the FUNDI Project's assets, but gave the Court misleading information, leading to the court making a wrong decision, implying that it was fraud that affected the case;
- b. the fact that a piece of evidence demonstrating that the information relied upon is incorrect was discovered, should be based upon to rectify such errors and the land to be registered to the real owners;
- c. depending on when the new evidence was discovered and the fraud contained, he finds it sufficient that the application for review should be admitted;

- d. the rulings of the case affected Mukandutiye Bellancille because of fraud, the fraud is that the letters had not been received by the recipient, because if they had received them, the issues raised in this case would have been resolved;
- e. Pursuant to article 58, paragraph d, of Ministerial Order N° 002/2008 of 01/04/2008 determining the procedure for registration of land, he finds that the issue could have been resolved without going to court, as the Registrar had to immediately register the land on the Fundi Project family.

DETERMINATION OF THE COURT

[17] Among the grounds for the application of the case review provided by article 170 of Law N° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administration procedure, including the fact that the case was vitiated with fraud (dol personnel) that affected the outcome of the case, and was never identified during the hearing by the party which lost the case.

[18] Fraud (dol personnel) is defined by legal expert Gérard CORNU as anything that entails deception "fraud", i.e. lying, buying witnesses, agreeing with the other party's lawyer and so on, to deceive the judge to win the case.¹

¹ "Ancienne cause d'ouverture de la requête civile englobant toute fraude (mensonge, subornation de témoins, collusion avec l'avocat de l'adversaire, etc.) destinée à tromper le juge pour obtenir de lui une décision à son profit, aujourd'hui remplacée par la "fraude", cas d'ouverture du recours en révision ; Gérard CORNU, Vocabulaire juridique, 6^{ème} éd., Paris, Presses Universitaires de France, 1987, p. 291.

[19] Legal scholars led by Georges de LEVAL, also explain that in order for the case to be reviewed on the ground of fraud, there must have been fraudulent acts in order to deceive the judge in order the one engaged in the fraudulent means to win the case. They also explain that fraud should not be confused with the fact that the party intentionally does not display or provide documents in his/her possession that would support the arguments of the other party. This is no the same as a party to the case telling lies to the judge or fraudulently hiding the document. They also explain that for the case to be reviewed due to fraud, the ruling of the case must have been solely based on false information.²

[20] Also, legal scholars, Izabelle DESPRES and Laurent DARGENT, based on court interpretations, explained that silence can be considered as fraud, but it can be considered as such when

NB : Under the Rwandan laws “requête civile” was replaced by “recours en révision”

² “L’ouverture à requête civile sur la base du dol personnel est ainsi soumise à quatre conditions...Il faut d’abord qu’il y ait eu des manoeuvres frauduleuses déployées en vue d’obtenir une decision favorable en trompant le juge. L’on ne peut à cet égard assimiler la simple et inévitable subjectivité dans la défense de ses propres intérêts à un dol personnel. De même, la simple abstention d’une partie de produire par loyale spontanéité, devant le juge, des documents de nature à faire triompher la prétention de la partie adverse ne constitue pas en soi un dol.....Il en est autrement, et il y a dol, lorsque la partie trompe le juge par une affirmation mensongère et une dissimulation frauduleuse de pièces, constituant ensemble une manoeuvre dolosive.En d’autres termes, pour que le dol personnel puisse fonder une requête civile , il faut que la décision entreprise repose tout entière sur des informations à ce point mensongères qu’elles ont aveuglé le juge et l’adversaire “ ; Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, Droit Judiciaire, Manuel de procédure civile ,T.2, Bruxelles, Ed. Larcier, 2015, p. 1881-1882.

is silent on the claim filed against him/ her or when he has been asked to give explanations, but that it cannot be considered as a fraud the silence of the party on the matters he had not been sued against or asked to give explanations.³

[21] When read together, the explanations of the Legal Scholar and the provisions of article 170 of the law N° 22/2018 of 29/04/2018 cited above, the interpretation is that:

- a. For the case to be reviewed on the grounds of fraud:
 - i. there must have been actions to mislead the judge in order for the one misleading to win the case.
 - ii. the ruling must be based solely on false information;
 - iii. fraud must have affected the outcome of the case;
- b. the silence of the party on matters that he was not required to provide information that was not considered fraudulent;
- c. The conduct of the party of not revealing documents that would support the arguments of the other party is not considered as fraud.

³ “ Seul peut constituer un acte frauduleux le silence gardé par une partie sur des faits contestés par l’autre partie ou dont il lui est demandé de rendre compte (à l’exclusion du silence d’une partie sur des faits qui ne lui sont pas reprochés et sur lesquels aucune explication ne lui est demandée)”; Isabelle DESPRES et Laurent DARGENT, Code de Procédure Civile, 107^{ème} éd., Dalloz, 2016, p. 709.

[22] In this case, Rutazibwa Alexandre's allegation that there was fraud, is based on the fact that the person who represented Rwanda Land Management and Use Agency did not tell the judges that there were letters from the Deputy Land Registrar in the Western Province of Rwanda wrote to the local authorities of Musasa (Rutsiro) and Gihombo (Nyamasheke) Sectors on 7/01/2015, and the one he wrote to the Mayor of Nyamasheke District on 29/01/2015, was not delivered to them.

[23] According to the case file, the letters (Rutazibwa Alexandre received a copy) were written when the case was still ongoing at the Intermediate Court of Karongi, because the case was filed in 2014 and the judgment rendered on 14/07/2016. Based on the copy of the judgment and the minutes of the hearing, except for the letter dated 29/01/2015⁴, no other letter was party mentioned, so that if necessary those mentioned in those letters be forced to intervene. It was not even raised on the appeal level in the High Court, chamber of Rusizi. In the Supreme Court, the minutes of the hearing of 19/12/2017 those letters were mentioned, but the Rwanda Land Management and use Authority was not asked to explain whether they were delivered to the receipt.

[24] Based on the information provided in the preceding paragraphs, the Court finds that the Rwanda Land Management and Use Authority did not inform the Court that the letters the Deputy Land Registrar of the Western Province which he wrote to the Executives of the Sectors of Musasa, and Gihombo, and

⁴ Urukiko rwabajije Me Mutembe icyo avuga kuri iyo baruwa, asubiza ko ibiyikubiyemo byanditse kuri MINIRENA, bakaba bemera ko byandikwa kuri “succession” Fundi.

Nyamasheke District, were not delivered to the intended recipient, cannot be construed as fraud for the following reasons:

- a. The Rwanda Land Management and Use Authority were never asked to give explanations regarding whether the letters written by its employee were received by the intended recipient and refused to give the explanations or provide false information so that it could win the case. Rutazibwa Alexandre, who knew that those letters were written since he was given copy, did not inquire what happened after it those letters were written, especially that it was in his benefit;
- b. There is no evidence that the Rwanda Land Management Authority deceived the judge to mislead him so that it wins the case, and the legal principle is that fraud is not presumed but should be proved.⁵

[25] The Court also finds that, even if the judges were to be told that the above letters written by the Deputy Land Registrar, had not reached the intended destination, it would not have changed the outcome of the case for the following reasons:

- a. The Supreme Court, in the case requested for review, motivated that RNRA cannot be compelled to register the land on the “Succession” FUNDI Project land which land is registered to other persons (outlined in

⁵ “Il convient enfin que le dol soit-par toutes voies de droit-prouvé par celui qui l’allègue ; il y va d’une application du principe général en vertu duquel le dol ne se présume pas ; Hakim BOULARBAH, Olivier CAPRASSE, Georges de LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, op. cit, p. 1184.

the case) because they were not sued or forced to intervene in the case. It explained that this would be ruling on a person or persons who were not parties to the case, confirming that the land be taken from them without trial, their right to defense would be violated;

- b. It would not have been possible for the persons mentioned in the letters of the Deputy Land Registrar to be compelled to intervene in the case because article 118 of Law No. 21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure which was in force by that time forced intervention to hold the intervenor liable on the appeal level was not allowed;
- c. So even if the Court were to be informed that the above letters were not delivered to the intended recipients, it would not have changed the outcome of the case because it would not have ruled on people who were not parties to the case.

[26] The Court, therefore, finds that pursuant to article 170 of Law N° 22/2018 of 29/04/2018 relating to civil, commercial, Labour and administrative procedures, and on the motivations given above, no fraud was committed by the Rwanda Land Management and use Authority (RNRA), which affected the outcome of the case, so that it the case should be reviewed; thus the claim filed by Rutazibwa Alexandre for reviewing the case is inadmissible.

III. DECISION OF THE COURT

[27] Holds that the claim filed by Rutazibwa Alexandre requesting for a review of the case is rejected because it was filed illegally;

[28] Sustains the rulings of the Judgment N° RADAA 0004/2017/SC rendered by the Supreme Court on 02/02/2018;

[29] Orders that the court fees deposited by Rutazibwa Alexandre cover the expenses incurred in this case.

CASES IN MERITS

CIVIL CASE

Re. N.A ET AL

[Rwanda INTERMEDIATE COURT– RCA
00161/2020/TGI/NYGE (Udahemuku, P.J, Mukamana and
Nshimiyimana, J.) 11 September 2020]

Law governing persons and family – Procreation – Assisted Reproductive Technology – Assisted Reproductive Technology mentioned in article 254 of the Law N° 32/2016 of 28/08/2016 governing persons and family can be applied depending on the evolution of technology – Gestational surrogacy is one of the allowed forms of reproduction – Law N° 32/2016 of 28/08/2016 governing persons and family, article 254.

Law governing persons and family – Child right – A child born through surrogacy has the rights to be registered in civil status registries as belonging to the couple which provided the embryo but has the right to be breastfed by the surrogate mother if possible – Law N° 32/2016 of 28/08/2016 governing persons and family article 254.

Facts: This case began in Kicukiro Primary Court, whereby a husband and a wife (in this report the husband to be known as N.A and the wife as N.O) were requesting the Court to allow the another family (also in this report the husband to be known as K.F while the wife known as M.G) to bear a child for them through surrogacy. They filed this claim basing on the contract between both families whereby they agreed that the family of K.F and M.G will carry the pregnancy of the family of N.A and N.O through surrogacy because since their marriage they failed to conceive and give birth, they took contract to the doctor who was going to perform the operation in the laboratory by artificial

insemination and then insert the embryo in the surrogate mother's uterus but the doctor told them that he can't perform that operation because there is no regulation governing it and requested them to contact the competent authorities to give guidance, consequently N.A and N.O filed an application before the Court requesting that the doctor be compelled to proceed with the surrogacy operation. The Court found the application of N.A and M.O with no merit on the ground that the nature of the application is not provided by Rwandan Law and that reproduction is allowed between woman and man and not between two families.

The applicant was not contended by that decision and appealed before Nyarugenge Intermediate Court indicating that the judge misinterpreted the provision of the Law because the court ruled that reproduction occurs between a woman and a man and not between two families, whereas they find that is not prohibited to be between families if they wish so. In this case Haguruka, University of Rwanda faculty of Law and HDI intervened as *amicus curiae*.

To determine whether M.G the wife to K.F should be allowed to be allowed to carry the child of N.A and N.O, the applicants state that the Court should order the doctor to carry out the surrogacy operation as both families with, on the other side M.G and K.F also stated that they don't understand why the doctor refused to perform the operation since both families had consented. The counsel for the applicants argues that reproduction through surrogacy is new in Rwanda, before Rwandese who could not procreate naturally, they had to travel abroad to procreate through technology but since that technology is also in Rwanda, thus, her clients should utilise it, she states that it's all about gathering eggs from the mother, fertilize them with sperm from the father, and

place the embryo into the uterus of a gestational surrogate who will carry the pregnancy and give birth on behalf of the couple which provided that embryo, she further argues that reproduction through technology is provided for under the Rwandan Law, though it's ambiguous.

The faculty of Law/ University of Rwanda argues that the Rwandan laws accept this form of reproduction which is through technology, thus it finds that in this case there are no legal challenges of determining whether this form of reproduction which is not nature is accepted under the Rwandan Law, thus the appellants should be granted their requests, however, the interests of the child should be taken into account mostly those regarding living with the surrogate mother at least for 6 months so that it can be breastfed.

Haguruka Asbl, states that the applicant's request should be granted because are based on various laws, that the Constitution of the Republic of Rwanda provides that a person has the right to have a decent life, access to health care, and the right to have a family, the rights to have children is fundamental, it also argues that right of the child must be taken into consideration especially living with the surrogate mother for at least for 6 months because its antibodies are not yet developed.

Health Development Initiative also, states that it concurs with others that the appeal has merit and that the rights of the children should also be protected.

Held: 1 The Gestational surrogacy is one of the permitted forms of reproduction, if it's agreed upon by the concerned parties because the law provides that reproduction occurs naturally between a man and a woman or it is medically assisted especially that the technology provided by the law is wide and can be

applied depending on the evolution of the technology, thus, the contract between M.G the wife of K.F and N.A and M.O of Gestational surrogacy should be enforced.

2. A child born through gestational surrogacy has the rights to be registered as a child of the couples who provided the embryo but has also the right to be breastfed by the surrogate mother for a period of 6 months, thus the child must be registered on his/her parents namely N.A and M.O but have to first stay with M.G, the wife to K.F for a period of 6 months after his/her birth.

**Appeal has merit;
The appealed judgment is reversed.
Court fees cover expenses of this case.**

Statutes and Statutory instruments referred to:

Constitution of the Republic of Rwanda of 2003, revised in
2015, articles 17 and 18

Law N° 32/2016 of 28/08/2016 governing persons and family,
article 254

No cases referred to.

Judgment

I. BACK GROUND OF THE CASE

[1] N.A and M.O were legally married on 22/12/2013, unfortunately they were unable to have a child, they consulted various doctors and they were told that M.O was not able to

produce children this was according to the doctor's medical report dated 20/01/2020, therefore they decided to use surrogacy.

[2] After reviewing various methods, N.A and M.O opted for gestational surrogacy and they wished the surrogate mother to be M.O's sister called M.G a wife to K.F, the latter were notified about it and they warmly welcomed it, subsequently made a written agreement whereby they agreed that the surrogate mother will give them the child after the birth and after signing the agreement they went to see Dr. Ngoga Eugene an expert in that field, who works from Kanombe Military Hospital, he made a report and informed them that he cannot perform the operation because there is no regulations governing it, he requested them to contact the competent authorities which will indicate how to proceed, N.A and M.O filed a claim to the Court requesting that the doctor be compelled to perform that operation.

[3] After hearing the case, the Primary Court of Kicukiro found the claim of N.A and M.O with no merit on the ground that their request is not provided under the Rwandan laws, the applicants were not contended by that decision, thus appealed before Nyarugenge intermediate Court, their grounds of appeal being that the judge erred in law when he stated that the reproduction is naturally between a man and woman and not between two families, whereas the appellant find that is not prohibited between two families if they agree to do so.

[4] Basing on the fact that this nature of the claim is new in courts, the Court requested those who wish to intervene as amicus curiae to apply, consequently the organisation called Haguruka, Faculty of Law / University of Rwanda and Health Development Initiative, applied and the Court after assessing their requests and their expertise they have on the subject matter,

were all were granted to intervene as amicus curiae. After assessing the nature of the claim, the Court finds that, the following issues are to be examined.

- **Whether M.G a wife to K.F can be the surrogate mother of NA and MO's child**

- **The challenges raised by Dr Ngoga and how it can be solved.**

II. ANALYSIS OF LEGAL ISSUES

- **Whether M.G a wife to K.F can be the surrogate mother of NA and MO's child**

[5] N.A and M.O state that they appealed before the Intermediate Court to reverse the decision taken by the Primary Court, thus, the Court should compel the doctor to execute the contract made before the notary between the two families, on the other side M.G and K.F who were also summoned, stated that they don't comprehend why the doctor denied to execute their contract whereas none of them had an objection; they further argue that both families agreed because M.O is a sister of M.G and that the latter felt the burden her sister carried for a long-time, to the extent that if it is possible to be a surrogate mother for her child, she is willingly to do so.

[6] Counsel Kabasinga, assisting N.A and M.O further explains that reproductive technology is new in Rwanda, therefore, before there were couples who were not able to naturally bear children and had to travel abroad for medication, but that technology is now available in Rwanda, therefore, her clients want to utilise it also, she explained that Gestational surrogacy takes place when an embryo created by in vitro

fertilization technology is implanted in a surrogate and give birth to a child who belongs to the family which donated the embryo, there are various persons who use this technique and there is no negative effects. She further stated that reproductive technology is provided by Rwandan law, but the law is silent on whether surrogacy is allowed, therefore deep analysis which was the Primary Court failed to carry should be done by the Intermediate Court, so that her client can get relief.

[7] The lecturers of Law sent by University of Rwanda as *amicus curiae*, namely Turatsinze Emmanuel, Uwineza Odette and Serugo Jean Babtiste stated that, the Court should settle the issue of whether reproductive technology is allowed in Rwanda. They explained that, it is important to distinguish between Medically Assisted Reproduction known as “MAR” and “Assisted Reproductive Technology” known as “ART”. Reference made to the explanations provided by World Health Organisation, they explained these two techniques whereby they explained that the “ART” technique is familiar in developed countries, even some countries enacted laws regulating it such as USA, others reject that technique due to “ethical reasons” like France, as it was ruled in the judgment of *Mennesson v. France* and the judgment of *Labassee v. France*. This explains why some French citizens who want to conceive through this means have to travel to USA, in conclusion, they state that the ART technique is incorporated in MAR technique.

[8] Uwineza Odette also representing the University of Rwanda argues that the judge misinterpreted the law, because Rwandan laws clearly provides that reproductive technology is allowed; she further argues that the doctor did not refuse to perform the surrogacy process but he only wanted the regulations

governing that process to be put in place, she finds that the Ministry of Health is the competent organ to enact those regulations, she concluded by stating that those regulations should be put in place by competent authorities, that the Court of law should be resorted to only if the doctor refuses to act accordingly to the provisions of the law, however as it is clear in this case, the doctor did not refuse.

[9] They further explained that though surrogacy is permitted in some countries, there are issues associated with it like the one regarding the mother of the child, the amicus curiae explained that there are different views depending on the country, some countries like South Africa the mother of the child is the one who carried the pregnancy and gives birth whereas others argue that the egg donor is the mother of the child, she concluded by stating that whatever should be the decision of the Court, the interests of the child should be taken into consideration, mostly regarding the child living with the surrogate mother for at least 6 months in order to breastfeed.

[10] Turatsinze Emmanuel reminded the Court to decide the case within the limits of the subject matter and not to decide in place of other institutions, he states that there are copies of judgments attached in the system, which concern civil status, child's rights, succession etc. those judgments are precedents, this Court could as well make a precedent in case someone had filed a claim regarding the contract they concluded, however, this is not the issue in the case at hand because there is no plaintiff, therefore, the Court should limit its analysis to determine whether gestational surrogacy between family is allowed or not, and desist from ruling on the issues which might happen in the future which are not yet raised. He concluded stating that, Rwanda allows

reproductive technology as provided by paragraph two of article 254 of the Law governing family. Consequently, there is no doubt that the Rwandan law accepts reproductive technology such as gestational surrogacy, therefore the appellant should be granted their requests.

[11] Counsel Garuka Chritian representing Health Development Initiative also stated that he concurs with the position of other parties whereby they find the application with merit and the surrogacy contract be implemented and the rights of the child to be born be ruled upon.

[12] Counsel Mugemanyi Jean Nepomscene representing Haguruka Asbl finds that the application should be granted because its supported by various laws, such as article 17,18,21 of Constitution of the Republic of Rwanda of 2003 as revised to date, provides that a person has right to a family (wife, husband, children) the rights to have children is fundamental, he further states that there is a right to have a decent life, like a health care which is provided by article 25 of the Constitution, he also concurs with University of Rwanda, because paragraph 2 of article 254 on which they based to file the application provides that reproduction occurs naturally or it is medically assisted. He concluded that reproductive technology should not be provided to the spouses only but it should be extended to others depending on the development of technology and that the court should examine analysed how to register the child in civil status registry, he states that on that point the Court should rule on it and not wait for disputes to come up be raised regarding this specific issue and the surrogate mother stays with the child for a period of 6 months because his immunity has not yet grown, also this should be thought of before.

[13] The Court finds that, at first instance, the judge ruled the case as follows: The Court finds though the applicants exhibit a contract they made with the family which accepted to be a surrogate of which they base on their application to the Court, however it finds the provision of the law they are basing their application on has no link with their requests because that article provides for reproductive technology between a man and a woman whereas they are requesting to be done between two families, that is why, the Court finds their application without merit, this is the ruling appealed by the appellants stating that technology is vast, but the court only limited itself on just a single component; therefore the Court should rule that the previous court misinterpreted the law, and thus find their application with.

[14] The Court finds that, for N.A and M.O could not produce normally was due to health complications as indicated by the medical report dated 20/01/2020 by Dr Eugene Ngoga, whereby he indicated that he followed up the health of M.O for 18 months and found that she can not get pregnant, health complications have always been in existence but scientists, lawyers and others, always look for solutions to various problems in our society, this was the birth of various technologies such as giving birth by caesarean, in these days, natural insemination complications are on the rise, to solve them, technology has shown that either a family (woman and man) or a woman can give birth whereas she did not get pregnant, known as surrogacy.¹

¹ Surrogacy is an arrangement, often supported by a legal agreement, whereby a woman (the surrogate mother) agrees to bear a child for another person or persons, who will become the child's parent(s) after birth. ... Surrogacy is considered one of many assisted reproductive technologies. [<https://en.wikipedia.org/wiki/Surrogacy>] visited on 10/09/2020.

[15] Even the legislatures, made a progress and incorporated surrogacy in domestic laws, though some countries don't allow it. As far as Rwanda is concerned, the Constitution, articles 17 and 18, provides that the government has the obligation to protect the family, however none can protect the family when natural reproduction is not possible because if no measures taken the family may disappear, in that case, technology as a solution is necessary. Pursuant the provisions of 17 and 18, the Government of Rwanda enacted the Law N° 32/2016 of 28/08/2016 governing the persons and family, article 254 of that law provides that "Reproduction occurs naturally between a man and a woman or it is medically assisted. Medically assisted procreation must be by mutual consent of the concerned"²

[16] The Court conclusively finds that reproductive technology is allowed in Rwanda and moreover technology is wide and keep on evolving, thus the technology in use today will not be the same in near future, in order to have consistent laws the legislature provided that: reproduction occurs naturally between a man and a woman or it is medically assisted. The Court finds that sentence complete and general, and provides a solution to the raised issue, otherwise if not so whenever a new technology comes up, the legislature will have to enact a new Law governing that new or trending technology, in reality that is the challenge the previous judge faced because he /she did not go further and understand that the concerned technology is wide.

² Article 254 of the Law N° 32/2016 of 28/08/2016 governing the persons and family provides that "Reproduction occurs naturally between a man and a woman or it is medically assisted. Medically assisted procreation must be by mutual consent of the concerned.

[17] The Court finds also that, as explained by experts, surrogacy is made of two forms namely: traditional surrogacy whereby the surrogate's eggs are used, making her the biological mother of the child she carries, (biological)-Gestational surrogacy, the surrogate has no biological link to the baby.

[18] As motivated in reproductive technology known as ART, what is known as gestational surrogacy is part of Assisted Reproductive Technology whereas the latter is also part of the technique known as Medically Assisted Reproduction (MAR). With regarding to the request of N.A and M.O to provide an egg to the family of K.F and M.G so that the latter can carry the pregnancy and bear a child for them, is scientifically known as “Gestational surrogacy”. As they have chosen that technique, it means that M.G has no blood relation with the child she will give birth.

[19] Pursuant to the motivations given above, the Intermediate Court of Nyarugenge finds that the agreement between the family of K.F and M.G and the family of N.A and M.O whereby the latter will be to be a gestational carrier, is in conformity with the Rwandan Law, thus it has to be executed in it's entirety. In addition to that, apart from this court ruling that the contract is legal, it's also important that the court address the issue raised by Dr. Eugene Ngoga.

The challenges raised by Dr Ngoga and how it can be settled.

[20] The Court finds that Dr Ngoga did not say that he is not able to perform the surrogacy operation, he clearly explained the

issue he had before proceeding with the surrogacy operation³ after indicating that such operation have been performed all over the world for 30 years, and himself has an experience of 6 years, Dr Ngoga explained that the issue was only in the domestic laws, whereby the woman who carries the pregnancy and give birth to the baby becomes automatically the mother of the born child, therefore he was in need of another supporting document to register the child to it's real parents, who are the donors of the fertilised egg as also acknowledged by Dr Ngoga.

[21] The Court finds a part from those issues raised by the physician, Counsel Ndayisenga Jean Claude though he was sent by Haguruka he made a statement different from his colleague

³ Dr Ngonga's letter responding to Florida Kabasinga Managing Partnerar Certa Law Chambers Re: Your request concerning the case N0 RC 00161/2020/TGI/NYGE Dear Madam,

I am a Chief Consultant Obstetrician Gynecologist working at Rwanda Military hospital. For the past 6 years I have been taking care of infertility couples including providing Assisted reproductive techniques. In the mentioned case, I advised the couple to sick the experts in law opinion as the only treatment which they could benefit from is surrogacy. This is part of assisted reproductive technic where the embryo from a couple (in this case husband and wife) is place in the uterus of another woman who will carry the pregnancy till term and deliver. Biologically speaking this child belongs to the couple which had their gametes fertilized. So, the child belongs to them and the surrogate mother is just a pregnancy carrier. This practice has been there for 3 decades. In Rwanda as the baby born is automatically related to person giving birth and written on her name, there is a need to have all important documents before the procedure to avoid any misunderstanding at the time of birth. Of course, the surrogate mother should be aware of what she is doing and a consent signed is required. The parents couple and the surrogate always get the explanations about the procedure and are counselled accordingly. I believe that when both sides are comfortable then we should support them so that they can fulfill their dream of being parents. Let me hope this has clarified the situation and I am available to clarify more even before the court of law."

who states that parental love in case of gestational surrogacy has to be taken into account, he stated that the expert Prof Dr. Gakwavu argues that in case of giving birth through this technology, though the born child's DNA is different from that of the surrogate mother, thus the latter stays longer with the baby to breastfeed him (purposely to provide him with antibodies) this may become a real love between the baby and the person who breastfed and may cause some difficulties for the surrogate mother to give the child to the real parents even at time of separation the baby may be traumatised because of the bond between them, thus to solve that issue, the child must be handled to the real parents at birth to avoid increasing the bond between the surrogate mother and the baby, which may have negative impacts on the child. Therefore, though Haguruka asbl agrees that breastfeeding the baby is essential but that issue should also be taken into account.

[22] The Court concurs that the issues raised by Dr. Ngoga are founded because as indicated by the amicus curiae, after the delivery, the surrogate mother may get fond of the baby especially when she recalls the difficulties she accounted during pregnancy and refuse to give the baby to the real parents, lawsuits will raise especially that under the Rwandan law the mother of the child is the one who gave a birth, therefore, this issue if is not resolved in beginning, may be the source of disputes which the physician raised, mostly that the technology in Rwanda has significantly advanced, to the extent that a child is registered in civil status registry at birth while he/she still in maternity, therefore, the Court based on the contract available in the case file and the statements of both families before the Court, it decides that the child will be registered as M.O and N A's child. Therefore, the issue raised by Dr Ngoga is settled.

