SEBATWARE N'ABANDI v. RWANDAIR

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA 0021/13/CS (Mutashya, P.J., Nyirinkwaya na Hitiyaremye, J.) 21 Nyakanga 2015]

Amategeko agenga gutwara abantu mu Ndege – Uburyozwe – Indishyi zikomoka ku rupfu rwatewe n'impanuka y'indege – Utwara abantu mu ndege agomba kuryozwa indishyi zikomoka ku rupfu rw'abo atwaye mu gihe atashoboye kugaragaza ko rwatewe n'indi mpamvu itari impanuka yagiriye mu ndege – Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929, yerekeye gutwara abantu mu ndege nk'uko yahinduwe n'amasezerano y'i La Haye yo kuwa 28/09/1955, ingingo ya 17.

Indishyi – Ingano y'Indishyi – Kuba utwara abantu mu ndege yarigeze kwemera gutanga indishyi zirenze umubare ntarengwa uvugwa mu masezerano ya Varsovie nk'uko yavuguruwe n'amasezerano y'i La Haye, ntiyahindukira ngo avuge ko uwo mubare ntarengwa ariwo ugomba kubahirizwa.

Indishyi – Indishyi z'ikurikiranarubanza – Mu gihe indishyi zasabwe ari ikirenga hakurikijwe igihe urubanza rumaze n'ibyarukozweho, zigenwa mu bushishozi bw'urukiko.

Incamake y'ikibazo: Kuwa 12/11/2009, RWANDAIR yakoze impanuka igihaguruka ku kibuga cy'indege i Kanombe maze uwitwa Nyirangorororoka Azera wari muri iyo ndege arakomereka bimuviramo urupfu. Umugabo we Sebatware hamwe n'abana babo babiri batanze ikirego mu Rukiko Rwisumbuye rwa Gasabo basaba indishyi zishingiye ku masezerano yo gutwara abantu mu ndege atarubahirijwe. Urukiko rwemeje ko nta bubasha rufite bwo gusuzuma ibirego byabo.

Kuwa 18/01/2013, abarega bongeye gutanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge, RWANDAIR nayo itanga inzitizi yo kutakira icyo kirego kuko cyatanzwe nyuma y'imyaka ibiri iteganywa mu masezerano ya Varsovie. Urukiko rwemeje ko ubusaze bw'ikirego bwahagaze igihe abarega batangaga ikirego mu gihe giteganywa n'amategeko mu Rukiko Rwisumbuye rwa Gasabo.

Mu kwiregura mu mizi, RWANDAIR ivuga ko Nyakwigendera atazize impanuka y'indege ahubwo ko yayikoreye mu modoka y'imbangukiragutabarayari imujyanye kwa muganga. Urukiko rwemeje ko nta shingiro bifite kuko iterekana uruhare rw'impanuka y'imodoka y'imbangukiragutabara mu rupfu rwa nyakwigendera, bityo ruyitegeka guha abaregaindishyi zingana na 20.000.000Frw kuri buri wese.

RWANDAIR yajuriye mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko Urukiko rubanza rwanze guha agaciro inzitizi yo kutakira ikirego yari yatanze kuko ikirego cy'abarega cyatanzwe impitagihe, Urukiko rwemeza ko iyo nzitizi ifite ishingiro bityo ko kirego cyabo kitagombaga kwakirwa mu Rukiko rubanza kuko igihe cy'imyaka ibiri kitubahirijwe.

Sebatware n'abana be bajuririye mu Rukiko rw'Ikirenga maze RWANDAIR nayo ibyutsa na none inzitizi y'iburabubasha bw'Urukiko rw'Ikirenga maze mu rubanza rubanziriza urundi, uru Rukiko rwemeza ko ikirego cyabo kitatanzwe impitagihe nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi kandi rwemeza ko iyo nzitizi y'iburabubasha nta shingiro ifite.

Mu mizi y'urubanza, abarega bavuga ko "Rwanda Civil Aviation" yiyemereye ko hapfuye umuntu umwe mu mpanuka y'indege yabereye ku kibuga cy'indege cya Kanombe kuwa 12/11/2009, kandi ko hari na raporo ya RWANDAIR igaragaza ko yemera uruhare rwayo mu rupfu rwa nyakwigendera, bakavuga rero ko nta wundi wakwishyuzwa indishyi zikomoka ku

rupfu rwe usibye RWANDAIR kuko ariyo yakoranye amasezerano na nyakwigendera yo kumugeza aho yari agiye.

