

UBUSHINJACYAHA v BANDORA

[Rwanda URUKIKO RW'IKIRENGA – RPA/GEN 0001/15/CS (Rugege, P.J., Mutashya na Kayitesi E., J.) 22 Werurwe 2019]

Amategeko agenga imanza z'inshinjabyaha – Igenwa ry'igihano – Impamvu nkomezacyaha – Igitinyiro cy'uregwa (influence) mu bandi baturage kiri mu byashingirwaho mu kumugenera ibihano biremereye mu gihe ibyaha byamuhamye yabikoze aricyo yishingikirije.

Amategeko agenga imanza nshinjabyaha – Impamvu nkomezacyaha – Impamvu nyoroshyacyaha – Impamvu nyoroshyacyaha zigenwa n'urukiko mu bushishozi bwarwo, ariko impamvu nkomezacyaha zo ziba ziteganywa n'itegeko, cyangwa se Ubushinjacyaha bugatanga ibimenyetso bigaragaza ku buryo budashidikanywaho impamvu uwahamwe n'icyaha agomba guhabwa igihano kinini.

Incamake y'ikibazo: Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko Rwihariye rushinzwe kuburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi, Ubushinjacyaha Bukuru burega Bandora ibyaha 6 aribyo icyaha cya Jenoside, Gucura umugambi wo gukora icyaha cya jenoside, icyaha cy'ubufatanyacyaha mu gukora jenoside, Kurimbura imbaga nk'icyaha cyibasiye inyokomuntu, Kwica nk'icyaha cyibasiye inyokomuntu, Kurema no gutunganya umutwe w'abagizi ba nabi.

Muri urwo Rukiko Ubushinjacyaha kwasobanuraga ko Bandora yakoresheje inama nyinshi ategura ubwicanyi muri Komini Ngenda, ariko by'umwihariko inama yabereye mu mazu ye y'ubucuruzi kuri santere ya Ruhuha, yacuriwemo umugambi wo kwica abatutsi muri Komini Ngenda no mu nkengero zayo, ko iyo nama yafatiwemo ibyemezo bitandukanye birimo gukora amalisisiti y'abagombaga kwicwa, gutanga ibikoresho byakoreshejwe Jenoside, gushyiraho za bariyeri zicwewe abatutsi, gutanga amabwiriza yo gukora Jenoside no kuyobora ibitero bigamije kwica abatutsi. Ubushinjacyaha buvuga ko izo nama zakurikiwe n'iyicwa ry'abaturage bazira ko ari abatutsi, bicirwa ahantu hatandukanye muri Komini Ngenda, kuri santere ya Ruhuha, kuri Paruwasi Gatolika ya Ruhuha no mu tundi duce twa Komini Ngenda. Bunavuga ko Bandora nk'umuntu wari ufite ijamba muri ako gace, ari umwe mu bayobozi b'ishyamba rya MRND muri Komini Ngenda, ndetse ari n'umucuruzi ukuriye abandi, ari mu bantu baketsweho kubigiramo uruhare.

Urukiko Rukuru, Urugereko rwihariye rushinzwe kuburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi, rwaciye urubanza rwemeza ko Bandora ahamwe n'ibyaha bitatu: ubwumvikane bugamije gukora jenoside, kuba icyitso cy'abakoze jenoside, kuba icyitso mu cyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu. Rwamuhanishije igifungo cy'imyaka 30, ruvuga ko agabanyirijwe ibihano kubera ko yaburanye atagoranye bigatuma iburanisha ryihuta, no kuba atarigeze akatirwa n'inkiko mu buryo buzwi.

Uregwa yajuriye mu Rukiko rw'Ikirenga atanga impamvu enye z'ubujurire avuga ko Urukiko rwaguye mu ikosa ryo kumuhamya ibyaha atakurikiranyweho ngo abyiregureho, akaba abisobanura mu buryo bukurikira:

- Kuba Urukiko rwaramuhamije icyaha cyo kuba icyitso cy'abakoze jenocide n'icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu; kuri iyi mpamvu y'ubujurire, uregwa avuga ko urukiko rwamuhamije icyaha cyo kuba icyitso cy'abakoze jenocide n'icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, kandi atarigeze abikurikiranwaho ngo abyiregureho, kuko mu byaha bitandatu (6) yarezwe ibyo bitarimo. Yongeraho ko kuba ibyo byaha bibiri yarabihamijwe kandi atarabikurikiranyweho n'Ubushinjacyaha ngo abyiregureho, bihabanye n'ingingo ya 29 (1^o) y'Itegeko Nshinga ryo muri 2003 nk'uko ryavugururwe muri 2015.
- Kuba Urukiko rwaremeje ko mu mazu ye habereye inama yacuriwemo umugambi wo gukora jenocide, nta bimenyetso simusiga rugaragarijwe, uregwa avuga Urukiko rutahaye agaciro imvugo z'abatangabuhamya b'Ubushinjacyaha zimushinjura; ko Urukiko rwashingiye ku mvugo z'abatangabuhamya batanzwe n'Ubushinjacyaha batavugishije ukuri kuko muri bo nta n'umwe washoboye kugaragariza Urukiko ko yagiye muri iyo nama, uwayitumije, imyanzuro yayifatwemo n'igihe yatangiye gushyirwa mu bikorwa, ahubwo ko icyaranze abo batangabuhamya ari ukwivuguruzwa.
- Kuba Urukiko rwaremeje ko yatanze amabwiriza yo kwica abatutsi mu Gatanga nta bimenyetso simusiga bigaragajwe, kuri iyi ngingo, uregwa asobanura ko Urukiko rwemeje ko ku mugoroba wo ku wa 07/04/1994, yageze mu Gatanga atwaye mu modoka ye abasirikare barimo Issa, rugendeye ku buhamya bw'uwitwa Mudenge n'ubw'umutangabuhamya wiswe PBE, ariko rwirengagiza ko ubwo batumizwaga mu Rukiko, baranzwe no kutavugisha ukuri, kwivuguruzwa no kuvuguruzanya, avuga ko kuba abo batangabuhamya baragaragaje ko babonye uregwa mu buryo butandukanye, ntibahurize ku modoka yajemo, umubare w'abasirikare bari kumwe no kuba yatanze cyangwa ataratanze amabwiriza yo kwica abatutsi, Urukiko rwagombaga gutesha agaciro izo mvugo zabo.
- Kuba ngo atarahawe uburenganzira bwose amategeko ateganya ku birebana n'impamvu nyoroshyacyaha ngo agabanyirizwe igihano, uregwa avuga ko Urukiko rwemeje ko akwiye kugabanyirizwa igihano kuko yitwaye neza igihe cyose yaburanye, bituma iburanisha ryihuta kandi ko atigeze akatirwa n'inkiko mu buryo buzwi, ariko rumuhanisha igifungo kirekire cy'imyaka 30, bityo akaba atarahawe amahirwe yo kugabanyirizwa, mu gihe ingingo 78 y'Igitabo cy'amategeko ahana, iteganya ko Umucamanza ashobora kugabanya kugeza ku myaka 10.

Ubushinjacyaha nabwo bwajuririye urwo rubanza mu Rukiko rw'Ikirenga butanga impamvu imwe (1) irebana no kuba Urukiko rwaragabanyirije igihano uregwa(Bandora) bitewe nuko atigeze agorana kuva yatangiye kuburana kandi akaba atarigeze akatirwa bizwi, nyamara mu nzego zose no mu Rukiko yaragiye ahakana ibyaha byose, ahubwo ko Urukiko rwagombaga gushingira ku mpamvu nkomezacyaha zagaragajwe nk'uburemere bw'ibyaha yakoze n'ingaruka byagize mu muryango nyarwanda ndetse no kuba yarakoresheje ubushobozi yari afite agakangurira abantu gukora jenocide.

Ubushinjacyaha kandi bwaburanye busubiza ku mpamvu z'ubujurire zatanzwe n'uregwa mu buryo bukurira:

- Ku mpamvu ijyanye no kuba Urukiko rwaramuhamije icyaha cyo kuba icyitso cy'abakoze jenocide n'icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu kandi atarabikurikiranyweho, ubushinjacyaha bwaburanye ko Urukiko rumaze kwihereza rwasanze ibyo bikorwa yakoze bitagize icyaha aregwa ahubwo bigize icyaha cyo kuba icyitso cy'abakoze jenocide n'icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, bivuze ko ibikorwa bitahindutse ndetse n'aho byabereye hatahindutse. Bityo, Urukiko akaba nta kosa rwakoze kuko rufite ububasha bwo guhindura inyito y'ibyaha rwaregwe, mu guhuza ibikorwa byaregwe n'inyito y'icyaha iteganywa n'amategeko.
- Ku mpamvu ijyanye no kuba Urukiko rwaremeje ko mu mazu ye habereye inama yacuriwemo umugambi wo gukora jenocide nta bimenyetso simusiga rugaragarijwe, Ubushinjacyaha buvuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kuko Ubushinjacyaha bwagaragaje ibimenyetso bihagije byerekana ko mu mazu ya Bandora hakorewe inama yafatiwemo ibyemezo byo kwica abatutsi muri Komini Ngenda no mu nkengero zaho, kandi uregwa akaba atarashoboye kuvuguruza ibyo bimenyetso byatanzwe.
- Ku mpamvu ijyanye no kuba Urukiko rwaremeje ko yatanze amabwiriza yo kwica abatutsi mu Gatanga nta bimenyetso simusiga bigaragajwe, Ubushinjacyaha busobanura ko umutangabuhamya PBE yavuze ko ku wa 07/04/1994 saa moya z'ijoro, Bandora yabasanze mu Gatanga ari kumwe n'abasirikare bane, ababaza niba bishe uwitwa Murangira, abwira responsible Mudenge ko abajyana bakamwica, bamubuze iwe, bamusanga kwa Bisuragu baramwica. Avuga kandi ko Mudenge yasobanuye ko Bandora yazanye n'umusirikare witwa Issa, maze bakabaha amabwiriza yo kwica, ndetse ko abo batangabuhamya bageze imbere y'Urukiko bongeye kuvuga ibyo bavuze mbere.
- Ku mpamvu ijyanye no kuba ngo uregwa atarahawe uburenganzira bwose amategeko ateganywa ku birebana n'impamvu nyoroshyacyaha ngo agabanyirizwe igihano, Ubushinjacyaha buvuga ko iyi mpamvu y'ubujurire yo kuba Bandora ataragabanyirijwe ibihano, ahubwo Ubushinjacyaha nabwo bwayijuririye buvuga ko Urukiko rwamugabanyirije ibihano rukamugenera igihano gito rushingiye ku mpamvu nyoroshyacyaha kandi ibyaha yakoze bifite uburemere kubera uburyo yabikoze n'ingaruka byagize ku muryango nyarwanda, ndetse n'umubare w'abo byagizeho ingaruka (victimes), ko rero atakongera kubaganyirizwa igihano, cyane cyane ko atigeze yemera ibyaha aregwa ngo anabyicuze.

Incamake y'icyemezo: 1. Igitinyiro cy'uregwa (influence) mu bandi baturage kiri mu byashingirwaho mu kumugenera ibihano biremereye mu gihe ibyaha byamuhamye yabikoze aricyo yishingikirije. Bityo kuba uregwa yari Perezida w'abacuruzi ku Ruhuha, akaba Visi Perezida wa MRND muri Komini Ngenda, ibyo byatumye agaragara nk'ufite igitinyiro mu baturage, iyi mpamvu ikaba ari imwe mu byashingirwaho hagenwa igihano.

2. Impamvu nyoroshyacyaha zigenwa n'urukiko mu bushishozi bwarwo, ariko impamvu nkomezacyaha zo ziba ziteganywa n'itegeko, cyangwa se Ubushinjacyaha bugatanga ibimenyetso bigaragaza ku buryo budashidikanywaho impamvu uwahamwe n'icyaha agomba guhabwa igihano kinini. Kuba ibyaha byahamye uregwa bifite uburemere kandi byaragize n'ingaruka zikomeye mu muryango nyarwanda, ntibihagije kugirango bibe impamvu nkomezacyaha zituma igihano yahanishijwe kiyongera kuko Ubushinjacyaha butagaragaza ko yabikoranye urwango n'ubugome birenze iby'abandi bakoze ibyo byaha mu gace byakorewemo.

**Ubujurire bw'uregwa nta shingiro bufite;
Ubujurire bw'Ubushinjacyaha nta shingiro bufite.**

Amategeko yakoreshejwe:

Itegeko Nshinga ryo muri 2003 nk'uko ryavuguruwe muri 2015, Ingingo ya 29 (1°).

Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, Ingingo ya 62.

Itegeko Ngenga N° 13/2008 ryo ku wa 19/05/2008 rihindura kandi ryuzuzwa Itegeko Ngenga N° 16/2004 ryo ku wa 19/06/2004 rigena imiterere, imikorere n'ububasha by'Inkiko Gacaca, Ingingo ya 9 n'ya 17.

