INGABIRE (IKIREGO KIGAMIJE KUVANAHO INGINGO Z'AMATEGEKO ANYURANYIJE N'ITEGEKO NSHINGA)

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/0002/12/CS (Kayitesi Z., P.J., Mutashya, Mukamulisa, Nyirinkwaya, Mukandamage, Kayitesi R., Rugabirwa, Hatangimbabazi na Munyangeri N., J.) 18 Ukwakira 2012]

Amategeko agenga ububasha bw'inkiko – Ibirego bigamije gukuraho ingingo z'amategeko – Urukiko rufite ububasha bwo kuregerwa – Urukiko rw'Ikirenga nirwo ruburanisha ibirego byerekeranye no gusaba gukuraho itegeko ngenga, itegeko, itegeko-teka, kubera ko binyuranyije n'Itegeko Nshinga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga – Itegeko ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 53.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Ibirego bigamije gukuraho ingingo – Iyubahirizwa ry'imihango y'iyakirwa ry'ibyo birego – Itangwa ry'amagarama y'urubanza – Igihe urega afunze nta garama ry'urubanza atanga kandi imihango y'iyakirwa ry'ikirego gisaba kuvanaho ingingo z'amategeko iba yubahirijwe igihe uwatanze ikirego yagitanze cyanditse, kiriho itariki n'umukono we, kandi kigaragaza ikiregerwa kimwe n'imyanzuro asabisha kuvanaho ingingo z'amategeko nanone kandi agomba kuba afite inyungu yo gutanga bene icyo kirego – Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 361(3) – Itegeko ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 53(3) n'iya 54.

Itegeko nshinga – Amategeko anyuranyije n'itegeko nshinga – Ikirego kigamije gusaba gukuraho ingingo y'Itegeko – Ingaruka zo kuba itegeko cyangwa ingingo yaryo itagikoreshwa kandi yaregewe kuvanwaho kuko inyuranyije n'itegeko nshinga – Amerekezo yo kuba ngingo ubwazo zaba zitumvikana neza cyangwa se zikenewe gusobanurwa kurushaho – Kugira ngo itegeko cyangwa ingingo yaryo bisuzumwe mu rwego rwo kumenya niba bitanyuranyije n'itegeko nshinga, iryo tegeko cyangwa iyo ngingo bigomba kuba biriho, bikoreshwa kandi byubahirizwa, bityo rero kuba itegeko cyangwa ingingo yaryo bitagikoreshwa bituma ikirego kibura impamvu cyatangiwe bigatuma cyitakirwa – Kuba izi ngingo ubwazo zaba zitumvikana neza cyangwa se zikenewe gusobanurwa kurushaho ntibyafatwa nk'aho zinyuranyije n'Itegeko Nshinga kuko kuba ingingo ikeneye gusobanurwa cyangwa kuzuzwa kurushaho bitafatwa nko kuba inyuranyije n'Itegeko Nshinga, ko ahubwo ari ibyakorwa n'Umushingamategeko mu gihe byagaragara ko ari ngombwa – Itegeko-Ngenga nº 01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda, ingingo ya 765.

Itegeko nshinga – Ubwisanzure mu gutanga ibitekerezo – Imbibi mu bwisanzure bwo gutanga ibitekerezo – Ubwisanzure mu gutanga ibitekerezo ntibiha buri wese kuvuga ibyo yishakiye ahubwo ubwo burenganzira bushobora kuzitirwa n'amategeko ya buri gihugu, cyane cyane iyo ari ngombwa kubungabunga umutekano n'ubusugire by'igihugu, ituze rusange rya rubanda cyangwa n'imyatwarire iboneye – Itegeko nº18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenoside, ingingo ya 2 n'iya 3.

Incamake y'ikibazo: Ingabire yatanze ikirego mu Rukiko rw'Ikirenga gikomoka ku rubanza rutaracibwa rufite nº RP 0110/10/HC aho yarezwe n'Ubushinjacyaha mu Rukiko Rukuru,

akurikiranyweho icyaha cyo gupfobya Jenoside n'icy'ingengabitekerezo ya Jenoside, akaba asaba ko ingingo za 2 kugeza ku ya 9 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenoside hamwe n'ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara zavanwaho kubera ko zinyuranyije n'ingingo za 20, 33 na 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu ngo kuko zanditse mu buryo budasobanutse, zikaba zirimo urujijo ku buryo zibangamira uburenganzira umuntu ahabwa n'Itegeko Nshinga bwo kwisanzura mu bitegerezo cyane cyane iyo avuga kuri jenoside yabaye mu Rwanda, zikaba na none zituma umuntu wese ashobora kuzumva uko yishakiye.

