

RWANDA / JUDGMENT

Re INGABIRE UMUHOZA (FOND)

RS/SPEC00001/2025/SC

COURT

Supreme Court

DECIDED

27 March 2026

CASE / FILE NUMBER

RS/SPEC00001/2025/SC

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Re INGABIRE UMUHOZA (FOND)

- Source: Amategeko
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- Date: 2026-03-27
- Case/document no.: RS/SPEC00001/2025/SC
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Text

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Re INGABIRE UMUHOZA (FOND) [Rwanda URUKIKO RW'IKIRENGA – RS/SPEC00001/2025/SC (Mukantaganzwa, J. P., Hitiyaremye, Cyanzayire, Kazungu na Kalihangabo) 27 Werurwe 2026] Itegeko Nshinga – Ubutabera buboneye – Ihame ryo gufatwa nk'umwera – Kuba urukiko rwahamagaza umuntu waketswe kuba yaragize uruhare mu ikorwa ry'icyaha nk'icyitso cyangwa nk'umufatanyacyaha kugira ngo atange ibisobanuro kubyo avugwaho mu rubanza, sibyo bituma ahinduka ukurikiranyweho icyaha, kuko nta perereza riba ryatangiye kumukorwaho, ahubwo akomeza gufwa nk'umwera, no mu gihe ubushinjacyaha bwategekwa kumukoraho iperereza rigomba kugaragaza niba hari uruhare yaba yaragize mu ikorwa ry'icyaha kiburanishwaho n'uko rwaba rungana. Itegeko Nshinga – Inzego z'ubutegetsi bwa Leta – Ihame ry'itandukana n'ubwuzuzanye by'inzego z'ubutegetsi bwa Leta – Ubutegetsi bw'Ubucamanza – N'ubwo inzego z'ubutegetsi zitandukanye, hari aho zishobora gukorana cyangwa kugenzurana – Ubucamanza bwuzuzanya n'ubundi butegetsi mu kurengera no kubungabunga uburenganzira, ubwisanzure n'ituze by'abaturage; bukabikora bucira urubanza uwo ari we wese, ndetse no kuba rwagira ibyo rutegeka bigomba kubahirizwa n'izo nzego. Itegeko Nshinga – Ihame ry'itandukana n'ubwuzuzanye by'inzego z'ubutegetsi bwa Leta – Ubwuzuzanye bw'inzego z'ubutegetsi bwa Leta

– Ubutegetsi bw’ubucamanza – Kuba ingingo ya 106 y’Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha nk’uko ryahinduwe, iha ububasha urukiko gutegeka ubushinjacyaha gutangiza iperereza, ntibigomba gufatwa nko kwivanga mu nshingano z’ubushinjacyaha, ahubwo bisobanuye ko urukiko rubwira ubushinjacyaha gukora inshingano zabwo mu rwego rw’ubwuzuzanye buteganywa n’ingingo ya 61 (2) y’Itegeko Nshinga. Itegeko Nshinga – Inzego z’Ubutegetsi – Ubutegetsi nyubahirizategeko – Ubushinjacyaha – Inshingano z’ubushinjacyaha – Kuba urukiko rutegeka ubushinjacyaha gukora iperereza ku muntu wahamagajwe mu rubanza avugwamo, ni ukubahiriza ingingo ya 143(1) y’Itegeko Nshinga, kuko urukiko rutikorera iperereza, ahubwo rubiharira ubushinjacyaha nk’urwego rubifite mu nshingano, mu rwego rwo kubahiriza iryo hame ryo gukora iperereza no gukurikirana ibyaha. Itegeko Nshinga – Inzego z’Ubutegetsi – Ubutegetsi nyubahirizategeko – Ubushinjacyaha – Ubwigenge n’ububasha bw’Ubushinjacyaha – Kuba urukiko rwategeka ubushinjacyaha gukora iperereza no kuzana mu rubanza umuntu utari wararurezwemo ntibibangamiye ubwigenge bw’umushinjacyaha, kuko urukiko rudategeka umushinjacyaha uko akora iperereza cyangwa umwanzuro ugomba kurivamo wo gukurikirana cyangwa kudakurikirana. Incamake y’ikibazo: Mu rubanza rubanziriza urundi RP00020/2022/HC/KIG rwabaye hagati y’Ubushinjacyaha na Sibomana na bagenzi be, Urukiko Rukuru, rushingiye ku ngingo ya 106 y’Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha nk’uko ryahinduwe, rwategetse Ubushinjacyaha gukora iperereza ryimbitse kuri Ingabire Umuhoza nk’umufatanyacyaha w’abaregwa muri urwo rubanza. Ibyo byatumye Ingabire Umuhoza atanga ikirego muri uru Rukiko rw’Ikirenga avuga ko iyo ngingo y’iryo Tegeko inyuranyije n’ingingo ya 29, igika cya mbere, agace ka (b), iya 61, iya 143, igika cya mbere n’iya 146, igika cya 4, z’Itegeko Nshinga rya Repubulika y’u Rwanda. Ingabire Umuhoza yaburanye asaba ko iyo ngingo yakurwaho kuko yemerera Urukiko Rukuru gutegeka Ubushinjacyaha kumukoraho iperereza ry’imbitse ndetse rukongerera rukaba ari rwo rumuburanisha, ibi bikaba ari ibikorwa binyuranyije n’ingingo z’Itegeko Nshinga zavuzwe haruguru. Ingabire Umuhoza avuga ko iyo ngingo ya 106 inyuranyije n’ingingo ya 29 igika cya mbere, agace ka (b), y’Itegeko Nshinga iteganya ko umuntu wese afite uburenganzira ku butabera buboneye burimo ubwo gufatwa nk’umwere kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha. Asobanura ko kuba

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Urukiko Rukuru rwaramuhamagaje mu rubanza RP00020/2022/HC/KIG ngo atange ibisobanuro, nyuma rugashingira kuri iyo ngingo ya 106, rugategeka Ubushinjacyaha kumukoraho iperereza ryimbitse nk’umufatanyacyaha w’abaregwa, rukazamuburanisha rukanamucira urubanza, asanga icyo gihe ataba agifatwa nk’umwere kuko ruba rwamaze kumucira urubanza. Ingabire Umuhoza avuga kandi ko kuba umwanditsi w’Urukiko yaramuhamagaje kwitaba nk’umufatantacyaha muri urwo rubanza, kandi mu by’ukuri atararezwe ndetse ntanahabwe n’umwanya wo kwiregura, asanga binyuranyije n’iryo hame ryo gufatwa nk’umwere kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha. Akomeza avuga ko kuba umucamanza yakora ibikorwa by’ikurikiranacyaha, nyuma agategeka ko umuntu akorwaho iperereza, akongerera akaba ari we umucira urubanza, asanga atatanga ubutabera buboneye. Ikindi ngo ni uko ibyo bikorwa

byambura Ubushinjacyaha Bukuru inshingano busanzwe bufite zo gushinja no gushinjura. Ibyo bisobanuro nibyo ashingiraho asaba uru Rukiko ko iyo ngingo ya 106 yakurwaho, kuko kuba urukiko rwashinja umuntu, rukamuburanisha, rukanamucira urubanza, iyo ari imigirire ibangamira ihame ry'ubutabera buboneye. Kuri icyo kibazo kijyanye no kumenya niba iyo ngingo ya 106 inyuranyije n'ingingo ya 29 y'Itegeko Nshinga, Uhagarariye Intumwa Nkuru ya Leta muri uru rubanza, avuga ko muri rusange, ingingo ya 106 yashyizweho hagamijwe gushimangira ihame rya "Judex Damnatur Cum Nocens Absolvitur" (Judge is condemned when guilty is acquitted) no guha umucamanza ubwinyagamburiro bwo gutanga ubutabera buboneye, ndetse no kudashyigikira umuco wo kudahana mu gihe abonye hari ibimenyetso byagaragajwe mu Rukiko (bitaragaragajwe ahandi) byerekana ko hari undi muntu wakoze icyaha utararezwe. Uhagarariye Intumwa Nkuru ya Leta avuga kandi ko iyi ngingo yemerera umucamanza gutumiza uwo muntu akamwumva, ariko yasanga ibisobanuro bye bidafatika, akaba yategeka ubushinjacyaha kumukoraho iperereza. Ibi ntibivuzeko biba byakuyeho ihame ry'uko ari umwere kugeza icyaha kimuhamye burundu; ahubwo bisobanuye ko haba hagaragara ibimenyesto byerekana ko ashobora kuba yarakoze icyo cyaha, bityo n'iperereza rikaba rihera kuri ibyo bimenyetso kugira ngo rifashe urukiko gushakisha ukuri kwabyo. Yongeraho ko kuba urukiko rutegeka ubushinjacyaha gukora iperereza ari igihamba ko ruba rutarafata uruhande runaka (position), ko ikiba kigamijwe ari ukugira ngo ubushinjacyaha burebe ibyagaragaye mu iburanisha bimureba, bikorerwe iperereza hagamijwe ko ukuri kujya ahagaragara. Asoza avuga ko kuba umucamanza yategeka ubushinjacyaha gukora iperereza bitavuze ko buzana ibimenyetso bishinja gusa kuko bushakisha n'ibishinjura; ndetse ishyirwa mu bikorwa ry'iyi ngingo ya 106 ritafatwa nk'aho uwakozweho iperereza yamaze guhamywa icyaha, kuko mu gihe rwaba rwakimuhamije urukiko ntirwakwirirwa rutegeka ko hakorwa iperereza. Ku kibazo kijyanye no kumenya niba ingingo 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, yaba inyuranyije n'ingingo ya 61 y'Itegeko Nshinga rya Repubulika y'u Rwanda, Ingabire Umuhoza avuga ko iha urukiko ububasha bwo kwivanga mu nshingano z'ubushinjacyaha, bityo ko kuba rero rwakwivanga mu nshingano z'urundi rwego rw'ubutegetsi rwigenga, asanga binyuranyije n'ingingo ya 61 y'Itegeko Nshinga, akaba ari yo mpamvu asaba ko ivanwaho. Urega asobanura ko ikibazo kiri ku nshinga gutegeka iri muri iyo ngingo ya 106, aho avuga ko iyo Urukiko Rukuru rudategeka Ubushinjacyaha kumukoraho iperereza, atari kuba akurikiranwa, dore ko Ubushinjacyaha bwari bwamaze kubwira urukiko ko mu mikorere yabwo bugendera ku ihame ryo gukurikirana cyangwa kudakurikirana icyaha, bityo akaba asanga urukiko rwarategetse ubundi Butegetsi icyo bugomba gukora kandi ibyo binyuranyije n'Itegeko Nshinga. Avuga kandi ko kuba rero ingingo ya 106 yemerera urukiko kwivanga mu nshingano ubusanzwe zikorwa n'ubushinjacyaha bwigenga, asanga iyo mikorere inyuranyije n'ihame rivuga ko buri Rwego rw'Ubutegetsi rwigenga, riteganywa n'iyi ngingo ya 61 y'Itegeko Nshinga. Urega akomeza asobanura ko mu bihe bya demokarasi tugezemo, umucamanza atakagombye gukora iperereza, hanyuma ngo ashinje, ndetse anace urubanza, kuko umucamanza aramutse akoze imirimo y'ubushinjacyaha byagaragara nk'aho adafite ubwigenge agomba kuba afite mu guca urubanza nk'uko

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biteganywa n'Itegeko rigenga Abacamanza n'abakozi b'Inkiko ndetse n'Itegeko Nshinga. Ikindi ngo ni uko, kuba urukiko ruhamagaza abafatanyacyaha batarezwe, rukabumva, rukiherera, nyuma rugafata icyemezo cyo kubakurikirana cyangwa kutabakurikirana, basanga izo nshingano ari iz'ubushinjacyaha, bityo umucamanza ubarizwa mu butegetsi bw'ubucamanza akaba adakwiye kuzihabwa kuko ari ukwivanga mu nshingano z'urundi rwego. N'ubwo iyo ngingo ya 106 yagiye igamije guca umuco wo kudahana nk'uko uhagarariye Intumwa Nkuru ya Leta abivuga, ibyo bitavuze ko igomba gukoreshwa mu buryo bubangamira Itegeko Nshinga, akaba ariyo mpamvu asaba uru Rukiko ko yavanwaho. Kuri iki kibazo, Uhagarariye Intumwa Nkuru ya Leta avuga ko ingingo ya 106 ishimangira ihame ry'uko Ubushinjacyaha ari bwo bwonyine bufite inshingano yo gukurikirana ibyaha kuko urukiko rudashobora gukora iperereza, gushinja cyangwa kuburanisha umuntu ku cyaha mu gihe atarezwe n'Ubushinjacyaha. Avuga kandi ko mu guca urubanza, rugendera ku byavuye mu iperereza rikorwa n'ubushinjacyaha, aho rwubaha icyemezo cyafashwe n'Ubushinjacyaha cyo gukurikirana cg kudakurikirana uwacyetsweho gukora icyaha. Akomeza asobanura ko ingingo ya 106 yahaye urukiko uburenganzira bwo kudahumiriza mu gihe rubonye hari ibimenyetso bigaragaza uruhare rw'umuntu mu cyaha kandi atarezwe, rukamuhamagaza mu iburanisha kubitangaho ibisobanuro. Bityo, kuba Urukiko rwategeka Ubushinjacyaha gukora iperereza bitavuze ko buri gihe uwahamagawe akurikiranwaho icyaha, kuko hari n'igihe Ubushinjacyaha busanga nta mpamvu yo kumukurikirana bitewe n'ikivuye mu iperereza. Muri uru rubanza hasuzumwe ikibazo cyo kumenya niba iyo ngingo ya 106 inyuranyije n'ingingo ya 143 y'Itegeko Nshinga, kuko Ingabire Umuhiza avuga ko iyo ngingo ya 106 iha ububasha bwo guhamagaza abavugwa mu rubanza nk'abafatanyije icyaha n'abaregwa ndetse n'ibytso byabo no gutegeka Ubushinjacyaha gukora iperereza, ari ukwivanga mu nshingano z'Ubushinjacyaha, bikaba binyuranyije n'ihame ry'uko ubushinjacyaha ari bwo bufite ububasha bwo gukurikirana cyangwa kudakurikirana icyaha, ndetse bikaba bigira ingaruka ku bwigenge bwe. Urega asobanura ko ingingo ya 106 ibangamira ubwo bwigenge bw'abashinjacyaha, kuko iteganya ko ubushinjacyaha butegetse kubahiriza ibyo bwategetse n'urukiko harimo gukora iperereza ryimbitse ku bisobanuro byatanze n'uwahamagawe mu rubanza ukekwa ko yafatanyije gukora icyaha n'abaregwa. Bityo, akaba asaba ko iyo ngingo ya 106 yavanwaho kuko ituma umucamanza yivanga mu nshingano z'ubushinjacyaha, ndetse ikaba ibangamiye ubwigenge bw'umushinjacyaha. Uhagarariye Intumwa Nkuru ya Leta, avuga ko ingingo ya 106 ntaho iteganya ko urukiko rukora ibikorwa by'iperereza, ahubwo ko inshingano zarwo zigarukira ku gutegeka ubushinjacyaha gukora iperereza ku muntu bikekwa ko yafatanyije icyaha n'abaregwa. Akomeza avuga ko ishimangira ihame ry'uko ubushinjacyaha ari bwo bwonyine bufite inshingano yo gukurikirana ibyaha, kuko iyo umucamanza ategutse ko hakorwa iperereza adategeka uko rigomba gukorwa n'ibigomba kurivamo, inshingano ze zigarukira gusa kuri uko gutegeka, dore ko ububasha bwo gukurikirana cyangwa kudakurikirana icyaha (opportunité de poursuite) ari igikorwa kigize iperereza, izo nshingano umushinjacyaha ategutse kuzikora. Incamake y'icyemezo: 1. Kuba urukiko rwahamagaza umuntu waketswe kuba yaragize uruhare mu ikorwa ry'icyaha nk'icyitso cyangwa nk'umufatanyacyaha kugira ngo atange ibisobanuro kubyo avugwaho mu rubanza, sibyo bituma

ahinduka ukurikiranyweho icyaha, kuko nta perereza riba ryatangiye kumukorwaho, ahubwo akomeza gufwa nk'umwera, no mu gihe ubushinjacyaha bwategekwa kumukoraho iperereza rigomba kugaragaza niba hari uruhare yaba yaragize mu ikorwa ry'icyaha kiburanishwaho.