RWANDAIR yo ivuga ko abarega batagaragaje ibimenyetso byerekana ko urupfu rwa nyakwigendera rwaturutse ku mpanuka y'indege kubera ko ajyanwa kwa muganga yakoze indi mpanuka mu modoka y'imbangukiragutabara yari imutwaye bigatuma agera kwa muganga yapfuye.

Uhagarariye abaregera indishyi avuga ko nta kosa Urukiko rw'Ubucuruzi rwa Nyarugenge rwakoze rwanga kubara indishyi rushingiye kuri "conditions générales de transport" za RWANDAIR kuko amasezerano ya Varsovie atemera ko utwara abagenzi mu ndege yivanaho cyangwa agabanya uburyozwe bwe, bityo agasaba ko ahubwo abakiliaya be bahabwa 982.500USD bari basabye mu rwego rwa mbere kuko amasezerano ya Varsovie nk'uko yahinduwe n'amasezerano y'i La Haye ateganya mu ngingo yayo ya 22-1 ko indishyi zingana na 250.000F ku bantu bangirijwe n'urupfu rw'umuntu wazize impanuka y'indege, naho mu ngingo ya 22-5 agateganya ko ifaranga rivugwa mu gace ka mbere rifite agaciro kangana na miligarama 65.5 za zahabu, ko kandi ivunjwa ry'ayo mafaranga 250.000 mu mafaranga y'igihugu runaka rikorwa hakurikijwe agaciro ka zahabu (valeur-or) k'iryo faranga ku munsi w'icibwa ry'urubanza.

RWANDAIR ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwatanze indishyi za 20.000.000Frw zidafite aho zishingiye kuri buri wese mu baziregeye, rwirengagije ingingo ya 22 y'amasezerano ya Varsovie nk'uko yavuguruwe n'amasezerano y'i La Haye u Rwanda rwashyizeho umukono kandi ayo masezerano adakuraho ihame ry'uburyozwe, ko rero nta ndishyi zigomba gutangwa iyo uvuga ko yangirijwe atagaragaza ibimenyetso by'ibyo yangirijwe. Ivuga kandi ibyo gupima agaciro k'ifaranga hifashishijwe zahabu nta shingiro bifite kuko kuva mu mwaka wa 1973 agaciro k'ifaranga ry'igihugu iki n'iki katagipimirwa kuri zahabu nk'uko mbere y'uwo mwaka byagendaga, ndetse ko byaje no kwemezwa n'amasezerano ya Jamaique yo kuwa 7 na 8/01/1976 yakuyeho "parité –or des monnaies".

Incamake y'icyemezo: 1. Uregwa agomba kuryozwa indishyi zikomoka ku rupfu rwa nyakwigendera mu gihe atashoboye kugaragaza ko rwatewe n'indi mpamvu itari impanuka yagiriye mu ndege.

2. Kuba RWANDAIR ubwayo yarigeze kwemera gutanga indishyi zirenze umubare ntarengwa uvugwa mu masezerano ya Varsovie nk'uko yavuguruwe n'amasezerano y'i La Haye, ntiyahindukira ngo ivuge ko uwo mubare ntarengwa ariwo ugomba kubahirizwa. Bityo, nta kosa urukiko rwakoze rutegeka uregwa guha indishyi zingana na 20.000.000Frw kuri buri wese mu baziregeye uko ari batatu.

3. Kuba indishyi zikurikiranarubanza zasabwe n'abareze ari ikirenga hakurikijwe igihe urubanza rumaze n'ibyarutanzweho byose, Urukiko rusanga uregwa akwiye guha abareze indishyi zingana na 1.000.000Frw yiyongera kuri 900.000Frw yategetswe ku rwego rwa mbere, yose hamwe akaba 1.900.000Frw ku nzego eshatu baburaniyemo.

Ubujurire nta shingiro bufite.
Ubujurire bwuririye ku bundi bufite ishingiro kuri bimwe.
Amagarama y'urubanza aherereye ku warezwe.

