UBUSHINJACYAHA v MUGABE N'ABANDI

[Rwanda URUKIKO RW'UBUJURIRE – RS/INJUST/RP 00003/2018/SC (Kayitesi, P.J, Nyirinkwaya, Cyanzayire, Hitiyaremye na Rukundakuvuga J) 17 Ukwakira 2020]

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Gusambanya umwana – Gushidikanya ku itariki y'ivuka – Urubanza rusimbura inyandiko y'ivuka – Iyo nta nyandiko y'ivuka yakozwe hagakorwa urubanza rusimburya iyo nyandiko, urwo rubanza rugomba gushingira ku makuru yizewe kandi adashikanywaho.

Amategeko agenga imiburanishirize y'imanza z'inshinjabyaha – Gusambanya umwana – gushidikanya ku itariki y'ivuka – Irangamimerere y'abantu ishobora gusa kwemezwa no kugaragazwa n'inyandiko z'irangamimerere- mu gihe hari ugushidikanya ku matariki y'ivuka bitewe n'amatariki atandukanye avugwa n'umuburanyi, amakuru yizewe kandi adashidikanywaho ku bijyanye n'iyo tariki y'ivuka ni ayatanzwe n'Inzego z'Ubuyobozi z'Igihugu zibifitiye ububasha.

Incamake y'ikibazo Urubanza rwatangiriye mu Rukiko rw'Isumbuye rwa Nyagatare, Ubushinjacyaha burega Mugabe, Murekezi na Kagame baregwa icyaha cyo gusambanya umwana naho Ndibwami, U, Kagame na Murekezi baregwa icyaha cyo gushishikariza, koshya cyangwa kuyobya umuntu umushora mu buraya. Urukiko rwafashe icyemezo ruhamya icyaha cyo gusambanya umwana Mugabe, Kagame na Murekezi rubahanisha igifungo cy'imyaka 10, naho ahamishwa icyaha cyo kuba icyitso cya Murekezi na Kagame nawe ahanishwa igifungo cy'imyaka 10 ; U ahamwa n'icyaha cyo gushishikariza, kochya cyangwa kuyobya umuntu umushora mu buraya ahanishwa igifungo cy'umwaka 1 gisubitswe.

Uretse Uwera abandi bose baregwaga bajuririye Urukiko Rukuru, urugereko rwa Rwamagana. Mugabe yajuriye avuga ko U.S.B bavuga ko yasambanije ntabyo yakoze ko kandi atari umwana; Murekezi yajuriye avuga ko yahamijwe icyaha cyo gusambanya umwana I. P kandi ataramusambanyije, akaba kandi atari n'umwana nk'uko bivugwa. Kagame yajuriye avuga ko yahamijwe icyaha cyo gusambanya umwana M L nyamara atari umwana. Ndibwami Sostène ajurira avuga ko yahamijwe icyaha cyo kuba icyitso nyamara mu Rukiko rubanza atararezwe icyo cyaha ngo akiregureho, ko kandi Urukiko rutagaragaje uburyo yagikozemo. Urukiko rushingiye kugushidikanya ku Ubushinjacyaha kugihe cy'amavuko cy'abana bavugwa ko basambanijwe ndetse runashingiye ku byemezo byamavuko rwahawe na NIDA rwagize abere abaregwaga bose kuko byagaragaye ko abo bavugwaga ko basambanijwe Atari abana.

Ubushinjacyaha ntibwishimiye imikirize y'Urukiko Rukuru, bwandikira Umuvunyi Mukuru busaba ko urubanza rusubirwamo ku mpamvu z'akarengane. Urubanza rwashyikirijwe Urukiko rw'Ikirenga. Aho Ubushinjacyaha bushingira ku kuba urwo Urukiko Rukuru rwaraciye urubanza rukemeza ko abasambanyijwe atari abana, rwarirengagije imanza zitandukanye zisimbura inyandiko z'ivuka zabaye itegeko, kandi ko rwatesheje agaciro izo manza rutarabiregewe, bituma abaregwa bagirwa abere. Abaregwa bakomeje kugaragaza ko ibyaha baregwa ntabyabaye kuko ibimenyetso bishingirwaho ntashingiro bifite kandi bivuguruzanya ndetse no kuba abo bavuga ko basambanyije abari abana nabyo byagaragajwe ko imyaka bavukiyeho nk'uko byemejwe na NIDA Atari abana naho imanza zisimbura inyandiko z'amavuko yabo zitashyingirwaho kuko zaciwe hashingiwe kumakuru y'ibinyoma nayo yavuguruzanyaga.

Incamake y'icyemezo: 1. Mu manza nshinjabyaha zijyanye no gusambanya abana, imyaka y'uwahohotewe ishobora kugaragazwa n'ikimenyetso icyo aricyo cyose kidashidikanywaho. Bityo abaregwa bakaba bagomba kugirwa abere kubera ko amakuru yari yashyingiweho mbere yashidikanwagaho.

Gusubirishamo urubanza ku nmpamvu z'akarengane ntashingiro bifite.
Amagarama y'urubanza aherereye k'isanduku ya Leta.

Amategeko yashingiweho :
Itegeko Ngenga No 01/2012/OL ryo ku wa 2/5/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 190 na 259

Ntamanza zifashishijwe.

Nta nyandiko z'Abahanga zifashishijwe

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ubushinjacyaha bwaregeye Urukiko Rwisumbuye rwa Nyagatare Murekezi David, Kagame Alexis na Mugabe Thomas alias Mabati, kuba barakoze icyaha cyo gusambanya umwana, burega U S B, Ndibwami David, Kagame Alexis na Murekezi David icyaha cyo gushishikariza, koshya cyangwa kuyobya umuntu umushora mu buraya. Bwagaragaje ko Mugabe Thomas alias Mabati yasambanyaga U.S.B, uyu nawe, mu bihe bitandukanye akazanira Murekezi David, Kagame Alexis na Ndibwami Sostène basambanya abana b'abakobwa bitwa M Li, I P, N na U W, kugira ngo babasambanye.

[2] Mu rubanza RP Min 0024/14/TGI/NYG rwaciwe ku wa 16/01/2015, Urukiko Rwisumbuye rwa Nyagatare rwemeje ko Mugabe Thomas alias Mabati, Murekezi David na Kagame Alexis bahamwa n'icyaha cyo gusambanya umwana, ko Ndibwami Sostène ahamwa no kuba icyitso cya Murekezi David na Kagame Alexis mu ikorwa ry'icyo cyaha, rubahanisha buri wese igihano cyo gufungwa imyaka icumi. Naho US B ahamwa n'icyaha cyo kuyobya umuntu umushora mu buraya n'icyaha cyo gucuruza umwana umushora mu buraya, rumuhanisha igihano cy'igifungo cy'umwaka umwe gisubitswe mu gihe cy'umwaka, n'ihazabu ingana n'amafaranga 1.000.000 Frw.

[3] Usibye US B, abandi bareganwa nawe ntibishimiye icyo cyemezo, ku bihe bitandukanye bajuririra Urukiko Rukuru, Urugereko rwa Rwamagana, ibirego byabo bihurizwa mu rubanza rumwe RPA 0029/15/HC/RWG -RPA0082/15/HC/R - RPA Min 0004/15/HC/RWG - RPA Min 0005/15/HC/RWG. Mugabe Thomas alias Mabati yajuriye avuga ko USB aregwa gusambanya, n'ubwo atamusambanyije, atari umwana, kuko yavutse tariki ya 09/01/1996.