[23] The Court finds also that, the child's rights have to be protected and are not limited only to being registered in registry of civil status, because the child to be born must have a decent life including being breastfeeding at least for six months by the surrogate mother, during that time he must be only fed on breastmilk, as recommended by World Health Organization (WTO) and UNICEF⁴, concerning regarding the issue that the surrogate mother may get fond with the baby if she stays longer with her as put by Counsel Ndayisenga Jean Claude, those feelings of the surrogacy mother who breastfed him and also the obligations contained in contract they concluded with the other family which carried the pregnancy. Therefore, within those six months the child will live with the surrogate mother, who is M.G however the baby's real parent can visit them whenever they wish but without prejudicing the peace of M.G and K.F family, the reason for staying with the surrogate mother for 6 months is for the breastfeeding the baby, implying that in case the surrogate mother fail to breastfeed him, then there will be no reason of

⁴ In Infant and Young Child Feeding, lesson 1, it is stated as follow "Adequate nutrition during infancy and early childhood is essential to ensure the growth, health, and development of children to their full potential. Poor nutrition increases the risk of illness Recommended Infant and Young Child Feeding

Practices: WHO and UNICEF's global recommendations for optimal infant feeding as set out in the Global Strategy are: exclusive breastfeeding for 6 months (180 days) (11); Exclusive breastfeeding means that an infant receives only breast milk from his or her mother or a wet nurse, or expressed breast milk, and no other liquids or solids, not even water, with the exception of oral rehydration solution, drops or syrups consisting of vitamins, minerals supplements or medicines (12)." WHO. Infant and young child feeding: model chapter for textbooks for medical students and allied health professionals. Geneva, World Health Organization, 2009, [<https://www.who.int/nutrition/publications/infantfeeding/9789241597494.pdf>] accessed on 10/08/2020.

living with her, instead the child will be given to the real parents who are N.A and M.O.

III. DECISION OF THE COURT

[24] Decides that the appealed judgment RC 00168/2020/TB/KICKI is reversed in it's entirety.

[25] Orders the execution of the surrogacy contract between M.G and K.F and N.A and M.O.

[26] Orders that the born child should be immediately registered by N.A and M.O in the civil regestrar.

[27] Holds that the child to be born will live with M.G the wife to K.F for a period of 6 months.

[28] Holds that the court fees cover the expenses of this case.

CRIMINAL CASE

PROSECUTION v. MUGESERA

[Rwanda COURT OF APPEAL – RP/GEN 00003/2019/CA
(Rugabirwa, P.J, Kaliwabo, J and Tugireyezu, J.) 25 September
2020]

Constitution – Judiciary – Independence of the Judiciary – The Judiciary is independent because it is different from the Legislature and the Executive, and in exercising their judicial functions, judges at all times do it in accordance with the law and are independent from any power or authority – The Constitution of the Republic of Rwanda of 2003 revised in 2015, article 140, paragraph 2; Law N° 86/2013 of 11/09/2013 establishing the general statutes for public service, article 33, paragraph one and 2.

Constitution – Rights to legal counsel – None should use rights to legal counsel to delay due process of the trial as well as the interests of justice.

The Convention on the Prevention and Punishment of the Crime of Genocide – International Crimes – The prosecution – The prosecution of the International Crimes does not need that those crimes appear in domestic laws because they are already prohibited in international customary law, therefore, laws instituting crimes against humanity should not be considered as laws instituting new crimes, rather, it is the affirmation of what is in international customary law.

Laws of crimes against humanity – International Crimes – Serious and violent crimes or when they were committed against a large number of people, this is the reason of treating them as

crimes committed against international community or which inflicted values of mankind.

Laws of crimes against humanity – International Crimes – Incitement to commit Genocide – Crime of persecution – hatred speech – When a principal offence was demonstrated, there is no need of considering as an offence different acts which contributed to the commission of that offence.

Evidence law – The value of testimony – Testimony produced after a long time shall be considered in its own quality though witnesses use their own words in reporting what they heard or what they were told.

Facts: This case started before the High Court, Chamber of International Crimes and Transnational Crimes, the accused was charged with various crimes which originate from his speech delivered in a meeting of a political party MRND which took place in former Gisenyi Prefecture, Kabaya Sub-Prefecture on 22/11/1992 and various speeches delivered in meetings in different areas of the country, these include his speech at Nyamyumba on 06/07/1992. The Court rendered the judgment and found him guilty of complicity in genocide because of inciting to commit genocide, persecution as crime against humanity and inciting ethnic hatred publicly and directly. The Court also held that he is not guilty of conspiracy to commit genocide and being accomplice of those who committed Genocide because of giving orders and distributing machetes, and therefore, the Court sentenced him to life imprisonment.

The accused appealed to the Supreme Court but his appeal was transferred to the Court of Appeal after judicial reform. He appealed stating that the High Court erred on facts and on laws because it disregarded that he should not be prosecuted for the

offences charged because crimes were committed while he was no longer in Rwanda since he exiled to Canada in 1992, that the court affirmed that it lacks jurisdiction but it disregarded it and heard his case, that the Court disregarded that he should have been presumed as innocent till the case is closed(*violation du principe de la présomption d'innocence*), he adds that the Court failed to hear discharging witnesses, that it deprived him rights to defence and responding to sentences requested by the Prosecution stating that he was not assisted by a legal counsel, he argues that those rights are provided by the Constitution of the Republic of Rwanda, he adds that the Court rendered the judgment basing on the law which does not exist because it violated the principle of non- retroactivity of the penal law, that the Court found him guilty relying on the speech presumed to have been delivered at Kabaya, the speech was on the audio tape which is not original, that the Court disregarded that if it considered that speech in its full content and not put it in general context, the Court would have found not guilty the orator, because he was calling for election in the country, and also, the Court disregarded that he did not commit a crime because the speech he delivered in different areas of the country which he named Speech of Four Corns of Satan (*Discours de quatre cornes de satan*) which does not incite to genocide, rather the speech contains message of avoiding pride, treason and arrogance, it also contains the daily weapons for which every member of MRND had to have which are election, heroism and love. Therefore, he prays to be acquitted because he did not commit a crime.

The Prosecution contends that the accused's statements that he should not be prosecuted for the offences charged with, that he is charged with crimes committed while he was no longer in Rwanda, this ground of appeal lacks merit because the crimes he is charged with were committed when he was still in Rwanda in

1992, when he delivered the speech which contains acts of crimes.

With regard to the Court's determination that it lacks jurisdiction and it keeps hearing the case, the Prosecution states that it is not true because the High Court did not hold that it lacks jurisdiction to hear the accused's case, rather in its decision of 25/04/2013, the Court decided that it has jurisdiction to try the case, the Court further found his claim filed to the Court being not in compliance with the Rwandan law because the claim does not relate to the jurisdiction of courts based on the ground of the claim, territorial jurisdiction, period and party to the case, and that it is not an objection based on the disqualification of judges of that court so that his case be transferred to other courts of Rwanda.

With regard to the principle for which he states that it was violated, that he should have been presumed as innocent until the case is closed (*violation du principe de la présomption d'innocence*), the Prosecution states that this ground of the accused's appeal should not mainly be admitted because it is not in limits of the appeal because that ground was not heard on first instance since it does not appear among objections examined by that court as indicated in the appealed judgment. The Prosecution further states that as an alternative, that ground of the accused's appeal has no merit because he did not prove that the speech delivered by authorities, statements or film, had influenced the appealed judgment because the accused did not state that it was done by the High Court, rather he was arguing that the statements were made by various authorities and different media.

Concerning the accused's statements that his rights provided by the Constitution of the Republic of Rwanda for defending himself in hearing and rights of responding to sentences requested by the Prosecution because he was not being assisted by a legal counsel,

the Prosecution states that the High Court decided to proceed with the hearing without a legal counsel for the accused because he and his counsel wanted to delay the hearing deliberately, and he failed to prove wrong that decision of the High Court whereby the Court explained that the accused and his Counsel voluntarily delay the hearing, till when the High Court decided to proceed with the hearing because the fact that the Counsel for the accused does not appear in the hearing, it does not affect the accused's rights to legal counsel and defence, the Prosecution further states, the fact that the accused did not react on sentences requested by the Prosecution was due to his negligence and that of his Counsel of appearing in hearing, because of that, the High Court had adjourned the hearing thirteen (13) times within three (3) months, thus that Court did not err because the accused was given reasonable time to exercise his rights but he failed to manage that time, thus, that ground of appeal should not be considered.

With regard to the accused's statement that the Court refused to hear discharging witnesses, the Prosecution states that the High Court asked all parties to produce identification of their witnesses, their addresses and how they will be interrogated, and also, the High Court reminded it several times because the accused who was stating that he has discharging witnesses, he failed to comply with what he was asked until he was given deadline but he also kept failing to do so. The Prosecution argues that, the fact that the accused did not produce identification of witnesses; he should not blame the Court because he deprived himself of those rights.

The fact that the accused argues that the Court rendered the judgment basing on the law which does not exist, because the Court violated the principle of non- retroactivity of the penal law, the Prosecution states that this ground of the accused's appeal has

no merit because the Convention on the Prevention and Punishment of the Crime of Genocide enumerates acts of Genocide as well as punishable acts, the Prosecutions adds, the fact that Rwanda is silent about sentencing, it does not affect the rest of other provisions of the Convention. The Prosecution further states, since Rwanda ratified the Convention on the Prevention and Punishment of the Crime of Genocide, the Crime of Genocide is provided in Rwandan laws, thus, acts for which the accused is prosecuted that they were committed in 1992, already, they were acts of Genocide pursuant to Rwandan law. The Prosecution also states that the crime of Genocide is a serious crime on international level, that Rwanda enacted a law punishing genocide and massacres perpetrated in Rwanda from 01 October 1990 to 31 December 1994, in the preamble of this law, the legislator stated that in 1975 Rwanda ratified the Convention on the Prevention and Punishment of the Crime of Genocide, thus there was a need enacting a law punishing the perpetrators of acts constituting this crime, which is the law of 1996.

Concerning the statements of the accused that the Court convicted him basing on the speech considered as the one delivered at Kabaya, the accused argues that it is on the audio tape which is not original, the Prosecution states that the Court did not err in affirming that the audio tape that contains the speech delivered by the accused at Kabaya because it is an element of evidence which should be useful in this case because even the Supreme Court of Canada relied on it when the Court decided in administrative case that he is not authorized to reside in that country because of the crimes for which he was suspected, the Prosecution adds that the speech on that audio tape was not altered as confirmed by the expert Peter Fraser, and also, the accused did not produce any proof that the speech was altered, except stating it only, the Prosecution further states the High

Court convicted the accused basing on that audio tape and other elements of evidence which are found in the case file such as statements of witnesses who were in the meeting at Kabaya, and that their testimony should be considered because they corroborate with content of the speech.

Held: 1. The Judicial Authority is independent because it is different from the Legislature and the Executive, and in exercising their judicial functions, judges at all times do it in accordance with the law and are independent from any power or authority, therefore, this objection of the accused that he should not be tried by Rwandan courts under pretext that he has conflicts with Rwanda is with no merit.

2. None should use rights to legal counsel to delay due process of the trial as well as the interests of justice; therefore, this ground of appeal that the accused was deprived right to legal counsel requesting to quash the judgment lacks merit.

3. The prosecution of the International Crimes does not need that those crimes appear in domestic laws because they are already prohibited in international customary law, therefore, laws instituting crimes against humanity should not be considered as laws instituting new crimes, rather, it is the affirmation of what is in international customary law, thus, the ground of appeal which refers to the fact that crimes were not provided in domestic laws has no merit.

4. Serious and violent crimes or when they were committed against a large number of people, this is the reason of treating them as crimes committed against international community or which inflicted values of mankind, therefore, the reason of the accused's appeal that he was sentenced in violation of the principle of non- retroactivity of the law has no merit.

5. When a principal offence was demonstrated, there is no need of considering as an offence different acts which contributed to the commission of that offence, thus, the High Court should not have found the accused guilty of fuelling hatred based on ethnicity while he was also convicted for incitement to commit genocide and crime against humanity as persecution.

6. Testimony produced after a long time shall be considered in its own quality though witnesses use their own words in reporting what they heard or what they were told, thus the ground of the accused's appeal that the High Court convicted him for the speech delivered at Kabaya basing on false accusations (testimony), this ground of the appeal lacks merit.

**Appeal has no merit,
Court fees are transferred to the public treasury.**

Statutes referred to:

The Constitution of the Republic of Rwanda of 2003 revised in 2015, article 140, paragraph 2.

Law N° 68/2018 of 30/08/2018 determining offences and penalties in general, article 94.

N° 08/2013/OL of 16/06/2013 Organic Law modifying and complementing Organic Law N° 31/2007 of 25/07/2007 relating to the abolition of the death penalty as modified and complemented to date, article 5bis.

Organic Law N° 02/2013/OL of 16/06/2013 modifying and complementing Organic Law N° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of courts as modified and complemented to date (which was in force at that time), article 18.

Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code, article 20, 83, 105, 120 litera 8, 121 and 132 litera 3.

Statute of International Criminal Court for Rwanda, article 3

Rome Statute (International Criminal Court), article 7.2

Statute of International Military Court, article 6

The Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948, article 3

Law N° 47/2013 of 16/06/2013 relating to transfer of cases to the Republic of Rwanda, article 18.

Law N° 15/2004 of 12/06/2004 relating to evidence and its production, article 2,3, 5,62 and 66.

Decree Law N° 21/77 of 18/08/1977 instituting the penal code (which was in force at that time), article 393.

Decree Law N° 08/75 of 12/02/1975, relating to public and direct incitement to commit Genocide (which was in force at that time).

Case laws referred to:

Mugesera v Canada, N° 2005 S.C.R. 40, rendered on 28/06/2005 by the Supreme Court of Canada.

Prosecution v Ntakirutimana, the judgment RPA 0197/10/CS rendered on 21/11/2014 by the Supreme Court.

Prosecution v Musema, ICTR-96-13-T rendered on 27/01/2000, paragraphs 19, 20 and 21

ICTR-99-52-A rendered on 28/11/2007

ICTR-96-4- T/Peine/leg/fra, Procureur c/ Akayesu Jean Paul

Prosecution vs Nahimana, ICTR-99-52-T.

Supreme Court of Canada, file N° 30025, the Accused v. Canada (Minister of Citizenship and Immigration), parag. 68

Prosecution v. Bikindi, ICTR-2001-72-T, 2nd December 2008, para.32

Prosecution v. Muvunyi, ICTR-00-55A-T, 11th February 2010, para. 56, 58, 91-94

Prosecution v Vujadin Popovic, 2ICTY-05-88-A.

Prosecution v Ngeze, ICTR- 99-52-A

Croatia v. Serbia, International Court of Justice, Judgment of 03/02/2015, para 87.

Authors cited:

Stanton, G. H. (2013). 10 Stages of Genocide. Retrieved April 22, 2016, from Genocide watch net:

<http://www.genocidewatch.org/genocide/tenstagesofgenocide.html> , in report of 2019 of the Senate of Rwanda on the denial or revisionism of Genocide perpetrated against Tutsi, acts which are committed abroad, pp 29-33

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Following the speech delivered in the meeting of MRND¹ held in the former Prefecture of Gisenyi, Sub-prefecture of Kabaya on 22/11/1992, and the speeches allegedly delivered in different meetings held in various parts of the Country including the speech allegedly delivered in the meeting held in Nyamyumba on 06/07/1992, the Public Prosecution accused

¹National Republican Movement for the Development and Democracy

Mugesera Léon of the offences against the State security, the incitement to the hatred between the citizens and the incitement of MRND militants to kill the Tutsi, but he was not arrested because he had taken refuge in Canada, where he pleaded in the cases related to the permanent residence in that State due to the charges against him including the incitement to kill and commit genocide, the incitement to the hatred and the crimes against humanity, but up to 2012, he was refused such rights, therefore he was transferred to plead in Rwanda.

[2] When Mugesera Léon was transferred in Rwanda, the Public Prosecution accused him before the High Court, the Special Chamber hearing the international and transnational crimes² for having committed the charges mentioned in the indictment.

[3] During the hearing, the High Court examined different objections raised by Mugesera Léon and decided on allotting the time to Mugesera Léon, the equipment and facilities for the case preparation and the right to be assisted. The High Court also examined the objection related to the charges against Mugesera Léon as the suspect transferred by another State and it was decided that he was accused of the crimes committed before 1994, thus he was not transferred by the International Criminal Tribunal for Rwanda (ICTR). It also examined the objection related to the hearing suspension due to the negotiation initiated between Mugesera Léon and the Public Prosecution in relation to the assistance provided to the indigent accused, the High Court ruled that it could not suspend the hearing as there was no evidence of such negotiation.

²Referred to as the High Court

[4] The High Court examined the objection raised by Mugesera Léon in relation to the hearing suspension due to the appeal filed against the previous cases, it decide that such appeal could not suspend the hearing, because those cases were jointly appealed with the hearing on the merits, concerning the adjournment of the hearing due to the ground of the sickness, it was decided to present the medical leave issued by a doctor. The Court also decided on the objection related to the refusal or acceptance of some evidence produced during the criminal case, whereby the Public Prosecution requested to firstly confirm if the speech it submitted to the High Court was the one Mugesera Léon delivered at Kabaya on 22/11/1992, and that there were the documents that Mugesera Léon would not continue to use for the purpose of the case, the Court ruled that the examination and appreciation of the evidence are conducted during the case hearing, and in the criminal matters all evidence which are not prohibited by the law are admitted.

[5] The High Court also examined another objection raised by Mugesera Léon related to the right to be heard by the judge legally assigned to the party, it was decided that the fact that one of the judges who started to hear the case has been appointed to other duties, leading to the bench change is not contrary to the law, and the change of the judge who started to hear the case does not deprive Mugesera Léon of the right to be heard by the judge legally assigned to him and it does not give room to the reopening of the hearing, given that the law provides that when a judge is replaced by another, the hearing resumes from where it was stopped.

[6] The Court also upheld that among the protected witnesses, some of the Public Prosecution's witnesses should be

removed from the list approved by the Court for different grounds including the sickness, their unavailability in the place of residence they mentioned, and the invalidation of the statements made during the investigation which are not signed. The High Court also ruled that the fact that Mugesera Léon did not provide the requirements for the appearance of the defence witnesses including the complete identification, the place of residence and the matter he wished that they should be interrogated about it, could not suspend the case hearing.

[7] Regarding the hearing on the merits, the High Court rendered the judgment n^o RP 0001/12/CCI on 15/042016 and ruled that Mugesera Léon is convicted of the crime of being accomplice of the genocide perpetrators for having publicly and directly incited to commit genocide, persecution as the crime against humanity and the crime of incitement to the hatred on basis of ethnic group, and it also decided that he was not convicted of the crime of conspiracy to commit genocide and being accomplice of the genocide perpetrators for having given orders and weapons and it sentenced him to the life imprisonment.

[8] Mugesera Léon filed the appeal against that judgment in the Supreme Court submitting that the High Court committed error of fact and error of law as it did not consider that he should not be prosecuted for the crimes of which he is accused as they have been allegedly committed when he was not in Rwanda because he took refuge in Canada in 1992, it ruled that it had not the jurisdiction to adjudicate his case, but it violated the principle that he should be presumed innocent until conviction, it disregarded to hear the defence witnesses, it deprived him of the rights entitled to him by the Constitution of the Republic of

Rwanda to defend himself on the hearing of 14/10/2015 and to reply on the penalties requested against him by the Public Prosecution as he was not assisted by a counsel, it rendered the judgment on basis of the law which did not exist and it violated the principle of non-retroactivity of the criminal law, it convicted him on basis of the tape which was not original, it convicted him on basis of the speech allegedly held in Kabaya recorded on that tape, it disregarded the fact that if it did not divide it up into parts and it analysed it in its general context, it would note that the one who delivered the speech did not commit an offence because he claimed for the elections in the country, and it did not consider that he did not commit the crime because the speeches delivered in various parts of the country he called the speech of four satanic horns (*Discours de quatre cornes de satan*) did not incite to commit genocide, rather they conveyed the message of avoiding dishonour, treason, the arrogance and pretension, also they included the fundamentals daily required for the MRND partisan including election, the heroism and the patriotism. He prayed to be declared innocent given that he did not commit any crime, however, after the restructuring of the court jurisdiction, his appeal was transferred to the Court of Appeal pursuant to the article 105 of the law N⁰ 30/2018 of 02/06/2018 determining the jurisdiction of the courts for adjudication³, it was recorded on N⁰ RPA/GEN 00003/2019/CA.

[9] The case was heard twelve (12) times, Mugesera Léon assisted by Counsel Rudakemwa Jean-Félix and the Public

³ Article 105 of the Law n⁰ 30/2018 of 02/06/2018 determining the jurisdiction of the courts provides that “From the day this Law comes into force, except cases already under trial, all cases that are no longer in the jurisdiction of the court seized are transferred to the court with jurisdiction in accordance with the provisions of this Law”.

Prosecution represented by Dushimimana Claudine together with Habineza Jean-Damascène, National Prosecutors.

II. ANALYSIS OF THE LEGAL ISSUES

A. REGARDING THE FUNDAMENTAL ISSUES AND RIGHTS OF WHICH MUGESERA LÉON HAS BEEN ALLEGEDLY DEPRIVED

1. Whether Mugesera Léon could not be charged of the crimes related to genocide and the crimes against humanity committed in 1994 when he was not residing in Rwanda.

[10] Mugesera Léon avers that the Public Prosecution could not charge him of the crimes related to genocide above mentioned including the incitement to commit genocide given that when the genocide was perpetrated in Rwanda in 1994 by the incumbent Government, he was not in Rwanda, rather he was in exile in Canada in 1992 for safeguarding his life, but he was not engaged in political activities in Canada because he did not adhere to any political party for recovering the power in Rwanda, rather he was a lecturer at the University as asserted by Counsel Stanislas Mbonampeka who then was the Minister of Justice. He also supports that he cannot be charged of the crime of genocide because he did not participate in the unrest which happened in Gisenyi, Ruhengeri and Byumba Prefectures because the Government of Rwanda had dismissed him on 03/02/1993.

[11] He sustains that on basis of the article 111 of the Law N° 027/2019 of 19/09/2019 relating to the code of criminal procedure which provides that *the benefit of doubt is given in favour of the accused* and the article 12 of the Law N° 22/2018 of

29/04/2018 relating to the civil, commercial, labour and administrative procedure⁴, he should be declared innocent because the Public Prosecution did not produce an evidence indicating that he was in Rwanda in 1994, when the genocide against Tutsi was committed.

[12] The representative of the Public Prosecution submits that the ground of appeal of Mugesera Léon is not founded given that the charges against him above mentioned were committed when he was in Rwanda in 1992, by the time he held the speech constituting the offences with which he is accused.

DETERMINATION OF THE COURT

[13] The casefile indicates that Mugesera Léon raised the objection in the High Court supporting that it has no jurisdiction to hear his case about the offences with which he is accused above mentioned, given that they were not under the jurisdiction of the International Criminal Tribunal for Rwanda (ICTR)⁵ because they have been committed before 1994, meaning on 22/11/1992, concerning the speech allegedly held at Kabaya, and on 06/07/1992 concerning the meetings he allegedly held at Nyamyumba.

⁴The article 12 of the Law N°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “The claimant must prove a claim, failing which the respondent wins the case.

⁵Article 1 of the Statute of International Criminal Tribunal for Rwanda provides that “The International Criminal Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed between 1 January 1994 and 31 December 1994.

[14] The High Court took a decision on that objection on 24/12/2012, it ruled that the objection raised by Mugesera Léon on the Tribunal competence *ratione temporis* is not grounded, given that it has the competence to hear his case because he has not been transferred by ICTR and the convention between the Republic of Rwanda and Canada does not stipulate that he would be prosecuted only for the crime of genocide and other serious violations of international humanitarian law committed between 01/01/1994 and 31/12/1994.

[15] The casefile also indicates that before the Court, Mugesera Léon and Counsel Rudakemwa Jean Félix who assists him sustained that he could not be prosecuted for the charges of which he is accused, because by the time of their commission in 1994 he was not in Rwanda, rather he was in exile in Canada, where he was lecturer in the University.

[16] The Court finds that, by the fact that the Rwandan law provides that the Rwandan courts have the jurisdiction to hear the case about the crime of genocide and crimes against humanity committed between 01/10/1990 and 31/12/1994 and the crimes above mentioned against which Mugesera Léon is charged by the Public Prosecution had been allegedly committed on 22/11/1992, it is evident that the High Court did not commit any error when it decided that it has the jurisdiction to hear his case about those crimes because they have been allegedly committed when was still in Rwanda on 22/11/1992, meaning within the time provided under the law⁶.

⁶Organic Law n° 08/96 of 30 August 1996 complemented by the Organic Law n° 40/2000 of 26/01/2001 establishing Gacaca Courts as repealed and modified by the Organic Law n° 16/2004 of 19/06/2004 establishing Gacaca Courts competent to prosecute and hear the cases of the perpetrators of the

[17] The Court however finds that the issue of determining if Léon has committed or not those crimes should be analysed in other paragraphs of this case.

2. Whether the High Court had decided that it does not have the jurisdiction to hear the case of Mugesera Léon, but it did not consider that fact and heard his case.

[18] Mugesera Léon avers that he requested the High Court not to hear the case N° RP 0001/12/CCI which opposes him with the Public Prosecution because it would not grant to him fair trial as he is the enemy of the Republic of Rwanda because he denounced the armed forces of Uganda when they attacked Rwanda in 1990, but on 25/04/2013, the Court took a decision and ruled that it does not have the jurisdiction to hear his case, but it did not stop the hearing and it did not indicate to him the court which has the jurisdiction to hear his case as provided under the article 1666 of the Law n° 30/2013 of 24/05/2013 relating to code of criminal procedure, rather it decided that the hearing would be resumed on 29/04/2013.

[19] He also sustains that even if he is not inimical to the Rwandan judges, however he notes that if the Rwandan courts would adjudicate his case while the Judiciary is one of the organs of the Republic of Rwanda of which he is the enemy, the Republic of Rwanda would become the judge and the party in the same judgment, and that issue is contrary to the article 151, paragraph 1 of the Constitution of the Republic of Rwanda of

crimes of genocide and other crimes against humanity committed between 01 October 1990 and 31 December 1994 as modified and complemented by the Organic Law n° 13/2008 of 19/05/2008 and the Organic Law n° 02/2013/OL of 16/06/2013 modifying and complementing the Organic Law n° 51/2008 of 09/09/2008.

2003 revised in 2015 which provides that “nobody may be a judge in his or her own case”.

[20] He explains that the evidence indicating that he is the enemy of the Republic of Rwanda so that it cannot grant to him a fair trial include the list prepared in January 1994 and signed by KANYARENGWE who was the chairman of RPF⁷ who mentioned that Mugesera Léon is the enemy of RPF as long as he is its opponent, and Gérard GAHIMA who was the Prosecutor General drafted a document indicating that it is not himself who established the list, rather it has been prepared for political purpose, Counsel Stanislas MBONAMPEKA who was the Minister of Justice himself mentioned that Mugesera Léon was the enemy of RPF and this has been supported by UWIZEYIMANA Evode who had written a letter indicating that Mugesera Léon could not be granted a fair trial in Rwanda, even the United Nations Organisation to which a claim had filed by Canadian Counsels was not satisfied with the decision taken by that country to transfer him in Rwanda.

[21] Counsel Rudakemwa Jean – Félix who assists him, sustains that normally the Rwandan courts have the jurisdiction to hear the claim filed by Mugesera Léon concerning the fact that he cannot be tried by the Rwandan courts while he is the enemy of the Republic of Rwanda, but he notices that the High Court committed errors because it ruled that he has not the jurisdiction to adjudicate the case, but it disregarded it and heard the case n° RP 0001/12/CCI on appeal instance, while it should indicate the other Court which has the jurisdiction to hear the case as provided under the law. He requests this Court to order the transfer of this

⁷ Front Patriotique Rwandais

case to the High Court to decide on the Court which has the jurisdiction to hear the case as provided under the law.