Amategeko yashingiweho:

Amasezerano mpuzamahanga ya Varsovie yo kuwa 12/10/1929 yerekeye gutwara abantu mu ndege nk'uko yahinduwe n'amasezerano y'i La Haye yo kuwa 28/09/1955, ingingo ya 17 n'iya 23.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Kuwa 12/11/2009, indege Nyirangororoka Azera yari arimo ya RWANDAIR yakoze impanuka igihaguruka ku kibuga cy'indege cy'i Kanombe, arakomereka, ajyanwa mu bitaro King Faisal aho yapfiriye nyuma y'iminota mike.

[2] Kuwa 11/11/2011, umugabo we Sebatware Bizimana Sébastien n'abana be babiri Niyongere Claire na Kagame Alexis batanze ikirego mu Rukiko Rwisumbuye rwa Gasabo basaba indishyi zishingiye ku masezerano yo gutwara abantu mu ndege ngo atarubahirijwe, mu rubanza rwo kuwa 24/04/2012 urwo rukiko rwemeza ko nta bubasha rufite bwo gusuzuma ibirego byabo.

[3] Kuwa 18/01/2013, Sebatware Bizimana Sébastien n'abana be ahagarariye bongeye gutanga ikirego mu Rukiko rw'Ubucuruzi rwa Nyarugenge maze RWANDAIR itanga inzitizi yo kutakira ikirego ivuga ko ikirego cyatanzwe nyuma y'imyaka 2 iteganywa mu ngingo ya 29 y'amasezerano ya Varsovie yo kuwa 12/10/1929 u Rwanda rwashyizeho umukono, urukiko ruca urubanza RCOM 0101/13/TC/NYGE kuwa 30/04/2013, rwemeza ko ubusaze bw'ikirego bwahagaze igihe abarega batangaga ikirego mu gihe giteganywa n'amategeko mu Rukiko Rwisumbuye rwa Gasabo kuwa 11/11/2011.

[4] Ku bijyanye n'imizi y'urubanza, urukiko rwaciye urubanza kuwa 30/04/2013, rwemeza ko ibyo RWANDAIR ivuga ko Nyirangororoka Azera atazize impanuka y'indege, ahubwo yazize ibikomere yatewe n'impanuka yakoreye mu modoka yari imujyanye kwa muganga nta shingiro bifite kuko iterekana uruhare rw'impanuka ya ambulansi mu rupfu rwa Nyirangororoka Azera, ruyitegeka guha Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis indishyi zingana na 20.000.000Frw kuri buri wese, no kwishyura amafaranga y'ikurikiranarubanza n'igihembo cy'Avoka angana na 900.000Frw.

[5] RWANDAIR yajuriye mu Rukiko Rukuru rw'Ubucuruzi ivuga ko ikirego cya Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis kitagombaga kwakirwa kuko cyatanzwe impitagihe hatubahirijwe igihe cy'imyaka ibiri giteganywa n'amasezerano ya Varsovie, itanga n'izindi ngingo zijyanye n'imizi y'urubanza igihe urukiko rwabibona ukundi, abaregwa mu bujurire nabo batanga ubujurire bwuririye ku bundi ku bijyanye n'indishyi.

[6] Mu rubanza RCOMA 0194/13/HCC rwo kuwa 27/09/2013, Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cya Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis kitagombaga kwakirwa mu Rukiko rw'Ubucuruzi rwa Nyarugenge kuko cyatanzwe hatubahirijwe igihe cy'imyaka ibiri giteganywa n'amasezerano ya Varsovie.

[7] Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis bajuririye Urukiko rw'Ikirenga, ikirego cyabo cyandikwa kuri RCOMAA 0021/13/CS. Mu rubanza

rubanziriza urundi rwo kuwa 06/06/2014, uru rukiko rwemeje ko inzitizi y'iburabubasha ry'Urukiko rw'Ikirenga yari yabyukijwe na RWANDAIR nta shingiro ifite.

[8] Na none mu rubanza rubanziriza urundi rwo kuwa 14/11/2014, uru rukiko rwemeje ko ikirego cya Bizimana Sébastien, Niyongere Claire na Kagame Alexis mu Rukiko rw'Ubucuruzi rwa Nyarugenge kitatanzwe impitagihe nk'uko byemejwe n'Urukiko Rukuru rw'Ubucuruzi, hakaba rero hagomba gusuzumwa ubujurire bwa RWANDAIR ku rubanza RCOM 0101/13/TC/NYGE mu mizi yarwo n'ubujurire bwuririye ku bwayo bwa Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis.