[4] Murekezi David yajuriye avuga ko Urukiko rwamuhamije icyaha cyo gusambanya umwana witwa Ingabire Pacifique kandi ataramusambanyije, akaba kandi atari n'umwana nk'uko bivugwa. Kagame Alexis yajuriye avuga ko Urukiko rwamuhamije icyaha cyo gusambanya umwana witwa M L nyamara atari umwana, kuko yavutse tariki ya 10/01/1996.

[5] Naho N S ajurira avuga ko Urukiko rwamuhamije icyaha cyo kuba icyitso cya Murekezi David na Kagame Alexis, nyamara mu Rukiko rubanza atararezwe icyo cyaha ngo akiregureho, ko kandi Urukiko rutagaragaje uburyo yagikozemo.

[6] Mu iburanisha, Ubushinjacyaha bwagaragaje imanza zisimbura inyandiko z'ivuka « *jugements supplétifs d'acte de naissance* » zitandukanye zaciwe n'Urukiko rw'Ibanze rwa Nyagatare, zerekana itariki y'amavuko ya buri mwana wasambanyijwe zemeza ko basambanyijwe ari abana arizo:

- Urubanza RC 0179/14/TB/NYG rwo ku wa 16/10/2014 rugaragaza ko Uwera Suzan Bella yavutse ku wa 18/10/1997 ;
- Urubanza RC 0187/14/TB/NYG rwaciwe ku wa 17/10/2014 rugaragaza ko Ingabire Pacifique yavutse ku wa 23/11/1999 ;
- Urubanza RC 0180/14/TB/NYG rwaciwe ku wa 16/10/2014 rugaragaza ko Mumararungu Liliane yavutse ku wa 01/01/1998.

[7] Urukiko Rukuru, Urugereko rwa Rwamagana mu rubanza RPA 0029/15/HC/RWG - RPA Min 0004/15/HC/RWG – RPA Min 0005/15/HC/RWG rwaciwe ku wa 20/07/2015, rwasanze hari ugushidikanya ku gihe USB, IP na ML bavukiye. Rwemeje ko ubujurire bwa Mugabe Thomas alias Mabati bufite ishingiro, ko adahamwa n'icyaha cyo gusambanya umwana USB. Kuri Kagame Alexis rwemeza ko ubujurire bwe bufite ishingiro ko adahamwa n'icyaha cyo gusambanya umwana ML. Rwemeza ko ubujurire bwa Murekezi David bufite ishingiro, ko adahamwa n'icyaha cyo gusambanya umwana IP. Naho kuri Ndibwami Sostène rwemeza ko adahamwa no kuba icyitso cya Kagame Alexis na Murekezi David. Urukiko rutegeka ko bahita bafungurwa.

[8] Urukiko Rukuru, Urugereko rwa Rwamagana rwemeza ko hari ugushidikanya ku itariki y'amavuko ya IP na ML, rwashingiye ku kuba Urukiko rw'Ibanze rwa Nyagatare rwaciye imanza zisimbura inyandiko z'ivuka « *jugements supplétifs d'acte de naissance* » rushingiye ku byemezo by'amavuko « *attestations de naissance* » byatanzwe n'Ubuyobozi bw'Umurenge, bwaje nyuma yaho gutanga ibindi byemezo by'amavuko biriho andi matariki abo bahohotewe bavukiyeho atandukanye n'ayo bwari bwatanze mbere.

[9] Urwo Rukiko rwemeza ko USB atari umwana kuko yavutse ku wa 09/01/1996, rwashingiye ku nyandiko zitandukanye zirimo (1) birth certificate yatanzwe na Luweru Town Council yemejwe na Ambassade y'u Rwanda muri Uganda, (2) Inyandiko yuzuzwa n'umunyeshuri ugiye kwinjira mu mashuri yisumbuye yatanzwe na Minisiteri y'Uburezi yo mu gihugu cya Uganda, no (3) ku nyandiko yo ku wa 17/07/2014 USB ubwe yiyandikiye ko yavutse 09/01/1996.

[10] Mu gufata icyemezo, Urukiko Rukuru, Urugereko rwa Rwamagana, rwashingiye no ku cyemezo cy'amavuko cyatanzwe n'Umunyamabanga Nshingwabikorwa w'Umurenge wa Karangazi ashingiye ku ibaruwa yo ku wa 06/06/2014 yanditswe n'Ikigo cy'Igihugu cy'Indangamuntu (NIDA), irimo amatariki y'amavuko ya Ingabire Pacifique igaragaza ko yavutse ku wa 01/01/1994, naho iya Mumararungu Liliane yemeza ko yavutse ku wa 01/01/1996, bivuze ko batari abana igihe bavuga basambanyirijwe.

[11] Ubushinjacyaha Bukuru buhagarariwe n'Umushinjacyaha ku rwego rw'Igihugu, ku wa 07/03/2017, bwandikiye Urwego rw'Umuvunyi busaba ko urubanza RPA 0029/15/HC/RWG - RPA0082/15/HC/R - RPA Min 0004/15/HC/RWG - RPA Min 0005/15/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 20/07/2015, rusubirwamo ku mpamvu z'akarengane.

[12] Urwego rw'Umuvunyi rumaze gusuzuma ubwo busabe rwasanze bufite ishingiro, rwandikira Nyakubahwa Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza RPA 0029/15/HC/RWG - RPA0082/15/HC/R - RPA Min 0004/15/HC/RWG - RPA Min 0005/15/HC/RWG rusubirwamo; nyuma yo kubisuzuma, Perezida w'Urukiko rw'Ikirenga mu cyemezo nimero 014/2018, cyo ku wa 13/02/2018 yemeza ko rwoherezwa mu Bwanditsi bw'Urukiko rw'Ikirenga kugira ngo ruzongere ruburanishwe.

[13] Iburanisha ry'urubanza ryashyizwe ku wa 25/06/2018, ariko uwo munsi ntirwaburanishwa kubera impinduka zabayeho mu mategeko, rwimurirwa tariki ya 15/10/2018. Kuri uwo munsi ntirwaburanishijwe kubera ko ababuranyi bose batari bahanye imyanzuro, rwimurirwa tariki ya 03/12/2018, rwongera gusubikwa kubera ko bamwe mu baburanyi bagaragaje ko hari ibimenyetso

bagishakisha mu nkiko baburaniyemo mbere, basaba Urukiko ko rwatumiza dosiye kugira ngo bazashobore kubibona, rwimurirwa tariki wa 04/02/2019, kugira ngo Ubwanditsi butumize dosiye.

[14] Ku wa 04/02/2019, urubanza rwaraburanishijwe, habanza gusuzumwa inzitizi yatanzwe n'abaregwa irebana no kumenya niba Ubushinjacyaha bufite ububasha n'inyungu yo gutanga ikirego cy'akarengane, ku wa 15/02/2019, Urukiko rufata icyemezo kuri iyo nzitizi rwemeza ko Ubushinjacyaha bufite ububasha n'inyungu yo gutanga ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, kuko ari umuburanyi uhagarariye inyungu za rubanda harimo n'abahohotewe, ruvuga ko iburanisha rizakomeza ku wa 21/05/2019.