Itegeko Ngenga N° 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, Ingingo ya 76 n'ya 78.

Imanza zifashishijwe:

Ubushinjacyaha v. Ndayambaje Janvier, RPA 0065/13/CS rwaciwe n'Urukiko Rw'Ikirenga ku wa 24/03/2017.

Ubushinjacyaha v. Nyawera Celestin, RPA 0033/11/CS rwaciwe n'Urukiko Rw'Ikirenga kuwa 14/09/2012.

Ubushinjacyaha v. Cpl Ngabonziza na Sgt Biziyaremye, RPAA0117/07/CS.

Ubushinjacyaha v. Kalimanzira Callixte, International Criminal Tribunal for Rwanda, (Case No. ICTR-05-88-T).

Ubushinjacyaha v. Rukundo Emmanuel, United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, (ICTR-2001-70-A), rwaciwe ku wa 20/10/2010.

Ubushinjacyaha v. Serushago, United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, Serushago Omar (ICTR-98-39-A).

Ubushinjacyaha v. Simba Aloys, United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, (ICTR-01- 76).

Ubushinjacyaha v. Bikindi, United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, (ICTR-01-72-A).

Urubanza

I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rukuru, Urugereko Rwihariye rushinzwe kuburanisha ibyaha byo ku rwego mpuzamahanga n'ibyaha byambuka imbibi, Ubushinjacyaha Bukuru burega BANDORA Charles kuba yarakoze ibyaha 6 byavuzwe.

[2] Busobanura ko BANDORA Charles aregwa kuba ku wa 07/04/1994 yarakoresheje inama nyinshi ategura ubwicanyi muri Komini Ngenda, ariko by'umwihariko inama yabereye mu mazu ye y'ubucuruzi kuri santere ya Ruhuha kuri iyo tariki, yacuriwemo umugambi wo kwica abatutsi muri Komini Ngenda no mu nkengero zayo, ko iyo nama yafatiwemo ibyemezo bitandukanye birimo gukora amalisisiti y'abagombaga kwicwa, gutanga ibikoresho byakoreshejwe Jenoside, gushyiraho za bariyeri ziciweho abatutsi, gutanga amabwiriza yo gukora Jenoside no kuyobora ibitero bigamije kwica abatutsi.

[3] Buvuga ko izo nama zakurikiwe n'iyicwa ry'abaturage bazira ko ari abatutsi, bicirwa ahantu hatandukanye muri Komini Ngenda, kuri santere ya Ruhuha, kuri Paruwasi Gatolika ya Ruhuha no mu tundi duce twa Komini Ngenda. Bunavuga ko BANDORA Charles nk'umuntu wari ufite ijamba muri ako gace, ari umwe mu bayobozi b'ishyamba rya MRND muri Komini Ngenda, ndetse ari n'umucuruzi ukuriye abandi, ari mu bantu baketsweho kubigiramo uruhare.

[4] Ku wa 15/05/2015, Urukiko Rukuru, Urugereko rwihariye rushinzwe kuburanisha ibyaha byo ku rwego mpuzamahanga n'ibyambuka imbibi, rwaciye urubanza N° RP 0007/13/HCCI/KIG, rwemeza ko BANDORA Charles ahamwe n'ibyaha bitatu: ubwumvikane bugamije gukora jenocide, kuba icyitso cy'abakoze jenocide, kuba icyitso mu cyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu. Rwamuhanishije igifungo cy'imyaka 30, ruvuga ko agabanyirijwe ibihano kubera ko yaburanye atagoranye bigatuma iburanisha ryihuta, no kuba atarigeze akatirwa n'inkiko mu buryo buzwi, ruvuga ko iryo gabanya rishingiyeku byateganywaga n'ingingo ya 22 y'Itegeko Ngenga n° 13/2008 ryo ku wa 19/05/2008 ihindura kandi yuzuzwa ingingo ya 81 y'Itegeko Ngenga N° 16/2004 ryo ku wa 19/06/2004 rigena imiterere, imikorere n'ububasha by'Inkiko Gacaca, iteganya ko iyo hari impamvu nyoroshyacyaha, hatangwa igihano gito giteganywa n'iryo tegeko.

[5] Ubushinjacyaha bwajuririye urwo rubanza mu Rukiko rw'Ikirenga butanga impamvu imwe (1) irebana no kuba Urukiko rwaragabanyirije igihano BANDORA bitewe nuko atigeze agorana kuva yatangira kuburana kandi akaba atarigeze akatirwa bizwi, nyamara mu nzego zose no mu Rukiko yaragiye ahakana ibyaha byose, ahubwo ko Urukiko rwagombaga gushingira ku mpamvu nkomezacyaha zagaragajwe nk'uburemere bw'ibyaha yakoze n'ingaruka byagize mu muryango nyarwanda ndetse no kuba yarakoresheje ubushobozi yari afite agakangurira abantu gukora jenocide.

[6] BANDORA Charles nawe yajuriye mu Rukiko rw'Ikirenga. Me Jeanne d'Arc UMUTESI na Me BIKOTWA Bruce bamuburanira, batanze impamvu enye z'ubujurire zikurikira:

- Kuba Urukiko rwaraguye mu ikosa ryo guhamya BANDORA Charles ibyaha atakurikiranyweho ngo abyiregureho, harimo icyo kuba icyitso cy'abakoze jenocide n'icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu;
- kuba Urukiko rwaremeje ko ku wa 07/04/1994 mu mazu ya BANDORA Charles habereye inama yacuriwemo umugambi wo gukora jenocide, nta bimenyetso simusiga rugaragarijwe, rukaba rutarahaye agaciro imvugo z'abatangabuhamya b'Ubushinjacyaha zishinjura uregwa;
- kuba Urukiko rwaremeje ko BANDORA Charles yatanze amabwiriza yo kwica abatutsi mu Gatanga nta bimenyetso simusiga bigaragajwe

- kuba BANDORA Charles atarahawe uburenganzira bwose amategeko ateganya ku birebana n'impamvu nyoroshyacyaha ngo agabanyirizwe igihano

[7] Urubanza rwaburanishijwe mu ruhamwe ku matariki atandukanye; ku wa 19/02/2018, ku wa 07/05/2018, ku wa 29/10/2018, ku wa 21/11/2018 no ku wa 29/01/2019, BANDORA Charles yunganiwe na Me UMUTESI Jeanne d'Arc na Me BIKOTWA Bruce, naho Ubushinjacyaha bwahagarariwe na WIBABARA Charity, DUSHIMIMANA Claudine, NKUSI Faustin, Abashinjacyaha ku rwego rw'Igihugu.

II. IBIBAZO BIRI MU RUBANZA N'ISESENGURWA RYABYO:

A. Ubujurire bwa BANDORA Charles

A.1. Kumenya niba BANDORA Charles yarahamijwe n'Urukiko Rukuru ibyaha atigeze akurikiranwaho ngo abyiregureho

[8] Me Jeanne d'Arc UMUTESI na Me BIKOTWA Bruce bunganira BANDORA Charles, bavuga ko uwo bunganira Urukiko rwamuhamije icyaha cyo kuba icyitso cy'abakoze jenocide n'icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, kandi atarigeze abikurikiranwaho ngo abyiregureho, kuko mu byaha bitandatu (6) yarezwe¹ ibyo bitarimo.

[9] Bavuga ko kuba ibyo byaha bibiri BANDORA Charles yarabihamijwe kandi atarabikurikiranyweho n'Ubushinjacyaha ngo abyiregureho, bihabanye n'ingingo ya 29 (1^o) y'Itegeko Nshinga ryo muri 2003 nk'uko ryavugururwe muri 2015 iteganya ko buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa, ndetse bikaba binyuranye n'ibiteganywa n'ingingo ya 1 n'iya 7 z'Itegeko N° 21/2012 ryo ku wa 14/06/2012, ryerekeye imiburanyishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu iteganya ko Umucamanza aca urubanza ku cyasabwe cyose kandi kuri icyo cyonyine.

[10] Uhagarariye Ubushinjacyaha avuga ko iyi ngingo y'ubujurire nta shingiro ifite kuko BANDORA Charles yari yarezwe icyaha cyo kurimbura imbaga nk'icyaha cyibasiye inyoko muntu, mu kugaragaza imikorere y'icyo cyaha muri Komini Ngenda, berekana ko BANDORA Charles afatanyije na bagenzi be², bakoze ibitero rusange kandi bya simusiga, hagaragazwa uruhare bagize mu kurimbura abatutsi bose cyangwa igice cyabo kandi babaziza ubwoko bwabo.

[11] Asobanura ko BANDORA Charles yatanze ubufasha bugaragara kandi bufatika mu gushyira mu bikorwa umugambi yari ahuriyeho na bagenzi be wo kwica abatutsi, nko gutanga imodoka zijyana interahamwe kwica, cyane cyane abari bahungiyeye kuri paruwasi ya Ruhuha, kuba

¹ Icyaha cya jenocide, gucura umugambi wo gukora jenocide, ubufatanyacyaha mu gukora jenocide, kurimbura imbaga nk'icyaha cyibasiye inyokomuntu, kwica nk'icyaha cyibasiye inyokomuntu no kurema no gutunganya umutwe w'abagizi ba nabi.

² Uwari Burugumesitiri wa Komini Ngenda HATEGEKINANA Samuel, Lt BIZIMUNGU wari ukuriye ingabo muri Ruhuha, BIKOMAGU Samuel wari umupolisi, SEBARAME Laurent, SENGABO Marcel, KIYOGÉ Francois, BIMENYIMANA Laurent, BAZIGA Laurent, NKEZABERA Nathan, MUNYAMPIRWA, n'abandi benshi batibukwa amazina barimo abacuruza BANDORA Charles yari akuriye.

mbere yo kwica barahuriraga iwe akabaha amabwiriza, bavayo akabaha ibyo kunywa no kurya, no kuba yaratanze ibikoresho byo kwica (imipanga n'izindi ntware za gakondo), ibyo bikorwa bikaba bigaragaza ko yafashije mu gutegura icyaha, haba mu mikorere yacyo no mu byakinononsoye kandi abikora abizi, anabikangurira abandi.

[12] Avuga ko Urukiko rumaze kwihereza rwasanze ibyo bikorwa yakoze bitagize icyaha aregwa ahubwo bigize icyaha cyo kuba icyitso cy'abakoze jenoside n'icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, bivuze ko ibikorwa bitahindutse ndetse n'aho byabereye hatahindutse. Bityo, Urukiko akaba nta kosa rwakoze kuko rufite ububasha bwo guhindura inyito y'ibyaha rwaregwe, mu guhuza ibikorwa byaregwe n'inyito y'icyaha iteganywa n'amategeko; nk'uko byasobanuwe mu rubanza N° RPAA 0117/07/CS no mu rubanza N° RPAA 0003/07/CS.

[13] Avuga ko nubwo mu mategeko mpuzamahanga hadateganyiwemo ko umuntu yahanirwa icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, ariko ko mu mategeko y'u Rwanda bishoboka, hagendewe ku bikorwa, nko kuba BANDORA Charles yari mu nama yacuriwemo umugambi wo kwica abatutsi ku Ruhuha no mu nkengero zaho, akaba mu batanze amabwiriza n'ibikoresho ku bagiye mu bitero bakica abantu, ibyo bikorwa bikaba bigaragaza ko yatanze inkunga ikomeye kuko yafashije abakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo no mu byakinononsoye kandi akaba yari azi ko ibyo bitero bigamije kwica umubare munini w'abatutsi.

[14] Avuga kandi ko no mu iburanisha, basobanuye ko aho bavuze ubufatanyacyaha, ari ikosa ry'imyandikire, ahubwo ko icyo bashatse gusobanura ari uko yabaye icyitso cy'abakoze jenoside. Asobanura ko mu iburanisha bagaragarije Urukiko ko yakoresheje inama ku wa 07/04/1994 mu mazu ye, ifatirwamo icyemezo cyo gutangiza ubwicanyi, ko muri icyo nama hanajemo Burugumesitiri wa Komini Ngenda, Lt BIZIMUNGU wari ukuriye ingabo muri Ruhuha, BIKOMAGU wari umupolisi n'abandi, kandi ko icyo nama irangiye, babwiye abaturage gufatanyaga guhiga umwanzi (umututsi), bamwe mu bacuruzi bari aho batanga imipanga.