[9] Urubanza mu mizi rwaburanishijwe kuwa 20/01/2015 no kuwa 13/05/2015, Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis bahagarariwe na Me Rwihandagaza Richard, naho RWANDAIR ihagarariwe na Me Nkurunziza François Xavier.

[10] Mu iburanisha ryo kuwa 13/05/2015 Urukiko rwumvise abatangabuhamya, aribo Biggi Zimvumi wakoze raporo y'impanuka y'indege na Ngendo Vincent wakoraga mu ndenge Nyirangororoka Azera yagiriyemo impanuka.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

A) Kumenya niba urupfu rwa Nyirangororoka Azera rudakomoka ku mpanuka y'indege yabaye kuwa 12/11/2009, RWANDAIR ikaba itagomba kuryozwa urupfu rwe.

[11] Me Nkurunziza François Xavier uburanira RWANDAIR avuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwaciye urubanza ku rwego rwa mbere rwirengagije ko Bizimana Sébastien, Niyongere Claire na Kagame Alexis nta bimenyetso batanga bigaragaza ko urupfu rwa Nyirangororoka Azera rwaturutse ku mpanuka y'indege kuko nyuma y'iyo mpanuka yajyanwe kwa muganga, imodoka ya ambulansi yari imutwaye ikora impanuka, bituma agera kwa muganga yapfuye.

[12] Avuga kandi ko RWANDAIR yagerageje kumvikana n'abarega kubera ko yemeraga kwishyura 51.500USD ahwanye n'uruhare rwayo, akubiyemo 10.000USD yari agenewe Sebatware, 20.000USD yari agenewe Niyongere Claire, 20.000USD yari agenewe Kagame Alexis na 1.500USD yo gukurikirana dosiye (frais), ariko ko itategekwa kwishyura indishyi zose yonyine kandi uwagize uruhare rukomeye mu rupfu rwa Nyirangororoka Azera ari uwari utwaye imodoka yakomerekeyemo ajyanwe kwa Muganga.

[13] Akomeza avuga ko raporo y'impanuka y'imodoka ihari kuko uwari uyitwaye yakurikiranywe mu Rukiko rwa Gisirikare, ko iyo dosiye yashakwa maze hakagaragazwa uruhare iyo mpanuka yagize mu rupfu rwa Nyirangororoka Azera.

[14] Me Rwihandagaza Richard uburanira Bizimana Sébastien, Niyongere Claire na Kagame Alexis avuga ko Rwanda Civil Aviation ubwayo yiyemereye ko hapfuye umuntu umwe mu mpanuka y'indege yabereye ku kibuga cy'indege cya Kanombe kuwa 12/11/2009 nk'uko bigaragara muri raporo ibanziriza indi (rapport préliminaire) iri kuri kote 35, ndetse ko hari n'ibaruwa ya RWANDAIR iri kuri kote 37 igaragaza ko yemera uruhare rwayo mu rupfu rwa Nyirangororoka Azera.

[15] Akomeza avuga ko Nyirangororoka Azera atakomerekeye mu mpanuka y'imodoka ya ambulansi kuko atari mu bajyanwe kwa muganga muri iyo modoka, ahubwo we akaba

yarajyanwe n'imodoka ya Polisi, ndetse ko ntaho avugwa muri raporo yakozwe na Polisi kuri iyo mpanuka y'imodoka.

[16] Yongeraho ko nubwo Nyirangororoka Azera yaba yari mu modoka yakoze impanuka nta wundi wakwishyuzwa indishyi zikomoka ku rupfu rwe usibye RWANDAIR kuko ariyo bakoranye amasezerano yo kumugeza aho yagombaga kujya.

[17] Kuri icyo kibazo, mu buhamya bwe Biggi Zimvumi yavuze ko indege imaze gukora impanuka, abatabazi basanze Nyirangororoka Azera yagwiriwe na "Food galley" ibikwamo amafunguro y'abagenzi mu ndege, yataye ubwenge, afite ibikomere mu mutwe, bakeka ko yapfuye, bamusohoramo, bamujyana ku bitaro King Faisal mu modoka isanzwe ikoreshwa ku kibuga cy'indege ifite plaque GR091A, bagerageza kumukorera ubutabazi ariko mu isaha imwe yari apfuye, ari nayo mpamvu hakurikijwe amasezerano mpuzamahanga bamubara mu bantu baguye mu mpanuka y'indege. Yavuze kandi ko Nyirangororoka Azera atari mu modoka GR 963A yagize impanuka ivuye ku kibuga cy'indege, ahubwo yari irimo pilote umwe, technicien umwe n'abagenzi babiri, bashakirwa indi ambulansi irabakomezanya.