[15] Kuri uwo munsi urubanza rwaburanishirijwe mu ruhame, ariko ntirwarangira kubera ubwire, Urukiko rwemeza ko iburanisha rizakomeza ku wa 27/05/2019, kuri iyi tariki no ku wa 11/06/2019 nabwo rwarasubitswe kubera ko Me Musirimu Jean Claude wunganira umwe mu baregwa atitabye kubera uburwayi, rwimurirwa ku wa 11/09/2019. Kuri uwo munsi urubanza rwaraburanishijwe Mugabe Thomas Alias Mabati yunganiwe na Me Ndikumana Ntwali Justin, Kagame Alexis yunganiwe na Me Uzabakiriho Irené na Me Nkanika Alimasi, Murekezi David yunganiwe na Me Musirimu Jean Claude, Ndibwami Sostène yunganiwe na Me Ntaganira Théogène ; Ubushinjacyaha buhagarariwe na Rudatinya Nyangezi Gaspard, Umushinjacyaha ku rwego rw'Igihugu. Urubanza rwarapfundikiwe isomwa rishyirwa ku wa 17/10/2019.

[16] Ubushinjacyaha mu kugaragaza akarengane kari mu rubanza RPA 0029/15/HC/RWG - RPA Min 0004/15/HC/RWG – RPA Min 0005/15/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, bushingira ku kuba urwo Rukiko rwaraciye urubanza rukemeza ko abasambanyijwe atari abana, rwarirengagije imanza zitandukanye zisimbura inyandiko z'ivuka zabaye itegeko, kandi ko rwatesheje agaciro izo manza rutarabiregewe, bituma abaregwa bagirwa abere. Ikigomba gusuzumwa muri uru rubanza akaba ari ukumenya:

- niba hari ibimenyetso bihamya Mugabe Thomas alias Mabati, Kagame Alexis, Murekezi David icyaha cyo gusambanya umwana, kuba icyitso cyacyo kuri Ndibwami Sosthène,
- kuri Kagame Alexis, na Murekezi David niba hari ibimenyetso bibahamya icyaha cyo gushishikariza no gushora abana mu buraya,
- kumenya niba Urukiko Rukuru Urugereko rwa Rwamagana rwaraciye urubanza ku cyo rutaregewe.

I. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba hari ibimenyetso bihamya Mugabe Thomas alias Mabati, Kagame Alexis na Murekezi David icyaha cyo gusambanya umwana, no kuba icyitso kuri Ndibwami Sosthène.

Kuri Mugabe Thomas alias Mabati,

[17] Ubushinjacyaha buvuga ko Urukiko Rukuru, Urugereko rwa Rwamagana, rwaciye urubanza RPA 0029/15/HC/RWG -RPA0082/15/HC/R - RPA Min 0004/15/HC/RWG - RPA Min 0005/15/HC/RWG, rugira Mugabe Thomas alias Mabati umwere, rwirengagije ko urubanza RC 0179/14/TB/NYG rwemeje ko USB, yari umwana igihe yasambanywaga rwabaye itegeko. Ubushinjacyaha busobanura ko, uko kuba USB yari umwana, byarashimangirwaga n'ifishi y'ikingira n'ibyemezo byaturutse ku ishuri yigagaho byose byerekanaga ko USB yavutse ku wa 18/10/1997.

[18] Ku bijyanye n'ibyemezo by'amavuko byatanzwe na Mugabe Thomas alias Mabati bigaragaza ko Uwera Suzan Bella atari umwana kuko yavutse ku wa 09/01/1996, uhagarariye Ubushinjacyaba avuga ko ibyo byemezo ari icyo bise "*appilication for Secondary School* na *Birth certificate"* ko ari

ibihimbano kuko byasabwe n'uwitwa Kayitare Peter mwene wabo wa Mugabe, kandi ko kugira ngo biboneke habayeho gushuka Nyina wa USB amwumvisha ko bizafasha mu ifungurwa rya USB wari ufunze. Ibi bikagaragazwa n' inyandiko ya Nyina wa B aho yasobanuye uburyo yashutswe (*manipulation*) na Kayitare Peter bigatuma amufasha kubona biriya byangombwa (cote ya 254-258), ari nayo mpamvu yaje mu Bushinjacyaha kubivuga yitwaje ifishi y'ikingiza ya USB, n'icyemezo cy'ishuri yigagaho, byerekana ko yavutse ku wa 18/10/1997.

[19] Ubushinjacyaha buvuga ko, iyo inyandiko y'irangamimerere itabonetse, hifashishwa urubanza kugira ngo urukiko abe ari rwo rugaragaza itariki y'amavuko, bityo inyandiko Urukiko Rukuru, Urugereko rwa Rwamagana rwashingiyeho mu rubanza RPA 0029/15/HC/RWG -RPA0082/15/HC/R - RPA Min 0004/15/HC/RWG - RPA Min 0005/15/HC/RWG rwemeza itariki y'amavuko y'abana basambanyijwe, zikaba nta gaciro zikwiye guhabwa.

[20] Ku bijyanye n'imikorere y'icyaha, Ubushinjacyaha buvuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rwirengagije ibimenyetso bigaragaza ko Mugabe Thomas alias Mabati yasambanyije USB, birimo imvugo ze bwite zimushinja, aho kuri cote ya 57 agaragaza uburyo Mabati yamusambanyije akanasobanura aho yabikoreye. Buvuga ko ikindi kimenyetso kirengagijwe ari imvugo ya IP n'iya ML zimushinja, zivuga uko icyo cyaha cyakozwe n'ababigizemo uruhare, n'imvugo ya Musabyeyezu Esther Nyirasenge wa USAB nawe umushinja.

[21] Ubushinjacyaha buvuga ko, uretse na Nyina wa USB, Kayitare Peter yashutse, yanashutse USB amusaba guhakana ko yasambanyijwe, ariyo mpamvu imvugo zafatwaho ukuri, ari izo yavugiye imbere y'Urukiko, kuko ibyo yavugiye mu Bushinjacyaha no mu Bugenzacyaha, harimo imvugo zishinjura, bitewe nuko gushukwa.

[22] Busoza buvuga ko, ibyo Mugabe Thomas avuga ko atazi USB atari byo, kuko *historique* ya telephone ye yatanzwe na MTN igaragaza ko bahamagaranaga inshuro nyinshi, ko ibyo yitwaza ko telefone ya USB yanditse kuri Mutangana Alexis nta shingiro bifite, kubera ko USB yasobanuye ko ari serivisi yatse Mutangana yo kumutiza irangamuntu kugira ngo abone uko yibaruza kuri iyo telefone, ariyo mpamvu iyo telefone yakoreshwaga na USB imwanditseho.

[23] Me Ntwali Justin n'uwo yunganira Mugabe Thomas alias Mabati, bavuga ko USB ubwe yivugiye ko yavutse 1996, ariyo mpamvu mu Rukiko Rukuru, Urugereko rwa Rwamagana aburana ibijyanye n'ifungwa ry'agateganyo, icyaha cyo gusambanya umwana bwakimukuyeho bumurega gushishikariza umuntu mukuru gukora uburaya, nyuma akaba yaratunguwe no kubona Ubushinjacyaha bwaragiye gushaka ibindi bimenyetso byemeza ko USB yasambanyijwe ari umwana. Bavuga ko urupapuro bazanye yakingiriweho ari ikintu bashakishije nyuma, Urukiko rugisuzumye rusanga nta kashe iriho, ndetse ko na *recommendation* buvuga yavuye ku ishuri yigagaho, Urukiko rwasanze yanditswe n'ikaramu, ntirwabiha agaciro.

