UBUSHINJACYAHA v. TURATSINZE

[Rwanda URUKIKO RW'IKIRENGA – RPAA0021/12/CS (Nyirinkwaya, P.J., Rugabirwa na Ngagi, J.) 19 Gashyantare 2016]

Amategeko agenga ibimenyetso – Ibimenyetso bicumbukuwe – Ni ingingo amategeko cyangwa urukiko bisesengura bishingiye ku kintu kizwi kugira ngo hagaragazwe ikitazwi. Bigomba kuba bikomeye, bisobanuye kandi bihuje – Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 104 n'iya 108.

Amategeko Mpanabyaha – Gupfobya jenoside – Ni imyifatire iyo ari yo yose igambiriwe kandi igaragajwe mu ruhame mu buryo ubwo ari bwo bwose, igamije kugabanya uburemere cyangwa ingaruka ya Jenoside no koroshya uburyo Jenoside yakozwemo – Itegeko N°84/2013 ryo ku wa 11/09/2013 ryerekeye icyaha cy'ingengabitekerezo ya Jenoside n'ibindi byaha bifitanye isano nayo, ingingo ya 6.

Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Ingaruka zo kutajuririra igihano k'ubushinjacyaha – Nta mpamvu yatuma igihano kiremerezwa mu bujurire, mu gihe kitajuririwe n'Ubushinjacyaha.

Incamake y'ikibazo: Uregwa yagejejwe imbere y'Urukiko Rwisumbuye rwa Ngoma aregwa icyaha cyo gupfobya Jenoside yakorewe Abatutsi, hashingiwe ku magambo yavuze ubwo yabwiraga Nyirabashumba Françoise bari bahuriye mu nzira ngo nibajya kwibuka abazize Jenoside ku itariki ya 07/04 bajye bibuka n'itariki ya gatanu z'uko kwezi yarongoreyeho. Urukiko rwemeje ko icyaha aregwa kimuhama, rumuhanisha igihano cy'igifungo cy'imyaka icumi (10). Yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, narwo rwemeza ko ubujurire bwe nta shingiro bufite.

Uregwa yajuririye Urukiko rw'Ikirenga, avuga ko icyaha aregwa ntacyo yakoze ndetse ko inkiko zibanza zamuhamije icyaha zitabajije abatangabuhamya yasabye ko babazwa. Uhagarariye Ubushinjacyaha we, avuga ko hari umutangabuhamya wasobanuye mu Bugenzacyaha uko icyaha cyakozwe kuko yarahari, akaba asanga nta mpamvu Urukiko rutaha agaciro ubuhamya bwe kuko uregwa ubwe yivugiye ko ntacyo bapfaga.

Incamake y'icyemezo: 1. Ibimenyetso bicukumbuye ni ingingo amategeko cyangwa urukiko bisesengura bishingiye ku kintu kizwi kugira ngo hagaragazwe ikitazwi. Bigomba kuba bikomeye, bisobanuye kandi bihuje.

2. Gupfobya Jenoside ni imyifatire iyo ari yo yose igambiriwe kandi igaragajwe mu ruhame mu buryo ubwo ari bwo bwose, igamije kugabanya uburemere cyangwa ingaruka ya Jenoside no koroshya uburyo Jenoside yakozwemo.

3. Igihano uregwa yahawe nticyaremerezwa mu bujurire ku mpamvu z'uko ari insubiracyaha kuko, n'ubwo yari abikwiye, inkiko zibanza zitigeze zibishingiraho mu kumugenera igihano yahawe kandi nta n'ubwo Ubushinjacyaha bwigeze bujuririra igihano yahawe, bityo akaba agomba guhanishwa igifungo cy'imyaka icyenda (9) kuko aricyo gihano ntarengwa giteganyijwe n'amategeko.

Ubujurire nta shingiro.
Imikirize y'urubanza rwajuririwe ihindutse ku birebana n'igihano.
Amagarama aherereye ku isanduku ya Leta.