[18] Ngendo Vincent nawe mu buhamya bwe yavuze ko yakoraga mu ndege yagiriye impanuka ku kibuga cy'indege cy'i Kanombe kuwa 12/11/2009, ko impanuka imaze kuba habaye ibikorwa by'ubutabazi, basanga Nyirangororoka Azera yataye ubwenge, umutwe wamenetse, umuganga wari uhari w'umunyamahanga agerageza kumwongerera umwuka biranga, ababwira ngo bamujyane kwa muganga, bamujyana mu bitaro King Faisal mu modoka ya "pick up", hashize nk'iminora 30 bamugejeje kwa muganga bababwira ko yapfuye.

UKO URUKIKO RUBIBONA

[19] Ingingo ya 17 y'amasezerano ya Varsovie yo kuwa 12/10/1929 nk'uko yahinduwe n'amasezerano y'i La Haye yo kuwa 28/09/1955 u Rwanda rwashyizeho umukono ivuga ko utwara abagenzi mu ndege aryozwa urupfu rw'abo atwaye cyangwa ibikomere bagize iyo bikomoka ku mpanuka yabaye umuntu ari mu ndege, ayizamukamo cyangwa ayimanukamo, ingingo ya 20 y'ayo masezerano ikavuga ko ataryozwa ibyangijwe iyo ashoboye kugaragaza ko we n'abo akoresha bakoze ibishoboka byose ngo impanuka itaba cyangwa ko batashoboraga kugira icyo bakora, naho ingingo ya 21 y'ayo masezerano ikavuga ko ataryozwa ibyangijwe iyo ashoboye kugaragaza ko bikomoka ku ikosa ry'uwangirijwe.

[20] Ku bijyanye rero na Nyirangororoka Azera, nubwo RWANDAIR ivuga ko urupfu rwe rwatewe n'impanuka y'imodoka yari imujyanye ku bitaro King Faisal, imvugo ya Biggi Zimvumi n'iya Ngendo Vincent zigaragaza ko atigeze ajyanwa mu modoka ya ambulansi yagiriye impanuka mu nzira ubwo yari ijyanye bamwe mu bari mu ndege yagiriye impanuka ku kibuga cy'indege, ndetse ko yavanywe mu ndege yakomeretse bikomeye ku buryo yari ameze nk'uwapfuye igihe yajyanwaga kwa muganga.

[21] Rukurikije rero imvugo z'abo batangabuhamya zigaragaza ko Nyirangororoka Azera yavanywe mu ndege yakomeretse cyane, icyemezo cy'ibitaro King Faisal kigaragaza ko yapfuye kuwa 12/11/2009 azize ibikomere byo mu mutwe n'icyemezo cy'Umunyamabanga Nshingwabikorwa w'Umurenge wa Shyogwe kigaragaza ko yapfuye kuri iyo tariki, Urukiko rusanga RWANDAIR itarashoboye kugaragaza ko urupfu rwa Nyirangororoka rwatewe n'indi mpamvu itari impanuka yagiriye mu ndege, ikaba rero igomba kuryozwa indishyi

zikomoka ku rupfu rwe nk'uko biteganywa n'amasezerano ya Varsovie yo muri 1929 nk'uko yavuguruwe n'amasezerano y'i La Haye yo muri 1955.

B) Ku bijyanye n'indishyi RWANDAIR yategekwa kwishyura.

[22] Me Nkurunziza François Xavier avuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rwatanze indishyi zidafite aho zishingiye za 20.000.000Frw kuri buri wese mu baziregeye, rwirengagije ingingo ya 22 y'amasezerano ya Varsovie nk'uko yavuguruwe n'amasezerano y'i La Haye u Rwanda rwashyizeho umukono ivuga ko indishyi zikomoka ku rupfu rw'umuntu wazize impanuka y'indege zidashobora kurenga 250.000F abarwa hashingiwe ku ifaranga-zahabu (Franc-Or), ayo mafaranga akaba ahwanye na 20.000USD yanditse mu masezerano Nyirangororoka Azera yagiranye na RWANDAIR (conditions générales de transport).

