UBUSHINJACYAHA v. NDIKUMANA

[Rwanda URUKIKO RW'UBUJURIRE – RPA 00014/2019/CA (Nyirandabaruta, P.J.) 23 Ukwakira 2020]

Amategeko nshinjabyaha – Icyaha cyo gucuruza abantu – Ku gikorwa cyo kubyaza umuntu inyungu mu cyaha cyo gucuruza abantu, si ngombwa ko intego iba yagezweho, icy'ingenzi nuko hagaragazwa icyari kigamijwe, mu ikorwa ry'icyo gikorwa kuko igihanwa ari icyari kigambiriwe nukuvuga kubyaza umuntu inyungu zitemewe aho kuba icyagezweho.

Amategeko nshinjabyaha – Icyaha cyo gucuruza abantu – Ku cyaha cyo gucuruza abantu, uregwa ntashobora kwireguza ko uwakorewe icyaha nawe yari yiyemereye gukorerwa igikorwa cyo gucuruza abantu.

Incamake y'ikibazo: Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi, uregwa akurikiranywe ku cyaha cyo gucuruza abantu, nyuma yuko hari umukobwa wavuye iwabo i Burundi, yambuka umupaka agera mu Rwanda ku biro by'abinjira n'abasohoka maze abakozi bamubajije iyo agiye biramushobera, batangira kwibaza uwo bari kumwe hakekwa uwitwa Ndikumana(uregwa) wasaga nk'aho akurikiranira hafi ibyuwo mukobwa, nuko hakorwa iperereza rishojwe uregwa akurikiranwaho icyaha cyo gucuruza abantu. Urukiko Rukuru, Ugereko ruburanisha ibyaha byo mu rwego mpuzamahanga n'ibyaha byambuka imbibi rwaciye urubanza, rwemeza ko uregwa ahamwa n'icyaha cyo gucuruza abantu, rumuhanisaha igifungo cy'imyaka irindwi (7) n'ihazabu ingana na miliyoni icumi z'amafaranga y'u Rwanda (10.000.000 FRW).

Uregwa yajuririye urwo rubanza mu Rukiko rw'Ubujurire avuga ko yahamijwe icyaha cyo gutunda no gucuruza abantu hashingiwe ku mpamvu y'uko yari mu rugendo rumwe na Shurweryimana(victim) kandi nta kuntu yari kumushuka ari umuntu mukuru, ko nta n'ukuntu yari gushakira akazi umuntu bataziranye, ko Urukiko rwashingiye ku kuba yaremeye icyaha mu Bugenzacyaha kandi yaragaragaje ko yakubiswe agata ubwenge, ko rwirengagije ubuhamya bwa muganga wagaragaje ugusenzekazwa kwe.

Nyuma yaho yaje gushyikiriza Urukiko rw'Ubujurire umwanzuro w'inyongera, avuga yahinduye imiburanire, ko noneho yemera icyaha kuko umutimanama we umukomanga, asaba ko ukwemera icyaha kwe kwahabwa agaciro, kukamubera impamvu nyoroshyacyaha akagabanyirizwa igihano, yanasabye kandi gusubikirwa igihano yahabwa kubera ko ngo asanganywe imyitwarire myiza kandi akaba yiyemeje kwisubiraho. Yongeye ho kandi ko Urukiko Rukuru rwakabaye rwaramuhamije icyaha cy'ubwinjiracyaha mu bikorwa byo gucuruza abantu aho kumuhamya icyaha cyo gucuruza abantu kuko igikorwa cyari kitaragerwaho.

Ubushinjacyaha bwo buvuga ko icyaha cyatsotsobwe igihe uwakorewe icyaha(victim) yajyanwaga nk'intama, ko bigaragara ko yari yahindutse nk'igicuruzwa, azi ko agiye mu kazi, mu gihe Ndikumana we yari yabonye inyungu kuko yajyanaga umuntu akabona amafaranga. Buvuga kandi ko hakurikijwe amasezerano mpuzamahanga ku cyaha cyo gucuruza abantu, hakoreshwa ibimenyetso bicukumbuwe, ko ibikorwa byose byakozwe na Ndikumana nta kugerageza kurimo.

Incamake y'icyemezo: 1. Ku gikorwa cyo kubyaza umuntu inyungu mu cyaha cyo gucuruza abantu, si ngombwa ko intego iba yagezweho, icy'ingenzi nuko hagaragazwa icyari kigamijwe, mu ikorwa ry'icyo gikorwa kuko igihanwa ari icyari kigambiriwe nukuvuga kubyaza umuntu inyungu zitemewe aho kuba icyagezweho, bityo impamvu y'ubujurire bw'uregwa ko Urukiko rwakabaye rwamuhamije icyaha cy'ubwinjiracyaha mu bikorwa byo gucuruza abantu nta shingiro ifite.