Incamake y'icyemezo: 1. Urukiko rw'Ikirenga nirwo ruburanisha ibirego byerekeranye no gusaba gukuraho itegeko ngenga, itegeko, itegeko-teka, kubera ko binyuranyije n'Itegeko Nshinga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga.

2. Igihe urega afunze nta garama ry'urubanza atanga kandi imihango y'iyakirwa ry'ikirego gisaba kuvanaho ingingo z'amategeko iba yubahirijwe igihe uwatanze ikirego yagitanze cyanditse, kiriho itariki n'umukono we, kandi kigaragaza ikiregerwa kimwe n'imyanzuro asabisha kuvanaho ingingo z'amategeko nanone kandi agomba kuba afite inyungu yo gutanga bene icyo kirego.

3. Kugira ngo itegeko cyangwa ingingo yaryo bisuzumwe mu rwego rwo kumenya niba bitanyuranyije n'itegeko nshinga, iryo tegeko cyangwa iyo ngingo bigomba kuba biriho, bikoreshwa kandi byubahirizwa, bityo rero kuba itegeko cyangwa ingingo yaryo bitagikoreshwa bituma ikirego kibura impamvu cyatangiwe, maze nticyakirwe.

4. Kuba izi ngingo ubwazo zaba zitumvikana neza cyangwa se zikenewe gusobanurwa kurushaho ntibyafatwa nk'aho zinyuranyije n'Itegeko Nshinga kuko kuba ingingo ikeneye gusobanurwa cyangwa kuzuzwa kurushaho bitafatwa nko kuba inyuranyije n'Itegeko Nshinga, ko ahubwo ari ibyakorwa n'Umushingamategeko mu gihe byagaragara ko ari ngombwa.

5. Ubwisanzure mu gutanga ibitekerezo ntibiha buri wese kuvuga ibyo yishakiye ahubwo ubwo burenganzira bushobora kuzitirwa n'amategeko ya buri gihugu, cyane cyane iyo ari ngombwa kubungabunga umutekano n'ubusugire by'igihugu, ituze rusange rya rubanda cyangwa n'imyatwarire iboneye, rero ingingo zisabirwa kuvanwaho ntizigamije kubuza abantu kwisanzura mu bitekerezo ahubwo zigamije gukumira uwakwitwaza ubwo burenganzira ahabwa n'amategeko agahembera gukora jenoside cyangwa agapfobya iyabayeho, bityo izo ngingo zikaba zitanyuranije n'Itegeko Nshinga.

Ikirego kigamije kuvanaho ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya Jenoside hamwe n'ingingo ya 4 kugeza kuya 9 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside nticyakiriwe.
Ikirego kigamije kuvanaho ingingo ya 2 n'iya 3 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside kirakiriwe ariko nta shingiro gifite.
Amagarama y'urubanza aherereye ku isanduku ya Leta.

Amategeko yashingiweho:

Itegeko nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2004 nk'uko ryavuguruwe kugeza ubu, ingingo ya 33 n'iya 34.
Itegeko nº18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenoside itanga ibisobanuro by'ingengabitekerezo ya Jenoside, ingingo ya 2 n'iya 3.
Itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 361(3).
Itegeko-Ngenga nº 01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda, ingingo ya 765.
Itegeko ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 53 n'iya 54.

Imanza zifashishijwe:
Mugesera Léon, RS/INCONST/PEN 0002/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 28/09/2012.
Ntawuburintimba Alivera, RS/INCONST/0002/10/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 27/04/2012.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ikirego cya Ingabire Umuhoza Victoire gikomoka ku rubanza rutaracibwa rufite nº RP 0110/10/HC yarezwe n'Ubushinjacyaha mu Rukiko Rukuru, aho akurikiranyweho icyaha cyo gupfobya Jenoside n'icy'ingengabitekerezo ya Jenoside.