[24] Basobanura ko Ikigo cy'Igihugu gishinzwe Irangamuntu cyemeje ko USB atigeze abarurwa n'icyo Kigo, bityo ko ibyemezo byatanzwe n'aho yavukiye bigashyirwaho umukono n'Ambasade y'u Rwanda bigaragaza ko yavutse ku wa 09/01/1996, kandi ko mu iburanisha Urukiko Rukuru rwasabye amakuru Ambassade y'u Rwanda muri Uganda, nayo yemeza ko ibyemezo byatanzwe ari iby'ukuri; ko rero ntaho Ubushinjacyaha bwahera buvuga ko urubanza rusimbura inyandiko y'ivuka arirwo rukwiye kwitabwaho, mu gihe ibindi bimenyetso bigaragaza ko USB yasambanyijwe atari umwana.

[25] Me Ntwali Justin wunganira Mugabe Thomas alias Mabati, asobanura kandi ko Ubushinjacyaha busaba ko urubanza rusubirwamo ku mpamvu z'akarengane bushingiye kuri *Jugements supplétifs* ngo zabaye itegeko zirengagijwe, ariko ko Urukiko rutari kuzisuzuma zonyine ngo rureke ibindi bimenyetso rwagaragarijwe n'ababuranyi, birimo ibyerekana ku buryo budashidikanywaho ko abavugwa ko basambanyijwe batari abana icyo gihe. Yongeraho ko, kuba Kayitare Peter yarandikiye Ambasade

kugira ngo itange ubufasha imyaka ya USB imenyekane, nayo ikemeza ko koko ibyo byangombwa byatanzwe mu buryo bwemewe n'amategeko, nta mpungenge bikwiye gutera. Naho ku byo Ubushinjacyaha buvuga ko USB na nyina bashutswe, avuga ko nta shingiro bifite, kuko nta bimenyetso bubigaragariza.

[26] Ku bijyanye n'imikorere y'icyaha, Me Ntwali Justin n'uwo yunganira Mugabe Thomas alias Mabati, bavuga ko imvugo za USB zivuguruzanya (cote 194, n'iya 194), ko kuva mu Bushinjacyaha no mu Bugenzacyaha yahakanye ko yasambanyijwe, ko yemeye ahantu hamwe gusa nabwo akaba yaravuze ko yabyemeye kugira ngo bamurekure, ndetse akaba yaranavuze ko hari abamuhatiraga kumushinja, ko na Nyirasenge wa USB atigeze amushinja.

[27] Bavuga ko Ubushinjacyaha budakwiye kuzana mu rubanza Mugabe Thomas alias Mabati, kuko ntaho ahuriye narwo, kubera ko atigeze asambanya USB. Mugabe Thomas alias Mabati asobanura ko atanamuzi kuko we ataba Nyagatare uretse kuba ahafite inzu ibamo abandi bantu, ko rero kuba USB yamenya imiterere yayo ari ibintu bisanzwe, kandi ko niba yaragezemo ajyanywe n'undi muntu atari we byabazwa.

[28] Ku bijyanye n'ikimenyetso cya telefone cyatanzwe na MTN kigaragaza ko bahamagaranaga inshuro nyinshi, Mugabe Thomas avuga ko nta gitangaza kirimo, kuko USB mu mvugo ze yivugiye ko atamuzi, kandi ko nk'umuntu wari ufite "company" ukoresha abantu benshi, yahamagarwaga n'abantu benshi kandi atazi basaba akazi. Me Ntwali umwunganira avuga ko Ubugenzacyaha bwasabye MTN kugaragaza nyiri telefone, yerekana ko ari iya Mutangana Alexis, ndetse ko na USB ubwe, mu ibazwa rye, yivugiye ko atigeze atunga telefone.

[29] Me Ntwali wunganira Mugabe Thomas alias Mabati asoza avuga ko, imvugo za USB zitagomba gushingirwaho nk'ikimenyetso gishinja Mugabe Thomas alias Mabati, kubera ko izo mvugo zuzuyemo ukwivuguruza, kuko ibyo yavugiye imbere y'Ubushinjacyaha bitandukanye n'ibyo yavugiye mu Bugenzacyaha ndetse n'ibyo yavugiye imbere y'Urukiko.

Kuri KAGAME Alexis

[30] Ubushinjacyaha buvuga ko Urukiko Rukuru, Urugereko rwa Rwamagana rwaciye urubanza rwirengagije urubanza RC 0180/14/TB/NYG rwabaye itegeko rwemeje ko ML yari umwana igihe yasambanywaga, ko urwo rubanza rwaciwe hashingiwe ku makuru yatanzwe n'ababyeyi be bemezaga ko yavutse mu 1998. Kuba hari amakuru yatanzwe n'Ikigo cy'Indangamuntu(NIDA) ndetse n'Ubuyobozi bw'Umurenge avuga ko yavutse mu 1996, bivuze ko atari umwana, bigomba gucukumburwa.

[31] Ku bijyanye n'ibimenyetso bishinja Kagame Alexis icyaha cyo gusambanya ML, Ubushinjacyaha buvuga ko bushingira ku mvugo zimushinja za USB wamushyiriye ML na IP ari kumwe na Murekezi David, nabo bakamuha amafaranga, mu mvugo ze akaba asobanura neza uburyo yabahuje. Buvuga ko imvugo ya IP iri kuri (cote ya 46) imushinja aho asobanura ko yahuriye na Kagame Alexis mu birori (*party*) byari byabereye kwa Ndibwami ari kumwe na Murekezi David, barababafata babajyana kuri Hoteli, babinjiza mu cyumba Murekezi David atwara IP, Kagame Alexis atwara ML, ngo hanyuma bageze mu cyumba IP abonye Murekezi atangiye kumukorakora mu mabere no kumusoma arirwaza atangira kwisepfuza, Murekezi agira ubwoba ajya gukomangira Kagame Alexis amubwira ko umwana yarwaye, maze bahita babareka barataha.

[32] Ubushinjacyaha busobanura ko ubwo buhamya bwa ML na IP buhura neza n'ibyo Kayinamura Hussein wakoraga muri *Lodge* basambanyirijwemo yavuze, ko abo bagabo bombi bazanye abo bana b'abakobwa mu modoka bahagera bakabajyana mu byumba ndetse zigahura n'imvugo za Nyirasenge wa USB. Busoza buvuga ko imvuyo za ML zivuga ko atigeze amusambanya nta shingiro zifite hashingiwe ku ngingo ya 190 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 ryashyiragaho

igitabo cy'amategeko ahana, kuko n'ubwo yaba ataramusambanyije, kuba Kagame Alexis yaramujyanye mu cyumba agatangira kumukorakora ku mabere no kumusoma, ari ibikorwa biganisha ku gitsina, bityo icyaha cyo gusambanya umwana kikaba kimuhama.