[22] The representative of the Public Prosecution sustains that the High Court did not rule that it does not have the jurisdiction to hear the case of Mugesera Léon and it continued with the hearing, rather in its decision of 25/04/2013 it ruled that it has the jurisdiction to hear his case in consideration of the charge filed against him by the Public Prosecution and it indicated the legal provisions which served as basis for taking such decision including the Constitution of the Republic of Rwanda and the Organic Law determining the jurisdiction of courts and it observed that the claim filed to it was a claim not provided under the Rwandan law because it does not concern the jurisdiction of courts regarding the subject matter, the territory, the time or the party, and it is not the claim to disqualify the judges of that Court for transferring the case in other Rwandan courts.

[23] It maintains that the fact that there is no law granting to the High Court the jurisdiction to transfer Mugesera Léon in other countries for hearing his case means that Court did not have the obligation to indicate to him another court to hear his own claim filed to it above mentioned or to hear his case.

DETERMINATION OF THE COURT

[24] The article 24 of the Organic Law N° 02/2013/OL of 16/06/2013 modifying and complementing the Organic Law n° 51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of courts as modified and complemented to date in application by the time when Mugesera Léon appeared in the High Court provides that “The special chamber of the High Court

has the jurisdiction to hear on the first instance the crime of genocide and other crimes against humanity”.

[25] The indictment included in the casefile indicates that the Public Prosecution accused Mugesera Léon in the High Court requesting to hear his case about various offences including the crime of genocide, the crime against humanity and incitement to hatred, and the claim was registered to n° RP 0001/12/CCI.

[26] The casefile indicates that by the time of the case hearing, Mugesera Léon filed the claim that the case n° RP 0001/12/CCI could not be heard by the Rwandan courts because he is the enemy of the Republic of Rwanda, rather it should be transferred in other countries for being granted fair trial.

[27] In its decision of 25/04/2013, the High Court explained that it has the jurisdiction to adjudicate the case Public Prosecution versus Mugesera Léon, but he filed before the Court a particular claim as it is not a claim for disqualifying the judges, and it does require the transfer of the case in other Rwandan courts, also it does not intend to indicate that the Court does not have the territorial jurisdiction, on the subject matter, the time and the party to hear such case, rather it requests to rule that the case should not be heard by Rwandan courts because the Judiciary is one of the organs constituting the Republic of Rwanda with which he has a problem so that he thinks that it cannot grant to him a fair trial, and it decided that it does not have the jurisdiction to examine the claim of Mugesera Léon relating to the fact that such case should not be adjudicated by the Courts of the Republic of Rwanda given that there is no law⁸ that confers

⁸ The High Court sustains that in those laws, including the Constitution of the Republic of Rwanda of 4th June 2003 as revised till now, in its article 149;

to the Court the jurisdiction requesting it to transfer the case in other courts which do not sit in Rwanda.

[28] The Court finds that, in its decision above mentioned, the High Court did not rule that it has the jurisdiction to adjudicate the case N° RP 0001/12/CCI of Mugesera Léon concerning the charges against him, rather what it decided is the analysis of the claim filed to it related to the fact that the case should be transferred to the Courts which do not sit in Rwanda as above explained.

[29] The Court finds however that the High Court could not decide that it has not the jurisdiction to analyse the claim of Mugesera Léon above mentioned, rather it could rule that it is not grounded given that he did not indicate the procedure in which the claim filed by the Public Prosecution above mentioned should be removed from the jurisdiction of the Rwandan courts while the charges against him fall under the jurisdiction of the High Court as provided under the article 14 of the Organic Law above mentioned.

Organic Law N°09/2013/ol of 16/06/2013 repealing the Organic Law n° 11/2007 of 16/03/2007 concerning the transfer of cases to the republic of Rwanda from The International Criminal Tribunal for Rwanda and from other states, as modified and complemented by the Organic Law N° 03/2009 of 26/05/2009, in its article 2; Organic Law N° 51/2008 of 09/09/2008 determining the organization, functioning and jurisdiction of Courts, as modified and complemented by the Organic Law N° 04/2009/OL of 29/07/2009 in its articles 89, 90, 120, 171,176 and 178; and Law N° 13/2004 of 17/5/2004 Law relating to the code of criminal procedure, as modified and complemented by the Law N° 20/2006 of 22/04/2004, in its article 154.

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[30] The Court finds that the Rwandan courts have the jurisdiction of hearing the case n° RP 0001/12/CCI the Public Prosecution versus Mugesera Léon as noticed by the High Court, it is evident that the appealed case could not be declared unfounded because it was adjudicated by the Court which has the jurisdiction, meaning that Mugesera Léon should not be transferred in Canada as he claimed.

[31] Furthermore, the Court finds that the statement of Mugesera Léon that the Rwandan courts could not grant to him a fair trial as he has a problem with the Republic of Rwanda is not founded, given that pursuant to the article 140, paragraph 2 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 the Judiciary is independent because it is separate from the Legislature and the Executive, and in exercising their judicial functions, judges at all times do it in accordance with the law and are independent from any power or authority as provided in the article 33, paragraph 1 and 2, of the Law N° 10/2013 of 08/03/2013 governing the Statutes of Judges and judicial personnel, therefore, the appeal of MUGESERA Léon lacks merit.

3. Whether the principle of presumption of innocence entitled to Mugesera Léon has been adjudicated on the first instance so that he could take it as a ground for appeal in this case.

[32] Mugesera Léon avers that the principle of presumption of innocence provided under the article 29 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, the article 7, paragraph 1, b, of African Charter on Human and People's Rights, the article 11 of the Universal Declaration of Human rights and the article 14, paragraph 2 of the International

Covenant on Civil and Political Rights was not respected by different authorities, the Radios and different newspapers because they have already tried him as the perpetrator of the crime of genocide before the Court adjudicates his case, however according to that principle, he should be presumed innocent pending the final judgment.

[33] He submits that in 2016 and 2019, various authorities held statements and made different declarations sustaining that Mugesera Léon committed the crime of genocide because in his speech held at Kabaya he allegedly said that the Tutsi should be killed and thrown in Nyabarongo for returning to their home country in Ethiopia. Among those authorities there are the Director of Mpanga Prison where he is detained when he was screening a movie on the former President Habyarimana Juvénal in 2016, Senator Tito Rutaremera, Mrs Mureshyankwano, Former Governor of the Southern Province, Mrs Mukasonga Solange, Former Mayor of Nyarugenge District, the Mayor of Nyanza, the Executive Secretary of the National Commission for the Fight against Genocide, Mr Ngoga Martin who was the Prosecutor General, also Radio Rwanda and KT Radio mentioned his name in their programmes and his name was indicated on the list of the suspects of the crime of genocide even if Gérard Gahima who was the Prosecutor General submitted that the list was drafted for political purpose. He also sustains that his speeches are kept in Gisozi Genocide Memorial, and they mention his name in the lessons provided by Teachers to their students.

[34] He supports that in the case N° ICTR–2005–89-R 11 bis Prosecutor versus Munyagishari Bernard rendered on 06/06/2012, the International Criminal Tribunal for Rwanda, in

paragraphs 47, 50, 51, 54 and 55, upheld the principle of presumption of innocence pending the final judgment, even a Lecturer in Canadian University submits that when the media denounce a person incriminating him, in that case the principle of presumption of innocence does not apply, meaning that the judge can base on that issue to decide that such person committed a crime.

[35] He adds that by the fact that the High Court disregarded the principle of presumption of innocence, this Court should set aside the appealed judgment and declare him innocent or transfer him in Canada to be tried there because he was not expelled as a person not eligible to live on its territory, rather that country transferred him in Rwanda on basis of the convention of 18/02/2009 including the guarantees provided by Rwanda to Canada to grant to him a fair trial, but such was not the case given that various authorities and different newspapers in Rwanda considered him as a genocide perpetrator while he did not exhaust the judicial proceedings. Also, the statements they made on him above mentioned had influenced the High Court Judges because he was convicted on basis of the four (4) paragraphs of his speech held at Kabaya.

[36] The Court asked to Mugesera Léon if the issue related to the fact that he should be presumed innocent had been adjudicated on the first instance so that he could consider it as a ground for appeal, he replies that such issue was adjudicated at the beginning of his case versus the Prosecutor General, Mr Ngoga Martin because the paragraph 18 relating to the principle that he should be presumed innocent was read to him, also he wrote a letter to him requesting issues concerning that principle and a copy of such letter was given to Mrs Mukasonga Solange

and the National Commission to Fight against the Genocide, meaning that he has evidence of his claim, but he cannot produce evidence held at Gisozi Genocide Memorial and the messages communicated everywhere in the country mentioning his name as the genocide perpetrator.

[37] Counsel Rudakemwa Jean – Félix who assists him supports that the principle of presumption of innocence as upheld in the case of Munyagishari Bernard above mentioned prohibits injustice for a person, the fact that such principle was not applied to Mugesera Léon as above mentioned ; he must be transferred in Canada for being tried there. He also avers that such issue was adjudicated in the High Court, if it is deemed necessary ; they would submit to the Court the statement indicating where it was adjudicated, even if the High Court did not include it in the judgment copy.

[38] The representative of the Public Prosecution maintains that primarily the ground of appeal of Mugesera Léon that the High Court disregarded the principle of his presumption of innocence cannot be admitted given that it is not in the scope of the appeal as it was not adjudicated on the first instance because it is not indicated in the objections examined by the Court as mentioned in the copy of the appealed judgment.

[39] He also avers that subsidiarity on basis of the article 3 of the Law n° 15/2004 of 12/06/2004 relating evidence and their production provides that “Each party shall prove the truth of his/her claim”, this ground of appeal of Mugesera Léon is not founded given that he did not produce any evidence indicating that the statements held by the Authorities above mentioned, the messages provided and the movie screened above mentioned had affected the appealed judgment because he did not maintains that

it has been done by the High Court, rather he supported himself that it was done by different Authorities, the newspapers and different Radio stations.

[40] He adds that this Court cannot rely upon the case of Munyagishari Bernard above mentioned given that the latter has been transferred in Rwanda by the International Criminal Tribunal for Rwanda, but Mugesera Léon was not transferred by that Tribunal, rather he had been transferred by Canada when it expelled him from its territory.

DETERMINATION OF THE COURT

[41] The Article 18, paragraph 1 of the Law N° 47/2013 of 16/06/2013 relating to transfer of cases to the Republic of Rwanda provides that *“both the prosecution and the accused have the right to appeal against any decision taken by the High Court upon one or all of the following grounds : 1° an error on a question of law invalidating the decision ; 2° an error of fact which has occasioned a miscarriage of justice”*.

[42] In the cases adjudicated by the International Criminal Tribunal for Rwanda (ICTR), and the Appeal Chamber of the International Criminal Tribunal for former Yugoslavia (ICTY), including the case n° ICTR –96-13-A rendered on 16/11/2001 Prosecutor vs Alfred Musema, the Tribunal upheld that *“the appellant cannot raise in the appeal the ground that he/she should have filed on the first instance because the appeal had not instituted to hear the case de novo as ruled by the Appeal*

*Chamber as provided under its Statute*⁹”, meaning that a party who has any claim must indicate to the Trial Chamber the existing objections first and foremost for allowing the Chamber to examine if there are the solutions provided Under the Law and Statute concerning those objections, but that party cannot remain silent on the matter only to return on appeal to seek a trial de novo¹⁰. In that case, the Appeal Chamber recalled the decision it took in the case Kambanda Jean in which it ruled that “*the fact that the Appellant made no objection before the Trial Chamber to the Registry’s decision means that, in the absence of special circumstances, he has waived his right to adduce the issue as a valid ground of appeal. For the explanations above mentioned and there are no special circumstances for examining this ground of appeal, the Appeal Chamber decided that it is not founded*”¹¹”.

[43] The Court finds that, in the High Court, Mugesera Léon did not raise the objection that the principle of presumption of innocence was not respected by various authorities or the public, given that such objection is not mentioned in the objections he raised and on which it decided as indicated in paragraphs 6, 7 and 8 of the case n° RP 0001/12/CCI appealed as above explained.

⁹ The case of Akayezu, the copy of the judgment in the appeal, paragraph 177, where it was transcribed the conclusions of the Appeal Chamber of ICTY in the decision taken in *Tadic case*, paragraph 41, and in the copy of the case of *Furundzija* in the appeal, paragraph 40.

¹⁰ *Tadic case*, the copy of the judgment in appeal, paragraph 55.

¹¹ Kambanda case, the copy of judgment in appeal, paragraph 25, and the copy of the judgment in appeal in Akayezu case, paragraph 113. The principle of waiving the right was upheld many times by the Appeal Chamber of ICTY in the following cases: Celebic case, the copy of the judgment in appeal, paragraph 640; *Furundzija case*, the copy of the judgment in appeal, paragraph 174.

[44] The Court finds that, rather when that Court held the hearing about the objection on determining if the n° RP 0001/12/CCI could be adjudicated on 19/11/2012 or adjourned, Mugesera Léon submitted that the reason why the Prosecutor General Mr Ngoga Martin and the Prosecutors he supervises forced him to appear before the court at that date is that they did not take into consideration the principle that he should be presumed innocent, rather they had already adjudicated his case as indicated by the statements he read in one newspaper, and he requests the Public Prosecution to respect such principle pending the final adjudication of the case n° RP 0001/12/CCI. That Court ruled on 20/11/2012 and decided that the hearing of that case was adjourned on 17/12/2012, but it did not take a decision on the claim of Mugesera Léon that he should be presumed innocent pending the final judgement as it did not consider it as the claim he filed to it about which it should take a decision.

[45] The Court finds that primarily the fact that Mugesera Léon did not file to the High Court the claim that the principle of presumption of innocence has been violated by the media and the authorities at different levels above mentioned as a special claim that it should examine and rule on, it indicates that he cannot file it as a ground of appeal in this case, given that he does not criticize the appealed judgement as long as he did not indicate to this Court a special reason which led him not to file such claim at the first instance.

[46] On a subsidiary basis, even if this Court can consider that Mugesera Léon has filed to the High Court the claim related to the fact that the principle of presumption of innocence has been violated by the Public Prosecution or the media and the authorities at different levels above mentioned, it cannot benefit

to him in this case, given that he does not demonstrate the influence of the statements held by those organs on the adjudication of the appealed judgment rendered by the High Court.

[47] Moreover, the Court finds that the statement of Mugesera Léon that the Rwandan Courts cannot grant to him a fair trial because the principle of presumption of innocence was violated by the comments made by the public authorities above mentioned is baseless, given that, as above explained, the judges are independent in exercising the judicial functions as they adjudicate the cases in full independence on basis of the law¹² and evidence included in the casefile, but they do not adjudicate the cases on basis of the comments held by the public as Mugesera Léon pretends to make it the case. This has been upheld by the International Criminal Tribunal for Rwanda in the case N° ICTR-2005-89- R 11 bis rendered on 06/06/2012, Prosecutor versus Bernard Munyagishari, in which it explained that the comments made by the media and public authorities would not impact on the rights of the accused because the Rwandan judges have enough knowledge and experience so that they are capable of separating comments made by public officials from evidence presented in the courtroom. It also upheld that it expected that nothing would violate the principle mentioned by Munyagishari Bernard that the presumption of innocence was not respected¹³, and it ruled for his transfer in Rwanda.

¹² “The article 33, paragraph 2 of N°10/2013 of 08/03/2013 Law governing the Statutes of Judges and judicial personnel provides that “In the exercise of their duties, judges shall be subject to the law and be independent without receiving injunction from authority or any administration”.

¹³ With regard to comments made by the media and public authorities, the Chamber is of the view that judges are trained and experienced professionals capable of separating comments made by public officials from evidence

[48] Basing on the explanations given above, the Court observes that the Rwandan Courts have the jurisdiction to hear the case of Mugesera Léon, given that they have the competence to grant to him a fair trial on basis of the evidence included in the casefile as above explained, so that it is evident that his claim that he should be tried in Canada is not grounded.

4. Whether the High Court had deprived Mugesera Léon of the right of legal representation in the hearing of 14/10/2015 and to rejoin to the penalties requested by the Public Prosecution.

[49] Mugesera Léon avers that he has been deprived of the right of legal representation in the hearing of 14/10/2015 in the High Court because it decided to conclude the hearing and declare that the pronouncement would be on 15/04/2016 while it clearly noted that he was not assisted, thus it disregarded the legal provisions including the Constitution of the Republic of Rwanda of 2003 revised in 2015 in its article 18 which provides that the defence and legal representation are inviolable rights and the article 19, paragraph 1 which provides that everyone has the right to be tried when the hearing is held in public and he/she is granted the right of legal representation. He Also submits that the High Court did not respect the articles 150 and 153 of the Law N° 30/2013 of 24/5/2013 relating to the code of criminal procedure which provided that the hearing should be held in public and in full independence by fulfilling the right to the legal counsel as

presented in the courtroom. Accordingly, these comments, in and of themselves, do not violate the right of the Accused (...) At this stage, the Chamber is not concerned that the Accused's presumption of innocence would not be protected". Case n° ICTR -2005-89- R 11 bis, Prosecutor versus Bernard MUNYAGISHARI, rendered on 06/06/2012, para 54 and 55.

also stipulated by the International Covenant on Civil and Political Rights ratified by Rwanda.

[50] Mugesera Léon requests that by the fact that the case n° RP 0001/12/CCI has been adjudicated by disregarding his fundamental right of being assisted, it should be set aside as ruled in the case n° RPA 0043/09/CS rendered by the Supreme Court on 18/11/2011, Public Prosecution versus Habufite Vincent, where it observed that the party has been deprived of the right of legal representation and it ordered that the judgment should be reviewed by the Supreme Court, but he realized that, instead of being adjudicated by the Court of Appeal, his case should be returned in the High Court for being heard by another bench in order not to deprive him of the appeal instance.

[51] He sustains that he has been deprived of his right of rejoining to the penalties requested against him by the Public Prosecution, when the High Court roughly concluded the hearing without being granted the opportunity to rejoin them as provided under the code of criminal procedure then applied, therefore he requests to be redressed in his right.

[52] The Public Prosecution avers that the High Court decided to resume the hearing without the counsel of Mugesera Léon because the accused and Counsel Rudakemwa Jean-Félix who assisted him deliberately intended to delay the trial, but he did not criticize the decision of the High Court, where it explained that Mugesera Léon and Counsel Rudakemwa Jean-Félix who assists him intentionally delayed the hearing until when the High Court took the decision on 14/10/2015 to resume the hearing without the Counsel of Mugesera Léon, because it observed that the fact that Counsel Rudakemwa Jean-Félix did not participate

in the hearing does not violate the right of Mugesera Léon of defence and legal representation.

[53] The Public Prosecution sustains that the fact that Mugesera Léon did not rejoin to the penalties requested against him by the Public Prosecution was due to the fact that himself and Counsel Rudakemwa Jean-Félix who assisted him manifested their bad faith of not participating in the hearing, so that the High Court suspended the hearing 13 times within a period of almost three (3) months, thus no error was committed by that Court, given that Mugesera Léon was granted enough time for safeguarding his rights, but he did not correctly spend that time, therefore his ground for appeal is unfounded.

DETERMINATION OF THE COURT

[54] The casefile indicates that in the paragraph 6 of the appealed judgment, the High Court made a decision on 14/10/2015 in the interlocutory judgment concerning the right of Mugesera Léon for legal representation and it declared that his right for legal representation should not be a way of delaying the good administration of justice.

[55] The casefile also indicates that the hearings were adjourned since the hearing starting on 21/09/2012, during the hearing of 23/07/2015 Mugesera Léon was notified that during the following hearing he would conclude on his case by rejoining to the penalties requested against him by the Public Prosecution, but on 30/07/2015 he appeared without the counsel because Counsel Rudakemwa Jean-Félix who assists him notified by writing that he was sick and the hearing was adjourned on 03/08/2015, on the same date Counsel Rudakemwa Jean-Félix

did not appear without indicating the reason of his absence, the hearing was adjourned on 07/09/2015, on that date the hearing was adjourned on 10/09/2015 due to the fact that Counsel Rudakemwa Jean-Félix uploaded a medical certificate granting him a leave until 20/09/2015 and the Court declared that it had to analyse the issue related to the recurrent medical leave.

[56] On 10/09/2015, Mugesera Léon again appeared without the counsel and the High Court, after conducting the investigation, observed that the certificate on which Counsel Rudakemwa Jean-Félix based on for requesting the medical leave, he requested it for delaying the case¹⁴, but for the good administration of justice, the Court decided that the hearing should resume on 15/09/2015. Rudakemwa Jean- Félix notified in writing to the High Court supporting that it should not resume the hearing disregarding that such certificate granted to him a medical leave until 20/09/2015, he sustains that the right of Mugesera Léon of defence and legal representation provided under the article of 25 of the International Covenant on Civil and Political Rights and the article 18, paragraph 3 of the Constitution of the Republic of Rwanda above mentioned was violated.

[57] On 15/09/2015, Mugesera Léon appeared before the Court assisted by Counsel Rudakemwa Jean – Félix. Jean Félix , the latter supported that he was still sick, he could not plead, rather he appeared to provide explanations about the medical leave and the High Court, basing on the article 15, paragraph 2 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides

¹⁴ See the decision of 10/09/2015 related to the adjournment of the judgment due to the medical leave granted to Counsel Rudakemwa Jean- Félix (pages 4415 -4416).

for the punishment for the intentional delay of a case, charged Counsel Rudakemwa Jean – Félix of a fine of five hundred thousand Rwandan francs (500,000 Frw), given that it observed that Mugesera Léon and Counsel Rudakemwa Jean – Félix had the intention of delaying the case, therefore, the hearing was adjourned on 21/09/2015 for allowing Mugesera Léon to return for submitting his conclusion on the case.

[58] On 21/09/2015, Mugesera Léon appeared before the Court assisted by Counsel RUDAKEMWA Jean – Félix, and he requested for the adjournment of the hearing of the case because he was sick, but the Court decided to resume the hearing because he did not produce a medical leave, he accepted the resumption of the hearing, but he again requested the High Court to wait for the decision of the Supreme Court on the appeal he filed related to the witness he wished to be interrogated. The High Court averred that the appeal could not suspend the hearing on basis of the provision of the article 1¹⁵ and 162 of the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure which provides that “*the appeal against an interlocutory judgement shall be made only jointly with the final judgement (...)*”, and Counsel Rudakemwa Jean – Félix sustained that he could not rejoin to the penalties requested against his client, because he did not have an occasion to hold

¹⁵ The High Court sustained that the provision of the article 162 the Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure should serve as basis pursuant to the provision of the article 1 of the Law n° 21/2012 of 14/06/2012 which provide that It shall also apply to all other cases in the absence of specific laws governing such procedures, unless the principles provided for by this Law cannot apply to other cases.

discussions with him as his medical leave was followed by the judicial recess, the hearing was adjourned on 22/09/2015 for examining if the wish of Mugesera Léon to be granted the time to provide the conclusion was grounded.

[59] On 22/09/2015, the High Court observed that even if the grounds on which Mugesera Léon and Counsel Rudakemwa Jean – Félix based for requesting to be granted the time to prepare the conclusion are not founded, Mugesera Léon should be granted additional time to prepare the case, the hearing was adjourned on 28/09/2015, on that date, the High Court provided the timetable of the hearing indicating that the hearing would be held on 29/09/2015, on 01/10/2015, on 05/10/2015 and on 06/10/2015.

[60] On 29/09/2015, Mugesera Léon appeared before the Court without the counsel, he sustained that he was sick and Counsel Rudakemwa Jean – Félix who assisted him, by the letter he wrote he supported that he would never appear in the hearing as long as the discussions with the Ministry of Justice on the legal aid were still ongoing, and in the hearing on 30/09/2015, the Court decided to adjourn the hearing on 05/10/2015, it summoned the Ministry of Justice and it requested Counsel Rudakemwa Jean Félix to participate in the hearing, on that date the Public Prosecution, the Ministry of Justice represented by Counsel Umwari Marie Claire and Counsel Mbonera Théophile, Mugesera Léon assisted by Counsel Rudakemwa Jean Félix appeared before the Court. After hearing the explanations provided concerning the legal aid needed for the assistance of Mugesera Léon, it observed that there were no discussions between the Ministry of Justice and the counsel of Mugesera Léon, rather he did not fulfil the requirements for being granted

the legal aid, it decided that the hearing would be resumed on 12/10/2015.

[61] On 12/10/2015, Mugesera Léon appeared before the Court without the counsel and it was evident that Rudakemwa Jean – Félix who assists him had signed on the act indicating the hearing adjournment, and the Court, basing on the article 15 of the Law relating to the civil, commercial, labour and administrative procedure charged Rudakemwa Jean – Félix of a fine of five hundred thousand Rwandan francs (500,000 Frw) for the intentional delay of the case, the hearing was adjourned on 14/10/2015 for the Court to decide if the hearing would be resumed, but on the date on which the hearing was adjourned Mugesera Léon appeared before the Court without the counsel and the Court decided that the hearing would be resumed because the absence of Counsel Rudakemwa Jean – Félix in the hearing does not violate the principle of defence and legal representation of Mugesera Léon as he was assisted in other hearings.

[62] The Court of Appeal finds that, even if the accused has the right to the legal representation as provided under the article 29 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 and the article 14, d, of the International Covenant on Civil and Political Rights ratified by Rwanda on 12/02/1975¹⁶, this right should not be a manoeuvre to delay the good administration of justice, because on 27/07/2015 when Mugesera

¹⁶ Everyone charged with a criminal offence shall have the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

Léon was requested to provide the conclusion and to rejoin to the penalties requested against him by the Public Prosecution, the hearing was adjourned thirteen (13) times for the reasons pertaining to him and his Counsel Rudakemwa Jean – Félix as explained herein above, most of them intended to delay the case, and Counsel Rudakemwa Jean – Félix was charged for that as indicated, but he did not change his behaviour, therefore this Court observes that the High Court did not commit any error when on 14/10/2015 it decided to resume the hearing without the counsel of Mugesera Léon, given that his counsel was notified of the hearing of 12/10/2015, and on that date he did appear before the Court and the hearing was adjourned on 14/10/2015, on that date he did not appear before the Court, the decision taken by the High Court cannot be considered as depriving Mugesera Léon of his right of legal representation and re-joining to the penalties requested against him by the Public Prosecution as he contends, because his rights should not delay the good administration of justice as indicated herein above.

[63] The Court finds that the same decision had been taken by the Supreme Court in the case n° RPA 0197/10/CS rendered on 21/11/2014 in which parties were the Public Prosecution and Ntakirutimana Jean Claude where it observed that Ntakirutimana Jean Claude was not deprived of the right to legal representation given that, on basis of his conduct and his Counsel, they manifested bad faith for the adjudication of the judgement after being adjourned 13 times, therefore it ruled that the right to defence should not be confused, nor violate the others' rights, nor delay the good administration of justice¹⁷; such decision coincides with the ruling of the International Criminal Tribunal

¹⁷ Case n° RPA 0197/10/CS rendered by the Supreme Court on 21/11/2014, Parties: Public Prosecution versus Ntakirutimana Jean Claude.

for Rwanda in the case Prosecutor vs Alfred Musema, in which it upheld that the conduct of the counsel of Alfred Musema including his absence during the hearing and his lack of cooperation which hinder the good administration of the hearing and the interest of justice, it also upheld that at the current step of the hearing he sustained that he could not plead guilty or not without his counsel, this did not violate the right to legal representation, if he remained silent because his counsel is absent, the Tribunal would consider that he did not plead guilty¹⁸.

[64] The Court also observes that the fact that Mugesera Léon and Counsel Rudakemwa Jean – Félix who assists him rely on the case n° RPA 0043/09/CS¹⁹ between the Public Prosecution and Habufite Vincent rendered by the Supreme Court on 18/11/2011 and they request that the case n° RP 0001/12/CCI rendered by the High Court should be set aside because it disregarded his fundamental right to legal representation granted by the law is not founded, given that in Pte Habufite Vincent case, the Supreme Court quashed the judgement rendered by the Military High Court because that Court committed an error of depriving Pte Habufite Vincent of the right of seeking a counsel, therefore the Supreme Court set aside such judgement, and it examined afresh the hearing about the charge against Pte Habufite Vincent, however in this case Mugesera Léon was not deprived of his right to legal representation, but it is himself and his counsel who infringed upon the good administration of the hearing and the interest of justice as explained herein above.