[23] Avuga kandi ko amasezerano ya Varsovie adakuraho "principe indemnitaire", ko rero nta ndishyi zigomba gutangwa iyo uvuga ko yangirijwe atagaragaza ibimenyetso by'ibyo yangirijwe.

[24] Me Rwihandagaza Richard avuga ko nta kosa Urukiko rw'Ubucuruzi rwa Nyarugenge rwakoze rwanga kubara indishyi rushingiye kuri "conditions générales de transport" za RWANDAIR kuko amasezerano ya Varsovie atemera ko utwara abagenzi mu ndege yivanaho cyangwa agabanya uburyozwe bwe (art 23: "toute clause tendant à exonérer le transporteur de sa responsabilité ou a établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet….").

[25] Mu bujurire bwuririye ku bundi, arasaba ko Bizimana Sébastien, Niyongere Claire na Kagame Alexis bahabwa 982.500USD bari basabye mu rwego rwa mbere kuko amasezerano ya Varsovie nk'uko yahinduwe n'amasezerano y'i La Haye ateganya mu ngingo yayo ya 22-1 ko indishyi zingana na 250.000F ku bantu bangirijwe n'urupfu rw'umuntu wazize impanuka y'indege, naho mu ngingo ya 22-5 agateganya ko ifaranga rivugwa mu gace ka mbere rifite agaciro kangana na miligarama 65.5 za zahabu, ko kandi ivunjwa ry'ayo mafaranga 250.000 mu mafaranga y'igihugu runaka rikorwa hakurikijwe agaciro ka zahabu (valeur-or) k'iryo faranga ku munsi w'icibwa ry'urubanza.

[26] Ku bijyanye n'uburyo bwo kubara izo ndishyi, asobanura ko igarama rimwe rya zahabu ryaguraga 57.23USD ku itariki ya 09/11/2011 hakurikijwe ibivugwa ku rubuga www.sacra-moneta.com, bivuze ko miligarama imwe yaguraga 0.06USD, naho 65.5 miligarama zikagura 3.93USD, bityo 250.000F avugwa mu masezerano ya La Haye akaba ahwanye na 982.500USD.

[27] Me Nkurunziza François Xavier avuga ko ibyo Me Rwihandagaza asabira Bizimana Sébastien, Niyongere Claire na Kagame Alexis mu bujurire bwuririye ku bundi nta shingiro bifite kuko kuva mu mwaka wa 1973 agaciro k'ifaranga ry'igihugu iki n'iki katagipimirwa kuri zahabu nk'uko mbere y'uwo mwaka byagendaga, ndetse ko byaje no kwemezwa n'amasezerano ya Jamaique yo kuwa 7 na 8/01/1976 yakuyeho parité –or des monnaies.

UKO URUKIKO RUBIBONA

[28] Amasezerano ya Varsovie yo kuwa 12/10/1929 ateganya mu ngingo yayo ya 22-1 ko amafaranga ntarengwa utwara abagenzi mu ndege aryozwa ku mugenzi ari 125.000Franc. Ayo masezerano yaje kuvugururwa n'amasezerano y'i La Haye kuwa 28/09/1995,

amafaranga ntarengwa utwara abagenzi mu ndege aryozwa ku mugenzi ashyirwa kuri 250.000Franc.

[29] Muri ayo masezerano yombi ariko nta buryo bwateganyijwe bwo kongera amafaranga ntarengwa utwara abantu aryozwa ku mugenzi uko imyaka igenda isimburana, ibi akaba ari imwe mu mpamvu y'ingenzi yatumye ibihugu bimwe n'ama sosiyete y'indege amwe ateganya andi masezerano azamura amafaranga ntarengwa utwara abagenzi ashobora kuryozwa[1], ndetse hajyaho amasezerano ya Montréal yo kuwa 28/06/1999 yashyize amafaranga ntarengwa utwara abantu aryozwa ku mugenzi kuri 100.000DTS.

[30] Amasezerano u Rwanda rwashyizeho umukono ni amasezerano ya Varsovie yo muri 1929 nk'uko yahinduwe n'amasezerano y'i La Haye yo muri 1955. Amasezerano yakurikiyeho harimo n'amasezerano ya Montréal ntabwo rwayashyizeho umukono, bivuze ko mu Rwanda amafaranga ntarengwa utwara abantu aryozwa ku mugenzi yagumye kuri 250.000Franc.