2. Ku cyaha cyo gucuruza abantu, uregwa ntashobora kwireguza ko uwakorewe icyaha nawe yari yiyemereye gukorerwa igikorwa cyo gucuruza abantu.

Ubujurire nta shingiro bufite.

Amategeko yashingiweho:
Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 2.
Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 76, 77,78, 85, 250, 251 n'iya 252.
Amasezerano y'inyongera ku masezerano y'Umuryango w'Abibumbye agamije gukumira, kurwanya no guhana icuruzwa ry'abantu, by'umwihariko abagore n'abana, ingingo ya 3.

Imanza zifashishijwe:
Ubushinjacyaha v. Mukankusi, RPA 0246/09/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 14/12/2012, Icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri 2013, nº 17 cyasohotse muri Mata, 2013.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Urubanza rwatangiriye mu Rukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyaha byambuka imbibi, Ubushinjacyaha burega Ndikumana Clovis icyaha cyo gucuruza abantu, aho ku wa 31/03/2018, saa cyenda z'amanywa, umukobwa witwa Shurweryimana yavuye iwabo i Burundi, yambuka umupaka agera mu Rwanda ku biro by'abinjira n'abasohoka maze abakozi bamubajije iyo agiye biramushobera, batangira kwibaza uwo bari kumwe. Haketswe uwitwa Ndikumana Clovis wasaga nk'aho akurikiranira hafi ibya Shurweryimana, arabazwa, maze birangira bigaragaye ko bombi bari kumwe, bahita bakeka ko Shurweryimana yaba yari agiye gucuruzwa, Ndikumana Clovis arafatwa, iperereza riratangira. Rishojwe akurikiranwaho icyaha cyo gucuruza abantu.

[2] Ndikumana Clovis yaburanye avuga ko atigeze akora icyaha, ko yari kumwe na Shurweryimana nk'uwari wamuhawe n'uwitwa Laruma ngo amushyikirize uwari kuzamuha akazi muri Uganda, ku buryo abona nta cyaha kiri mu byo yakoze.

[3] Ku wa 18/10/2018 Urukiko Rukuru, Ugereko ruburanisha ibyaha byo mu rwego mpuzamahanga n'ibyaha byambuka imbibi rwaciye urubanza No RP 00017/2018/HC/HCCIC,

rwemeza ko Ndikumana Clovis ahamwa n'icyaha cyo gucuruza abantu, rumuhanisaha igifungo cy'imyaka irindwi (7) n'ihazabu ingana na miliyoni icumi z'amafaranga y'u Rwanda (10.000.000 FRW).

[4] Ndikumana Clovis yajuririye urwo rubanza muri uru Rukiko, avuga ko yahamijwe icyaha cyo gutunda no gucuruza abantu hashingiye ku mpamvu y'uko yari mu rugendo rumwe na Shurweryimana Inès kandi nta kuntu yari kumushuka ari umuntu mukuru, ko nta n'ukuntu yari gushakira akazi umuntu bataziranye, ko Urukiko rwashingiye ku kuba yaremeye icyaha mu Bugenzacyaha kandi yaragaragaje ko yakubiswe agata ubwenge, rwirengagije ubuhamya bwa muganga wagaragaje ugusenzekazwa kwe, rukaba rwaravuze ko ibijyanye n'urugendo rwa Shurweryimana Inès byari mu maboko ye kandi atari byo, kuko uyu yari umuntu mukuru umuruta, akaba atari kumurandata nk'urandata impumyi.

[5] Ku wa 8/10/2019, Ndikumana Clovis yashyikirije Urukiko rw'Ubujurire umwanzuro w'inyongera, avuga yahinduye imiburanire, ko noneho yemera icyaha kuko umutimanama we umukomanga, ko atakomeza guhakana icyaha gifitiwe ibimenyetso bihagije, asaba ko ukwemera icyaha kwe kwahabwa agaciro, kukamubera impamvu nyoroshyacyaha akagabanyirizwa igihano, anasaba gusubikirwa igihano yahabwa kubera ko ngo asanganywe imyitwarire myiza kandi akaba yiyemeje kwisubiraho.

[6] N'ubwo ariko avug ko yemera icyaha, avuga ko Urukiko Rukuru rwakabaye rwaramuhamije icyaha cy'ubwinjiracyaha mu bikorwa byo gucuruza abantu aho kumuhamya icyaha cyo gucuruza abantu kuko igikorwa cyari kitaragerwaho, anavuga ko urwo Rukiko rutaramugabanyirije ibihano kandi yaremeye icyaha.