[2] Ingabire Umuhoza Victoire yatanze ikirego mu Rukiko rw'Ikirenga ku wa 16/05/2012 asaba ko ingingo za 2 kugeza ku ya 9 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenoside n'ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara zavanwaho kubera ko zinyuranyije n'ingingo za 20, 33 na 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 04/06/2003 nk'uko ryavuguruwe kugeza ubu, akavuga ko zanditse mu buryo budasobanutse, zikaba zirimo urujijo ku buryo zibangamira uburenganzira umuntu ahabwa n'Itegeko Nshinga bwo kwisanzura mu bitegerezo cyane cyane iyo avuga kuri jenoside yabaye mu Rwanda, zikaba na none zituma umuntu wese ashobora kuzumva uko yishakiye.

[3] Uru rubanza rwahamagawe tariki ya 19/07/2012, ariko ntirwaburanishwa kuko Me Gatera Gashabana wunganira Ingabire Umuhoza Victoire yasabye ko yahabwa igihe cyo gusubiza umwanzuro w'intumwa ya Leta mu nyandiko kuko yavugaga ko yawubonye bitinze, iburanisha ryimurirwa kuwa 03/09/2012, uwo munsi ruburanishwa mu ruhame Ingabire Umuhoza Victoire yunganiwe na Me Gatera Gashabana, hari n'Intumwa ya Leta Me Mbonera Théophile.

II. KU BIJYANYE N'UBUBASHA BW'URUKIKO N'IYAKIRWA RY'IKIREGO

Ku bijyanye n'ububasha bw'urukiko.

[4] Ingingo ya 53, igika cya kabiri y'Itegeko ngenga Nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "Urukiko rw'Ikirenga ari rwo ruburanisha ibirego byerekeranye no gusaba gukuraho itegeko ngenga, itegeko, itegeko-teka, kubera ko binyuranyije n'Itegeko Nshinga, haba kubikuraho byose cyangwa se zimwe mu ngingo zabyo zinyuranyije n'Itegeko Nshinga".

[5] Ingabire Umuhoza Victoire yashyikirije Urukiko rw'Ikirenga ikirego kigamije gukuraho ingingo ya ingingo ya 2 kugeza kuya 9 z'Itegeko n° 18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenoside n'ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara kuko zinyuranije n'ingingo za 20, 33 na 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryavuguruwe kugeza ubu.

[6] Hashingiwe ku bimaze kuvugwa, Urukiko rw'Ikirenga rufite ububasha bwo gusuzuma iki kirego.

Ku bijyanye n'imihango y'iyakirwa ry'ikirego.

[7] Hashingiwe ku ngingo ya 361, 3º y'itegeko nº 21/2012 ryo kuwa 14/06/2012 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, nta garama Ingabire Umuhoza Victoire yagombaga gutanga kubera ko afunze. Ikirego yatanze yagitanze cyanditse, kiriho itariki n'umukono we, kandi kigaragaza ikiregerwa kimwe n'imyanzuro asabisha kuvanaho ingingo z'amategeko. Ku mugereka w'ikirego cye, akaba yarometseho kopi y'ingingo z'amategeko asabira kuvanwaho. Bikaba bigaragara ko ingingo ya 54 y'Itegeko Ngenga nº 03/2012/OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga irebana n'imihango igendana n'iyakirwa ry'ikirego yubahirijwe.

[8] Nanone kandi hashingiwe ku ngingo ya 53, igika cya 3 y'Itegeko Ngenga rimaze kuvugwa, Ingabire Umuhoza Victoire afite inyungu yo gutanga ikirego kigamije gukuraho ingingo z'amategeko zavuzwe kubera ko afite urubanza rw'inshinjabyaha aburana mu Rukiko Rukuru akurikiranweho icyaha cyo gupfobya Jenoside n'icy'ingengabitekerezo ya Jenoside.

III. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

[9] Ibibazo urukiko rugomba gusuzuma muri uru rubanza ni ibyerekeranye n'ivanwaho ry'ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 ryahanaga icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara, hamwe n'icyo kumenya niba ingingo ya 2 kugeza kuya 9 z'itegeko n°18 /2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside zinyuranyije n'Itegeko Nshinga.

A. Ibyerekeranye n'ivanwaho ry'ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 ryahanaga icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara.

[10] Me Gatera Gashabana wunganira Ingabire Umuhoza Victoire avuga ko ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara, basaba ko ivanwaho kuko basanga yaragaruwe mu gitabo cy'amategeko ahana gishya mu ngingo yacyo ya 116 ikaba ivuga bimwe n'iyo basabira kuvanwaho, zikaba zitandukaniye gusa ku gihano cy'igifungo. Avuga rero ko

hakurikijwe imyanzuro y'inyongera batanze nyuma y'uko hasohotse Itegeko Ngenga rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda gishya, ingingo basabira kuvanwaho ari iya 116 y'iryo Tegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana.