¹⁸ Case n° ICTR-96-13-T, Prosecutor vs Alfred Musema rendered by ICTR on 27/01/2000, paragraphs 19, 20 and 21.

¹⁹ Rwanda Law report, book II, 2012.N° 13, pp.15-23.

[65] The Court also observes that the statement of Mugesera Léon that he had been deprived of his right of re-joining to the penalties requested against him by the Public Prosecution when the Court promptly concluded the hearing without being granted the opportunity to rejoin about them is not grounded, given that, as explained herein above, Counsel Rudakemwa Jean – Félix who assisted him did not appear in the hearings held on 13/07/2015, on 30/07/2015, on 03/08/2015, on 07/09/2015, on 10/09/2015, on 29/09/2015, 30/09/2015, on 06/10/2015, and on 12/10/2015 up to the date when the High Court decided on 14/10/2015 to resume the hearing without the counsel of Mugesera Léon, given that the fact that Counsel Rudakemwa Jean – Félix did not appear in the hearings did not violate the right of Mugesera Léon to legal representation and defence. This Court also observes that it is himself who refused to take the opportunity granted to him to rejoin to the penalties requested against him by the Public Prosecution.

[66] Basing on the explanations provided herein above, the Court of Appeal observes that the ground of appeal provided by Mugesera Léon that the High Court deprived him of his right to legal representation in the hearing of 14/10/2015 and to rejoin to the penalties requested against him by the Public Prosecution is not founded.

5. Whether the High Court violated the principle of the non-retroactivity of the criminal law

[67] Mugesera Léon, assisted by Counsel Rudakemwa Jean – Félix, in his submissions and in his pleading, supports that the High Court committed an error of relying on the article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948, but this article does not provide for

penalties, because by the Decree-Law of 12/02/1975, Rwanda recognized that such Convention is incorporated in its laws, but it reserved itself about the article 9 concerning the penalties, thus the crime of genocide against the Tutsi committed in 1994 cannot be punished pursuant to that Convention.

[68] Mugesera Léon also sustains that the High Court based on the Organic Law N° 16/2004 of 19/06/2004 establishing organisation, competence and functioning of Gacaca Courts and the Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code, while those laws have been enacted after the commission of the crimes with which he is accused, this is contrary to the principle of non-retroactivity of the criminal law, and to the article 130, paragraph 6 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

[69] The Public Prosecution avers that the ground of appeal of Mugesera Léon is unfounded given that the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948, in its article 2, enumerates the acts constituting the crime of genocide and in its article 3 it enumerates the punishable acts, the fact that Rwanda reserved itself about the article 9 concerning the punishment does not affect the other articles of the Convention. It also sustains that from 1975 when Rwanda ratified the Convention on the Prevention and Punishment of the Crime of Genocide, the crime of genocide is provided under the Rwandan Laws, therefore, the acts with which Mugesera Léon is accused for having committed them in 1992 were constituting the crime of genocide pursuant to the Rwandan laws.

[70] The Public Prosecution supports that the crime of genocide is a serious crime at the international level, Rwanda established the Decree-Law N° 08/1996 of 30/08/1996 punishing

the crimes of genocide committed between 01/10/1990 and 31/12/1994, and in its preamble, the legislator expounded that in 1975 Rwanda ratified the Convention on the Prevention and Punishment of the Crime of Genocide, consequently it was necessary to enact a law punishing the perpetrators of the acts constituting such crime and it is the law of 1996.

DETERMINATION OF THE COURT

a) Regarding the crime of incitement to commit genocide

[71] The Court finds that the crime of incitement to commit genocide with which Mugesera Léon is accused is one of the acts of genocide provided under the article III, c, of the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948 incorporated by Rwanda through the Decree-Law N° 08/75 of 12/02/1975, the rationale of prosecuting and punishing the crime of genocide is based on the fact that, apart from the fact that persecuting the minority on basis of colour, racial, ethnical or linguistic discrimination is totally contrary to the human values, it has legal implications. The Supreme Court of Israel, in the case between the Prosecution and Adolph Eichmann, observed that nobody can pretext that the international grave crime he committed is not provided under the domestic law as a ground for not being prosecuted because they “must be seen today as acts that have always been forbidden by customary international law - acts which are of a ‘universal’ criminal character and entail individual criminal responsibility²⁰”.

²⁰ Prosecutor v Adolphe Eichmann, Appeal Judgment, para 11.

[72] The Court finds that in that case, the Court explained that in the framework of administering fair trial, it is not appropriate to punish someone for an act that was not a crime by the time of its commission, but such principle should not apply to the grave crimes, given that when those crimes are perpetrated, the values conveyed by that principle are automatically denied given that the accused cannot contend that, when he was committing those crimes, he did not know that it was a violation of other important values set by the customary international law, therefore the principle of *nullum crimen nulla poena sine lege* should not apply to those crimes²¹, especially the Court recalled that the International Military Tribunal of Nuremberg did not rely on the principle of *nullum crimen nulla poena sine lege*, because the perpetrators of Holocaust did not ignore that they were committing crimes, rather they expected to be protected by the Nazi laws in case of military victory for not being prosecuted. It upheld that “*in repudiating the relevance of the ethical content of the principle of nulla poena to the parallel crimes of which the major war criminals were convicted in Nuremberg is also apposite here: "...the ethical import of the maxim is confronted by the countervailing ethical principles supporting the courts and sentences. Killing, maiming, torturing and humiliating innocent people are acts condemned by the value-judgments of all civilized men, and punishable by every civilized municipal legal system.... All this was known to the accused when they acted, though they hoped, no doubt, to be protected by the law of a victorious Nazi state from punishment. If, then, the rules applied at Nuremberg were not previously rules of positive international law, they were at least rules of positive ethics accepted by civilized men*

²¹ Prosecutor v Adolphe Eichmann, Appeal Judgment, para 8.

*everywhere, to which the accused could properly be held in the forum of ethics*²²."

[73] The Court finds that in the case between Serbia and Croatia, the International Court of Justice recalled that from 1951 it continued to assert that the Convention on the Prevention and Punishment of the Crime of Genocide embodies the principles that are part of customary international law: « *The Court has also repeatedly stated that the Convention embodies principles that are part of customary international law. That was emphasized by the Court in its 1951 Advisory Opinion. "The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and the spirit and aims of the United Nations (resolution 96 (I) of the General Assembly, 11 December 1946). The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge' (Preamble to the Convention) »*²³ .

[74] The Court finds that this guideline had been taken by the United Kingdom House of Lords in the paragraph 17 of Augusto Pinochet case where it expounded that, even if the accused

²² Prosecutor v Adolphe Eichmann, Appeal Judgment, para 8.

²³ Croatia v. Serbia case, International Court of Justice, Judgment of 03/02/2015, para. 87.

supported that there is no evidence indicating that the torture committed by the state was a crime before the Torture Convention of 1984, there is “*no doubt that long before the Torture Convention of 1984, state torture was an international crime in the highest sense...*”²⁴, this indicates that the international crimes should not necessarily be incorporated in domestic laws to be prosecuted and punished.

b) Persecution as the crime against humanity

[75] The Court finds that the crime of persecution is mainly committed by distressing the persons for their nature. Such discrimination is committed with the intent of violating the fundamental human rights. The International Criminal Tribunal for Rwanda and the International Criminal Tribunal for former Yugoslavia expounded that the persecution is one of the crimes provided under the customary international law as constituting the crime against humanity²⁵.

[76] The Court finds that the Tribunals upheld that for long time the crimes against humanity have always been forbidden and punished by the customary international law, especially in the Erdomivic case, the International Criminal Tribunal for former Yugoslavia ruled that “*Isolated offences did not fall within the notion of crimes against humanity. As a rule systematic mass action, particularly if it was authoritative, was necessary to transform a common crime . . . into a crime against humanity . . . Only crimes which by their magnitude and savagery or by their large number or by the fact that a similar pattern was applied at*

²⁴ Ex Parte Pinochet [1999] 2 All ER 97 at 17.

²⁵ Nahimana Ferdinand case, 28/11/2007, paragraph 985, Brdanin case, 2/04/2007, paragraph 296, Simic case, 28/11/2006, paragraph 177.

*different times and places, endangered the international community or shocked the conscience of mankind . . .*²⁶

[77] The Court finds this point is one of the issues which motivated the tribunals to uphold that the current laws providing for the crimes against humanity should not be considered as establishing new crimes, rather they emphasized the existing provisions. This guideline has been recalled by the European Court of Human Rights in the case *Korbely vs Hungary*, where it decided that “As regards the elements of the crimes against humanity, one may take the recent Rome Statute of the International Criminal Court as declaratory of the international law definition of this crime...”²⁷

[78] The Court also finds that in explaining the civilians in punishing the crimes against humanity, the International Criminal Tribunal for former Yugoslavia upheld that on basis of the customary international law, the persons hors de combat can be included in the victims of those crimes when they constitute the crimes above mentioned even if they are not members of the civilian population²⁸. Concerning the crime of persecution, that Court upheld that it “*consists of an act or omission which discriminates in fact and which: denies or infringes upon a fundamental right laid down in international customary or treaty law (actus reus); and was carried out deliberately with the*

²⁶ Joint Separate Opinion of Judge McDonald and Judge Vohrah, *Erdemović Appeal Judgement*, para. 22 (quoting *History of the United Nations War Crimes Commission and the Development of the Laws of War*, p. 179).

²⁷ *Korbely v Hungary* (App no 9174/02), 19/09/2008; *Streletz, Kessler and Krenz v Germany* (App. No 34044/96, 355532/97 and 44801/98) of 22/03/2001.

²⁸ See *Mrkšić and Šljivančanin case*, para. 35 (citing *Blaškić case*, para. 113).

*intention to discriminate on one of the listed grounds, specifically race, religion or politics (mens rea)."*²⁹

[79] It also reiterated it in Dorđević case by upholding that "the crime of persecutions requires that an act or omission – not a crime – which infringes upon a fundamental right laid down in customary international law, be committed with discriminatory intent..."³⁰

[80] The Court thus finds that there is no doubt that Rwanda as a country governed by the customary international law and the international conventions to which it acceded or it ratified since the period of the independence, this means that the perpetrators of the crimes provided under the customary international law and the international conventions cannot take as pretext the fact that the qualifications of the crimes they committed were not included in the Decree-Law N° 21/77 of 18/08/1977 instituting the penal code applied by the time of the commission of the crimes, given that such understanding would amount to the minimization of the crimes committed, by removing them from the international law governing them and considering them as the common crimes provided under the domestic law.

[81] The Court finds that the crime of incitement to commit genocide and the persecution as constituting the crime against humanity are both crimes based on the discrimination, therefore, when Léon was convicted of both crimes as international crimes, it was not necessary for the High Court to decide that he was convicted of the crime of the incitement to hatred based to the ethnic group provided and punished by the article 393 of Decree-

²⁹ Krnojelac Appeal case, para. 184 and 185.

³⁰ Dorđević Appeal case, para 557, 693 and 876.

Law n° 21/77 of 18/07/1977 instituting the penal code, given that the discrimination or the incitement to hatred based to the ethnic group are acts of the incitement to commit genocide and persecution as constituting the crime against humanity. This guideline coincides with the decision of the International Criminal Tribunal for former Yugoslavia, where in Kuranac et al. it upheld that when the principal crime has been pointed out, it is not necessary to consider as crime various acts that led to the commission of that crime³¹.

[82] The Court finds that Rwanda, basing on the customary international law, the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948 to which it acceded by the Decree-Law N° 08/75 of 12/02/1975, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 26/11/1968 to which it acceded by the Decree-Law of 16/04/1975 through the Fundamental Law of 18/01/1996, recalled that in the amendment of the article 12, paragraph 4 of the Constitution of 10 June 1991, *“the acts that were not punished under the domestic law by the time of their commission shall be prosecuted before the courts if, by the time of their commission, the legal norms recognized by the countries qualified them as crimes”*, such amendment recalled that nobody could take as pretext the domestic law to contend that he could not be punished for the crimes he committed that are forbidden by the international law.

[83] The Court finds that, concerning the penalties, the article V of the Convention on the Prevention and Punishment of the Crime of Genocide provides that *“The Contracting Parties undertake to enact, in accordance with their respective*

³¹ Kuranac et al. appeal case, para. 153.

Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III”, this article constitutes one of the tools of international law on which Rwanda relied for amending the article 12 of the Constitution of the Republic of Rwanda of 10 June 1991³², also it enacted the Organic Law N° 08/96 of 30/08/1996 governing the punishment of the crime of genocide and the crimes against humanity committed between 1/10/1990 and 31/12/1994, the law which was replaced by the Organic Law N° 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts, this law was replaced by the Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code, where in its article 762 it provides that unless otherwise provided, the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994 shall be punishable by penalties provided under this Organic Law, the provision of the article 762 of that Organic Law has been reiterated by the article 335, paragraph 2 of the Law No 68/2018 of 30/08/2018 determining offences and penalties in general³³ which is currently applied.

³² Article 12 of the Constitution of the Republic of Rwanda of 10/06/1991 was amended on 18/01/1996 and it included the paragraph 4 which provides that “ the acts that were not punished under the domestic law by the time of their commission shall be prosecuted before the courts if, by the time of their commission, the legal norms recognized by the countries qualified them as crimes”.

³³ The article 335 of the Law No 68/2018 of 30/08/2018 determining offences and penalties in general provides that “However, the genocide crimes and other crimes against humanity committed between October 1, 1990 and December 31, 1994 is punishable in accordance with penalties provided for under this Law unless legal provisions otherwise provide”.

[84] The Court finds that, apart from the fact that the High Court committed an error of basing on the Organic Law n° 16/2004 of 19/06/2004 establishing Gacaca Courts in sentencing Mugesera, the sentence of life imprisonment imposed to Mugesera Léon pursuant to the article 5 bis of the Organic Law n° 08/2013 of 16/06/2013 modifying and complementing the Organic Law n° 31/2007 of 25/07/2007 relating to the abolition of the death penalty as modified and complemented to date, read together with the Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code above mentioned herein, which replaced the death penalty which was provided under the article 312 of the Decree-Law n° 21/77 of 18/08/1977 instituting the penal code which was provided for the acts of murder resulting from the speeches held at Kabaya and Nyamyumba inciting the population to commit genocide as he was convicted by the High Court, therefore the allegation of Mugesera Leon that the High Court sentenced him to a penalty not provided under the Rwandan law is not grounded.

[85] The Court finds that this idea that the penalties to the crime of genocide were provided under the Rwandan law had been adduced in Akayesu Jean Paul case by the International Criminal Tribunal for Rwanda³⁴.

³⁴ The Prosecutor versus Jean Paul Akayesu, Case N° ICTR-96-4-T/sentence, Decision of 2 October 1998, para.16: "In this regard, the Chamber nevertheless recalls that by enabling legislation, Rwanda acceded to the Genocide Convention of 12 February 1975. Therefore, as the Chamber stated in its judgement, criminal liability for the crime of genocide existed in Rwanda in 1994, when the crimes with which AKAYESU is charged were committed and the perpetrators of such crimes could indeed be charged before the appropriate Rwandan courts.

[86] The pleading of Mugesera Léon that he could not be sentenced for the crime of genocide because Rwanda reserved itself on the article IX concerning the sentence provided for the crime of genocide, the Court observes that it is not grounded given that the article IX of the Convention on the Prevention and Punishment of the Crime of Genocide provides that “*Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute*”, it is evident that such article is not linked to the punishment of the accused of the crime of genocide or the acts provided under the article III of the Convention, rather it concerns the judicial action against the State in case it fails to prevent the genocide or one of the acts provided under the article III.

[87] The Court finds that this guideline has been highlighted by the International Court of Justice in *Croatia v. Bosnia*³⁵ case, where it upheld that the article IX of the Convention on the Prevention and Punishment of the Crime of Genocide provides for its jurisdiction to examine, enforce and fulfil the Convention, especially concerning the obligations of the States accused of genocide or any other act provided under the article III of that Convention, and, as it recalled in the *Bosnia and Herzegovina versus Serbia* case in 2007³⁶, the article IX only concerns the jurisdiction of the International Court of Justice in genocide

³⁵ *Croatia v Serbia* case, International Court of Justice, Judgment of 03/02/2015, para. 85.

³⁶ *Bosnia and Herzegovina v. Serbia and Montenegro*, International Court of Justice, Judgment of 26/02/2007.

matters, meaning that when Rwanda reserved itself to the article IX in ratifying the Convention it precluded as a State to be accused of the crime of genocide before the International Court of Justice³⁷, such does not exclude that the individuals who committed the genocide in Rwanda should be prosecuted and punished for it, as explained herein above, their punishment is based on the article VI, not the article IX of that Convention.

[88] Basing on the explanations above provided herein, the Court finds that the ground of appeal of Mugesera Léon that he has been sentenced by disregarding the principle of non-retroactivity of criminal law is not founded.

6. Whether the High Court refused to hear the defence witnesses of Mugesera Léon

[89] Mugesera Léon, by means of his submission and pleading, sustained that the High Court seriously deprived him of his defence right provided under the Constitution, it refused to hear the defence witnesses. He submits that among those witnesses who were not heard there are the fact witnesses, character witnesses and expert witnesses.

[90] Mugesera Léon supports that the Public Prosecution, which normally has more powers than the accused has been granted enough time to identify and select the prosecution witnesses, but he was not granted the time nor means to identify and discuss with his defence witnesses, rather he was requested to provide the list and the issues of their testimony, disregarding

³⁷ *Democratic Republic of Congo v Rwanda case*, International Court of Justice, Application of 28/05/2002, para. 72

the fact that he would firstly meet the defence witnesses whom he wished to meet.

[91] Mugesera Léon requested this Court to set aside the appealed judgment and be returned in Canada, because he was tried in violation of the principle of equality of arms and the fundamental right to fair trial granted to him by the Constitution of the Republic of Rwanda and the Conventions it ratified.

[92] The Public Prosecution avers that the High Court requested both parties to provide the identification of their witnesses, the issues of their testimonies, their residence and the procedure for their interrogation, and the High Court reminded it several times, as Mugesera Léon who supported that he has the defence witnesses did not meet the requirements by 30/6/2014, when he was given the deadline which he did not meet. The Public Prosecution sustains that the fact that Mugesera Léon did not provide the identification of the defence witnesses does not entail the liability of the High Court because it is himself who deprived of that right.

DETERMINATION OF THE COURT

[93] The article 66 of the Law N° 15/2004 of 12/06/2004 relating evidence in matters and its production provides that “the issues for which a party requests a witness he/she shall briefly expound them without further details. In case the Jurisdiction observes that they are necessary, valid and admissible, it can on its own initiative order to provide the witnesses for those issues”.

[94] The Court finds that Mugesera Léon who supported that he had the defence witnesses, was requested by the High Court

through the letter of 06/11/2012 to provide the complete identification of the witnesses he wished to be interrogated, the place of the interrogation and the issues of their testimony, this has been reminded to him in the hearing held on 18/01/2013, on 30/06/2014 and on 14/01/2015, but he did not meet the requirements up to the conclusion of the judgement on 24/06/2020.

[95] The Court finds that the pleading ground of Mugesera Léon that he should be granted the means to firstly identify and agree with the defence witnesses before providing their list is not valid, given that he should himself know the issue on which each one could defend him, and the Court would summon them in case it deems it necessary, and it is not necessary to hold discussions with them on the defence issues, due to his failure to provide the list, this Court itself concurs with the High Court that Mugesera Léon did never indicate the defence witnesses, therefore he was not deprived of the right of the witnesses to be heard.

[96] The Court finds that Mugesera Léon who did not fulfil his obligations for finding the exculpatory evidence cannot take it as pretext of the appeal ground. This has been noted by the International Criminal Tribunal for Rwanda in NGEZE Hassan case for the issue of a witness he did not request to be summoned on the first instance while he was aware that he would need him, it upheld that *“However, with respect to the availability of the proffered evidence at trial, the Appeals Chamber agrees with the Prosecution that the Appellant failed to exercise the due diligence required for the evidence to be admissible on appeal. (...) The Appellant must demonstrate that the “proffered evidence was not available to him at trial in any form” and that he had made use of all mechanisms of protection and compulsion*

available under the Statute and the Rules to bring the evidence before the Trial Chamber. In the present case, the Appellant has not shown why he could not call [Witness ABC1]³⁸”. The same has been noted by the International Criminal Tribunal for former Yugoslavia in the case of Vujadin Popovic who did not use the legal procedure for that Court to analyse the exculpatory evidence³⁹.

[97] The Court observes that the explanations provided in the previous paragraphs indicate that Mugesera Léon was not deprived of his right of bringing the defence witnesses ; therefore, this ground of appeal is not founded.

7. Whether the High Court erred in ruling that the speech entitled “the Speech of four satanic horns” is not an exculpatory evidence for Mugesera Léon

[98] Mugesera Léon avers that the High Court should not take into account the accusation of the Public Prosecution, rather it should consider the content of the speech he made everywhere he went, the speech he entitled “*the Speech of four satanic horns*” because he delivered its message everywhere he held meetings, there is no act constituting a crime of incitement to commit genocide included in that speech he admits, rather the words used in it are related to the avoidance of the contempt, the insolence, the vanity and the treachery, also it mentioned the instruments to be daily maintained by every partisan of MRND including the election, the bravery, the love, thus such speech does not have any link with hating and killing the Tutsi, rather it indicates that

³⁸ The Prosecutor V. NGEZE Hassan, ICTR-99-52-A

³⁹ ICTY-05-88-A, The Prosecutor vs Vujadin Popovic, para. 8, 9 and 10.

Mugesera Léon is not a murderer, and he does not hate the Tutsi, rather he is a kind person.

[99] He further sustains that he does not have such speech, it is not the speech held at Kabaya, but he made it elsewhere the meetings were held, he does not know where he made it and the period he held it, the fact that he does not have it does not mean that it does not exist, rather it should be claimed from the Public Prosecution which sent it in Canada and it was used in the judgment rendered in Canada on 08/09/2003, as mentioned from the paragraphs 155 to 162, the fact that there is another judgment of the Supreme Court of Canada which invalidated the previous decision does not exclude that there is such exculpatory evidence constituted by that speech.

[100] The Public Prosecution avers that in the paragraph 109 of the appealed judgment, the High Court upheld that the explanations provided by Mugesera Léon on the speech of four satanic horns are unfounded, given that it observed that there is another speech held at Kabaya and Nyamyumba inciting the Rwandans to commit genocide, and he himself admitted in this Court that the speech of four satanic horns is not the one made at Kabaya, he does not know the period nor the place he held it, therefore the Court of Appeal does not have any possibility to examine his ground of appeal related to the speech he does not have himself.

[101] The Public Prosecution also sustains that there are witnesses charging him to have held the speeches at Kabaya and Nyamyumba inciting the Rwandans to commit genocide, therefore, the High Court did not err because it relied on the article 119 of the law n°15/2004 of 12/06/2004 relating evidence and its production and it considered the evidence produced, and

the Court of Appeal should not rely on the judgement which analysed the speech of four satanic horns on the first instance as there is the judgment of the Supreme Court of Canada rendered on 28/06/2005 which invalidated the previous decision.

DETERMINATION OF THE COURT

[102] The article 3 of the Law n°15/2004 of 12/06/2004 relating evidence and its production provides that each party shall prove the truthfulness of his/her allegation.

[103] The casefile indicates that in the paragraph 109 of the appealed judgment the High Court expounded that nothing indicates that the speech of four satanic horns conveys the message of avoiding the contempt, the insolence, the vanity and the treachery and the instruments to be daily maintained by any partisan of MRND including the election, the bravery, the love, he held everywhere he went, because it noted that there is another speech made at Kabaya and Nyamyumba conveying the message inciting to commit genocide.

[104] The casefile also indicates that during the hearing held in the Court of Appeal on 06/02/2020 Mugesera Léon supported that that speech of four satanic horns is not the one he made at Kabaya, he does not have it, he does not know the place nor the period he made it.

[105] The Court observes that the speech called “*the speech of four satanic horns*”, which Mugesera Léon supports that it contains the words related to the avoidance of the contempt, the insolence, the vanity and the treachery and the instruments to be daily maintained by any partisan of MRND including the

election, the bravery and the love, is not the one he made at Kabaya and everywhere the meetings were held, as he himself admitted in the Court of Appeal, he does not have it, he does not know where he made it, nor the dates on which he made it, thus, it cannot be considered as exculpatory evidence as he sustains it because it is not related with the evidence on which the High Court relied in convicting him including the speech of which he is accused he made at Kabaya and the meeting he chaired at Nyamyumba, and he does not demonstrate that such speech contradicts that evidence.

[106] The Court observes that the speech called “the speech of four satanic horns” does not benefit to Mugesera Léon in this judgment because it is not the one on which the High Court relied in convicting him for the crimes with which he is accused, rather he was prosecuted and convicted on basis of the speech he held at Kabaya and the meeting he chaired at Nyamyumba as above explained.

B. REGARDING THE CASE ON THE MERITS

1. Whether the High Court erred in deciding that it is Mugesera Léon who made the speech made at Kabaya on 22/11/1992 and whether it should be considered as evidence in this judgment.

[107] Mugesera Léon submits that the High Court should not convict him on basis of the speech held at Kabaya on 22/11/1992 given that it was not original due to the fact it was altered as asserted by Peter Fraser during the cross-examination of 23/06/1995. He explains that Rwanda submitted to Mrs Diane Clément who was the Canadian Prosecutor in charge of Citizenship and Immigration a tape on which the speech held at Kabaya was recorded, she gave it to the expert called Peter Fraser

for analysis, and the latter, after putting it in a specialized machine, noted that it was not original, but later, he went to the Citizenship and Immigration Service where he got the tape n° 1 and the tape n° 3, he mixed them using a specialized machine bought in the United States of America, he obtained one tape, after erasing it he concluded that it did not constitute an evidence to be produced before the Court as it was not original.

[108] He supports that, even if he forgot the speech he made at Kabaya on 22/11/1992, he has the right to say something about the speech on which his conviction is based because it is an incriminating evidence produced by the Prosecution and the High Court relied on it in convicting him for a crime he did not commit, so that he understands that he could not confess that it is himself who held it because the article 14, g of the International Covenant on Civil and Political Rights of 16/12/1966 and the article 14, 7° of the Organic Law n° 11/2007 of 16/03/2007 concerning transfer of cases to the Republic of Rwanda provide that nobody shall be compelled to testify against himself or to confess guilt, rather the Prosecution should produce the incriminating evidence as provided under the law.

[109] He also sustains that the High Court did not respect the article 122 of the Law n° 15/2004 of 12/06/2004 relating evidence and its production which provides for the origin of evidence⁴⁰, its

⁴⁰ The article 122 of the Law n° 15/2004 of 12/06/2004 relating evidence and its production provides that “A party who wishes to produce an evidence related to a tangible item shall indicate its source to prove its link with the subject-matter, the accused and the offence. To that effect, he/she shall demonstrate that such evidence was seized or originated from the facts, he/she shall indicate that it was not altered because of being manipulated by several persons and subjected to the research”.

mode of formation and its obtaining, the article 123 of that Law⁴¹ prohibits the evidence alteration, the article 124 of the Law above mentioned⁴² provides that the person who recorded the sounds or took photos should be present, because it convicted him on basis of the speech made at Kabaya on 22/11/1992 without demonstrating the conditions of its transmission between different persons from Kabaya where it was held for the first time to ORINFOR and the conditions of its transfer to the Prosecutor General who sent it in Canada.