[7] Iburanisha ryabereye mu ruhame ku wa 21/9/2020, Ndikumana Clovis yunganiwe na Me Nkundabatware Bigimba Felix, naho Ubushinjacyaha buhagarariwe na Habarurema Jean Pierre, Umushinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIGARAGARA MU RUBANZA N'ISESENGURWA RYABYO

Kumenya niba Ndikumana Clovis yari guhanirwa ubwinjiracyaha cyo gucuruza abantu aho kuba icyaha cyo gucuruza abantu.

[8] Ndikumana Clovis avuga ko impamvu yajuririye ari uko umugambi we utagezweho, kubera ko nyuma y'uko bafatiwe ku mupaka Shurweryimana Ines yasubijwe inyuma we bakamufata, bigaragaza ko atigeze agera ku mugambi we, ariyo mpamvu asaba ko icyaha cyahindurirwa inyito, kikitwa ubwinjiracyaha cyo gucuruza abantu nk'uko byemejwe mu rubanza No RPA 00022/2019/CA rwa Good Luck Asser Marahaba rwaciwe n'uru Rukiko ku wa 17/7/2020, aho kuba icyaha cyo gucuruza abantu.

[9] Me Nkundabatware Bigimba Felix, avuga ko kuba icyaha Ndikumana Clovis aregwa cyo gucuruza abantu atarakigezeho, ariho bahera basaba ko inyito y'icyaha yahinduka, ko nk'uko byemejwe mu rubanza RPA 00022/2019/CA rwa Good Luck Asser Marahaba, rwaciwe ku wa

17/7/2020, hakoreshwa ingingo ya 251 aho gukoreshwa iya 252 z'Igitabo cy'amategeko ahana cya 2012.

[10] Uhagarariye Ubushinjacyaha avuga ko urubanza No RPA 00022/2019/CA rwaciwe rwa GOOD Luck Asser Marahaba rutagenderwaho kuko atari ihame ko urubanza rugenderwaho, cyane ko ingingo ya 9 y'Itegeko no 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, itaganya ko umucamanza ashingira ku mategeko, kandi icyaha Ndikumana Clovis akurikiranyweho kikaba ari icyaha cyihariye, harebwe uburyo abantu bagenda bahererekanya abantu nk'ibicuruzwa, binjizwa, batundwa, hagamijwe kubona inyungu.

[11] Avuga ko kuri Shurweryimana Ines, icyaha cyatsotsobwe igihe yajyanwaga nk'intama, ko harebwe ibyo ingingo ya 250 y'Itegeko rishyiraho Igitabo cy'amategeko ahana ibyaha ryari ubwo icyaha cyakorwaga iteganya, bigaragara ko yari yahindutse nk'igicuruzwa, azi ko agiye mu kazi, mu gihe Ndikumana Clovis we yari yabonye inyungu kuko yajyanaga umuntu kwa Eddy akabona amafaranga nk'uko babisobanuye mu myanzuro, akaba yarakoze igikorwa cyo gushakisha, kwimura, gukoresha uburiganya hagamijwe kubyaza inyungu uwo yabikoreye igihe bari kuba bageze aho yari amujyanye.

[12] Uhagarariye Ubushinjacyaha avuga kandi ko hakurikijwe amasezerano mpuzamahanga ku cyaha cyo gucuruza abantu, hakoreshwa ibimenyetso bicukumbuwe, ko ibikorwa byose byakozwe na Ndikumana Clovis nta kugerageza kurimo, ariyo mpamvu Ubushinjacyaha busanga atahanwa hashingiwe ku ngingo ya 251 y'Itegeko no 01/2012 ryo ku wa 01/05/2012 ryavuzwe haruguru, ko ahubwo hakurikizwa ingingo yaryo ya 252.

UKO URUKIKO RUBIBONA

[13] Ingingo ya 2 y'Itegeko Nº 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, iteganya ko ikimenyetso cyo mu rubanza ari uburyo bukoreshwa kugira ngo ukuri kw'ibyabaye kugaragare, naho ingingo yaryo ya 3 igateganya ko buri muburanyi agomba kugaragaza ukuri kw'ibyo aburana.