[11] Me Mbonera Théophile, Intumwa ya Leta, avuga ko ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 ryamaze kuvugwa yavuyeho, bityo ko ari nta mpamvu yo gusaba ko iyo ngingo ivaho (*sans objet)* kuko utavanaho ingingo y'Itegeko yarangije kuvaho.

[12] Ku birebana no kuba ibikubiye mu ngingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 aribyo biboneka mu ngingo ya 116 y'Itegeko-Ngenga nº 01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda, Me Mbonera Théophile avuga ko ibirego bigira uko bitangwa n'uko biburanishwa, ko rero ikirego gisaba kuvanaho ingingo ya 116 kitasuzumwa kuko itigeze iregerwa.

[13] Ku byerekeranye n'iki kirego gishingiye ku ngingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 ryahanaga icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara, bigaragara ko igihe Ingabire Umuhoza Victoire yagitangaga, iryo tegeko ryariho kandi rikoreshwa, ko ariko kuva Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rivuzwe haruguru ryasohoka, Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara, aririyo ririmo ingingo ya 4 Ingabire Umuhoza Victoire yasabye ko ivanwaho ritari rikiriho hashingiwe ku ngingo ya 765 y'Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rimaze kuvugwa. Kuba rero Ingabire Umuhoza Victoire yarasabye kuvanaho ingingo y'itegeko ritagikoreshwa bituma ikirego cye kibura impamvu cyatangiwe (sans objet), bityo ikirego kijyanye no gusaba gukuraho ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara kikaba kitagomba kwakirwa.

[14] Ibi ni nako byemejwe n'uru Rukiko mu rubanza nº RS/INCONST/PEN 0004/12/CS ko kugira ngo itegeko cyangwa ingingo yaryo bisuzumwe mu rwego rwo kumenya niba bitanyuranyije n'Itegeko Nshinga, iryo tegeko cyangwa iyo ngingo bigomba kuba biriho, bikoreshwa kandi byubahirizwa[1].

[15] Ku byerekeye ivanwaho ry'ingingo ya 116 y'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 53 y'Itegeko Ngenga nº 03/2012 OL ryo kuwa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga iteganya ko "…Urukiko rw'Ikirenga ruregerwa mu nyandiko…" naho ingingo ya 54 y'iryo Tegeko Ngenga ikavuga ko "Ikirego… kigaragaza kandi ikiregerwa kimwe n'ingingo urega asabisha kuvanaho itegeko ngenga, itegeko cyangwa itegeko-teka…".

[16] Ingingo zivuzwe mu gika kibanziriza iki, zigaragaza uburyo gutanga ikirego bikorwamo n'inzira zikoreshwa. Kuba Ingabire Umuhoza Victoire yaratanze ikirego asaba ko ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo ku wa 06/09/2003 rihana icyaha cya jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara yavanwaho kuko inyuranyije n'Itegeko Nshinga, ntabwo Urukiko rwahindukira ngo rusuzume ko ingingo ya 116 y'Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iyo

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[1] Urubanza RS/INCONST/PEN 0002/12/CS rwaciwe kuwa 28/09/2012 Mugesera Léon asaba Urukiko rw'Ikirenga kwemeza ko ingingo ya 162 mu gika cyayo cya 2 y'Itegeko Nº 18/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi inyuranye nta shiti n'Itegeko Nshinga.

ngingo ariyo inyuranyije n'Itegeko Nshinga kuko atari cyo kirego Urukiko rwagejejweho binyuze mu nzira n'uburyo biteganywa n'ingingo z'amategeko zavuzwe mu gika kibanziriza iki.

B. Kumenya niba ingingo ya 2 kugeza kuya 9 z'itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside zinyuranyije n'Itegeko Nshinga.

[17] Mu mwanzuro utanga ikirego muri uru Rukiko ndetse no mu iburanisha ry'uru rubanza, Ingabire Umuhoza Victoire na Me Gatera Gashabana umwunganira bavuga ko ingingo za 2 kugeza kuya 9 z'itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside zinyuranyije n'Itegeko Nshinga mu ngingo zaryo za 20, 33 na 34. Me Gatera Gashabana asobanura ko itegeko rihana rigomba kugaragaza mu buryo budashidikanywaho, ibice bigize icyaha, mu gusobanura imvugo ye agatanga inyandiko z'abahanga mu mategeko n'imanza zaciwe mu bindi bihugu.