[33] Kagame Alexis n'abamwunganira bavuga ko, Umucamanza mu Rukiko Rukuru yasanze ibimenyetso byose byashingiweho abarega bahamwa n'icyaha bishingiye ku gushidikanya, maze abagira abere, kandi ko kugeza uyu munsi Ubushinjacyaha butarashobora gukuraho uko gushidikanya, kuko n'urubanza rusimbura inyandiko y'ivuka rya ML Ubushinganjacya buvuga, Kagame Alexis yarutambamiye rukurwaho.

[34] Basobanura ko mu iburanisha ry'urwo rubanza, hasuzumwe icyemezo cyatanzwe n'Ikigo cy'Igihugu cy'Indangamuntu, hanahamagazwa abatangabuhamya barimo abari baratanze *attestations* za mbere zashingiweho urwo rubanza rucibwa, nyuma yo kubisuzuma, Urukiko ruvanaho urwo rubanza, ubu bakaba bibaza agaciro Ubushinjacyaha buha urwo rubanza rusimbura inyandiko y'ivuka rya ML.

[35] Basaba ko Urukiko rwazashingira ku rubanza RPAA 0015/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 28/02/2014, aho umuburanyi yasabye kugabanyirizwa ibihano ariko Urukiko rusuzumye icyemezo cy'amavuko cye, busanga gishidikanywaho, agirwa umwere, no ku rubanza RPA 0023/1010/CS rwaciwe ku wa 05/09/2014, aho Urukiko rwashingiye ku ihame ry'uko ugushidikanya kurengera uregwa.

[36] Basoza bavuga ko, imvugo za ML zisobanura uburyo yakorewe icyaha ziteye gushidikanya, kuko hari aho avuga ko umunsi bamusambanyirijeho hari ku cyemweru tariki ya 17/05/2014 kuko yari avuye gusenga, wareba ugasanga uwo munsi atari ku cyumweru (cote ya 36). Ku bijyanye n'ikimenyetso cya *historique* ya telefone yatanzwe na MTN, bavuga ko itagombye kuba ikimenyetso kimushinja, kubera ko nta numero ye bigeze babonamo, ko kandi kuvuga ko yashatse kumusambanyiriza aho atuye atari byo, kuko adatuye Nyagatare, ko n'inzu ye iri Nyagatare ibamo abapangayi, ko rero iyo Ubushinjacyaha buba bushaka ukuri bwari kubabaza.

[37] Ku mvugo ya Kayinamura Hussein yemeza ko yamubonye muri Hoteli, Kagame Alexis n'abamwunganira bavuga ko ari imvugo idafite aho ishingiye kuko aterekana aho yanditse mu bitabo bya Hoteli, cyangwa ngo yerekane inyemezabwishyu (*facture*) yaba yarishyuriyeho, ndetse ko no kuri za hoteli haba za kamera zishobora kwerekana ko yahageze, bityo ko imvugo ye idakwiye guhabwa agaciro, kubera ko ntaho ishingiye.

Kuri MUREKEZI David

[38] Ubushinjacyaha buvuga ko Murekezi David bumurega gusambanya umwana witwa IP, kandi ko bwashingiye ku rubanza RC 0187/14/TB/NYG rusimbura inyandiko y'ivuka rugaragaza ko Ingabire Pacifique yari umwana igihe yamusambanyaga. Buvuga ko mu gusesengura bwasanze hari ibyemezo bitandukanye byagiye bitangwa n'inzego z'Ubuyobozi bigaragaza igihe IPyavukiye, birimo icyemezo cyanditswe n'Umurenge wa Karangazi, ibaruwa yanditswe n'Ikigo cy'Igihugu cy'indangamuntu, ibaruwa yanditswe n'icyo Kigo nyuma ku makuru yasabwe n'Ubushinjacyaha bagamije kumenya neza itariki yavukiyeho, ariko ko bukurikije ibikubiye muri ibyo byemezo byose bigaragaza amakuru anyuranye, bukaba busanga hari ugushidikanya ku gihe IP yavukiye, bityo bukaba butagihagaze ku kuvuga ko yasambanyijwe ari umwana, busaba Urukiko ko ari rwo rwazabifataho icyemezo.

[39] Murekezi David avuga ko ashimira Ubushinjacyaha bwakurikiranye bukamenya ukuri, ko uretse no kuba IP atari umwana, atigeze amusambanya, kandi ko kuba Ingabire Pacifique nk'umuntu mukuru nawe yivugira ko atasambanyijwe, ko yumva nta kindi kintu cyaba kikiburanwa.

[40] Me Nkanika Alimasi wunganira Murekezi David avuga ko ashingiye ku ngingo ya 4, agace ka 5 y'Itegeko Nº 43/2011 ryo ku wa 31/10/2011 rishyiraho Ikigo cy'Igihugu gishinzwe Irangamuntu

iteganya ko iki Kigo aricyo gishinzwe kwegeranya amakuru arebana n'irangamimerere ry'abantu, kuyabika no kuyemeza. Asobanura ko niba icyo Kigo n'izindi nzego zifite irangamimerere mu nshingano byemeje ko IP yavutse ku wa 01/01/1994, Ubushinjacyaha bukaba butarabasha kubivuguruza, ntaho bwahera buvuga ko IP yasambanyijwe ari umwana, bityo ko hashingiwe ku ngingo ya 165 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha asanga kuba hari urujijo ku myaka ya IP, uko gushidikanya gukwiye kurengera uregwa akagirwa umwere.

[41] Asoza avuga ko mu guca uru rubanza hazashingirwa no ku murongo watanzwe n'Urukiko rw'Ikirenga mu manza zirebana no gushidikanya ku bimenyetso harimo urubanza RPAA0203/10/CS rwaciwe ku wa 05/09/2014 haburana MP C/Mbarubukeye Jean Bosco alias BOBO Rasta, no ku murongo watanzwe ku bijyanye no gushidikanya ku myaka y'uwasambanyijwe mu rubanza RPAA015/10/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 28/02/2014 haburana MPC/Sebiteke Shamugabo, bityo rukagira umwere Murekezi David.

b. Kuri Ndibwami Sosthène uregwa kuba icyitso cya Murekezi David na Kagame Alexis

[42] Ubushinjacyaha burega Ndibwami Sosthène kuba icyitso cya Murekezi David na Kagame Alexis bubishingira ku mvugo za USB, iza IP na ML zimushinja. Ikindi bushingiraho ni *historique* ya telefone yatanzwe na MTN igaragaza ko yavuganye na USB inshuro nyinshi ndetse hakaba hari na *message* USB yamwandikiye amushimira ko ari inshuti nziza (*best friend*), ko ariwe yanyuragaho ngo abone abo bakobwa.

[43] Ndibwami Sosthène mu kwiregura avuga ko urubanza rutangira yaregwaga gusambanya umwana witwa UG, bamupimye basanga atarasambana, nawe ubwe yivugira ko atarasambana kandi ko atazi Ndibwami, ariko ko yatunguwe n'uko Urukiko Rwisumbuye rwa Nyagatare rwamuhamije icyaha cyo kuba icyitso cya Murekezi David na Kagame Alexis, kandi atarigeze akiregwa, akaba ariyo mpamvu mu Rukiko Rukuru, Urugereko rwa Rwamagana yahanaguweho icyaha.