[14] Ingingo ya 250 y'Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana itanga ubusobanuro bwo gucuruza abantu, ko harimo ibikorwa bihindura umuntu igicuruzwa bijyanye no gushakisha cyangwa kwimurira umuntu ahandi mu gihugu cyangwa mu mahanga hakoreshejwe uburiganya, ibikangisho, imbaraga cyangwa agahato, ububasha ubikora aba amufiteho, akenshi hagamijwe kumwangiriza ubuzima cyangwa kumubyaza inyungu zitemewe akoreshwa mu biterasoni, mu buraya …..Bifatwa kandi nko gucuruza abantu, kubashakamo inyungu hakoreshejwe kubagira abasabirizi ku gahato, kubabera ababyeyi batarababyaye hakoreshejwe ikiguzi mu buryo butemewe n'amategeko…. Gushakwamo inyungu ni uburyo bwose bwo gushaka inyungu zishingiye ku gitsina, imirimo y'agahato, ubucakara n'ibindi bisa na bwo cyangwa guca urugingo rw'umuntu…

[15] Ingingo ya 251 y'Itegeko Ngenga no 01/2012/OL ryo ku wa 02/05/2012 ryavuzwe haruguru igira iti: "Umuntu wese ugira uruhare, ku buryo ubwo ari bwo bwose, ari we cyangwa abicishije ku wundi, mu gutorokesha umuntu avanywe mu Rwanda ajyanywe mu mahanga agamije kumucuruza, akoresheje ubushukanyi, imbaraga, ibikangisho n'ubundi buryo bw'agahato,

2° yishingikirije ibibazo umuntu afitanye n'ubuyobozi, ubutabera, ubupfubyi, ubukene, kwibana, ubumenyi buke, imirimo ivunanye, umuryango w'indahekana, ibura ry'akazi, uburwayi, ubumuga bw'umubiri cyangwa bwo mu mutwe, icyuho mu itegeko n'ibindi byatuma umuntu muzima akora ibyo atatekereje; ahanishwa igifungo kuva ku mwaka umwe (1) kugeza ku myaka itatu (3) n'ihazabu y'amafaranga y'u Rwanda kuva ku bihumbi magana atanu (500.000) kugeza kuri miliyoni ebyiri (2.000.000)".

[16] Ingingo ya 252 y'iryo Tegeko Ngenga, iteganya ko "Umuntu wese utwara cyangwa utuma batwara, ufata cyangwa ufatisha, ufunga cyangwa ufungisha, utunda cyangwa utundisha abantu abo ari bo bose, agamije kubahindura abacakara cyangwa kubagurishiriza kuba abacakara, kubagira abasabirizi ku gahato, kubabera umubyeyi utarababyaye mu buryo butemewe n'amategeko hakoreshejwe ikiguzi kubakoresha mu mashusho y'urukozasoni, mu masiporo ateye ubwoba, kubashora mu ntambara, kubana na bo nk'umugore n'umugabo hagamijwe iyicarubozo cyangwa icuruzwa ry'ingingo z'imibiri yabo, ahanishwa igifungo kuva ku myaka irindwi (7) kugeza ku myaka icumi (10) n'ihazabu y'amafaranga y'u Rwanda kuva kuri miliyoni eshanu (5.000.000) kugeza kuri miliyoni icumi (10.000.000 Frw).

[17] Mu rubanza rujuririrwa, Urukiko Rukuru rwasanze Ndikumana Clovis yaragiye akora ibishoboka byose ngo bitamenyekana ko ari kumwe na Shurweryimana Ines, ko mu gihe barimo kumusaka amaze kwinjira mu Rwanda yabwiye umukozi wo mu biro by'abinjira n'abasohoka witwa Niyonzima Godefroid ko ataziranye na Shurweryimana Ines bahuriye mu modoka gusa, ariko bikarangira bigaragaye ko bari kumwe.

[18] Urukiko Rukuru rwasanze kandi mu gihe Ndikumana Clovis yari atwaye Shurweryimana Ines muri ubwo buryo, we yari afite aho azagarukira n'inyungu y'amadorali hagati ya 600 $ na 700 $ yari guhabwa amugejejeyo, ko ikigaragara muri iyo migirire ari uko itundwa rya Shurweryimana Ines, atari ubufasha busanzwe nk'uko Ndikumana Clovis yashatse kubyumvikanisha, ahubwo ryari rifite intego yo kumubyaza inyungu zitemewe mu buryo "Eddy" wari kumusigirwa yari kugena uko abishaka, agamije no kwiyishyura ibyo yari kuba yamutakajeho byose, cyane cyane ko Shurweryimana Ines yari kumugeraho bataziranye nta n'icyo basezeranye, akemera gukoreshwa ibyo atagakoze aramutse afite ubwinyagamburiro.

[19] Urukiko Rukuru rwasanze uruhurirane rw'uburyo Shurweryimana Ines yavanywe i Burundi n'inyungu ifatika y'amadorali uregwa yari abifitemo, byerekana ko igikorwa Ndikumana Clovis yafatiwemo cyari gifite intego yo kumucuruza, rubishingiraho rwemeza ko ahamwa n'icyaha cyo gucuruza abantu.