Amategeko yashingiweho:
Itegeko Ngenga Nº01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 79 n'iya 116.
Itegeko N°84/2013 ryo ku wa 11/09/2013 ryerekeye icyaha cy'ingengabitekerezo ya Jenoside n'ibindi byaha bifitanye isano nayo, ingingo za 6 na 12.
Itegeko Nº15/2004 ryo kuwa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 104 n'iya 108.

Nta manza zifashishijwe.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Ngoma, Turatsinze Pierre aregwa icyaha cyo gupfobya Jenoside yakorewe Abatutsi ubwo ku itariki ya 19/04/2008 yabwiraga Nyirabashumba Françoise bari bahuriye mu nzira ngo nibajya kwibuka abazize Jenoside ku itariki ya 07/04 bajye bibuka n'itariki ya gatanu z'uko kwezi yarongoreyeho.

[2] Uru rukiko rwaciye urubanza N° RP0287/08/TGI/Ngoma ku wa 22/05/2009, rwemeza ko icyaha aregwa kimuhama, rumuhanisha igihano cy'igifungo cy'imyaka icumi (10).

[3] Turatsinze yajuriye mu Rukiko Rukuru, Urugereko rwa Rwamagana, urwo rukiko ruca urubanza N° RPA0110/09/HC/RWG ku wa 11/03/2011, rwemeza ko ubujurire bwe nta shingiro bufite.

[4] Nyuma y'isomwa ry'urwo rubanza, Turatsinze Pierre yavuze ko ajuriye ariko nta myanzuro y'ubujurire yigeze ashyikiriza uru rukiko. Urubanza rwaburanishijwe mu ruhame ku wa 29/12/2015, Turatsinze Pierre yunganiwe na Me Umulisa Paola, Ubushinjacyaha buhagariwe na Ntawangundi Béatrice, Umushinjacyaha ku rwego rw'Igihugu.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

Kumenya niba Turatsinze Pierre adahamwa n'icyaha cyo gupfobya Jenoside.

[5] Turatsinze Pierre avuga ko icyaha aregwa ntacyo yakoze, ko icyo yemera n'uko ku itariki ya 19/04/2008 yahuye na Nyirabashumba avuye kwa Hitamungu, umugore we Mukandayisenga amuherekeje, nawe agiye muri urwo rugo ari hamwe na Karegeya Claver na Innocent, Nyirabashumba akamusuhuza, Mukandayisenga agasubira mu rugo, abasaza yari hamwe nabo bakajya mu nzu bagasigara uko ari babiri ku mbuga yo kwa Hitamungu, ariko ko nta ntonganya zabaye, ko nta kindi bavuganye usibye gusuhuzanya, Nyirabashumba amubwira ko yamwanze atakimusura, nawe amubwira ko atari ukumwanga ahubwo ari ukubura umwanya, ko nawubona azamusura, nyuma y' iminota itarenze itanu Nyirabashumba akagenda, nawe akinjira kwa Hitamungu.

[6] Akomeza avuga ko Hitamungu yagiye kubagurira inzoga ku mugabo witwa Viateur, hashyize nk'iminota 30 Nyirabashumba araza abwira abari aho ati "*Pierre yambwiye amagambo numva arambabaje*", bamubajije icyo yamubwiye, avuga gusa ko amagambo

yamubwiye yamubabaje ahita agenda, ageze imbere aragaruka aravuga ngo "*ngaho nimubaze Twamugize, ayo magambo yayumvise*", bamubajije avuga ko yabanyuzeho bahagararanye agiye kwigurira ifu y'abana ariko ko ayo magambo yamubabaje atayumvise, ubwo nawe bamubaza icyo yamubwiye, abasobanurira ko basuhuzanyije, Nyirabashumba akamubwira ko yamwanze atakimusura, akamusubiza ko atamwanze, ko nta kindi bavuganye, hashyize akanya Nyirabashumba ataraha, nabo ntibongera kubyitaho.