[44] Avuga ko iby'uko yavuganye na USB kuri telefone inshuro nyinshi, atari ukuri kuko nta kimenyetso kibigaragaza, ko ubutumwa bugufi (message) bavuga ntaho Ubushinjacyaha bubwerekana. Avuga kandi ko nta kimenyetso na kimwe Ubushinjacyaha butanga kimuhuza na Murekezi David cyangwa Kagame Alexis, ko ntawe yigeze atiza icyumba cyangwa ngo amuhe ubufasha ubwo aribwo bwose, akaba atazi impamvu bamwita icyitso. Asoza avuga ko n'amafaranga bivugwa ko yahaye USB nta kimenyetso Ubushinjacyaha buyatangira, ko akwiye kugirwa umwere kuko nta cyaha yakoze.

[45] Me Ntagungira Théogène wunganira Ndibwami Sosthène avuga ko nta karengane kari mu rubanza rusabirwa gusubirwamo, ko kuba Urukiko rwarasanze ari ngombwa kubanza gusuzuma imyaka y'aba bakobwa atari akarengane.

[46] Avuga ko ibyo Ndibwami Sosthène yabajijwe mu Bugenzacyaha no Bushinjacyaha atari byo byaciriweho urubanza, ko kuri cote ya 18 na 21 USB ari we mutangabuhamya umushinja, ariko ko usanga imvugo ze zivuguruzanya, ikibazo umuntu yakwibaza akaba ari inyungu Ndibwami yari abifitemo kuko ntawe bamushinja ko yasambanyije, bityo akaba asanga nta gikorwa na kimwe mu bigize icyaha cyo kuba icyitso Ndibwami yakoze.

[47] Asoza avuga ko urebye inyandiko y'Umuvunyi Mukuru usanga nta kintu avuga kuri Ndibwami Sosthène, ko kandi kuba abavugwa ko basambanyijwe ari abakobwa bakuru, adashobora kuba icyitso cy'icyaha kitabayeho, akaba asaba ko Urukiko rwashingira ku ngingo ya 165 CPP akagirwa umwere.

c. Ku byerekeye ibihano

[48] Ku bijyanye n'ibihano, Ubushinjacyahaga buvuga ko mu manza zabanje bwasabye ibihano bitandukanye bitewe n'icyaha buri wese yari akurikiranyweho, ariko ko Urukiko rwahinduye inyito

rusanga abakurikiranywe bahamwa n'icyaha cyo gusambanya umwana, n'icyaha cyo kuba icyitso kuri icyo cyaha, kandi ko Itegeko ryakoreshwaga icyo gihe ryagihanishaga igifungo cya burundu, ariko ko Itegeko rishya riteganya igihano cy'imyaka 25 y'igifungo, bityo busaba ko Urukiko rwazatanga ibihano biteganywa n'Itegeko rishya, kuko aririyo ritanga ibihano byoroshye.

UKO URUKIKO RUBIBONA

[49] Dosiye y'urubanza igaragaza ko Ubushinjacyaha buregera Urukiko Rwisumbuye rwa Nyagatare bwari bukurikiranyeho abaregwa icyaha cyo gusambanya umwana n'icyaha cyo gushishikariza, koshya cyangwa kuyobya umuntu umushora mu buraya. Nkuko biri mu nyandiko itanga ikirego, Mugabe Thomas alias Mabati yari akurikiranyweho gusambanya umwana USB utarageza ku myaka y'ubukure, Murekezi David akurikiranyweho gusambanya umwana witwa IP utarageza ku myaka y'ubukure, Kagame Alexis akurikiranyweho gusambanya umwana ML utarageza ku myaka y'ubukure.

[50] Iyo nyandiko itanga ikirego igaragaza ko Murekezi David, Ndibwami Sosthène na Kagame Alexis bari bakurikiranyweho icyaha cyo gushora mu buraya abana b'abakobwa b'abanyeshuri batarageza ku myaka y'ubukure, harimo uwitwa USB nawe wari ugikurikiranyweho, kuko mu bihe bitandukanye yabazaniye ML, IP, N na UW, kugira ngo babasambanye. Urukiko rumaze gusuzuma ibikorwa Ndibwami Sostène yakoze, rwasanze ari icyitso cya Murekezi David na Kagame Alexis mu ikorwa ry'icyaha cyo gusambanya abana ML na IP akaba aricyo cyaha Ubushinjacyaha bumukurikiranyeho.

[51] Mu gushinja abaregwa icyaha cyo gusambanya umwana, icyo kuba icyitso muri icyo cyaha, n'icyo gushishikariza, koshya cyangwa kuyobya abana babashora mu buraya, dosiye y'urubanza igaragaza ko Ubushinjacyaha bushingira ku buhamya bwa USB, ubwa ML, n'ubwa IP bavuga ko basambanyijwe. Bushingira kandi ku buhamya bwa Musabyeyezu Esther Nyirasenye wa USB babanaga wamubwiye ko ashyira abakobwa abaregwa bakabasambanya, n'ubuhamya bwa Kayinamura Hussein wakoraga kuri Hoteli bikekwa ko basambanyirijwemo, uvuga ko yahababonye ndetse na *historique* za telefone zigaragaza ko abaregwa bavuganaga kenshi n'abasambanyijwe.

[52] Mu kugaragaza ko abasambanyijwe bari abana, dosiye y'urubanza irimo icyemezo cy'amavuko cya Ingabire Pacifique cyatanzwe n'Umurenge wa Karangazi ku wa 02/06/2014 kigaragaza ko yavutse ku wa 23/11/1999 n'ikindi cyemezo nacyo cyatanzwe n'Umurenge wa Karangazi ku wa 28/08/2014 kigaragaza ko yavutse ku tariki ya 01/01/1994 (cote 99 dosiye y'Urukiko Rukuru). Usangamo kandi icyemezo cy'amavuko cya ML kigaragaza ko yavutse ku wa 01/01/1996 cyatanzwe n'Umurenge wa Nyagatare ku wa 02/06/2014 (cote ya 150 TGI), n'ikindi cyo ku wa 30/05/2014 kigaragaza ko yavutse muri 1998, ariko cyo nta tariki n'ukwezi biriho.

[53] Dosiye y'urubanza igaragaramo na none inyandiko zitandukanye zirimo « *birth certificate* » yatanzwe na Luweru Town Council yemejwe na Ambassade y'u Rwanda muri Uganda, Inyandiko yuzuzwa n'umunyeshuri ugiye kwinjira mu mashuri yisumbuye yatanzwe na Minisiteri y'Uburezi yo mu gihugu cya Uganda, Inyandiko igaragaza amanota WS (US) yabonye arangiza amashuri abanza yatanzwe n'ikigo kitwa Nsaasi Umea Primary School kigaragaza ko yavutse tariki ya 18/10/1997, inyandikomvugo y'ibazwa rya Se wa USB yo ku wa 02/09/2014 n'iya Nyina yo ku wa 08/09/2014 zivuga ko yavutse tariki ya 18/10/1997 (cote 251 dosiye TGI).