[20] Dosiye igaragaza ko mu ibazwa rya Ndikumana Clovis mu Bugenzacyaha ryo ku wa 31/3/2018, yavuze ko yemera icyaha cyo gucuruza abantu mu mahanga, asobanura ko yabitewe n'ubukene, ko hari umuntu biganye witwa Eddy, umaze igihe yarinjiye muri ubu bucuruzi bwo gushakisha abakobwa bakabacuruza babajyana mu bihugu by'abarabu, ko kandi amaze kugurisha umwe witwa Adija ariko bakaba barasanze afite ikibazo cya Hepatite, ko iyo babagejejeyo babishyura amadolari hagati ya 600 na 700, Eddy akabajyana Kenya kubashakira Visa.

[21] Dosiye igaragaza inyandiko yakozwe na Niyonzima Godefroid ku wa 2/4/2018, umukozi w'Ibiro by'abinjira n'abasohoka, wemeje ko ku wa 31/03/2018 ahagana saa cyenda (z'amanywa) yabonye Ndikumana Clovis azanye Shurweryimana Ines bavanye i Burundi, ababona baganira

amubajije aho bagiye aramuhakanira noneho abajije Shurweryimana Ines aho agiye amusubiza ko agiye kwiga, akomeza kugira amakenga, bituma yaka Ndikumana Clovis telefone ye, abona abo bavuganaga bahuje umwuga wo gucuruza abantu, ahita amushyikiriza umugenzacyaha. Ibi kandi ninako Nirora Peter nawe wafashe Ndikumana Clovis yabisobanuye, aho yanavuze ko muri telephone bamufatanye harimo ibiciro ahabwa iyo agejeje umuntu Uganda bagiye ku mucuruza.

[22] Dosiye igaragaza ko mu nyandikomvugo y'ibazwa rya Shurweryimana Ines yo ku wa 31/3/2018, yemeje ko Ndikumana Clovis bamufashe bari kumwe ku mupaka w'Akanyaru, amujyanye Uganda, kandi ko yari yishingiye kumuha ibintu byose akaba ari nawe wamushakiye Passeport.

[23] Urukiko Rukuru mu guhamya Ndikumana Clovis icyaha aregwa, rwagaragaje ko ikitagibwaho impaka ari ukuba Ndikumana Clovis yafashwe ajyanye Shurweryimana Ines muri Uganda kandi akaba ari we wishingiye ibikenerwa byose mu rugendo n'amatike, amujyanye nk'umuntu wijejwe akazi ariko utarasobanuriwe neza imiterere yako, utazi neza uzamukoresha n'aho azakorera, utazi uzamugeza kuri uwo mukoresha, uretse kugenda ahererakanywa hagati y'abantu atazi, atanazi uburyo bakorana hagati yabo; adafite ubushobozi n'uburyo bwo kwifatira icyemezo cyo gukomeza urugendo cyangwa kugaruka i Burundi, kuko ibijyanye n'imibereho bye byose byari mu maboko ye.

[24] Urukiko rusanga ku gira ngo ushinjwa ahamwe n'icyaha cyo gucuruza abantu, ari ngombwa ko akora kimwe mu bikorwa bivugwa mu ngingo ya 252 ari byo gutwara cyangwa gutuma batwara, gufata cyangwa gufatisha, gufunga cyangwa gufungisha, gutunda cyangwa gutundisha abantu abo ari bo bose, ukurikiranywe akabikora agamije kubyaza inyungu zitemewe umuntu cyangwa korohereza undi ugamije kumubyaza inyungu zitemewe.

[25] Urukiko rurasanga kuba Ndikumana Clovis avuga ko nta bushukanyi bwabayeho kuri Shurweryimana wari ushyiriwe Eddy kubera ko ngo yari yabyemeye, nta shingiro bifite kubera ko uretse n'uko yamufatiranye mu bukene adafite akazi mu gihugu cye cy'i Burundi, yamwijeje ko agiye kumushakira akazi kazamuhemba amafaranga menshi, bituma amushakira pasiporo, aramujyana ariko Shurweryimana Ines akaba adafite amakuru ahagije y'uko aho agiye azagerayo, igihe azagererayo, icyo azakora, uwo azakorera n'icyo azahembwa, kuko Ndikumana Clovis ari we wari wishingiye ibirebana n'ibyo azakenera byose mu rugendo.