2. Ubutegetsi bw'Ubucamanza bwuzuzanya n'ubundi butegetsi mu kurengera no kubungabunga uburenganzira, ubwisanzure n'ituze by'abaturage; bukabikora bucira urubanza uwo ari we wese, ndetse no kuba rwagira ibyo rutegeka bigomba kubahirizwa n'izo nzego.
3. N'ubwo inzego z'ubutegetsi zitandukanye, hari aho zishobora gukorana cyangwa kugenzurana – Kuba ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza

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z'inshinjabyaha nk'uko ryahinduwe, iha ububasha urukiko gutegeka ubushinjacyaha gutangiza iperereza, ntibigomba gufatwa nko kwivanga mu nshingano z'ubushinjacyaha, ahubwo bisobanuye ko urukiko rubwira ubushinjacyaha gukora inshingano zabwo mu rwego rw'ubwuzuzanye buteganywa n'ingingo ya 61 (2) y'Itegeko Nshinga.

4. Kuba urukiko rutegeka ubushinjacyaha gukora iperereza ku muntu wahamagajwe mu rubanza avugwamo, ni ukubahiriza ingingo ya 143(1) y'Itegeko Nshinga, kuko urukiko rutikorera iperereza, ahubwo rubiharira ubushinjacyaha nk'urwego rubifite mu nshingano, mu rwego rwo kubahiriza iryo hame ryo gukora iperereza no gukurikirana ibyaha.
5. Kuba urukiko rwategeka ubushinjacyaha gukora iperereza no kuzana mu rubanza umuntu utari wararurezwemo ntibibangamiye ubwigenge bw'umushinjacyaha, kuko urukiko rudategeka umushinjacyaha uko akora iperereza cyangwa umwanzuro ugomba kurivamo wo gukurikirana cyangwa kudakurikirana. Ikirego gisaba kwemeza ko ingingo y'Itegeko inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda, nta shingiro gifite. Amategeko yashingiweho: Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/08/2023, ingingo ya 29, 61, 143 n'ya 146. Itegeko No 27/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, ingingo ya 3 n'ya 106. Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe, ingingo ya 72. Itegeko No 13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 121. Itangazo Mpuzamahanga ku burenganzira bwa muntu, ingingo ya 11. Amasezerano Mpuzamahanga ku burenganzira mbonezamubano na politiki yo kuwa 23/06/1976, ingingo ya 14. Amasezerano Nyafurika y'uburenganzira bwa muntu n'ubw'abaturage (Banjul Charter), yo ku wa 27/06/1981, ingingo ya 7. Imanza zifashishijwe: RS/INCONST/SPEC00001/2022/SC, Re Murangwa Edward, rwaciwe n'Urukiko rw'Ikirenga ku wa 16/12/2022. RS/INCONST/PEN0001/07/CS, Re Mutebwa Alfred, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008. United States vs Crouch, 478 F, Supp. 867 (E.D. Cal 1979). South African Association of Personal Injury Lawyers v. Heath 2000(1) BCLR 77 (CC), para 46. Inyandiko z'abahanga zifashishijwe: Henri-D Bosly, Damien Vandermeersh, Droit de la

Procédure Pénale, La Charte, page 23. Cour Européenne des Droits de l'Homme, Rev. Trim D.H 1995, page 656. Serge Guinchard et Jacques Buisson: Procédure pénale, Lexis Nexis, 14^e éd. Paris, 2021, p. 333. UN Human Rights Committee, General Comment 13, Article 14 (Twenty-first session, 1984), (Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994). Bernard Bouloc: Procédure pénale, éditions Dalloz, 28^e éd., Paris, 2022, p.126. Richard Benwell and Oonagh Gay, House of Commons, p. 2. Olivier Gohin: Droit Constitutionnel, Lexis Nexis, 4^e éd., Paris, 2019, p. 209. Louis Favoreu, Patrick Gaia et autres: Droit Constitutionnel, éditions Dalloz, 18^e éd., p. 403. Roger Masterman and Colin Murray: Constitutional and Administrative Law, Cambridge, 3rd ed. UK, p. 256, 257.

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Liège 14 Octobre 1993, Rev droit penal criminel 1994 p.906, JLLMB, 1994 page 746, Cour eur.D.H., 1^{er} octobre 1982, Public. Cour eur. D.H., Serie A, no 53, 30; cour eur.D.H., 22 avril 1994, J.L.M.B., 1995, P.362; Cour eur. DH., 22 fevrier 1996, Rev. Trim, D.H., 1996, no 28,627, note P. Martens.

Urubanza I. IMITERERE Y'URUBANZA [1] Ku wa 17/07/2025, Ingabire Umuhiza Victoire yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 106 y'Itegeko No 27/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe (muri uru rubanza yitwa ingingo ya 106), inyuranyije n'ingingo ya 29, igika cya mbere, agace ka (b), iya 61, iya 143, igika cya mbere n'ya 146, igika cya 4, z'Itegeko Nshinga rya Repubulika y'u Rwanda (muri uru rubanza ryitwa Itegeko Nshinga). [2] Asobanura ko intandaro yo kugira ngo atange ikirego, ari urubanza RP00020/2022/HC/KIG, Ubushinjacyaha buregamo Sibomana Sylvain na bagenzi be; kuko yabangamiwe n'icyemezo cyafatiwe mu rubanza rubanziriza urundi rwasomwe ku wa 19/06/2025, aho Urukiko Rukuru rushingiye ku ngingo ya 106 rwategetse ubushinjacyaha gukora iperereza ryimbitse ku bisobanuro yari amaze gutanga. [3] By'umwihariko, Ingabire Umuhiza Victoire avuga ko kuba Urukiko Rukuru rwarasabye ubushinjacyaha kumukoraho iperereza ryimbitse nk'umufatanyacyaha w'abaregwa mu rubanza RP00020/2022/HC/KIG; rukongera rukaba ari rwo rumuburanisha, asanga ibyo bikorwa binyuranyije n'Itegeko Nshinga, akaba asaba ko iyo ngingo yakurwaho. [4] Uhagarariye Intumwa Nkuru ya Leta avuga ko iki kirego kidakwiye kwakirwa ngo gisuzumwe kuko ikibazo gisa nk'iki cyakemuwe mu rubanza RS/INCONST/PEN0001/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008, aho Mutebwa Alfred yatanze ikirego asaba gukuraho ingingo ya 121 y'Itegeko No 13/2004 ryo ku wa 17/05/2004 ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryakurikizwaga icyo gihe kuko yari inyuranyije n'Itegeko Nshinga. Akomeza avuga ko kuba igika cya mbere cy'ingingo ya 121 gisa n'igika cya mbere cy'ingingo ya 106 isabirwa gukurwaho, asanga iki kirego kitakongera gusuzumwa. [5] Avuga ko ariko mu gihe urukiko rwasanga ikirego gikwiye gusuzumwa, rwakwemeza ko iyo ngingo itakurwaho kuko iha umucamanza ubwinyagamburiro bwo gutanga ubutabera buboneye ndetse no kurwanya umuco wo kudahana mu gihe abonye hari ibimenyetso byagaragajwe mu Rukiko (bitagaragajwe ahandi) byerekana ko hari undi muntu wakoze icyaha utararezwwe. [6] Ingabire Umuhiza Victoire avuga ko icyo aregera ari uko ingingo ya 106 ivaho yose, kandi ko ababuranyi mu manza zombi atari bamwe n'impamvu atari zimwe, hakaba nta

cyabuza ko ikirego gisuzumwa kuko nta rundi rubanza rwigeze rufatwamo icyemezo ku kibazo afite. [7] Iburanisha mu ruhamye ryabaye ku wa 12/11/2025, Ingabire Umuhoza Victoire yunganiwe na Me Gatera Gashabana, Me Bikotwa Bruce na Me Gashema Félicien, naho Leta y'u Rwanda ihagarariwe na Me Ntwari Emile na Me Kabibi Spéciose, maze urukiko rubanza gusuzuma niba Ingabire Umuhoza Victoire afite inyungu mu rubanza.

1 Ubushinjacyaha bushingiye kuri icyo cyemezo cy'urukiko Rukuru, bwakoze iperereza maze busanga hari impamvu zikomeye zituma Ingabire Umuhoza Victoire akekwa icyaha yabajijweho; bumuregera Urukiko rw'Ibanze rwa Kicukiro kugira ngo rufate icyemezo ku ifunga n'ifungurwa ry'agateganyo. Urukiko rw'Ibanze rwa Kicukiro rwemeje ko Ingabire Umuhoza Victoire akurikiranwa afunzwe, ajuririra Urukiko Rwisumbuye rwa Nyarugenge, narwo rugumishaho icyo cyemezo.

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[8] Ingabire Umuhoza Victoire n'abamwunganira bavuga ko afite inyungu zo kurega muri uru rubanza kuko Urukiko Rukuru rwashingiye ku ngingo ya 106 aregera, rutegeka ubushinjacyaha kumukoraho iperereza ryimbitse mu rubanza RP00020/2022/HC/KIG buregamo Sibomana Sylvain na bagenzi be; icyo cyemezo kikaba cyaramugizeho ingaruka mbi kuko ari cyo cyatumye afatwa, agafungwa. Abahagarariye Leta y'u Rwanda nabo bavuga ko Ingabire Umuhoza Victoire afite inyungu bwite ndetse n'inyungu rusange zo gutanga ikirego, ariko ko urukiko rwasuzuma niba ikirego gikwiye kwakirwa. [9] Nyuma yo kumva imiburanire ya Ingabire Umuhoza Victoire n'icyo abahagarariye Leta y'u Rwanda babivugaho, rushinngiye ku ngingo ya 72, igika cya mbere, y'Itegeko No 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe, no ku murongo watanze mu rubanza rubanziriza urundi RS/INCONST/SPEC00001/2022/SC rwaciye n'Urukiko rw'Ikirenga ku wa 16/12/2022, ku kirego cyatanze na Murangwa Edward, urukiko rwafatiye icyemezo mu ntebe rwemeza ko Ingabire Umuhoza Victoire afite inyungu zo kurega kuko ibiteganywa n'ingingo ya 106 byamugizeho ingaruka ku giti cye, ndetse bikaba byazigira no ku muntu wese wahamagazwa mu buryo nk'ubwo yahamagajwemo. [10] Iburanisha ryakomeje ababuranyi bajya impaka ku gitekerezo cyatanze n'abahagarariye Leta y'u Rwanda cy'uko ikiregerwa cyakemuwe mu rundi rubanza, bityo ko kitakongera gusuzumwa. [11] Ku wa 16/01/2026, urukiko rwaciye urubanza rubanzirira urundi, maze rusanga ihame rya res judicata ryari ryashingiweho n'abahagarariye Leta y'u Rwanda isaba ko ikirego kitakwirakirwa rikurikizwa no mu manza ziregera ko itegeko rinyuranyije n'Itegeko Nshinga, kandi atari ngombwa ko ababuranyi baba ari bamwe kuko itegeko rireba buri wese. Rwavuze ko mu kureba ikiburanwa, hatarebwa amagambo akoreshwa, ko ahubwo harebwa igitekerezo gikubiye mu itegeko rirerwa. Rwasanze iryo hame ritakubahirizwa ku itegeko ryari ryarasuzumwe nyuma rigahinduka, kuko itegeko rishya rizana ibitekerezo bitandukanye n'irya mbere bishobora gusuzumwa n'urukiko. [12] Urukiko rwanzuye ko ikirego cyatanze na Ingabire Umuhoza Victoire cyakirwa kigasuzumwa; ruvuga ko iburanisha mu mizi rizakomeza ku wa 04/03/2026 saa tatu. Kuri uwo munsu, ababuranyi baritabye, Ingabire Umuhoza Victoire yunganiwe nka mbere, Leta y'u Rwanda ihagarariwe

na Me Kabibi Spéciose, hasuzumwa ibibazo bikurikira:

- a) Kumenya niba ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, inyuranyije n'ingingo ya 29, igika cya mbere, agace ka (b) y'Itegeko Nshinga rya Repubulika y'u Rwanda;
- b) Kumenya niba ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, inyuranyije n'ingingo ya 61 y'Itegeko Nshinga rya Repubulika y'u Rwanda;
- c) Kumenya niba ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, inyuranyije n'ingingo ya 143, igika cya mbere, n'iya 146, igika cya 4, z'Itegeko Nshinga rya Repubulika y'u Rwanda. II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA
- 1) Kumenya niba ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, inyuranyije n'ingingo ya 29, igika cya mbere, agace ka (b) y'Itegeko Nshinga rya Repubulika y'u Rwanda

2 Iyo ngingo itegenye ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga iyo babifitemo inyungu.

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[13] Ingabire Umuhoza Victoire n'abamwunganira bavuga ko ingingo ya 29, igika cya mbere, agace ka (b), y'Itegeko Nshinga, iteganya ko umuntu wese afite uburenganzira ku butabera buboneye burimo ubwo gufatwa nk'umwera kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha. Bavuga ko, nk'uko impuguke mu mategeko zibisobanura, umuntu wese agomba gufatwa nk'umwera kugeza igihe urukiko rubifitiye ububasha ari rwo rumuhamije icyaha, kandi ko afite uburenganzira bwo kudafatwa nk'umunyabyaha kugeza igihe habonetse ibimenyetso bimuhamya icyaha³. Bavuga kandi ko Urukiko rusesa imanza rwo mu Bubirigi⁴ ndetse n'Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu⁵ nazo zagatse kuri iryo hame. [14] Basobanura ko mu gusesengura ingingo ya 106 bahera ku mutwe wayo witwa guhamagaza mu rubanza abafatanyije icyaha cyangwa ibyitso bataregwe urukiko, ibyo bikaba bivuga ko uwahamagajwe gutyo aba yarangije kuba umunyacyaha. Bavuga ko kuba Urukiko Rukuru rwarahamagaje Ingabire Umuhoza Victoire mu rubanza RP00020/2022/HC/KIG ngo atange ibisobanuro, nyuma rugashingira kuri iyo ngingo ya 106, rugatega ubushinjacyaha kumukoraho iperereza ryimbitse nk'umufatanyacyaha w'abaregwa, rukazamuburanisha rukanamucira urubanza, basanga icyo gihe ataba agifatwa nk'umwera kuko ruba rwamaze kumucira urubanza. [15] Bavuga ko kuba ku wa 17/06/2025, Umwanditsi w'urukiko yarahamagaje Ingabire Umuhoza Victoire kwitaba nk'umufatanyacyaha mu rubanza RP00020/2022/HC/KIG, kandi mu by'ukuri atararezwe ndetse ntanahabwe n'umwanya wo kwiregura, basanga binyuranyije n'ihame ryo gufatwa nk'umwera kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha. Bavuga

kandi ko kuba umucamanza yakora ibikorwa by'ikurikiranacyaha, nyuma agatega ko umuntu akorwaho iperereza, akongera akaba ari we umucira urubanza, basanga umucamanza atatanga ubutabera buboneye. [16] Basobanura ko igihe umucamanza atumijwe umuntu mu Rukiko, aba yamaze guca urubanza kuko aba yaramugize umufatanyacyaha; akaba ari yo mpamvu asanga binyuranyije n'ihame riteganyijwe mu ngingo ya 29, igika cya mbere, agace ka (b), ndetse bikanambura ubushinjacyaha Bukuru inshingano busanzwe bufite zo gushinja no gushinjura. Bavuga kandi ko kuba umucamanza yarabajije Ingabire Umuhiza Victoire ibijyanye n'amahugurwa y'ururimi rw'icyongereza yategurwaga n'ishyamba rye, basanga yari yamaze gufata uruhande abogamiraho. [17] Basobanura kuri iyi ngingo bavuga ko kuba urukiko rwashinje umuntu, rukamuburanisha, rukanamucira urubanza, iyo ari imigirire ibangamira ihame ry'ubutabera buboneye, akaba ari nayo mpamvu basaba Urukiko rw'Ikirenga gukuraho ingingo ya 106 kuko inyuranyije n'ingingo ya 29, igika cya mbere, agace ka (b), y'Itegeko Nshinga. [18] Me Kabibi Spéciose uhagarariye Intumwa Nkuru ya Leta avugaga ko muri rusange, ingingo ya 106 yashyizweho hagamijwe gushimangira ihame rya "Judex Damnatur Cum Nocens Absolvitur" (Judge is condemned when guilty is acquitted) no guha umucamanza ubwinyagamburiro bwo gutanga ubutabera buboneye, ndetse no kudashyigikira umuco wo kudahana mu gihe abonye hari ibimenyetso byagaragajwe mu Rukiko (bitaragaragajwe ahandi) byerekana ko hari undi muntu wakoze icyaha utararezwe.

3 "La présomption d'innocence est un principe selon lequel toute personne est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie. Ce principe garantit que l'individu n'est pas traité comme un coupable tant que la preuve contraire n'a pas été apportée". Elle constitue un rempart crucial contre les erreurs judiciaires et les abus de pouvoir. Elle assure que les individus ne sont pas sanctionnés sans preuve solide et légalement établie de leur culpabilité. Par ailleurs, elle garantit l'impartialité du système judiciaire en évitant de préjuger du résultat du procès". 4 "Un Arrêt de la Cour de cassation belge, interdit au Tribunal de faire apparaître, en cours du procès son opinion ou sa conviction quant aux faits reprochés au prévenu". Cass, 11 Mai 1983, Pass, I P 1027; Cass, 8 Mai 1996 JLMB, 1996 p. 297 in Henri-D Bosly, Damien Vandermeersch, Droit de la Procédure Penale, la Charte, page 23. 5 Dans un Arrêt rendu le 10 Février 1995, la Cour Européenne des droits de l'homme a considéré à cet égard que le manque de discrétion et de réserve dont avait fait preuve une autorité publique en donnant des informations sur une enquête judiciaire laissant apparaître la culpabilité d'une personne constituait une violation de la présomption d'innocence et était contraire à l'Article 6.2 de la convention. Cour Européenne des droits de l'homme, Rev Trim D.H 1995, page 656.

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[19] Avugaga kandi ko Umushingamategeko yasanze hari igihe bishoboka ko iperereza ritabona ibimenyetso bifatika, bigatuma dosiye ishyingurwa cyangwa ntiyabaye gukurikirana ukekwe icyaha bitewe n'uko hari abamuhishiriyeho; ariko mu gihe cy'iburanisha umucamanza akabibona biturutse ku mvugo n'ibimenyetso byatanze n'abandi baregwa cyangwa n'abatangabuhamya, mu gihe cy'iburanisha kandi bitarigeze bigaragazwa mu gihe

cy'iperereza. Avuga ko iyi ngingo yemerera umucamanza gutumiza uwo muntu akamwumva ariko yasanga ibisobanuro bye bidafatika, akaba yategeka ubushinjacyaha kumukoraho iperereza. [20] Agaragaza ko ubu bubasha butaba mu Rwanda gusa, ko no mu gihugu cy'Ubugande babufite (Section 319 of India's Code of Criminal Procedure), kandi ko naho iyi ngingo yasabiwe gukurwaho ariko urukiko rukemeza ko nta kibazo itege kuko igamije guha inkiko ububasha bwo guhana abakwiye guhanwa bese. [21] Akomeza avuga ko kuba urukiko rwahamagaza umuntu utari mu barezwe n'ubushinjacyaha biri mu nyungu z'ubutabera, kuko icyo ruba rugamije ari ukureba niba hari amakuru uwo muntu afite kuri urwo rubanza yafasha urukiko no kumva niba ibyo abandi baburanyi bamuvugaho hari ibisobanuro abifitiye. [22] Asobanura ko kuba ingingo ya 106 iteganya ko iyo uwahamagajwe atanze ibisobanuro bidahagije, nyuma urukiko rugasanga hari ibimenyetso bimushinja icyaha, maze rugategeka ubushinjacyaha kumukoraho iperereza ryimbitse, ubwabyo bitavuze ko biba byakuyeho ihame ry'uko ari umwere kugeza icyaha kimuhamye burundu; ahubwo bisobanuye ko haba hagaragara ibimenyetso byerekana ko ashobora kuba yarakoze icyo cyaha, bityo n'iperereza rikaba rihera kuri ibyo bimenyetso kugira ngo rifashe urukiko gushakisha ukuri kwabyo. Yongeraho ko kuba urukiko rutegeka ubushinjacyaha gukora iperereza ari igihamba ko ruba rutarafata uruhande runaka (position), ko ikiba kigamijwe ari ukugira ngo ubushinjacyaha burebe ibyagaragaye mu iburanisha bimureba, bikorerwe iperereza hagamijwe ko ukuri kujya ahagaragara. [23] Avuga kandi ko umucamanza afite ububasha bwo kwishakira ibimenyetso bitagezweho n'ababuranyi (rôle actif), akaba ari muri urwo rwego ashobora guhamagaza umufatanyacyaha cyangwa icyitso mu rubanza, ariko akabikora mu gihe hari ibimenyetso byagaragaye mu iburanisha byerekana ko uwo muntu ashinjwa koko icyo cyaha. Yongeraho ko mu gihe umucamanza yaba abonye ibyo bimenyetso, atabyirengagiza ashingiye ku kuba bitazanywe n'ubushinjacyaha kuko abikoze nta butabera yaba atanze. [24] Akomeza avuga ko ingingo ya 106 nta rujijo itege kandi ko kuba umucamanza yategeka ubushinjacyaha gukora iperereza bitavuze ko buzana ibimenyetso bishinja gusa kuko bushakisha n'ibishinjura. [25] Asoza kuri iyi ngingo avuga ko ishyingira mu bikorwa ry'ingingo ya 106 ritafatwa nk'aho uwakozweho iperereza yamaze guhamywa icyaha, kuko urukiko rubaye rwakimuhamije rutakwirirwa rutegeka ko hakorwa iperereza. UKO URUKIKO RUBIBONA [26] Ikigomba gusuzumwa muri uru rubanza ni ukumenya niba ububasha bukubiye mu ngingo ya 106 buhabwa urukiko mu manza z'inshinjabyaha bunyuranyije n'ihame ryo gufatwa nk'umwere riteganyijwe mu Itegeko Nshinga, mu ngingo ya 29 (1) (b) iteganya ko buri muntu afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo gufatwa nk'umwere kugeza igihe urukiko rubifitiye ububasha rumuhamije icyaha.

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- [27] Gufatwa nk'umwere, (presumption of innocence/présomption d'innocence) ni uburenganzira buteganywa kandi n'amasezerano ndetse n'Itangazo mpuzamahanga u Rwanda rwasinye; amwe muri yo ni aya akurikira:

- a. Itangazo Mpuzamahanga ku burenganzira bwa muntu, ingingo ya 11: (1) yaryo iteganya ko umuntu wese ukurikiranyweho icyaha afite uburenganzira bwo gufatwa nk'umwera kugeza igihe agihamijwe n'urukiko hakurikijwe amategeko, kandi yahawe uburenganzira bwo kwisobanura mu rubanza rubereye mu ruhamye⁶.
- b. Amasezerano Mpuzamahanga ku burenganzira mbonezamubano na politiki, ingingo ya 14 (2) yaryo iteganya ko umuntu wese ukurikiranyweho icyaha afite uburenganzira bwo gufatwa nk'umwera kugeza igihe agihamijwe n'urukiko hakurikijwe amategeko⁷.
- c. Amasezerano Nyafurika y'uburenganzira bwa muntu n'ubw'abaturage mu ngingo ya 7 (1) hateganyijwemo ko buri muntu wese afite uburenganzira bwo kumvwa. Ubwo burenganzira bukaba burimo (b) n'uburenganzira bwo gufatwa nk'umwera kugeza igihe ahamijwe icyaha n'urukiko rubifitiye ububasha⁸. [28] Ibisobanuro by'abahanga n'inyandiko zitandukanye bigaragaza ko iri hame mu bijyanye n'imanza z'inshinjabyaha⁹ rigaragarira mu buryo butandukanye, ari bwo ko ari (i) bumwe mu burenganzira bw'ibanze bwa muntu (ii) buhabwa ukekwa, ukurikiranyweho n'ushinjwa icyaha; (iii) rireba ibijyanye n'itangwa ry'ibimenyetso n'agaciro kabyo ndetse (iv) n'imyitwarire y'abashinzwe gutanga ubutabera.
- a. Uburenganzira bw'ibanze bwa muntu [29] Ihame ryo gufatwa nk'umwera ni imwe mu nkingi zigamije kurengera uburenganzira bwa muntu. Mu Itegeko Nshinga rya Repubulika y'u Rwanda, iri hame rigaragara mu cyiciro cy'uburenganzira, by'umwihariko mu mutwe wa kane uteganya ibijyanye n'uburenganzira n'ubwisanzure bya muntu. Ni ko bimeze no mu bindi bihugu nk'Ubufaransa¹⁰, muri Canada¹¹, no muri Leta Zunze Ubumwe za Amerika mu mavugurura y'Itegeko Nshinga, irya 5, irya 6 n'irya 14 avuga ku butabera bubonye nk'uko bisobanurwa n'uwitwa William F. Fox¹² ¹³.
- b. Uburenganzira buhabwa ukekwa, ukurikiranyweho n'ushinjwa icyaha [30] Uburenganzira bwo gufatwa nk'umwera buhabwa umuntu ukekwa icyaha, ukurikiranyweho icyaha n'ushinjwa icyaha, bukarangirana n'uko urukiko rubifitiye ububasha rumuhamije icyaha mu buryo budasubirwaho. Ni ihame rirebana n'itangwa ry'ibimenyetso kuko ritegeka ubushinjacyaha kuba ari bwo

6 Universal Declaration of Human Rights, Art. 11 (1) "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense". 7 International Covenant on Civil and Political Rights Art. 14 (2) "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law". 8 African Charter on Human and Peoples' Rights (Banjul Charter) adopted June 27, 1981 "Every individual shall have the right to have his cause heard. This comprises: (b) the right to be presumed innocent until proved guilty by a competent court or tribunal." 9 Harasesengurwa gusa ibijyanye na ryo mu manza z'inshinjabyaha, kuko rishobora no gukoreshwa mu zindi manza. 10 Article 9 "Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne serait pas nécessaire pour s'assurer de sa personne doit être sévèrement réprimée par la loi". 11 "Tout inculqué a le droit: (d) d'être présumé innocent tant qu'il n'est pas

déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable". 12 "The American criminal law concept known as the "presumption of innocence" has been described variously as: - "that bedrock 'axiomatic and elementary' principle whose enforcement, lies at the foundation of the administration of our criminal law." - "a basic component of a fair trial." - "[an] assumption that, in the absence of contrary facts, it is to be assumed that any person's conduct upon a given occasion was lawful." - "not a presumption at all in the legal sense". William F. Fox Jr., "The presumption of Innocence" as Constitutional Doctrine, p. 253. Available at <https://scholarship.law.edu/lawreview/vol28/iss2/3>. 13 Muri urwo rubanza ariko, abacamanza babiri b'Urukiko rw'Ikirenga, ntibemeranyijwe n'icyo cyemezo, bavuga ko iryo atari ihame ry'Itegeko Nshinga.

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butanga ibimenyetso bidashidikanywaho. Ntirireba ibibanziriza cyangwa ibikurikira urubanza¹⁴ kuko ridakurikizwa ahandi hatari mu ikurikirana ry'icyaha¹⁵. Ryubahirizwa mu nzego zose z'ikurikiranacyaha, guhera ku iperereza rikorwa n'abashinzwe ubugenzacyaha kugeza igihe urubanza ruciriwe burundu¹⁶, ni ukuvuga ko rigomba kugirira akamaro umuntu wese ushinjwa, gushinjwa bikaba bigomba kumvikana nko kumenyeshwa mu buryo bwemewe n'urwego rubifitiye ububasha, ko ibyo yakoze bigize icyaha¹⁷.

- d. Ihame ryo gufatwa nk'umwere n'itangwa ry'ibimenyetso n'agaciro kabyo [31] Ishyirwa mu bikorwa ry'iri hame rigaragarira cyane mu bintu bibiri bigaragaza ko ari ihame rirebana n'itangwa ry'ibimenyetso¹⁸. Icyamba mbere ni ukuba riha ubushinjacyaha inshingano yo kuba ari bwo bugomba gutanga ibimenyetso bidashidikanywaho by'ibyo bushinja ukurikiranyweho icyaha. Ntawe ugomba gufatwa nk'umunyacyaha igihe cyose icyaha aregwa kitaragaragarizwa ibimenyetso bidashidikanywaho, kandi ushinjwa agomba gukomeza gufatwa mu buryo bwubahirije iri hame, inzego za Leta zikirinda kuvuga ku bizava mu rubanza rutararangira¹⁹. Icyamba kabiri ni ukuba igihe ibyo bimenyetso bitabonetse bigirira akamaro ushinjwa. Ukurikiranyweho icyaha si we usabwa kugaragaza ko ari umwere mu gihe nta tegeko ribiteganywa ukundi^{20, 21}, ahubwo iyo ibimenyetso bitabonetse, bimugirira akamaro, kuko umucamanza ategatswe kutakimuhamya.
- d. Imyitwarire y'abashinzwe gutanga ubutabera [32] Abashinzwe gutanga ubutabera basabwa kwirinda imvugo cyangwa imyitwarire ituma bigaragara ko bamaze kwemeza ko ukurikiranywe cyangwa ushinjwa yakoze icyaha akurikiranyweho²², birinda kuvuga iby'urubanza rutararangira (préjugement) no kugaragaza uko batekereza ushinjwa (préjugé)²³.

¹⁴ "It is often treated as a rule of evidence, synonymous with the burden of proof being on the prosecution to prove guilt beyond a reasonable doubt, and therefore having no application beyond the trial itself". Pamela R. Ferguson "The presumption of innocence and its role in the criminal process, available at <https://link.springer.com/article/10.1007/s10609-016-9281-8>. ¹⁵ "Nothing in the Taylor opinion suggests that the presumption of innocence operates at any time in the criminal process outside the narrow context of the trial itself" William F. Fox Jr. op. cit, p.

261. 16 “En revanche, s’agissant de la procédure pénale proprement dite, la présomption d’innocence doit être respectée à tous les stades du procès pénal (entendu ici comme la constitution d’un dossier de procédure), depuis l’enquête de police jusqu’à la condamnation définitive” Serge Guinchard et Jacques Buisson: *Procédure pénale*, Lexis Nexis, 14^e éd. Paris, 2021, p. 333. 17 “pour la Cour européenne, ce principe doit bénéficier à “toute personne accusée”, l’accusation se définissant comme “la notification officielle, émanant de l’autorité compétente, du reproche d’avoir accompli une infraction pénale”. Ibid. p. 468. 18 “La présomption d’innocence est d’abord une règle de preuve, puisqu’il appartient aux autorités poursuivantes de prouver la culpabilité de la personne poursuivie ...” ibid. p 333. 19 “By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial”. UN Human Rights Committee, General Comment 13, Article 14 (Twenty-first session, 1984), (Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 14 (1994). 20 “(...) the burden of proof is on the prosecution; and any doubt should benefit the accused (Barberà, Messegué and Jabardo v. Spain, 1988, § 77)”. Key Theme article 6 (criminal limb) Presumption of innocence. (Last updated: 31/08/2025) by the European Court of Human Rights. p. 1. 21 “En l’absence de texte qui renverserait la charge de la preuve, la présomption d’innocence a pour effet normal de dispenser la personne suspecte ou poursuivie d’établir son innocence”. Bernard Bouloc: *Procédure pénale*, éditions Dalloz, 28^e éd., Paris, 2022, p. 126. 22 “Le juge doit lui-même respecter la présomption d’innocence en ne portant pas de préjugement sur la personne accusée et en n’ayant pas de préjugé non-plus sur elle. (...) il résultera, par exemple, de propos tenus avant ou pendant l’audience; le juge ne doit pas montrer au prévenu, à l’accusé, ses sentiments sur sa culpabilité ou son innocence. (...) les organes Européens ont affirmé plusieurs fois qu’il y a violation de la présomption d’innocence « si, sans établissement légal de la culpabilité d’un prévenu et notamment sans que ce dernier ait eu l’occasion d’exercer les droits de la défense, une décision judiciaire le concernant reflète le sentiment qu’il est coupable. Il peut en aller ainsi même en l’absence de constat formel; il suffit d’une motivation donnant à penser que le juge considère l’intéressé comme coupable” Serge Guinchard et Jacques Buisson op. cit,
- p. 342. 23 “Article 6 § 2 requires, inter alia, that: (1) when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged” the European Court of Human Rights. Op. cit. p. 1.

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Binareba ibyemezo bafata mu rwego rw’urubanza cyangwa gukurikirana icyaha, igihe hatarabaho urubanza. Byakumvikana na none nk’ibyemezo bibanziriza urubanza. Iyi nshingano ntireba abaca imanza gusa, inareba abagenza ibyaha, ababikurikirana n’ababishinja. Icyakora,

ibikorwa bimwe ntibifatwa nko guhungabanya ihame ryo gufatwa nk'umweme. Ibyo bikorwa ni nko kuba umushinjacyaha yashinja uregwa imbere y'urukiko, gusoma inyandiko igaragaza ibyo ushinjwa aregwa, inyandiko yo gufata no gufunga by'agateganyo, cyangwa se kuba hakomeza iburanisha ry'ubanza rw'imbonezamubano igihe urw'inshinjabyaha rutararangira²⁴. [33] Ibisobanuro bimaze gutangwa bigaragaza ko ugufatwa nk'umweme:

- a. Ari ihame rishingiyeho uburenganzira ku butabera buboneye, rigamije kurinda uburenganzira bw'ukurikiranyweho icyaha;
- b. Ari uburenganzira butangirana n'ukurikiranacyaha, bukarangirana n'igihe urukiko ruhamije icyaha ukurikiranywe mu buryo budasubirwaho. Ni ukuvuga ko ari uburenganzira bureba gusa ukurikiranyweho icyaha, bukaba ntacyo bumaze igihe ntacyo umuntu abazwa;
- c. Biha ubushinjacyaha inshingano yo kuba ari bwo butanga ibimenyetso by'ibyo bushinja uregwa, ibyo bimenyetso bikaba bigomba kuba bidashidikanywaho, kandi kutabitanga bikaba bituma ushinjwa adahamywa icyaha aregwa;
- d. Bidakuraho ibyemezo bigomba gufatwa mu rwego rw'iperereza no gutekura iburanisha byafashwe n'ababifitiye ububasha mu buryo bukurikije amategeko. [34] Ku bijyanye n'uru rubanza, Ingabire Umuhoro Victoire avuye ku ingingo ya 106 inyuranyije n'ihame ryo gufatwa nk'umweme riteganyijwe mu ngingo ya 29 (1) (b) y'Itegeko Nshinga kubera ko igihe urukiko rutegetse ubushinjacyaha gukora iperereza ku muntu uvugwa mu rubanza ruburanisha hanyuma rugatega ko azanwa, rukamuburanisha, ruba rwamaze kumugira umufatanyacyaha. [35] Ingingo ya 106 aregera iteganya ibi bikurikira: Guhamagaza mu rubanza abafatanyije icyaha cyangwa ibyitso batategewe urukiko Iyo urukiko rusanze hari impamvu zatuma hakekwa abandi bantu kuba barafatanyije gukora icyaha cyangwa se ari ibyitso by'ukurikiranyweho icyaha rurabahamagaza kugira ngo bagire ibisobanuro batanga muri urwo rubanza. Iyo abahamagawe mu rubanza batitabye, urukiko rutegeka ubushinjacyaha kubazana ku ngufu za Leta. Iyo urukiko rumaze kubaza abahamagawe mu rubanza mu buryo buteganywa mu gika cya mbere n'icya 2 by'iyi ngingo rugasanga nta bimenyetso bituma bakekwaho icyaha rufata icyemezo cyo gukomeza iburanisha batongeye guhamagarwa mu rubanza. Iyo urukiko rusanze ibisobanuro batanze bidahagije kandi urukiko rugasanga hari ibimenyetso bibashinja icyaha, rutegeka ubushinjacyaha gukora iperereza buherereye ku byagaragajwe mu iburanisha kugira ngo bazashyikirizwe urukiko. ubushinjacyaha butegatswe kandi kubahiriza icyo cyemezo cy'urukiko.

24 “Moreover, if the presumption of innocence were a true presumption with actual evidentiary effect, it might well be used to invalidate long standing pretrial practices, such as bail and pretrial detention. If the presumption exists as a matter of evidence, under conventional practice the prosecutor would have to introduce sufficient evidence to rebut it. In other words, if the presumption constituted evidence of lack of guilt, the prosecutor would be forced to produce at least some evidence of guilt sufficient to overcome the presumption, or the defendant could not be handled prior to trial in any manner suggesting guilt. Since most prosecutors are loath to put on their entire case during the grand jury inquiry or at the preliminary hearing, defendants could

conceivably invoke the presumption to circumvent bail requirements or pretrial custody. Of course, the Supreme Court has never gone this far. The District of Columbia pre-trial detention statute, for example, has been upheld as constitutional.” William R. Fox. Op. cit, p 261.

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[36] Iyi ngingo igaragaramo ibintu bitatu by’ingenzi: ko urukiko (i) ruhamagaza mu iburanisha umuntu waketswe kuba yaragize uruhare mu ikorwa ry’icyaha nk’icyitso cyangwa nk’umufatanyacyaha, uzamo nk’uje gutanga ibisobanuro ku byo avugwaho mu rubanza; igihe urukiko rusanze nta bimenyetso bituma akekwa icyaha, ntiyongera guhamagazwa mu rubanza. Ikindi kigaragaramo ni uko, (ii) igihe urukiko rusanze ibisobanuro atanze bidahagije rutegeka ubushinjacyaha gukora iperereza no (iii) kugarura uwo muntu ngo aburanishwe. [37] Ku bijyanye no guhamagaza umuntu gutanga ibisobanuro, ndetse no kuba urukiko rwategeka ubushinjacyaha gukora iperereza igihe rusanze ibisobanuro atanze n’ibyo yavuzweho bigaragaza ko hari ibimenyetso bituma akekwa kugira uruhare mu ikorwa ry’icyaha kiburanishwaho, iyi ngingo ishyiraho ibigomba kuba bihari kugira ngo umuntu ahamagazwe, ari byo kuba mu bivugwa n’ababuranyi hagarukamo izina ry’umuntu utari mu rubanza. Ni ukuvuga ko uhamagazwa ari umuntu uvugwaho kugira aho ahuriye n’icyaha kiburanishwaho, kugira ngo agire icyo asobanura ku byamuvuzweho mu iburanisha. Ikindi kandi, kuba umuntu yahamagajwe ngo yumvwe, urukiko rugomba kugira icyo ruvuna mu bisobanuro yatanze, no kugira umwanzuro rubifatira. [38] Urukiko rurasanga ibimaze kuvugwa ntaho bibangamiye ihame ryo gufatwa nk’umwere kubera ko nk’uko byasobanuwe haruguru, guhamagaza umuntu gutanga ibisobanuro atari byo bituma uwahamagajwe ahinduka ukurikiranyweho icyaha kuko nta perereza riba ryatangiye kumukorwaho. Rurasanga kandi gutegeka ubushinjacyaha gukora iperereza ahubwo bishimangira ko urukiko rudafata uwo muntu nk’umunyacyaha, ko icyo ruba rukoze, ari ugutegeka ko hatangira iperereza rigomba kugaragaza niba hari uruhare uwo muntu yaba yaragize mu ikorwa ry’icyaha kiburanishwaho n’uko rwaba rungana. [39] Urukiko rurasanga ibi bihura n’ibyavuzwe mu rubanza rwa Mutebwa Alfred, ko igihe urukiko rusanze hari impamvu zikomeye zituma umuntu akekwa ko yaba yarafatanyije n’ushinjwa gukora icyaha, noneho rugasaba umushinjacyaha kumukurikirana bitatuma umucamanza agaragara nk’aho yemeza ko uwo muntu koko yakoze icyaha²⁵. [40] Ku bijyanye n’uko urukiko rutegeka ubushinjacyaha kugarura uwo muntu kugira ngo aburanishwe, urukiko rurasanga ibi bidasaba umushinjacyaha kuzana ibimenyetso bishinje gusa, kuko bufite inshingano yo gushaka ibimenyetso bishinje n’ibishinjura²⁶. Ni ukuvuga ko ubushinjacyaha bukorera iperereza uko bikwiye, bukazana imbere y’urukiko ibyo bwabonye; si ibyo urukiko rwabutegetse kuzana. Rurasanga kandi, kuba urukiko rwategeka ko uwo muntu azanwa mu rubanza rwari rwaratangiye, byubahirije inshingano n’ububasha by’urukiko byo kuba rwahuza imanza zikwiye guhuzwa kubera ko zifitanye isano. Muri uru rwego, umuntu aba yavuzweho kugira uruhare mu ikorwa ry’icyaha kiburanishwa, bikaba byumvikana ko ubushinjacyaha buramutse busanze na we agomba gukurikiranwa, yaburanira hamwe n’abari kuburana kuri icyo cyaha, mu rwego rw’imigendekere myiza y’iburanisha. [41]

Urukiko rusanga ibi ari byo ahubwo byubahirije ihame ryo gufatwa nk'umwere, kuko bituma urukiko rudafata icyemezo kivuga ku muntu utarabaye umuburanyi mu rubanza, ndetse bigaha uyu muntu uburenganzira bwo kwisobanura imbere y'abamuvuzeho kugira uruhare mu cyaha gikurikiranwa. Biri mu nyungu z'uwo muntu kandi, ko igihe abaye umwere bigaragarira mu rubanza yavuzwemo.

25 Urubanza RS/Inconst/pen.0001/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008 haburana Mutebwa Alfred, igika cya 30. 26 Izo nshingano zigaragara mu ngingo ya 3 (1) 5o, iya 16. 3o, iya 72. 6o n'iya 93 (3) z'Itegeko ryerekeye imiburanishirize y'imanza z'insinjabyaha.

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[42] Mu gihugu cy'Ubuganda, ingingo ya 31927 y'Itegeko rigena imiburanishirize y'imanza z'insinjabyaha ryabo iteganya ko igihe mu iburanisha habonetse ibimenyetso ko hari umuntu utari mu iburanisha wakoze icyaha ashobora gukurikiranwaho hamwe n'abaregwa, urukiko rushobora kumukurikirana kuri icyo cyaha²⁸. Iyi ngingo yareguye ko inyuranyije n'Itegeko Nshinga ryabo mu rubanza Hardeep Singh v. State of Punjab, maze urugereko rushinzwe kurinda Itageko Nshinga rw'Urukiko rw'Ikirenga rusobanura ko urukiko ari rwo rwonyine murinzi w'ubutabera, rukagira n'inshingano yo gukora ku buryo ihame ryo kugendera ku mategeko ryubahirizwa. Rwavuze ko bidakwiye kwima urukiko ubwo bubasha mu butabera mpanabyaha, aho bishoboka ko rimwe na rimwe umunyacyaha yakoresha amayeri atuma adakurikiranwa kuva mu bugenzacyaha kandi afite aho ahuriye n'icyaha gikurikiranwa²⁹. [43] Ubu bubasha ntibugaragarira mu mategeko y'u Rwanda cyangwa Ubuganda gusa, bunaboneka mu bihugu bimwe na bimwe bigendera kuri sisitemu (system/systeme) y'amategeko ya "civil law/romano- germanique" cyangwa ibifite icyitwa "hybrid system/systeme hybride", aho usanga umucamanza ari we uyobora imiburanishirize y'imanza z'insinjabyaha mu gushaka ibimenyetso n'amakuru, uburyo bwitwa "inquisitorial system/systeme inquisitorial" nk'Ubufaransa³⁰. Nubwo muri ibi bihugu hari umucamanza wihariye ukurikirana akanafata ibyemezo bijyanye n'ikurikiranacyaha ribanziriza urubanza mu mizi bita juge d'instruction, ariko ni umucamanza ubarirwa mu Butegetsi bw'Ubucamanza. [44] Nk'uko byasobanuwe rero, ububasha buhabwa urukiko mu ngingo ya 106 bugamije kurinda ko urukiko rwahinduka urwego rurebera mu gihe hari ibigize icyaha bigaragariye mu iburanisha, ariko ntirugire ububasha bwo kugira icyo rubikoraho, bigatuma ukuri kugaragaye kudacukumburwa mu nzira zemewe n'amategeko. Bugaragaza ko inshingano z'urukiko atari uguca urubanza gusa ku baregwa bazanywe n'ubushinjacyaha, ahubwo ari no kurinda icyizere cy'ubutabera, kugira ngo igihe icyaha kigaragaye kidasigara kidakurikiranywe. [45] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rurasanga ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'insinjabyaha nk'uko ryahinduwe, itanyuranyije n'ingingo ya 29, igika cya mbere, agace ka (b), y'Itegeko Nshinga rya Repubulika y'u Rwanda.

27 Iyi ngingo yo iteganya ko umucamanza ari we uzana mu rubanza umuntu ukekwa icyaha. N'ubwo itandukanye n'ya 106 kuko yo itegeka Ubushinjacyaha gukora iperereza, icyo zigamije zombi ni ukuzana mu rubanza uwaba afite uruhare mu cyaha gikurikiranwaho. 28 Iyi ngingo iteganya ibi bikurikira: 319. "Power to proceed against other persons appearing to be guilty of offence. (1)Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.(2)Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.(3)Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.(4)Where the Court proceeds against any person under sub-section (1), then -(a)the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;(b)subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced". 29 "The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence". Hardeep Singh vs State of Punjab & Ors, Supreme Court of India, 10 January, 2014, para.17, available at [efaidnbmnnnibpcajpcglcfindmkaj/https://ejournal.knjars.knjari.ac.id/index.php/ajpcglc/article/view/107](https://ejournal.knjars.knjari.ac.id/index.php/ajpcglc/article/view/107) files/07 Criminal Law/39 section 319 of crpc/Hardeep Singh vs State of Punjab & Ors on 10 January, 2014. PDF. 30 Ingingo ya 204 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha yabo iteganya ko: "La chambre de l'instruction peut également, quant aux infractions résultant du dossier de la procédure, ordonner que soient mises en examen, dans les conditions prévues à l'article 205, des personnes qui n'ont pas été renvoyées devant elle, à moins qu'elles n'aient fait l'objet d'une ordonnance de non-lieu devenue définitive".

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- 2) Kumenya niba ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, inyuranyije n'ingingo ya 61 y'Itegeko Nshinga rya Repubulika y'u Rwanda [46] Ingabire Umuhoza Victoire n'abamwunganira bavuga ko ingingo ya 61 y'Itegeko Nshinga iteganya ko inzego z'ubutegetsi bwa Leta zigizwe n'Ubutegetsi Nshingamategeko, Ubutegetsi Nyubahirizategeko n'Ubutegetsi bw'Ubucamanza; ko ubwo butegetsi butandukanye, bwigenga, ariko bwose bwuzuzanya. Bavuga ko ariko ingingo ya 106 iha urukiko ububasha bwo kwivanga mu nshingano z'ubushinjacyaha, bityo ko kuba urukiko rwakwivanga mu nshingano z'urundi rwego rw'ubutegetsi rwigenga, basanga binyuranyije n'ingingo ya 61 y'Itegeko Nshinga,

akaba ari yo mpamvu basaba urukiko rw'Ikirenga kuyivanaho. [47] Basobanura ko ikibazo ubwacyo kiri ku nshinga gutegeka yakoreshejwe muri iyo ngingo ya 106, kuko iyo urukiko rudategeka ubushinjacyaha gukora iperereza kuri Ingabire Umuhoza Victoire atari kuba akurikiranwa ubu. Bavuga ko kuba ubushinjacyaha bwari bwamaze kubwira urukiko ko mu mikorere yabwo bugendera ku ihame ryo gukurikirana cyangwa kudakurikirana icyaha (opportunité de poursuite), ariko urukiko rukabirengaho rukabutegeka ko agomba guhamagazwa, asanga urukiko rwarategetse ubundi Butegetsi icyo bugomba gukora kandi ibyo binyuranyije n'Itegeko Nshinga. [48] Bavuga ko mu irangashingiro ry'Itegeko Nshinga, hateganywa ihame ry'isaranganya ry'Ubutegetsi kandi ko ingaruka zabyo ari uko Ubutegetsi Nshingamategeko, Nyubahirizategeko ndetse n'ubw'Ubucamanza butandukanye kandi bwigenga. Basobanura ko kuba rero ingingo ya 106 yemerera urukiko kwivanga mu nshingano ubusanzwe zikorwa n'ubushinjacyaha bwigenga, asanga iyo mikorere inyuranyije n'ihame rivuga ko buri Rwego rw'Ubutegetsi rwigenga, riteganywa n'ingingo ya 61 y'Itegeko Nshinga. Basobanura ko ihame ry'uko inzego z'ubutegetsi zigomba kuba zitandukanye (La séparation des pouvoirs) ryagarutsweho n'abahanga batandukanye³¹. [49] Bibutsa kandi ko inshingano z'umucamanza mu manza z'inshinjabyaha ari ukwakira ibirego aba yashyikirijwe n'ubushinjacyaha bigamije guhana umuntu iyo icyaha kimuhamye; ko mu byo ashinzwe hatarimo gupereza no gukurikirana ibyaha kuko izo nshingano Itegeko Nshinga ryazihariye Urwego rw'ubushinjacyaha. Bavuga kandi ko ibyo bidateganywa n'Itegeko Nshinga gusa kuko ari n'ihame rihuriweho n'ibindi bihugu riteganywa ko buri Butegetsi bugomba gutandukana n'ubundi kandi bukagenzurana (checks and balances/ equilibre des pouvoirs). [50] Bavuga ko ihame ry'uko buri butegetsi bugomba gutandukana ryagarutsweho mu rubanza rwa Mutebwa Alfred, aho Urukiko rw'Ikirenga rwasobanuye ko iryo hame ryashyizweho kugira ngo abantu bave mu bihe aho mu butegetsi bwa cyami (monarchie absolue), umwami yabaga ari umushinjacyaha, umucamanza ndetse akaba ari na we ushyira mu bikorwa ibyemezo bye. Bavuga ko ibyo byahaga umwami ububasha bwinshi, akaba yarashoboraga kubukoresha nabi (abus de pouvoir); ko mu bihe bya demokarasi tugezemo, umucamanza atakagombye gukora iperereza, hanyuma ngo ashinje, ndetse anace urubanza. Bavuga ko Itegeko Nshinga n'andi mategeko agenera mu buryo bugaragara izo nshingano inzego zitandukanye³². Bavuga kandi ko muri urwo rubanza urukiko rwasobanuye ko ubushinjacyaha buvuguruwe bukwiye kugirirwa icyizere hakubahirizwa amahame yo mu Itegeko Nshinga kandi ahuje n'amahame mpuzamahanga yo gutandukanya inshingano z'ubushinjacyaha n'iz'Ubucamanza³³.

31 “La séparation des pouvoirs est un principe fondamental de l'organisation politique des États, théorisé principalement par Montesquieu, qui vise à diviser les fonctions étatiques entre trois branches distinctes: le pouvoir législatif (qui fait la loi), le pouvoir exécutif (qui applique la loi) et le pouvoir judiciaire (qui interprète et sanctionne le respect de la loi). Cette doctrine est une garantie contre l'arbitraire et les abus de pouvoir, assurant ainsi la liberté des citoyens”. 32 Reba urubanza RS/Inconst/Pén.0001/07/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/01/2008, ku kirego cyatanze na Mutebwa Alfred, igika cya 24. 33 Ibid. igika cya 32.

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[51] Bakomeza bavuga ko hari izindi nkiko zagaragaje ko zidashaka kwivanga mu nshingano z'ubushinjacyaha, nk'aho mu rubanza rwa People vs Robles, Urukiko rwo muri Leta Zunze Ubumwe za Amerika rwavuze ko ihame ry'itandukanywa ry'inzeho z'ubutegetsi nyubahirizategeko, ubutegetsi nshingamategeko n'ubutegetsi bw'ubucamanza bibuza urukiko kwivanga mu nshingano z'ubushinjacyaha³⁴. Berekana ko mu rubanza "United States vs Crouch", Urukiko rwavuze ko ku byerekeye gukora iperereza no gushinja icyaha, mu gihe urukiko ruvuga ko rurimo gukoresha ubushishozi, rureka inshingano yarwo nyakuri, ahubwo rugasanga rurimo gukora imirimo y'umushinjacyaha no guhangana n'uregwa, bakaba basanga bitandukanye n'akazi k'urukiko³⁵. [52] Bavuga ko umucamanza aramutse akoze imirimo y'ubushinjacyaha byagaragara nk'aho adafite ubwigenge agomba kuba afite mu guca urubanza nk'uko biteganywa n'Itegeko rigenga Abacamanza n'abakozi b'Inkiko ndetse n'Itegeko Nshinga. Batanga urugero ku rubanza rwabaye muri Africa y'Epfo, aho Urukiko rushinzwe kurinda Itegeko Nshinga rwavuze ko umucamanza agomba kwigenga kandi abaturage bakamubona batyo. Bavuga ko urwo Rukiko rwemeje ko mu gihe byakwemerwa ko umucamanza yajya yivanga mu mirimo y'ubutegetsi nyubahirizategeko, ubwo byaba bivuze ko yajya anashingwa n'imirimo yo mu rwego nyubahirizategeko, ibyo bikaba binyuranye n'inshingano z'ubucamanza, bikaba byabangamira ihame ryo gutandukana k'ubutegetsi n'ubwigenge bw'ubucamanza³⁶. [53] Bavuga ko kuba urukiko ruhamagaza abafatanyacyaha batarezwe, rukabumva, rukiherera, nyuma rugafata icyemezo cyo kubakurikirana cyangwa kutabakurikirana, basanga izo nshingano ari iz'ubushinjacyaha, bityo umucamanza ubarizwa mu butegetsi bw'ubucamanza akaba adakwiye kuzihabwa kuko ari ukwivanga mu nshingano z'urundi rwego. Basobanura ko umuntu ufite uburenganzira bwo gutegeka umushinjacyaha ari Minisitiri w'ubutabera kuko ari we bahuriye mu butegetsi nyubahirizategeko. Basobanura kandi ko ingingo ya 106 ituma nta bwinyagamburiro umushinjacyaha aba afite kuko icyo aba asabwa ari ukugera ku ntego aba yategetswe n'umucamanza. [54] Bavuga ko nubwo ingingo ya 106 yagiye igamije guca umuco wo kudahana nk'uko uhagarariye Intumwa Nkuru ya Leta abivuga, ibyo bitavuze ko igomba gukoreshwa mu buryo bubangamira Itegeko Nshinga kuko ingingo ya 3 n'ya 95 z'Itegeko Nshinga zibibuza. Basobanura kuri iyi ngingo bavuga ko umucamanza agomba kwigenga, bityo ko mu gihe ahawe inshingano ubusanzwe zikorwa n'ubutegetsi nyubahirizategeko, biba binyuranyije n'inshingano z'ibanze z'ubucamanza zo guca imanza. [55] Me Kabibi Spécioce, uhagarariye Intumwa Nkuru ya Leta, avuga ko ingingo ya 106 ishimangira ihame ry'uko ubushinjacyaha ari bwo bwonyine bufite inshingano yo gukurikirana ibyaha kuko urukiko rudashobora gukora iperereza, gushinja cyangwa kuburanisha umuntu ku cyaha mu gihe atarezwe n'ubushinjacyaha. [56] Avuga ko urukiko mu guca urubanza rugendera ku byavuye mu iperereza rikorwa n'ubushinjacyaha kandi ko rwubaha icyemezo ubushinjacyaha bushobora gufata nyuma yaryo, cyaba icyo gukomeza iperereza, kuregera urukiko cyangwa gushyingura dosiye ndetse ko n'iyi ubushinjacyaha

34 “respect for the basic separation of powers lodged in the executive, legislative and judicial branches of government compel this court not to interfere with the prosecutor’s authority”. 35 *United States vs Crouch*, 478 F, Supp. 867 (E.D. Cal 1979). “in exercising whatever discretion, it has [relating to the investigation and prosecution]. the Court removes itself from its proper function and becomes enmeshed in the prosecution’s fact gathering process and defendant’s trial tactics, such does not appear to me to comport with the court’s proper role”. 36 “It is important that judiciary be independent and it be perceived to be independent. If it were to be held that his intrusion of a judge into the executive domain is permissible, the way would be open for judges to be appointed for indefinite terms to other executive posts, or to perform other executive functions which are not appropriate to the central mission of the judiciary. This would undermine the separation of powers and the independence of the judiciary...” *South African Association of Personal Injury Lawyers V. Heath* 2000(1) BCLR 77 (CC)para. 46.

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buhisemo kuregera urukiko, rubisuzumana ubushishozi, ubwigenge, ubunyangamugayo, maze rugafata icyemezo rusingiye ku mategeko. [57] Avuga ko no mu bigize iperereza harimo no gusuzuma niba ushinjwa agomba kuregerwa cyangwa kutaregerwa urukiko, nk’uko biteganywa n’ingingo ya 3, agace ka 537, y’Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru. Asobanura ko ibisobanuro Urukiko rw’Ikirenga rwatanze mu gika cya 32 cy’urubanza rwa Mutebwa Alfred, Urukiko rwasobanuye ko impamvu ingingo ya 121 yagombaga kuvaho ari uko yateganyaga ko iyo urukiko rwategekaga ubushinjacyaha gukora iperereza ntiburikore, rwariyikorera. [58] Asanga rero ibyateganywaga n’iyo ngingo bitandukanye n’ibiteganywa n’ingingo ya 106 kuko yo iha urukiko ububasha bwo gutegeka ubushinjacyaha gukora iperereza igihe rusanze hari ibimenyetso byerekana ko umuntu ashobora kuba yarakoze icyaha. Asobanura ko ingingo ya 106 yahaye urukiko uburenganzira bwo kudahumiriza mu gihe rubonye hari ibimenyetso bigaragaza uruhare rw’umuntu mu cyaha kandi atararezwe, rukamuhamagara mu iburanisha kubitangaho ibisobanuro; ko ariko kuba urukiko rudafite inshingano zo gukora iperereza mu gihe rutanyuzwe n’ibisobanuro ruhawe, rutegeka ubushinjacyaha kurikora. [59] Asobanura ko Ubutegetsi Nyubahirizategeko n’Ubutegetsi bw’Ubucamanza butandukanye kandi buri bwose bwigenga, ko ariko bwombi bugomba kuzuzanya, ndetse bukanagenzurana (Checks and balances). [60] Asoza kuri iyi ngingo avuga ko kuba urukiko rwategeka ubushinjacyaha gukora iperereza bitavuze ko buri gihe uwahamagawe akurikiranwaho icyaha kuko hari n’igihe ubushinjacyaha busanga nta mpamvu yo kumukurikirana bitewe n’ikivuye mu iperereza. Avuga kandi ko inshinga gutegeka yakoreshejwe mu ngingo ya 106 asanga ntacyo itwaye kuko ari ko urukiko rukora. UKO URUKIKO RUBIBONA [61] Ikibazo kigomba gusuzumwa, ni ukumenya niba kuba urukiko rwategeka Ubushinjacyaha gukora iperereza nyuma yo kubona ko hari ibimenyetso bigaragaza ko hari umuntu rutaregewe uvugwaho kugira uruhare mu ikorwa ry’icyaha, bigaragaramo ukwivanga k’urukiko mu nshingano zihabwa ubushinjacyaha bubarizwa mu Butegetsi Nyubahirizategeko, bikaba binyuranyije n’ihame ry’itandukana ry’ubutegetsi riteganywa mu ngingo ya 61 y’Itegeko Nshinga. [62] Ingingo ya 61 y’Itegeko Nshinga iteganya ibi bikurikira:

- (1) Inzego z'Ubutegetsi bwa Leta ni izi zikurikira:
 - a) Ubutegetsi Nshingamategeko;
 - b) Ubutegetsi Nyubahirizategeko;
 - c) Ubutegetsi bw'Ubucamanza.
- (2) Ubutegetsi Nshingamategeko, Ubutegetsi Nyubahirizategeko n'Ubutegetsi bw'Ubucamanza buratandukanye kandi buri butegetsi burigenga, ariko bwose bukuzuzanya. Inshingano, imitunganyirize n'imikorere yabwo biteganywa n'iri Tegeko Nshinga.
- (3) Leta igomba gukora ku buryo imirimo yo mu Butegetsi Nshingamategeko, Nyubahirizategeko n'iy'ubw'Ubucamanza ikorwa n'abantu bayifitiye ubushobozi n'ubwangamugayo.

37 ingingo ya 3, agace ka 5 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya ko iperereza: igikorwa cyose kigamije gushakisha ibyaha, gukusanya ibimenyetso byaba ibishinja cyangwa ibishinjura kimwe n'igikorwa kigamije gusuzuma niba ushinjwa agomba gukurikiranwa cyangwa kudakurikiranwa.

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- [63] Itandukana ry'ubutegetsi, ihame rikomoka ku muhanga w'umufaransa Montesquieu³⁸, ni imwe mu nkingi za demokarasi³⁹ igamije gutuma hubahirizwa ihame ry'igihugu kigendera ku mategeko⁴⁰ kugira ngo hirindwe ko ubutegetsi bwaba mu maboko y'abantu bamwe, bashobora kubukoresha nabi⁴¹ mu nyungu zabo bwite. Iri hame rishingiye ku kuba hari itandukana ry'inshingano yo gukora amategeko (legislative/législatif), iyo kuyashyira mu bikorwa (executive/exécutif) n'iy'ubucamanza (judiciary/judiciaire), buri nshingano igahabwa urwego rwihariye kandi rwigenga ku buryo nta muntu umwe ugira ububasha bukubiyemo izo nshingano zose⁴², ariko bigasaba ko habaho uburyo izo nzego zigira imikoranire kandi zikagenzurana kugira ngo habeho ukudahungabana kw'imiyoborere⁴³.
- [64] Iri tandukana rishobora kubaho mu buryo bubiri: itandukana ry'inzego z'ubutegetsi risesuye (pure separation of powers) n'itandukana ry'inzego z'ubutegetsi ku buryo budasesuye (partial separation of powers). Ku bijyanye n'itandukana ry'inzego z'ubutegetsi risesuye (pure separation of powers), buri rwego rukora inshingano zarwo gusa, nta rwego rwivanga mu nshingano z'urundi, kandi nta muntu umwe ushobora kuba mu nzego ebyiri icyarimwe. Inzego z'ubutegetsi uko ari eshatu ziba zubatse ku buryo buri butegetsi bwihagije mu mikorere no mu myubakire yabwo hagamijwe kurinda no kubungabunga ubwigenge buzira igitugu muri Leta, ku buryo nta rwego na rumwe rushobora kugira ijamba (influence) ku bikorwa by'urundi⁴⁴. [65] N'ubwo bimeze gutya ariko, ubu butegetsi ntibufunze ku buryo ntaho izo nzego zihurira, kuko byatuma hatabaho kuzuzanya⁴⁵. Ni yo mpamvu mu bihugu bimwe nka Leta Zunze Ubumwe za Amerika⁴⁶

38 “When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty... there is no liberty if the powers of judging is not separated from the legislative and executive... there would be an end to everything, if the same man or the same body... were to exercise those three powers.” Montesquieu, Charles de Secondat, baron de. *The Spirit of Laws* (c.1748). Translated and edited by Anne Cohler, Basia Miller, Harold Stone. (New York: Cambridge University Press, 1989). Byakuwe mu nyandiko ya Richard Benwell and Oonagh Gay, House of Commons, p. 2. 39 “Le pouvoir est aménagé par toute Constitution contemporaine selon le schéma théorique de la séparation des pouvoirs, au confluent de la politique et du droit, en tant que condition nécessaire, quoique non suffisante, de la démocratie”. Olivier Gohin: *Droit Constitutionnel*, Lexis Nexis, 4e ed., Paris, 2019, p. 209. 40 “Le principe du partage du pouvoir étatique étant admis comme une condition essentielle de la réalisation de l’État de droit (...)”, Louis Favoreu, Patrick Gaia et autres: *Droit Constitutionnel*, éditions Dalloz, 18e ed., p. 403. 41 “Lorsque, dans la même personne ou dans le même corps de magistrature, la puissance législative est réunie à la puissance exécutive, il n’y a point de liberté; parce qu’on peut craindre que le même monarque ou le même sénat ne fasse des loi tyranniques, pour les exécuter tyranniquement”. Olivier Gohin, op. cit, p. 210. 42 “Separation of powers” refers to the idea that the major institutions of state should be functionally independent and that no individual should have powers that span these offices. The principal institutions are usually taken to be the executive, the legislature and the judiciary”. Richard Benwell and Oonagh Gay in *The Separation of Powers yanditswe na*, House of Commons, p. 1. 43 “la théorie de la séparation des pouvoirs repose sur la distinction de trois fonctions, législative, exécutive et juridictionnelle confiées à des organes indépendants le plus possible les uns des autres. Une sorte de contrôle réciproque est impliquée par cette séparation conduisant à l’équilibre du système” Louis Favoreu, Patrick Gaia n’abandi, op. cit. p. 405. 44 “The 'pure' theory of separation of powers holds that there should be a strict separation of both personnel and functions between the legislative, executive and judicial branches: members of one branch of government should not also be members of one of the other two branches, and branches of government should not interfere with functions carried out by another branch (...)The pure theory of separation seeks to ensure that governmental power is distributed amongst the three branches of government and does not seek to allow one branch of government to wield influence over another ” Roger Masterman and Colin Murray: *Constitutional and Administrative Law*, Cambridge, 3rd ed. UK, p. 256, 257. 45 “The pure approach is, therefore, arguably unsatisfactory as, while it disperses governmental power between three separate branches, it insulates the decisions of each of those branches from external challenge. Instead of establishing a system in which the exercise of governmental power can be restrained, the pure theory would simply seem to result in the concentration of unfettered governmental power in not one branch, but three”. Ibid. 46 “The United States Constitution adheres closely to the separation of powers. Article 1 grants powers to the legislature; article II gives executive power to the President; and article III creates an independent judiciary. Congress is elected separately from the President, who does not sit as part of the legislature. The Supreme Court can declare the acts of both Congress and President to be unconstitutional.” Richard Benwell and Oonagh Gay. Op.cit. p. 2.

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hagenwa uko izo nzego zitabangamirana mu mikorere⁴⁷, hakaba hari ububasha buhabwa buri rwego, nko kuba Perezida yakwanga ko itegeko ryatowe n'Inteko Ishinga Amategeko ryatangazwa (veto)⁴⁸, kuba habaho ibyemezo by'ubucamanza ku mategeko yatowe n'Inteko (judicial review); Inteko nayo ikaba ifite ububasha bwo kugenzura ibikorwa bya Guverinoma, kimwe n'uko Inteko Ishinga Amategeko ishobora guhindura ibyemezo by'Ubucamanza binyuze mu guhindura Itegeko Nshinga (constitutional amendment)⁴⁹. [66] Ku bijyanye n'itandukana ry'inzego z'ubutegetsi ku buryo budasesuye (partial separation of powers), n'ubwo inzego z'Igihugu zitandukanye, hari aho zishobora gukorana cyangwa kugenzurana. Ni ukuvuga ko inshingano zazo zidatandukanywa burundu, kandi hari ubufatanye n'igenzura hagati yazo (checks and balances)⁵⁰. Urugero rw'ibihugu bikoresha ubu buryo, ni Ubwongereza aho usanga ubutegetsi nshingamategeko n'ubutegetsi nyubahirizategeko busobekeranye ku buryo Minisitiri w'Intebe n'abamisititiri benshi baba bari no mu Nteko Ishinga amategeko, mu mutwe wa "House of Commons"⁵¹. [67] icyo ubu buryo bw'itandukana ry'ubutegetsi bwombi buhuriraho ni uko ubutegetsi bw'ubucamanza bugira uruhare rukomeye muri uku kuzuzanya no kugenzurana kuko bufite ububasha bwo kuburanisha umuturage uwo ari we wese urenganyije undi muturage cyangwa urwego rwa Leta urwo ari rwo rwose, bukagira n'ububasha bwo gutesha agaciro ibyemezo byafashwe n'ubutegetsi nyubahirizategeko bitubahirije amategeko cyangwa Itegeko Nshinga, ndetse n'ubwo gutesha agaciro amategeko atubahirije Itegeko Nshinga⁵². [68] Ibisobanuro bimaze gutangwa bigaragaza ibi bikurikira:

- a. Ihame ry'itandukana ry'inzego z'ubutegetsi rishingiye ahanini ku mikorere n'imiterere yazo ku buryo nta na rumwe rwivanga mu mikorere y'urundi;
- b. Buri rwego rufite inshingano zarwo zidasimbirwa n'iz'urundi, kandi nta rwego rufite ububasha bwo gusimbura urundi mu nshingano z'ibanze zarwo;

⁴⁷ "La pratique montra toutefois très vite qu'« aucune chose vivante ne peut, selon l'expression du président Woodrow Wilson, avoir des organes qui se font obstacle les uns les autres et vivre". Louis Favoreu et autres, op. cit. p. 425. ⁴⁸ "Trois séries de moyens d'action du président sur le Congrès peuvent être ainsi mises en évidence. Ils tiennent au rôle législatif du président, à son droit de veto en matière législative et de manière générale à un pouvoir d'influence sur le Congrès" ibid. ⁴⁹ "For example, the legislative power of Congress may be subject to presidential (executive) veto,¹⁵ and is also subject to (judicial) review by the United States Supreme Court. Secondly, the executive powers of the President may require Congressional (legislative) endorsement.¹⁶ And finally, judgments of the Supreme Court may be reversed by a process of constitutional amendment under Art. V of the Constitution" Roger Masterman and Collin Murray. Op. cit. p. 258-259. ⁵⁰ "the partial separation theory envisages that each of the branches should be able to exercise a degree of influence over the powers of the other branches. As such, the partial separation doctrine acts as a tool whereby the political and legal autonomy of one branch of government may be legitimately limited by one or more of the remaining branches. (...) separation of powers doctrine should not mean that each branch of government 'ought to have no partial agency in, or no control over, the acts of each other' (...) liberty would better be secured to

the individual by branches of government able to exercise coercive powers over each other. (...) ideas associated with what have become known as checks and balances” Roger Masterman na Colin Murray, *ibid.* 51 “In the UK, and other common law jurisdictions, the executive and legislature are closely entwined. The Prime Minister and a majority of his or her ministers are Members of Parliament and sit in the House of Commons. The executive is therefore present at the heart of Parliament.”. Richard Benwell and Oonagh Gay *op. cit.*, p. 2. 52 “The Courts are independent from the Executive and Legislature. The Judiciary has the power to strike down laws made by the Legislature and declare actions of the Executive unlawful. Judicial review ensures the other arms of Government are accountable under the law and are restrained from enacting laws that may be unconstitutional (and therefore invalid and unenforceable) and behaving unlawfully. This is a highly important check on the power of the Government because it provides a legal process in the courts for any individual, not matter their status or rank, to challenge the decisions of the Government” in Checks and Balances, by Ruleof Law Institute Person, the Australian Rule of Law Education Center, Nov 28, 2024. Available at https://www.ruleoflaw.org.au/category/principles/page/2/?utm_source=chatgpt.com.

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- c. Inzego zose zihurira ku nshingano imwe yo kurengera uburenganzira, ubwisanzure n’ituze by’abaturage, zikaba zigomba gukora ku buryo ibyo urwego rumwe rukora byuzuzanya n’iby’urundi rwego mu kugera kuri iyo ntego;
- d. Buri rwego rugira ububasha butuma ruhagarika ibikorwa by’urundi igihe byabangamira uburenganzira, ubwisanzure, n’ituze by’abaturage;
- e. Muri urwo rwego, ububasha bw’ubucamanza ni ubwo gukuraho, no gutegeka ko ibyemezo byose bibangamiye uburenganzira, ubwisanzure n’ituze by’abaturage bivanwaho cyangwa bikosorwa. [69] Ku bijyanye n’uru rubanza, Ingabire Umuhoza Victoire avuga ko ingingo ya 106 ituma ubutegetsi bw’ubucamanza bwivanga mu nshingano z’Ubutegetsi Nyubahirizategeko kuko rutegeka ubushinjacyaha gukora iperereza, bigaragaza ko nta bwuzuzanye hagati y’ubushinjacyaha n’ubucamanza buhari, ahubwo isano ihari ari iyo kuyoborwa. [70] Hakurikijwe ibisobanuro byagaragajwe haruguru ku ruhare rw’ubucamanza mu kuzuzanya no kugenzurana kw’inzego z’ubutegetsi, Urukiko rurasanga ubucamanza bwuzuzanya n’ubundi butegetsi mu kurengera no kubungabunga uburenganzira, ubwisanzure n’ituze by’abaturage; bukabikora bucira urubanza uwo ari we wese, harimo n’ukomoka mu Butegetsi Nyubahirizategeko cyangwa urwego rwabwo urwo ari rwo rwose, ndetse no kuba rwagira ibyo rutegeka bigomba kubahirizwa n’izo nzego. [71] Itegeko Nshinga mu ngingo yaryo ya 43, riha Ubucamanza inshingano yo kuba umurinzi w’uburenganzira n’ubwisanzure bwa muntu, ndetse iya 152 (1) (d) iteganya ko ibyemezo by’ubucamanza bigomba gukurikizwa n’abo bireba bose, zaba inzego z’ubutegetsi bwa Leta cyangwa abantu ku giti cyabo, bikaba bidashobora kuvuguruzwa, keretse binyuze mu nzira no mu buryo biteganywa n’amategeko. Ni muri urwo rwego ibyemezo by’urukiko byose bikoresha inshinga gutegeka, kuko bigomba kubahirizwa n’uwo bireba wese, umuntu ku giti

cye, n'inzege za Leta, harimo n'izo mu Bubutegetsi Nyubahirizategeko. [72] Urukiko rurasanga kuba ubucamanza bwategeka ubushinjacyaha bubarizwa mu Butegetsi Nyubahirizategeko gukora iperereza biri mu nshingano zabwo zo kurinda uburenganzira n'ubwisanzure bwa muntu, no kugenzura ibikorwa by'izindi nzego byaba bitubahirije ubwo burenganzira. Rurasanga kuba urukiko rwabona ko hari icyaha kitakurikiranywe cyangwa ukekwa kuba yaragize uruhare mu ikorwa ry'icyaha udakurikiranywe, ntirugire icyo rubikoraho, byaba atari ugutanga ubutabera bwuzuye mu gihe ubushinjacyaha bwaba butatunganyije inshingano zabwo uko bikwiye. [73] Urukiko rurasanga kandi kuba ingingo ya 106 iha ububasha urukiko gutegeka ubushinjacyaha gutangiza iperereza, bitagomba gufatwa nko kwivanga mu nshingano z'ubushinjacyaha, ahubwo bisobanuye ko urukiko rubwira ubushinjacyaha gukora inshingano zabwo mu rwego rw'ubwuzuzanye buteganywa n'ingingo ya 61 y'Itegeko Nshinga yavuzwe haruguru. Muri icyo cyemezo, urukiko ntirukora iperereza, ntirukurikirana icyaha, ntirutegeka uko ubushinjacyaha buzakora iperereza, cyangwa ngo rutegeke ibizarivamo. [74] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, itanyuranyije n'ingingo ya 61 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

- 3) Kumenya niba ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, inyuranyije n'ingingo ya 143, igika cya mbere, n'iya 146, igika cya 4, z'Itegeko Nshinga rya Repubulika y'u Rwanda

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- [75] Ingabire Umuhoza Victoire n'abamwunganira bavuga ko ingingo ya 143, igika cya mbere, y'Itegeko Nshinga, iteganya ko Urwego rw'Ubushinjacyaha Bukuru rushinzwe gukora iperereza no gukurikirana ibyaha mu gihugu hose. Bavuga ko icyo banenga ingingo ya 106 ari uko iha urukiko ububasha bwo guhamagaza abavugwa mu rubanza nk'abafatanyije icyaha n'abaregwa ndetse n'ibitso byabo kugira ngo bagire ibisobanuro batanga bitewe n'uko hari impamvu zituma bakekwa ko bafatanyije, urukiko rwasanga hari ibimenyetso bibashinja rugategeka ubushinjacyaha gukora iperereza. Bavuga ko uko gutegeka ubushinjacyaha ari ukwivanga mu nshingano zabwo, bikaba binyuranyije n'ihame ry'uko ubushinjacyaha ari bwo bufite ububasha bwo gukurikirana cyangwa kudakurikirana (opportunité de poursuite), nk'uko byagarutsweho mu byemezo byatanze⁵³ n'inkiko zitandukanye⁵⁴, akaba ari yo mpamvu basaba ko iyo ngingo ivanwaho. [76] Bavuga kandi ko kuba umucamanza yategeka umushinjacyaha gukora iperereza bigira ingaruka ku bwigenge bwe, impuguke zikaba zisobanura ko inkiko n'ubushinjacyaha bigira ubwigenge buteganywa mu Itegeko Nshinga. Bakomeza bavuga ko izo mpuguke zisobanura ko n'ubwo ubushinjacyaha bufite impu ebyiri kuko bubarizwa mu butegetsi nyubahirizategeko bukanagira uruhare mu bw'ubucamanza, bufite ubwigenge ku nkiko ndetse no ku butegetsi nyubahirizategeko⁵⁵, bukaba budashobora guhabwa amabwiriza n'umucamanza⁵⁶. [77] Bakomeza bavuga ko ingingo ya 146, igika cya 4, y'Itegeko Nshinga iteganya ko abashinjacyaha bafite ubwigenge ku baburanyi no ku bacamanza b'inkiko. Bagaragaza ko

ingingo ya 106 ibangamira ubwo bwigenge bw'abashinjacyaha kuko iteganya ko ubushinjacyaha butegetswe kubahiriza ibyo bwategetswe n'urukiko harimo gukora iperereza ryimbitse ku bisobanuro byatanze n'uwahamagawe mu rubanza ukekwa ko yafatanyije gukora icyaha n'abaregwa. Bavuga ko ibyo, ari ukwivanga gukabije mu bwigenge bw'ubushinjacyaha, ari nayo mpamvu basaba ko yakurwaho kuko inyuranyije n'ingingo ya 146, igika cya 4, y'Itegeko Nshinga. [78] Bavuga ko ubwo bwigenge bwagarutseho n'impuguke zavuzweho haruguru, aho zavuze ko ubushinjacyaha burangwa n'ubwigenge ku nkiko. Bavuga ko izo mpuguke zongeyeho ko urukiko rudafite ububasha bwo kugira icyo rutegeka cyangwa kugira amabwiriza ayo ari yo yose (injonction) ruha ubushinjacyaha kandi ko rutemerewe no kwivanga mu mikorere yabwo.

53 “Le devoir d’indépendance et d’impartialité qui est de l’essence de la fonction juridictionnelle et qui est consacré par un principe général de droit suppose qu’appelé à connaître d’une affaire, le juge puisse en aborder l’examen sans préjugé c’est-à-dire sans être intervenu précédemment à une autre occasion en la même cause et sans avoir par ses décisions déjà pris position sur tel ou tel aspect du problème qui pouvait influencer sa décision”. Liège 14 Octobre 1993, Rev droit penal criminel 1994 p.906, JLLMB, 1994 PAGE 746, Cour eur.D.H., 1ER octobre 1982, Public. Cour eur. D.H., Serie A, no 53, 30; cour eur.D.H., 22 avril 1994, J.L.M.B., 1995, P.362; Cour eur. DH., 22 février 1996, Rev. Trim, D.H., 1996, no 28,627, note P. Martens. 54 “Le principe de l’impartialité subjective du juge implique que le tribunal n’émette pas d’opinion “tranchée sur la solution du litige avant le prononcé de la décision au fond. Ainsi manque d’impartialité le tribunal qui, à travers ses propos, laisse transparaître son opinion quant à la culpabilité du prévenu”. Cass.,31 mai 1976, pas., I.P 1042; Cass., 30 avril 1986, JLM.B., 1987, p 1245. M.B., 23 mars 1999. 55 “Les juridictions et le Ministère Public jouissent d’une indépendance l’un vis-à-vis de l’autre; L’indépendance réciproque du juge et du Ministère Public est consacrée par le nouvel article 151, 1ER de la Constitution. Nonobstant son statut hybride d’agent de l’exécutif et d’organe judiciaire, le Ministère Public se caractérise par son indépendance envers les cours et tribunaux et dans une moindre mesure, envers le gouvernement” Rappelons ici le pouvoir d’injonction positive du ministre de la justice au procureur général (art.274 c.i.cr). Sur la question de l’indépendance du ministère public à l’égard de l’exécutif, voyez notamment R. Hayoit de Termicourt, “Propos sur le Ministère Public”, Rev. Dr. pen. Crim., 1936, pp. 961-1011; J. Vande Lanotte, “Bedenkingen bij de onafhankelijkheid van het openbaar ministerie”, RW., 1990, pp. 1001 et s; A. De Nauw, “Het Gaat Niet Alleen Om Het Openbaar Ministerie”, RW., 1991-1992, PP 1073 et S. 56 “Il n’est ni l’assesseur, ni l’auxiliaire du juge et les juridictions répressives n’ont pas le pouvoir de lui adresser des injonctions, ni de censurer son action”. Cass.,21 Juin 1974, Pas., I 1096; R Hayoit de Termicourt, “Propos sur le Ministère Public”, Rev. Dr. Pen. crim., 1936, p. 977

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[79] Me Kabibi Spécioce, uhagarariye Intumwa Nkuru ya Leta, avuga ko ingingo ya 106 ntaho iteganya ko urukiko rukora ibikorwa by’iperereza, ahubwo ko inshingano zarwo zigarukira ku gutegeka ubushinjacyaha gukora iperereza ku muntu bikekwa ko yafatanyije icyaha n’abaregwa. Asobanura ko ibyo ahubwo bishimangira ihame ryo gutandukana kw’inzego

z'ubutegetsi (separation of powers), aho urukiko rutegeka ubushinjacyaha gukora iperereza, ubushinjacyaha bugakora inshingano zabwo neza, naho urukiko rwo rukagenda ku byavuye muri iryo perereza. [80] Akomeza avuga ko ingingo ya 106 ishimangira ihame ry'uko ubushinjacyaha ari bwo bwonyine bufite inshingano yo gukurikirana ibyaha kuko urukiko rudashobora gukora iperereza, gushinja cyangwa kuburanisha umuntu ukurikiranyweho icyaha igihe atarezwe n'ubushinjacyaha. [81] Agaragaza kandi ko kuba urukiko rwategeka gukora iperereza nta na hamwe bibangamira ubwigenge bw'ubushinjacyaha cyangwa ngo bikureho ububasha bwo gukurikirana cyangwa kudakurikirana icyaha (opportunité de poursuite) bufitwe n'ubushinjacyaha, kuko iyo umucamanza ategutse ko hakorwa iperereza adategeka uko rigomba gukorwa n'ibigomba kurivamo. Yongeraho ko ibi ari na byo Urukiko rw'Ikirenga rwemeje mu rubanza rwa Mutebwa Alfred. [82] Asobanura ko iyo umucamanza ategutse ubushinjacyaha gukora iperereza, kuko ububasha bwo gukurikirana cyangwa kudakurikirana icyaha (opportunité de poursuite) ari igikorwa kigize iperereza, izo nshingano umushinjacyaha ategutse kuzikora. Akomeza avuga ko nyuma yo gukusanya ibimenyetso, ubushinjacyaha busuzuma niba uwo muntu akwiye gukurikiranwa, bwabona ari ngombwa dosiye ye ikaregerwa urukiko, kwasanga atari ngombwa gukurikiranwa, dosiye igashyingurwa hakagaragazwa n'impamvu zashingiweho. UKO URUKIKO RUBIBONA [83] Icyo Urukiko rugomba gusuzuma ni ukumenya niba kuba urukiko rutegeka ubushinjacyaha gukora iperereza no kuzana umuntu wakozweho iperereza ngo aburanishwe ari ukwivanga mu nshingano z'ubushinjacyaha cyangwa se niba hari aho bibangamira ubwigenge bw'urwo rwego. [84] Ingingo ya 143, igika cya mbere, y'Itegeko Nshinga iteganya ko urwego rw'ubushinjacyaha Bukuru rushinzwe gukora iperereza no gukurikirana ibyaha mu gihugu hose, naho iya 146, igika cya 4 yaryo, igateganya ko abashinjacyaha bafite ubwigenge ku baburanyi no ku bacamanza. [85] Nk'uko byasobanuwe haruguru, urukiko rufite ububasha bwo kugira ibyo rutegeka inzego zindi za Leta mu kubungabunga no kurengera uburenganzira, ubwigenge n'ituze by'abantu, igihe rusanze hari ibikenewe kugira ngo rutange ubutabera buboneye. Ni muri urwo rwego urukiko rushobora gutegeka ubushinjacyaha gukora iperereza, kandi ntibibangamira ubwigenge bwabwo, nk'uko byavuzwe n'uru Rukiko mu rubanza rwa Mutebwa Alfred rwagarutse haruguru, aho rwasobanuye ko igihe urukiko rusanze hari impamvu zikomeye zituma umuntu akekwa ko yaba yarafatanyije n'ushinjwa gukora icyaha, noneho rugasaba ubushinjacyaha kumukurikirana, ibyo bitabangamiye ubwigenge n'ubushishozi bw'ubushinjacyaha⁵⁷. Ikiri busuzumwe kitavuzweho muri urwo rubanza, ni ukumenya niba ubu bubasha bubangamiye ububasha bw'umushinjacyaha bwo gukurikirana cyangwa kudakurikirana icyaha (opportunité de poursuite). [86] Ishyirahamwe Mpuzamahanga ry'Abashinjacyaha ryashyizeho amahame agenga abashinjacyaha, ateganya mu ngingo yayo ya 4.2 ko abashinjacyaha bakomeza ikurikiranacyaha igihe hari ibimenyetso byizewe kandi bishobora kwemerwa, byaba bidahari bakaba bagomba guhagarika ikurikiranacyaha⁵⁸. Ibi

57 Reba mu gika cya 30. 58 “d) in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;”

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ni nabyo biteganywa mu ngingo ya 14 y'amabwiriza y'Umuryango w'Abibumbye agenga uruhare rw'abashinjacyaha⁵⁹. [87] Mu gusobanura iperereza icyo ari cyo, ingingo ya 3 mu gace ka 50 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, iteganya ko umushinjacyaha agomba gusuzuma niba ushinjwa agomba gukurikiranwa cyangwa kudakurikiranwa⁶⁰; ingingo ya 40-1 y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryo mu Bufaransa nayo iteganya ko mu gihe icyaha cyakozwe n'umuntu ufitiwe umwirondoro, ndetse n'aho akomoka hazwi kandi nta budahangarwa afite, umushinjacyaha ashingiye ku bimenyetso yagaragarijwe, afata icyemezo cyo gukurikirana cyangwa icyo gukoresha ubundi buryo butari ikurikiranacyaha, cyangwa icyo gushyingura idosiye⁶¹. [88] icyemezo cyo gukurikirana icyaha gishingira ku bintu bibiri, ari byo kuba hari icyaha cyabaye giteganywa n'amategeko no kuba hashobora gufatwa icyemezo cyo kugukurikirana cyangwa kutagukurikirana⁶². [89] Ku bijyanye no kuba hari icyaha cyabaye kigomba gukurikiranwa mu buryo buteganywa n'amategeko, (légalité des poursuites), ikurikiranacyaha ribaho ari uko hakozwe icyaha amategeko ateganyiriza ibihano, ibisabwa kugira ngo habeho icyaha byuzuye⁶³, kandi ari nta mpamvu ihari iteganywa n'amategeko ituma icyaha kidakurikiranwa. Ikurikiranacyaha ribaho kandi iyo ikirego gishobora kwakirwa, ni ukuvuga igihe kitashaje, uregwa ariho, cyangwa nta cyemezo cy'urukiko cyamaze gufatwa kuri icyo cyaha⁶⁴. Kuba icyaha cyakozwe giteganywa n'amategeko ubwabyo ntibihagije ngo hafatwe icyemezo cyo kugukurikirana kuko hagomba no kurebwa niba ari ngombwa koko (opportunité de poursuite/decision to prosecute). [90] Ku bijyanye no gufata icyemezo cyo gukurikirana cyangwa kudakurikirana icyaha (opportunité de poursuite/decision to prosecute), mu bihugu bigendera kuri civil law, ni ihame riha umushinjacyaha amahitamo atatu ari yo (i) kuba yaregera urukiko igihe yahisemo gukurikirana, (ii) kuba yahitamo uburyo bwo gukemura ikibazo hatabayeho gukurikirana icyaha (alternative to prosecution/Alternatives aux

efaidnbmnnnibpcajpcglclefindmkaj/https://www.iap-association.org/admin/IAP/media/Global-Training-Academy- Documents/Manuals/IAP Standards Oktober-2018 Final 20180210.pdf. 59 "14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded" Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 available at efaidnbmnnnibpcajpcglclefindmkaj/https://www.ohchr.org/sites/default/files/prosecutors.pdf. 60 Iyo ngingo iteganya ibi bikurikira: iperereza: igikorwa cyose kigamije gushakisha ibyaha, gukusanya ibimenyetso byaba ibishinja cyangwa ibishinjura kimwe n'igikorwa kigamije gusuzuma niba ushinjwa agomba gukurikiranwa cyangwa kudakurikiranwa. 61 Iyo ngingo iteganya ibi bikurikira: "Lorsqu'il estime que les faits qui ont été portés à sa connaissance en application des dispositions de l'article 40 constituent une infraction commise par une personne dont l'identité et le domicile sont connus et pour laquelle aucune disposition légale ne fait obstacle à la mise en mouvement de l'action publique, le procureur de la République territorialement compétent décide s'il est opportun: 1° Soit d'engager des poursuites; 2° Soit de mettre en oeuvre une procédure alternative aux poursuites en application des dispositions des

articles 41-1, 41-1-2 ou 41-2; 3° Soit de classer sans suite la procédure dès lors que les circonstances particulières liées à la commission des faits le justifient”. 62 “En effet, la poursuite peut être régie selon deux systèmes: la légalité des poursuites et l'opportunité des poursuites”. Serge Guinchard et Jacques Buisson. Op. cit. p. 933. 63 “Il va donc falloir que le procureur de la République examine de près les faits portés à sa connaissance, ceux qui paraissent établis d'après les constatations faites et d'après les personnes entendues; il devra en conséquence « qualifier » ces faits, c'est-à-dire voir s'ils tombent bien sous le coup d'une disposition précise de la loi” Bernard Bouloc, Op. cit. p. 692. 64 “Cet examen portera d'abord sur la compétence, qu'il s'agisse de compétence d'attribution ou de compétence territoriale. Le procureur doit vérifier d'autre part qu'il n'est pas survenu quelque cause d'extinction de l'action publique telle que la prescription, le décès de l'un ou plusieurs délinquants (...), une précédente décision sur les mêmes faits ayant acquis l'autorité de la chose jugée (...)” *ibid.* p. 693-694.

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poursuites) cyangwa (iii) kuba yashyingura dosiye⁶⁵. Mu bihugu bigendera kuri “Common law”, umushinjacyaha afite ububasha bwo gukurikirana (decision to prosecute) gusa iyo abona ko hari ibimenyetso bihagije kandi biri mu nyungu rusange⁶⁶. [91] Nubwo umushinjacyaha afite ubwigenge n'ubwisanzure mu gufata icyemezo, mu kubukoresha afite ibyo agomba kwitaho kugira ngo hatabaho kurengera no kudafata abantu kimwe, bityo mu bihe bimwe akaba yakwitwara mu buryo butandukanye, urugero akaba yahitamo gukurikirana abantu bamwe, abandira akabihorera kandi barafatanyije gukora ibyaha⁶⁷. Ni yo mpamvu iyo bibaye ngombwa ko ashyingura dosiye agomba kubisobanura kandi akabimenyesha uwahohotewe⁶⁸, akaba atemerewe gushyingura dosiye y'ukekwa icyaha utarubahirije ibyo yari yarategetswe⁶⁹, kandi agatakaza ubwo burenganzira igihe yaregeye urukiko⁷⁰. [92] Umushinjacyaha kandi agira impamvu ziteganywa n'amategeko ashobora gushingiraho ashyingura dosiye, zirimo kuba icyaha kidashobora gukurikiranwa kuko kitujuje ibisabwa, kuba abakekwa gukora icyaha batashoboye kumenyekana, kuba hatashoboye kuboneka ibimenyetso bihagije, cyangwa se kuba nta buremere n'ingaruka bikomeye icyaha gifite⁷¹. Ibi ni nabyo biteganywa n'ingingo ya 24 (1) (60) y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe. [93] Ubu bubasha bufite aho bugarukikira kuko mu gihe umushinjacyaha ashyinguye dosiye, uwahohotewe ashobora kuregera urukiko atisunze ubushinjacyaha nk'uko biteganywa n'ingingo za 118 na 120 z'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryavuzwe haruguru, kandi umushinjacyaha akagomba kuza mu rubanza⁷². Uwahohotewe ashobora kujuririra urwego rukuriye umushinjacyaha wafashe icyemezo cyo gushyingura dosiye⁷³, ndetse n'umucamanza ushinze iperereza

65 “(...) le procureur, au vu des éléments portés à sa connaissance, décide, en cas d'infraction commise par une personne dont l'identité et le domicile sont connus, soit d'engager des poursuites, soit de mettre en œuvre une procédure alternative aux poursuites, soit de classer sans suite la procédure.” *Ibid.* p. 695. 66 “existing prosecution policies of Australia, Canada, Fiji, Kenya, New Zealand, South Africa, the United Kingdom, and the United States—all common law countries—reveals that the decision to institute criminal proceedings is typically guided by

evidentiary and public interest considerations”. Guiding and Protecting Prosecutors, Comparative Overview of Policies Guiding Decisions to Prosecute. Yanditswe na Howard Varney, Shenali De Silva, and Alexandra Raleigh, itangazwa na International Center for Transitional Justice. p. 5. Available at https://www.ictj.org/sites/default/files/ICTJ_Report_GuidingProtectionProsecutors_Web.pdf. 67 “Cependant il présente le défaut d'un risque d'arbitraire et d'inégalité entre les particuliers sur l'ensemble du territoire national, deux affaires similaires pouvant ne pas recevoir la même réponse en deux points différents du sol national” Serge Guinchard et Jacques Buisson. Op. cit. p. 933. 68 “Suivant sa finalité d'encadrement du classement sans suite, la loi du 9 mars 2004 fait désormais obligation au procureur d'informer les victimes des motifs juridiques et factuels qui le fondent” *ibid.* p. 934 para 1544. 69 “la loi du 9 mars 2004 semble avoir interdit au procureur tout classement sans suite lorsque le mis en cause n'a pas exécuté la mesure alternative ordonnée à son encontre, à moins que ne soit intervenu un élément nouveau depuis que ladite mesure a été décidée” *ibid.* para 1545. 70 “Il faut d'ailleurs souligner, tant la confusion est parfois grande en pratique, que cette latitude n'existe que dans la prise de décision de poursuivre ou de ne pas poursuivre, pour cesser lorsque la poursuite a été engagée par l'acte saisissant une juridiction d'instruction ou de jugement. Dès cet instant, le procureur perd toute liberté, singulièrement celle de revenir sur sa décision de poursuivre, même lorsqu'il estime ensuite la poursuite infondée” *ibid.* para 1543. 71 “le classement sans suite peut d'abord intervenir parce que l'infraction n'est pas caractérisée du fait de l'absence d'un élément constitutif ou de l'existence d'une cause d'irresponsabilité, (...) impossibilité factuelle de poursuite ... dans le fait que l'auteur n'a pas été identifié, (...) Cette opportunité peut résulter du faible préjudice causé par l'infraction reprochée, du caractère mineur du trouble à l'ordre public qu'elle a provoqué, de la personnalité de l'auteur présumé, de son honorabilité ou de sa volonté affichée, et corroborée, de ne pas réitérer les faits alors qu'il est délinquant primaire, ou encore du fait qu'il a indemnisé la victime” *ibid.* para 1546, 1547, 1548. 72 “constitution de partie civile: Il existe un contrepoids au classement sans suite qui réside dans le droit d'action civile que peut exercer la victime”. *ibid.* p. 937, para 1552. 73 “Recours au procureur general: La loi du 9 mars 2004 a prévu, au profit de toute personne qui a dénoncé des faits au procureur, le droit de former un recours, auprès du procureur général compétent, contre la décision de classement sans suite intervenu relativement à ces faits”. *Ibid.* p. 398, para 1553.

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(juge d'instruction) ashobora gutegeka umushinjacyaha gutanga amakuru yose kuri dosiye yaregewe, akaba yanamutegeka gukora iperereza ku muntu yaba ataregeye hamwe n'abaregewe urukiko⁷⁴. Ubu bubasha kandi ntibuzira iherezo kuko igihe impamvu yatumye dosiye ishyingurwa zivuyeho, iperereza rishobora gukomeza igihe icyaha kitarasaza nk'uko biteganywa n'ingingo ya 24 (2) y'Itegeko ryerekeye imiburanishirize y'imanza z'inshinjabyaha ryavuzwe haruguru. [94] Ibimaze gusobanurwa haruguru, bigaragaza ibi bikurikira:

- a. Kuba urukiko rwategeka ubushinjacyaha gukora iperereza no kuzana mu rubanza umuntu utari wararurezwemo si ukwivanga mu nshingano z'ubushinjacyaha;

- b. Kuba urukiko rwategeka ubushinjacyaha gukora iperereza no kuzana mu rubanza umuntu utari wararurezwemo ntibibangamiye ubwigenge bw'umushinjacyaha, kuko urukiko rudategeka umushinjacyaha uko akora iperereza cyangwa umwanzuro ugomba kurivamo;
- c. Inshingano yo gukurikirana cyangwa kudakurikirana ukekwa icyaha iha umushinjacyaha ububasha bugamije gutuma aregera icyaha abona ko gikwiye kuregerwa koko, ni ukuvuga igihe hari ibimenyetso bihagije bituma ukekwa yakurikiranwa, kandi bikaba ari ngombwa koko ko icyaha gikurikiranwa;
- d. Ububasha bw'umushinjacyaha bukomoka ku nshingano yo gukurikirana cyangwa kudakurikirana ukekwa icyaha bubaho igihe hakozwe icyaha giteganywa n'amategeko gishobora gukurikiranwa kandi hatangiye iperereza ryo kugukurikirana, bukarangira igihe habayeho kuregera urukiko bikoze n'ubushinjacyaha cyangwa uwahohotewe igihe areze atisunze ubushinjacyaha.
- e. Umwanzuro wo kudakurikirana watumye dosiye ishyingurwa uba ari uw'agateganyo igihe cyose ikirego kitarasaza. [95] Ku bijyanye n'uru rubanza, Ingabire Umuhiza Victoire avugaga ko kuba urukiko rushobora gutegeka ubushinjacyaha gukora iperereza ari ukwivanga mu nshingano zabwo, bikaba binyuranyije n'ihame ry'uko ubushinjacyaha ari bwo bufite ububasha bwo gukurikirana cyangwa kudakurikirana ukekwa icyaha (opportunité de poursuite). [96] Rushingiye ku bisobanuro byatanze haruguru, Urukiko rurasanga nyuma y'uko urukiko rwaregwe rusanze ibyavugiye mu iburanisha n'ibisobanuro byatanze n'umuntu rwahamagaye bigaragaza ko ashobora kuba yaragize uruhare mu ikorwa ry'icyaha kiburanishwa, icyo rukora ari ugutegeka ubushinjacyaha kubikoraho iperereza, bukarabura niba koko hari uruhare yagize agomba gukurikiranwaho. Rurasanga kwivanga mu nshingano z'ubushinjacyaha byabaho igihe urukiko rwaba ari rwo rwikoreye iperereza, hanyuma rukabururisha uwo muntu. Ibi ni byo uru Rukiko rwanzuye ko binyuranyije n'Itegeko Nshinga mu rubanza rwa Mutebwa Alfred rwagarutse haruguru, aho rwavuze ko igihe umushinjacyaha adashakaga gukurikirana umuntu wagaragaye mu rubanza, bigasaba ko umucamanza yikorera ibikorwa by'iperereza no gushinja, byaba binyuranyije n'inshingano ye yo guca imanza mu bwigenge nta kubogama, kandi binabangamiye ihame ry'uko iburanisha rigomba kuba riboneye⁷⁵. Urukiko rurasanga kuba urukiko rutegeka ubushinjacyaha gukora iperereza ari ukubahiriza ingingo ya 143(1) y'Itegeko Nshinga kuko urukiko rutikorera iperereza, ahubwo rubiharira ubushinjacyaha nk'urwego rubifite mu nshingano, mu rwego rwo kubahiriza iryo hame.

74“Une garantie supplémentaire résulte des articles 202 et 204 du Code de procédure pénale (repris de l'art. 235 CIC). Si, dans une affaire déterminée, le procureur de la République a laissé certaines personnes ou certains faits en dehors de la poursuite qu'il a intentée, la chambre de l'instruction peut ordonner, même d'office, qu'il soit informé sur tous les chefs résultant du dossier à l'égard des personnes mises en examen renvoyées devant elle (art. 202), ou ordonner la mise en examen sur les mêmes chefs de personnes non renvoyées devant elle”. Bernard Bouloc, op. cit. p. 706. 75 Reba igika cya 31 cy'urwo rubanza.

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- [97] Urukiko rurasanga kandi ntaho bibangamiye ihame ry'uko ubushinjacyaha ari bwo busuzuma niba bukurikirana cyangwa budakurikirana ukekwa icyaha, kuko igikorwa urukiko ruba rukoze cyo gutegeka ko umuntu akorwaho iperereza atari cyo gitangiza iperereza rituma umushinjacyaha agira ubwo bubasha. Rurasanga n'igihe umushinjacyaha yaba yarakoze iperereza ku muntu agahitamo kutamuregera urukiko, ariko mu iburanisha hakaboneka ibimenyetso bitari byaragaragaye mbere, bihagije kugira ngo dosiye yari yarashyinguwe yongere ikorweho iperereza. [98] Urukiko rurasanga kandi kuba urukiko rwaregewe rwategeka umushinjacyaha kuzana umuntu mu rubanza kugira ngo aburanishwe, nabyo bitabangamiye ububasha bw'umushinjacyaha bwo gukurikirana cyangwa kudakurikirana, kuko nk'uko byasobanuwe haruguru mu gika cya (40), kuzana umuntu mu rubanza biri mu bubasha bw'urukiko bwo kugenzura niba hari ingaruka ibyo uwo muntu avugwaho bizagira ku rubanza ruri kuburanishwa, nko kuba hafatwa icyemezo ku muntu utari mu rubanza; bisobanuye ko igihe ubushinjacyaha busanze nta bimenyetso bihagije bituma uwo muntu akurikiranwa, bubivugira imbere y'urukiko kuko bufite ububasha bwo gushinja n'ubwo gushijura. [99] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ingingo ya 106 y'Itegeko No 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, itanyuranyije n'ingingo ya 143, igika cya mbere, n'ya 146, igika cya 4, z'Itegeko Nshinga rya Repubulika y'u Rwanda.
- III. ICYEMEZO CY'URUKIKO
- [100] Rwemeje ko ikirego cyatanze na Ingabire Umuhoza Victoire gisaba kwemeza ko ingingo ya 106 y'Itegeko No 27/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe, inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo yaryo ya 29, igika cya mbere, agace ka (b), iya 61, iya 143, igika cya mbere n'ya 146, igika cya 4, nta shingiro gifite.
- [101] Rwemeje ko ingingo ya 106 y'Itegeko No 27/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha nk'uko ryahinduwe itanyuranyije n'ingingo ya 29, igika cya mbere, agace ka (b), iya 61, iya 143, igika cya mbere, n'ya 146, igika cya 4, z'Itegeko Nshinga rya Repubulika y'u Rwanda.

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Prepared on 14 October 2026 · Esheria