[15] Akomeza avuga ko nyuma y'icyo nama ariho ubwicanyi bwatangiye, hicwa uwari IPJ KAYIRANGA Callixte wiciwe kwa BANDORA Charles, kandi ko bagaragaje ko BANDORA Charles yatanze amabwiriza hicwa abatutsi barimo MUGENZI wari Konseye wa Gakomeye, MURANGIRA n'umuryango we, n'abandi. Avuga ko BANDORA Charles yahawe umwanya wo kwisobanura kuri ibyo bikorwa byose, urukiko rugasanga bitagize icyaha cya jenoside ahubwo bigize icyaha cyo kuba icyitso cy'abakoze jenoside nta kosa rwakoze, kuko ku birebana no guhindura inyito y'icyaha biri mu bubasha bwarwo.

UKO URUKIKO RUBIBONA

[16] Ingingo ya 29 (1°) y'Itegeko Nshinga ryo muri 2003 nk'uko ryavugururwe muri 2015 iteganya ko: “buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo kumenyeshwa imiterere n'impamvu z'icyaha akurikiranyweho, kwiregura no kunganirwa [...]”.

[17] Kopi y'urubanza N° RP 0007/13/HCCI BANDORA Charles ajuririra, igaragaza ko yari yarezwe ibyaha bitandatu (6) bikurikira: Icyaha cya jenoside, gucura umugambi wo gukora icyaha

cya jenocide, icyaha cy'ubufatanyacyaha mu gukora jenocide, kurimbura imbaga nk'icyaha cyibasiye inyokomuntu, kwica nk'icyaha cyibasiye inyokomuntu, kurema no gutunganya umutwe w'abagizi ba nabi.

[18] Kopi y'urwo rubanza inagaragaza ko BANDORA Charles yahamwe n'ibyaha bikurikira: icyaha cy'ubwumvikane bugamije gukora jenocide, kuba icy'icyitso cy'abakoze jenocide, n'icyo kuba icyitso mu cyaha cyo kurimbura imbaga nk'icyaha kibasiye inyoko muntu. Ibi byaha bibiri bya nyuma, nibyo BANDORA Charles avuga ko yahamijwe atarigeze abikurikiranwaho, ataranabyireguyeho.

[19] Mu miburanire y'Ubushinjacyaha mu Rukiko Rukuru (reba igika cya 31 cy'urubanza N° RP 0007/13/HCCI), bwari bwavuze ko BANDORA Charles yabaye icyitso cy'abakoze jenocide kuko yatanze ubufasha bugaragara kandi bufatika ku bayikoze. BANDORA Charles nawe yabyireguyeho (reba igika cya 37) avuga ko ataregwa icyaha cyo kuba icyitso cy'abakoze jenocide mu gihe hatagaragazwa abo yafatanyije nabo kugikora cyangwa ngo herekanwe imanza zabahamije icyaha cya jenocide.

[20] Urukiko rwaciye urubanza rujuririrwa rwabifasheho umwanzuro rumaze gusesengura ibikorwa bye bijyanye no kuba yaragize uruhare mu ifatwa ry'icyemezo cyo gutanga imipanga, kuba yarohereje imodoka yasahuwe HAKIZAMUNGU Laurent mu gitero cyagabwe kwa MUGENZI Ezechiel, kuba yatanze amabwiriza yo kwica abatutsi bo ku Ruhuha no mu Gatanga barimo IPJ KAYIRANGA Callixte, barumuna be HAKIZAMUNGU Laurent, MUGENZI Ezechiel, umuryango wa MURANGIRA Gratien n'abandi. Urukiko rwahereye kuri ibyo bikorwa no kuba yari mu nama yabereyemo ubwumvikane bwo gukora jenocide, rusanga ibyo bigaragaza ko yari afite ubushake bwo gutanga inkunga ya ngombwa yo gufasha mu kwica abatutsi bose cyangwa bamwe muri bo bazira ubwoko bwabo, bikaba bimugira icyitso cy'abakoze jenocide (reba igika cya 65 cy'urubanza N° RP 0007/13/HCCI rwajuririwe).

[21] Ibyo kwemeza ko ahamwa n'icyaha cyo kuba icyitso cy'abakoze jenocide, Urukiko rwabifasheho umwanzuro ruhereye ku cyaha yari yarezwe cyo gukora jenocide, ruhuza ibikorwa yarezwe kandi byamuhanye nkuko biri mu gika kibanziriza iki, rwemeza ko BANDORA Charles ahamwa n'icyaha cyo kuba icyitso cy'abakoze jenocide aho guhamwa n'icyaha cya jenocide. Urukiko rwabivuze muri aya magambo: "hashingiwe ku bimaze gusobanurwa, urukiko rurasanga rero icyaha gihama BANDORA Charles ari icyaha cy'icyitso cy'abakoze jenocide aho kuba icyaha cya jenocide gisaba ko ukiregwa aba yarakoze ubwe ibikorwa birimo kwica abantu [...](reba igika cya 68 cy'urubanza N° RP 0007/13/HCCI).

[22] Urukiko rw'Ikirenga rurasanga ibyo Urukiko Rukuru rwakoze rwemeza ko icyaha gihama BANDORA Charles ari icyaha cyo kuba icyitso cy'abakoze jenocide aho kuba icyaha cya jenocide, bitafatwa nko kumuhanya icyaha atakurikiranyweho, ndetse atanireguyeho. Icyakozwe ni uguhuza inyito y'icyaha n'ibikorwa bitandukanye BANDORA Charles yarezwe binyuranyije n'amategeko ahana (acts constituting violation of the criminal law), ndetse akaba yaranahawe umwanya wo kubyisobanuraho nkuko byagaragajwe hejuru, Urukiko rwemeza ko bimuhama.

[23] BANDORA Charles yahamijwe kandi kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu aho guhamwa n'icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu yari yarezwe. Urukiko rwabifasheho umwanzuro nyuma yo gusanga BANDORA

Charles yari mu nama yacuriwemo umugambi wo kwica abatutsi ku Ruhuha no mu nkengero zaho, no kuba ari mu batanze amabwiriza yo kubica mu Gatanga, rusanga yaragize uruhare mu itangwa ry'amabwiriza n'ibikoresho ku bagiye mu bitero bakica abantu bavuzwe, iyo akaba ari inkunga ikomeye yabahaye. Ku bw'ibyo ahamwe no kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu (reba igika cya 86 cy'urubanza N° RP 0007/13/HCCI).

[24] Urukiko rw'Ikirenga rurasanga kuba Ubushinjacyaha bwari bwagaragaje ko ibikorwa BANDORA Charles aregwa bigize icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, Urukiko Rukuru mu guca urubanza rukemeza ko ibyo bikorwa bigize icyaha cyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu, atari ukumucira urubanza ku cyaha atigeze aregwa, atanisobanuyeho, ahubwo habayeho guhuza inyito y'icyaha n'ibikorwa binyuranije n'amategeko yaregwaye, Urukiko rusanga bimugira icyitso.

[25] Kuri iyi ngingo y'ubujurire irebana no kuba yarahamijwe ibyaha atigeze akurikiranwaho ngo anabyiregureho, Urukiko rurasanga BANDORA Charles ataraciriwe urubanza ku byaha atakurikiranyweho, ahubwo Urukiko Rukuru rwarahinduye inyito y'icyaha ariko ibikorwa aregwa byo ntibyigeze bihinduka. Biri mu nshingano z'Umucamanza guhindura inyito y'icyaha kugirango ibyabaye bihuzwe n'inyito ijyanye n'ibyo itegeko ritaganywe, iyo asanze ari ngombwa. Ikibujijwe mu mategeko y'u Rwanda, ni uguhindura inyito y'icyaha ushinjwa akurikiranyweho mu iburanisha ry'ibirego ku ifungwa n'ifungurwa ry'agateganyo³. Mu manza zitandukanye⁴ zaciwe n'uru Rukiko, rwemeje ko guhindura inyito y'icyaha ku mucamanza ari uburenganzira ndetse n'inshingano afite, mu gihe igikorwa cyakozwe kidahuye n'ibyo amategeko ataganywe.

[26] Urukiko ruherye ku bisobanuro bitanzwe mu bika bibanziriza iki, rurasanga iyi ngingo y'ubujurire irebana no kuba BANDORA Charles yaba yarahamijwe ibyaha atisobanuyeho atanakurikiranyweho nta shingiro ifite.

A.2. Kumenya niba hari ibimenyetso bidashidikanywaho Urukiko rwashingiyeho rwemeza ko ku wa 07/04/1994, mu mazu ya BANDORA Charles habereye inama yacuriwemo umugambi wo gukora jenocide.

[27] BANDORA Charles n'abamwunganira bavuga ko Urukiko rwashingiye ku mvugo z'abatangabuhamya batanzwe n'Ubushinjacyaha batavugishije ukuri kuko muri bo nta n'umwe washoboye kugaragariza Urukiko ko yagiye muri iyo nama, uwayitumije, imyanzuro yayifatiwemo n'igihe yatangiye gushyirwa mu bikorwa, ahubwo ko icyaranze abo batangabuhamya ari ukwivuguruzwa.

[28] Basobanura ko umutangabuhamya KAYITARE Cyprien yavuze ko iyo nama atayibayemo, kuko yari yarahungiyeye kwa Padiri kuri Paruwasi, bivuze ko atashoboraga kumenya niba yarabayeho, ibyavugiye n'abayiyoboye, dore ko yavuze ko ibyo yatanze nk'ubuhamya yabyumvanye abantu atanabashije kugaragaza amazina yabo. Ku birebana n'umutangabuhamya witwaga HAKIZAMUNGU Laurent watanze ubuhamya ko atamenye ibyabereye ku Ruhuha ku wa

³ Reba ingingo ya 100 y'Itegeko N° 30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha.

⁴ Urubanza RPA 0065/13/CS hagati y'Ubushinjacyaha na NDAYAMBAJE Janvier rwaciwe ku wa 24/03/2017, para 20, urubanza RPA 0033/11/CS hagati y'Ubushinjacyaha na Nyawera Celestin rwaciwe kuwa 14/09/2012, para. 6, urubanza RPAA0117/07/CS hagati y'Ubushinjacyaha na Cpl Ngabonziza na Sgt Biziyaremye, para. 18, n'izindi

07/04/1994, ahubwo ko yavuye mu rugo saa kumi n'igice ari nabwo yamenye ko Perezida yapfuye, umukozi we amubwiye ko ibintu byahindutse asubira mu rugo. Bavuga ko ubwo buhamya bwa HAKIZAMUNGU Laurent bugaragaza ko atazi iby'inama bivugwa ko yabereye mu mazu ya BANDORA Charles, ariko Urukiko rukaba rwaraguye mu ikosa ryo gushingira kuri ubwo buhamya rwemeza ko habaye inama yabaye nyirabayazana ya jenocide ku Ruhuha.

[29] Naho ku bijyanye n'ubuhamya bw'uwiswe PBD nawe wavuze ko ku wa 07/04/1994, kuva saa yine za mu gitondo kugera saa kumi n'ebiri, yari yihishe mu giti kiri muri metero 20 uvuye ku mazu ya BANDORA, akaba yarabonye abantu bari hagati ya 30 na 50 bagiye mu nama ariko ko atayibayemo. Bavuga ko kuba PBD yivugira ko atabaye mu nama, bivuze ko atarashoboraga kumenya niba ibyaberaga mu mazu ya BANDORA ari inama, ngo anamenye n'ibyayivugiye, byongeye kandi kuba yari afite imyaka 14, bivuze ko yari akiri muto, ku buryo ibyo yavuze harimo ugushidikanya, bityo, Urukiko rukaba rwaraguye mu ikosa ryo gushingira kuri ubwo buhamya kandi burimo gushidikanya.

[30] Ku birebana n'umutangabuhamya wiswe PBB wavuze ko inama atayibayemo, mu Bugenzacyaha yavuze ko yabonye abantu benshi bahurira kwa BANDORA (c7) ariko ko atakwemeza ibyahavugiye, usibye ko ari amakuru yamugezeho. Bavuga ko izo mvugo ze zigaragaza ko nta nama yabereye mu mazu ya BANDORA Charles, bityo, Urukiko rukaba rwaraguye mu ikosa ryo gushingira kuri ubwo buhamya rwemeza ko muri ayo mazu habereye inama yabaye intandaro y'amarorerwa yahitanye abatutsi.

[31] Bavuga ko ubuhamya bwa PBC nabwo butari guhabwa agaciro kuko ntacyo byari gufasha urukiko mu kumenya niba iyo nama yarabayeho, ibyayivugiye n'abayitabiriye. Banavugaga ko umutangabuhamya wiswe PBA mu mabazwa ye yose, ntaho yavuze iby'inama yo ku wa 07/04/1994, ku buryo urukiko rutagombaga kumushingiraho, kimwe n'ubuhamya bwatanzwe na MATABARO J.M.V alias MASUDI, kuko imvugo ze zivuguruzanya kandi ziteye urujijo ku buryo zitari gushingirwaho, nk'aho hamwe avugaga ko inama yabaye ahari, ubundi akavugaga ko ari uko we abitekereza cyane cyane ko atayibayemo kuko atayitumiye, ndetse ko mu nyandiko eshatu yashyizeho umukono kandi zivuguruzanya, Urukiko rwashoboraga kugendera ku ya mbere aho yagaragaje ko nta cyaha ashinja BANDORA Charles.