[26] Urukiko rusanga kandi n'iyo Shurweryimana Ines yari kuba yemeye, bitari kuvanaho Ndikumana Clovis icyaha cyo gucuruza abantu, mu gihe bigaragara ko yari yarangije kumwizeza akazi amubeshya, agamije kumubyaza inyungu[1], kuko mu byaha byo gucuruza abantu, harebwa amayeri yakoreshejwe k'ukurikiranweho gucuruza abantu kugira ngo uwo ateganya gucuruza, yemere ibyo amubwiye.

[27] Ku bijyanye no kuba Ndikumana Clovis yakurikiranwaho ubwinjiracyaha mu cyaha cyo gucuruza abantu, aho kuba icyaha cyo gucuruza abantu, abahanga mu mategeko bavuga ko

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[1] L'article 3.b) du Protocole relatif à la traite des personnes: "Le consentement d'une victime de la traite des personnes à l'exploitation envisagée est indifférent lorsqu'il a été démontré que la duperie, la contrainte, la force ou d'autres moyens interdits ont été utilisés. Le consentement ne peut donc pas être invoqué à titre de défense pour exonérer une personne de sa responsabilité pénale". https://www.unodc.org/documents/congress/background information/Human_Trafficking/TIP_Manual_fr_module_01.pdf , visité le 16/10/2020

igikorwa cyo kubyaza umuntu inyungu mu cyaha cyo gucuruza abantu, atari ngombwa ko intego igikorwa cyakoranywe iba yagezweho, ko icy'ingenzi ari uko hagaragazwa icyari kigamijwe mu ikorwa ry'icyo gikorwa, kuko igihanwa ari icyari kigambiriwe, ni ukuvuga kubyaza umuntu inyungu zitemewe aho kuba icyagezweho.2

[28] Ibivugwa n'abo bahanga bihura kandi n'ibiteganywa mu ngingo ya 3 y'Amasezerano y'inyongera ku masezerano y'Umuryango w'Abibumbye agamije gukumira, kurwanya no guhana icuruzwa ry'abantu, by'umwihariko abagore n'abana, yashyiriweho umukono i Palermo mu Butaliyani ku wa 15/11/2000, u Rwanda rukaba rwarayemeje ku wa 26/09/20033, iteganya ko ushinjwa adashobora kwireguza ko uwakorewe icyaha yabyemeye, igihe cyose bigaragara ko hari bimwe mu bikorwa bivugwa muri iyo ngingo yakoze.

[29] Urukiko rw'Ubujurire rurasanga kuba Urukiko Rukuru rwarahamije Ndikumana Clovis icyaha cyo gucuruza abantu rukakimuhanira nta kosa rwakoze, kuko ibikorwa yakoze byo kuvana Shurweryimana Ines mu Burundi amubeshya ko yamuboneye akazi, akamunyuza mu Rwanda amujyanye Uganda aho yari amushyiriye Eddy wagombaga kumwishyura 600$ cyangwa 700 $ akabona kumumusigira ngo nawe amujyana kumucuruza muri Arabia Saoudite, bigize icyaha cyo gucuruza abantu giteganywa kandi gihanwa n'ingingo ya 250 na 252 z'Itegeko Ngenga nº01/2012 ryo ku wa 02/05/2012 ryavuzwe haruguru, kandi bisobanurwa n'amasezerano y'inyongera ku masezerano y'Umuryango w'Abibumbye agamije gukumira, kurwanya no guhana icuruzwa ry'abantu, by'umwihariko abagore n'abana, yavuzwe haruguru.

[30] Urukiko rw'Ubujurire rushingiwe ku bisobanuro byose byatanzwe, rurasanga ubujurire bwatanzwe na Ndikumana Clovis ku ngigo yo guhindura inyito y'icyaha yahamijwe hagendewe ku byemejwe mu rubanza RPA 00022/2019/CA rwa Good Luck Asser Marahaba rwaciwe ku wa 17/7/2020 nta shingiro bufite, kubera ko muri urwo rubanza Urukiko rwasanze kubera ko Ngowe Goodluck yafatiwe mu nzira atarageza Kwizera Marie Claire muri Uganda aho yari amujyanye, ntashobore kugera ku mugambi, icyaha kimuhama ari ubwinjiracyaha ku cyaha cyo kugira uruhare mu kuvana umuntu mu gihugu agamije kumucuruza nk'uko biteganywa n'ingingo ya 27 y'Itegeko Ngenga nº 01/2012/OL, mu gihe muri uru rubanza byasobanuwe neza ko icy'ingenzi muri ibi