[110] He explains that he filed a claim to the High Court to know the one who recorded the speech held at Kabaya and its transmission and it noted that it was really an issue, then it submitted to ORINFOR a letter of 25/06/2014, requesting it to inform it on the origin of the tape and the person who recorded it, and by its letter of 27/06/2014, the Director General of ORINFOR, which became RBA, replied that such tape was found in its archive, but he did not know the names of the person who recorded it and the person who brought it there, and there is no audio-visual speech and he confirmed that it is not Murutampunzi Boniface who recorded and brought it in ORINFOR, rather he

⁴¹ The article 123 of the Law n° 15/2004 of 12/06/2004 above mentioned provides that “ In case a person, an item or evidence indicating the facts are not those submitted to the Court for observation, the photos or pictures indicating the facts shall indicate without any alteration the picture they had by the time when the subject-matter occurred. The same is required for the sounds that had been recorded by means of trapping to be produced as evidence”.

⁴² The article 124 of the Law n° 15/2004 of 12/06/2004 above mentioned provides that “In order to prove that there is no alteration, there shall be the testimony of the person who recorded the sound or took moving or not moving photos, or who pictured in any manner or who was present by the occurrence of the facts”.

took it from the ORINFOR archive and gave it to Nyirantabashwa Ange for making its copy which after was sent to Canada. He sustains that such Court erred in convicting him on basis of such tape without indicating the person who recorded it and the names of the persons who manipulated it and signed the statement that they got it from Kabaya to the Prosecutor General, rather he notes that its manipulation is only limited at Kabaya.

[111] Mugesera Léon further explains that he was in the meeting organized by MRND held at Kabaya on 22/11/1992, he made a speech there, but it is not the speech recorded on the tape given to the High Court by the Public Prosecution on basis of which the appealed judgment was rendered against him because he made an oral speech which was unwritten, because he spontaneously made it on the request of the Prefet Banzi Wellars who was seated together with him. He supports that the fact that he firstly outlined the principal points to develop in the speech does not constitute evidence indicating that he had drafted the speech. Also, that speech was never recorded on the tape by MRND nor himself, however he does not remind it due to the elapsed period, therefore the statement of the Public Prosecution that the original speech is archived in Rwanda Broadcasting Authority (former ORINFOR) is not true, because Peter Fraser asserted that the speech recorded on the tape he was given originated from the tape or “CD”⁴³ kept in RBA (ORINFOR) archive is not original, rather it has been altered as above explained.

[112] He requests the Court not to convict him on basis of the speech held at Kabaya recorded on the tape that is not original because it is not the evidence that indicates beyond reasonable

⁴³ CD = Compact Disc.

doubt that he committed the crime as required in criminal matters, rather during the administrative case he held in Canada, the evidence on which it was based was not weighty in comparison to the one required in this criminal case.

[113] The representative of the Public Prosecution sustains that the High Court did not err in deciding that the tape on which it is recorded the speech held by Mugesera Léon in the meeting of 22/11/1992 at Kabaya is a supporting evidence in this judgment given that the Supreme Court of Canada based its ruling on it in the administrative case when it decided that Mugesera Léon is not entitled to stay in that country due to the crimes of which he is suspected as asserted by the expert called Peter Fraser who affirmed that the speech recorded on that tape was not altered, but Mugesera Léon did not produce any evidence indicating that it was altered apart from alleging it only, meaning that he did not meet the conditions of the article 3 of the Law n° 15/2004 of 12/06/2004 relating evidence and its production which provides that each party shall prove the truthfulness of his/her allegation and the article 85, paragraph 3 of the Law n° 30/2013 of 24/05/2013 relating to the code of criminal procedure which provides that “*where evidence to support the offence is presented, the accused must produce the evidence indicating that he/she is innocent*”.

[114] He also avers that the High Court convicted Mugesera Léon with the crime on basis of the tape and other evidence contained in the casefile including the testimonies of the witnesses who were attending the meeting at Kabaya who heard the speech he held constituting the crimes of which he is accused and their testimonies should be taken into consideration because they concord with the speech on the tape, but Mugesera Léon did

not produce any evidence that contradict with the incriminating evidence.

[115] Concerning the transfer of the speech made at Kabaya recorded on the tape, the representative of the Public Prosecution submits that in the paragraph 13 and the following paragraphs of the appealed judgment, the High Court expounded the modalities of the tape transfer, where it explained that Mugesera Léon having made the speech on 22/11/1992, after only four (4) days, the Public Prosecution issued an arrest warrant, it submitted a letter to ORINFOR requesting the tape on which the speech was recorded, and it transmitted it by asserting that it has been recorded by Radio Rwanda on 22/11/1992 in the context of collection and dissemination of information, and the original tape on which that speech is recorded is kept in its archive as it is its property, it handed it to the Public Prosecution a copy in the context of criminal action. He also supports that on 22/05/1995, Murutampunzi Boniface who was journalist at Radio Rwanda confirmed that it is himself who took the tape from its archive and handed it to Nyirantabashwa Ange who was a technician at Radio Rwanda for making a copy, and the High Court examined all the evidence and noticed that the speech made by Mugesera Léon at Kabaya on 22/11/1992 recorded on the tape or “CD” should be considered as evidence because it is original, but Mugesera Léon and his counsel did not indicate the defects contained in those explanations, given that they did not demonstrate the conditions of the speech alteration, meaning the additions, the deletions or the modifications and who modified it.

[116] He adds that Mugesera Léon did not improvise the speech held at Kabaya, rather he prepared it as remarked on the tape or “CD” as the High Court explained it, it also examined its

duration, the fact that before beginning it, he firstly indicated that he would develop four (4) principal points contained in it, and then after, he developed a point by point up to the conclusion, but even if Mugesera Léon did not prepare the speech, that cannot exclude his criminal liability.

DETERMINATION OF THE COURT

[117] The article 119 of the Law N° 15/2004 of 12/06/2004 relating evidence and its production provides that *“in criminal matters, the evidence are based on all modalities of the facts and the legal provisions, provided that the parties have been given the opportunity to be present for cross-examination. The Court irrefutably substantiates that all incriminating or exculpatory evidence are genuine and admissible”*

[118] The article 121 of the Law above mentioned provides that *“The Court can rely on the audio recorded by means of any appropriate tools or the video recorded by means of a camera recording the moving visual images”*. The article 127 of the same Law provides that *“A party who produces an evidence based on the recorded audio must proffer a witness who was present by the time of recording the audio or who can identify the person who produced it. The Court can appoint an expert to examine if the audio belongs to the person who allegedly produced it”*.

[119] In the casefile there is a statement of 17/01/1996 indicating that Mugesera Léon admitted before the arbitrator in

Canada that the topics and the sounds recoded on the tape which he heard are exactly genuine with the speech he made⁴⁴.

[120] The casefile also indicates that in the paragraph 46 of the judgment n° 2005 S.C.R. 40, adjudicated by the Supreme Court of Canada on 28/06/2005⁴⁵, the parties being Mugesera Léon versus Canada (M.C.I), that Court expounded that the taped speech of Mugesera Léon had been transcribed by Thomas Kamanzi who had been used as expert, and during the hearing before the arbitrator in Canada on 17/01/1996, it has been demonstrated that the transcription of the tape (composite n° 4) included in the casefile corresponds in all points with the speech held by Mugesera Léon, as Mugesera Léon admitted it himself during the pre-trial conference held on 30/01/1997, as also indicated in the judgment adjudicated by “Section of Immigration Appeal” (SAI) in paragraph 135.

[121] The explanations above mentioned are also provided in the paragraph 14 of the appealed judgment, where the High Court explained that the expert Peter Fraser, who was used by the

⁴⁴ The arbitrator asked to M. Mugesera the following question: (...) given the topic or topics you developed, the sound we heard, can we say that it exactly reflects the speech you held? Mugesera Léon replied to him that:

“Yes, yes, it exactly reflects that speech; from the beginning it is understandable”.

⁴⁵ The speech of M. Mugesera had been taped and transcribed. During the hearing before the arbitrator, it has been demonstrated that the transcription of the tape (“composite n° 4”) included in the case file corresponds in all points with the speech made. M. Mugesera has officially admitted it during the pre-trial conference held on 30 January 1997 (Judgement of SAI, para.135). The arbitrator maintained the version of M. Kamanzi. The issue of the choice of the translated text had been repeatedly discussed, but during the final hearings, the respondents agreed that the translation of M. Kamanzi accurately reflected the Kinyarwanda text”.

arbitrator in Canada, pointed out that the taped speech is the one that Mugesera Léon held at Kabaya because it was not modified as expounded in the judgment rendered by the Supreme Court of Canada above mentioned.

[122] Also in the paragraphs 15 and 19 of the appealed judgment, the High Court upheld that it compared the taped speech sent in Canada and the speech recorded on “compact disc” (CD) and the transcription submitted to it by the Public Prosecution, and basing on the judgments rendered by the Canadian Courts above mentioned, it observed that the speech submitted to it by the Public Prosecution is the one that Mugesera Léon held in the MRND meeting of 22/11/1992, as he admitted it in the Canadian Courts, therefore, the High Court decided that such speech taped and recorded on “compact disc” (CD) constitutes an evidence in that case, given that it was lawfully obtained as provided under the article 127 of the Law above mentioned herein.

[123] The casefile also indicates that in this Court Mugesera Léon admitted that he was in the meeting held at Kabaya on 22/11/1992, he made a speech before many citizens who participated in that meeting, during the hearing, he submitted that even if he did not remember the speech he gave, he could analyse the speech which served for his accusation, he so did and contextualized it.

[124] The Court finds that the fact that the expert called Peter Fraser confirmed that the taped speech (composite n° 4) exactly corresponds with the original speech given by Mugesera Léon and Mugesera Léon admitted it in Canada on 17/01/1996 and on 30/01/1997, where he admitted that the taped speech he heard corresponds with the speech given in the meeting held at Kabaya

on 22/11/1992 and before this Court Mugesera Léon admitted that he participated in that meeting and he gave a speech and he analysed that speech and he contextualized it, undoubtedly indicates that such speech taped and recorded on “compact disc” (CD) is an evidence that such speech was made by Mugesera Léon of which he is accused in this judgment because it was lawfully obtained as above mentioned as upheld by the High Court.

[125] The Court observes that the statement of Mugesera Léon that the High Court could not convict him on basis of the tape above mentioned, due to the fact that Peter Fraser confirmed that it was not original because it had been modified is unfounded, because it is not true, given that during the cross-examination of 23/06/1995, Peter Fraser ascertained that the taped speech (composite n° 4) corresponds with the original speech held by Mugesera Léon⁴⁶ as emphasized by the arbitrator⁴⁷.

[126] The Court also observes that the statement of Mugesera Léon that the High Court should not convict him on basis of the taped speech above mentioned because it did not indicate who recorded it and the modalities of its transfer from Kabaya to the Prosecutor General is not founded, given that, apart from the fact that Mugesera Léon himself admitted that it is himself who gave it as above explained, in the paragraphs 17 and 18 of the appealed judgment, the High Court upheld that after the speech was held

⁴⁶ “(...) then tape number 4 would in all probability be what was given in the original speech. Probability. (...) It's my opinion that this and this would be the same”.

⁴⁷ “We have an expert here in the field who conducted analysis and who told us that, basing on the balance of probabilities, the tape number 4 would be the transcription of the original speech”.

in the meeting at Kabaya on 22/11/1992, it was recorded by Radio Rwanda in the context of collecting and disseminating the information, and that tape is kept in its archive and on 27/11/1992, ORINFOR brought to the Prosecution a copy of the tape, and authorized it to use it for its job purpose. That Court also explained that on 22/05/1995, Murutampunzi Boniface, who was a journalist at Radio Rwanda from November 1992 admitted that on the request of his Director in the presence of the representative of the High Commission of Canada to Rwanda in Kigali, he took from the ORINFOR archive the original tape on which the speech was recorded, he gave it to Nyirantabashwa Ange who was a technician at Radio Rwanda for making a copy, as the latter admitted it.

[127] Basing on the explanations above provided, the Court observes that the High Court did not err in deciding that the speech recorded on the tape and the compact disc (CD) received from the Public Prosecution, as annexed to this judgment, should be considered as an evidence in the case, as it was lawfully obtained, because Mugesera Léon did not produce any contradicting evidence, therefore, this ground of appeal is uncorroborated.

2. Whether the High Court erred in convicting Mugesera Léon on basis of untruthful testimonies.

2.1 Regarding the witnesses accusing him for the speech he held at Kabaya.

[128] Mugesera Léon criticized the fact that the High Court relied on the witnesses who do not tell the truth and some witnesses who do not have the knowledge of the facts on which they testify, he explains his critique about the ordinary witnesses and the expert witnesses.

[129] Regarding the ordinary witnesses, Mugesera Léon criticized the fact that the High Court on its initiative, opted for hearing only 28 witnesses among 48 witnesses on which the Public Prosecution relied in accusing him, he should be given the opportunity to cross-examine the testimonies of all witnesses because all statements in the casefile are taken into account in the case analysis without considering the fact that the witnesses had been summoned or not to appear before the Court.

[130] In criticizing the testimonies of the witnesses on which the High Court relied, Mugesera Léon sustains that some of the prosecution witnesses lied that they were in the meeting held at Kabaya on 22/11/1992, while they never appeared there, others express their emotions and they use the words not included in the speech for which he is accused to have made that day, there are others who plotted for telling lies due to their common religious affiliation or their family relationship, others allegedly accused him that the speech he held had been the trigger of killing the Tutsi residing in that region, but they cannot produce an evidence of the relationship between the persons killed due to the speech for which he is accused to have made at Kabaya.

[131] Mugesera Léon supports that the witnesses who contended that they heard the speech made at Kabaya on Radio Rwanda lied because Higiroy Jean Marie Vianney who was opponent of the incumbent regime and who was the employee on Radio Rwanda submitted that such speech was never aired on Radio Rwanda.

[132] Mugesera Léon criticized the testimony of Hategekimana Iddi who supported that he was present in the meeting held at Kabaya and he heard Mugesera Léon saying that any Tutsi should pass by Nyabarongo, but this phrase does not appear in the speech

for which he is accused, that witness sustained that following the speech held by Mugesera Léon there were the Bagogwe who were killed, but this is contradicted by Lt Ruzibiza Abdoul who explained on Radio Voice of America on 02/05/2004 that the Bagogwe were killed by Inkotanyi, and the person who was Minister of Justice in 1992 himself admitted that no one was killed following the speech held by Mugesera Léon.

[133] Mugesera Léon criticized Gashikazi Rajhab who lied that he was present in the meeting held at Kabaya and he heard his speech, then after in his testimony he sustained that he never heard the word “election” while this word appears 17 times in the speech for which he is accused.

[134] Mugesera Léon further criticized other witnesses who incriminate him for the phrases which do not appear in the speech of which he is accused, but who sustain that they heard it, others were told them by those who participated in the meeting at Kabaya. Those include Nyirabagirishya who supports that she was told that Mugesera Léon said that the Tutsi are cockroaches, Uwimana Salama who submitted that she heard Mugesera Léon saying that no Tutsi should escape them from the cell and the sector, Ntawuruhunga Hassan supported that Mugesera Léon said that the Hutu should eliminate the Tutsi in Sectors and Communes.

[135] Mugesera Léon also criticized the High Court to have relied on the testimonies of the persons tried for perjury. Those include PME tried in the case N° RP 320/R3/2001 by the Intermediate Court of Gisenyi on 13/09/2002 for murder and perjury and PMK tried in the case N° RP 0075/TGI/NYGE by the Intermediate Court of Nyarugenge on 16/11/2009 for perjury in the Court.

[136] Mugesera Léon pleaded by supporting that what indicates that the witnesses lied against him is that, in various cases, there are others who gave false testimonies and then after admitted it by sustaining that they did so because the Public Prosecution promised them the pardon for the penalties pronounced by the courts. Those are Nyabyenda Jean Marie who gave testimony in Mwigimba Jean Baptiste case and Baziga Emmanuel together with Hakizimana De Gaulle who admitted that they gave false testimonies against Bandora.

[137] Concerning the expert witnesses, Mugesera Léon criticized the testimony given by Ruzindana Matthieu (who holds PhD in Linguistics with focus on Phonology) and Ntakirutimana Evariste considered as experts in defining the terms the “snake” (*inzoka* in Kinyarwanda) and “cockroaches” (*inyenzi* in Kinyarwanda), apart from lacking academic competences in Lexicology, they have no room to assert that the terms “snake” and “cockroaches” mean the Tutsi, rather some of so-called experts went to Arusha for subsistence. He criticizes the fact that the High Court relied on their testimonies, but it never summoned them for hearing their testimonies, and for him to be granted the right of cross-examination.

[138] Mugesera Léon also criticizes the High Court to have relied on the letter alleged to the witness Rumiya Jean, while this expert in History cannot certify the facts occurred at Kabaya while he had not been there, also before the Court in Canada, the latter supported that, during the genocide, Mugesera Léon had left MRND, he thought that he joined FPR, therefore the letter alleged to Rumiya Jean should not have any value.

[139] Mugesera Léon submits that the High Court should take into consideration the findings of the experts who had been in

Rwanda because they have enough knowledge of the facts they related, including General Romeo Dallaire, who appeared before the UN General Assembly on 30/03/1994 asserting that there was no problem in Rwanda, thus, he could not ignore to mention the turmoil caused by the speech of Mugesera Léon in case of its occurrence, also in its book entitled *Shake hands with the devil*, he did not mention any issue related to Mugesera Léon. He also submits that the experts including Eric GILLET and Alison DES FORGES conducted a thorough investigation in Rwanda in 1993 ; both did not mention that the speech made by Mugesera Léon occasioned the genocide.

[140] The Public Prosecution avers that the High Court did not err in convicting Mugesera Léon on basis of the testimonies given by the witnesses because they concur on the principal topics constituting the speech made by Mugesera Léon at Kabaya which incited to commit genocide including: qualify the Tutsi snakes and accomplices of the invaders of the Country; to cut off their necks; to make them pass by the shortcut in Nyabarongo; the error committed in 1959 by letting the Tutsi to go away and their children are attacking the Country; they also concur on the fact that, following that speech, the killing of the Tutsi residing in that region immediately began.

[141]] The Public Prosecution also argues that the High Court relied on the quality of the testimonies given, even if the witnesses could use different terms in relating what they heard themselves or it's a hearsay, also after more than 20 years, a witness cannot repeat the statements using the same terms with those used by Mugesera Léon, the High Court decided on basis of the various cases adjudicated by the International Criminal

Tribunal for Rwanda, and it requests the Court to make ruling in that guideline.

[142] The Public Prosecution expounded that Mugesera Léon cannot rely on the relationship between those who accuse him requesting to invalidate their testimonies, because the fact that some of them have the relationship with the persons killed and some of the persons who accuse him had been convicted by the courts, rather he should criticize the quality of the testimonies given against him, and he failed to do so as upheld by the High Court, also up to date, he does not rebut the testimonies given against him, as the facts that they assured coincide with the contents of the speech of which he is accused to have delivered at Kabaya.

[143] Regarding the witnesses so-called experts by Mugesera Léon, the Public Prosecution maintains that there are no experts used in the appealed judgment, rather the testimonies given by these experts in various judgments adjudicated by the International Criminal Tribunal for Rwanda (for example, in Akayesu case and Nyiramasuhuko Pauline et al. case) and the testimony given in the judgment against Mugesera Léon tried in Canada, those testimonies served for defining some terms contained in the speech made by Mugesera Léon at Kabaya inciting the citizens to commit genocide. It sustains that some terms particularly defined on basis of the context in which they were used are “cockroaches”, “*accomplices of the invaders of the Country*”, the terms which were used by those who incited to the intent of genocide, but they avoided to explicitly mention the Tutsi, and these terms are in the speech of which Mugesera Léon is accused, in which he mentioned that it is these persons whose the necks could be cut off, they should be killed and pass by the

shortcut in Nyabarongo for returning in their home country “Ethiopia”.

DETERMINATION OF THE COURT

[144] The Article 18 of the Law N° 47/2013 of 16/06/2013 relating transfer of cases to the Republic of Rwanda provides that *“Both the prosecution and the accused have the right to appeal against any decision taken by the High Court upon one or all of the following grounds : 1° an error on a question of law invalidating the decision ; 2° an error of fact which has occasioned a miscarriage of justice”*.

[145] Article 65 of the Law N°15/2004 of 12/06/2004 relating the evidence and its production provides that “it is the Court which only weights that the testimonies of the witnesses are in line with the subject-matter, accurate and should be admitted or rejected”.

[146] The Court finds that the High Court did not err in opting for hearing 28 witnesses instead of hearing all witnesses interrogated by the Prosecution, given that it is the Court which examines the testimonies of the witnesses and decides about the testimonies that are in line with the nature of the case and the facts, it was not in the interest of the justice and the parties to summon the witnesses who do not have the knowledge of the subject-matter, and who could not help the Court to attain the

truthfulness need as provided under the Articles 2⁴⁸ and 65⁴⁹ of the Law N°15/2004 of 12/06/2004 relating evidence and its production.

[147] The Court finds that the grounds on which Mugesera Léon relied to criticize the witnesses interrogated about the speech for which he is accused to have held at Kabaya on 22/11/1992 and those grounds have been examined by the High Court on the first instance as indicated in the judgment it rendered, from the paragraph 67 to 69, where he mentioned that the witnesses held the contradictory statements because they related the facts to which they did not witness, there are the terms of which they accuse him which are not included in the speech of which he is accused to have made at Kabaya and they do not mention the principal statements included in the speech submitted to the Court, there are some witnesses who pleaded guilty and admitted the charges, they falsely accuse him for exonerating themselves, others falsely accuse him on basis of their relationship with the persons killed.

[148] The Court finds that, in the paragraph 71 of the appealed judgment, the High Court exactly motivated its decision of relying on the testimonies of the witnesses mentioned in the judgment, where it indicated that their testimonies are consistent, given that, even if they related the facts in their own words, the

⁴⁸ The Article 2 of the Law above mentioned herein provides that the evidence in the case is the procedure used to point out the truthfulness of the facts.

⁴⁹ The Article 65 of the Law above mentioned herein provides that it is the Court which only weights that the testimonies of the witnesses are in line with the subject-matter, accurate and should be admitted or rejected.

facts they relate are similar to the speech made by Mugesera Léon at Kabaya as heard on the “CD” and its transcription. It also observed that the manner in which the witnesses related what they heard themselves or hearsaid indicates that they relate what they know because all recount the principal topics which convey the message inciting to commit the genocide including qualifying the Tutsi as cockroaches, accomplices of the country invaders, they should cut off their necks and pass by the shortcut through Nyabarongo to return in Ethiopia from where they came, the mistake committed in 1959 is that they let them run away and their children had invaded the country. It also observed that the witnesses recount on the fact that the speech of Mugesera Léon triggered the attacks in which many Tutsi were killed in Gisenyi and the vicinity, while others’ houses were destroyed.

[149] The Court also observed that the testimonies on which relied the High Court had been correctly analysed, given that, apart from comparing them with what it heard on the “CD”, in the paragraph 75 of the appealed judgment, it noted that the testimonies of the witnesses are similar to the articles of the newspapers which reported the speech of Mugesera Léon and its effects including Umurangi N° 14 of 10/12/1992 which reported that Mugesera Léon held at Kabaya a speech that they should cut off the Tutsi necks and throw them in Nyabarongo, Rwanda Rushya N° 34 of December 1992 which reported that Mugesera Léon stated in the meeting at Kabaya that there are the Ethiopian Rwandans which should pass by Nyabarongo for quickly getting there, Isibo of 24-31 December 1992 which reported that the statements of Mugesera Léon at Kabaya had been implemented by Interahamwe and Impuzamugambi at Kibirira on 28/12/1992, Kinyamateka N° 387 published in February 1993 reported about

the speech of Mugesera Léon given at Kabaya implicitly inciting the residents of Gisenyi to kill their opponents⁵⁰.

[150] The Court also observes that, in weighing the testimonies given, the High Court noted that their statements were similar to those of the experts including the International Commission on Human Rights which, in its report of 07-21/10/1993, pointed out the speech of Mugesera Léon as the person who seriously incited to the atrocity, Rumiya Jean, a University lecturer, who sent to Mugesera Léon an open letter of 02/12/1992 denouncing his speech which incited to kill the Tutsi and the MRND opponents and Philip Reyntjens, a University lecturer, who wrote that the speech held by Mugesera Léon at Kabaya in 1992 was triggering, because it incited to kill the Tutsi and the politicians opponent to the regime which was in power.

[151] The Court observes that the High Court did not err in its analysis because it examined the substance of the testimonies that were given by comparing them with the statements they made and other evidence available before giving the testimonies as explained in the previous paragraphs, especially the statements they made are similar to the taped speech of Mugesera Léon for which he is accused and also recorded on “CD” and which had been transcribed. The High Court also clearly expounded that the fact that some of witnesses are relative, others have common religious affiliation, others may have discussed together before giving the testimonies cannot exclude the Court from relying on their testimonies because they are consistent and similar to other evidence produced by the Public Prosecution.

⁵⁰ Paragraph 75 of the appealed judgment N° RP 0001/12/CCI.

[152] The Court also observes that, as indicated in the paragraph 72 of the appealed judgment, in invalidating the grounds on which Mugesera Léon relied by supporting that the High Court could not rely on the testimonies of some witnesses who made the statements dissimilar to the speech for which he is accused and others who did not repeat the terms mainly used in that speech, the High Court based on the judgments rendered by the International Criminal Tribunal for Rwanda including Bikindi Simon⁵¹ and Muvunyi Tharcisse⁵² cases which upheld that the testimonies given after a long time are considered for their substance, even if the witnesses used their own words in relating what they heard themselves or hearsaid.

[153] The Court of Appeal concurs with the guideline above mentioned given that the witnesses heard or hearsay the speech for which Mugesera Léon is accused to have made at Kabaya, each one, after a long time, retained in his mind the statement which affected his heart, and in explaining it, he can use his own terms, the Court has the duty to assert that the testimony given is in line with the nature of the subject-matter and accurate, this has been done by the High Court in comparing the testimonies given and other evidence submitted to it included in the case file above mentioned herein.

[154] Concerning the statement of Mugesera Léon that there are prisoners who falsely gave the testimonies because they have been promised the sentence reduction, where he mentioned the example of those who admitted that they falsely witnessed

⁵¹ ICTR-2001-72-T, The Prosecutor vs. Bikindi Simon, 2nd December 2008, para.32.

⁵² ICTR-00-55A-T, The Prosecutor vs. Muvunyi Tharcisse, 11th February 2010, para. 56, 58, 91-94.

including Bandora and Mwigimba, the Court observes that, apart from the fact that he did not produce the evidence to that effect, he does not demonstrate its link with his case under litigation.

[155] The Court observes that, concerning the expert witnesses who are criticised by Mugesera Léon, that Ntakirutimana Evariste and Ruzindana Mathias provided the definition of the words “*inyenzi*” (cockroaches) and “*ibytso*” (accomplices) by relating them with the Tutsi, while they allegedly do not have enough knowledge of the lexicology. The Court observes that the experts mentioned in this paragraph have been used by the International Criminal Tribunal for Rwanda in Muvunyi Tharcisse and Nyiramasuhuko Pauline⁵³ cases, in which they indicated that these terms have been used by the politicians who did not wish that the foreign countries could discover the intention they had against the Tutsi.

[156] The Court observes that, in his pleading in the High Court, Mugesera Léon relied on the definition provided by the expert Kamanzi Thomas who stated in the Canadian Court that the term “*inyenzi*” (cockroaches) means “*inyeshyamba*” (rebels), the term “*ibytso*” (accomplices) does not mean the Tutsi, rather it means those who accepted to cooperate with the enemies who attacked Rwanda, and “*inzoka*” (snake) can mean a crafty. The Court also observes in the High Court, Mugesera Léon pleaded by sustaining that the words do not have the meaning, they have the use (*les mots n'ont pas de sens, ils ont des emplois*⁵⁴).