[18] Bavuga kandi ko ugushinjwa icyaha ku buryo budasobanutse binyuranya n'ihame ry'uko ntawe ushobora guhanirwa ibyo yakoze cyangwa atakoze iyo amategeko atabifataga nk'icyaha igihe byakorwaga, ko kandi ntawe ushobora gucibwa igihano kiruta icyari giteganijwe n'amategeko mu gihe yakoraga icyaha nk'uko biteganywa n'ingingo ya 20 y'Itegeko Nshinga, kuko basanga mu ngingo ya 2 n'iya 3 zarezwe nta bigize icyaha bizigaragaramo.

[19] Bakomeza bavuga nanone ko ingingo ya 2 n'iya 3 zibanze ku mvugo cyangwa ibikorwa bigaragajwe mu ruhame (expressions orales et écrites) zidatanga ibisobanuro, ku buryo umuntu ugiye gutanga igitekerezo kuri jenoside atazi aho yagarukira kugirango avuge ibyo ashaka nta bwoba bwo gukurikiranwa, bakaba basanga izo ngingo zibangamira uburenganzira umuntu ahabwa n'Itegeko Nshinga mu gutanga ibitekerezo, bityo zikaba zikwiye kuvanwaho.

[20] Me Mbonera Théophile Intumwa ya Leta, avuga ko ingingo ya 2 n'iya 3 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside zisabirwa gukurwaho zisobanutse neza, ko zidakoresha amagambo atumvikana cyangwa se ateye urujijo ku buryo yasobanurwa uko umuntu yishakiye. Yongeraho ko kibaye ari n'ikibazo cyo gusobanura amategeko (interprétation), itegeko ryanditse mu ndimi eshatu, bivuze ko umuntu yakwifashisha rumwe cyangwa urundi, ko ariko bitakwitiranywa no kuba rinyuranyije n'Itegeko Nshinga.

[21] Ku byerekeranye n'ingingo zirebana n'ubwisanzure mu bitekerezo no kubigaragaza, Intumwa ya Leta isanga ntaho ingingo ya 2 n'iya 3 z'Itegeko n° 18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside ziregerwa zinyuranyije n'iza 33 na 34 z'Itegeko Nshinga kuko ubwisanzure buzivugwamo bugomba gukoreshwa butabangamiye abandi. Yongeraho ko itegeko ryashyizeho imbibi, ariko ritabujije umuntu kuvuga ibyo azi kuri jenoside. Icyo umushingamategeko yanze ni ibyavugwa bigamije guhembera ko jenoside yakongera kubaho cyangwa bigamije gupfobya iyabayeho.

[22] Mu gusesengura ikirego cya Ingabire Umuhoza Victoire ku birebana n'ingingo ya 2 kugeza kuya 9 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside, Urukiko rurasanga ingingo ya 2 n'iya 3 z'itegeko rivuzwe haruguru zikiriho, bityo ikirego kizishingiyeho kikaba cyakwakirwa kigasuzumwa. Naho ikirego gishingiye ku ngingo ya 4 kugeza kuya 9 z'iryo tegeko kikaba nta mpamvu yacyo (sans objet) kubera ko

izo ngingo zirebana n'ibihano biteganyijwe mu gitabo cy'amategeko ahana gishya zavanweho, kikaba rero kidakwiye kwakirwa ngo gisuzumwe.

[23] Ingingo ya 33 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko "ubwisanzure mu bitekerezo, mu kubigaragaza, mu mutimanama, mu guhitamo idini, mu gusenga no kubigaragaza mu ruhame burengerwa na Leta mu buryo buteganywa n'amategeko. Kwamamaza ivangura rishingiye ku isano muzi, ku karere, ku bwoko cyangwa ku macakubiri ayo ari yo yose bihanwa n'amategeko", naho ingingo ya 34 yaryo igateganya ko "ubwisanzure bw'itangazamakuru n'ubwo kumenya amakuru bwemewe kandi bwubahirizwa na Leta. Ubwisanzure bwo kugaragaza ibitekerezo n'ubwo kumenya amakuru ntibugomba kubangamira ituze rusange rya rubanda n'imyifatire iboneye, uburenganzira bw'umwenegihugu bwo kugira icyubahiro n'agaciro mu maso y'abandi, ubwo kutagira uwivanga mu mibereho ye bwite n'iy'umuryango we; bwemerwa kandi iyo butabangamiye irengerwa ry'urubyiruko n'abana. Uko ubwo bwisanzure bukoreshwa biteganywa n'amategeko".

[24] Ingingo ya 2 y'itegeko nº18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenoside itanga ibisobanuro by'ingengabitekerezo ya Jenoside mu buryo bukurikira "Ingengabitekerezo ya jenoside ni urusobe rw'ibitekerezo bigaragarira mu myifatire, imvugo, inyandiko n'ibindi bikorwa bigamije cyangwa bihamagarira abantu kurimbura abandi hashingiwe ku bwoko, inkomoko, ubwenegihugu, akarere, ibara ry'umubiri, isura, igitsina, ururimi, idini cyangwa ibitekerezo bya politiki, bikozwe mu gihe gisanzwe cyangwa mu gihe cy'intambara", naho ingingo ya 3 y'iryo tegeko ikagira iti: "Icyaha cy'ingengabitekerezo ya jenoside kigaragarira mu myifatire irangwa n'ibimenyetso bigamije kwambura ubumuntu umuntu umwe cyangwa itsinda ry'abantu bafite icyo bahuriyeho nko mu buryo bukurikira:

1° Gutoteza, gutera ubwoba, gutesha agaciro mu mvugo, mu nyandiko cyangwa mu bikorwa bisebanya, birangwamo ubugome cyangwa byenyegeza urwango;

2° Gushyira mu kato, gushinyagurira, kwigamba, kwandagaza, guharabika, gutesha isura, kuyobya uburari hagamijwe gupfobya jenoside yabaye, guteranya abantu, kwihimura, kwangiza ubuhamya cyangwa ibimenyetso bya jenoside yabaye;

3° Kwica, gutegura umugambi wo kwica cyangwa kugerageza kwica undi bishingiye ku ngengabitekerezo ya jenoside".

[25] Urukiko rw'Ikirenga rurasanga izi ngingo, iya 2 n'iya 3 ntaho zinyuranyije n'Itegeko Nshinga cyane cyane mu ngingo yaryo ya 20, kuko zateganyije ibigize icyaha, ari nabyo bishingirwaho mu gufata icyemezo. Izo ngingo ziteganya na none ingero z'uburyo icyaha cy'ingengabitekerezo ya jenoside gikorwamo, umucamanza akaba ariwe usuzuma ibikorwa uregwa akurikiranweho akabihuza n'itegeko.

[26] Kuba izi ngingo ubwazo zaba zitumvikana neza cyangwa se zikenewe gusobanurwa kurushaho ntibyafatwa nk'aho zinyuranyije n'Itegeko Nshinga nk'uko Urukiko rw'Ikirenga rwabifasheho icyemezo, aho rwemeje ko kuba ingingo ikeneye gusobanurwa cyangwa kuzuzwa kurushaho bitafatwa nko kuba inyuranyije n'Itegeko Nshinga, ko ahubwo ari ibyakorwa n'Umushingamategeko mu gihe byagaragara ko ari ngombwa[2].

[2]Urubanza Nº RS/INCONST/0002/10/CS rwaciwe ku wa 27/04/2012, Ntawuburintimba Alivera asaba kwemeza ko ngingo ya 138 n'iya 141 z'itegeko nº 18/2004 ryo kuwa 20/06/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi zinyuranyije n'Itegeko Nshinga.

[27] Ku byerekeranye no kuvuga ko izi ngingo zaba zinyuranyije n'ibiteganywa n'ingingo za 33 na 34 z'Itegeko Nshinga ngo kubera ko zibangamira uburenganzira bwo kwisanzura mu bitekerezo zikaba zabuza umuntu washaka kugira icyo avuga kuri Jenoside kukivuga nta bwoba bwo gukurikiranwa, nabyo nta shingiro bifite kubera ko ubwisanzure mu gutanga ibitekerezo bidaha buri wese kuvuga ibyo yishakiye, cyane ko n'amategeko mpuzamahanga n'Itegeko Nshinga ry'u Rwanda yemera ko ubwo burenganzira bushobora kuzitirwa nk'uko biteganywa ngingo ya 34 y'Iryo Tegeko Nshinga n'ingingo ya 19 y'Amasezerano yerekeye uburenganzira mu by'imbonezamubano na politiki iteganya mu gace kayo ka 3 b, ko uburenganzira bwo gutanga ibitekerezo, bushobora kuzitirwa n'amategeko ya buri gihugu, cyane cyane iyo ari ngombwa kubungabunga umutekano n'ubusugire by'igihugu, ituze rusange rya rubanda cyangwa n'imyitwarire iboneye[3]. No mu ngingo ya 10 y'amasezerano y'Uburayi yerekeye uburenganzira bwa muntu, hateganywa ubwisanzure mu gutanga ibitekerezo, ariko mu ngingo yayo ya 17 hakabuzwa gukoresha nabi ubwo burenganzira.