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[2] L'"objectif de l'exploitation" est un élément moral de type dolus specialis: le dolus specialis peut être défini comme l'objectif visé par l'auteur du crime lorsqu'il commet les actes matériels de l'infraction. C'est l'objectif qui importe et non le résultat concret auquel est parvenu l'auteur du crime. Ainsi, la satisfaction de l'élément de dolus specialis ne nécessite pas que le but soit effectivement atteint. En d'autres termes, les "actes" et les "moyens" de l'auteur du crime doivent viser à exploiter la victime. Il n'est par conséquent pas nécessaire que l'auteur du crime exploite effectivement celle-ci. P.5. (https://www.unodc.org/documents/congress/background information/Human_Trafficking/TIP_Manual_fr_module_01.pdf visité le 16/10/2020

[3] https://www.unodc.org/documents/data-and-analysis/glotip/Annex_II_-_Definition_and_mandate.pdf visité le 16/10/2020.

Article 3, paragraph (a) of the Protocol states that trafficking in persons "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3, (b) states that: "The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."

byaha byo gucuruza abantu, ari uko hagaragazwa icyari kigamijwe mu ikorwa ry'icyo gikorwa, kuko igihanwa ari icyari kigambiriwe, ni ukuvuga ku byazwa umuntu inyungu zitemewe, aho kuba icyagezweho.

Kumenya niba Ndikumana Clovis yaremeye icyaha nta gabanyirizwe ibihano kandi niba yagabanyirizwa kuri uru rwego

[31] Ndikumana Clovis na Me Nkundabatrware Bigimba Felix umwunganira, bavuga ko ataruhije ubutabera, ko mu Rukiko Rukuru yaburanye yemera icyaha akerekana inyungu yari kuvana muri icyo cyaha ariko ntirumugabanyirize igihano. bavuga kandi ko icyaha yakoze nta ngaruka cyateje, ariyo mpamvu basaba Urukiko kumugabanyiriza ibihano rushingiye ku ngingo za 77 na 78 z'Igitabo cy'amategeko ahana cyariho ubwo icyaha cyakorwaga, byashoboka igihano ahawe kigasubikwa.

[32] Uhagarariye Ubushinjacyaha avuga ko icyo itegeko riteganya atari uko umuntu agabanyirizwa ibihano ageze mu bujurire, ko ahubwo yateganyije ko uwemeye mu ntangiriro ari we ushobora kugabanyirizwa, ko Ndikumana Clovis yemeye icyaha mu Bugenzacyaha yagera mu Rukiko akagihakana, ko rero atagabanyirizwa ibihano kuko itegeko ritabyemera, ko binakozwe byaba binyuranyije n'itegeko (contra legem).

UKO URUKIKO RUBIBONA

[33] Ingingo ya 76 y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga igihe icyaha cyakorwaga, iteganya ko umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye kandi ko kwemeza impamvu zoroshya uburemere bw'icyaha bigomba gusobanurwa. Ingingo yaryo ya 77 iteganya ko zimwe mu mpamvu nyoroshya cyaha zirimo ko ....mu ntangiriro z'iburanisha ku rwego rwa mbere, ushinjwa yireze akemera icyaha mu buryo budashidikanywa n'igihe icyaha cyakozwe nta ngaruka zikomeye cyateje.

[34] Ingingo ya 78, 1°, y'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rimaze kuvugwa haruguru iteganya ko: "iyo hari impamvu zoroshya uburemere bw'icyaha, igihano cyo gufungwa burundu cyangwa cya burundu y'umwihariko gisimbuzwa igihano cy'igifungo kitari munsi y'imyaka icumi (10). Naho inginngo yaryo ya 85 iteganya ko: Muri iri Tegeko Ngenga, isubikagihano ni icyemezo cy‟umucamanza gihagarika irangizarubanza ku gihano cy‟igifungo kitarengeje imyaka itanu (5) iyo uwagikatiwe atigeze ahanishwa mbere mu rubanza rwabaye ndakuka igihano cy‟igifungo cyangwa igihano nsimburagifungo cy‟imirimo ifitiye igihugu akamaro kirenze amezi atandatu (6).

[35] Mu rubanza rujuririrwa, Ndikumana Clovis yaburanye avuga ko ibyo yavuze abazwa n'ibyo yanditse yabivuze akubitwa, ko kandi inyandiko zo kwa muganga ari ikimenyetso gihamya ibyo avuga nta shingiro bifite, kuko ikigaragara ari uko yari arwaye igifu akagira n'ukwiheba ari na byo byatumye ajyanwa mu Bitaro bya Munini avanywe mu Kigo Nderabuzima cya Nyamyumba, urwo Rukiko rusanga kuba muganga yemeza ko arwara igifu akagira n'ukwiheba gukabije (dépression) bitafatwa ku buryo budashidikanywaho nk'ikimenyetso cy'uko yakubiswe bigatuma yishinja ibyo atakoze, kuko no gufatirwa mu byaha ubwabyo byamutera uko kwiheba.