[157] The Court observes that, in the paragraph 42 of the appealed judgment, it is the High Court which provided the

⁵³ ICTR- 98-42-2183/01 adjudicated by ICTR on 14/12/2015.

⁵⁴ Paragraph 34 of the appealed judgment N° RP 0001/12/CCI.

definitions of « *inyenzi n'ibitso byazo* », « *inzoka* », « *abohereje abana babo mu Nkotanyi* », « *abemerewe gusohoka mu gihugu mu 1959* » by contextualizing those terms in the periods in which the Tutsi lived, they were killed simply because they cooperated with Inkotanyi who had attacked Rwanda, it ruled that those terms denoted the Tutsi, the Court of Appeal concurs with the conclusion taken by the High Court because it analysed those terms by contextualizing them on basis of the testimonies given by Kadogo Hachim, Nyirabagirishya Raphaël, PME, Ngerageze Muhamudu, Ntawuruhunga Hassan, and Hategekimana Iddi who asserted that they considered that speech as inciting to the killing of the Tutsi, because after the meeting, they began to kill, loot and destroy the Tutsi houses⁵⁵. It also observes that concerning the fact that the term “*inyenzi*” used in the speech of Mugesera Léon for which he is accused means the Tutsi, the Court concurs with the author Susan Benesch⁵⁶ who analysed the use of this term in different periods of Rwandan history.

[158] The Court observes that the appeal ground of Mugesera Léon, who criticises the fact that the High Court relied on the testimonies of the experts who do not have knowledge, is not founded, given that the High Court did not use them as witnesses

⁵⁵ Paragraph 78 of the appealed judgment N° RP 0001/12/CCI.

⁵⁶ The term “*inyenzi*” was coined in the 1960s to refer to Tutsi rebel fighters who conducted night time attacks in Rwanda and then disappeared before daylight into neighboring countries. In the early 1990s the term referred to the Tutsi rebels of the RPF, but it also came to mean perceived enemies of the Hutu government, and later any Tutsi person, “*inyenzi*” was a leitmotif of MUGESERA’s speech. Since the meaning of the word changed dramatically over time, it cannot be understood without asking: **what did it mean to a particular audience at a particular moment?**” (Susan Benesch: “Vile crime or inalienable right: Defining incitement to commit genocide” in *Virginia Journal International Law*, p. 486).

in the judgment it adjudicated, rather it carried out its proper analysis of the terms as explained in the previous paragraph, it emphasized the definition it provided to the terms above mentioned on basis of the definitions provided by the experts Ruzindana Mathias and Ntakirutimana Evariste used by the International Criminal Tribunal for Rwanda in which they explained that the terms “*inyenzi n’ibytso byazo*” (cockroaches and their accomplices) were used to mean the Tutsi by using the implicit statement to not enable the foreign countries to discover the intention of the regime that was in power in persecuting the Tutsi.

[159] It also observes that in emphasizing the definition it gave to the terms « *inyenzi n’ibytso byazo* » (cockroaches and their accomplices) and the term “*inzoka*” (snake) it based on the document of 21/09/1992 from the Military High Command taken into account in the report of the experts⁵⁷ which also mentions that the enemy evoked in that period was a Tutsi residing in the Country, this gives the substance to the definition of the terms provided by the Court.

[160] The Court also observes that the definitions provided by Ruzindana Mathias and Ntakirutimana Evariste on the terms “*inyenzi n’ibytso byazo*” (cockroaches and their accomplices) are similar to the definitions of the Supreme Court of Canada which defined the word “*inyenzi*” (cockroaches) used in the speech of Mugesera Léon for which he is accused has the origin in the attacks of the Tutsi refugees waged in 1960 for the purpose of their repatriation, Mugesera Léon used it with connotation to the term “*Inkotanyi*” when he stated that those who attacked

⁵⁷ Report of the International Commission of Investigation on Human Rights Violations in Rwanda from 01/10/1990, p. 63.

Rwanda do not deserve the qualification of Inkotanyi, rather they deserve to be qualified as “*inyenzi*” (cockroaches), even if he stated that the *inyenzi* accomplices should be killed for avoiding the mistake committed in 1959 by letting them flee, by contextualizing these terms in the periods they were used when more than 2,000 Tutsi were killed between 1990 and 1993, it concludes that “*inyenzi n’ibitso byazo*” (cockroaches and their accomplices) mentioned mean the Tutsi.⁵⁸

[161] The Court observes that concerning the insufficient knowledge evoked by Mugesera Léon on the experts used by the International Criminal Tribunal for Rwanda, he does not have any basis, given that the definition they provided to the term “*inyenzi*” (cockroaches) is in line with the writings of other experts not criticised by Mugesera Léon including General Romeo Dallaire, commandant of the international peacekeeping force in Rwanda and Mugesera Léon recognized him as one of the experts who were in Rwanda, Dallaire stated that “Hutus leaders, editors and broadcasters famously described Tutsi people as Inyenzi or cockroaches”⁵⁹.

[162] The Court observes that, basing on the explanations provided in the previous paragraphs, the appeal ground of Mugesera Léon who submits that the High Court convicted him on basis of the speech held at Kabaya by relying on the untrue testimonies is not founded.

⁵⁸ Supreme Court of Canada, file No 30025, MUGESERA vs. Canada (Minister of Citizenship and Immigration), para. 68.

⁵⁹ Romeo DALLAIRE: Shake the hand of the devil, 2005, p.142.

2.2. Regarding the witnesses accusing him for the speech he held in the meeting at Nyamyumba.

[163] Mugesera Léon, assisted by Counsel Rudakemwa Jean Félix, supports that, apart from the fact that he did not participate in the meeting of which he accused and that had been held at Nyamyumba on 06/07/1992, he thoroughly analysed and noted that the witnesses Rwasubutare Callixte and Sinayobye André plotted to falsely accuse him because he noticed that the written testimonies submitted by both persons are similar in their content and writing, and the signature on the testimonies alleged to both is the one of Rwasubutare Callixte as it is similar to the one on his letter of 2010/2008 he saw in the prison, but before the High Court both sustained that they were not together when the submitted their testimonies.

[164] Mugesera Léon also criticises those who accuse him of having participated in the meeting allegedly held at Nyamyumba by supporting that they accuse him of being together with the Secretary General of MRND, Habimana Bonaventure, and Ngirumpatse Matthieu who was allegedly the Chairperson of MRND, however on this mentioned date, both persons were not in these managing positions alleged to them. Moreover, if he was together with both persons, he could not make a speech as there were his hierarchical leaders in the party of MRND at national level.

[165] The Public Prosecution avers that in the meeting held at Nyamyumba on 06/07/1992, Mugesera Léon made a speech inciting the Hutu to murder the Tutsi because they are enemies who intend to kill them, they are “*inzoka*” (snakes), they caused disabilities to the Hutu ancestors, therefore they should chase them, catch them, expel them by the shortcut to get where they

came from in Abyssinia and exterminate them because those who attack them are their descendants born in foreign countries. It further sustains that Mugesera Léon is accused of these acts by Sinayobye André and Rwasubutare Callixte who had been Interahamwe and they maintain that after the meeting, themselves together with others killed the Tutsi residing in that region.

[166] The Public Prosecution also expounded that there was no conspiracy between both witnesses because they stated what they heard themselves in the meeting in which they were present and during the investigation they recalled the content of their statement incriminating Mugesera Léon, therefore, the High Court considered their statements as consistent.

DETERMINATION OF THE COURT

[167] The article 62 of the Law No 15/2004 of 12/06/2004 relating to the evidence and its production provides that the testimony is the statement made before the Court by the person who witnessed the fact or hearsay himself/herself concerning the subject-matter, and the article 71 of the same Law provides that all the witnesses who contribute to the fair adjudication of the case deliver their statement about it.

[168] The High Court in weighing the testimony of Sinayobye André and Rwasubutare Callixte, based on the fact that both witnesses, even if each one relates the facts in his own words, recount the fact that in the meeting held at Nyamyumba, Mugesera Léon incited the Hutu to fight and kill the Tutsi, he reminded them their enmity against their parents and the fact that they detailed as the persons really present, the consequences arising from that speech. The Court also noted that the fact that

both witnesses submitted the common written testimony does not invalidate their testimony because they recalled it during the investigation and the interrogation before the High Court and Mugesera Léon does not indicate the false testimony they gave against him.

[169] The Court really observes that Rwasubutare Callixte and Sinayobye André detailed their testimony before the Public Prosecution and the High Court and Mugesera Léon was granted the opportunity to cross-examine them before the same Court, they related the facts as they witnessed them and they themselves admitted that they played a role in persecuting and killing the Tutsi after having heard the speech of Mugesera Léon.

[170] The Court observes that as the participants in the meeting, each one makes a specific statement relating to the speech of Mugesera Léon, for example RWASUBUTARE Callixte mentioned that Mugesera Léon told that the one who wants to surpass another awaits him/her and he told them that to pass by the shortcut is to exterminate (pages 111-112), and SINAYOBYE André, in his testimony, maintained that he asked them if they do not know to distinguish the herb (bad) from the cob (good), and he told them to understand the ongoing war and its origin, he reminded them the Rwandan history from 1959 and the attacks waged by the Tutsi in 1963, 1973 and 1990. Sinayobye André detailed the conditions in which for the *interahamwe* (including himself), the uniforms and the busses to bring them in the meeting were requested, Habimana Bonaventure gave them 2 busses, when they were going in the meeting held at Budaha, the lists of *interahamwe* were drafted, then after they were brought to the MRND palace at the Prefecture where they were given uniforms and the tools for chasing the Tutsi (pages 116-121). It observes

that the explanations given by both persons indicate that they related what they witnessed themselves, therefore, their testimony should be declared valid as decided by the High Court.

[171] The Court also observes that Rwasubutare Callixte and Sinayobye André similarly relate the principal aspects of the meeting held at Nyamyumba, both recount that it was held at Trinité Kivumu school, among the leaders who participated in the meeting there were Mugesera Léon, Habimana Bonaventure and Ngirumpatse Mathieu, Habiyaambere Cosima, Banzi Wellars, Colonel Gahimano and Karemera Egide, that Mugesera Léon detailed the history of the Tutsi enmity, and the necessity to return them in their region of origin Abyssinia, the youth participating in the meeting were requested to chase the Tutsi and they immediately attacked those who resided in the vicinity. It observes that the fact that they relate the facts almost similar as the participants in the same meeting, on the same date, when particular acts happened cannot be considered as defect as Mugesera Léon tends to put that it is conspiracy, rather it must substantiate their testimony because it is founded given that the fact that they similarly relate the facts is not due to the conspiracy, but it is due to the fact that they similarly witnessed the facts.

[172] The Court observes that the pleading ground of Mugesera Léon by supporting that the witnesses gave false testimony against him because on 06/07/1992 Habimana Bonaventure was not the Secretary General of MRND and Ngirumpatse Mathieu was not the Chairperson of MRND and he could not make a speech in a meeting in which his hierarchical leaders at national level participated, that ground is unfounded, given that Mugesera Léon himself admitted that Habimana Bonaventure and Ngirumpatse Mathieu were members of the managing organs of

MRND and the witnesses maintained that they knew them because everyone among the guests introduced himself to the participants in the meeting and presented his position, the fact that the witnesses do not similarly mention the leader and his position in the party does not constitute a defect that can invalidate his testimony on basis of the long time elapsed, from the time of the occurrence of the fact to the date of giving the testimony. It also observes that Mugesera Léon, who was a leader in MRND in Gisenyi Prefecture and he himself admits that in the same period he crossed everywhere in the Country to hold the meetings convened by MRND party sensitizing about “the four satanic horns”, cannot rebut the testimony incriminating him that he had been at Nyamyumba where he held a speech inciting the Hutu to kill the Tutsi.

[173] The Court observes that Rwasubutare Callixte and Sinayobye André, as some of the members of interahamwe militia affiliated to MRND party, by the testimony they gave about Mugesera Léon, themselves explained their role in the crimes committed on 06/07/1992, where they admitted that they looted and killed some of the Tutsi who were residing in Nyamyumba and its vicinity, it does not notice any interest for them to falsely accuse Mugesera Léon on the crimes in which they participated and for which they had been sentenced.

3. Whether the High Court erred in deciding that Mugesera Léon committed a crime of being accomplice of genocide perpetrators because of inciting to commit genocide.

[174] Mugesera Léon supports that if the High Court had analysed and contextualized the speech held at Kabaya, it could notice that the one who held it did not commit a crime, but that

Court erred in convicting him of the crime of inciting to commit genocide by disregarding that such speech was made by the time when Rwanda was attacked by Uganda as admitted by the President Yoweri Museveni of Uganda on 10/10/1990 when he stated that the Rwandan armed forces would not resist against his armed forces equal to 400,000 excellent in fighting , as stressed by a Dutch witness who gave the testimony in Canada and who asserted that the Ugandan armed forces attacked Rwanda, that Remigius Kintu in his book, he wrote that the President Paul KAGAME had serial number 00007 by that time, there is a telegram from Belgium Embassy in Ottawa on 16/07/1987 which stated that there were the American and Canadian experts equal to 300 who were training Tutsi armed forces of RPF for attacking Rwanda.

[175] He also puts that another evidence indicating that Rwanda was attacked by Uganda is that the soldiers from Uganda had infiltrated the civilian population as stated by the Senator Tito Rutaremara when Rwanda was attacked, as emphasized by Philippe Reyntjens in 1994, where he explained the conditions in which the war occurred, meaning that Rwanda should defend itself as indicated by some terms used in that speech relating to “not being invaded” or “ I never accept that we would accept to be shot” or “ the persons called Inyenzi came to attack us, but they had been repelled outside the border”, but the term “Inyenzi” does not mean Inkotanyi.

[176] He sustains that the High Court disregarded that the speech was made by the time many persons in Byumba were displaced from their property by the war, also there were the persons who misappropriated their relief so that the Red Cross stopped to provide it, as written by Philippe Reyntjens in the book

above mentioned, but MUGESERA Léon was against the war, rather he requested to stop it by consensus because he requested to the President MUSEVENI to stop it and renounce to attack Rwanda, he requested to the United States of America and Canada to place the armed forces on the border of Rwanda and Uganda to halt the war, but it was not so done.

[177] He further expounds that the High Court also disregarded that such speech was held by the time preceding the election of parties which were actively campaigning, if it had thoroughly analysed and contextualized it by 1992, instead of contextualizing it by 1994 and 2020, it could notice that the one who made it did not commit a crime because he did not have the intent of inciting to commit genocide, rather he had the intent of instilling the democratic spirit through the election, given that the term “election” had been used 17 times and it is the only term that the citizens had captured in their mind as he concluded the speech by such term as indicated on the page 17 of the judgment copy.

[178] He also maintains that the High Court erred by butchering the speech held at Kabaya, because there are some parts where it skipped some principal terms, for example there is the part where it is written “ellipsis” (...) where it put other terms not mentioned, it considered the terms into the speech with the intent to convict him of the crime he did not commit, it disregarded the Law n° 15/2004 of 12/06/2004 relating evidence and its production which provides that the evidence should be altered, rather if it considered the whole speech and contextualized it, it could note that the one who gave it stated the election as above explained.

[179] He further explains that the High Court disregarded the applicable laws because if it did not disregard them, it could notice that the one who made the speech at Kabaya did not

commit the crime of inciting to commit genocide, the lists mentioned in that speech are not the lists of the persons to be killed, rather there were the lists of the persons to be submitted to the judicial organs for being tried for the crimes they had committed, for example, where he stated that “he shall be liable to death penalty any person who shall recruit young persons from the population and give them to the foreign armed forces who are attacking the Republic of Rwanda”, because those who are liable for those acts should be sentenced by the judicial organs, given that those acts were prohibited by the Constitution of 1991 and punished by the penal code of 1977.

[180] He also sustains that the High Court could not convict him on basis of the speech held at Kabaya, because the one who made it used the conditional tense, meaning that the denotation could happen or not, for example where he stated “if, if they do it, if they have done, if a period elapsed, he will be sentenced to, if they once strike you on the cheek, strike them twice on the other cheek so as for them to collapse on the ground without being able to recover”, because when they do not strike you, you also you do not strike anyone, there is the part where he used the future tense, for example where he stated “he will be sentenced to” and there are also cited sequences, for example, where he cited “You heard yourselves what was stated by the Prime Minister: “They are going to run to marshland”, “You heard”, “you have spent days hearing”, and the part where he made a petition as democratic act, for example where he stated “you could write to him”, “You could write to him and inform him”.

[181] He adds that the High Court could not rule that he incited to commit genocide, given that the speech he held at Kabaya was not followed by the murder of the Tutsi as asserted by Counsel

Mbonampeka Stanislas who was the Minister of Justice in 1992 and stressed by Eric Gillet and Mrs Alison Des Forges in his case tried in Canada and Professor Filip Reytdjens assured that Nsanzuwera, who was then the Public Prosecutor in Kigali, told him that by virtue of laws, he could not have room to initiate proceeding for prosecuting Mugesera Léon.

[182] Counsel Rudakemwa Jean Félix, assisting Mugesera Léon, avers that this Court should rectify the errors committed by the High Court above mentioned and rule that Mugesera Léon is innocent.

[183] The representative of the Public Prosecution sustains that primarily in case Mugesera Léon does not admit that it is not him who made the speech of Kabaya for which he has been tried, he has no right to interpret it nor to support that it had been altered, rather he should admit that it has been held by him, then after, explain how the High Court butchered it and misinterpreted it so that it reached to a conclusion that is unjust for him, but he must not pretend that the speech has been butchered and misinterpreted while he does not remember the speech he gave. Moreover, he did not sustain before this Court that if the High Court had maintained the extracts, it omitted they could make the original version of the speech he made, given that it is not the speech which had been accused, rather it is Mugesera Léon who had been accused for the speech he held at Kabaya.

[184] He avers that subsidiarity, in case this Court opts for interpreting the speech made at Kabaya, it observes that the High Court did not err in convicting Mugesera Léon for the crime of inciting to commit genocide on basis of the speech made in the meeting held at Kabaya on 22/11/1992 recorded on the tape and CD, because, according the copy of the appealed judgment, that

Court analysed the speech and noticed that it was made by him, it points out that the terms he used constitute the crimes including the incitement to commit genocide, it indicates the legal provisions on which it relied by convicting him and during the pre-trial conference of 30/01/1997, Mugesera Léon admitted in Canada that the taped speech transcribed by the expert is completely similar with the speech he held at Kabaya, and because of such speech, Canada expelled him from its territory so that he was transferred in Rwanda, and before this Court, he admitted himself that he was at Kabaya and he held there a speech that he allegedly does not remember, however he did not produce any evidence contradicting the motivation of the High Court in convicting him, and he did not indicate the legal provisions that it violated.

[185] He expounds that Mugesera Léon could not support that the High Court disregarded to contextualize the speech held at Kabaya because he pretends that he does not remember it, apart from that issue, that Court did not disregard it, given that in the paragraphs 42 to 46 and in the paragraphs 115 and 165 of the appealed judgment, that Court contextualized the speech that Mugesera Léon gave at Kabaya by the wartime prevailing in Rwanda from 1990, it observed that Mugesera Léon committed the crimes on basis of the message contained in that speech according to which the Hutu should exterminate Inyenzi and their accomplices, return them in Ethiopia through Nyabarongo, and that speech triggered the genocide against the Tutsi because after making it in 1992, the Tutsi were immediately killed.

[186] He puts that another evidence indicating that the Court contextualized the speech of Kabaya is that it convicted Mugesera Léon on basis of the report of the International

Commission for Investigation of March 1993 which points out the general context prevailing in Rwanda from 1990 to 22/11/1992 when Mugesera Léon delivered such speech and indicates that by that time the anti-Tutsi acts were perpetrated.

[187] He also sustains that the fact that Rwanda was in wartime when Mugesera Léon delivered the speech does not preclude him from the liability for the crime of inciting to commit genocide, because the article one of the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948 provides that the genocide can be committed in time of peace or in time of war, but Mugesera Léon did not demonstrate that the words he used at Kabaya on 22/11/1992 that “they committed the mistakes of letting the Tutsi leave the country and flee” were addressed to the Ugandans and that their necks should be cut off.

[188] He adds that the High Court did not err in analysing each part of the speech held by Mugesera Léon at Kabaya, given that in the hearing of 10/02/2020, he supported that the speech he delivered at Kabaya was composed of the following principal four (4) parts: Avoid MDR kick, not to be invaded, their attitudes to avoid the traitors and the behaviour during the election, and all those parts do not concern the election because they convey different elements including the terms related to the genocide, for example the snakes (inzoka), to purchase the machetes to cut off the Tutsi’s necks and to pass them through Nyabarongo for returning in the home country Ethiopia, and there is a part where he exhorted those who have the money to bring it for use, rather if that Court has taken into account the frequency of terms, it could decide that Mugesera Léon incited to commit genocide as it did on the term “Inyenzi” used 27 times and the term “amatora”

(election) that Mugesera Léon pretexts that it has been used several times equal to 15.

[189] The Court questioned the representative of the Public Prosecution if the High Court erred or not in deciding that Mugesera Léon had been accomplice of genocide perpetrators, he replied that Mugesera Léon should be convicted of the crime of inciting others to commit genocide instead of the crime of being accomplice of genocide perpetrators as those are two different crimes, and this Court has the jurisdiction to change the qualification of the crime at any stage of the hearing as upheld in the case N° RPAA 0117/07/CS rendered by the Supreme Court on 17/09/2010.

[190] He expounds that the High Court should not convict Mugesera Léon of the crime of being the accomplice of the genocide perpetrators, rather it should convict him of inciting others to commit genocide given that it is a specific crime, different from the first one, given that it is provided under the article 3 of the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948 incorporated in the Rwandan penal code, meaning the Organic Law of 30/08/1996 which punished the crime of genocide, the Organic Law which governed the Gacaca Courts of 2000, 2004 and 2008 repealed and the Organic Law instituting the penal code of 2012 applicable by the time Mugesera Léon was tried in the High Court.

DETERMINATION OF THE COURT

[191] The Article 18, paragraph one of the Law N° 47/2013 of 16/06/2013 relating to transfer of cases to the Republic of Rwanda provides that “*Both the prosecution and the accused*

have the right to appeal against any decision taken by the High Court upon one or all of the following grounds : 1° an error on a question of law invalidating the decision ; 2° an error of fact which has occasioned a miscarriage of justice”.

[192] That article insinuates that the appellant should indicate to the Court of Appeal the errors of facts and the errors of law that occasioned the miscarriage of justice as well as the supporting legal provisions as upheld in the case n° ICTR-96-4-A of AKAYESU Jean – Paul adjudicated by the International Criminal Tribunal for Rwanda on 01/06/2001⁶⁰.

[193] The Article 3 c) of the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948 incorporated in Rwandan law by the Decree Law 08/75 of 12/02/1975 provides for the direct and public incitement to commit genocide.

[194] The Article 132, paragraph 3 of the Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code applicable by the time Mugesera Léon case was adjudicated at the first instance provides that “incitement, either by speech, image or writing, to commit such a crime, even when not followed by the commission is an act punished as the crime of genocide”. The Article 114 of such Organic Law provides that “*The crime of*

⁶⁰ “The role of the Appeals Chamber is limited to correcting errors of law invalidating a decision, and errors of fact which have occasioned a miscarriage of justice”, The Prosecutor v. Jean-Paul AKAYESU, n° ICTR- 96-4- A, para. 17, Judgment of 1 June 2001. Article 24 of the Statute of the International Criminal Tribunal for Rwanda provides that “The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds: (a) An error on a question of law invalidating the decision; or (b) An error of fact which has occasioned a miscarriage of justice.”

genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, whether in time of peace or in time of war : 1° killing members of the group, among others (...). ”

[195] Concerning the incitement to commit genocide, the International Criminal Tribunal for Rwanda upheld that “*The principal consideration is thus the meaning of the words used in the specific context : it does not matter that the message may appear ambiguous to another audience or in another context. On the other hand, if the discourse is still ambiguous even when considered in its context, it cannot be found beyond reasonable doubt to constitute direct and public incitement to commit genocide*⁶¹”, especially the Tribunal upheld that the elements to be considered include:

- a) The culture, including the nuances of the Kinyarwanda language to examine how a speech was understood by its intended audience in order to determine its true message⁶²;
- b) Examine if the one who held it was an official or a leader in order to determine if he was aware or could predict the consequences of the speech he delivered to his audience⁶³;

⁶¹ Ferdinand Nahimana Jean-Bosco Barayagwiza Hassan Ngeze (Appellants) v. THE PROSECUTOR (Respondent) Case No. ICTR-99-52-A, Judgment of 28 November 2007, para.701.

⁶² Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Appellants) v. the Prosecutor (Respondent) Case No. ICTR-99-52-A, Judgment of 28 November 2007, para.700.

⁶³ The Prosecutor v. Simon Bikindi Case No. ICTR-01-72-T, para. 136 and 137.

c) The purpose of the speech is indisputably a factor in determining whether there is direct and public incitement to commit genocide⁶⁴;

d) The fact that the speech occasioned the commission of genocide should be considered as evidence of the fact that the purpose of the one who held it was the incitement to commit genocide; even if those words may appear ambiguous they should be considered as intending to incite persons to commit genocide⁶⁵.

[196] Regarding this judgment, the casefile indicates that in paragraphs [38] to [49] and in paragraphs [110], [114], [117] and [118] of the appealed judgment, the High Court expounded that Mugesera Léon committed the crime of direct and public incitement to commit genocide provided under the legal provisions above mentioned because the speech he held at Kabaya on 22/11/1992 contained the words inciting the MRND militants who heard it to kill all or some Tutsi, for example, there is a part where Mugesera Léon stated that *inyenzi* (cockroaches) residing in the country sent their children on the battlefield to help *inkotanyi*, and he wondered himself if those parents should not be exterminated, and he wondered himself why they could not arrest those who bring those children and exterminate them. He also requested to put those persons on the list to be submitted to the judicial organs, in case they fail to judge them, the citizens should exterminate those bandits.

⁶⁴ Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Appellants) v. The Prosecutor (Respondent) Case No. ICTR-99-52-A, Judgment of 28 November 2007, para.706.

⁶⁵ Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Appellants) v. The Prosecutor (Respondent) Case No. ICTR-99-52-A, Judgment of 28 November 2007, para.703 and 709.

[197] The High Court also expounded that there is a part of the speech where Mugesera Léon requested the heads of cells to act together to crush the accomplice who penetrates the cell for not letting him to leave it, he requested the MRND militants to act together to provide the money in order to cut off their necks, because if they fail to cut off someone's neck, the latter would cut off their necks and he told to a partisan of PL⁶⁶ who derogated him that his home country is Ethiopia, that the mistake they committed in 59 even if he was still young is that they let them run away, that they would pass through Nyabarongo to quickly get there.

[198] In the paragraphs [43] and [114] of the appealed judgment, the High Court explained that even if in the meeting held at Kabaya, Mugesera Léon did not directly state that they should exterminate the Tutsi, but if it considers the words he then used, for instance to exterminate *inyenzi* (cockroaches) and the accomplices of those who attacked the country, and the context in which those word were then understood, it is evident that Mugesera Léon directly and publicly incited to kill all or some Tutsi, because the words “inyenzi” (cockroaches) or “ibyitso” (accomplices) he used intended to mean the Tutsi as explained by Mathias Ruzindana used by the International Criminal Tribunal for Rwanda in the case of Akayesu Jean Paul⁶⁷.

[199] Concerning the intent to commit the crime of incitement to commit genocide, in the paragraph [118] of the appealed

⁶⁶ PL= Parti Libéral.

⁶⁷ Case n° ICTR -96-4 -T, The Prosecutor vs AKAYESU Jean - Paul, rendered by ICTR on 02/09/1998, para. 147-150.

judgment, the High Court expounded that the special intent of Mugesera Léon to commit the crime of incitement to commit genocide is manifested by the words he used above mentioned, for example where he stated that he does not understand the reason why they did not exterminate the parents who sent their children to join Inkotanyi and those who brought them, and the fact that he reminded to a partisan of PL (it is evident that he was a Tutsi) that his home country is Ethiopia, that the mistake they committed in 59 is that they let them leave the country, but they would pass them by Nyabarongo to quickly get there and the fact that his audience would hear him and implement his speech because Mugesera Léon made his speech in Gisenyi Prefecture, where he was born, he was the deputy chairperson of MRND party, he was a University lecturer and an Advisor in the Ministry.

[200] The Court observes that, the fact that Mugesera Léon made a speech in the meeting held at Kabaya on 22/11/1992 and he told to MRND militants who were hearing him that he did not understand the reason why they did not exterminate *inyenzi* residing in the country, meaning the parents who sent their children to join Inkotanyi and those who brought them, the fact that he requested to prepare their list to be submitted to the judicial organs for judging them, that in case they failed to judge them, the citizens should fulfil the obligation of rendering themselves justice by exterminating them, the fact that he requested the heads of cells to crush an accomplice who penetrated the cell for not letting him to leave it, the fact that he requested those who have money to bring it in order to cut off their necks, the fact that he told to a partisan of PL that his home country is Ethiopia, that the mistake they committed in 59 is that they let them leave the country, that they would pass them by

Nyabarongo to quickly get there and the fact that Mugesera Léon as deputy chairperson of MRND party, a University lecturer and an Advisor in the Ministry, he held such speech well knowing that the Tutsi he called *inyenzi* were being killed in Kigali and elsewhere in the country and the fact that he well knew that his audience considered such speech as inciting them to kill the Tutsi because they considered him as an intellectual with political experience as above explained, indicate that Mugesera Léon committed the crime of public and direct incitement to commit genocide, given that he incited the citizens to exterminate all or some Tutsi on basis of their ethnic group as provided under the article 3 of the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948 ratified by Rwanda on 12/02/1975, rather than being the accomplice of the genocide perpetrators as decided by the High Court.

[201] The Court observes that another evidence which indicates that Mugesera Léon committed the crime of direct and public incitement to commit genocide is that the testimonies of Sinayobye André and Rwasubutare Callixte above mentioned indicate that in the meeting held at Nyamyumba on 06/07/1992, Mugesera Léon incited the Hutu to fight and kill the Tutsi, for example, where he told them that they should fight and exterminate the Tutsi because they oppressed their parents intending to appropriate themselves their country, and the speech was followed by disastrous consequences including killing, beating and looting the Tutsi as explained by the High Court in the paragraph [89] of the appealed judgment.

[202] The Court observes that the statement of Mugesera Léon that if the High Court did not butcher the speech he delivered at Kabaya on 22/11/1992, rather if it considered it as a whole in its

general context, it could notice that he requested that the election should be held, because it is the word which was used several times equal to 17 times, this statement is not grounded, because in the paragraph [18] of the appealed judgment, the High Court expounded that the Public Prosecution explained the whole speech on which it relied by accusing Mugesera Léon of the crime of incitement to commit genocide, the fact that the Public Prosecution insisted on some sentences that denote that he committed such crime, it did not err because, in terms of laws, it is not prohibited to consider some sentences of the speech conveying the message to be delivered by the one who held it and Mugesera Léon does not demonstrate the defect against those explanations.

[203] Furthermore, the Court observes that, even if in his speech, Mugesera Léon stated the words related to the election, not to be invaded and avoiding the kicks of MDR and PSD, opposition parties to MRND, this does not exclude the words above mentioned inciting the MRND militants to exterminate the Tutsi as above explained, because in his speech, Mugesera Léon continued to call the Tutsi inside the Country and the leaders of the opposition parties to MRND, *inyenzi* and accomplices of Inkotanyi who attacked the country, even if Mugesera Léon did not explicitly state that they should kill the Tutsi.

[204] The Court also observes that the statement of Mugesera Léon that the word retained by the citizens in their mind was “election”, as it is on it he concluded, is not founded because, as explained by the High Court in the paragraph [81] of the appealed judgment, the audience does not necessarily retain the concluding word, rather it can retain the surprising one, the fearing one, the interesting one, the hurting one and any other and Mugesera Léon

does not indicate the defect against these explanations. Moreover, the Court observes that the word “election” is not the one used several times by Mugesera Léon, rather it is the word “inyenzi” used 30 times.

[205] The Court observes that the statement of Mugesera Léon that the lists mentioned in his speech were not those of the persons to be killed is not grounded because, in that speech, he requested for the preparation of the lists of *inyenzi* or the parents who sent their children to join Inkotanyi and those who brought them in order to be tried by the judicial organs, in case they fail to judge them, the citizens would exterminate them and Mugesera Léon admitted to the journalist of « Quotidien Le Soleil⁶⁸ » that those who brought those children to join Inkotanyi were the recalcitrant Tutsi, meaning that they were the Tutsi whose names should be put on the lists for being killed.

[206]] The Court observes that the pleading of Mugesera Léon that the High Court disregarded that the speech delivered at Kabaya on 22/11/1992 was made when Rwanda was attacked by Uganda so that the soldiers had infiltrated the civilian population and many persons were displaced following the war is not founded, because in the paragraph [82] of the appealed judgment, the High Court expounded that Mugesera Léon did not give such speech as the representative of Rwanda, but he delivered it in the context of MRND party, as he did not hold any other managing position which conferred to him the power to deliver such speech as the representative of the state, meaning that by virtue of the laws, such speech cannot be considered as self-defence because

⁶⁸ Stated in the paragraph 70 of the case n° 30025 adjudicated by the Supreme Court of Canada on 28/06/2005, Mugesera Léon vs Minister of Citizenship and Immigration (MCI).

there was no act against Mugesera Léon that could justify the self-defence, as provided under the article 105⁶⁹ of Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code applicable by the time when the case of Mugesera Léon was adjudicated by the High Court, but Mugesera Léon did not demonstrate any defect against those explanations provided by the High Court.

[207] The Court finds that the statement of Mugesera Léon that the High Court disregarded that the one who held the speech at Kabaya requested for the enforcement of the laws in order to sentence to death penalty those who sent their children in Inkotanyi and those who brought them, the one who delivered the national territory and the one who demoralized the national soldiers during the wartime, as provided under the penal code, is not founded, given that he could not pretend to request for the law enforcement while that speech incited the population to exterminate the Tutsi and their accomplices as above explained.

[208] The Court also observes that the statement of Mugesera Léon that the High Court disregarded that the speech delivered at Kabaya does not incite to kill the Tutsi because all requirements were not met, as the one who delivered it used the conditional and future tenses, is not grounded, given that, through his speech, Mugesera Léon indicated to the MRND militants, who were hearing him, that all conditions are met for exterminating those they qualified as Inyenzi and their accomplices, he incited them

⁶⁹ The Article 105 of the Organic Law above mentioned provides that “A person shall be considered to act in self-defense when he/she commits an act to: 1° repel, during night, a person who breaks into an occupied place, enters it by force or trickery; 2° defends him/herself against perpetrators of theft or other criminals”.

to do so, for example, there is a part where he wondered himself why they should not prepare the lists of the parents inside the country who sent their children to join Inkotanyi for exterminating them, or where he requested their collaboration by giving the money for cutting off their necks, if they fail to cut off their necks, they would come to cut off their, or where he requested the heads of cells that they should crush the accomplices of Inyenzi who penetrated the cells they were heading for preventing them to leave them as above explained.

[209] The Court also observes that the statement of Mugesera Léon that the High Court should not decide that he incited to commit genocide because the speech he held at Kabaya was not followed by the killing of the Tutsi is unfounded, given that the public and direct incitement to commit genocide is a crime, even if the incited persons should not implement it, as provided under the article 3 c) of the Convention on the Prevention and Punishment of the Crime of Genocide of 09/12/1948 above mentioned, the Article 132, 3° of the Organic Law above mentioned, meaning that the Public Prosecution does not need to produce an evidence indicating that the speech of Mugesera Léon was followed by the killing of the Tutsi or violence acts.

[210] The assertions provided in the previous paragraph are similar to the decisions of the case n° 2005 S.C.R. 40 tried by the Supreme Court of Canada on 28/06/2005, in its paragraph 85, where it expounded that Mugesera Léon is accused of incitement to commit genocide, the Minister does not need to establish a direct causal link between the speech held by Mugesera Léon and any acts of murder or violence, and he does not need to demonstrate that his audience killed or tried to kill the members

of the group he targeted⁷⁰. This has been also upheld in the case n° ICTR-99-52-T adjudicated by the International Criminal Tribunal for Rwanda on 03/12/2003, in the paragraph 1029, which upheld that “With regard to causation, the Chamber recalls that incitement is a crime regardless of whether it has the effect it intends to have. In determining whether communications represent an intent to cause genocide and thereby constitute incitement, the Chamber considers it significant that in fact genocide occurred, that the media intended to have this effect is evidenced in part by the fact that it did have this effect⁷¹”.

[211] The Court observes that another evidence indicating that the statement of Mugesera Léon that the speech he held at Kabaya was not followed by the murder against the Tutsi is not founded, because the witnesses interrogated by the High Court asserted that after the speech held by Mugesera Léon, the Tutsi were immediately killed, their properties were looted and their houses burnt, as indicated in the paragraphs [71] and [167] of the appealed judgment.

4. Whether the High Court erred in deciding that Mugesera Léon committed the crime of persecution as constituting the crime against humanity

[212] [212] Mugesera Léon sustains that the High Court committed an error of law and an error of fact because it convicted him of the crime of persecution as constituting the crime against humanity, while he never targeted individuals nor

⁷⁰ Mugesera v. Canada (Minister of Citizenship and Immigration), Case number 30025, 28/05/2005

⁷¹ The Prosecutor v. Ferninand Nahimana, Jean-Bosco Barayagwiza, Hassan NGEZE case no. ICTR-99-51-T, para. 1029, 03/12/2003.

the opposition political parties to MRND, rather he targeted those who attacked Rwanda from Uganda.

[213] He also puts that the same Court convicted him of that crime disregarding that the speech held at Kabaya was made by the troubling time of political parties competition, when a political party considered a Ministry as its own preserve because it expelled the partisans of other parties so that they dismissed the staffers of opposition parties (reciprocity), the example is the part where the one who held the speech stated that “they have to prevent against kicks of MDR, PL, FPR, PSD and PDC to which they exposed themselves in this time”, but he never stated that Uwilingiyimana should be removed from the Ministry of Education and sent to her home.

[214] He also avers that the High Court disregarded the laws because, if it did not disregard them, it could notice that the one who held the speech did not commit a crime, the example is where he stated that “he shall be sentenced to death penalty any person who shall demoralize the Rwandan soldiers on the battlefield”, as stated by Nsengiyaremye who was the Prime Minister, or “he shall be sentenced to death penalty any person who shall gave up a part of the national territory”, as done by Twagiramungu, who then gave up Byumba Prefecture, Nsengiyaremye and Twagiramungu should be punished by the judicial organs because their acts were prohibited by the Constitution of 1991 and the penal code of 1977, and they are also prohibited in present time, because any person who should demoralizes the Rwandan armed forces or who should give up to FDRL one of the Rwandan provinces or who should attack Rwanda and the one who should aid him should be punished according to the laws as upheld in the case n° RP

0009/14/HC/MUS pronounced by the High Court, the Chamber of Musanze on 12/03/2015 in which the FDLR partisans were sentenced for having attacked Rwanda.

[215] He adds that the one who held the speech at Kabaya did not commit any crime because where he stated that “those who were seeking power went in negotiations in Belgium like MDR, PL and PSD, they promised to deliver Byumba Prefecture, to demoralize our soldiers” those words related to the “Brussels conspiracy”, and he was not mistaken because the negotiations really took place, as explained by Philippe Reyntjens, in his book published in 1994, in which he explained the conditions of the attacks against Rwanda and the conditions in which the political parties like MDR, PL and PSD had no mandate to participate in the negotiations, rather the mandate was under the responsibility of the Government of Rwanda, as highlighted by Pierre Payant, in his book published in 2005, but Mugesera Léon did not submit this book as exculpatory evidence in this case because it has been seized by the Director of the Prison as it allegedly defames the incumbent Rwandan regime.

[216] The representative of the Public Prosecution sustains that the High Court did not err in convicting Mugesera Léon of the crime of persecution as constituting the crime against humanity because, as above explained, the same Court analysed and contextualized the speech held at Kabaya and it noticed that by the words used, like qualifying the Minister of Education as arrogant, the politicians opponent to MRND were targeted and killed all over the country, but, in this case Mugesera Léon did not produce any evidence contradicting the evidence on which the High Court relied in convicting him of such crime, including the testimonies of the prosecution witnesses and the final report

of the International Commission for Investigation on Human Rights Violations in Rwanda from 1 October 1990 published in March 1993 and the representatives of different human right associations including CLADHO (Comité de Liaison des Associations de Défence des Droits de l'Homme).

DETEMINATION OF THE COURT

[217] The Article 18, paragraph one of the Law N° 47/2013 of 16/06/2013 relating to transfer of cases to the Republic of Rwanda above mentioned provides that “Both the prosecution and the accused have the right to appeal against any decision taken by the High Court upon one or all of the following grounds : 1° an error on a question of law invalidating the decision ; 2° an error of fact which has occasioned a miscarriage of justice”, for his appeal to have merit.

[218] Regarding this case, the crime against humanity is one of the crimes recognized by the customary international law as acts violating the fundamental human rights as upheld by the International Criminal Tribunal for Rwanda in AKAYESU Jean Paul case⁷² and they should be punished by all States even if they are not provided under domestic laws as the States and the International Criminal Tribunals have incorporated them in their criminal law, for example, the article 7.2. (g) of Rome statute of International Criminal Court in force on 01/07/2002 provides that “Persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”⁷³. The crime against

⁷² Case No ICTR-96-4T, The Prosecutor v. AKAYESU Jean Paul, p.6.

⁷³ Article 7.2 (g) of Rome statute of International Criminal Court,

humanity is also provided under the article 6, c) of the Charter of the Nürnberg Tribunal⁷⁴ and the article 3 of the Statute of the International Criminal Tribunal for Rwanda as one of the acts committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds⁷⁵ as explained by the High Court in the paragraph [158] of the appealed judgment.

[219] The article 120 of the Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code applicable by the time of the adjudication of the appealed judgment provides that “ The crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population because of its national, political , ethnic or religious affiliation: 1° murder; 2° extermination; (...); 8° persecution against a person on political, racial, national, ethnic, cultural, religious grounds or any other form of discrimination(...)”⁷⁶.

⁷⁴ Article 6, c) of Charter of the Nürnberg Tribunal: “Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated”.

⁷⁵The Article 3 of the International Criminal Tribunal for Rwanda: “The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:(a) Murder;(b) Extermination;(c) Enslavement;(d) Deportation;(e) Imprisonment ;(f) Torture;(g) Rape;(h) Persecutions on political, racial and religious grounds;(i) Other inhumane acts.

⁷⁶ That article is also in accordance with the article 94 of the Law n° 68/2018 of 30/08/2018 determining offences and penalties in general, which provides that “The crime against humanity is any of the following acts committed as

[220] Regarding this judgment, the High Court expounded in the paragraph [160] of the appealed judgment, that the speech of Mugesera Léon held in the meeting at Kabaya constitutes the crime of incitement to commit genocide and the crime of persecution as the crime against humanity given that it belittles the Tutsi for their ethnic group, it incites to seriously use violence against them by infringing upon their fundamental rights, because the incitement to use violence against the Tutsi has been implemented, as they were murdered, their properties were looted, their houses burnt as asserted by the witnesses interrogated by that Court and other evidence in the casefile including the newspapers and other documents of experts indicated, which report about the consequences arising from the speech held by Mugesera Léon at Kabaya.

[221] The High Court also expounded in the paragraph [161] of the appealed judgment that it notices by the speech held by Mugesera Léon in the meeting at Kabaya he targeted the politicians of other parties like MDR, PSD, PL and FPR that were in opposition to MRND, by qualifying them as accomplices of *inyenzi* (cockroaches) or the country aggressors, he incited to exterminate and murder them, he used the words belittling them because there is someone he called brigand, another an arrogant,

part of a widespread or systematic attack directed against any civilian population: 1° murder; 2° extermination; 3° enslavement; 4° deportation or forcible transfer of population; 5° imprisonment or other severe deprivation of physical liberty against a person in violation of law; 6° torture; 7° rape, sexual slavery, enforced prostitution, enforced sterilization, or any other form of sexual violence of comparable gravity; 8° persecution against a person on political, ethnic, religious grounds or any other form of discrimination; 9° enforced disappearance of persons; 10° the crime of apartheid; 11° other inhumane acts of a similar character intentionally causing great suffering or serious injury to mental or physical health.

another was qualified as someone “I beg Satan”, and he used the words that deprive them of the full political rights, for example, stating that they should never conduct political activities in Gisenyi, rather they should conduct them at their home country.

[222] In the paragraph [163] of the appealed judgment, the High Court noticed that the acts of Mugesera Léon of targeting the Tutsi civilian population and the politicians in opposition to MRND were part of the widespread of systematic attacks because he held that speech by the time when all over the country the Tutsi were murdered, imprisoned and persecuted from October 1990 as upheld in the judgment rendered by the Supreme Court of Canada on 28/06/2005⁷⁷.

[223] Concerning the intent to commit the crime of persecution as the crime against humanity, in the paragraph [165] of the appealed judgment, the High Court explained that should be considered the speech held by Mugesera Léon in the meeting at Kabaya when he targeted the Tutsi or the politicians opponent to MRND during the wartime in the country and by the time the persons were killed all over the country, others imprisoned or exposed to other forms of violence like burning their houses,

⁷⁷ Mugesera v. Canada (Minister of Citizenship and Immigration), 28/05/2005, para. 160 and 163: “According to Mr. Duquette, a pattern of massacres, sometimes participated in and overtly encouraged by MRND officials and the military, began in 1990 and was still under way when Mr. Mugesera gave his speech. The Tutsi and moderate Hutu, two groups that were ethnically and politically identifiable, were a civilian population as this term is understood in customary international law. Mr. Duquette’s findings of fact leave no doubt that the ongoing systematic attack was directed against them. For these reasons, we agree that at the time of Mr. Mugesera’s speech, a systematic attack directed against a civilian population was taking place in Rwanda.

looting their properties, being beaten and the victims were qualified as accomplices of the country aggressors as above explained, it is obvious that by the time Mugesera Léon gave the speech he had the intent to persecute them on basis of the grounds based on their ethnic and political group.

[224] The Court finds that, as noted by the High Court, by the fact that in the meeting held at Kabaya, Mugesera Léon targeted the civilian Tutsi for their ethnic group when he incited the MRND militants to persecute and kill them because they were accomplices of Inyenzi who attacked the country as above explained, and such targeting has been conducted as part of systematic and widespread attacks because he gave such speech after the murder of almost two thousand (2,000) from 01/10/1990 to 22/11/1992, the date on which he gave the speech and when the murder was ongoing all over the country as it was publicly supported by the Government of Rwanda so that there were the MRND leaders and military officers who took part in it⁷⁸ and that speech occasioned the murder of the civilian Tutsi, their properties were looted, their houses burnt as testified by the witnesses interrogated by the same Court, it is evident that

⁷⁸ Mugesera v. Canada (Minister of Citizenship and Immigration), 28/05/2005, para. 159 and 160: “Mr. Duquette found that, between October 1, 1990 and November 22, 1992, almost 2,000 Tutsi were massacred in Rwanda. According to Mr. Duquette, a pattern of massacres, sometimes participated in and overtly encouraged by MRND officials and the military, began in 1990 and was still under way when Mr. Mugesera gave his speech. As discussed above, a pattern of victimizing behaviour, particularly one which is sanctioned or carried out by the government or the military, will often be sufficient to establish that the attack took place pursuant to a policy or plan and was therefore systematic. There was an unmistakable policy of attacks, persecution and violence against Tutsi and moderate Hutu in Rwanda at the time of Mr. Mugesera’s speech. Mr. Mugesera’s act of persecution therefore took place in the context of a systematic attack”.

Mugesera Léon committed the crime against humanity by those acts of persecution and the murder of the civilian Tutsi perpetrated as part of systematic and widespread attacks targeting the Tutsi on basis of their ethnic group as explained by the High Court.

[225] The Court also observes that, as noticed by the High Court, by the fact that in the meeting held at Kabaya, Mugesera Léon targeted the leaders of the parties in opposition to MRND like MDR, PSD, PL and PDC when he qualified them as accomplices of Inyenzi who attacked the country and he belittled them when he qualified the Prime Minister Nsengiyaremye as the one “I beg Satan”, and he qualified Twagiramungu, Chairperson of MDR as a brigand, he qualified the Minister of Education as arrogant and he incited to kill the Prime Minister Nsengiyaremye and Twagiramungu because he wondered himself why they did not kill them, allegedly because the Prime Minister demoralized the armed forces on the battlefield and Twagiramungu gave up Byumba Prefecture and he used the words depriving them of their full political rights because he stated that they should not conduct their political activities in Gisenyi Prefecture, nor pull up there their scraps claiming to be flags, rather they should conduct them at their homes or go live with Inyenzi, and the acts of persecution against the Hutu opponent to MRND were conducted all over the country by the time Mugesera Léon gave the speech, it is evident that Mugesera Léon committed the crime against humanity, instead of the crime of persecution as the crime against humanity as upheld by the High Court, given that the leaders of the parties opponent to MRND were persecuted in the context of systematic and widespread attacks targeted against them for their political affiliation as expounded by the High Court.

[226] Moreover, the Court finds that another evidence indicating that Mugesera Léon committed the crime against humanity is that the witnesses Sinayobye André and Rwasubutare Callixte asserted that in the meeting held at Nyamyumba on 06/07/1992, Mugesera Léon targeted the Tutsi by the wartime in the country so that some of them were killed, others imprisoned, others 'houses were burnt, others 'properties were looted as explained by the High Court in the paragraph [165] of the appealed judgment.

[227] The Court finds that, as upheld by the High Court in the paragraph [164] of the appealed judgment, the speech inciting to hatred and the MRND militants to use violence against the persons due to the discrimination based on the ethnic or political group constitutes the crime against humanity as upheld in the cases adjudicated by the International Criminal Tribunal for Rwanda including the case n° ICTR-99-52-A The Prosecutor v. Nahimana Ferdinand et al. in which the Tribunal upheld in the paragraphs 983 and 988 that "It is evident that hate speech targeting a population on the basis of ethnicity, or other discriminatory grounds, reaches this level of gravity and constitutes persecution. In the present case, the hate speeches made after 6 April 1994 were accompanied by calls for genocide against the Tutsi group and all these speeches took place in the context of a massive campaign of persecution directed at the Tutsi population of Rwanda, this campaign being also characterized by acts of violence (killings, torture and ill-treatment, rapes ...) and of destruction of property. In particular, the speeches broadcast by RTLM - all of them by subordinates of Appellant Nahimana, considered as a whole and in their context, were, in the view of the Appeals Chamber, of a gravity equivalent to other crimes

against humanity⁷⁹”. This also has been upheld by the Supreme Court of Canada on 28/06/2005 by expounding that “Mr. Duquette found as a matter of fact that Mr. Mugesera’s speech had incited hatred of Tutsi and of his political opponents. This incitement included the encouragement of acts of extreme violence, such as extermination (...) A speech such as Mr. Mugesera’s, which actively encouraged ethnic hatred, murder and extermination and which created in its audience a sense of imminent threat and the need to act violently against an ethnic minority and against political opponents, bears the hallmarks of a gross or blatant act of discrimination equivalent in severity to the other underlying acts listed in s. 7(3.76). The criminal act requirement for persecution is therefore met⁸⁰”.

[228] The Court observes that the statement of Mugesera Léon that if the High Court had contextualized the speech made at Kabaya, it could not convict him because it could notice that such speech was given during the troubling period of the political parties’ competition is not founded given that, even if such speech had been delivered in that period, this does not exclude that he incited MRND militants, who were hearing him, to kill, persecute and use violence against the civilian Tutsi for their ethnic group and the leaders of the opposition parties for their political affiliation, as above explained.

[229] The Court also observes that the statement of Mugesera Léon that, if the High Court did not disregard the laws, it could

⁷⁹ Ferdinand Nahimana, Jean Bosco Barayagwiza, Hassan Ngeze (Appellants) v. The Prosecutor (Respondent) Case No. ICTR-99-52-A, Judgment of 28 November 2007, para. 983 and 988.

⁸⁰ Mugesera v. Canada (Minister of Citizenship and Immigration), 28/05/2005, para. 148.

notice that the one who held the speech made at Kabaya did not commit a crime, because he was requesting for the law enforcement, and the Prime Minister, who demoralized the armed forces during the wartime, and Twagiramungu who gave up Byumba Prefecture, should be liable to death penalty as provided under the law, is not founded, because the fact that Mugesera Léon was requesting for the law enforcement does exonerate him from the criminal liability by the time he was inciting for the killing of Nsengiyaremye and Twagiramungu, as he was wondering why they were not killed.

5. Whether the High Court erred in convicting Mugesera Léon of the crime of incitement to hatred based to ethnic group.

[230] Mugesera Léon submits that the High Court committed error of fact and error of law because it convicted him of the crime of incitement to hatred based to ethnic group while he did not commit it. He requests this Court to be discerning and acquit him because he did not commit a crime. He also sustains that he has been aggrieved by the fact his name has been tarnished by various people above mentioned who considered him as an animal and genocide perpetrator while the real Mugesera Léon is a very kind man who loves the Tutsi because, by the time of his marriage, he was pictured with Bishop Bigirumwami, who was a Tutsi, together with other two (2) Bishops, also in case this Court deems it necessary, he would submit to it that photo, but it should be done in secrecy. He adds that even the Prison guards know that he is a kind man because their Director met him in Mpanga Prison and asked him if he cannot be helpful for Rwanda instead of spending days by only preparing his cases, and he drafted a document useful to the Rwandans and he gave it to him and also

he has a book which he would give to his Counsel Rudakemwa Jean Félix for submitting it to him.

[231] His Counsel Rudakemwa Jean – Félix avers that the High Court unjustly convicted Mugesera Léon of three (3) charges including the incitement to hatred based to ethnic group because he did never manifest the hatred against the Tutsi. He requests this Court to reverse that decision tainted with injustice and acquit him.

[232] The representative of the Public Prosecution sustains that the decisions of the appealed judgement should not be reversed because Mugesera Léon did not produce the evidence contradicting the evidence on which the High Court relied in convicting him of the crime of incitement of hatred based to ethnic group.

[233] He explains that Mugesera Léon should be convicted of the crime of incitement to hatred based to ethnic group given that it differs from the crime of incitement to commit genocide because this crime is provided under the law as a specific crime, and it is committed even if the persons incited to commit genocide did not commit it, because it requires the specific intent to exterminate all or a part of persons on basis of ethnic, racial, religious grounds, but the crime of incitement to hatred was provided as specific crime under the Decree Law n° 21/77 of 18/08/1977 instituting the penal code applicable by the commission of the crime, even if it is sometimes committed on basis of ethnic group, origin or religious group. He adds that another evidence indicating the difference between the two crimes is that the legal scholars explain that the crime of incitement to commit genocide exists when there is someone who

incites others to act while the crime of incitement to hatred exists when someone makes the statement that only incites to hatred.

DETERMINATION OF THE COURT

[234] In the paragraphs [176] and [178] of the appealed judgment, the High Court expounded that on basis of the article 393 of the Decree Law N° 21/77 of 18/08/1977 instituting the Penal Code applicable by the time of the crime commission, Mugesera Léon should be convicted of the crime of incitement to hatred in the population because of the words used in his speech made in the meeting held at Kabaya and Nyamyumba indicating the hatred he had against the Tutsi when he qualified them as *inyenzi* (cockroaches), accomplices of the country invaders, among others, as testified by the witnesses interrogated by that Court, therefore, those words indicate that he had the intent to hate the Tutsi and incite others to hate them, thus, MUGESERA Léon committed the crime of incitement to hatred in the population based to ethnic group as provided under the article 393 of the Decree Law.

[235] The report of the Senate of Rwanda published in 2019 on the status of denial and revisionism of the genocide against the Tutsi explains that Gregory Stanton, who thoroughly explained the preparation and execution of the genocide, indicated that the genocide against the Tutsi was prepared in ten (10) stages⁸¹: 1)

⁸¹ Stanton, G. H. (2013). *10 Stages of Genocide*. Retrieved April 22, 2016, from Genocide watch net:<http://www.genocidewatch.org/genocide/tenstagesofgenocide.html>, in *Raporo yakozwe na Sena y'u Rwanda yo mu mwaka wa 2019 ku miterere y'ihakana n'ipfobya bya Jenoside yakorewe Abatutsi bibera mu mahanga n'ingamba zo kubirwanya*, pp 29-33.

Classification, 2) Symbolization, 3) Discrimination, 4) Dehumanization, 5) Organization, 6) Polarization, 7) Preparation, 8) Persecution, 9) Extermination, 10) Denial and revisionism.

[236] In explaining the stages above mentioned, the report indicates that in Rwanda, those who planned the genocide started by classification, each group was given a specific name, meaning the Hutu and Tutsi, and this was emphasized by the message of hatred which greatly divided the two groups, until the Tutsi targeted group was considered as enemy so that they were progressively dehumanized through the media and the hatred ideology, and the identification documents they were given made them to be identified and they were given several dehumanizing names like *inyenzi* (cockroaches), *inzoka* (snakes), etc. and the quota policy deprived them of their fundamental rights in the country because they could not access to education or public services in a great number. Moreover, every genocide has an official plan by the Government so that it uses the militia for hiding his role, in Rwanda, Interahamwe, Impuzamugambi and Hutu power were used and they were trained to eliminate the enemy and given different instruments to be used (machetes, cudgels,...), then after it came a slogan and ideology stating that “the one who is not with us, fights us”, they were respected and disseminated to those who had to implement that intent, in Rwanda, it was explained that the enemy is the Tutsi living inside or outside the country, then after it followed the murder and the persecution of the Tutsi, the denial and revisionism of the genocide against the Tutsi.

[237] The Court finds that, concerning this judgment, the acts of inciting hatred in the population based to the ethnic group

perpetrated by Mugesera Léon in consideration of the speeches he held at Kabaya and Nyamyumba as above explained is one of the stages leading to genocide used by Mugesera Léon with the intent to commit the crime of inciting others to perpetrate genocide as explained in the Senate report above mentioned, meaning that the High Court should not consider it as a specific crime of incitement of hatred provided under the article 393 of the Decree Law above mentioned, because by the fact that Mugesera Léon incited the hatred in the population when he qualified the Tutsi as inyenzi (cockroaches) and accomplices of the country invaders he intended to incite them to hate them and exterminate the Tutsi.

6. Whether the High Court erred in sentencing Mugesera Léon to the life imprisonment.

[238] Mugesera Léon and his Counsel Rudakemwa Jean – Félix sustain that the High Court could not sentence him to the life imprisonment on basis of the fact that the speech held at Kabaya was altered ; rather it should acquit him because he did not commit a crime he is accused of.

[239] The representative of the Public Prosecution avers that Mugesera Léon should be condemned to the life imprisonment decided by the High Court because he committed the crimes of which he was convicted by that Court as above explained.

DETERMINATION OF THE COURT

[240] The Article 132, paragraph 3 of the organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code applicable by the time of hearing the case of Mugesera Léon at the first instance provides that other acts punished as the crime of

genocide are “incitement, either by speech, image or writing, to commit such a crime, even when not followed by the commission”. The Article 115 of the same Organic Law provides that the crime of genocide is punished by the life imprisonment with special provisions.

[241] The Article 120, paragraph 8 of the Organic Law above mentioned provides that “The crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population because of its national, political, ethnic or religious affiliation: persecution against a person on political, racial, national, ethnic, cultural, religious grounds or any other form of discrimination (...) The Article 121 of the same Organic Law provides that “Any person who commits a crime against humanity provided for under items 8° of Article 120 of this Organic Law shall be liable to a term of imprisonment of ten (10) years to twenty five (25) years”.

[242] The Article 83, paragraph 2, a, of the Organic Law above mentioned provides that “the ideal concurrence of offences occurs when a single act may constitute several offences”. The Article 84 of the same Organic Law provides that “If an offender would receive several penalties of imprisonment or fine as a result of one or several acts, the judge shall apply the most severe penalty and increase its duration or the amount depending on the circumstances of the offences, but not exceeding half (1/2) in addition to the maximum of the most severe penalty”.

[243] In the paragraphs [189] and [192] of the appealed judgment, the High Court expounded that the crimes that Mugesera Léon committed include being the accomplice of the genocide perpetrators for the public and direct incitement to commit genocide, the persecution as the crime against humanity

and the incitement to hatred based to ethnic group with the ideal concurrence of committing genocide and harming the so-called accomplices of the country invaders, therefore he should be liable to the penalty of life imprisonment provided for the crime of being the accomplice of the genocide perpetrators as above explained.

[244] The Court finds that the acts of inciting the hatred in the population based to the ethnic group committed by Mugesera Léon should not be considered as specific crime, rather they should be considered as one of the stages leading to the genocide used by Mugesera Léon with the intent to commit the crime of inciting others to commit genocide as above explained, meaning that Mugesera Léon should be convicted of the crime of the public and direct incitement to commit genocide and the crime against humanity (persecution), therefore, by the fact that those crimes have been committed in the ideal concurrence of committing genocide and harming the so-called Inyenzi and the accomplices of the country invaders, he should be liable to the penalty of life imprisonment provided for the crime of direct and public incitement to commit genocide because it is the most severe penalty as provided under the article 84 of the Organic Law above mentioned, but Mugesera Léon should not be liable to the penalty of the life imprisonment with special provisions provided under the Article 132, paragraph 3 of the Organic Law above mentioned because he has been transferred by Canada as provided under the Article 5 bis of the Organic Law n° 08/2013 of 16/06/2013 modifying and complementing the Organic Law n° 31/2007 of 25/04/2007 relating to the abolition of the death

penalty as modified and complemented to date⁸², as decided by the High Court.

[245] Basing on the explanations above provided, the Court finds that the High Court did not err in sentencing Mugesera Léon to the life imprisonment, therefore, his ground of appeal is unfounded.

II. DECISION OF THE COURT

[246] Decides that the appeal of Mugesera Léon lacks merit ;

[247] Decides that the judgment n° RP 0001/12/CCI rendered by the High Court, The Special Chamber hearing international and transnational crimes, on 15/04/2016, is only reversed on the crimes of which Mugesera Léon is convicted ;

[248] Decides that Mugesera Léon is convicted of the crime of public and direct incitement to commit genocide and the crime against humanity ;

[249] Sentences Mugesera Léon to the life imprisonment ;

[250] Orders that the court fees of this judgment be charged to the Public Treasury.

⁸² The Article 5 bis provides that “An accused who is convicted in a case transferred to Rwanda from the International Criminal Tribunal for Rwanda or from another State shall not be subject to life imprisonment with special provisions.”

ANNEX TO THE JUDGMENT RP/GEN00003/2019

The speech delivered by Mugesera Léon in the meeting of MRND party which was held on 22 November 1992 at Kabaya

Long life to our movement . . .

Long life to President HABYARIMANA . . .

Long life to ourselves, the militants of the movement at this meeting.

Militants of our Movement, as we are all met here, I think you will understand the meaning of the word I will say to you. I will talk to you on only four points. Recently, I told you that we rejected contempt. We are still rejecting it. I will not go back over that.

When I consider the huge crowd of us all met here, it is clear that I should omit speaking to you about the first point for discussion, as I was going to tell you to beware of kicks by the dying M.D.R.! That is the first point.

The second point on which I would like us to exchange ideas is that we should not allow ourselves to be invaded, whether here where we are or inside the country; that is the second point.

. The third point I would like to discuss with you is also an important point, namely the way we should act so as to protect ourselves against traitors and those

who would like to harm us. I would like to end on the way in which we must act.

The first point I would like to submit to you, therefore, is this important point I would like to draw to your attention. As M.D.R., P.L., F.P.R. and the famous party known as P.S.D. and even the P.D.C. are very busy nowadays, you should know what they are doing, and they are busy trying to injure the President of the Republic, namely, the President of our movement, but they will not succeed. They are working against us, the militants: you should know the reason why all this is happening: in fact, when someone is going to die, it is because he is already ill!

The thief Twagiramungu appeared on the radio as party president, and he had asked to do so, so he could speak against the C.D.R. However, the latter struck him down. After he was struck down, in all taxis everywhere in Kigali, militants of the M.D.R., P.S.D. and accomplices of the Inyenzi were profoundly humiliated, so they were almost dead! Even Twagiramungu himself completely disappeared. He did not even show up at the office where he was working! I assure you that this man's party is covered with shame: everyone was afraid and they nearly died!

So, since this party and those who share its views are accomplices of the Inyenzi, one of them named Murego on arrival in Kibungo stood up to say "We are descended from the Hutu and are in fact the Hutus".

The reply to him was "Can you lose your brothers by death! Tell us, who do you get these statements about the Hutu from?" They were so angry they nearly died!

That was when the Prime Minister named, they say, I don't know whether I should say Nsengashitani (I beg Satan), headed for Cyangugu to prevent the Hutu defending themselves against the Tutsi who were laying mines against them. You heard this on the radio. Then we laughed at him, you heard him yourselves, and he lost his head, he and all the militants in his party, and those of the other parties who shared his views. This is when these people had just suffered such a reverse . . .

You yourselves heard that the president of our party, His Excellency Major-General Habyarimana Juvénal, spoke when he arrived in Ruhengeri. The "Invincible" put himself solemnly forward, while the others disappeared underground! In their excitement, these people were nearly dead from excitement, as they learned that everyone, including even those who were claiming to be from other parties, were leaving them to come back to our party, as a result of our leader's speech.

Their kicks would threaten the most sensible person. Nevertheless, in view of our numbers, I realize there are so many of us that they could not find where to give the kicks: they are wasting their time!

That is the first point. The M.D.R. and the parties who share its views are collapsing. Avoid their kicks. As I noted, you will not even have a scratch!

The second point I have decided to discuss with you is that you should not let yourselves be invaded. At all costs, you will leave here taking these words with you, that you should not let yourselves be invaded.

Tell me, if you as a man, a mother or father, who are here, if someone comes one day to move into your yard and defecate there, will you really allow him to come again? It is out of the question.

You should know that the first important thing . . . you have seen our brothers from Gitarama here. Their flags – I distributed them when I was working at our party's headquarters. People flew them everywhere in Gitarama. But when you come from Kigali, and you continue on into Kibilira, there are no more M.R.N.D. flags to be seen: they have been taken down!

In any case, you understand yourselves, the priests have taught us good things: our movement is also a movement for peace. However, we have to know that, for our peace, there is no way to have it but to defend ourselves.

Some have quoted the following saying: "Those who seek peace always make ready for war". Thus, in our prefecture of Gisenyi, this is the fourth or fifth time I am speaking about it, there are those who have acted first. It says in the Gospel that if someone strikes you on one cheek, you should turn the other cheek. I tell you that the Gospel has changed in our movement: if someone strikes you on one cheek, you hit them twice on one cheek and they collapse on the ground and will never be able to recover!

So here, never again will what they call their flag, what they call their cap, even what they call their militant, come to our soil to speak: I mean throughout Gisenyi, from one end to the other!

A proverb says “An animal eats others, but when they want to eat it, it becomes bitter”! They should know that one man is as good as another, our yard (party) will not let itself be invaded either. There is no question of allowing ourselves to be invaded, let me tell you.

There is also something else I would like to talk to you about, concerning “not being invaded”, and which you must reject, as these are dreadful things. Our elder Munyandamutsa has just told you what the situation is in the following words: “Our inspectors, currently 59 throughout the country, have just been driven out. In our prefecture of Gisenyi there are eight.

Tell me, dear parents gathered here, have you ever seen, I do not know if she is still a mother, have you ever seen this woman who heads the Ministry of Education, come herself to find out if your children have left the house to go and study or go back to school? Have you not heard that she said that from now on no one will go back to school? – And now she is attacking teachers! I wanted to draw to your attention that she called them to Kigali to tell them that she never wanted to hear anyone say again that an education inspector had joined a political party!

They answered: "First leave your party, because you yourself are a Minister and you are in a political party, and then we will follow your example". She is still there! You have also heard on the radio that nowadays she is even insulting our President! Have you ever heard a mother insulting people in public? So what I would like to tell you here, and this is the truth, there is no doubt, to say it would be this or that, there might be among them people who have behaved flippantly. Have you heard that they are persecuted for membership in the M.R.N.D.? They are persecuted for membership in the M.R.N.D. Frankly, will you allow them to invade us to take the M.R.N.D. away from us and to take our men?

I am asking you to take two very important actions. The first is to write to this shameless woman who is issuing insults publicly and on the airwaves of our radio to all Rwandans. I want you to write her to tell her that these teachers, who are ours, are irreproachable in their conduct and standards, and that they are looking after our children with care; these teachers must continue to educate our children and she must mend her ways. That is the first action I am asking you to take.

Then, you would all sign together: paper will not be wanting. If you wait a few days and get no reply, only about seven days, as you will send the letter to someone who will take it to its destination, so he will know she has received it, if seven days go by without a reply, and she takes the liberty of arranging for someone else to replace the existing inspectors, you

can be sure, if she thinks there is anyone who will come to replace them, for anyone who comes . . . the place where the Minister is from is the place known as Nyaruhengeri, at the border with Burundi, in Butare, you will ask this man to get moving, with his travelling provisions on his head, and be inspector at Nyaruhengeri.

Let everyone whom she has appointed be there, let them go to Nyaruhengeri to look after the education of her children. As for ours, they will continue to be educated by our own people. This is another important point on which we must take decisions: we cannot let ourselves be invaded: this is forbidden!

Something else which may be called “not allowing ourselves to be invaded” in the country, you know people they call Inyenzi (cockroaches), no longer call them Inkotanyi (tough fighters), as they are actually Inyenzi. These people called Inyenzi are now on their way to attack us.

Major-General Habyarimana Juvénal, helped by Colonel Serubuga, whom you have seen here, and who was his assistant in the army at the time we were attacked, have got up and gone to work. They have driven back the Inyenzi at the border, where they had arrived. Here again, I will make you laugh! In the meantime, these people had arrived who were seeking power. After getting it, they headed for Brussels. On arrival in Brussels, note that this was the M.D.R., P.L. and P.S.D., they agreed to deliver the Byumba Prefecture at any cost. That was the first thing. They

planned together to discourage our soldiers at any cost.

You have heard what the Prime Minister said in person. He said they were going down to the marshland when the war was at its height! It was at that point that people who had low morale abandoned their positions and the Inyenzi occupied them. The Inyenzi descended on Byumba and they ransacked the shops of our merchants in Byumba, Ruhengeri and Gisenyi. The Government will have to compensate them as it had created this situation. It was not one of our merchants, as they were not even asking for credit! Why credit! So those are the people who pushed us into allowing ourselves to be invaded. The punishment for such people is nothing but: "Any person who demoralizes the country's armed forces on the front will be liable to the death penalty". That is prescribed by law. Why would such a person not be killed?

Nsengiyaremye must be taken to court and sentenced. The law is there and it is in writing. He must be sentenced to death, as it states. Do not be frightened by the fact that he is Prime Minister. You have recently heard it said on the radio that even French Ministers can sometimes be taken to court! Any person who gives up any part of the national territory, even the smallest piece, in wartime will be liable to death. Twagiramungu said it on the radio and the C.D.R. dealt with him on the radio. The militants in his party then lost their heads – can you believe that? I would draw to your attention the fact that this man

who gave up Byumba on the radio while all of us Rwandans, and all foreign countries, were listening to him, this man will suffer death. It is in writing: ask the judges, they will show you where it is, I am not lying to you! Any person who gives up even the smallest piece of Rwanda will be liable to the death penalty; so what is this individual waiting for?

You know what it is; dear friends, “not letting ourselves be invaded”, or you know it. You know there are Inyenzi in the country who has taken the opportunity of sending their children to the front, to go and help the Inkotanyi. That is something you intend to speak about yourselves. You know that yesterday I came back from Nshili in Gikongoro at the Burundi border, travelling through Butare. Everywhere people told me of the number of young people who had gone. They said to me “Where they are going, and who is taking them . . . why are they are not arrested as well as their families?” So I will tell you now, it is written in the law, in the Penal Code: “Every person who recruits soldiers by seeking them in the population, seeking young people everywhere whom they will give to the foreign armed forces attacking the Republic, shall be liable to death”. It is in writing.

Why do they not arrest these parents who have sent away their children and why do they not exterminate them? Why do they not arrest the people taking them away and why do they not exterminate all of them? Are we really waiting till they come to exterminate us?

I should like to tell you that we are now asking that these people be placed on a list and be taken to court to be tried in our presence. If they refuse, it is written in the Constitution that "justice is rendered in the people's name". If justice therefore is no longer serving the people, as written in our Constitution which we voted for ourselves, this means that at that point we who also make up the population whom it is supposed to serve, we must do something ourselves to exterminate those brigands.

I tell you in all truth, as it says in the Gospel, "When you allow a serpent biting you to remain attached to you with your agreement, you are the ones who will die".

I have to tell you that a day and a night ago – I do not know if it is exactly in Kigali, a small group of men armed with pistols entered a cabaret and demanded that cards be shown. They separated the M.D.R. people. You will imagine, those from the P.L. they separated, and even the others who pass for Christians were placed on one side. When an M.R.N.D. member showed his card, he was immediately shot; I am not lying to you, they even tell you on the radio; they shot this man and disappeared into the Kigali marshes to escape, after saying they were Inkotanyi. So tell me, these young people who acquire our identity cards, then they come back armed with guns on behalf of the Inyenzi or their accomplices to shoot us!

I do not think we are going to allow then to shoot us! Let no more local representatives of the M.D.R. live

in this commune or in this prefecture, because they are accomplices! The representatives of those parties who collaborate with the Inyenzi, those who represent them . . . I am telling you, and I am not lying, it is . . . they only want to exterminate us. They only want to exterminate us: they have no other aim. We must tell them the truth. I am not hiding anything at all from them. That is in fact the aim they are pursuing.

I would tell you, therefore, that the representatives of those parties collaborating with the Inyenzi, namely the M.D.R., P.L., P.S.D., P.D.C. and other splinter groups you run into here and there, who are connected and who are only wandering about, all these parties and their representatives must go to live in Kayenzi with Nsengiyaremye: in that way we will know where the people at war are located.

My brothers, militants of our movement, what I am telling you is no joke, I am actually telling you the complete truth, so that if one day someone attacks you with a gun, you will not come to tell us that we who represent the party did not warn you of it! So now, I am telling you so you will know. If anyone sends a child to the Inyenzi, let him go back with his family and his wife while there is still time, as the time has come when we will also be defending ourselves, so that . . . we will never agree to die because the law refuses to act!

I am telling you that on the day the demonstrations were held, Thursday, they beat our men, who had to take refuge in the church at the bottom of the Round - About. These so-called Christians from the P.D.C.

pursued them and went into the church to beat them. Others fled into the Centre Culturel Français. I should like to tell you that they began killing them. That is actually what happened! They attacked the homes and killed people. Now, anyone who they hear is a member of the M.R.N.D. is beaten and killed by them; that is how things are. Let these people who represent their parties in our prefecture go and live with the Inyenzi, we will not allow people living among us to shoot us when they are at our sides!

There is another important point I would like to talk to you about so that we do not go on allowing ourselves to be invaded: you will hear mention of the Arusha discussions. I will not speak about this at length as the representative of the Secretary General will speak about it in greater detail. However, what I will tell you is that the delegates you will hear are in Arusha do not represent Rwanda. They do not represent all of Rwanda; I tell you that as a fact. The delegates from Rwanda, who are said to be from Rwanda, are led by an Inyenzi, who is there to discuss with Inyenzi, as it says in a song you hear from time to time, where it states "He is God born of God". In the same way, they are Inyenzi born of Inyenzi, who speak for Inyenzi. As to what they are going to say in Arusha, it is exactly what these Inyenzi accomplices living here went to Brussels to say.

They are going to work in Arusha so everything would be attributed to Rwanda, while there was nothing not from Brussels that happened there! Even what came from Rwanda did not entirely come from our

government: it was a Brussels affair which they put on their heads to take with them to Arusha! So it was one Inyenzi dealing with another! As for what they call "discussions", we are not against discussions. I have to tell you that they do not come from Rwanda: they are Inyenzi who conduct discussions with Inyenzi, and you must know that once and for all! In any case, we will never accept the things which will come from there!

Another point I have talked to you about is that we must defend ourselves. I spoke about this briefly. However, I am telling you that we must wake up! Someone whispered in my ear a moment ago that it was not only the parents who must wake up as well as the teachers about the famous problem for inspectors. Even people who do not have children in school should also support them, as they will have one tomorrow or they had one yesterday. Let us all wake up and sign!

The second point I wish to speak to you about is the following: we have nine Ministers in the present government. Just as they rose up to drive out our inspectors, relying on their Ministry, as they rose up to drive out teachers from secondary schools . . . a few days ago, you have heard that the famous woman was going around the schools. She had no other reason for going there but to drive out the inspectors and teachers who were there and who were not in her party. You have heard what happened in MINITRAPE: it was not just a diversion; they even went after our workers! You have heard what

happened at the radio, and the Byumba program that was cancelled. You have heard how all this happened.

I have to tell you that we must ask our Ministers that they too, there are people working for their parties and who are in our Ministries . . . For example, you have heard mention of the Militant-Minister Ngirabatware, who is not present here because the country has given him an important mission. I visited his Ministry on Thursday. There was a little handful of people there, I am not exaggerating because I am in the M.R.N.D., some people from the M.R.N.D., those who were there were exclusively Inyenzi belonging to the P.L. and the M.D.R.! Those are the ones who are in the Planning Ministry! You will understand that if this Minister said: "If you touch our inspectors, I will also liquidate yours", what would happen? Our Ministers have also to shake the bag so the brigands who are with them have to disappear and go into their Ministries.

One important thing which I am asking all those who are working and are in the M.R.N.D.: "Unite!" People in charge of finances, like the others working in that area, let them bring money so we can use it. The same applies to persons working on their own account. The M.N.R.D. have given them money to help them and support them so they can live as men. As they intend to cut our necks, let them bring money so we can defend ourselves by cutting their necks!

Remember that the basis of our Movement is the cell, that the basis of our Movement is the sector and the Commune. He told you that a tree which has branches

and leaves but no roots dies. Our roots are fundamentally there. Unite again, of course you are no longer paid, members of our cells, come together. If anyone penetrates a cell, watch him and crush him: if he is an accomplice do not let him get away! Yes, he must no longer get away!

Recently, I told someone who came to brag to me that he belonged to the P.L. – I told him “The mistake we made in 1959, when I was still a child, is to let you leave”. I asked him if he had not heard of the story of the Falashas, who returned home to Israel from Ethiopia? He replied that he knew nothing about it! I told him “So don't you know how to listen or read? I am telling you that your home is in Ethiopia, that we will send you by the Nyabarongo so you can get there quickly”.

What I am telling you is, we have to rise up, we must really rise up. I will end with an important thing. Yesterday I was in Nshili, you learned that the Burundians slandered us, I went to find out the truth. Before I went there, people told me that I would not come back. That I would die there. I replied “If I die, I will not be the first victim to be sacrificed”.

In Nshili they fired the mayor who was there before, apparently on the pretext that he was old! – that he began working in 1960! I saw him yesterday, and he was still a young man! – but because he was in the M.N.R.D., he left! They wanted to put in a thief; that didn't work either. When they put in an honest man, they refused him! Now, this commune known as Nshili is administered by a consultant who also has no idea

what to do! At this place called Nshili, we have armed forces of the country who are guarding the border. There are people known as the J.D.R...

For the good reason that our national soldiers are disciplined and do not shoot anyone, especially they would not shoot a Rwandan, unless he was an Inyenzi, these soldiers did not know that everyone in the M.D.R. had become Inyenzi! They did not know it! They surrounded them and arrested our gendarmes, so that a citizen who was not in our party personally told me "What we want is for them to hold elections so we can elect a mayor. Otherwise, before it holds, let us provisionally put back the person who was there before because from the state things are in, he will not be able to put people on the right path again".

Dear relations, dear brethren, I would like to say something important to you: elections must be held, we must all vote. As you are now all together here, has anyone scratched anyone else? They talk of security. They say we cannot vote. Are we not going to mass on Sunday? Did you not come here to the meeting? In the M.R.N.D., did you not elect the incumbents at all levels? Even those who say this, did they not do the same thing? Did they not vote? On the pretext they suggest, there is no reason preventing us from voting on security grounds, because those who are going about the country and the troubles which have occurred, it is those who provoke them. That is the word I would say to you: they are all misleading us: even here where we are, we can vote.

Second, they are relying on the war displaced persons in Byumba. I should tell you that no one went to ask those people if they did not want to vote. They told me personally that they previously had lazy counsellors, that even some of their mayors were lazy. Since the Ministry which gives them what they live on is supervised by an Inkotanyi, or rather by the Inyenzi Lando, he chose people known as Inyenzi and their accomplices who are in this country, and gave them the job of taking food supplies to those people. Instead of taking it to them there, they sold it so they could buy ammunition which they gave to the Inyenzi who have been shooting us! I should tell you that they said "They shoot us from behind and you shoot us from in front by sending us this rabble to bring us food supplies".

I had no answer to give them, and they went on "What we want, they said, is that from ourselves, we can elect incumbents, advisors, cell leaders, a mayor; we can know he is with us here in the camp, he protects us, he gets us food supplies". You will understand that what I was told by these men and women who fled in such circumstances as you hear about from time to time, on all sides, was that they also wanted elections: the whole country wants elections so that they will be led by good people as was always the case. Believe me, what we should all do, that is what we should do, we should call for elections.

So in order to conclude, I would remind you of all the important things I have just spoken to you about: the

most essential is that we should not allow ourselves to be invaded, lest the very persons who are collapsing take away some of you. Do not be afraid, know that anyone whose neck you do not cut is the one who will cut your neck. Let me tell you, these people should begin leaving while there is still time and go and live with their people, or even go to the Inyenzi, instead of living among us and keeping their guns, so that when we are asleep they can shoot us. Let them pack their bags, let them get going, so that no one will return here to talk and no one will bring scraps claiming to be flags!

Another important point is that we must all rise, we must rise as one man if anyone touches one of ours, he must find nowhere to go. Our inspectors are going nowhere. Those whom they have placed will set out for Nyaruhengeri, to Minister Agathe's home, to look after the education of her children! Let her keep them!

I will end with one important thing: elections. Thank you for listening to me and I also thank you for your courage, in your arms and in your hearts. I know you are men, you are young women, fathers and mothers of families, who will not allow yourselves to be invaded, who will reject contempt.

May your lives be long!

Long life to President HABYARIMANA . . .

Long life and prosperity to you . . .

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