[32] Bavuga ko Urukiko rwirengagije imvugo z'abatangabuhamya bashinjura barimo MUNYAMPIRWA Augustin, KABERA Emmanuel, na RUGEMANA Jean bavuze ko nta nama yo gutegura jenocide yabereye mu mazu ya BANDORA, ahubwo ko habaye ubusahuzi bwakozwe n'abasirikare bari bahakambitse, bigatuma BANDORA ahuruzwa aho yari mu rugo.

[33] Ku birebana n'amazu yakorewemo inama bivugwa ko yari aya BANDORA Charles, bavugaga ko usibye kuba aye nta burenganzira bwo kuyakorera imirimo iyo ariyo yose yari afite kuko yakodeshwaga na MICOMYIZA Faustin, nk'uko bishimangirwa n'ianza N° RP165/99/NTA/C.De/AV, RP 137/98/Nmta/Gde na RPA 153/Kig – RP 165/ Nta zaciye n'Urukiko rwa Mbere rw'Iremezo rwa Nyamata n'Urukiko rw'Ubujurire rwa Kigali, zabaye itegeko. Muri izo manza hakaba haremejwe ko MICOMYIZA adahamwa n'ibyaha aregwa birimo kuremesha amanama cyangwa se kuba hari inama zabereye mu mazu yakoreragamo ayakodeshwa na BANDORA Charles.

[34] Bavuga kandi ko muri izo manza zabaye itegeko, abitwa HAKIZIMANA de Gaulle na BAZIGA Emmanuel bahamwe n'ibyaha bitandukanye byagize ingaruka ku nzirakarengane z'abatutsi zazize jenoside ku Ruhuha, batanze ubuhamya bashinja BANDORA Charles, ariko ko batigeze bemeza ko mu mazu ye habereye inama yabaye nyirabayazana mu marorerwa yose, ibyo nabyo bikaba byagombye kuba ikimenyetso gicukumbuye muri uru rubanza kigaragaza ko iyo nama BANDORA Charles ashinjwa itabayeho.

[35] Uhagarariye Ubushinjacyaha avuga ko iyi mpamvu y'ubujurire nta shingiro ifite, kuko Ubushinjacyaha bwagaragaje ibimenyetso bihagije byerekana ko mu mazu ya BANDORA Charles hakorewe inama yafatiwemo ibyemezo byo kwica abatutsi muri Komini Ngenda no mu nkengero zaho, kandi BANDORA Charles n'abamwunganira bakaba batarashoboye kuvuguruza ibyo bimenyetso byatanzwe. Avuga kandi ko imvugo z'abatangabuhamya zitateshwa agaciro n'uko batari muri iyo nama kandi bitarashobokaga ko bayizamo kandi bahigwa ahubwo ko babirebaga bari ahantu hatandukanye bihishe, kandi ko icyabagarariye ko hari ikintu kibi gitegurwa ari uko IPJ witwa Callixte yinjiye mu nama ahita atemwa asohoka yiruka bamwirukaho baramwica, Urukiko rukaba rwaragendeye ko ibyo bavuga byinshi bisa, nk'abaje mu nama, abatanze imipanga n'uwishe IPJ Callixte.

[36] Ku birebana n'abatangabuhamya bose bavugwa ko bashinjura BANDORA Charles, avuga ko baranzwe no kwivuguruza no kutavugisha ukuri kuko bivugururwe kenshi cyane ko nta bumenyi bafite bw'ibyo batangira ubuhamya, dore ko abenshi batigeze bagera ku Ruhuha tariki ya 7/4/1994, bivuze ko batazi inama yo kuri iyo tariki yateguriwemo kwica abatutsi, ndetse ko n'abavuga ko bahageze hari mu masaha ya nimugoroba ku buryo batazi ibyabaye mbere ya saa sita. Ku birebana n'imvugo ya BANDORA Charles y'uko abantu baje ku mazu ye kuko yari yibwe, uhagarariye Ubushinjacyaha avuga ko nta kuri kurimo kuko yabibajijwe inshuro nyinshi abura ikimenyetso kibigaragaza, ndetse n'abatangabuhamya avuga ko Urukiko rutitayeho mu guca urubanza, nabo bakaba ntabyo bazi uretse kuvuga gusa ko bumvise ko iwe hari hibwe.

[37] Ku bijyanye no kuvuga ko ayo mazu ya BANDORA Charles nta burenganzira yari ayafiteho kuko yakodeshwaga MICOMYIZA Faustin, uhagarariye Ubushinjacyaha avuga ko ataribyo kuko nta kimenyetso bigeze babitangira, dore ko mu manza bavuga, byagaragaye ko aho hantu MICOMYIZA yari ahafite icyocyezo gusa, ahasigaye hose hakorerwamo na BANDORA Charles. Ku birebana n'imanza N° RP 165/99/NTA/C. De/AV, RP 137/98/Nmta/Gde na RPA 153/Kig – RP 165/Nta BANDORA Charles n'abamwunganira bavuga ko hemejwe ko nta nama zabereye mu mazu ye, uhagarariye Ubushinjacyaha avuga ko bashaka kuvugisha izo manza ibitazanditse, kuko iyo uzisomye ubura ahanditse ibyo bavuga, hakibazwa iyo babikura.

UKO URUKIKO RUBIBONA

[38] Ingingo ya 62 y'Itegeko no 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ivuga ko: “ubuhamya ni ibivugwa mu rukiko bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa“. Naho iya 65 ikavuga ko “urukiko ari rwo rwonyine rupima ko imikirize y'abatangabuhamya ihuye n'ikiburanwa, ifite ingingo zikiranuye kandi ikaba ikwiye kwemerwa cyangwa guhakanwa, ntirwitsitsa ku mubare w'abatangabuhamya, rwita cyane cyane ku bumenyi bwabo bw'ibyabaye, no ku buryo babivuga uko byagenze ntacyo bihimbira“.

[39] Urukiko Rukuru rwaciye urubanza N° RP 0007/13/HCCI rujuririrwa rwemeje ko mu gitondo cyo kuwa 07/04/1994 mu mazu ya BANDORA Charles ari kuri santeri ya Ruhuha habereye inama yacuriwemo umugambi wo gutangiza jenocide ku Ruhuha by'umwihariko, no muri Komine ya Ngenda muri rusange, iyo nama ikaba yari irimo abacuruzi bo kuri Santeri ya Ruhuha n'abayobozi banyuranye barimo BANDORA Charles, HATEGEKIMANA Samuel wari Burugumesitiri wa Komine ya Ngenda, Lt BIZIMUNGU wari ukuriye ingabo muri Ruhuha, BIKOMAGU Samuel wari umupolisi, SENGABO Marcel, KIYOGÉ François, BIMENYIMANA François, BAZIGA, NKEZABERA Nathan, MUNYAMPIRWA n'abandi. Rwemeje kandi ko muri iyo nama abari bayirimo bumvikanye gukora jenocide.

[40] Urukiko Rukuru rwageze kuri uwo mwanzuro rumaze gusesengura imvugo z'abatangabuhamya rwabajije, bavuze ko biboneye ibyabereye kuri santeri ya Ruhuha mu gitondo cyo kuwa 07/04/1994. Imvugo z'abatangabuhamya zashingiweho n'Urukiko ni iza KAYITARE Cyprien, MATABARO Vianney alias Masudi, DUSABIMANA Alexis n'abatangabuhamya PBB na PBD bahawe ayo mazina kubera impamvu z'umutekano wabo, bavuze ko uwo munsu mu gikari cy'amazu ya BANDORA ari kuri iyo santeri habereye inama itegura jenocide irimo abantu banyuranye bavuzwe mu gika kibanziriza iki.

[41] Abo batangabuhamya bavuze ko nubwo batari bari muri iyo nama, babonye IPJ KAYIRANGA Callixte w'umututsi wayisohotse yatemwe ndetse yicirwa hafi aho. Banavuze ko iyo nama irangiye abari bayirimo bahise basaba abari hanze gushyira hamwe bakareka iby'amashyamba bagahiga umwanzi, bamwe mu bacuruzi batangira guha abaturage imipanga bahita bagaba ibitero ku batutsi, barabica, barabasahura, ko ibyo byagaragarije abo batangabuhamya ko icyo iyo nama yari igamije kwari ugutegura ubwicanyi. BANDORA Charles we avuga ko ibyo abo batangabuhamya bavuze bitahabwa agaciro kuko nta n'umwe muribo wigeze ugaragariza Urukiko ko yagiye muri iyo nama, uwayitumije, imyanzuro yayifatiwemo n'igihe iyo myanzuro yatangiriye gushyirwa mu bikorwa, ko imvugo zabo batangabuhamya zirimo ukwivuguruzwa.

[42] Urukiko rw'Ikirenga rurasanga mu batangabuhamya babajijwe kuba nta numwe wari muri iyo nama bitaba impamvu yo gutesha agaciro ubuhamya batanze bujyanye no kuba iyo nama yarabayeho, ngo hemezwe ko uwari muri iyo nama ariwe wenyine ushobora guhamya ko yabayeho. Ubuhamya nkuko busobanurwa mu ngingo ya 62 y'Itegeko no 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo ni ibivugwa mu rukiko bivuzwe n'umuntu wabibonye, cyangwa wabyumvise ubwe ku byerekeye ikiburanwa.

[43] KAYITARE Cyprien wabajijwe mu bihe bitandukanye (mu Bugenzacyaha, mu Bushinjacyaha no mu Rukiko) yavuze ko kwa BANDORA Charles habereye inama itegura Jenocide, ko yabonye abayitabiriye kuko yari ku RUHUHA. Ndetse no mu iburanisha ry'urubanza rujuririrwa habayeho kuvuguruzanya k'umutangabuhamya n'ababuranyi (cross examination), KAYITARE Cyprien yongera kuvuga ko yabonye abantu batandukanye bajya mu nama yabereye mu mazu ya BANDORA Charles ari kuri santeri ya RUHUHA. Ubwo buhamya bukomeza buvuga ko abari muri iyo nama, basohotse bavuga badahisha ko havugiwemo ibirebana no kwica abatutsi. Urukiko rurasanga ubu buhamya bwa KAYITARE bufite ishingiro kuko avuga ibyo yiboneye, nibyo yiyumviye birebana n'ibyaha BANDORA aregwa.

[44] Nkuko biri mu nyandiko mvugo y'iburanisha ryo ku wa 23/09/2014, habayeho kuvuguruzanya hagati ya KAYITARE Cyprien n'ababuranyi, abazwa igihe yamenyeye urutonde

rw'abagiye mu nama kwa BANDORA asubiza muri aya magambo: "uwo munsu tariki ya 7 bajya mu nama narababonye". Yongera kubazwa niba yarabibonye atarabibwiwe asubiza agira ati: "ntabwo nabibwiwe, nari hafi muri m70". Asabwe kuvuga abari muri iyo nama yashubije agira ati: "ndabazi amazina, hari BANDORA Charles dore ko inama yaberaga iwe [] n'abandi benshi". Abajijwe niba yari hafi yaho inama yaberaga, n'icyo yahakoraga yashubije muri aya magambo: "nacuruzaga imyenda tukayibitsa ku Ruhuha, buri wa kane twitegura isoko twajyaga kwirirwa tugorora nicyo cyari cyanzinduye". Uyu mutangabuhamya akomeza avuga ko nyuma aribwo yahungiyeye kwa Padiri, ndetse mu minsi yakurikiye, yarakomeje agera i Burundi. Urukiko rurasanga rero ibyo BANDORA avuga ko KAYITARE yari yihishe kwa Padiri ku buryo atari kumenya niba mu mazu ye habereye inama n'abayigiyemo bitahabwa agaciro kuko bigaragara ko uwo mutangabuhamya yagiye kwihisha kwa Padiri nyuma, ariko mu gitondo cyo ku itariki ya 7/04/1994 yari hafi yaho inama yabereye akaba yarashoboye kumenya ibyahabereye.