[7] Avuga kandi ko ibyo Twamugize yavuze mu Bugenzacyaha ko yasanze ahagaranye na Nyirabashumba ku mbuga yo kwa Hitamungu atari ukuri kuko atigeze ahamubona, naho ku byerekeye impamvu Nyirabashumba yaba amubeshyera, avuga ko ubundi imibanire yabo yari myiza basurana, ariko ko mu mwaka wa 2007 yigeze kumusaba nk'umuntu wireze akemera icyaha cya Jenoside yakorewe Abatutsi ngo azashinje uwitwa Nyirabukeye Clémentine muri Gacaca ko yasahuye ibintu byo muri Komini, ashaka no kumwigisha uko yabivuga, arabyanga amubwira ko atamurega ibintu atabonye cyangwa atamenye.

[8] Avuga ko Inkiko zibanza zamuhamije icyaha zitabajije abatangabuhamya yasabye ko babazwa, abo akaba ari Karegeya Claver, Mukandayisenga na Hitamungu kuko bari bahari igihe avugana na Nyirabashumba ku wa 19/04/2008 bakaba bavuga niba harabaye intonganya hagati yabo, abandi akaba ari abazi ko Nyirabashumba yari yaramusabye gushinja Nyirabukeye, aribo Muyango Martin, uwari ushinzwe umutekano mu Kagari witwa Viateur n'Umuyobozi w'Akagari. Ku kibazo cyo kumenya ukuntu babimenye, avuga ko ari we wabibabwiye.

[9] Me Umulisa Paola wunganira Turatsinze avuga ko usibye n'uko uwo yunganira ahakana amagambo aregwa, kuvuga ngo "*nimujya mwibuka abazize Jenoside mujye mwibuka* itariki *narongoreyeho*" ntabwo byafatwa nko gupfobya Jenoside yakorewe Abatutsi kuko ayo magambo atabuza kwibuka Jenoside kandi ntahakana ko yabaye, ahubwo byafatwa nko kuyiha agaciro.

[10] Akomeza avuga ko guha agaciro itariki umuntu yarongoreyeho atari ukwambura agaciro igikorwa cyo kwibuka Jenoside, ko ariya magambo Turatsinze aregwa yakomeretsa uwo bakundanye kuko agamije kumubwira kwibuka itariki yashakiyeho umugore, akaba rero ari muri urwo rwego yakomerekeje Nyirabashumba kuko bakundanye ariko ntiyamurongora, ahubwo ashaka undi mugore.

[11] Avuga kandi ko mu Rukiko Rwisumbuye rwa Ngoma, Turatsinze yasabye ko hakorwa iperereza, umucamanza amubwira ko urubanza rwe ruri mu birarane, ko rutasubikwa, ko n'ubwo ntaho byanditse ko yasabye iperereza bitabura guhabwa agaciro, Urukiko rw'Ikirenga rukamuha amahirwe yo kubaza abatangabuhamya yatanze hiyongereyeho Sumba Shabani, Nyiramatabaro Jeanne, Karegeya Claver, Mukandayisenga Claudine na Nyirabukeye Clémentine kuko bazi imibanire ye na Nyirabashumba,ndetse bakurikije uko bamuzi n'imyitwarire ye bakaba bavuga niba ariya magambo yayavuga.

[12] Ku birebana n'uko yaba yarabwiye Nyirabashumba ariya magambo mu rwego rwo kumukomeretsa nk'umuntu bakundanye ariko akaza kumwanga akarongora undi, Turatsinze avuga ko koko bakundanye ariko ntiyamurongora kubera ko yaje kumenya ko afite ubwandu bwa SIDA, ariko ko atari kumubwira ariya magambo kuko kuba yarashatse ko babana ntibibe bitaba impamvu yo kumubwira amagambo amukomeretsa.

[13] Uhagarariye Ubushinjacyaha avuga ko Twamugize Chantal yasobanuye mu Bugenzacyaha ko yasanze Nyirabashumba arimo kurira atongana na Turatsinze, amusubirira

mu magambo Turatsinze yamubwiye, nawe abimubajije ahita abisubiramo uko Nyirabashumba yari yabivuze, akaba asanga nta mpamvu Urukiko rutaha agaciro ubuhamya bwa Twamugize kuko Turatsinze ubwe yivugiye ko ntacyo bapfaga.

[14] Avuga kandi ko Nyirabashumba nta masano afitanye na Turatsinze ngo abe yakwibuka umunsi yarongoreyeho, ko kandi urebye uburemere icyaha cya Jenoside gifite kugereranya igikorwa cyo kwibuka abazize Jenoside yakorewe Abatutsi n'icyo kwibuka ubukwe ari ukuyambura agaciro, ndetse ko Turatsinze yabikoze azi neza icyo akora agamije gukomeretsa Nyirabashumba.

[15] Ku birebana n'abatangabuhamya asaba ko bahamagazwa, avuga ko ntacyo bamara kuko nawe ubwe yivugiye ko yari abanye neza na Nyirabashumba kandi ko nta muntu wamenye ko yamusabye gushinja Nyirabukeye usibye abo yabibwiye, yivugiye na none ko nta wundi muntu wari uhari igihe avugana na Nyirabashumba bahagaze ku mbuga yo kwa Hitamungu usibye Twamugize wahanyuze agahagarara.

[16] Asoza avuga ko Turatsinze yashoboraga guhabwa igihano cy'igifungo cyikubye kabiri nk'uko biteganywa n'ingingo ya 75 y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana yerekeye ibihano bihabwa insubiracyaha kuko yari yarakatiwe igifungo cy'imyaka 10 kubera icyaha cya Jenoside yakorewe Abatutsi, ariko ko atabisaba kuko Ubushinjacyaha butajuriye. Yongeraho ko nubwo itegeko rihana ririho ubu riteganya ibihano byoroheje kurusha ibyariho igihe Turatsinze yakoraga icyaha, asaba ko hagumishwaho igihano yahawe mu nkiko zibanza hakurikijwe ko ari insubiracyaha.

UKO URUKIKO RUBIBONA

[17] Muri uru rubanza, hagomba gusuzumwa niba Turatsinze yarabwiye Nyirabashumba amagambo aregwa ngo nibajya kwibuka abazize Jenoside yakorewe Abatutsi ku itariki ya 07/04 bajye bibuka n'itariki yarongoyeho ku itariki ya gatanu z'uko kwezi kwa kane, niba yarayavuze hagasuzumwa niba yafatwa ngo gupfobya Jenoside.

[18] Ingingo ya 104 y'Itegeko ryerekeye ibimenyetso mu manza n'itangwa ryabyo ryavuzwe haruguru ivuga ko ibimenyetso bicukumbuye ari ingingo amategeko cyangwa urukiko bisesengura bishingiye ku kintu kizwi kugira ngo hagaragazwe ikitazwi, naho ingingo ya 108 ikavuga ko ibimenyetso bicukumbuwe n'urukiko bigomba kuba bikomeye, bisobanuye kandi bihuje (*Ne doivent être admises que les présomptions humaines graves, précises et concordantes*).

[19] Urukiko rurasanga nubwo Turatsinze ahakana kuba yarabwiye Nyirabashumba amagambo aregwa, yemera ko bahuye ku itariki ya 19/04/2008 bakamarana akanya gato bahagararanye, ndetse ko uwo munsi Nyirabashumba yabwiye abantu yasanze mu kabari ka Viateur ko yamubwiye amagambo yamubabaje.

[20] Urukiko rurasanga kandi n'ubwo imbere y'uru rukiko Turatsinze avuga ko Twamugize atigeze abanyuraho ubwo yari ahagararanye na Nyirabashumba, yarabyemeye mu Bushinjacyaha, ibyo yemeye agifatwa akaba aribyo bigomba gufatwaho ukuri kuko abihurizaho na Nyirabashumba na Twamugize nawe ubwe avuga ko ntacyo bapfaga cyatuma amubeshyera.

[21] Urukiko rurasanga na none nubwo imbere y'uru rukiko Turatsinze avuga ko Nyirabashumba amubeshyera kuko bakundanye nyuma akaza gushaka undi mugore

bitafatwaho ukuri kuko haba mu nzego z'iperereza, haba mu nkiko yaburaniyemo zindi atigeze abivuga, akaba agenda ahinduranya imvugo kuko mbere hose yavugaga gusa ko ashobora kuba amuhora y'uko yamusabye gushinja muri Gacaca uwitwa Nyirabukeye akabyanga.

[22] Urukiko rurasanga kandi ibyo avuga ko Nyirabashumba ashobora kuba amuziza ko yamusabye gushinja Nyirabukeye akabyanga nta gaciro byahabwa kuko bivuguruzwa n'ibyo avuga ku rundi ruhande ko bari babanye neza, ndetse ko Nyirabashumba ariwe wamwakiriye neza wa mbere ubwo yari amaze gufungurwa avuye muri gereza kubera icyaha cya Jenoside.

[23] Ku birebana n'abatangabuhamya asaba ko bahamagazwa, Urukiko rurasanga ntacyo byafasha kuko nawe ubwe yivugiye mu Bugenzacyaha no mu Bushinjacyaha ko nta wundi wabanyuzeho igihe yari ahagararanye na Nyirabashumba usibye Twamugize, ko yari abanye neza na Nyirabashumba, ndetse ko abazi ko yari yaramusabye gushinja Nyirabukeye ari abo we ubwe yabibwiye, bakaba rero batabitangira ubuhamya kuko baba batavuga ibintu biyumviye cyangwa biboneye ubwabo.

[24] Iyo rero rusuzumye imvugo ya Twamugize Chantal mu Bugenzacyaha, aho avuga ko yasanze Nyirabashumba ahagararanye na Turatsinze arimo kurira atongana amubaza impamvu ahora amukomeretsa, ko ndetse Turatsinze yamusubiriyemo ibyo yabwiraga Nyirabashumba ngo nawe bajye bamwibuka mu kwezi kwa kane kuko tariki ya 05/04 aribwo yarongoye, rukayihuza n'imvugo ya Nyirabashumba mu Bugenzacyaha igihe yatangaga ikirego, aho avuga ko Twamugize yaturutse hepfo ahagararanye na Turatsinze, uyu amusibiriramo amagambo yamubwiye, rukayihuza na none n'imvugo ya Turatsinze ubwe mu Bushinjacyaha aho yemera ko Twamugize yasanze ahagararanye na Nyirabashumba, rukareba n'ukwivuguruza no guhinduranya imvugo kwagiye kuranga imvugo ze, Urukiko rurasanga nta gushidikanya guhari ko yabwiye Nyirabashumba ariya magambo aregwa.

[25] Ku bijyanye no kumenya niba amagambo Turatsinze yavuze agize icyaha cyo gupfobya Jenoside, harebwa ingingo ya 6 y'Itegeko N°84/2013 ryo ku wa 11/09/2013 ryerekeye icyaha cy'ingengabitekerezo ya Jenoside n'ibindi byaha bifitanye isano nayo ivuga ko gupfobya Jenoside ari imyifatire iyo ari yo yose igambiriwe kandi igaragajwe mu ruhame mu buryo ubwo ari bwo bwose, igamije kugabanya uburemere cyangwa ingaruka ya Jenoside no koroshya uburyo Jenoside yakozwemo.

[26] Urukiko rurasanga ibyo uwunganira Turatsinze avuga ko ariya magambo atafatwa nko gupfobya Jenoside kuko atabuza kwibuka kandi adahakana ko yabaye, ari ukwirengagiza ko Jenoside ari icyaha ndengakamere cyateye ibikomere bikomeye mu gihugu no mitima y'Abanyarwanda benshi, ko kwibuka abapfuye bishwe mu buryo bwa kinyamanswa bitagereranywa no kwizihiza umunsi umuntu yarongoreyeho.

[27] Urukiko rurasanga kandi Turatsinze, nk'umuntu Jenoside yabaye ari mukuru, wayikoze kandi wayihaniwe, yari azi neza ko kubwira Nyirabashumba ngo nibajya kwibuka Jenoside bajye bibuka n'itariki yarongoreyeho ari ukwambura Jenoside yakorewe Abatutsi uburemere bwayo agereranya igikorwa cyo kwibuka abazize Jenoside kireba Igihugu n'Abanyarwanda bose n'igikorwa cyo kwibuka ubukwe kireba umuntu ku giti cye, ibi akaba yarabikoze agamije gukomeretsa Nyirabashumba agaragaza ko nta gaciro n'uburemere aha ubwicanyi ndengakamere Abatutsi bakorewe n'agahinda kw'ababashije kurokoka.

[28] Ku bijyanye rero n'ibihano, ingingo ya 4 y'Itegeko N°33bis/2003 ryo ku wa 06/09/2003 rihana icyaha cya Jenoside, ibyaha byibasiye inyoko muntu n'ibyaha

by’intambara yateganyaga igifungo kuva ku myaka icumi (10) kugeza kuri makumyabiri (20) ku wahamijwe icyaha cyo guhakana, gupfobya cyangwa guha ishingiro Jenoside, ibi bihano ariko byasimbujwe igihano cy’igifungo kuva ku myaka itanu (5) kugeza ku myaka icyenda (9) hashingiwe ku bivugwa mu ngingo ya 12 y’Itegeko N°84/2013 ryo ku wa 11/09/2013 ryerekeye icyaha cy’ingengabitekerezo ya Jenoside n’ibindi byaha bifitanye isano nabyo n‘ibivugwa mu ngingo ya 116 y’Itegeko Ngenga Nº01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy’amategeko ahana.

[29] Ku birebana n’ibihano bireba uwakoze icyaha ari insubiracyaha, ingingo ya 85 y’Itegeko Teka Nº21/77 ryo ku wa 18/08/1977 rishyiraho Igitabo cy’amategeko ahana ryariho igihe icyaha cyakorwaga yavugaga ko ahanishwa igihano ntarengwa cyo gufungwa cyateganyijwe n’itegeko kandi ko icyo gihano gishobora kwongerwa kugeza ku nshuro ebyiri zacyo. Ni nabyo biteganyije mu ngingo ya 79 y’Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy’amategeko ahana rikurikizwa ubu.

[30] Urukiko rurasanga ariko igihano Turatsinze yahawe kitaremerezwa mu bujurire ku mpamvu z’uko ari insubiracyaha kuko, n’ubwo yari abikwiye, inkiko zibanza zitigeze zibishingiraho mu kumugenera igihano yahawe kandi nta n’ubwo Ubushinjacyaha bwigeze bujuririra igihano yahawe, bityo akaba agomba guhanishwa igifungo cy’imyaka icyenda (9) kuko aricyo gihano ntarengwa cyateganyijwe n’ ingingo ya 116 y’Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy’amategeko ahana rikurikizwa ubu ku wahamijwe icyaha cyo gupfobya Jenoside.

III. ICYEMEZO CY’URUKIKO

[31] Rwemeje ko ubujurire bwa Turatsinze Pierre nta shingiro bufite;

[32] Rwemeje ariko ko urubanza N° RPA0110/09/HC/RWG rwaciwe n’Urukiko Rukuru, Urugereko rwa Rwamagana ku wa 11/03/2011 ruhindutse ku byerekeranye n’ibihano byahawe Turatsinze Pierre mu rwego rwo kubahiriza Itegeko Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy’amategeko ahana rikurikizwa ubu;

[33] Ruhanishije Turatsinze Pierre igifungo cy’imyaka icyenda (9);

[34] Rutegetse ko amagarama y’urubanza aherera ku Isanduku ya Leta.