[31] Ayo masezerano u Rwanda rwashyizeho umukono ateganya mu ngingo yayo ya 22-5 ko ayo mafaranga (250.000Franc) abarwa hashingiwe ku ifaranga-zahabu (Franc-Or) igizwe na 65.5mg za zahabu, kandi ko avunjwa mu mafaranga ya buri gihugu hakurikijwe agaciro k'ayo muri zahabu (valeur-or)[2] iyo bibaye ngombwa kugena indishyi.

[32] Abaregera indishyi barabara indishyi basaba bashingiye ku giciro cya zahabu ku isoko, ariko Urukiko rusanga nk'uko byasobanuwe n'umucamanza wa mbere ari ukwitiranya agaciro k'ifaranga muri zahabu (valeur-or) n'agaciro ka zahabu kari ku isoko.

[33] Urukiko rurasanga kandi ivunjwa ry'ifaranga-zahabu mu mafaranga ya buri gihugu ritagishoboka kuko amasezerano ya mbere[3] n'aya kabiri[4] avugurura sitati ya Fond Monétaire International (FMI) yaje kwemeza ko agaciro k'ifaranga (monnaie) ry'igihugu iki n'iki katagipimirwa kuri zahabu, ku buryo havutse ikibazo cyo kumenya uburyo indishyi zishingiye kuri Franc-or zabarwa igihe bibaye ngombwa.

[34] Ni mu rwego rwo gukemura ikibazo cyari kivutse, muri 1975 hateguwe amasezerano y'inyongera ku masezerano ya Varsovie yo muri 1929[5] no ku masezerano y'i La Haye yo muri 1955[6] avugurura amasezerano ya Varsovie, aya mbere ateganya ko amafaranga ntarengwa utwara abagenzi yaryozwa hashingiwe ku masezerano ya Varsovie abaye 8.300 Spécial drawing rights (SDR*)*, naho aya kabiri agateganya ko amafaranga ntarengwa utwara abagenzi yaryozwa hashingiwe ku masezerano y'i La Haye avugurura amasezerano ya Varsovie abaye 16.600SDR.

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[1] - Les accords de Malte du 1er avril 1987.
- Les accords IATA (International Air Transport Association signés le 31/10/1995 à Kuala Lumpur.
- L'accord MIA signé le 3 avril 1996 à Montréal.
- Accord de Montréal de 1966 (75.000USD par passager)

[2] (….) la conversion de ces sommes en monnaies nationales autres que la monnaie-or s'effectuera en cas d'instance judiciaire suivant la valeur-or de ces monnaies à la date du jugement.

[3] *Le DTS-Dtroits de tirage spéciaux a été crée Le 28 juillet 196l lors du premier amendement aux statuts du FMI par le Fonds Monétaire International.*

[4] *7-8 janvier, le second amendement aux statuts du FMI; Accords de la Jamaïque (Kingston, 8 janvier 1976) décide de mettre un terme définitif au système monétaire des parités fixes mais ajustables.*

[5] *Protocole additionnel N° 1 signé à Montréal le 25 septembre 1975.*

[6] *Protocole additionnel N° 2 signé à Montréal le 25 septembre 1975.*

[35] Urukiko rusanga kuba u Rwanda rutarashyize umukono kuri ayo masezerano y'inyongera bitaba imbogamizi kuko ikigenderewe ari ukureba uburyo amafaranga avugwa mu masezerano ya Varsovie yo muri 1929 n'amasezerano ya La Haye yo muri 1955 yashyizwe muri SDR.

[36] Hakurikijwe rero amasezerano y'inyongera (Procole N°2) ateganya ko amafaranga ntarengwa utwara abagenzi yaryozwa ari 16.600SDR, Urukiko rurasanga ku itariki ya 31/07/2015 ayo mafaranga yari ahwanye n'amafaranga y'u Rwanda angana na 16.135.257 hagendewe ku gaciro ka 1.008,453575 gatangwa na Banki Nkuru y'Igihugu.

[37] Urukiko rusanga ariko nanone, nubwo amafaranga 16.600SDR ariyo agomba gufatwa nk'umubare ntarengwa w'indishyi utwara abagenzi yaryozwa agenwa n'amasezerano y'i La Haye avugurura amasezerano ya Varsovie, ntabwo bivuga ko ariyo agomba gutangwa byanze bikunze kuko uwangirijwe agomba kubanza kugaragaza ibyo yangirijwe (fournir la preuve de l'existence et du quantum du dommage subi), ibi akaba ari ihame mu mategeko y'u Rwanda no mu mategeko mpuzamahanga.

[38] Urukiko rusanga nanone nubwo amafaranga 16.600SDR ariyo agomba gufatwa nk'umubare ntarengwa w'indishyi utwara abagenzi yaryozwa agenwa n'amasezerano y'i La Haye avugurura amasezerano ya Varsovie, ntabwo bivuga ko uwangirijwe adashobora kugenerwa indishyi zirengeje ayo mafaranga kuko, nk'uko bisobanurwa mu ngingo ya 23 y'ayo masezerano, ikibujijwe ni ugutegeka uwangirijwe guhabwa umubare ntarengwa muto k'uwateganyijwe mu masezerano.

[39] Urukiko rusanga kuba RWANDAIR yarivugiye mu iburanisha ko yashatse guha abaregera indishyi 51.500USD ngo kuko yabonaga ariyo ahwanye n'uruhare rwayo, urundi ruhare runini ari urwa nyiri modoka yagize impanuka itwaye Nyirangorororoka ku bitaro, byumvikanisha ko abaregeye indishyi bayigaragarije ibyo bangirijwe (préjudice), ikaba rero itahindukira ngo ivuge ko batagaragaje ibimenyetso by'ibyo bangirijwe.

[40] Urukiko rusanga nanone kuba RWANDAIR yariyemereye kwishyura mu bwumvikane 51.500USD kuko yabonaga ariyo ahwanye n'uruhare rwayo (usibye ko byagaragajwe ko ariyo yonyine yagize uruhare mu rupfu rwa Nyirangorororoka), byumvikanisha ko yemeye gutanga indishyi zirenze umubare ntarengwa uvugwa mu masezerano ya Varsovie nk'uko yavuguruwe n'amasezerano y'i La Haye harebwa indishyi zikwiye, ikaba rero itahindukira ngo ivuge ko uwo mubare ntarengwa ugomba kubahirizwa.

[41] Hashingiwe rero kuri ibyo bisobanuro, Urukiko rusanga nta kosa Urukiko rw'Ubucuruzi rwa Nyarugenge rwakoze rutegeka RWANDAIR guha buri wese mu baziregeye indishyi zingana na 20.000.000Frw, yose hamwe akaba 60.000.000Frw.

[42] Ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka, Urukiko rusanga ayasabwe angana na 10.000.000Frw ari ikirenga, hakurikijwe igihe urubanza rumaze n'ibyarugiyeho byose RWANDAIR ikwiye guha abaregeye indishyi muri uru rubanza 1.000.000Frw yiyongera kuri 900.000Frw yategetswe ku rwego rwa mbere, yose hamwe akaba 1.900.000Frw ku nzego eshatu baburaniyemo.

III. ICYEMEZO CY'URUKIKO

[43] Rwemeje ko ubujurire bwa RWANDAIR ku rubanza RCOM 0101/13/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge kuwa 30/04/2013 nta shingiro bufite;

[44] Rwemeje ko ubujurire bwuririye ku bundi bwa Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis bufite ishingiro kuri bimwe;

[45] Rwemeje ko nta gihindutse ku rubanza RCOM 0101/13/TC/NYGE rwaciwe n'Urukiko rw'Ubucuruzi rwa Nyarugenge, usibye ku bijyanye n'amafaranga y'ikurikiranarubanza n'igihembo cya Avoka;

[46] Rutegetse RWANDAIR guha Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis indishyi zingana na 60.000.000Frw, buri wese agahabwa 20.000.000Frw nk'uko byemejwe mu rubanza RCOM 0101/13/TC/NYGE;

[47] Rutegetse RWANDAIR guha Sebatware Bizimana Sébastien, Niyongere Claire na Kagame Alexis amafaranga y'ikurikiranarubanza n'igihembo cya Avoka angana na 1.900.0000Frw;

[48] Rutegetse RWANDAIR kwishyura 100.000Frw y'amagarama y'urubanza.