[45] Ku birebana n'ubuhamya bwatanzwe na DUSABIMANA Alexis⁵, PBB⁶ na PBD⁷ nabo bavuze ko bibonye abantu bajya mu nama yabereye mu mazu ya BANDORA, kandi ko bari hafi yaho inama yabereye. Urukiko rurasanga ibyo bavuze nk'ubuhamya, bijyanye n'ibyo bibonye bo ubwabo birebana n'inama yabereye mu mazu ya BANDORA ku itariki ya 7/4/1994. Mu iburanisha ryo ku wa 13/10/2014 mu Rukiko Rukuru, umutangabuhamya DUSABIMANA Alexis yabajijwe aho yari ku itariki ya 7/4/1994, asubiza ko yari ku Ruhuha mu gitondo saa kumi n'ebiri. Akomeza agira ati: "nka saa moya za mu gitondo twabonye abantu baza kwa BANDORA bambaye imyenda ya MRND n'abasirikare bayobowe na Lt BIZIMUNGU, harimo na Bourgumestre Samuel bajya mu nama muri bar kwa BANDORA [...] twabonye ari ikangurira abahutu kwica abatutsi". Abajijwe icyatumye abibona gutyo asubiza ko aruko IPJ Callixte winjiyemo yasohotse bamutemye. Abajijwe niba yarabirebaga asubiza agira ati: "yego twari aho tureba neza mu marembo yo kwa BANDORA".

[46] Umutangabuhamya PBB wabajijwe mu Rukiko ku wa 20/10/2014, yavuze ko ku itariki ya 7/4/1994 yari ku Ruhuha, ko yabonye abantu barimo BANDORA baza mu nama yabereye mu gikari cy'amazu ye (BANDORA). Abajijwe aho yari ari kugirango abimenye asubiza agira ati: "nabibonye ndi iwange ntabwo ari kure yaho byabereye kwa BANDORA"[...] ntabwo ari kure cyane iyo uhagaze iwange uba ubona kwa BANDORA kandi abazijyagamo bari abaturanyi nari mbazi".

[47] Ubundi buhamya bwashingiweho n'Urukiko Rukuru rwemeza ko mu mazu ya BANDORA habereye inama, abayirimo bakumvikana ku mugambi wo gukora jenocide, ni ubwa MATABARO J.M.V alias MASUDI. Mu buhamya yatangiye mu Rukiko Rukuru kuwa 15/10/2014, yavuze ko yabonye abagiye muri iyo nama ndetse ko nawe yayigiyemo ariko agahita asohorwa. Urukiko rurasanga ubuhamya bwa MATABARO bwerekana ko inama ivugwa yabayeho cyane cyane ko ibyo avuga yabihagazeho, yibonye kandi yiyumviye. Ibyo BANDORA avuga ko imvugo ze zivuguruzanya bitewe nuko ko hari aho avuga ko inama yabaye ahari, ubundi akavuga ko atayitumiwemo, Urukiko rusanga bitafatwa nko kuvuguruzanya kuko icyo we yavuze nuko iyo nama atayibayemo kuko yayigezemo agasohorwa. Undi mutangabuhamya wavuze ko mu mazu ya BANDORA habereye inama mu gitondo cyo ku itariki ya 7/4/1994 ni uwahawe izina rya PBC

⁵ Reba inyandikomvugo y'ubuhamya yatangiye imbere y'Urukiko Rukuru ku wa 13/10/2014

⁶ Reba inyandikomvugo y'ubuhamya yatangiye imbere y'Urukiko Rukuru ku wa 20/10/2014

⁷ Reba inyandikomvugo y'ubuhamya yatangiye imbere y'Urukiko Rukuru ku wa 13/10/2014

wavuze ko yabonye abantu bari hagati ya 30 na 50 bajya mu nama yabereye mu gikari cy'amazu ya BANDORA, abajijwe aho yari ari kugirango abe yaramenye iby'iyi nama asubiza ko yari hafi y'igiti cy'umunyinya cyari nko muri m 20 uturutse aho inama yabereye⁸.

[48] Abatangabuhamya bavuzwe mu bika bibanziriza iki, BANDORA Charles asaba ko ibyo bavuze byateshwa agaciro kuko batagaragaje ko bari batumiwe muri iyo nama, ntibagaragaze uwayitumije n'imyanzuro yayifatiwemo. Urukiko rurasanga ibyo BANDORA Charles avuga ko muri aba batangabuhamya nta numwe wari uyirimo ari ukwigiza nkana, yirengagiza ko abari bayirimo ari abari bayitumiwemo bahuje umugambi wo gukora jenocide. Ntabwo BANDORA Charles agaragaza ko abo batangabuhamya bagombaga kuba bayirimo byanga bikunze uretse ko atanemera ko iyo nama yabayeho.

[49] Urukiko rukaba rusanga kandi iyo nama atari inama abaturage bose bo muri ako gace bashoboraga kujyamo, ku buryo ubuhamya bwatangwa n'abatari bayirimo bwashidikanywaho. Ibyo bigaragazwa nuko MATABARO J.M.V alias MASUDI washatse kuyibamo, yasohowe ndetse na IPJ Kayiranga Callixte wayigiyemo akaba yarahise asohorwa bamutemye nyuma akaza no kwicwa nkuko byagiye bivugwa n'abatangabuhamya batandukanye

[50] Urukiko rw'Ikirenga rurasanga ibyakurikiye iyo nama nko, gutanga imipanga no kugaba ibitero bitandukanye nk'icyagiye kwa HAKIZAMUNGU Laurent, icyagabwe kwa MUGENZI Ezéciel, ndetse no kwica abatutsi bo ku Ruhuha no mu Gatanga ndetse no kwica uwayijemo IPJ Kayiranga Callixte wari umututsi bigaragaza ko inama yabereye kwa BANDORA yacuriwemo umugambi wo kwica abatutsi.

[51] Hari ubuhamya BANDORA avuga ko bwirengagijwe burimo ubwa KABERA Emmanuel, MUNYAMPIRWA Augustin n'ubwa RUGEMANA Jean. Ari mu Rukiko Rukuru ku itariki ya 17/11/2014, KABERA Emmanuel yavuze ko ku itariki ya 7/04/1994 yiriwe muri Segiteri Gakomeye ko yageze ku Ruhuha mu masaa kumi n'imwe. Kuba yaravuze ko atamenye iby'inama yabereye mu gikari cy'amazu ya BANDORA, ntibishinjura BANDORA kuko nubundi atageze hafi yaho inama yabereye mbere yuko iba cyangwa mu gihe yarimo kuba. Kuri MUNYAMPIRWA Augustin we yahakanye ko iyo nama itabayeho ko yayumvise mu ikusanyamakuru ryakozwe n'inkiko Gacaca kandi ko nawe ashinjwa kuyibamo. Urukiko rurasanga ubuhamya yatanze butahabwa agaciro kuko afite inyungu zo guhamya ko iyo nama itabayeho kuko aregwa kuyibamo nkuko abyivugira.

[52] RUGEMANA Jean wabajijwe n'Urukiko ku wa 24/11/2014, yavuze ko yabonye abantu bagera kuri 80 cyangwa 100 bahurira kwa BANDORA kubera ikibazo cy'ubujura cyari cyahabereye. Akomeza avuga ko we atagiye kuko uwo muni uwari ufite ubwoba atavuye iwe. Ivyavuzwe n'uyu mutangabuhamya, Urukiko rurasanga bitashingirwaho ngo rwemeze ko nta nama yabereye kwa BANDORA kuko RUGEMANA yivugira ko atavuye iwe, akaba atagaragaza aho yari nuko yamenye ko kwa BANDORA hari abantu bari hagati ya 80 na 100 baje mu kibazo cy'ubujura. Uru Rukiko rurasanga ubwo buhamya bwe butahabwa agaciro harebwe ibyakurikiye ibyo yita ubusahuzi, birimo kwica IPJ KAYIRANGA Callixte, kugaba ibitero ku batutsi barimo uwitwa HAKIZAMUNGU Laurent no kwa MUGENZI Ezéciel. Inama ivugwa iyo iza kuba yiga

⁸ Reba inyandiko mvugo y'iburanisha yo ku wa 10/11/2014 mu Rukiko Rukuru

ku kibazo cy'ubusahuzi, ntiba yarakurikiwe no kwica abatutsi nkuko byagarutsweho mu bika bibanziriza iki.

[53] Urukiko rwaciye urubanza rujuririrwa, rwashingiye ku buhamya butandukanye rwemeza ko BANDORA Charles ahamwa n'icyaha cy'ubwumvikane bugamije gukora jenocide (conspiracy to commit genocide), giteganywa n'ingingo ya 3(b) y'Amasezerano Mpuzamahanga yo ku wa 09/12/1948 agamije gukumira no guhana icyaha cya jenocide, u Rwanda rwashyizeho umukono ku wa 12/02/1975, kikaba giteganywa n'ingingo ya 93, 10 y'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange. Uru Rukiko rugendeye ku biteganywa n'ayo mategeko, rukabihuza n'ibyabaye, rurasanga inyito y'icyaha cyahamye BANDORA Charles igomba kuba "gucura umugambi wo gukora Jenocide" nkuko nubundi yari yarakirezwe aho kuba ubwumvikane bugamije gukora Jenocide. Ubwumvikane siyo nyito ahubwo ni igisobanuro kigaragaza uko icyaha kigerwaho.

A.3. Kuba Urukiko rutarahaye agaciro ubuhamya bw'abatangabuhamya b'Ubushinjacyaha bashinjura uregwa.

[54] BANDORA Charles n'abamwunganira bavuga ko abatangabuhamya HAKIZIMANA de Gaule na BAZIGA Emmanuel batanzwe n'Ubushinjacyaha, basobanuriye Urukiko ko bahatiwe n'inyangamugayo za Gacaca, Ubugenzacyaha hamwe n'Ubushinjacyaha gushinja BANDORA bamubeshyera, ariko ngo Urukiko rukaba rwaratesheje agaciro ubwo buhamya mu buryo bunyuranyije n'ingingo ya 62 y'Itegeko N° 15/2004 ryo ku wa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Iyo ngingo iteganywa ko ubuhamya ari ibivugwa mu Rukiko, bivuzwe n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa, ngo Urukiko rukaba rwarakoze ikosa rwemeza ko ubwo buhamya bwabo buhuye n'ubw'abandi batangabuhamya, kandi bararugararije impamvu yatumye bamushinja.

[55] Bavuga kandi ko Urukiko rwavuze ko ibyo abo batangabuhamya bavuze bihura n'ibyavuzwe n'abandi bashinjura barimo NSANZIMANA Jean Paul, UGIYEKERA Justin, HANYURWIMFURA Aimable, RUGEMANA Jean, KABERA Emmanuel, NZIGIHIMA Theoneste, mu gihe aba bese bivugiye ko icyo bazi ari uko ku itariki ya 7/4/1994, mu mazu ya BANDORA Charles habereye ubujura bwakorewe uregwa. Bityo, ko Urukiko rwagombaga guha agaciro ibyavugiye mu rukiko n'abo batangabuhamya aho kumuhamya icyaha rushingiye ku buhamya buvuga ko kuri uwo muni kwa BANDORA Charles hateraniye abantu benshi, kuko ibyo bitandukanye no kuvuga ko kwa BANDORA habereye inama itegura jenocide.

[56] Uhagarariye Ubushinjacyaha avuga ko iyi mpamvu nayo nta shingiro ifite kuko Urukiko rutigeze rutesha agaciro ubuhamya bwa BAZIGA Emmanuel n'ubwa HAKIZIMANA De Gaule, batanze imbere y'Urukiko, ahubwo ko Urukiko rwasuzumye imvugo zabo ku buryo burambuye kandi bucukeye, haba mu Bugenzacyaha, mu Bushinjacyaha no mu Rukiko, maze rubihuza n'ibindi bimenyetso byatanzwe mu Rukiko, byose rubishingiraho mu gufata icyemezo; kandi BANDORA n'abamwunganira bakaba batarabashije kuvuguruza ibimenyetso byatanzwe kimwe n'impamvu urukiko rwashingiyeho. Avuga kandi ko ibyo abo batangabuhamya bombi bavuze ko hatarimo gushinjura BANDORA Charles, ahubwo ko bagaragaje ko nta makuru bafite. Naho ku birebana no kuvuga ko bahatiwe kumushinja, Uhagarariye Ubushinjacyaha avuga ko bitahabwa agaciro kuko nta bimenyetso bigeze babitangira usibye kubivuga gusa.

UKO URUKIKO RUBIBONA

[57] Abatangabuhama babiri aribo BAZIGA Emmanuel na HAKIZIMANA de Gaulle bavugiyeye imbere y'Urukiko Rukuru⁹ ko nta gikorwa cy'ubwicanyi babonyemo BANDORA mu gihe cya jenocide. Mu bugenzacyaha, no mu Bushinjacyaha BAZIGA Emmanuel na HAKIZIMANA de Gaulle bwo bari bavuze ko habaye mu gikari cy'amazu ya BANDORA habereye inama ku itariki ya 7/04/1994 kandi ko iyo nama BANDORA yari ayirimo, mu Rukiko bavuga ko bahatiwe kumushinja. Urukiko rurasanga aba batangabuhama uburyo basobanuramo uko ibi bintu byagenze buhura n'ukuri ku byabaye.