[36] Urukiko rurasanga mu Rukiko Rukuru, Ndikumana Clovis ataraburanye yemera icyaha nk'uko abivuga, kuko n'ibyo yari yaremeye mu nzego z'iperereza yavuze ko yabyemejwe n'inkoni, ibyo avuga ko atagabanyirijwe igihano kandi yaraburanye yemera icyaha akanorohereza ubutabera bikaba nta shingiro bifite.

[37] Ku bijyanye n'uru rubanza, Urukiko rurasanga imvugo y'uhagarariye Ubushinjacyaha y'uko Ndikumana Clovis atagabanyirizwa ibihano bitewe n'uko atemeye icyaha mu ntangiriro, nta shingiro ifite, kubera ko ingingo ya 76 y'Itegeko Ngenga ryavuzwe haruguru, iteganya ko umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye, bivuze ko ushinjwa ashobora gutangira ahakana icyaha, ariko nyuma yo ku gikora akaba ashobora kwemera icyaha ku rwego yaba agezeho urwo ari rwo rwose, haba mu Bushinjacyaha cyangwa imbere y'Urukiko. Ibyo kandi bihura n'ibyemejwe mu rubanza no RPA 0246/09/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 14/12/2012, haburana Ubushinjacyaha na Mukankusi Victoire, aho rwemeje ko nta cyabuza ko Urukiko rugabanyirizwa uregwa igihano mu gihe rusanze ukwemera icyaha kwe kuzuye kandi kudashidikanywaho, kuko kwemera icyaha utinze ubwabyo atari impamvu yamubuza kugabanyirizwa igihano, kandi ko nta gihe cyateganyijwe cyo kuba uregwa yasubiza agatima impembero ngo yiyemeze kwisubiraho avugishe ukuri imbere y'inkiko4.

[38] Urukiko rusanga kuri uru rwego Ndikumana Clovis yaremeye icyaha akurikiranyweho asaba imbabazi kandi akicuza, bigaragara ko acyemera mu buryo budashidikanywaho, ariko hakurikijwe ko Ndikumana Clovis yari asanzwe akora bene ibi byaha, kuko ubwe yivugira ko atari ubwa mbere yinjiye muri ibyo bikorwa byo gucuruza abantu, kuko yabanje kujyana uwitwa Hadija yamugeza Uganda akarokorwa n'uko basanze arwaye umwijima bikaba ngombwa ko amusubiza iwabo i Burundi, nyuma akabona kujyana Shurweryimana Ines, no kuba iki cyaha ari icyaha kigira ingaruka zikomeye k'uwagikorewe, aho umuntu wacurujwe aburana n'umuryango we, agahohoterwa bikabije ndetse bikaba bishobora kubyara urupfu, bituma atagomba kugabanyirizwa ibihano.

[39] Urukiko rw'Ubujurire rushingiye ku bisobanuro byose bwatanzwe, rurasanga ubujurire bwa Ndikumana Clovis nta shingiro bufite, bityo akaba nta kigomba guhinduka ku rubanza no RP 00017/2018/HC/HCCIC rwaciwe n'Urukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi ku wa 18/10/2018.

[40] Urukiko rurasanga ibyo Ndikumana Clovis asaba by'uko yasubikirwa igihano bitashoboka kuko nk'uko ingingo ya 85 y'Itegeko no 01/2012 ryo ku wa 02/05/2012 yavuzwe haruguru ibiteganya, isubkagihano rishoboka mu gihe urisaba yahanishijwe igifungo kitarenze imyaka itanu (5) kandi akaba yarahawe igihano kiyirenze kuko yahanishijwe kufungwa imyaka irindwi (7ans).

III. ICYEMEZO CY'URUKIKO

[41] Rwemeje ko ubujurire bwatanzwe na Ndikumana Clovis nta shingiro bufite;

[4] Urubanza nº RPA 0246/09/CS, rwaciwe ku wa 14/12/2012 n'Urukiko rw'Ikirenga, Icyegeranyo cy'ibyemezo by'inkiko, Igitabo cya kabiri 2013, nº 17 cyasohotse muri Mata, 2013.

[42] Rwemeje ko nta gihindutse ku rubanza no RP 00017/2018/HC/HCCIC rwaciwe n'Urukiko Rukuru, Urugereko ruburanisha ibyaha mpuzamahanga n'ibyambuka imbibi ku wa 18/10/2018;

[43] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta.