URUKIKO RUKURU URUGEREKO RWIHARIYE RUBURANISHA IBYAHA MPUZAMAHANGA N'IBYAHA BYAMBUKA IMBIBI RURI I NYANZA KU CYICARO CYARWO RUKIJIJE NONE KU WA 15/12/2021 URUBANZA Nº RP 00030/2019/HC/HCCIC KU RWEGO RWA MBERE MU BURYO BUKURIKIRA :

HABURANA:

UREGA:

UBUSHINJACYAHA buhagarariwe n'Abashinjacyaha ku rwego rw'Igihugu HARINDINTWARI Come na MUKUNZI Faustin.

ABAREGWA:

1. NKAKA Ignace alias La Forge Fils Bazeye mwene Bazeye Dominique na Gakecuru alias Nyirazikunze, wavutse mu mwaka wa 1966, avukira mu Mudugudu wa Birembo, Akagari ka Birembo, Umurenge wa Nyabihu, Akarere ka Rubavu, Intara y' Uburengerazuba, umunyarwanda, ubarizwa muri Repubulika Iharanira Demokarasi ya Congo (RDC), wunganirwa na Me Milton NKUBA MUNYANDATWA.

2. NSEKANABO Jean Pierre alias Kamara Abega mwene Bansoba Ruhanamirindi Jean na Nyiramagambo, wavutse mu mwaka wa 1973, avukira mu cyahoze ari Komini Rwerere, Segiteri yahoze yitwa Nyarushumba, umunyarwanda ubarizwa muri Repubulika Iharanira Demokarasi ya Congo (RDC), wunganirwa na Me HABIMFURA Elias.

IBYAHA BAREGWA:

- Kuri NKAKA Ignace alias La Forge Fils Bazeye na NSEKANABO Jean Pierre alias Kamara Abega:

1. Ubugambanyi, Icyaha giteganywa kandi kigahanishwa ingingo ya 446 [3] y'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana n'ingingo ya 191 [3] y'Itegeko nº 68/2018 riteganya ibyaha n'ibihano muri rusange.

2. Kurema umutwe utemewe cyangwa kuwujyamo, icyaha giteganywa kandi kigahanishwa ingingo ya 459 y'Itegeko Ngenga nº 02/05/2012 rishyiraho igitabo cy'amategeko ahana n'ingingo ya 200 y'Itegeko nº 68/2018 riteganya ibyaha n'ibihano muri rusange.

3. Kwica abantu no kugaba ibitero ku baturage b'abasivile cyangwa ku mitungo yabo, uzi neza ko bazayigwamo, bazahakomerekera cyangwa imitungo yabo ikahangirikira nk'icyaha cyibasiye inyokomuntu n'icyaha cy'intambara giteganywa kandi kigahanishwa ingingo ya 120 [1], 121 [1] haseguriwe ibiteganywa mu itegeko nº 68/2018 ryo kuwa 30/06/2018 riteganya ibyaha n'ibihano muri rusange mu ngingo za 123 [1, 9], 124 [1] na 125 [1] z' Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana n' ingingo za 94 [1],95 [1], 96 [1], 97 [1] na 98 [1] z'Itegeko nº 68/2018 ryo ku wa 30/06/2018 riteganya ibyaha n'ibihano muri rusange.

4. Kugirira nabi ubutegetsi buriho, icyaha giteganywa kandi kigahanishwa ingingo ya 461 y' Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana n'ingingo ya 202 y'Itegeko nº 68/2018 ryo ku wa 30/06/2018 riteganya ibyaha n'ibihano muri rusange.

5. Kuba mu ishyirahamwe ry'iterabwoba, icyaha giteganywa kandi kigahanishwa ingingo ya 503 y' Itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy' amategeko ahana n'ingingo ya 18 na 19 z'Itegeko nº 46/2018 ryo ku wa 13/08/2018 ryerekeye kurwanya iterabwoba.

6. Gukora iterabwoba ku nyungu za politiki, icyaha giteganywa kandi kigahanishwa ingingo ya 524 y' Itegeko Ngenga No 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy' amategeko ahana n'ingingo ya 33 y'itegeko nº 46/2018 ryo ku wa 13/08/2018 ryerekeye kurwanya iterabwoba ihana iterabwoba ku nyungu za politiki.

- Kuri NKAKA Ignace alias La Forge Fils Bazeye:

7. Gukwiza amakuru atariyo cyangwa icengezamatwara bigamije kwangisha Leta y' u Rwanda mu bihugu by'amahanga, icyaha giteganywa kandi kigahanishwa ingingo ya 451 y'Itegeko Ngenga nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy' amategeko ahana n'ingingo ya 194 y' itegeko nº 68/2018 ryo ku wa 30/06/2018 riteganya ibyaha n'ibihano muri rusange.

I. IMITERERE Y'URUBANZA

[1]. Kuva ku wa 8 Mutarama 1998 kugeza ku wa 20 Kamena 1998, abahoze ari abasirikare b'u Rwanda bari barahungiye muri Repubulika Iharanira Demokarasi ya Congo (RDC) bibumbiye mu mutwe wa PALIR[1]/ALIR[2], bagiye bagaba ibitero binyuranye mu Ntara y'Amajyaruguru (mu cyahoze ari Perefegitura za Ruhengeri, Byumba n'igice cya Kigali Ngali) n'iy'Uburengerazuba (mu cyahoze ari Perefegitura ya Gisenyi, Kibuye na Cyangugu). Nyuma uwo mutwe waje guhinduka FDLR[3], maze mu mwaka wa

[1] Peuple en action pour la libération du Rwanda.
[2] Armée de libération du Rwanda.
[3] Forces démocratiques pour la libération du Rwanda.

2012 na nyuma y'aho bagaba ibindi bitero mu Mujyi wa Kigali n'ahandi mu Gihugu.

[2]. Mu mwaka wa 1997, NKAKA Ignace yagiye muri PALIR ashingwa itangazamakuru, bigeze mu mwaka 2018 agirwa Komiseri ushinzwe amakuru n'umuvugizi wa FDLR. NSEKANABO Jean Pierre we yinjiye muri PALIR mu mwaka 1998, akomeza kuba umusirikare wa FDLR kugeza ageze ku ipeti rya Lt. Koloneli anashinzwe n'iperereza.

[3]. Ku wa 15/12/2018, ubwo bari bavuye mu butumwa bwa FDLR mu gihugu cya Uganda aho bari bagiye kugirana biganiro by'ubufatanye n'undi mutwe urwanya Leta y'u Rwanda wa RNC[4] ukorera muri icyo gihugu, baje gufatwa bashyikirizwa inzego z'ubutabera baregwa ibyaha bitandukanye bifitanye isano n'iterabwoba, ubugambanyi no kugirira nabi ubutegetsi buriho.

[4]. Abaregwa bemeye ibikorwa bimwe mu bigize ibyaha baregwa, NSEKANABO Jean Pierre alias Abega Kamara avuga ko yemera icyaha cy'ubugambanyi n'icyo kuba mu mutwe utemewe wa FDLR, NKAKA Ignace we akaba yemera ko yinjiye muri FDLR akayibera umunyamuryango, ariko nko atigeze aba umusirikare wa FDLR, ko nta n'uruhare yagize mu bitero cyangwa ubwicanyi aregwa.

[5]. Muri uru rubanza hasuzumwe ibibazo bikurikira:

- Kumenya niba abaregwa baryozwa nk'abayobozi cyangwa nka gatozi ibyaha byo kwica abantu no kugaba ibitero ku baturage b'abasivile cyangwa ku mitungo yabo nk'ibigize icyaha cyibasiye inyokomuntu n'icyaha cy'intambara byakozwe n'abarwanyi ba FDLR mu cyiswe intambara y'abacengezi na nyuma yaho, no kumenya niba baryozwa ibikorwa by'iterabwoba byakozwe muri 2012 na nyuma yaho.

[4] Rwanda National Congress.

- Kumenya niba kuba abaregwa bari mu mutwe wa FDLR bigize icyaha by'ubugambanyi, icyo irema ry'umutwe w'ingabo utemewe, icyo kuba mu ishyirahamwe ry'iterabwoba, n'icyo kugirira nabi ubutegetsi buriho.

- Kumenya niba ibyo NKAKA Ignace alias la Forge Fils Bazeyi yatangaje nka Komiseri ushinzwe amakuru akaba n'umuvugizi wa FDLR bigize icyaha cyo gukwiza impuha zigamije kwangisha Leta y'u Rwanda mu bihugu by'amahanga.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

II.1. *Kumenya niba abaregwa baryozwa nk'abayobozi cyangwa nka gatozi ibyaha byo kwica abantu no kugaba ibitero ku baturage b'abasivile cyangwa ku mitungo yabo nk'ibigize icyaha cyibasiye inyokomuntu n'icyaha cy'intambara byakozwe n'abarwanyi ba FDLR mu cyiswe intambara y'abacengezi na nyuma yaho, no kumenya niba baryozwa ibikorwa by'iterabwoba byakozwe muri 2012 na nyuma yaho*.

A. Imiburanire y'Ubushinjacyaha

[6]. Ubushinjacyaha bwareze NKAKA Ignace na NSEKANABO Jean Pierre ibyaha byo kwica abantu no kugaba ibitero ku baturage b'abasivili cyangwa ku mitungo yabo, nk'icyaha cyibasiye inyokomuntu n'icyaha cy'intambara byakozwe n'abarwanyi ba FDLR kuva mu ntangiriro z'umwaka wa 1998 na nyuma yaho. Bunabarega icyaha cyo gukora ibikorwa by'iterabwoba ku nyungu za politiki byakozwe n'abarwanyi b'umutwe wa FDLR guhera mu mwaka wa 2012. Busobanura ko umutwe wa FDLR wari ufite inzego zinyuranye zirimo komite nyobozi (Comité directeur) na komite nshingwabikorwa (Comité Exécutif), ko hakurikijwe ibiteganywa n'ingingo ya 40 ya sitati ya FDLR, komite nyobozi yari ifite mu nshingano zayo kwemeza bimwe mu byifuzo by'ingabo, kugenzura no kwemeza ibikorwa byose byabaga byateguwe, gutanga amapeti y'abasirikare harimo no gushyiraho

abayobozi. Bunavuga ko ingingo ya 38 y'iyo sitati ariyo iteganya urwego rwa komite nshingwabikorwa ifite mu nshingano zayoo kureba imicungire ya buri munsi ya FDLR, gushyira mu bikorwa ibyemezo bya FDLR, kureba imicungire y'umutungo no kureba ishyirwa mu bikorwa ry'ibyemejwe, ko izo komite zombi zabaga zigizwe n'umubare w'abasirikare ungana n'umubare w'abasivile.

[7]. Bukomeza buvuga ko ibitero byose byagabwaga byategurwaga n'izi nzego zombi, zikanareba uburyo bishyirwa mu bikorwa, ko NKAKA Ignace winjiye muri PALIR - ALIR mu ntambara y'abacengezi, agashingwa iyamamaza matwara n'icengezamatwara mu binyamakuru byitwa "IBOHORE, INTASHYO, IJWI RYA RUBANDA, UMUCUNGUZI" n'ibindi, aba na Komiseri ndetse aba no muri izo Komite, ari n'umuvugizi wa FDLR ufitiwe icyizere gikomeye akaba yarafatiwe ku mupaka wa Bunagana avuye Uganda guhagararira umutwe wa FDLR mu mishyikirano na RNC, agomba kuryozwa nk'umuyobozi ibyaha byakozwe n'abarwanyi ba FDLR mu bitero uyu mutwe wagabye mu Rwanda.

[8]. Buvuga kandi ko NSEKANABO Jean Pierre nawe winjiye muri PALIR/ALIR mu ntangiriro za 1998, aba umusirikare kugeza uwo mutwe uhindutse umutwe w'iterabwoba wa FDLR, anaba mu bashinzwe iperereza agomba kuryozwa nk'umuyobozi ibyaha byakozwe n'abarwanyi ba FDLR mu bitero yagabye mu Rwanda hashingiwe ku byateganywaga n'amategeko yakurikizwaga igihe byakorwaga. Bityo, kuba NKAKA Ignace yari umuyobozi mu nzego za gisivile za FDLR, naho NSEKANABO Jean Pierre akaba mu nzego za gisirikare, bagomba kuryozwa ibikorwa byakozwe na FDLR kuko bitari gukorwa nk'abayobozi batabigizemo uruhare, batanabitangiye uburenganzira,

[9]. Bunavuga kandi ko abaregwa bakwiye gufatwa nk'abayobozi b'abateraga za gerenade, nk'izatewe ku isoko rya Kicukiro ku wa 13 na 14/9/2013, ko ibyo bikorwa byakozwe mu nyungu za Politiki kuko byakozwe hagenderewe kuburizamo amatora y'abadepite.

B. Imyiregurire y'abaregwa

[10]. NSEKANABO Jean Pierre na Me HABIMFURA Elias umwunganira bavuga komite nyobozi yabagamo abasivile n'abasirikare ari yo yafataga ibyemezo harimo no kugaba ibitero kandi ikaba yarigizwe n'abantu icumi (10) bashyirwagamo hagendewe ku burambe, we akaba yari nko ku rwego rwa mirongo itanu (50) ku buryo atari gutorerwa kuyijyamo. Bavuga ko mu gutera u Rwanda hari n'ubundi buryo bwakoreshwaga aho umuyobozi w'ingabo mu gace no ku rwego runaka yari yemerewe ku buryo buhoraho kugaba ibitero no kubitangira raporo, ko ibyo byemezwa na Usengimana Samuel alias Mutima wavuze ko abayobozi b'ingabo bari bafite ububasha bwo kugaba ibitero.

[11]. Bakomeza bavuga ko amategeko yose yatangwaga n'umuyobozi w'ingabo (commandant) ku buryo we nk'umujyanama nta bubasha bwo kubuza cyangwa gukora ibitero yari afite, ko n'urubanza rwa Major Bizimana wahamwe n'ibyaha byakoze n'abo yari ashinzwe kuyobora rushingirwaho n'Ubushinjacyaha, rutandukanye n'urwe kuko we yari umukozi wo muri biro n'umujyanama, akaba atarigeze aba umuyobozi w'ingabo nka Bizimana.

[12]. Bavuze kandi ko NSEKANABO Jean Pierre atigeze akurira urwego rw'iperereza ahubwo yari ofisiye mukuru wo mu biro kuko iperereza rya FDLR FOCA[5] ryari rikuriwe na Koloneli Mwenebantu nk'uko byemejwe n'umutangabuhamya witwa NSENGIMANA Habimana Leonce wagaragaje imirimo yari ashinzwe, ndetse hakaba n'abandi batangabuhamya bavuze inshingano z'ushinzwe iperereza ndetse ko hari n'undi wasobanuye uko ibitero byategurwaga. Bakomeza basobanura ko uburyo butandukanye bw'iperereza bwakorwaga n'inzego za gisirikare zitandukanye we atabagamo. Ko we icyo yakoraga nka ofisiye mukuru wo mu biro guhera mu mwaka wa 2016-2018 yakoraga incamake y'amakuru yavuye Birunga akayandika neza, ameze nk'umunyamabanga. Naho andi maperereza yacaga mu nzira zisanzwe z'uwahawe ubutumwa hagategurwa ibitero

[5] Forces combattantes Abacunguzi.

haherewe kuri aya makuru, ku buryo mu mwanya we mu biro by'iperereza nta burenganzira yari afite mu babitegura.

[13]. Bashoje bavuga ko nta basirikare NSEKANABO Jean Pierre yayoboye bakoze ibikorwa byakwitwa ibyaha mu Rwanda, kuko mu mwaka wa 2007 ari bwo yigeze kuyobora "*compagnie*" ariko nta gikorwa kigize icyaha bigeze bakora.

[14]. NKAKA Ignace na Me Nkuba Milton umwunganira bavuga ko hakurikijwe uko iburanisha ryagenze n'uko dosiye ibigaragaza hari ibyaha NKAKA Ignace yarezwe ataragombaga kubiregwa ku giti cye ahubwo abikurikiranyweho kubera umwanya w'ubuyobozi yari afite muri FDLR, kuko abantu bagiye bapfa mu duce dutandukanye tw'u Rwanda byakozwe n'abarwanyi ba FDLR, ko n'Ubushinjacyaha butagaragaza ko NKAKA Ignace yari afite ububasha bwihariye bwo gutanga amabwiriza ku ishami rya gisirikare.

[15]. Banavuga kandi ko NKAKA Ignace yinjiye muri komite nyobozi mu mwaka wa 2010 ibikorwa byose by'abacengezi byararangiye, kandi n'iyo uburyozwacyaha bwabaho butaba no ku bikorwa byakozwe NKAKA Ignace atarinjira mu bacengezi.

C. Uko urukiko rubibona

[16]. Urukiko rusanga ibikorwa Ubushinjacyaha burega NKAKA Ignace na NSEKANABO Jean Pierre bishingiye ku bitero abarwanyi ba FDLR bagabye ku baturage b'abasivile cyangwa ku mitungo yabo nk'ibigize icyaha cyibasiye inyokomuntu n'icyaha cy'intambara byakozwe n'abarwanyi ba FDLR kuva mu ntangiriro z'umwaka wa 1998 kugeza mu mpera za kamena 1998 ndetse n'ibikorwa byo kwica abaturage byakorewe mu Karere ka rubavu mu mwaka wa 2012. Bunabarega ibikorwa byo gutera gerenade ku isoko rya Kicukiro ku matariki ya 13 na 14/9/2013 na nyuma y'aho nk'ibigize icyaha cyo gukora iterabwoba ku nyungu za politiki na byo byakozwe n'abarwanyi b'uwo mutwe, ibyo ibikorwa byose bubibarega hashingiwe ku ihame ry'uburyozwacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora.

[17]. Rusanga harebwe igihe ibikorwa NKAKA Ignace na NSEKANABO Jean Pierre bakurikiranyweho byakorewe, ibyakozwe mu mwaka wa 1998 byarakozwe uburyozwacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora bwarateganywaga mu ngingo ya 86 igika cya 2 y'Amasezerano ya I y'inyongera yo kuwa 08 Kamena 1977 yemejwe n'u Rwanda ku wa 15 Ukwakira 1984 no ku Masezerano Mpuzamahanga y'i Genève yo kuwa 12 Kanama 1949 arebana n'amategeko mpuzamahanga agenga ibihe by'intambara yemejwe n'u Rwanda kuwa 05 Gicurasi 1964[6] arebana n' intambara zifite kamere mpuzamahanga. Rugasanga intambara yiswe iy'abacengezi itarebwa n'aya masezerano y'inyongera kuko yari intambara y'imbere mu gihugu.

[18]. Rusanga nanone ubu buryozwe bwarateganywaga mu ngingo ya 3 igika cya kabiri y'Itegeko-Ngenga nº 8/96 ryo kuwa 30/08/1996 rigena imitunganyirize y'ikurikirana ry'ibyaha bigize icyaha cy'itsembabwoko n'itsembatsemba cyangwa ibyaha byibasiye inyoko-muntu byakozwe kuva tariki ya mbere ukwakira 1990[7].

[19]. Rusanga rero hashingiwe kuri aya masezerano n'iri tegeko, NKAKA Ignace na NSEKANABO Jean Pierre batakurikiranwa ku byaha byakozwe mu ntambara yiswe iy'abacengezi hagati y'umwaka wa 1997 na 1998 hashingiwe ku buryozwacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora kandi icyo gihe ubu buryozwacyaha butari buteganyijwe mu mategeko y'u Rwanda.

[20]. Rusanga mu mwaka wa 2003, itegeko n⁰ 33 bis/2003 ryo kuwa 06/09/2003 rihana icyaha cya jenoside, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara mu ngingo yaryo ya 18 igika cya 3 ryarateganyaga ko kuba

[6] « Le fait qu'une infraction aux Conventions ou au présent Protocole a été commise par un subordonné n'exonère pas ses supérieurs de leur responsabilité pénale ou disciplinaire, selon le cas, s'ils savaient ou possédaient des informations leur permettant de conclure, dans les circonstances du moment, que ce subordonné commettait ou allait commettre une telle infraction, et s'ils n'ont pas pris toutes les mesures pratiquement possibles en leur pouvoir pour empêcher ou réprimer cette infraction ».

[7] « Iyi ngingo yateganyaga ko « kuba igikorwa icyo ari cyo cyose giteganyijwe na ryo cyarakozwe n'uyoborwa bitabuza umuyobozi we kuryozwa icyaha cyakozwe mu gihe yari azi cyangwa yagombaga kumenya ko uwo ategeko yari yiteguye gukora icyo cyaha cyangwa yagikoze, umutegeka we ntabe yarafashe ibyemezo bikwiye kugira ngo abakoze icyaha bahanwe cyangwa abuze icyo cyaha gukorwa kandi yari abishoboye. »

kimwe mu bikorwa biteganyijwe n'iri tegeko cyakozwe n'uyoborwa bitabuza umuyobozi we kukiryozwa mu gihe azi cyangwa yagombaga kumenya ko uwo ayobora yari yiteguye kugikora cyangwa yagikoze ntabe yarafashe ibyemezo bya ngombwa kandi bishyize mu gaciro kugira ngo abuze ko icyo cyaha gikorwa cyangwa ngo afatire ibyemezo uwagikoze kandi abimenyeshe inzego zibishinzwe.

[21]. Rusanga haba ibikorwa byakozwe mu mwaka wa 1998 uburyozwazacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora butarinjizwa mu mategeko y'u Rwanda haba no ku bikorwa abarwanyi ba FDLR bakoze ubu buryozwacyaha bwaramaze kwinjizwa mu mategeko y'u Rwanda NKAKA Ignace na NSEKANABO Jean Pierre batagomba kuryozwa ibikorwa by'abarwanyi ba FDLR, kuko uretse kugaragaza ko bari mu nzego zo hejuru za FDLR aho bari bafite inshingano zihariye nk'uko byasobanuwe hejuru, nta bimenyetso bifatika Ubushinjacyaha bwagaragaje ko ari bo bateguraga ibitero cyangwa bagategeka igabwa rya byo n'ikorwa ry'ibikorwa bihungabanya umutekano byakozwe n'abarwanyi ba FDLR/FOCA cyangwa ngo bugaragaze ububasha nyabwo kandi bufatika bari bafite bwo kubuza ibitero byateguwe kudakorwa, kubabyamagana no gusaba ko abarwanyi ababikoze babiryozwa.

[22]. Rusanga ukutaryozwa icyaha kwa NSENKANABO Jean Pierre na NKAKA Ignace gushimangirwa n'uburyo amategeko mpuzamahanga n'imanza zaciwe n'inkiko mpuzamahanga bisobanura uburyozacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora.

[23]. Sitati y'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho icyahaze ari Yugoslaviya, mu ngingo ya 7 igika cya 3 na Sitati y'Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda mu ngingo ya 6 igika cya 3[8] ziteganya uburyozwa bw'umuyobozi ku byaha byakozwe n'abo ayobora.

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[8] « Le fait que l'un quelconque des actes visés aux Articles 2 à 4 du présent Statut a été commis par un subordonné ne dégage pas son supérieur de sa responsabilité pénale s'il savait ou avait des raisons de savoir que le subordonné s'apprêtait à commettre cet acte ou l'avait fait et que le supérieur n'a pas pris les mesures nécessaires et raisonnables pour empêcher que ledit acte ne soit commis ou en punir les auteurs

[24]. Mu gusesengura izi ngingo mu manza zaciye, izi Nkiko Mpanabyaha Mpuzamahanga zagaragaje ibishingirwaho kugira ngo uregwa ahanwe hashingiwe ku buryozwacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora. Mu rubanza rwa BAGOSORA Theoneste na bagenzi be Urukiko Mpanabyabyaha Mpuzamahanga rwashyiriweho u Rwanda rwasanze igihe cyose uregwa akurikiranywe kubera ibyaha byakozwe n'abo ayobora, ikirego cy'Ubushinjacyaha kigomba kuba kigaragaza umwanya w'ubuyobozi uregwa yari afite; ibyaha byakozwe n'abo yayoboraga; imyitwarire y'uregwa igaragaza ko yamenye cyangwa yashoboraga kumenya ko ibyaha bigiye gukorwa cyangwa byamaze gukorwa n'abo ayobora cyangwa imyitwarire y'uregwa igaragaza ko atafashe ingamba za ngombwa ngo akumire ibyo byaha cyangwa se ahane ababikoze.[9]

[25]. Mu rubanza rwa SETAKO Euphrem hasobanuwe ko kugira ngo umuyobozi aryozwe ibyaha byakozwe n'abo yayoboraga, nk'uko biteganywa n'ingingo ya 6(3) ya Sitati ya TPIR Ubushinjacyaha bugomba kugaragaza ko uregwa n'uwakoze icyaha bari bahujwe n'isano y'umuyobozi n'uyoborwa, ko umuyobozi yari azi cyangwa yashoboraga kumenya ko icyaha kigiye gukorwa cyangwa se cyakozwe cyangwa no kuba umuyobozi atarafashe ingamba za ngombwa kugira ngo akumire icyaha cyangwa ahane uwagikoze.[10]

[26]. Izi Nkiko uretse kuba zaragaragaje ibishingirwaho mu buryozwacyaha bw'umuyobozi, zanasobanuye uko buri ngingo igize ibishingirwaho igomba kumvikana. Ku bijyanye n'isano y'umuyobozi n'uyoborwa, mu rubanza rwa Kordic na Cerkez, urukiko Mpanabyaha rwashyiriweho icyahoze ari Yugosilaviya rwasobanuye ko uregwa aryozwa ibyakozwe n'uwo ayobora iyo iyo sano iha umuyobozi ububasha bwo kugenzura ibikorwa by'abo ayobora[11]. Naho mu rubanza rwa Zejnil DELALIC, Zdravko MUCIC, Hazim DELIC na Esad LANDŽO rwiswe " Urubanza rwa Celebici" ("*Celebici Case*")

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[9]ICTR-98-41-A, Théoneste BAGOSORA and Anatole NSENGIYUMVA v. The PROSECUTOR, para. 191. 191, ICTR-99-46-A, The PROSECUTOR v. NTAGERURA Andre, BAGAMBIKI Emmanuel and IMANISHIMWE Samuel v. para.92, ICTR-00-56-A, NDINDILIYIMANA Augustin v. The PROSECUTOR, para. 235.

[10] ICTR -04-81- A, The PROSECUTION v SETAKO Ephrem, para. 269.

[11] IT-95-14/2-A, PROSECUTOR v. Dario KORDIC AND Mario CERKEZ, para. 840.

hasobanurwa ko agomba kuba afite ububasha nyabwo (*effective control)* ku bakoze ibyaha.[12]

[27]. Mu rubanza rwa NDINDIRIYIMANA rwaciwe n'urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda hasobanuwe ko ububasha nyabwo ari ubushobozi bufatika (*material ability*) bwo gukumira cyangwa guhana icyaha cyakozwe n'uyoborwa[13] kandi bikaba bireba abayobozi ku bw'itegeko n'abayobozi ku bw'ibikorwa (*de jure* and *de facto* superior), baba abasirikare cyangwa abasivile.[14]

[28]. Ku kijyanye n'ikigaragaza ububasha, mu rubanza rwa SETAKO Euphrem Urwo rukiko rwasobanuye ko ububasha nyabwo ari ukuba umuyobozi ashobora gutanga amabwiriza[15]; naho mu rubanza rwa Hadzihasanovic na Kubura hemeza ko ububasha bunagaragazwa n'ikigero abayoborwa bashoboraga kubahaho ubakuriye (the degree of surbodination).[16], ko ububasha umuyobozi yari afite bwo gufatira abo ayobora ibihano ari kimwe mu bikwiye gushingirwaho mu gusuzuma niba uregwa yari afite ububasha bwo gukumira icyaha cyangwa guhana abagikoze nk'uko byemejwe mu rubanza rwa NDAHIMANA Gregoire.[17]

[29]. Ku bijyanye no kumenya niba umuyobozi yari azi cyangwa yashoboraga kumenya ko ibyaha bigiye gukorwa cyangwa byakozwe hashingirwa ku bintu bibiri ari byo: umwanya w'ubuyobozi afite n'uburyo inzego z'ubuyobozi zubatse[18]. Rusanga no mu rubanza rwa Celebici hasobanurwa ko kuba bigaragara ko umuyobozi yashoboraga kumenya ko icyaha kigiye gukorwa cyangwa cyakozwe harebwe umwanya uregwa yariho igihe ibyaha byakorwaga.[19]

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[12] IT-96-21-A, The PROSECUTOR V. Zejnil DELALIC, Zdravko MUCIC (aka "PAVO"), Hazim DELIC and Esad LANDŽO (aka "ZENGA") ("Celebici Case"), paras. 196, 197.
[13] ICTR-00-56-A, The PROSECUTOR v. NDINDILIYIMANA Augustin, paras.55, 70.
[14] ICTR- 95-1A-A, The PROSECUTOR v. Ignace BAGILISHEMA, para. 50.
[15] ICTR -04-81- A, The PROSECUTION v SETAKO Ephrem, para. 272.
[16] IT-01-47-A The PROSECUTOR v. Hadzihasanovic and Kubura, para.203.
[17] ICTR-01-68-A, Grégoire NDAHIMANA v. The PROSECUTOR, para.54.
[18]IT-95-14-A, The PROSECUTOR v. TIHOMIR BLASKIC, para.57
[19] IT-95-14/2-A, The PROSECUTOR v. Dario KORDIC AND Mario CERKEZ, (Celebici case), para.239.

[30]. Ku bijyanye no kuba umuyobozi yaba ntacyo yakoze ngo akumire ikorwa ry'ibyaha cyangwa ahane ababikoze, mu rubanza rwa Krnojelac urukiko rwasanze umuyobozi adahanirwa icyaha uwo ayobora yakoze ahubwo ahanirwa ko nk'umuyobozi yateshutse ku nshingano ze zo kudakumira ibyaha cyangwa se ngo ahane ababikoze.[20] Bityo, nk'uko bigaragara mu rubanza rwa Oric[21] umuyobozi agomba kuba yari afite ububasha (*had control over*) ku bakoze ibyaha igihe byakorwaga cyangwa se ubwo hagombaga gufatwa ingamba zo guhana ababikoze.

[31]. Rusanga rero nk'uko byemejwe n'Urugereko rw'ubujurire mu rubanza rwa Oric, kuba umuntu ari ku rwego rw'ubuyobozi runaka bitavuze buri gihe ko afite igenzura ry'abari munsi ye, ari yo mpamvu Ubushinjacyaha buba bufite buri gihe inshingano yo kugaragaza ko umuyobozi afite ububasha nyakuri bwo kugenzura abari munsi ye.[22]

[32]. Rusanga harebwe ibyo NKAKA Ignace na NSEKANABO Jean Pierre baregwa, nta kimenyetso Ubushinjacyaha bugaragaza ko babaye mu bayoboye abarwanyi bagabye ibitero mu Rwanda bagakora ibikorwa bigize ibyaha ku buryo babiryozwa nk'abayobozi. Runasanga ahubwo icyo Ubushinjacyaha buvuga ari uko bakoreraga inshingano zabo mu nzego zo hejuru z'ubuyobozi bwa FDLR kandi ibi bidahagije ngo baryozwe ibyaha abo barwanyi bakoze mu gihe nta bubasha bufatika bugaragazwa bari bafite kuri bo no ku bikorwa bakoraga.

[33]. Rusanga ubwabyo kuba abaregwa bari mu nzego nkuru za FDLR no kuba bari mu mwanya wo kuba bagira amakuru bamenya arebana n'ibitero bigiye kugabwa cyangwa se ko hari ibyagabwe, bidagahagije kuko bigaragara ko nta bubasha nyabwo bufatika bari bafite bwo kubuza cyangwa guhana abakoze ibikorwa bigize icyaha byateguwe n'ababifitiye ububasha muri FDLR kandi babikora mu izina rya FDLR.

[34]. Ku bikorwa byo gutera ibisasu bigize icyaha cyo gukora iterabwoba ku nyungu za politiki abarwanyi ba FDLR bakoze kuva muri 2012, urukiko

[20] IT-97-25-A, The PROSECUTOR v. MILORAD KRNOJELAC, para.171.
[21] IT- 03-68-A, The PPROSECUTOR v. NASER Oric, para. 164
[22] Idem. Para. 92.

rusanga abaregwa batabikurikiranwaho hashingiwe ku buryozwacyaha bw'umuyobozi ku byaha byakozwe n'abo ayobora kubera ko ingingo ya 133 y'Itegeko Ngenga No 01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ubu buryo bw'uburyozacyaha ku cyaha cya jenoside, ku byaha byibasiye inyoko muntu no ku byaha by'intambara. Ikindi kandi hashingiwe ku ngingo ya 4 y'iryo tegeko, "amategeko ahana agomba gufatwa uko ateye, ko adashobora gukoreshwa ku buryo butandukira, ko n'inkiko zibujijwe guca imanza ku buryo bugenekereje".

[35]. Rusanga nanone ibyo Ubushinjacyaha buvuga ko abaregwa baryozwa ibyaha nk'abafatanyacyaha na byo nta shingiro bifite kuko Ubushinjacyaha buvuga ko nta bikorwa bigize ibyaha byibasiye inyokomuntu n'ibyaha by'intambara byakozwe mu ntambara yiswe iy'abacengezi ndetse n'icyaha cyo gukora iterabwoba ku nyungu za politiki cyakozwe kuva muri 2012 abaregwa bakoze ku giti cyabo. Bityo, hashingiwe ku bimaze gusobanurwa NKAKA ignace na NSEKANABO Jean Pierre badahamwa n'ibyaha byibasiye inyokomuntu, ibyaha by'intambara n'icyaha no gukora iterabwoba mu nyungu za politiki.

II. 2. *Kumenya niba kuba abaregwa bari mu mutwe wa FDLR bigize icyaha by'ubugambanyi, icyo irema ry'umutwe w'ingabo utemewe, icyo kuba mu ishyirahamwe ry'iterabwoba, n'icyo kugirira nabi ubutegetsi buriho*

A. Imiburanire y'Ubushinjacyaha

[36]. Ubushinjacyaha bwavuga ko mu bihe bitandukanye hagati ya 1997 na 1998 NKANKA Ignace na NSEKANABO Jean Pierre binjiye kandi baguma mu mutwe wa PALIR wari ufite umutwe w'ingabo wa ALIR waje guhinduka FDLR/FOCA, ko NKAKA Ignace yabaye umwe mu bagize komite nyobozi ari na Komiseri ushinzwe amakuru akaba n'umuvugizi wa FDLR bigaragazwa na sitati ya FDLR, izo nzego zikaba ziri mu nzego nkuru za FDLR zifata ibyemezo ku ngamba ziyobora FDLR zikanagena ibikorwa ndetse zikangenzura ishyirwa mu bikorwa byazo, ko NKAKA Ignace yanafashije

mw'iremwa ry'umutwe wa FDRL aho yifashishije ikinyamakuru "*Ijwi rya rubanda*" yari abereye umuyobozi, yatanze amatangazo n'ibiganiro abinyujije mw'itangazamakuru ashishikariza abandi kuwujyamo. Buvuga ko NSEKANABO Jean Pierre we yabaye muri komite nyobozi na komite nshingwabikorwa, anaba n'umusirikare ku nzego zinyuranye kugeza ubwo ashinzwe kuyobora urwego rw'iperereza (S2) afite ipeti rya Liyetona Koloneli.

[37]. Bukomeza buvuga ko abaregwa bagabye ibitero by'intambara kuri Leta y'u Rwanda guhera mu cyiswe intambara y'abacengezi kugeza ku bitero byatewemo gerenade mu bice bitandukanye by'Igihugu, ndetse no mu bitero shuma byakomeje kugabwa mu Rwanda kugeza mu mwaka wa 2018 ubwo bafatwaga. Buvuga ko bimwe muri ibi bikorwa bigamije guhungabanya umutekano birimo gerenade zatewe haba mu masoko, nk'irya Kicukiro cyangwa ahandi hantu hahurira abantu besnhi nk'ahategerwa imodoka n'ahandi, ko ibi bikorwa byibasiye abasivili ntavangura ry'ugamije kwicwa bikaba ari ibikorwa by'iterabwoba abaregwa bagizemo uruhare mu itegurwa ryabyo bifashishije imyanya y'ubuyobozi bari bafite muri FDLR.

[38]. Buvuga kandi ko umutwe wa FDLR ufite umutwe w'ingabo warwanyaga kandi ukaba ukirwanya Repubulika y'u Rwanda ukoresheje intwaro z'intambara, ko NKAKA Ignace ari kumwe na NSEKANABO Jean Pierre bagiye mu gihugu cya Uganda bahura n'intumwa za RNC aribo Ntwali Frank, Rashid, Tito ndetse na Mateke Philemon umuyobozi wo mu gihugu cya Uganda bazi neza ko uyu mutwe urwanya Leta y'u Rwanda witwaje intwaro kandi ko muri iyi nama FDLR na RNC bemeje ko bagiye gukorana mu kurwanya ubutegetsi bw'u Rwanda bafatwa bava muri izi nama z'ubugambanyi.

[39]. Bwavuga nanone ko ibimenyetso bushingiraho bubarega iki cyaha bigizwe n'imvugo zabo zo mu bugenzacyaha[23], mu Bushinjacyaha,[24] ubuhamya bw'ababashinja ndetse no kuba mu iburana ryabo mu Rukiko baremeye ko

[23] Inyandikomvugo ya Nkaka Ignace mu bugenzacyaha yo ku wa 02.04.2019 n'iyo ku wa 05.04.2019.
[24] Inyandikomvugo ya Nkaka Ignace mu bushinjacyaha yo ku wa 04.04.2020.

bagiye i Buganda guhura n’intumwa za RNC bemeranwa mu kurwanya ubutegetsi bw’u Rwanda.

B. Imyiregurire y’abaregwa

[40]. NSEKANABO Jean Pierre na Me HABIMFURA Elias umwunganira bavuga ko NSEKANABO Jean Pierre yinjira muri ALIR/PALIR atari azi ko ari umutwe w’iterabwoba ko n’ikimenyetso gishingirwaho ari raporo yakozwe na Leta zunze Ubumwe za Amerika (USA) mu mwaka 2005 kandi we yarinjiye muri gashyantare 1998, ndetse muri 2018 igihe yafatwga FDLR itari ikiri ku rutonde rw’imitwe y’iterabwoba rukorwa n’icyo gihugu, bityo ko NSEKANABO Jean Pierre atahanirwa kuba mu mutwe w’iterabwoba.

[41]. Banavuga ko NSEKANABO Jean Pierre yabaye mu mitwe PARIL/ALIR na FDLR/FOCA kuva muri 1998 abihatiwe kuko kwanga kujyamo yari kubizira, ko nubwo NSEKANABO Jean Pierre yabaye umusirikare muri uyu mutwe, nta bitero yagiyemo kuko yabaga ari mu buyobozi utajya ku rugamba, ko icyo yemera ari icyaha cy’ubugambanyi no kuba yarabaye umusirikare mu mutwe wari ugamije guhindura ubutegetsi bwa Leta y’u Rwanda hakoreshejwe intwaro.

[42]. NKAKA Ignace na Me Nkuba Milton umwunganira bo bavuga ko ibyo kuba NKAKA Ignace yarabaye mu ishyirahamwe rya FDRL abyemera kandi abisabira imbabazi, ariko babihuje n’amategeko basanga bitagize icyaha cyane cyane harebwe umurongo Leta y’u rwanda yafashe ababaye muri FDLR bose bagatahuka atari ko bose bakurikiranywe kandi ko hari n’abayibayemo ari n’abayobozi bo hejuru baje bagahabwa imirimo itandukanye, NKAKA rero akaba nta mwihariko afite ku buryo nawe atajya mu buzima busanzwe nk’abandi, kuko nubwo yafashwe ari mu mutwe utemewe n’amategeko ufite intwaro ku butaka bwa Repubulika Iharanira

Demokarasi ya Congo[25], yabaye muri FDRL nk'umunyamuryango ariko ko atari mu bayishinze kuko yayisanzeho kandi ko atari azi ko ari umutwe w'iterabwoba.

[43]. Basobanuye kandi ko icyaha cy'ubugambanyi gishingiye kuba NKAKA Ignace yarabaye muri FDLR atagihanirwa kuko atigeze aba umusirikare ngo arwanye Leta akoreshe intwaro, ko ahubwo nk'umunyapolitiki yarwanyaga Leta kumugaragaro bitanyuze mu ntambara.

C. Uko Urukiko rubibona.

- *Ku bijyanye n'ibyaha by'ubugambanyi n'irema ry'umutwe w'ingabo utemewe*

[44]. Ingingo ya 446 agace ka 3^0 y'Itegeko Ngenga No. 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko "umunyarwanda wese urwanya Repubulika y'u Rwanda akoresheje intwaro z'intambara aba akoze icyaha cy'ubugambanyi kandi ahanishwa igifungo kuva ku myaka makumyabiri (20) kugeza ku myaka makumyabiri n'itanu (25); iki cyaha kinateganywa no mu ngingo ya 191 agace ka 3 y'itegeko nº68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

[45]. Ingingo ya 459 igika cya 1 y'Itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko « umuntu wese urema umutwe w'ingabo cyangwa akabisembura cyangwa akagirana amasezerano na zo, abikoresheje impano, igihembo, iterabwoba, igitugu, abigirira gushyigikira igitero cy'intambara cy'ingabo zindi zitari izemewe z'igihugu, ahanishwa igifungo kuva ku myaka icumi (10) kugeza ku myaka cumi n'itanu (15) »; naho mu gika cya kabiri iteganya ko « umuntu wese wemera, ku bushake, kwinjira cyangwa gutorerwa kujya mu ngabo zitari ingabo zemewe z'igihugu », ahanishwa igifungo kuva ku myaka irindwi (7) kugeza ku myaka icumi (10). Iki cyaha kinateganywa mu ngingo ya 200 igika

[25] Inyandikomvugo ya Nkaka mu bugenzacyaha yo kw'itariki 22.01.2019.

cya 2 y'itegeko nº 68/2018 ryo ku wa 30/06/2018 riteganya ibyaha n'ibihano muri rusange.

[46]. Isesengura ry'izi ngingo rigaragaza ko kugira ngo icyaha cy'ubugambanyi kibeho ugikora agomba kuba afite ubwenegihugu nyarwanda arwanya Repubulika y'u Rwanda akoresheje intambara. Naho icyaha cy'irema ry'umutwe w'ingabo utemewe cyo kibaho ku muntu uwo ari we wese ukora ibikorwa byo kurema umutwe w'ingabo, usembura iremwa ryawo cyangwa ugira amasezerano n'ingabo z'uwo mutwe, hakoreshejwe impano, ibihembo, iterabwoba, igitugu hagamijwe gushyigikira igitero cy'intambara cy'ingabo zindi zitari izemewe z'igihugu cyangwa wemera ku bushake, kwinjira cyangwa gutorerwa kujya mu ngabo zitari ingabo zemewe z'igihugu.

[47]. Urukiko rusanga ibikorwa Ubushinjacyaha bushingiraho burega NKAKA Ignace na NSEKANABO Jean Pierre icyaha cyo kugambanira Leta y'u Rwanda n'icy'irema umutwe w'ingabo utemewe ari uko hagati ya 1997 na 1998 binjiye kandi baguma mu mutwe wa PARIL waje guhinduka FDLR ufite umutwe w'ingabo warwanyaga kandi ukaba ukirwanya Repubulika y'u Rwanda ukoresheje intwaro z'intambara wabanje kuba ALIR nyuma uza guhinduka FOCA.

[48]. Rusanga harebwe icyiciro ibi byaha biteganyijwemo mu itegeko ngenga ryo mwaka wa 2012 rishyiraho igitabo cy'amategeko ahana, icyaha cy'ubugambanyi n'irema ry'umutwe w'ingabo utemewe biteganyijwe mu Nteruro ya III irebana n'ibyaha bikorerwa igihugu, mu mutwe wa mbere urebana n'ibyaha bihungabanya Leta, mu cyiciro cya mbere cyawo kirebana n'ibyaha bihungabanya umudendezo wa Leta n'ibindi bihugu, ibyaha by'ubugambanyi n'iby'ubutasi. Akaba ari na ko biteganyijwe mu itegeko rigena ibyaha n'ibihano muri rusange ryo mu mwaka wa 2018.

[49]. Rusanga nta bimenyetso ubushinjacyaha bugaragaza by'uko NKAKA Ignace na NSEKANABO Jean Pierre babaye muri PALIR/ALIR yaje guhinduka FDLR/FOCA bafite intego yo guhungabanya umudendezo wa Leta y'u Rwanda n'ikindi gihugu icyo ari cyo cyose, cyangwa hagamijwe gushyigikira

igitero cy'intambara cy'ingabo zindi zitari izemewe z'igihugu, ahubwo icyo FDLR igamije ari ukurwanya inzego za Leta iriho mu Rwego rwo gufata ubutegetsi ku ngufu cyangwa guhatira ubuyobozi buriho kujya mu mishyikirano nk'uko byemejwe n'Urukiko rw'Ikirenga mu rubanza rwa Ingabire Umuhoza Victoire na bagenzi be[26], aho rutahaye agaciro ubujurire bw'Ubushinjacyaha bwavugaga ko Urukiko Rukuru rwasesenguye nabi itegeko aho rwavuze ko kurema umutwe w'ingabo utemewe bitari bigamije guhungabanya umudendezo wa Leta n'ibindi bihugu nk'uko bwari bwabiregeye. Bityo, hashingiwe ku bimaze gusobanurwa NKAKA Ignace na NSEKANABO Jean Pierre bakaba badahamwa n'iki cyaha.

- *Ku bijyanye n'icyaha cyo kuba mu ishyirahamwe ry'iterabwoba*

[50]. Urukiko rusanga NKAKA Ignace na NSEKANABO Jean Pierre mu ibazwa ryabo haba mu Bugenzacyaha[27], mu Bushinjacyaha[28] ndetse no mu Rukiko[29] baremeye ko babaye muri FDLR.

[51]. NSEKANABO Jean Pierre yarasobanuye ko yinjiye mu mutwe wa 'ALIR' mu mwaka wa 1998 waje guhinduka FDLR, ko yinjiriye mu bacengezi mu cyahoze ari Komine Nyamutera muri Ruhengeri, nyuma aza kuyobora Palatuni (chef de peleton), nyuma yaho ajya gushyirwa mu bashinzwe iperereza amaze kugera ku ipeti rya Liyetena Koloneli yahawe mu kwezi kwa mbere 2018[30].

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[26] « Urukiko rusanga rero nk'uko Urukiko Rukuru rwabyemeje, ibikorwa bigize ibyaha Ubushinjacyaha bukurikiranyeho abaregwa byo kurema umutwe w'ingabo bagamije guteza umutekano muke mu gihugu, atari ibyaha bigendereye guhungabanya umudendezo wa Leta n'ibindi bihugu, ahubwo bigendereye kurwanya inzego za Leta iriho mu rwego rwo gufata ubutegetsi ku ngufu cyangwa kuhatira ubuyobozi buriho kujya mu mishyikirano, ubujurire bw'Ubushinjacyaha bugamije kugaragaza ko Urukiko Rukuru rwasesenguye nabi ingingo ya 163 yamaze kuvugwa bukaba nta shingiro bufite ». Urubanza RPA 0255/12/CS rwaciwe ku wa 13/12/2013 Ubushinjacyaha buburana na Ingabire Umuhoza Victoire na bagenzi be, urup. rwa 74, igika cya 410.
[27] Inyandikomvugo z'abaregwa mu Bugenzacyaha ku wa 22/01/2019
[28] Inyandikomvugo z'abaregwa mu Bushinjacyaha tariki ya 04/04/2019;
[29] Inyandikomvugo y'iburanisha yo ku ya 10/07/2021;
[30] Inyandikomvugo ya NSEKANABO Jean Pierre mu Bugenzacyaha ku wa 02/04/2019;

[52]. NKAKA Ignace we yavuze ko yinjiye mu bacengezi mu mwaka wa 1997, agirwa umwanditsi mukuru (Redacteur en chef) w'ikinyamakuru 'Ijwi rya rubanda', bigeze mu mwaka wa 1998 asubira muri RDC, agezeyo agirwa umuyobozi w'ishami ry'itangazamakuru muri komite nshingwabikorwa, bigeze mu mu mwaka wa 2010 agirwa Komiseri w'itangazamakuru n'umuvugizi wa FDLR[31].

[53]. Rusanga, uretse ibyo abaregwa biyemerera, hari n'abatangabuhamya batandukanye babajijwe mu Bushinjacyaha barimo Bisengimana Samuel Abraham Alias Mutima wavuze ko azi NKAKA Ignace nka komiseri wari komite nyobozi na komite nshingwabikorwa nk'inzego zifata ingamba n'ibyemezo birebana no gutera Igihugu, n'umuvugizi washishikarizaga abantu kugana FDLR[32], Habamungu Bad Adam wavuze ko muri FDLR NKAKA Ignace yabaga afite amakuru ku rwego rwo hejuru[33], na Hategekimana alias Nowah Valence wavuze ko azi NSEKANABO Jean Pierre babanye muri FDLR, ko uyu yabaye ofisiye wa Birigade (S2) aba no mu buyobozi bwa FOCA (G2) kugeza afashwe.[34]

[54]. Rusanga, ingingo ya 503 y'itegeko Ngenga nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana igateganya ko aba akoze icyaha «Umuntu wese uri cyangwa wemera kuba mu ishyirahamwe rikora iterabwoba".

[55]. Rusanga, hashingiwe ku biteganywa n'iyi ngingo no ku bimenyetso bigaragajwe hejuru, NKAKA Ignace na NSEKANABO Jean Pierre bahamwa n'icyaha cyo kuba mu ishyirahamwe ry'iterabwoba. Ibyo kuba FDLR nk'ishyirahamwe ry'iterabwoba byaremejwe n'urukiko rw'Ikirenga rw'u Rwanda[35] ndetse n'Akanama k'umutekano k'Umuryango w'Abibumbye[36].

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[31] Inyandikomvugo ya NKAKA Ignace mu Bugenzacyaha ku wa 02/04/2019.

[32] Ubuhamya yatanze mu Bushinjacyaha ku wa 30/05/2019.

[33] Ubuhamya yatanze mu Bushinjacyaha ku wa 27/05/2019.

[34] Ubuhamya yatanze mu Bushinjacyaha ku wa 25/05/2019.

[35]« Kuba FDLR ari umutwe w'iterabwoba byemejwe n'Urukiko rw'Ikirenga mu manza zirimo urubanza RPA 0050/15/CS-RPA 0031/16/CS rwo kuwa 22/12/2017, igika cya 33, n'urubanza RPA 0011/13/CS rwo ku wa 10/11/2017, igika cya 25.».

bityo, bakaba bahamwa n'icyaha cyo kuba mu ishyirahamwe ry'iterabwoba. Bityo, ibyo abaregwa bavuga ko bagiye muri FDLR kuko nta mahitamo bari bafite kuko binjijwe muri FDLR ku ngufu nta shingiro bifite, kubera ko harebwe igihe bayimazemo, imyanya bari bayifitemo no kuba bari bafite ubwinyamburiro bwo kujya mu bandi bihugu, byari kuborohera kuyivamo.

- *Ku bijyanye n'icyaha cyo kugirira nabi ubutegetsi buriho.*

[56]. Ingingo ya 461 agace ka 1 y'Itegeko Ngenga n*o* 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko umuntu wese ukora icyaha cyo kugirira nabi ubutegetsi buriho cyangwa cyo kubuhirika akoresheje intambara cyangwa izindi mbaraga zose ahanishwa igifungo cya burundu. Ni nako biteganywa mu ngingo ya 202 agace ka 1^{0} y'itegeko rigena ibyaha n'ibihano muri rusange ryo mu mwaka wa 2018 ryavuzwe hejuru.

[57]. Rusanga mu mategeko ahana y'ibindi bihugu nko mu Bufaransa, iki cyaha cyo kugiririra nabi ubutegetsi giteganyijwe mu ngingo ya 412-1 y'itegeko rihana iteganya ko icyaha cyo kugirira nabi ubutegetsi ari igikorwa kimwe cyangwa byinshi bya kiboko bishobora gushyira mu kaga Repubulika cyangwa guhungubanya ubusugire bw'igihugu[37].

[58]. Isesengura ry'izi ngingo z'amategeko rigaragaza ko igihanwa nk'icyaha cyo kugirira nabi ubutegetsi buriho ari igikorwa kimwe cyangwa byinshi bikoreshejwe intambara cyangwa imbaraga izo ari zo zose bigamije guhungabanya inzego z'ubuyobozi cyangwa kuzivanaho.

[59]. Rusanga ibyo Ubushinjacyaha bushingiraho burega NKAKA Ignace na NSEKANABO Jean Pierre icyaha cyo kugirira nabi ubutegetsi buriho ari ukuba barabaye mu mutwe wa FDLR ufite abarwanyi kandi wagiye ugaba

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[36]Akanama gashinzwe umutekano k'Umuryango w'Abibumbye na ko kuwa 31/12/2012 kawushyize ku rutonde rw'imitwe y'iterabwoba nk'uko bigaragara ku rubuga https://scsanctions.un.org/4q27jen-all.html rwasuwe kuwa 14 ukuboza 2021.

[37] "Constitue un attentat le fait de commettre un ou plusieurs actes de violence de nature à mettre en péril les institutions de la République ou à porter atteinte à l'intégrité du territoire national ».

ibitero ibitero byishe abantu abanyarwanda binasenya n'ibikorwa remezo by'igihugu mu bihe bitandukanye.

[60]. Ku bijyanye n'ibitero FDLR yagabye mu Rwanda, NSEKANABO Jean Pierre yavuze ko hari ibyo yibuka harimo igitero cyabaye mu mpera z'umwaka wa 1998 cyagabwa ku basirikare Rubavu, icyabaye mu mwaka wa 2001 cyiswe 'Oracle du Seigneur' cyagabwe Gisenyi na Ruhengeri, icyagabwe Bisate na Kabatwa kiyobowe na Gakwerere, icyabaye mu mwaka wa 2017 ahitwa Bugeshi n'icyo ku wa 11/12/2018 i Busasamana biyobowe na Koloneli Ruhinda.

[61]. NKAKA Ignace we yavuze ko FDLR yagabye ibitero ahantu hatandukanye nk'ahitwa i Janja mu mwaka 1998, i Gitarama, icyo gaba mu mwaka wa 2001 cyiswe 'Oracle du Seigneur', n'ikindi cyagabwe i Gisenyi na Ruhengeri mu mwaka wa 2012.

[62]. Rusanga, hari n'abantu batandukanye babajijwe mu Bushinjacyaha bavuze ku bitero bagabweho n'abarwanyi ba FDLR, muri bo hari uwitwa Bateguzi Chantal wavuze ko mu Murenge wa Busasamana mu Karere ka Rubavu batewe na FDLR yica umugabo we wari umukuru w'Umudugudu mu ijoro ubwo yari asohotse kureba ab'irondo, naho uwitwa Mukandori Alphonsine na we yavuze ko ibitero bya FDLR byageze mu gace batuyemo, icya mbere (1) cyica uwitwa Bizimana wari umukuru w'Umudugudu na Ndabateze, icya kabiri (2) cyica Mupenzi, icya gatatu (3) kiramukomeretsa (Mukandori), icya kane (4) kirasa umusaza w'umudive.

[63]. Urukiko rusanga harebwe rero imiterere y'ibi bitero FDLR yagiye igaba mu bihe bitandukanye ku butaka bw'u Rwanda bikica abantu, bigasenya ibikorwa remezo, bikanangiza imitungo yaba iya Leta n'iy'abantu ku giti cyabo, ikigaragara ari uko byari ibikorwa by'iterabwoba kuko bihura n'igisobanuro cy'iterabwoba gitangwa mu ngingo ya 2 y' itegeko n°45/2008 ryo kuwa 09/09/2008 ryerekeye kurwanya iterabwoba n'iya 497 y'igitabo cy'amategeko ahana aho zivuga ko iterabwoba ari " 1^0 *gukora cyangwa gukangisha gukora ibikorwa bigamije gutuma inzego z'ubutegetsi za Leta zihindura imikorere yazo hakoreshejwe gufata bugwate umuntu umwe cyangwa benshi, kwica,*

gukomeretsa cyangwa gutera ubwoba abaturage hakoreshejwe uburyo ubwo ari bwo bwose bushobora kwica umuntu cyangwa kumukomeretsa; 2° gukora cyangwa gukangisha gukora igikorwa giteganyijwe mu gace ka 1º k'iyi ngingo kubera impamvu za politiki, iz'idini cyangwa z'ingengabitekerezo iyo ari yo yose.

[64]. Rusanga rero rushingiye ku bimaze gusobanurwa, ibikorwa byakozwe na FDLR abaregwa barimo bitagize icyaha cyo kugirira nabi ubutegetsi buriho.

III. 3. *Kumenya niba ibyo NKAKA Ignace alias la Forge Fils Bazeyi yatangaje nka Komiseri ushinzwe amakuru akaba n'umuvugizi wa FDLR bigize icyaha cyo gukwiza impuha zigamije kwangisha Leta y'u Rwanda mu bihugu by'amahanga*

A. Imiburanire y'Ubushinjacyaha

[65]. Ubushinjacyaha buvuga ko ubwo NKAKA Ignace yari 'PALIR' yaje guhinduka FDLR yagiye akwirakwiza amakuru atariyo yangisha Leta y'u Rwanda mu mahanga akoresheje ibinyamakuru byandikwa, ibiganiro ku ma Radiyo y'amahanga no ku rubuga rwa *'Youtube'*. Buvuga ko mu magambo yavuze harimo aho yavuze ko Leta y'u Rwanda yiyoberanya ikajya muri Kongo kwica impunzi z'Abahutu, aho yavuze ko ubwicanyi bwabereye Miriki muri Rubero iri muri Kivu y'Amajyaruguru muri RDC ku matariki ya 06-07 Mutarama 2016 n'ubwabereye Lusambo, Buleusa, Rukumbirwa na Katiku bwo ku itariki ya 22 Ugushyingo 2015 bwakoze n'ingabo z'u Rwanda.

B. Imyiregurire ya NKAKA Ignace

[66]. NKAKA Ignace n'umwunganizi we bavuga ko nta cyaha cyo gukwiza impuha zigamije kwangisha Leta y'u Rwanda mu mahanga, kuko amakuru yatangaga ari ayo yabaga yahawe n'abamukuriye kandi agomga kuyatangaza uko ari, ko atayatangaga agambiriye kwangisha Leta y'u Rwanda mu mahanga kandi mu nshingano ze atari ashinzwe gucengeza amatwara ya FDLR. Banavuga ko mu mwaka wa 2010 ari bwo NKAKA Ignace yabaye umuvugizi wa FDLR, aba ari bwo ahabwa uburenganzira bwo kuba mu nama za komite nyobozi aho yarashoboraga guhura n'itangazamakuru, ko nubwo yari umuvugizi wa FDRL atari mu bafataga ibyemezo.

C. Uko urukiko rubibona

[67]. Ingingo ya 451 y'Itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko "Umuntu wese ukwiza impuha agamije kwangisha Leta y'u Rwanda mu bihugu by'amahanga, ahanishwa, mu gihe cy'intambara, igifungo cya burundu; mu gihe cy'amahoro igifungo kuva ku myaka irindwi (7) kugeza ku myaka icumi (10)". Iki cyaha kinateganywa no mu ngingo ya 194 y'Itegeko nº 68/2018 ryo ku wa 30/06/2018 riteganya ibyaha n'ibihano muri rusange.

[68]. Urukiko rusesenguye amakuru NKAKA Ignace yatangaga kandi yemera, rusanga aya makuru yari ibihuha kubera ko we ubwe yemera ko yayatangaga atarabihagazeho, ariko hakaba nta kimenyetso cyagaragajwe cyemeza abivuga yari afite ubushake bwihariye bwo kwangisha Leta y'u Rwanda mu bihugu by'amahanga. Ibi byo kuba hagomba kugaragazwa icyari kigamijwe bihura n'ibyemejwe mu rubanza rwa Niyitegeka Fulgence rwaciwe n'urukiko Rukuru aho rwemeje ko uregwa adahamwa n'iki cyaha bitewe

n'uko Ubushinjacyaha butagaragaje icyo uregwa yari agamije akwiza izo mpuha.[38]

II.4. *Kumenya ibihano abaregwa bakwiye guhanishwa*

A. Icyifuzo cy'Ubushinjacyaha

[69]. Ubushinjacyaha busaba ko mu itangwa ry'ibihano urukiko rwashingira ku itegeko nº 68/2018 ryo ku wa 30/06/2018 riteganya ibyaha n'ibihano muri rusange rikurikizwa ubu, aho gushingira ku itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryahanaga ibi byaha ubwo abaregwa batangiraga gukurikiranywa.

[70]. Bukavuga ko ibyaha abaregwa bakoze bigize impurirane z'ibyaha, bukaba busanga bahanishwa igifungo cya burundu bakanamburwa uburenganzira afite mu gihugu.

B. Icyo abaregwa bavuze

[71]. NKAKA Ignace na Me Nkuba Milton umwunganira basaba ko NKAKA Ignace akwiye gufatwa nk'abandi bantu bavuye muri FDLR bagasubizwa mu buzima busanzwe batabanje kunyuzwa mu nkiko haba hubahirijwe itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015 n'amasezerano ya Lusaka yo ku wa 10/7/1999 yashyizweho umukono na Leta y'u Rwanda ndetse n'amasezerano yo ku wa 09/10/2007 yabaye hagati ya Leta y'u Rwanda na Repubulika iharanira Demokarasi ya Kongo. Bavuga kandi ko urukiko rusanze akwiye guhabwa ibihano hazitabwa ku kuba ataruhije ubutabera haba mu nzego z'iperereza no mu Rukiko, agahanishwa igihano gito.

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[38] RPA 00083/2016/HC/KIG rwaciwe ku wa 30/11/2016 hagati y'Ubushinjacyaha na Niyitegeka Fulgence, urupapuro rwa 3, igika cya 4.

[72]. NSEKANABO Jean Pierre na Me Habimfura Elias umwunganira nabo basabye ko NSEKANABO Jean Pierre yasubizwa mu buzima busanzwe nk'uko na bagenzi be bavuye muri FDLR babikorewe, itegeko Nshinga rikubahirizwa, ndetse n'amasezerano ya Lusaka yo mu mwaka wa 1999 kuko agaragazwa n'iteka rya Minisitiri w'imari rivuga ko uvuye muri FDLR ataburanishwa usibye uwaba yarakoze ibyaha ku giti cye.

C. Uko urukiko rubibona

[73]. Ku bijyanye n'itegeko rikwiye gukoreshwa mu itangwa ry'ibihano, Urukiko rurasanga ingingo ya 334 y'itegeko nº 68/2018 ryo ku wa 30/06/2018 No 68/2018 ryo ku wa 30/06/2018 riteganya ibyaha n' ibihano muri rusange ivuga ko 'Ingingo zose z'amategeko abanziriza iri kandi zinyuranyije na ryo zivanyweho. Icyakora, icyaha cyakozwe mbere y'uko iri tegeko ritangazwa mu Igazeti ya Leta ya Repubulika y'u Rwanda gihanwa hakurikijwe itegeko ryakigengaga keretse mu gihe iri tegeko riteganya ibihano byoroheje. Rusanga Itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ryakurikizwa mu gihe ari ryo ryoroheye abaregwa harebwe ibikorwa bigize ibyaha n'uburyo ibihano bigabanywa hashingiwe ku mpamvu nyoroshyacyaha riteganya.

[74]. Rusanga kuba abaregwa basaba imbabazi no kuba kuva bafatwa kugeza mu iburana ryabo mu Rukiko barakoranye neza n'inzego z'ubutabera basobanura bataruhanyije imikorere y'ibyaha barezwe, ari impamvu yo kubagabanyiriza ibihano. Bityo, hashingiwe ku ngingo ya 76 y'itegeko Ngenga nº 01/2012 ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko umucamanza ari we uha agaciro impamvu nyoroshyacyaha, iya 77 igika cya 1 iteganya kwemera icyaha nk'imwe mu mpamvu ituma ibihano bishobora kugabanywa, n'iya 78 igika cya 2 ivuga uburyo igihano cy'igifungo cy'imyaka cumi (10) kugeza kuri makumyabiri n'itanu (25) gishobora kugabanywa kugeza ku gifungo cy'imyaka itanu (5),

NKAKA Ignace na NSEKANABO Jean Pierre bakwiye guhanishwa igihano kigabanyije cy'igifungo cy'imyaka cumi (10) kuri buri wese kuko icyaha cyo kuba mu ishyirahamwe ry'iterabwoba gihanishwa igifungo kuva ku myaka cumi n'itanu (15) kugeza kuri makumyabiri n'itanu (25).

[75]. Ku bijyanye n'icyifuzo cy'abaregwa cy'uko basubizwa mu buzima busanzwe hagendewe ku Iteka rya Minisitiri nº 066 ryo ku wa 13/09/2002 n'amasezerano bavuga nta shingiro gifite kuko NKAKA Ignace na NSEKANABO Jean Pierre bataje mu Rwanda bitandukanyije na FDLR ku bushake bwabo.

III. CYEMEZO CY'URUKIKO

[76]. Rwemeje ko NKAKA Ignace alias La Forge Fils Bazeye na NSEKANABO Jean Pierre alias Kamara Abega badahamwa n'ibyaha by'ubugambanyi, irema ry'umutwe w'ingabo utemewe, gukora iterabwoba ku nyungu za politiki, kugirira nabi ubutegetsi buriho, icyaha cyibasiye inyokomuntu n'icyaha cy'intambara.

[77]. Rwemeje ko NKAKA Ignace alias La Forge Fils Bazeye adahamwa n'icyaha cyo gukwiza impuka zigamije kwangisha Leta y'u Rwanda mu bihugu by'amahanga.

[78]. Rwemeje ko NKAKA Ignace alias La Forge Fils Bazeye na NSEKANABO Jean Pierre alias Kamara Abega bahamwa n'icyaha cyo kuba mu ishyirahamwe ry'iterabwoba.

[79]. Ruhanishije buri wese igihano cy'igifungo cy'imyaka cumi (10).

[80]. Rutegetse ko NKAKA Ignace alias La Forge Fils Bazeye na NSEKANABO Jean Pierre alias Kamara Abega basonewe igarama kuko baburana bafunzwe.

[81]. Rwibukije ko kujurira bikorwa mu gihe kitarenze iminsi mirongo itatu (30) uhereye itariki urubanza ruciriweho.

NI UKO RUKIJIJWE KANDI RUSOMEWE MU RUHAME NONE KU WA 15/12/2021.

INTEKO:

Sé/

MUHIMA S. Antoine

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Sé/

KANYEGERI N. Timothee

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