[58] Mu iburanisha ryo mu Rukiko Rukuru, HAKIZIMANA de Gaulle yavuze ko bamwe mu bari baje mu kibazo cy'ubusahuzi bwabereye kwa BANDORA batanze imipanga, ndetse abo bacuruzi barababwira ko nta PL, PSD, MDR. Ibi yavuze biragaragaza ko ibijyanye n'ubusahuzi atari ukuri kuko iyo biba byarabayeho ntihari gutangwa imipanga, ndetse no gusaba abaturage ko ibirebana n'amashyamba (PL, PSD, MDR) barimo babishyira ku ruhande bagafatanya kurwanya uwo bise umwanzi "umututsi". BAZIGA Emmanuel we yavuze ko IPJ Callixte yinjiye mu gikari cy'amazu yo kwa BANDORA, abarimo bakamusohora bamaze kumutema mu rubavu kuko yari umututsi. Ndetse yanahamije ko iyo nama irangiye, BIMENYIMANA Francois na SENGABO Marcel bari bayirimo, batanze imipanga basaba abayihawe guhiga umwanzi. Uwo mutangabuhama hari naho agera akavugaga ko iyibwa rya BANDORA atarizi (C490).

[59] Imvugo z'abatangabuhama bavugwa mu gika kibanziriza iki hari ibyo zihurizaho bigaragaza ko mu gikari cy'amazu ya BANDORA ku itariki ya 7/4/1994 habereye inama yo kwica abatutsi. Ibyo bombi bahurizaho ni nko kuba mu gitondo cyo kuwa 07/04/1994 ku Ruhuha haraje abantu benshi barimo Burugumesitiri HATEGEKIMANA Samuel, Lt BIZIMUNGU, abacuruzi n'abandi baturage bicara mu kabari kari mu gikari cy'amazu ya BANDORA, bakanahuriza kandi ku kuba IPJ KAYIRANGA Callixte yaragiye, akahatemerwa, nyuma akaza kwicirwa hafi aho, kuba abari muri ako kabari barasohotse, abacuruzi bari bayirimo bagahita batanga imipanga bavugaga ngo bahige umwanzi, no kuba harahise hagabwa ibitero ku batutsi barimo umucuruzi wo ku Ruhuha witwaga HAKIZAMUNGU Laurent no kwa MUGENZI Ezéchiel. Ibi bavuze bihura n'ibyavuzwe n'abandi batangabuhama KAYITARE Cyprien, MATABARO Vianney alias Masudi, na DUSABIMANA Alexis, PBB na PBD bashinja BANDORA.

[60] Urukiko ruherye ku bisobanuro byatanze mu bika bibanziriza iki, rusanga impamvu y'ubujurire irebana n'ubuhama bw'abatangabuhama babiri b'Ubushinjacyaha BANDORA avugaga ko bamushinjuye, rukurikije ibyo bavuze, n'uruhererekane rw'uko ibintu byagenze, ubuhama bwabo budashinjura BANDORA, ahubwo bushimangira ko kuwa 7/04/1994 habayeho inama mu mazu ya BANDORA yafatiwemo umugambi wo kwica abatutsi ku Ruhuha no mu nkengero zaho kandi BANDORA akaba yarayigizemo uruhare.

A.4. Kumenya niba Urukiko rwaremeje ko BANDORA yatanze amabwiriza yo kwica abatutsi mu Gatanga nta bimenyetso simusiga bigaragajwe.

[61] BANDORA Charles n'abamwunganira bavugaga ko Urukiko rwemeje ko ku mugoroba wo kuwa 07/04/1994, yageze mu Gatanga atwaye mu modoka ye abasirikare barimo Issa, rugendeye

⁹ Reba iburanisha ryo kuwa 14, 15, 16/10/2014

ku buhamya bwa MUDENGE Athanase n'ubw'umutangabuhamya wiswe PBE, ariko rwirengagiza ko ubwo batumizwaga mu Rukiko, baranzwe no kutavugisha ukuri, kwivuguruza no kuvuguruzanya. Bavuga ko kuba abo batangabuhamya baragaragaje ko babonye uregwa mu buryo butandukanye, ntibahurize ku modoka yajemo, umubare w'abasirikare bari kumwe no kuba yatanze cyangwa ataratanze amabwiriza yo kwica abatutsi, Urukiko rwagombaga gutesha agaciro izo mvugo zabo.

[62] Bavuga ko nk'umutangabuhamya PBE yanzwe no kwivuguruza imbere y'Inzego zitandukanye yabarijwemo, nko mu ibazwa rye ku wa 09/09/2008, yavuze ko BANDORA yageze mu Gatanga imvura irimo kugwa ari kumwe n'abasirikare 4, ariko ageze mu Rukiko avuga ko ku wa 07/04/1994 BANDORA yageze mu Gatanga ari kumwe n'abasirikare 2, bikaba bigaragara ko imvugo ze zirimo ukwivuguruza.

[63] Bavuga ko n'umutangabuhamya MUDENGE Athanase abazwa mu Bugenzacyaha ku wa 27/03/2008 yavuze ko ku mugoroba wo ku wa 07/04/1994 BANDORA yageze mu Gatanga ari mu modoka ya Samurai y'umweru, ariko ageze mu Rukiko ku wa 12/11/2014, yabaye nk'ujijinganya ateza urujijo kuko yavuze ko BANDORA yageze mu Gatanga ari mu kamodoka k'agasuzu k'umweru, ukwivuguruza kwe kukaba gushingiye ku modoka BANDORA yajemo.

[64] Bavuga kandi ko ikindi gituma Urukiko rutari guha agaciro ubuhamya bwa PBE na MUDENGE, ari uko bavuguruzanya, nk'aho PBE, ku wa 09/09/2008 yabwiye Ubugenzacyaha ko BANDORA yageze mu Gatanga ari mu modoka ya Daihatsu ifite karisoli ari kumwe n'abasirikare 4, ko BANDORA atigeze ava mu modoka, ahubwo ko aribo bamusanze bamusaba kubagurira inzoga aribwo yabahaye amabwiriza yo kujya kwica. Bavuga ko MUDENGE we yavuze ko BANDORA yahageze ari mu modoka y'isuzu ari kumwe n'umusirikare witwa Issa, basohoka mu modoka, bamusanga mu nzu, uwo musirikare amukubita urushyi amubaza impamvu bataratangira kwica abatutsi.

[65] Uhagarariye Ubushinjacyaha avuga ko ku wa 07/04/1994, BANDORA yageze mu Gatanga arahagarara ari kumwe n'abasirikare barimo umwe witwa Isaa, ko abasirikare binjiye muri bar ari 2, abandi bagasigara ku modoka, ariho havuye umubare wa 4 kandi ko abo yahaye amabwiriza ngo bajye gutera bari 4. Avuga ko abatangabuhamya hari ibyo bahurizaho birimo amasaha BANDORA n'umusirikare bahagereye ya nimugoroba, imodoka y'umweru ndetse n'ahatewe, umuryango watewe n'ibyahakorewe n'abantu bishwe. Naho ibyo kuba BANDORA yireguza ko uwo muni atahatashye kubera ko yari amaze kwibwa bikaba atari ukuri kuko nta bimenyetso yigeze abitangira kandi no mu batangabuhamya babajijwe bemeje ko nta hantu hibwe uwo muni. Avuga kandi ko ibyo bavuga ko abatangabuhamya MUDENGE na PBE bavuguruzanya ataribyo kuko Urukiko rwabisuzumye rugaragaza ko atari ukwivuguruzanya mu gihe ibyo bavuga bidahindura ireme ry'ubuhamya burebana no kuba BANDORA yaranyuze mu Gatanga ari kumwe n'abasirikare, hagatangwa amabwiriza yo kwica.

[66] Asobanura ko umutangabuhamya PBE yavuze ko ku wa 07/04/1994 saa moya z'ijoro, BANDORA yabasanze mu Gatanga ari kumwe n'abasirikare bane, ababaza niba bishe MURANGIRA Gratien, abwira responsable MUDENGE ko abajyana bakamwica, bamubuze iwe, bamusanga kwa BISURAGU baramwica. Avuga kandi ko MUDENGE yasobanuye ko BANDORA yazanye n'umusirikare witwa Issa, maze bakabaha amabwiriza yo kwica, ndetse ko abo batangabuhamya bageze imbere y'Urukiko bongeye kuvuga ibyo bavuze mbere.

UKO URUKIKO RUBIBONA

[67] Ku itariki ya 12/11/2014, MUDENGE Athanase yavugiyeye mu Rukiko Rukuru ko BANDORA Charles ari kumwe n’umusirikare witwa Issa, bageze mu Gatanga ku mugoroba wo ku itariki ya 7/04/1994, batanga amabwiriza yo kwica abatutsi. Yabivuze muri aya magambo: “BANDORA na Issa bakigera aho, Issa amaze kunkubita urushyi nibwo yabajije ngo ino aha nta batutsi cyangwa ibyitso bihari? Ubwo nibwo bahise bavugaga bati turagiye ejo nituzatukabona hari abatutsi cyangwa ibyitso, nimwe muzabibazwa, nimwe tuzaheraho. Bahise bajya mu modoka barazamuka [...] BANDORA niwe wazanye uwo musirikare mu nzu kuko niwe wari unzi ni nawe wari uhazi, yarambajije ngo mwiriwe mute? “. Abajijwe igihe bagiriye kwica nyuma yo guhabwa amabwiriza asubiza agira ati: “twahise tugenda ako kanya. [...] iyo tubigira (ibitekerezo byo kwica) twari kuba twishe na kare“.

[68] Umutangabuhamya PBE wari umukozi udahoraho¹⁰ wa BANDORA, wabajijwe mu Rukiko Rukuru ku itariki ya 12/11/2014, yabwiye Urukiko ko ku mugoroba wo ku itariki ya 7/04/1994, BANDORA yamusanze mu Gatanga ari kumwe n’abandi, abaha amabwiriza yo kwica umuryango wa MURANGIRA Gratien. Uwo mutangabuhamya yabivuze muri aya magambo: “hari le 07/04/1994 twari twagiye kunywa inzoga mu Gatanga, hagati ya saa moya na saa moya n’igice nibwo twagiye kubona tubona imodoka ya BANDORA imanutse iva ku RUHUHA, [...] igeze aho twanyweraga irahagarara ari kumwe n’abasirikare babiri, BANDORA abaza MUDENGE ati MURANGIRA n’umuryango we baracyariho? Kubera ko ariwe wari Responsable yahise amubwira ati jyana n’aba bantu mugende mubice, MUDENGE yahise akinga akabari [...] ubwo twaramanutse tubasanga ari abantu batanu [...] abantu bane twahise tubica, umwana umwe yizingira ku mukecuru aho yari yahungiyeye turamwihorera “.

[69] Invugo z’abatangabuhamya zigaragara mu bika bibiri bibanziriza iki, zerekana nta shiti ko BANDORA yageze mu Gatanga ku mugoroba wo ku wa 7/04/1994, ndetse zikanagaragaza ko hahise hatangwa amabwiriza yo kwica abatutsi, ababibwiwe bagahita bahera ku muryango wa MURANGIRA Gratien. Ikigaragaza ko ayo mabwiriza yatanze nuko mbere yuko BANDORA ahagera nta batutsi bari bishwe mu Gatanga, ndetse iyo ataza kuhagera muri uwo mugoroba, umuryango wa MURANGIRA ntuba warahise wicwa bawusanze aho wahungiyeye, bikozwe n’abantu BANDORA yasanze mu kabari ka Mudenge.

[70] Ibirebana n’umubare w’abasirikare bari kumwe na BANDORA, izina n’ubwoko bw’imodoka bagiyemo, nibyo BANDORA avugaga ko abo batangabuhamya badahurizaho akabiharaho asaba ko ubuhamya batanze bwateshwa agaciro.

[71] Ku birebana n’umubare w’abasirikare, umutangabuhamya PBE hamwe avugaga ko BANDORA yazanye n’abasirikare bane ahandi akavugaga babiri. Isesengura ry’invugo ya PBE rigaragaza ko, aho BANDORA yajyanye n’abasirikare babiri ari mu Gatanga, naho abasirikare bane ni abagiye kwica MUGENZI (ku Ruhuha). Ibi byavuzwe n’umutangabuhamya PBE mu iburanisha mu Rukiko Rukuru ryo ku wa 12/11/2014. Yabivuze muri aya magambo: “ [...] BANDORA Charles aratubwira ngo nidupakurure ibyo bintu, ibintu twarabipakuruye tubirangije ati nimujyane nabo basirikare mujye kureba ziriya Nkotanyi ziri kwa MUGENZI. Imodoka

¹⁰ Yavuze ko yapakiraga akanapakurura inzoga kwa Bandora

twarayuriye n’abasirikare bane bafite imbunda. [...] uwitwa KABUNGA abanza kumukubita ferabeto mu mutwe undi RYANGOMBE ahita amutera inkota mu rwano yikubita hasi[...]“.

[72] Kuba MUDENGE avuga ko yabonye umusirikare umwe witwa Issa arinawe wamukubise urushyi, naho PBE akavuga babiri, Urukiko rurasanga iki kinyuranyo gishingiye ku hantu abo batangabuhamya baboneye BANDORA. Mudenge yamubonye yinjiye mu kabari ke ari kumwe n’umusirikare umwe, naho PBE abona BANDORA akiza atarinjira mu kabari ari kumwe n’abasirikare babiri, bivuze ko undi yasigaye hanze. Nkuko bisobanuwe muri iki gika, Urukiko rurasanga ibirebana n’umubare w’abasirikare bari kumwe na BANDORA mu Gatanga, imvugo z’abatangabuhamya zitavuguruzanya ahubwo zuzuzanya.

[73] Ku birebana n’ibara ry’imodoka, abatangabuhamya bahuriza ku ibara ry’umweru, bagatandukanira ku birebana n’ubwoko bwayo (Mudenge yavuze ko ari akamodoka gato gato kanditseho Suzu, PBE yavuze ko ari Daihatsu y’umweru). Ibi ariko ntibyaba impamvu yo gutesha agaciro ubuhamya batanze kuko nubundi ntawahamya ko bari basanzwe basobanukiwe n’ibirebana n’amoko y’imodoka ku buryo babihurizaho. Urukiko rurasanga bihagije ko abo batangabuhamya bahuriza ku kuba BANDORA yarazanye n’abasirikare mu Gatanga, bari mu modoka y’umweru ku mugoroba wo ku itariki ya 7/04/1994.

[74] Urukiko rurasanga kandi nkuko byemejwe n’Urukiko Rukuru mu rubanza rujuririrwa, BANDORA Charles yaragize uruhare mu iyicwa ry’abatutsi bo mu Gatanga kuko akihagera ariwe watanze amabwiriza yo kwica abatutsi batangiriye ku muryango wa MURANGIRA Gratien, ndetse bihita bishyirwa no mu bikorwa hicwa abantu bane. Urukiko rw’Ikirenga, ruhereye ku bisobanuro bitanzwe mu bika bibanziriza iki, rurasanga nta kuvuguruzanya kuri hagati y’imvugo z’abatangabuhamya zerekana ko BANDORA Charles yageze mu Gatanga ku mugoroba wo ku itariki ya 7/4/1994, no ku mubare w’abasirikare bajyanye na BANDORA mu Gatanga ku buryo byatera gushidikanya ku ruhare rwe mu iyicwa ry’abatutsi bo mu Gatanga. Bityo, impamvu y’ubujurire yatanze irebana n’iyo ngingo nta shingiro ifite.

A.5. Kumenya niba BANDORA atarahawe uburenganzira bwose amategeko ateganya ku birebana n’impamvu nyoroshyacyaha

[75] BANDORA Charles n’abamwunganira bavuga ko Urukiko rwemeje ko akwiye kugabanyirizwa igihano kuko yitwaye neza igihe cyose yaburanye, bituma iburanisha ryihuta kandi ko atigeze akatirwa n’inkiko mu buryo buzwi, ariko rumuhanisha igifungo kirekire cy’imyaka 30, bityo akaba atarahawe amahirwe yo kugabanyirizwa, mu gihe ingingo 78 y’igitabo cy’amategeko ahana, iteganya ko Umucamanza ashobora kugabanya kugeza ku myaka 10.

[76] Uhagarariye Ubushinjacyaha avuga ko iyi mpamvu y’ubujurire yo kuba BANDORA Charles ataragabanyirijwe ibihano, ahubwo Ubushinjacyaha nabwo bwajuririye buvuga ko Urukiko rwamugabanyirije ibihano rukamugenera igihano gito rushingiye ku mpamvu nyoroshyacyaha kandi ibyaha yakoze bifite uburemere kubera uburyo yabikoze n’ingaruka byagize ku muryango nyarwanda, ndetse n’umubare w’abo byagizeho ingaruka (victimes), ko rero atakongerera kubaganyirizwa igihano, cyane cyane ko atigeze yemera ibyaha aregwa ngo anabyicuze.

[77] Ku birebana no kuba BANDORA Charles yaragabanyirijwe ibihano hashingiwe ko atagoranye, uhagarariye Ubushinjacyaha avuga ko bitari gushingirwaho mu gihe yaburanye ahakana ibyaha aregwa, ku buryo byatumye urubanza rumara imyaka 2 ruburanishwa, ndetse ko hari n'ibyo atasobanuye nk'umuntu wabaye Perezida wa MRND muri Komini Ngenda, Perezida w'abacuruzi muri Komini Ngenda, ku buryo yari afite ijamba, kandi abacuruzi yari akuriye aribo batanze imipanga.

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[78] BANDORA Charles yahamwe n'icyaha cyo gucura umugambi wo gukora Jenoside, icyo kuba icyitso cy'abakoze jenoside n'icyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu. Urukiko rwasanze ibyo byaha bigize impurirane y'imbonezamugambi hakurikijwe ingingo ya 93 y'Itegeko Teka N0 21/77 ryo ku wa 18/8/1977 rishyiraho Igitabo cy'amategeko ahana cyakurikizwagwa igihe ibikorwa BANDORA aregwa byakorwaga iteganya ko iyo igikorwa kimwe ubwacyo gishobora kubara ibyaha byinshi uwagikoze ahanishwa igihano kiremereye giteganyirizwa kimwe muri ibyo byaha.

[79] Ingingo ya 9 y'itegeko Ngenga No 13/2008 ryo ku wa 19/05/2008 rihindura kandi ryuzuzwa Itegeko Ngenga n° 16/2004 ryo ku wa 19/06/2004 rigena imiterere, imikorere n'ububasha by'Inkiko Gacaca iteganya ko: “ Hakurikijwe ibikorwa bigaragaza uruhare rwe mu gukora ibyaha biteganywa n'ingingo ya mbere y'Itegeko Ngenga n° 16/2004 ryo ku wa 19/06/2004 rigena imiterere, ububasha n' imikorere by'inkiko Gacaca zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya jenoside n'ibindi byaha byibasiye inyokomuntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'ya 31 Ukuboza 1994 nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ushinjwa ashobora gushyirwa mu nzego zikurikira: - Urwego rwa mbere: 1° umuntu wakoze ibyaha cyangwa ibikorwa by'ubufatanyacyaha bimushyira mu bacuze cyangwa bateguye umugambi wa jenoside cyangwa ibindi byaha byibasiye inyokomuntu, hamwe n'ibyo by'itegeko; [.....] 3° umuntu wakoze ibyaha cyangwa ibikorwa by'ubufatanyacyaha bimushyira mu bashishikarije abandi umugambi wa jenoside, abagenzuye n'abayoboye jenoside cyangwa ibindi byaha byibasiye inyokomuntu, hamwe n'ibyo by'itegeko; [...] 4° umuntu wari mu nzego z'ubuyobozi ku rwego rwa Superefegitura n'urwa Komini: mu nzego z'ubutegetsi bwa Leta, mu mashyamba ya politiki, mu Gisirikare muri Jandarumori, muri Polisi ya Komini, mu madini cyangwa mu mi twe yi twaraga gisirikari ku buryo butemewe n'amategeko, akaba yarakoze ibyaha bya jenoside cyangwa ibindi byibasiye inyokomuntu cyangwa akoshya abandi kubikora, hamwe n'ibyo by'itegeko [...]“

[80] Nkuko biteganywa n'ingingo ya 17 y'itegeko Ngenga No 13/2008 ryo ku wa 19/05/2008 rivugwa mu gika kibanziriza iki, abari mu rwego rwa mbere bahanishwa igifungo cya burundu y'umwihariko. Ingingo ya 115, iya 121 n'ya 132 z'itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga igihe hacibwaga urubanza rujuririrwa, ziteganywa igihano cy'igifungo cya burundu y'umwihariko kuri buri cyaha cyavuzwe mu bihama BANDORA Charles. Ingingo ya 5 bis y'Itegeko Ngenga No 08/2013/OL ryo kuwa 16/06/2013 rihindura kandi ryuzuzwa Itegeko Ngenga No 31/2007 ryo kuwa 25/04/2007 rikuraho igihano cyo kwicwa nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko uwahamwe n'icyaha mu rubanza rwimuriwe mu Rwanda ruvuye mu Rukiko Mpanabyaha rwashyirirweho u

Rwanda cyangwa mu kindi gihugu¹¹, adashobora guhanishwa igifungo cya burundu cy'umwihariko. Urukiko rurasanga hakurikijwe ibiteganywa n'iri Tegeko, igihano kijyanye n'ibyaha byahamye BANDORA Charles ari igifungo cya burundu.

[81] Ingingo ya 78 y'Itegeko Ngenga no 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakoreshwaga igihe hacibwaga urubanza rujurirwa iteganya ko iyo hari impamvu zoroshya uburemere bw'icyaha, ibihano bigabanywa ku buryo [...] ° igihano cyo gufungwa burundu cyangwa cya burundu y'umwihariko gisimbuzwa igihano cy'igifungo kitari muni y'imyaka icumi (10). Urukiko rw'Ikirenga rurasanga kuba BANDORA yarahanishijwe igifungo cy'imyaka 30 aho kuba igifungo cya burundu biri mu mbibi z'igihano giteganywa n'itegeko mu gihe urukiko rwasanze hari impamvu nyoroshyacyaha kuwari guhanishwa igifungo cya burundu. Iyo impamvu nyoroshyacyaha zagagarajwe, Urukiko ntirutegetswe gutanga igihano gito (minimum) ahubwo ruherye ku mpamvu nyoroshyacyaha rwagaragaje rugena igihano kigendanye nazo kidashobora kujya muni y'igihano itegeko riteganya.

[82] Hagendewe ku mpamvu nyoroshyacyaha Urukiko Rukuru rwashingiyeho zo kuba BANDORA yaraburanye ataruhanyije no kuba nta bindi byaha yigeze akurikiranwaho, uru Rukiko rurasanga izo mpamvu rwashingiyeho zijyanye n'igabanya ry'igihano rwatanze, bityo akaba atakongera kugabanyirizwa nkuko abisaba, cyane cyane ko atagaragaza indi mpamvu nyoroshyacyaha yirengagijwe, ikaba yashingirwaho yongeraga kugabanyirizwa igihano.

[83] Urukiko rushingiye ku bisobanuro bitanzwe mu bika bibanziriza iki, rurasanga impamvu y'ubujurire yatanzwe na BANDORA irebana no kuba atarahawe uburenganzira bwose amategeko ateganya ku birebana n'impamvu nyoroshyacyaha nta shingiro ifite, igifungo cy'imyaka 30 yahanishijwe kikaba kitagabanywa.

B. Ubujurire bw'Ubushinjacyaha

B.1. Kumenya niba BANDORA Charles yaragabanyirijwe igihano hashingiwe ku mpamvu nyoroshyacyaha zidakwiriye

[84] Uhagarariye Ubushinjacyaha avuga ko bajuriye kubera impamvu imwe irebana no kuba BANDORA Charles Urukiko rwaramugabanyirije ibihano rukamugenera igihano gito rushingiye ku mpamvu nyoroshyacyaha irebana no kuba ataragoranye kuva yatangira kuburana kandi akaba atarigeze akatirwa bizwi. Avuga ko iyi mpamvu itagombaga gushingirwaho mu kumugabanyiriza ibihano nkaho yemera ibyaha aregwa, kandi mu nzego zose no mu Rukiko yarahakanye ibyaha byose aregwa, ku buryo byatumye urubanza rumara imyaka ibiri (2) ruburanishwa.

[85] Avuga ko ahubwo Urukiko rwirengagije impamvu nkomezacyaha Ubushinjacyaha bwagaragaje nko kuba ibyaha yakozwe bifite uburemere kubera uburyo yabikoze n'ingaruka byagize mu muryango nyarwanda, ndetse n'umubare wabo byagizeho ingaruka (victimes), kuko muri Komini Ngenda hishwe abatutsi benshi kandi abigizemo uruhare rukomeye.

[86] Avuga kandi ko mu mpamvu nkomezacyaha hatagombaga kwirengagizwa ubushobozi yari afite mu gihe cya jenocide (influence) kuko yari Perezida w'abacuruzi, visi Perezida wa MRND, ku buryo yakoresheje ubwo bushobozi akangurira abantu gukora jenocide ndetse

¹¹ BANDORA Charles yaje kuburanira mu Rwanda yoherejwe n'inzego z'ubutabera bw'Igihugu cya Norway

bakabyitabira kubera igitinyiro, umwanya yari afite kimwe n'amafaranga yari afite, ndetse nawe ubwe akaba yaragize ibikorwa bibi akora ku giti cye, ibyo byose bikaba bigaragaza uburemere n'impamvu nkomezabyaha ku byaha aregwa.