[54] Urukiko rurasanga, Urukiko Rwisumbuye rwa Nyagatare, mu rubanza rubanziriza urundi RP MIN 0024/014/TGI/NYG rusuzuma inzitizi y'iburabubasha, rwaciwe ku wa 27/10/2014, rwaremeje ko USB, ML na IP ari abana (cote 212). Rurasanga kandi, Urukiko rw'Ibanze rwa Nyagatare, mu rubanza RC 0179/14/TB/NYG rwaremeje ko USB yavutse ku wa 18/10/1997, mu rubanza RC 0187/14/TB/NYG rwaciwe ku wa 17/10/2014 rwemeza ko IP yavutse ku wa 23/11/1999, naho mu rubanza RC

0180/14/TB/NYG rwaciwe ku wa 16/10/2014 rwemeza ko ML yavutse ku wa 01/01/1998. Izi manza zikaba zaraciwe hashingiwe ku byemezo by'ivuka (*attestations de naissance*) byatanzwe n'Ubuyobozi bw'Imirenge, kandi ari nazo Ubushinjacyaha bushingiraho bushinja abaregwa icyaha cyo gusambanya umwana n'icyo kuba icyitso muri icyo cyaha, bunavuga ko Urukiko Rukuru Urugereko rwa Rwamagana rutagombaga gukuraho izo manza kuko byaba ari uguca urubanza ku kitararegewe.

[55] Urukiko rurasanga, mu gusuzuma ibimenyetso bivugwa haruguru, Urukiko Rukuru, Urugereko rwa Rwamagana (igika cya 18-23 cy'urubanza), kuri USB, rwarasanze mu ica ry'urubanza RC 0179/14/TB/NYG rusimbura inyandiko y'ivuka, Urukiko rw'Ibanze rwa Nyagatare rwarashingiye ku cyemezo cy'amavuko (*attestion de naissance*) cyerekana ko yavutse tariki ya 18/10/1997. Nyuma yo gusesengura uburyo « *attestation de naissance* » zikorwamo, rusanga itaba inyandiko yizewe yakwerekana itariki nyakuri USB yavukiyeho, kuko yakozwe hashingiwe ku magambo uyisaba yivugiye ubwe hatitawe ku nyandiko y'umwimerere y'Irangamimerere, ruha agaciro itariki y'ivuka igaragara mu nyandiko zakozwe n'abategetsi babifitiye ububasha b'aho yavukiye, akanakurira zigaragaza ko yavutse tariki ya 09/01/1996. Iyi nyandiko ikaba ihura n'inyandiko yo ku wa 17/07/2014 USB ubwe yiyandikiye yemera ko yavutse ku wa 09/01/1996.

[56] Urukiko rurasanga kandi, muri iryo sesengura ry'Urukiko Rukuru, Urugereko rwa Rwamagana, rwarasanze kuri IP rutagomba kwizera icyemezo cy'amavuko (*attestation de naissance*) cyashingiweho mu rubanza RC 0187/014/TB/NYG kigaragaza ko yavutse ku wa 23/11/1999, kuko nyuma y'itangwa ryacyo hatanzwe ikindi cyemezo kigaragaza ko yavutse tariki ya 01/01/1994 gishingiye ku makuru yatanzwe n'Ikigo cy'Igihugu cy'Indangamuntu(NIDA), akaba ari nacyo gishinzwe iyandikwa ry'abaturage, irangamimerere n'itangwa ry'ikarita ndangamuntu, nk'uko biteganywa n'ingingo ya 4 y'Itegeko N°43/2011 ryo kuwa 31/10/2011 rishyiraho icyo Kigo.

[57] Muri iryo sesengura kandi, Urukiko Rukuru, Urugereko rwa Rwamagana rwasanze kuri ML, urubanza RC 0180/14/TB/NYG rwaciwe ku wa 16/10/2014 rugaragaza ko yavutse ku wa 01/01/1998, rwaraciwe hashingiwe ku cyemezo cy' amavuko (*attestation de naissance*) cyatanzwe n'Umurenge wa Nyagatare ku wa 30/05/2014, ariko nyuma gato tariki ya 02/06/2014, uwo Murenge utanga ikindi cyemezo kivuga ko yavutse tariki ya 01/01/1996, no mu iburanisha ry'urubanza mu bujurire hatangwa ikindi cyemezo cy'Ikigo cy'Igihugu cy'Indangamuntu kigaragaza ko yavutse tariki ya 01/01/1996, bityo Urukiko rwanzura ko ibyo byemezo byombi aribyo byo kwizera, aho kuba amakuru yari yaratanzwe mbere mu rubanza rusimbura inyandiko y'ivuka rye. Iyi tariki y'ivuka ya 01/01/1996 ikaba ari nayo yemejwe mu rubanza RC 0192/14/TB/NYG nyuma y'ikirego cyatanzwe na Kagame Alexis gitambamira urubanza RC 0180/14/TB/NYG. Iyi tariki y'amavuko ya ML yo ku wa 01/01/1996 ni nayo kandi Ikigo cy'Igihugu cy'indangamuntu cyagaragaje mu nyandiko nimero 187/NIDA/2019 yo ku wa 12/09/2019 yandikiwe Umushinjacyaha Mukuru, nyuma y'uko uru Rukiko rusabye Ubushinjacyaha kubaza icyo Kigo amakuru kuri ML.

[58] Urukiko rurasanga, mu gihe hatakozwe inyandiko y'ivuka mu irangamimerere y'umuntu, hagakorwa urubanza rusimbura inyandiko y'ivuka, narwo rugomba gushingira ku makuru yizewe kandi adashidikanywaho nk'icyemezo cya muganga wabyaje umubyeyi (*certificat de naissance*) gitangwa mu minsi cumi n'itanu (15) umwana avutse, iyo gihari.

[59] Urukiko rurasanga, muri uru rubanza, amakuru yizewe kandi adashidikanywaho ku bijyanye n'itariki y'ivuka ya USB, ari ayatanzwe n'Inzego z'Ubuyobozi zitandukanye z'Igihugu cya Uganda, akemezwa na Ambasade y'u Rwanda muri Uganda, avuga ko yavutse tariki ya 09/01/1996, kuri Ingabire Pacifique itariki y'ivuka yizewe ikaba 01/01/1994 yatanzwe n'Ikigo cy'Igihugu cy'indangamuntu, naho kuri ML itariki y'ivuka yizewe ikaba iya 01/01/1996 yatanzwe n'icyo Kigo. Uru Rukiko rukaba rwemeranya n'isesengura ryakozwe n'Urukiko Rukuru, Urugereko rwa Rwamagana, bityo hashingiwe ku ngingo ya 3, agace ka 10 y'Itegeko N° 54/2011 ryo ku wa 14/12/2011 ryerekeye uburenganzira bw'umwana n'uburyo bwo kumurinda no kumurengera ryakoreshwaga icyaha

gikorwa, iteganya ko*:* umwana ari umuntu wese utarageza ku myaka cumi n'umunani (18) y'amavuko*",* USB, IP na ML, ntibari abana igihe icyaha abaregwa bakekwaho cyakorwaga.

[60] Urukiko rurasanga, kuba imbere y'uru Rukiko Ubushinjacyaha bwaravuze ko Murekezi David atahamwa n'icyaha cyo gusambanya umwana, kubera ko Ikigo cy'Igihugu cy'indangamuntu cyagaragaje itariki y'ivuka ya ML bugasanga afite imyaka y'ubukure igihe icyaha aregwa cyakorwaga, bigomba kuba kimwe no kuri Kagame Alexis uregwa kuba yarasambanyije IP, kubera ko icyo Kigo cyerekanye ko nawe yari afite imyaka y'ubukure, ndetse bikaba kimwe no kuri Mugabe Thomas alias Mabati uregwa gusambanya USB, nawe ibyemezo by'Ubuyobozi bubifitiye ububasha byerekana ko yari afite imyaka y'ubukure.

[61] Ku bijyanye n'ibyo Ubushinjacyaha buvuga ko, Urukiko Rukuru, Urugereko rwa Rwamagana rwasuzumye icyo rutaregewe, kuko rwatesheje agaciro imanza zisimbura inyandiko z'amavuko kandi rutarabiregewe, Urukiko rurasanga ubujurire bw'abaregwa mu Rukiko Rukuru Urugereko rwa Rwamagana, bwari bushingiye ku kuba Urukiko Rwisumbuye rwa Nyagatare rwarabahamije icyaha cyo gusambanya abana, rushingiye ku byemezo by'ivuka bitari ukuri, bigaragara ko icyajuririwe ari nacyo cyagiweho impaka mu iburanisha, Urukiko Rukuru rukaba ntaho rwanyuranije n'ingingo ya 189 y'Itegeko N° 30/2013 ryo ku wa 24/05/2013 ryerekeye imiburanishirize y'imanza z'injabyaha ryakurikizwaga icyo gihe iteganya ko : Urukiko rwajuririwe ruburanisha gusa mu mbibi z'icyajuririwe.

d. Kubyerekeye icyaha cyo gushishikariza no gushora umuntu mu buraya cyarezwe Kagame Alexis, Murekezi David na Ndibwami Sosthène.

[62] Mu nyandiko ikubiyemo ikirego cy'Ubushinjacyaha yo ku wa 08/09/2014, bwaregeye Urukiko Rwisumbuye rwa Nyagatare Murekezi David, Kagame Alexis, na Ndibwami Sosthène, ko bagamije kwishimisha, bashoye abana b'abakobwa mu buraya, babifashijwemo na USB. Muri iyo nyandiko Ubushinjacyaha bwasabiye Murekezi David na Kagame Alexis guhanwa gusa ku cyaha cyo gusambanya umwana hakurikijwe ingingo ya 190 n'iya 191 z'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 ryashyiraho igitabo cy'amategeko ahana (cote 244), byumvikana ko abaregwa ari nacyo bireguyeho gusa bavuga ko batigeze bagikora.

[63] Ndibwami Sosthène Ubushinjacyaha bwamusabiye guhanirwa icyaha cyo gushishikariza umuntu gukora uburaya hakurikijwe ingingo ya 259,2º y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 ryashyiraho igitabo cy'amategeko ahana[1]. Ariko Urukiko Rwisumbuye rwa Nyagatare rumaze gusesengura ibikorwa yakoze, rwasanze icyaha yakoze ari ukuba icyitso cya Kagame Alexis na Murekezi David mu cyaha cyo gusambanya umwana, bigaragara ko Ndibwami Sosthène atakomeje gukurikiranwaho icyaha cyo gushishikariza no gushora umuntu mu buraya.

UKO URUKIKO RUBIBONA

[64] Urukiko rurasanga, icyaha cyo gushishikariza no gushora umuntu mu buraya, Ndibwami Sosthène yari yaragikurikiranweho mu Rukiko Rwisumbuye rwa Nyagatare, ariko Urukiko rukurikije ibikorwa yakoze, rusanga icyaha yakoze ari icyo kuba icyitso cya Kagame Alexis na Murekezi David mu gusambanya umwana, ari nacyo yahaniwe Ubushinjacyaha ntibwajurira. Muri uru Rukiko, iki cyaha ni cyo Ubushinjacyaha bwamukurikiranyeho gusa, bivuze ko bwaretse kumukurikiranaho icyaha cyo gushishikariza no gushora umuntu mu buraya.

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[1]Ingingo ya 259, 2º yerekeye ibihano by'ucuruza umwana amushora mu buraya cyangwa mu bikorwa by'urukoza soni, ivuga ko: "Ushora mu buraya cyangwa mu bikorwa by'urukozasoni umwana ufite imyaka kuva kuri 12 kugeza kuri 18 ahanishwa igifungo cy'imyaka 5 kugeza kuri 7…"

[65] Urukiko rurasanga, kuri Kagame Alexis na Murekezi David, uretse kuba icyaha cyo gushishikariza no gushora umuntu mu buraya kigaragara mu nyandiko y'Ubushinjacyaha itanga ikirego, butarabasabiye igihano kuri icyo cyaha, bivuze ko batigeze bakiburanaho. Urukiko rurasanga kandi Urukiko Rwisumbuye rwa Nyagatare, nyuma yo gusesengura ibikorwa Kagame Alexis na Murekezi David bari bakurikiranyweho, narwo rwasanze, icyo ibyo bikorwa byari bigamije atari ugushishikariza no gushora umuntu mu buraya, ahubwo umugambi nyamukuru wabo waganishaga ku bikorwa byo gusambanya umwana, ari nacyo cyaha rwasanze kibahama, baranagihanirwa.

[66] Urukiko rurasanga, uretse n'ibyo, hashingiwe ku ngingo Ubushinjacyaha bwashingiyeho butanga ikirego kuri icyo cyaha, ariyo ya 259, 2º yerekeye ibihano by'ucuruza umwana amushora mu buraya cyangwa mu bikorwa by'urukoza soni, ivuga ko: "Ushora mu buraya cyangwa mu bikorwa by'urukozasoni umwana ufite imyaka kuva kuri 12 kugeza kuri 18 ahanishwa igifungo cy'imyaka 5 kugeza kuri 7…*",* nyuma yo gusanga abakobwa bavugwa mu rubanza ko baba barasambanyijwe, bari bafite imyaka y'ubukure icyo gihe, ikirego kuri iki cyaha, nta shingiro cyaba gifite.

[67] Urukiko rurasanga rero, hashingiwe ku bisobanuro byatanzwe, no ku ngingo ya 190 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga icyaha gikorwa iteganya ko :gusambanya umwana ari imibonano mpuzabitsina yose cyangwa ishingiye ku bitsina ikorewe umwana uko yaba ikozwe kose n'icyaba cyakoreshejwe cyose, Mugabe Thomas alias Mabati, Murekezi David na Kagame Alexis badahamwa n'icyaha cyo gusambanya umwana, Ndibwami Sosthène adahamwa n'icyaha cyo kuba icyitso cya Kagame Alexis na Murekezi David mu gusambanya umwana ; bityo mu rubanza RPA 0029/15/HC/RWG - RPA Min 0004/15/HC/RWG – RPA Min 0005/15/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 20/07/2015, hakaba nta karengane kagaragaramo.

III. ICYEMEZO CY'URUKIKO

[68] Rwemeye kwakira ikirego cyatanzwe n'Ubushinjacyaha cyo gusubirishamo, ku mpamvu z'akarengane, urubanza RPA 0029/15/HC/RWG - RPA Min 0004/15/HC/RWG – RPA Min 0005/15/HC/RWG, rwaciwe n'Urukiko Rukuru urugereko rwa Rwamagana ku wa 20/07/2015, ariko rugisuzumye rusanga nta shingiro gifite.

[69] Rwemeje ko mu rubanza RPA 0029/15/HC/RWG - RPA Min 0004/15/HC/RWG – RPA Min 0005/15/HC/RWG rwaciwe n'Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 20/07/2015, nta karengane karimo, rukaba rudahindutse.