[28] Kuba umuntu ashobora gukurikiranwa kubera ko ibyo yavuze bikubiyemo urwango cyangwa ivangura si umwihariko w'u Rwanda. Urugero ni nko mu gihugu cya Canada, mu gitabo cy'amategeko ahana (code criminel), ingingo ya 319 y'icyo gitabo ihana abakwirakwiza urwango n'imvugo y'amacakubiri[4].

[29] Na none mu rubanza R. v. Keegstra rwaciwe n'Urukiko rw'Ikirenga rw'icyo gihugu cya Canada ku itariki ya 13/12/1990, aho James Keegstra, umwarimu mu mashuri yisumbuye mu ntara ya Alberta y'icyo gihugu, yarezwe gukwirakwiza urwango ku bayahudi igihe yigishaga. Mu gihe urubanza yarezwemo n'ubushinjacyaha rwari rutaracibwa burundu, James Keegstra yatanze ikirego mu Rukiko rw'Ikirenga rw'icyo gihugu avuga ko icyaha yari akurikiranyweho giteganywa n'ingingo ivugwa mu gika kibanziriza iki mu gace kayo ka kabiri kinyuranije n'Itegeko Nshinga ry'icyo gihugu. Urukiko rwanzuye ruvuga ko ari ngombwa kurengera itsinda ry'abantu runaka, no kubanisha abantu bumva ko bangana (égalité) kabone n'ubwo baba bafite imico itandukanye. Urukiko rwabivuze muri aya magambo "………There is obviously a rational connection between the criminal prohibition of hate propaganda and the objective of protecting target group members and of fostering harmonious social relations in a community dedicated to equality and multiculturalisme".

[30] Nanone kandi, ibindi bihugu byiganjemo ibyo ku mugabane w'Uburayi bihana icyaha cyo gupfobya jenoside yakorewe abayahudi. Urugero nko Mu Bufaransa, Urukiko Rusesa imanza n'Urukiko rw'Ubujurire rw'i Paris zemeje mu manza zaciye ko ubwisanzure mu gutanga ibitekerezo bushobora, ku mpamvu yumvikana gukumirwa kubera kurengera ituze rusange rya rubanda n'imyifatire iboneye no kurengera inyungu z'inzirakarengane za "nazisme"[5]. Izindi ngero zigaragaza bihagije ko icyo cyaha gihanwa, ni nk'imanza zaciwe mu bihugu by'i Burayi zagihamije abari bagikurikiranweho kandi bakagihanirwa[6].

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[3] Aya masezerano yemejwe n'Inteko y'Umuryango w'Abibumbye ku wa 16/12/1966 yatangiye gukurikizwa kuwa 23/03/1976, akaba yaremejwe mu Rwanda n'Itegeko –Teka n° 08/75 ryo kuwa 12/02/1975.

[4] (1) "Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (b) an offence punishable on summary conviction. (2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (b) an offence punishable on summary conviction".

[5] *En Europe, l'article 10 de la Convention européenne des droits de l'homme garantit la liberté d'expression, alors que l'article 17 interdit d'abuser du droit. La Cour européenne des Droits de l'homme, s'appuyant sur ces deux articles, a conforté l'utilisation de la loi française du 13 juillet 1990 dite «Loi Gayssot» pour poursuivre et condamner des auteurs de publications négationistes. En France, la Cour de Cassation et la Cour d'Appel de Paris ont jugé que la liberté d'expression pouvait légitimement être restreinte pour des motifs de protection de*

[31] Urukiko rurasanga ingingo ya 2 n'iya 3 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenoside zitagamije kubuza abantu kwisanzura mu bitekerezo cyangwa kubigaragaza mu mvugo mu gihe bavuga kuri jenoside yakorewe abatutsi mu 1994, ahubwo zigamije gukumira uwakwitwaza ubwo burenganzira ahabwa n'amategeko agahembera gukora jenoside cyangwa agapfobya iyabayeho, bityo izo ngingo zikaba zitanyuranije n'Itegeko Nshinga.

IV. ICYEMEZO CY'URUKIKO

[32] Rwemeje kutakira ikirego rwashyikirijwe na Ingabire Umuhoza Victoire kigamije kuvanaho ingingo ya 4 y'Itegeko nº 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha by'intambara kuko nta mpamvu yacyo;

[33] Rwemeje kutakira ikirego cya Ingabire Umuhoza Victoire kigamije kuvanaho ingingo ya 4 kugeza kuya 9 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya jenoside kuko nta mpamvu;

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l'ordre public, de la morale et des intérêts des victimes du nazisme).

[6] *Lehideux and Isorni v. France, 1998-VII, n. 92; application number 24662/94,case number 55/1997/839/1045 (European Court of Human Rights 23 September 1998).*

Faurisson v France, 2 BHRC UN Doc. CCPR/C/58/D/550/1993, Constitutional Court of Spain. November 7, 2007.

-Jean-Marie Le Pen, France, Germany fines Feb. 27, 1998. En 1987, il a qualifié à plusieurs reprises les chambres à gaz de «point de détail de l'histoire de la Seconde Guerre mondiale».

Roger Garaudy, France, imprisonment (suspended), ₣240,000 fine Jul. 21, 1998 (Writer fined for Holocaust writings).

Jürgen Graf, Switzerland, 15 months imprisonment (fled Switzerland to avoid sentence).

Gerhard Förster, Switzerland, 12 months imprisonment, disgorgement, May 27, 1999.

Jean Plantin, France, 6 months imprisonment (suspended), fine, damages Apr. 11, 2000 (Francillon, Claude. "A Lyon, l'éditeur chômeur Jean Plantin jugé pour contestation de crimes contre l'humanité", Disciple de Faurisson, il a été à deux reprises condamné pour contestation de crimes contre l'humanité par le Tribunal de grande instance de Lyon, à 6 mois de prison avec sursis ainsi qu'à des peines d'amende.

Gaston-Armand Amaudruz, Switzerland, 1 year imprisonment, damages Feb. 20, 2006 ("Holocaust revisionist sentenced".

David Irving, Austria, 1 year imprisonment Mar. 15, 2006 (Traynor, Ian. "Irving jailed for denying Holocaust".

Germar Rudolf, Germany, 2½ years imprisonment, Oct. 3, 2006 ("German Holocaust Denier Imprisoned for Inciting Racial Hatred".

Robert Faurisson, France, €7,500 fine, 3 months probation' Feb. 15, 2007. Les thèses revisionnistes héritées de Paul Rassinier, ancien résistant déporté qui contestait la véracité des témoignages d'anciens déportés, a été condamné en 1981 par la 17ème Chambre du Tribunal de grande instance de Paris pour diffamation publique, condamnation confirmée par la Cour d'Appel.

Ernst Zündel, Germany, 5 years imprisonment' Jan. 14, 2008 ("Holocaust denier in Germany sentenced to five years in prison

Wolfgang Fröhlich, Austria, 6½ years imprisonment' Jan. 15, 2008 ("Austrian Holocaust denier gets six-and-a-half years in prison".

Sylvia Stolz, Germany, 3½ years imprisonment ' Mar. 11, 2009 ("German Neo-Nazi Lawyer Sentenced for Denying Holocaust".

Horst Mahler, Germany, 5 years imprisonment' Oct. 23, 2009.

Dirk Zimmerman, Germany, 9 months imprisonment' Oct. 27, 2009.

Richard Williamson, Germany, €12,000 fine. Condamnation pour des déclarations négationnistes d'un évêque britannique qui avait déclaré en 2008 qu'il n'y a pas eu de chambres à gaz, que 200000 à 300000 Juifs ont péri dans les camps de concentration, mais un seul dans les chambres à gaz

[34] Rwemeje kwakira ikirego cya Ingabire Umuhoza Victoire kigamije kuvanaho ingingo ya 2 n'iya 3 z'Itegeko n°18/2008 ryo kuwa 23/07/2008 rihana icyaha cy'ingengabitekerezo ya Jenocide kuko cyatanzwe mu buryo bukurikije amategeko;

[35] Rwemeje ariko ko nta shingiro gifite;

[36] Rutegetse ko amagarama y'urubanza angana na 11.600Frw, aherera ku isanduku ya Leta.