[87] Akomeza avuga ko impamvu nk'izo zagiye zifatwa nk'izikomeza icyaha mu manza zaciwe n'Urukiko Mpuzamahanga rwashyiriweho u Rwanda rukorera Arusha (ICTR) ndetse no mu manza zaciwe na ICTY, atanga urugero nk'urubanza N° ICTR – 05 – 88 – A hagati y'Ubushinjacyaha na KALIMANZIRA Callixte, ndetse no mu rubanza N° ICTR – 97 – 36A – A rwa MUNYAKAZI Yussuf n'Ubushinjacyaha, ko izo manza zakwifashishwa muri uru rubanza mu kugena impamvu nkomezabyaha (circonstances aggravantes) BANDORA Charles aregwa. Bityo, igihano cy'imyaka mirongo itatu (30) BANDORA Charles yahawe kikaba cyahinduka agahanishwa igifungo cya burundu.

[88] BANDORA Charles n'abamwunganira bireguye kuri iyo mpamvu y'ubujurire bavuga ko nta shingiro ifite kuko ibyo urukiko rwemeje bishingiye ku ngingo ya 76 y'Igitabo cy'amategeko ahana, ko ukwemera icyaha kuvugwa n'Ubushinjacyaha, ataricyo cyonyine gisobanura ko BANDORA Charles yaburanye atagoranye, ahubwo ko kuba yaremeye kuburana, akanitwara neza imbere y'urukiko hagereranyijwe n'izindi manza, urubanza rwe rukihuta, byongeye akaba ari bwo bwa mbere akatiwe n'inkiko, ari impamvu zihagije kugira ngo agabanyirizwe igihano. Naho ku birebana n'imanza za ICTR na ICTY Ubushinjacyaha bwatanze nk'icyitegererezo, bavuga ko zitashingirwaho kuko ntaho zihuriye n'uru rubanza rwa BANDORA Charles hashingiwe ku bisobanuro izo nkiko zagiye zitanga, ndetse ko izo manza zitasimbura amategeko y'u Rwanda. Ku birebana n'ubushobozi BANDORA Charles yari afite, bavuga ko atari akiri Perezida wa MRND ahubwo ko yari Visi Perezida ku buryo izo mbaraga ntaho yari kuzikura kuko Perezida ariwe wafataga ibyemezo no gutegura inama, kandi ko atari kuba afite ubushobozi Ubushinjacyaha bumuvugaho ngo amaduka ye asahurwe.

UKO URUKIKO RUBIBONA

[89] Ingingo ya 76 y'Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko: "Umucamanza ubwe aha agaciro impamvu nyoroshyacyaha, ari izakibanjirije, ari izagiherekeje cyangwa izagikurikiye. Kwemeza impamvu zoroshya uburemere bw'icyaha bigomba gusobanurwa".

[90] Nkuko byasobanuwe hejuru, BANDORA Charles yahamwe n'icyaha cyo gucura umugambi wo gukora jenocide¹², icyo kuba icyitso cy'abakoze jenocide n'icyo kuba icyitso cy'abakoze icyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu. Igihano cy'igifungo cya burundu nicyo gihanishwa ibyaha byamuhamye. Ku mpamvu Urukiko Rukuru rwasobanuye zo kuba yaraburanye atagoranye agatuma iburanisha ry'urubanza ryihuta no kuba atarigeze akatirwa n'inkiko ku buryo buzwi, rwamugabanyirije igihano, rumuhanisha igifungo cy'imyaka cy'imyaka 30.

[91] Impamvu nyoroshyacyaha zigenwa n'urukiko mu bushishozi bwarwo, ariko impamvu nkomezacyaha zo ziba ziteganywa n'itegeko, cyangwa se Ubushinjacyaha bugatanga ibimenyetso bigaragaza ku buryo budashidikanywaho impamvu uwahamwe n'icyaha agomba guhabwa igihano

¹² Urukiko Rukuru rwari rwakise icyaha cy'ubwumvikane bugamije gukora jenocide

kinini. Nibyo koko, ibyaha byahamye BANDORA Charles bifite uburemere kandi byagize n'ingaruka zikomeye mu muryango nyarwanda. Kuba yarahamwe n'ibi byaha, ntibihagije kugirango bibe impamvu nkomezacyaha zituma igihano yahanishijwe kiyongera kuko Ubushinjacyaha butagaragaza ko yabikoranye urwango n'ubugome birenze iby'abandi bakoze ibyo byaha mu gace byakorewemo ko ku RUHUHA no mu nkengero zaho.

[92] Uyu murongo ninawo wafashwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa Callixte KALIMANZIRA Urukiko rwabivuze muri aya magambo: “The Chamber has wide discretion in determining what constitutes mitigating and aggravating circumstances and the weight to be accorded thereto. While aggravating circumstances need to be proven beyond reasonable doubt, mitigating circumstances need only be established on a “balance of probabilities”. Proof of mitigating circumstances does not automatically entitle the accused to a “credit” in the determination of the sentence; it simply requires the Trial Chamber to consider such mitigating circumstances in its final determination. [...] However, the Chamber considers that Kalimanzira’s actions did not evidence any particular zeal or sadism. He did not personally kill anyone and only remained at the sites for a brief period¹³[...]”.

[93] BANDORA Charles yari Perezida w'abacuruzi ku Ruhuha, akaba Visi Perezida wa MRND muri Komini Ngenda, ndetse akaba n'umwe mu bacuruzi bo ku Ruhuha. Ibyo byatumye agaragara nk'ufite igitinyiro mu baturage, ndetse akagira umwanya ahabwa n'abayobozi ba gisiviri n'abagisirikare bo muri ako gace uri hejuru y'abandi baturage. Ibi bigaragazwa no kuba hari inama yabereye mu mazu ye ku Ruhuha ku itariki ya 7/04/1994 ikitabirwa n'umuyobozi wa Komini ndetse n'awayoboraga abasirikare muri ako gace no kugendana n'abasirikare. icyo gitinyiro cyiri mu byamufashije gukora ibyaha yahamijwe n'Urukiko. Uru Rukiko rurasanga igitinyiro cy'uregwa (influence) mu bandi baturage kiri mu byashingirwaho mu kumugenera ibihano biremereye mu gihe ibyaha byamuhamye yabikoze aricyo yishingikirije. Ibi ninako byemejwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, mu rubanza rwa RUKUNDO Emmanuel (ICTR-2001-70-A)¹⁴ aho rwagize ruti: “ The Appeals Chamber recalls that it is settled jurisprudence of the Tribunal that the abuse of a position of influence and authority in society can be taken into account as an aggravating factor in sentencing“.

[94] Uru Rukiko rurasanga icyo gitinyiro cya BANDORA ari kimwe mu byashingirwaho hagenwa igihano cy'igifungo cya burundu, arinacyo kinini gishoboka kuri we hangendewe ku byaha byamuhamye no kuba ari mu baburana baturutse hanze. Ariko, ibyo ntibibuza ko agabanyirizwa igihano nkuko byakozwe hashingiwe ku mpamvu nyoroshyacyaha.

[95] Ku birebana n'impamvu yo kuburana atagoranye, Ubushinjacyaha busaba ko itahabwa agaciro kuko atigeze yemera icyaha, Urukiko rw'Ikirenga rurasanga kwemera icyaha bishobora kuba imwe mu mpamvu nyoroshyacyaha ariko siyo yonyine. Urukiko mu guca urubanza rushobora gushingira ku zindi mpamvu nyoroshyacya zidafite aho zihuriye no kwemera icyaha, ntibibe ikosa. N'uru Rukiko, rwemeranywa n'Urukiko Rukuru ku mpamvu rwashingiyeho rugabanyiriza BANDORA Charles igihano kikava ku gifungo cya burundu kikaba igifungo cy'imyaka 30.

¹³ International Criminal Tribunal for Rwanda, The Prosecutor V. Kalimanzira Callixte (Case No. ICTR-05-88-T), para. 748- 751

¹⁴ United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, Rukundo Emmanuel v. Prosecutor (ICTR-2001-70-A) para. 250, 20/10/2010

[96] Iby'ubushinjacyaha busaba ko impamvu nyoroshyacyaha zashingiweho zivaho, byahabwa agaciro aruko bugaragaje ikosa ryakozwe n'Urukiko rwaciye urubanza rujuririrwa. Ibi kandi ninako byemejwe n'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu rubanza rwa SERUSHAGO Omar (ICTR-98-39-A). Urwo rukiko rwabivuze muri aya magambo: “[22] Under the Statute and the Rules of the Tribunal, a Trial Chamber is required as a matter of law to take account of mitigating circumstances. But the question of whether a Trial Chamber gave due weight to any mitigating circumstances is a question of fact. In putting forward this question as a ground of appeal, the Appellant must discharge two burdens. He must show that the Trial Chamber did indeed commit the error, and, if it did, he must go on to show that the error resulted in a miscarriage of justice. [...]”¹⁵. Ibi kandi ni nako byemejwe mu rubanza rwa SIMBA Aloys¹⁶ n'urwa BIKINDI Simon¹⁷.

[97] Urukiko rw'Ikirenga rushingiye ku bisobanuro byatanzwe mu bika byo hejuru, rurasanga muri rusange impamvu zatanze na BANDORA Charles ajurira nta shingiro zifite. Ndetse n'impamvu imwe yatanze n'ubushinjacyaha bujura nta shingiro ifite. Ku bw'ibyo, rwemeje ko hagumaho imikirize y'urubanza N° RP 0007/13/HCCI rwaciye n'Urukiko Rukuru, Urugereko Rwihariye Rushinzwe kuburanisha ibyaha byo ku Rwego Mpuzamahanga n'ibyaha byambuka imbibi kuwa 15/05/2015, uretse ku nyito y'icyaha uru rukiko rwemeje ko ari icyaha cyo gucira umugambi wo gukora jenocide nkuko yakirezwe aho kuba icyaha cy'ubwumvikane bugamije gukora jenocide.

III. ICYEMEZO CY'URUKIKO

[98] Rwemeje ko ubujurire bwa BANDORA Charles nta shingiro bufite;

[99] Rwemeje ko ubujurire bw'Ubushinjacyaha nta shingiro bufite;

[100] Rwemeje ko hagumyeho imikirize y'urubanza RP 0007/13/HCCI/KIG rwaciye ku wa 15/5/2015;

¹⁵ United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, SERUSHAGO Omar (ICTR-98-39-A), Para. 22 SERUSHAGO Omar was sentenced to 15 years' imprisonment by the Trial Chamber on 5th February 1999, on 14 the February 2000, the Appeals Chamber confirmed the sentence

¹⁶ United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, SIMBA Aloys v. Prosecutor (ICTR-01-76), para 328 “The Appeals Chamber recalls that neither the Statute nor the Rules exhaustively define the factors which may be considered as mitigating factors.[1] Consequently, under the jurisprudence of this Tribunal, “what constitutes a mitigating circumstance is a matter for the Trial Chamber to determine in the exercise of its discretion.”[2] The burden of proof which must be met by an accused with regard to mitigating circumstances is not, as with aggravating circumstances, proof beyond reasonable doubt,[3] but proof on the balance of probabilities – the circumstance in question must exist or have existed “more probably than not”. [4] Once a Trial Chamber determines that certain evidence constitutes a mitigating circumstance, the decision as to the weight to be accorded to that mitigating circumstance also lies within the wide discretion afforded to the Trial Chamber at sentencing”.

¹⁷ United Nations International Criminal Tribunal for Rwanda, Appeals Chamber, Bikindi v. Prosecutor, (ICTR-01-72-A) Para. 158 : “The Appeals Chamber reiterates that in assessing the individual circumstances of the accused, the Trial Chamber shall consider aggravating and mitigating circumstances. The Appeals Chamber recalls that neither the Statute nor the Rules exhaustively define the factors which may be considered in mitigation. Rather, what constitutes a mitigating circumstance is a matter for the Trial Chamber to determine in the exercise of its discretion. The Trial Chamber is endowed with a considerable degree of discretion in making this determination, as well as in deciding how much weight, if any, to be accorded to the mitigating circumstances identified”

[101] Rwemeje ko BANDORA ahamwa n'ibyaha bikurikira:

- gucura umugambi wo gukora jenocide;
- kuba icyitso cy'abakoze jenocide;
- kuba icyitso mu cyaha cyo kurimbura nk'icyaha cyibasiye inyokomuntu.

[102] Rwemeje ko nta gihindutse ku gihano cyatanzwe cy'igifungo cy'imyaka 30,

[103] Rutegetse ko amagarama y'uru rubanza aherera mu Isanduku ya Leta kuko uregwa afunze.